



**CITY AND COUNTY OF SAN FRANCISCO  
DANIEL LURIE, MAYOR**

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**LICENSE NO. XXXX**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO  
OPERATING BY AND THROUGH THE  
SAN FRANCISCO PORT COMMISSION**

**AND**

**PACIFIC GAS AND ELECTRIC COMPANY,  
A CALIFORNIA CORPORATION**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
GAIL GILMAN, VICE PRESIDENT  
WILLIE ADAMS, COMMISSIONER  
STEPHEN ENGBLOM, COMMISSIONER  
STEVEN LEE, COMMISSIONER**

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## **EXHIBITS**

**EXHIBIT A-1 DESCRIPTION OF LICENSE AREA**

**EXHIBIT B ESTOPPEL CERTIFICATE**

**EXHIBIT C SOIL MANAGEMENT PLAN**

**SCHEDULE 1 HAZARDOUS MATERIALS DISCLOSURE**

**SCHEDULE 2 FEMA DISCLOSURE NOTICE**

### BASIC LICENSE INFORMATION

<i>License Date:</i>	_____, 202XX
<i>License Number:</i>	
<i>Port:</i>	<b>CITY AND COUNTY OF SAN FRANCISCO</b> , a municipal corporation, operating by and through the <b>SAN FRANCISCO PORT COMMISSION</b>
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400
<i>Licensee:</i>	<b>PACIFIC GAS AND ELECTRIC COMPANY</b> , a California corporation (“PG&E” or “Licensee”)
<i>Licensee's Notice and Billing Address:</i>	Pacific Gas and Electric Company 300 Lakeside Drive, Suite 210 Oakland, CA 94612 Attn: Land Right Library
<i>Licensee's Emergency Contact and Address:</i>	Telephone: 1 (800) 660-6789
<i>Licensee's Insurance Contact and Address (not broker):</i>	Telephone: 1 (415) 973-4548
<i>Contact Information for Licensee's Agent for Service of Process:</i>	CSC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
<i>License Area:</i>	<p>Approximately 164 rentable square feet of land, which is a portion of China Basin Park (Assessor Parcel Number 8719A-005), within Mission Rock in the City and County of San Francisco, State of California, as further depicted on <b><i>Exhibit A</i></b>, which exhibits are attached hereto and made a part hereof, together with any and all improvements and alterations thereto.</p> <p>The License Area is within a public open space.</p> <p>The above-ground areas of the License Area may not be obstructed, blocked or impeded in any way by Licensee, except in connection with: (1) any Permitted Activities where all required Regulatory Approvals and any other approvals required hereunder have been obtained (including but not limited to maintenance or repair of the Utility Facility), (2) in the case of an emergency in</p>

	accordance with the Additional Conditions to Permitted Activities section, below, or (3) any approved above-grade meters, boxes or appurtenances.
<i>Utility Facility:</i>	The underground portion of an electric power line located within the License Area that provides power to the Pilot House owned by the Port adjacent to Project Site (“Serviced Building”).
<i>Length of Term:</i>	Sixty-six (66) years.
<i>Commencement Date:</i>	[Note: Insert the date the License is fully executed, after all necessary approvals, including Board approval of this License and once the existing agreement between MRP and PG&E has terminated.]
<i>Expiration Date:</i>	_____, 2091 [Note: Insert the date that is 66 years after the Commencement Date].
<i>License Fee:</i>	\$0.00
<i>Security Deposit:</i>	Not applicable
<i>Permitted Activities:</i>	The License Area shall be used solely for the operation, maintenance, repair and replacement of the Utility Facility located within the License Area and for no other purpose, as further described in <b>Section 4</b> , and subject to the immediately following “ <b>Additional Conditions to Permitted Activities</b> ” row of this Basic License Information.
<i>Additional Conditions to Permitted Activities:</i>	<p>Except in the event of an emergency where no prior written notice to Port is required, Licensee will provide Port at least 30 days’ prior written notice before performing any maintenance or repair of the Utility Facility that requires the License Area be blocked off for more than 4 hours. Licensee’s notice will include the dates, hours, and a description of the work/plans/specifications of the maintenance or repair, including any permits required, that Licensee proposes in the License Area. If Port reasonably objects to any aspect of Licensee’s proposal, then Port will have 15 days to object in writing. Licensee will use its good faith efforts to address Port’s objections, including but not limited to changing the proposed dates/hours to dates/hours that are reasonably acceptable to Port.</p> <p>Licensee agrees to comply with Section 5 regarding Sidewalk Closures of the Regulations for Working in San Francisco Streets (dated December 2022). The regulations may be found at:</p>

	<p><a href="https://www.sfnta.com/reports/construction-regulations-blue-book">https://www.sfnta.com/reports/construction-regulations-blue-book</a></p> <p>During the major league baseball season and to the extent reasonably possible, Licensee will conduct planned Permitted Activities on non-home game days of the San Francisco Giants. The foregoing shall in no way limit Licensee's ability to access the License Area to address emergencies.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in <b>Section 4.3</b>, Licensee shall be prohibited from using the License Area for any of the following activities:</p> <p>(a) Parking of any vehicles or placement of any equipment in the License Area, except for temporary equipment and vehicles in connection with the Permitted Activities;</p> <p>(b) Excavating any areas adjacent to or near the License Area that are comprised of lightweight cellular concrete; and</p> <p>(c) Interfering with or damaging the Other Utilities within, around, about or near the License Area.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<i>Cure Period where applicable:</i>	Defined in Section 22.1.
<i>Maintenance and Repair:</i>	Sole responsibility of Licensee—no exceptions
<i>Utilities and Services:</i>	Sole responsibility of Licensee—no exceptions
<i>Lightweight Cellular Concrete:</i>	<p>At Licensee's request, the Horizontal Developer installed the Utility Facility within the License Area in a twenty-four inch (24") wide trench that is approximately between thirty-eight and one-half inches and forty-four and one-half inches (38.5" – 44.5") deep and surrounded the Utility Facility within the License Area in a minimum of twelve inches (12") of sand.</p> <p>So long as Licensee's Permitted Activities are within the License Area, there should be no contact with or excavation of lightweight cellular concrete ("LCC") surrounding the Utility Facility. Other areas within Mission Rock, including areas outside the 24 inches of sand that surround the Utility Facility, rights-of-way within Mission Rock, and China Basin Park are comprised in whole or in part of LCC.</p>

	<p>Working within areas outside the License Area that are comprised in whole or in part of LCC require compliance with additional and/or different Regulatory Approvals and procedures than areas comprised of typical pavement base and asphalt concrete wearing surface applied in other areas of the City. Licensee acknowledges and accepts that the additional and/or different Regulatory Approvals and procedures may result in additional costs to Licensee to repair and backfill any excavated areas.</p> <p>Notwithstanding that Permitted Activities within the License Area should not contact LCC, Licensee must promptly notify Port if its activities under this License result in any contact with or penetration of any LCC, will comply with all such reasonable requirements and procedures regarding LCC, and will be responsible for all costs associated with backfilling and/or repairing any damage resulting from such contact or penetration, as directed by Port or its designee.</p>
<i>Franchise Fee:</i>	Not Applicable
<i>Development Project:</i>	Mission Rock, as further described in <b><i>Section 1.3.</i></b>
<i>Prepared By:</i>	Caroline Morris

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## NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY NO. XXXXX

THIS NON-EXCLUSIVE LICENSE TO USE PORT PROPERTY (this “**License**”) is dated as of the License Date set forth in the Basic License Information, for reference purposes only, by and between the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), and **PACIFIC GAS AND ELECTRIC COMPANY** (“**PG&E**” or “**Licensee**”), a California corporation. City and Licensee will sometimes hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”. The Basic License Information and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this “**License**.”

### RECITALS

**A.** Port owns the License Area described in the Basic License Information. The License Area is within the area known as Seawall Lot 337, located south of Mission Creek/China Basin Channel in the Mission Bay neighborhood (the “**Project Site**” or “**Mission Rock**”), as more particularly described in that certain Disposition and Development Agreement dated August 15, 2018, by and between Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns, “**Horizontal Developer**”), and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Horizontal DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”).

**B.** Licensee will operate and maintain the Utility Facility within the License Area which Utility Facility provides power to the Serviced Building. The License Area is owned by the Port. The License Area is generally used as open space, including for pedestrian access paseos that are open to the public at all times.

**C.** Pursuant to **Port Commission Resolution No. XXXX** adopted on **XXXXXXXX**, the Port Commission authorized the Port Executive Director to execute this License under the terms and conditions provided herein, subject to approval by the Board of Supervisors, which was granted by the Board of Supervisors in **Resolution No. XXXXX on XXXXXXXX**.

### IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, PORT AND LICENSEE HEREBY AGREE AS FOLLOWS:

#### 1. GRANT OF LICENSE.

**1.1. License Area.** Port hereby grants to Licensee a non-exclusive license to enter upon and use the License Area described in the Basic License Information for the Permitted Activities.

**1.2. Other Utilities.** Licensee acknowledges and understands that its Utility Facility is near other utility infrastructure and systems (collectively, “**Other Utilities**”), such as infrastructure for the district energy system and the blackwater system. It is Licensee’s sole responsibility to ensure that the Permitted Activities do not adversely impact the Other Utilities, whether pre-existing or later installed pursuant to **Section 10**, below. Licensee is solely responsible for all costs and damages to the Other Utilities from the Permitted Activities.

**1.3. Mission Rock Development.** Licensee acknowledges that the License Area is within the Mission Rock development site. Accordingly, there will be construction and activities associated with such construction within, adjacent to, and near the License Area throughout the Term which will generate certain adverse impacts that may result in inconvenience to or disturbance of Licensee (provided that physical damage resulting from such construction and associated activities shall be redressed). Impacts may include, but are not limited to,

coordinating date and time of routine maintenance of the Utility Facility with both vertical and horizontal developers, Port tenants, subtenants and other users within the Mission Rock development site, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Licensee hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance, except for failure to redress physical damage resulting from construction and associated activities.

## **2. CONDITION OF PROPERTY.**

**2.1. AS IS Condition.** Licensee acknowledges that Port has made no representations or warranties concerning the License Area shown, including without limitation, the environmental or seismological condition thereof. Licensee acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials and the FEMA disclosure notice attached as *Schedule 2* and Licensee accepts these areas “AS IS”, “WITH ALL FAULTS.” Licensee shall maintain the License Area and any other areas used in connection with this License so they will not be unsafe, unsightly or unsanitary as a result of the Permitted Activities. Licensee represents and warrants to Port that Licensee has investigated and inspected, either independently or through agents of Licensee’s own choosing, the condition of each of these areas and their suitability for Licensee’s business and intended use. Licensee acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the seismological, physical or environmental condition of these areas, the present or future suitability of these areas for Licensee’s business, or any other matter whatsoever relating to these areas, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**2.2. Accessibility.** Licensee is hereby advised that the License Area has not been inspected by a Certified Access Specialist (“CASp”) for accessibility issues. Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards. Licensee understands and agrees that it may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws as a result of Licensee’s Permitted Activities.

## **3. TAXES AND ASSESSMENTS.**

**3.1. General.** Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into resulting from Licensee’s possession, use, or occupancy of the License Area under this License, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy of the License Area by Licensee under this License (as distinguished from the ownership of the License Area). Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Effective Date. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

**3.2. Possessory Interest Tax.** Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any sublease or assignment permitted under this License and any exercise of any option to renew or other extension of this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by Law, all of which shall be paid when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the License Area or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Port shall provide a copy of this License to the County Assessor after the Commencement Date. Licensee shall timely provide any information to the Port or City that may reasonably be requested to ensure compliance with this or any other reporting requirement.

#### **4. USE OF THE LICENSE AREA.**

**4.1. Permitted Activities.** Subject to obtaining all required Regulatory Approvals and compliance with the terms and conditions of this License, Licensee may: use the License Area for the sole purpose of operating and maintaining, at Licensee's sole expense and risk, the Utility Facility, including but not limited to the right to excavate, repair, reconstruct, maintain, replace within the License Area, and remove such Utility Facility, for the purpose of providing electric service (collectively, the "**Permitted Activities**"). Any activities other than the Permitted Activities shall require Port's advance written approval, which Port may offer in its sole discretion.

**4.2. Non-Interference.** Licensee acknowledges and agrees that Licensee's exercise of the rights herein granted shall not impede or interfere with the use of the above-ground portion of License Area by Port and its tenants, subtenants, invitees, and members of the public without the prior written consent of Port or the Other Utilities as further described in **Section 1.2**, provided however that Port acknowledges the restrictions on its approvals and activities set forth in **Section 10(b)** of this License. Licensee shall notify and keep Port and if requested by Port, Port tenants, the master association of Mission Rock, and private property owners, informed of its activities under this License in accordance with the "**Additional Conditions to Permitted Activities**" row of this Basic License Information.

**4.3. Prohibited Uses.** Licensee shall use the License Area solely for the Permitted Activities and for no other purpose. Any other use in the License Area, including but not limited to the Prohibited Uses identified in the Basic License Information, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property except for the restrictions set forth in **Section 10(b)** of this License, obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) is prohibited (each, a "**Prohibited Use**"). Use of the Utility Facility by any party other than Licensee or its Agents without Port's prior written consent pursuant to **Section 20.4**, is a Prohibited Use. For the avoidance of doubt, an Assignee approved in accordance with this License may use the Utility Facility.

In the event after inspection of the License Area by the Port that a Prohibited Use is occurring on the License Area, then Licensee shall immediately cease the Prohibited Use and shall pay to Port, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00),

subject to increases set forth below, upon delivery of written notice to Licensee to cease the Prohibited Use (“**Notice to Cease Prohibited Use**”) within thirty (30) calendar days after delivery of written notice. In subsequent inspection(s) of the License Area if Licensee has not ceased the prior-cited Prohibited Use within thirty (30) calendar days, then Licensee shall pay to Port, as an additional charge, an amount equaling Four Hundred Dollars (\$400.00), subject to increases set forth below, for each additional thirty (30) calendar day Notice to Cease Prohibited Use delivered to Licensee. The Parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the License Area. Licensee’s failure to comply with the applicable Notice to Cease Prohibited Use and Port’s right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity. The amounts set forth in this Section shall be due within sixty (60) calendar days following delivery of the applicable Notice to Cease Prohibited Use.

Each charge set forth in this Section and in **Sections 8.3** (Additional Charges) shall be increased by one hundred dollars (\$100.00) on every tenth (10th) Anniversary Date after the Effective Date. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

## **5. EFFECTIVE DATE.**

This License shall become effective on the first date (the “**Effective Date**”) that all of the following conditions are satisfied:

- (a) The Port Commission authorizes execution of this License by the Port Executive Director;
- (b) The Board of Supervisors, authorizes execution of this License; and
- (c) The Parties fully execute this License.

## **6. TERM OF LICENSE.**

This License shall be for a term (“**Term**”) commencing on the Effective Date and expiring on the day that is sixty-six (66) years from and after the Effective Date (the “**Expiration Date**”). The License shall be irrevocable during the Term unless terminated, in whole or in part, in accordance with either of the following: (a) provided all the terms and conditions of Section 7 below are satisfied by Licensee, Licensee delivers written notice to Port of its relinquishment and termination of any or all of the rights granted hereunder; or (b) upon an Event of Default as described in Section 21 below.

## **7. INTENTIONALLY DELETED.**

## **8. FEES.**

**8.1. General.** All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to Port and delivered to Port’s address specified in **Section 24**, or such other place as Port may designate in writing.

### **8.2. License Fee.**

(a) **During the Term.** If the Port Commission and the Board of Supervisors approve, there will be no license fee charged to Licensee for use of the License Area during the Term.

(b) **After the Term.** Upon the expiration of this License, Licensee and Port shall meet and confer to any monthly license fee for Licensee’s continued use and/or occupancy of the License Area.

**8.3. Additional Charges.** Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate Party, upon written notice from the Port, the items identified in 16.4(a) (Licensee's Environmental Condition Notification Requirements); 16.5 (Storm Water Pollution Prevention); 34.1 (Non-Discrimination); and 37 (Estoppel Certificate); or to provide evidence of the required insurance coverage described in Section 21, then upon written notice from Port of such failure, Licensee shall pay, as an additional charge, an amount equaling Three Hundred Dollars (\$300.00), as increased subject to Section 4.3. In the event Licensee fails to provide the necessary document within thirty (30) calendar days after delivery of such written notice and Port delivers to Licensee an additional written notice requesting such document, then Licensee shall pay to Port, as an additional charge, an amount equaling Three Hundred Fifty Dollars (\$350.00), as increased subject to Section 4.3 for each additional thirty (30) calendar days written notice Port delivers to Licensee requesting such document. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. The amounts set forth in this Section shall be due within thirty (30) business days following delivery of the written notice of such failure to submit the documents identified herein. By signing this License, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

**8.4. Returned Checks.** If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission).

**9. INTENTIONALLY DELETED.**

**10. SUBJECT TO OTHER USES.**

Licensee acknowledges and agrees that this License herein granted is for Licensee's non-exclusive use and that Port shall have the right to use or permit the use by others of the License Area for any use that does not substantially interfere with the rights granted to Licensee herein, provided that,

(a) Notwithstanding the generality of the foregoing, Licensee acknowledges its obligations in **Sections 1.2 and 4.2.**

(b) Subject to the last sentence of this paragraph, Port shall obtain Licensee's prior written consent, which consent shall be at Licensee's reasonable discretion, and which shall not be unreasonably withheld, conditioned or delayed if Port wishes to issue a license, lease or other written agreement to another party for any subsurface uses within the License Area. Notwithstanding the foregoing, the Port shall not place or construct, nor issue permits for a third party to place or construct, any building or other structure, or store flammable substances, or other non-movable obstruction, or substantially add to or diminish the ground level within the License Area; provided however, the Port may issue permits and/or allow movable street furniture such as tables and chairs in the License Area. The Port will reasonably assist Licensee to require the removal or relocation of any unauthorized uses under this Section.

(i) If Licensee's prior approval is required under **Section 10(b)**, Port shall provide sufficient documentation, including engineering drawings to enable Licensee to review any such proposed activities. Licensee shall consent or deny consent within ninety (90) days of a Port request presented to Licensee with sufficient documentation under **Section 10(b)**. Licensee's failure to respond within the 90-day period, after at least two (2) written requests from Port under Licensee's address listed in **Section 24** (Notice) highlighting the issue and 90-day deadline and reasonable further efforts by the Port to communicate the issue to PG&E

through established channels of communication between the Parties, shall be deemed an approval of Port's request. If Licensee denies the request, the denial must be accompanied by an explanation of the technical rationale for the denial in sufficient detail to allow Port to submit a redesign of the requested project such that Licensee would consent.

(ii) If Licensee denies consent, Port may seek CPUC approval to allow the activity or to allow the proposed facilities to be co-located in the License Area, which approval would supersede Licensee's denial.

#### **11. INTENTIONALLY DELETED.**

#### **12. REPAIR AND MAINTENANCE.**

Licensee, at its sole cost and expense and in no later than thirty (30) days (unless Licensee requests and Port provides written approval authorizing one or more additional thirty-day periods), (a) shall repair and maintain the Utility Facility and the License Area as necessary to prevent threats to health, safety or the environment and may make other repairs all in compliance with all applicable Laws; and (b) in the event that Licensee digs, excavates, or otherwise damages any portion of the License Area or surrounding area as a result of the Permitted Activities Licensee shall restore said portion of the License Area (including any surrounding area damaged or affected by such action) as nearly as reasonably possible to its condition prior to such action, including without limiting the generality of the foregoing, pavement (including any special or unique pavement unless Port requests in writing, in each instance, that Licensee restore the pavement with standard asphalt covering), sidewalks, lawns and shrubs, and any other improvements owned by the Port or City, and as may be required by Regulatory Approvals. So long as Licensee's Permitted Activities are totally within the License Area, there should be no contact with or excavation of lightweight cellular concrete ("LCC") surrounding the Utility Facility. Other areas within Mission Rock, including areas outside the 24 inches of sand that surround the Utility Facility, rights-of-way within Mission Rock, and China Basin Park are comprised in whole or in part of LCC. If Licensee's repair and maintenance Permitted Activities are within areas comprised in whole or in part of LCC, Licensee must comply with the obligations described in the "*Lightweight Cellular Concrete*" row of the Basic License Information.

Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. Licensee acknowledges and agrees that, except in the case of an emergency, without limiting the conditions set forth in the "*Additional Conditions to Permitted Activities*" row of the Basic License Information, Licensee shall use commercially reasonable efforts to provide advance written notice, and shall obtain all Regulatory Approvals (along with full payment of all fees and charges associated with obtaining the same), and shall coordinate with Port (and at Port's request, the Master Association for the Mission Rock development or such other Port designee) prior to performing any repair or maintenance of the Utility Facility permitted under this License.

#### **13. SURRENDER; EQUIPMENT REMOVAL PLAN.**

(a) No later than twenty-four months after the expiration or notice of earlier termination of this License (and subject to the fee provisions in *Section 10.2(b)* of this License), Licensee shall surrender the License Area clean, free of debris, waste, and Hazardous Materials caused or permitted by Licensee or the Permitted Activities, and free and clear of all liens and encumbrances created by or benefitting Licensee. Licensee shall abandon in place the Utility Facility unless either Port, in accordance with *Section 14*, or Licensee reasonably determine that the Utility Facility shall be removed. If determined the Utility Facility is to be removed, it shall be in accordance with the methods and schedules of an "*Equipment Removal Plan*" developed and paid for by Licensee as that plan is approved by Port.

(b) Licensee shall submit a final Equipment Removal Plan to Port and to all Regulatory Agencies for Regulatory Approvals within ninety (90) days prior to the expiration of this License, or no later than twenty-four months following notice of earlier termination of this License. The plan must contain the following:

(i) A detailed description of the methods to be employed to remove the Utility Facility including their ultimate disposition;

(ii) Supplemental environmental information if required or necessary, to enable Port to comply with applicable Laws;

(iii) A schedule for completion of the removal of the Utility Facility;  
and

(iv) Identification of the entities to be employed to execute the Equipment Removal Plan.

(c) If the Utility Facility is abandoned in place, Licensee shall deliver to Port such documentation as may be necessary to convey title to such remaining improvements to Port free and clear of any liens, mortgages, loans or other encumbrances.

(d) Should Licensee fail to remove the Utility Facility or convey title to any remaining improvements pursuant to the requirements of this Section, Licensee agrees it will be deemed abandoned. Licensee hereby waives the benefits of California Civil Code Section 1993, to the extent applicable.

(e) If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

(f) Licensee's obligation under this Section shall survive the expiration or earlier termination of this License until the abandonment, transfer, or removal of the Utility Facility in accordance with this License.

#### **14. REQUIRED REMOVAL OR RELOCATION OF THE UTILITY FACILITY.**

**14.1. *Required Removal or Relocation.*** Licensee agrees that it will remove or relocate without expense to Port or City any Utility Facility installed, used and maintained under this License, if and when such removal or relocation is made necessary by any lawful change of grade, alignment or width of any street or right of way, or by any work to be performed under the governmental authority of Port or the City and upon written notice of the same by Port or City. After receipt of a notice requesting relocation/removal of the Utility Facility, Licensee and the Port/City will use commercially reasonable and technically feasible efforts to facilitate the Port's/City's design and engineering of any Port or City project requiring such removal or relocation to minimize time and expense to both Parties. The Parties will negotiate in good faith to amend this License to the extent necessary to reflect the new License Area.

In the event that: (a) applicable law prohibits the removal or relocation of the Utility Facility; or (b) the required relocation would render the Utility Facility permanently unusable and thereby defeat the purpose of this License or; (c) despite Licensee's good faith efforts, a Regulatory Agency having jurisdiction over the Utility Facility prohibits Licensee from removing or relocating the Utility Facility; or (d) the Port or City can reasonably redesign or reroute such work at significantly less cost than the cost to Licensee to relocate or remove the Utility Facility, Port and Licensee agree to negotiate in good faith to allow for the Port or City to proceed in an alternative manner acceptable to all Parties, as evidenced in writing signed by Licensee and Port or City, as applicable, conditioned on Licensee bearing all commercially reasonable costs of the City/Port alternative.

Licensee shall remove or relocate the Utility Facility, pursuant to an Equipment Removal Plan as described in Section 13, within thirty-six (36) months subject to Force Majeure and reasonable extensions by Port or City after notice has been given under this Section.

To the extent that all or any portion of the License Area is surrendered as a result of a removal or relocation of the Utility Facility as provided by this Section, Licensee shall comply with the provisions Section 13.

**14.2. Force Majeure Delay.** The dates and times by which Licensee must perform the obligations described in this Section 14 will be extended by Force Majeure. To obtain the benefit of an extension of time due to Force Majeure (in each instance, a “**Force Majeure Delay**”), Licensee must give Port and City written notice within sixty (60) days after the earlier of the Force Majeure event or Licensee’s discovery of the Force Majeure event causing the delay to occur (“**Force Majeure Notice**”) of: (i) the cause of the delay; (ii) Licensee’s reasonable estimate of the length of the Force Majeure Delay. Unless the City or Port objects to Licensee’s estimate of the period of Force Majeure Delay within fifteen (15) business days after timely receipt of a Force Majeure Notice (or within fifteen (15) business days after Port’s receipt of a second Force Majeure Notice if Port did not respond to the first Force Majeure Notice), the Force Majeure Delay will be the period specified in the applicable Force Majeure Notice. Each Force Majeure Notice must display prominently on the envelope enclosing such notice and the first page of such notice a statement substantially the following form (including emphasis): “**FORCE MAJEURE DELAY NOTICE. IMMEDIATE ATTENTION REQUIRED. FAILURE TO RESPOND WITHIN FIFTEEN (15) BUSINESS DAYS MAY RESULT IN A FORCE MAJEURE DELAY AS DESCRIBED IN THIS NOTICE.**”

## **15. COMPLIANCE WITH LAWS; PORT ACTING AS REAL PROPERTY OWNER.**

**15.1. Compliance with Laws.** All activities performed on the License Area by Licensee its Agents shall be done in accordance with all then applicable Laws.

**15.2. Proprietary Capacity.** Licensee understands and agrees that Port is entering into this License in its capacity as a property owner with a proprietary interest. Except as specifically stated herein, Licensee further understands and agrees that no approval by Port for purposes of this License shall be deemed to constitute any approval required by any federal, state, regional or City authority. Before beginning any work in the License Area, Licensee shall obtain any and all necessary permits and other Regulatory Approvals for conducting the Permitted Activities and shall maintain such approvals as necessary throughout the Term of this License. Promptly upon receipt of such approvals, Licensee shall use commercially reasonable efforts to deliver copies to Port, and in any case upon request by the Port. Port shall cooperate with Licensee, at no cost to Port, to the extent necessary to obtain applicable approvals. To the fullest extent permitted by Law, Licensee agrees to indemnify and hold the Indemnified Parties harmless from and against any loss, expense, cost, damage, attorneys’ fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee’s failure to obtain or comply with the terms and conditions of any Regulatory Approval. The indemnity obligation in this paragraph shall survive the expiration or termination of this License.

**15.3. Regulatory Approval.** Licensee understands that Licensee’s activity on the License Area may require Regulatory Approval(s). Licensee shall be solely responsible for obtaining any such Regulatory Approval. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by Port or would create obligations on the part of Port or owners of the Other Utilities (whether on or off of the License

Area), other than those expressly acknowledged in Section 10(b) of this License, to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

Without limiting the terms and conditions of this Section, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any governmental officials, departments, boards, commissions or agencies responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a regulatory agency of the City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activities on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

## **16. HAZARDOUS MATERIALS.**

**16.1. *Compliance with Environmental Laws.*** Licensee will comply and cause its Agents and Invitees, while in, on, or under the License Area, to comply with all Environmental Laws, Operations Plans (if any), the Soil Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices disclosed to Licensee, and any additional soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Utility Facility or the License Area. Without limiting the generality of the foregoing, Licensee covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed, conditioned or withheld, Handle, nor permit the Handling of, Hazardous Materials in, on, or under the License Area, except for (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, and (b) those Hazardous Materials reasonably necessary to operate and maintain the Utility Facility, and (c) pre-existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

**16.2. *Licensee Responsibility.*** Licensee agrees to protect its Agents and the general public in its operations on the License Area from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during the Term:

(a) Other than the Hazardous Materials existing prior to the Effective Date in the License Area, will not permit any Hazardous Materials to be present in, on, or under the License Area except as permitted under Section 16.1 and to the extent reasonably necessary for Licensee's operation and maintenance of the Utility Facility;

(b) Will not cause or permit any Hazardous Material Condition;

(c) Will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or willfully or

knowingly permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws;

(d) Upon and after the Commencement Date, Licensee will be the “**Generator**” of any waste, including hazardous waste, resulting from Licensee’s Permitted Activities (other than to the extent the Horizontal Developer, Phase 1 Horizontal Developer or another vertical developer within Mission Rock is designated as the “Generator” and such designation is approved in writing by the Port’s Deputy Director of Planning and Environment); provided that the Port hereby approves Horizontal Developer and/or Phase 1 Horizontal Developer as the “Generator” of any waste resulting from such entity’s work on the License Area in connection with the first phase of the Mission Rock development; and

(e) Will comply with all provisions of the Soil Management Plan with respect to the License Area, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually.

### **16.3. *Removal/Remedial Action of Hazardous Materials.***

(a) Nothing in this Section 16.3 shall limit the parties’ rights and obligations under Section 13 (Surrender/Equipment Removal Plan).

(b) After notifying Port in accordance with Section 16.4, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition caused or permitted by Licensee during the Term; provided Licensee must take all necessary immediate actions to the extent practicable to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition, and will then provide such notice to Port in accordance with Section 16.4. Except as provided in the previous sentence, Licensee must obtain Port’s approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port’s approval of the work plan and continue diligently until Remediation is complete.

(c) In addition to its obligations under Section 16.3(b), before this License terminates for any reason, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License any Hazardous Material Condition caused by Licensee’s or its Agents’ or Invitees’ Handling, Release or Exacerbation of Hazardous Materials during the Term.

(d) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port’s reasonable judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area.

(e) Unless Licensee or its Subtenants or Agents or Invitees Exacerbate the Hazardous Material Condition or Release Hazardous Materials in, on, under, around or about the License Area, Licensee will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date.

**16.4. *Licensee’s Environmental Condition Notification Requirements.*** The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, (ii) the Soil Management Plan, and (iii) Environmental Laws:

(a) Licensee shall notify Port upon the issuance of any environmental permit, approval or license issued by a Regulatory Agency related to Licensee’s activities on the License Area and shall provide Port with a copy of such documents as requested from Port from time to time, and shall provide to Port any hazardous waste generator identification numbers related to

the License Area issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency, to itself, its sublicensees or Agents.

**(b)** Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 16.1, Handled, in, on, over or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environment condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use during the Term if such Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency. In addition to Licensee's notice to Port by oral or other means, Licensee must provide Port written notice of any such Release (or Handling of Hazardous Materials, except in accordance with Section 16.1) within twenty-four (24) hours following such Release (or Handling).

**(c)** Licensee must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Licensee's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Licensee's receipt of any of the following, of:

**(i)** Any notice of the Release of Hazardous Materials (or Handling of Hazardous Materials, except in accordance with Section 16.1), in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area during the Term, or from any vehicles Licensee, or its Agents and Invitees use during the Term that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

**(ii)** Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

**(iii)** Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over or under the License Area during the Term or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area, or from any vehicles Licensee, or its Agents and Invitees use in, on, or under the License Area during the Term;

**(iv)** Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, over, or under the License Area or emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term; and

**(v)** Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

**(d)** Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Port will be entitled to participate in any such meetings at its sole election.

(e) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the License Area or Licensee's or its Agents' or Invitees' operations at the License Area. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this Section 16.4 upon Port's request.

(f) Licensee must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area.

(g) Port may from time to time request, and Licensee will be obligated to provide, available information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

#### **16.5. Storm Water Pollution Prevention.**

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting, if applicable. If requested by the Port, Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning on-site operations, if applicable.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction storm water control provisions of the Statewide General Permit for Discharge of Storm Water from Small Municipalities and the San Francisco Storm Water Design Guidelines, subject to review and permitting by the Port.

**16.6. Disclosure of Hazardous Materials.** Licensee is hereby advised that Hazardous Materials may be present on the License Area, including elevated concentrations of petroleum hydrocarbons, polynuclear aromatic hydrocarbons, heavy metals, and other contaminants commonly found in public rights-of-way, fill and in Bay sediments as further described in the reports listed in *Schedule 1* attached hereto. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Licensee agrees to provide this information to its sublicensees, Agents, Contractors and Invitees in connection with their use of the License Area.

**16.7. Failure to Comply.** Failure to comply with this Section 16 shall constitute an Event of Default under Section 22.1(a) of this License. In the event of such default, Port shall have all rights available under this License and at law or equity including, without limitation, the right to continue this License and require Licensee to clean up such Hazardous Condition required of Licensee under this Section 16. If Licensee fails to clean up such Hazardous Condition required of Licensee, the Port may terminate this License and collect damages Port incurs as a result of such default, including, without limitation, cleanup costs incurred by Port resulting from Licensee's failure to cleanup of any Hazardous Condition required of Licensee under this Section 16.

**16.8. Survival.** Licensee's obligations under this Section 16 shall survive the expiration or earlier termination of this License.

## **17. NO COSTS TO PORT.**

Licensee shall bear all costs or expenses of any kind or nature in connection with this License, including but not limited to, all costs of excavation, construction, operation, sampling, monitoring, testing, transporting and disposing of soil or groundwater and backfilling, and shall keep the License Area free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with the Permitted Activities.

## **18. REPAIR OF DAMAGE.**

If any portion of the License Area, or any other property of Port or its Agents located on or about the License Area, is damaged by any of the Permitted Activities conducted by Licensee or its Agents, Licensee shall, at its own cost and expense, repair any and all such damage and restore said property to as nearly as reasonably possible, the condition that existed prior to such damage. If the damage does not create or result in an Emergency Condition (as defined in Section 22), then such repair and restoration shall be completed within a reasonable period but not longer than the time frame specified in Section 22 below.

## **19. INDEMNIFICATION.**

**19.1. General Indemnity.** Subject to *Section 19.4*, Licensee agrees to and will Indemnify the City and Port from and against any and all Losses imposed upon or incurred by or asserted against the City and Port in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof caused by Licensee or its Agents, or that result from Licensee's Permitted Activities, and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee or its Agents, to the extent resulting from Licensee's use of the License Area under this License;

(b) any use, possession, or occupation of the License Area, and any operation, maintenance, or management of Licensee's Utility Facility in, or condition of the License Area or any part thereof related to the Permitted Activities;

(c) any latent, design, construction or structural defect relating to the Utility Facility, any other subsequent construction, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents related to the Permitted Activities;

(d) any failure on the part of Licensee or its Agents, as applicable, to perform or comply with any of the terms, covenants, or conditions of this License or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents; and

(f) any negligent acts or omissions of Licensee, or its Agents with respect to the Utility Facility, or in, on, under, or about the License Area.

### **19.2. Hazardous Materials Indemnification.**

(a) In addition to its obligations under *Section 19.1* and subject to *Section 19.4*, Licensee agrees to Indemnify the City and Port from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition that occurred or was Exacerbated during the term of this License caused by any acts or omissions of Licensee or its Agents in, on, under, about, or to the License Area;

(ii) any Handling or Release of Hazardous Materials caused by Licensee or its Agents in, on, under, around or about the License Area during the term of this License as a result of the Permitted Activities;

(iii) any Exacerbation of any Hazardous Material Condition in, on, under, around or about the License Area during the term of this License caused by Licensee or its Agents as a result of the Permitted Activities;

(iv) failure by Licensee to comply with Environmental Laws applicable to the License Area; or

(v) claims by Licensee for exposure to Hazardous Materials in, on, under, around, or about the License Area arising during the Term.

(b) Losses under *Section 19.2(a)* includes:

(i) for the following costs in subsection (x) and (y) incurred in connection with any Investigation or Remediation required by any Environmental Regulatory Agency or in the restoration of the affected area to its condition before the Release, (x) the actual reasonable costs incurred if such costs are incurred before Port tenders the Claim to Licensee, and (y) the actual reasonable costs incurred if such costs are incurred after Port tenders the Claim to Licensee;

(ii) actual damages for diminution in the value of the License Area;

(iii) sums actually paid in settlement of claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties as a result of the Permitted Activities; and

(iv) reasonable attorneys' fees and costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or pays any costs within the scope of this *Section 19.2* due to Licensee's failure to comply with its Indemnification obligations to Port and the City under this License, Licensee must reimburse Port for Port's actual and reasonable costs within forty-five (45) days after notice from Port.

(c) Licensee understands and agrees that its liability to the City and Port under this *Section 19.2*, subject to *Section 19.4*, arises upon the earlier to occur of:

(i) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area as a result of either the Permitted Activities or the acts or omissions of Licensee or its Agents; and

(ii) the Exacerbation of any Hazardous Material Condition caused by Licensee or its Agents, or resulting from the Permitted Activities; or

(iii) the institution of any Hazardous Materials Claim with respect to such Release of Hazardous Materials or Exacerbation of Hazardous Material Condition resulting from the Permitted Activities or the acts or omissions of Licensee or its Agents, and not upon the realization of loss or damage.

**19.3. Scope of Indemnities; Obligation to Defend.** Except as otherwise provided in *Section 19.4*, Licensee's Indemnification obligations under this License are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the City and Port. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the City and Port from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this License are in addition to, and in no

way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this License, at common law or otherwise.

**19.4. Exclusions from Indemnification.** Nothing in this Indemnity relieves the City or Port from liability, nor will the Indemnities set forth in *Sections 19.1 and 19.2*, or the defense obligations set forth in *Section 19.3* extend to Losses:

(a) to the extent caused by the gross negligence or willful misconduct of the City or Port; or

(b) from third parties' claims for exposure to, or Release or Handling of, Hazardous Materials or a Hazardous Material Condition in, on or under any portion of the License Area prior to the Effective Date of this License, or that are not a result of Licensee's or its Agents' acts or omissions, the Utility Facility, or the Permitted Activities.

**19.5. Survival.** Licensee's Indemnification obligations for Losses that arise during the term of this License shall survive the expiration or earlier termination of this License.

## **20. ASSIGNMENT; USE BY OTHERS.**

**20.1. Assignment; Port Consent Required.** This License is personal to Licensee and shall not be assigned, except with the written consent by Port, which shall not be unreasonably withheld; provided, however, that Licensee shall have the right, with notice delivered at least sixty (60) days prior to the assignment, to assign Licensee's interest in this License to an Affiliate of PG&E (a "**Permitted Assignee**") without the prior written consent of Port so long as the Permitted Assignee assumes all of Licensee's obligations under this License.

**20.2. Request for Assignment.** Except in connection with an assignment to a Permitted Assignee, Licensee shall give Port at least one hundred twenty (120) days prior written notice of any desired assignment (herein "**Notice of Request to Assign**") and shall provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed assignee, (b) the current balance sheet and profit and loss statements (herein "**financial statements**") for the proposed assignee and for any other entity or person who is to be liable for Licensee's obligations under this License, such financial statements to be certified in writing to be true and correct and to be prepared in accordance with generally accepted accounting principles and to cover a period of three years prior to the proposed effective date of the assignment (or for such shorter period as the proposed assignee or other person may have been in existence), (c) a full description of the terms and conditions of the proposed assignment, including copies of any and all proposed assignment agreements or other documents and instruments concerning the proposed assignment, (d) a Pre-screening and Leasing Application, or other similar document, completed by the proposed assignee and delivered to Port, and (e) any other information, documentation or evidence as may be requested by Port, all in sufficient detail to enable Port to evaluate the proposed assignment and the prospective assignee. Licensee's Notice of Request to Assign shall not be deemed to have been served or given until such time as Licensee has provided Port with all information set forth hereinabove. Licensee shall immediately notify Port of any modifications to the proposed terms of the assignment.

If Port consents to the Assignment, Licensee must close the Assignment on the terms stated in the Notice of Request to Assign within one hundred twenty (120) days after Port notifies Licensee of Port's consent. If the assignment agreement does not close within the 120-day period, then Port's consent will expire, unless Licensee gives Port a new Notice of Request to Assign, in which case Port again will be entitled to exercise any of the options under this Section.

**20.3. Required Provisions in Every Assignment.** Each and every assignment agreement shall contain the following provisions:

(a) Each assignee shall assume all obligations of Licensee under this License and shall be jointly and severally liable with Licensee for payment of all Fees and performance of all terms, covenants and conditions to be performed by Licensee hereunder.

(b) A clause naming as additional insureds under all liability and other insurance policies “**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS EMPLOYEES AND REPRESENTATIVES**”.

**20.4. Use by Others Prohibited.** Except for an assignment permitted in accordance with Sections 20.1 and 20.2, Licensee is prohibited from allowing other parties use of the Utility Facility.

**20.5. No Further Consent Implied.** A consent to one Assignment shall not be construed as a consent to a subsequent assignment. Except as set forth in Section 20.1 above, no interest in this License shall be assignable as to Licensee’s interest by operation of Law without Port’s written consent.

**20.6. Fees for Review.** Licensee shall reimburse Port for all reasonable and actual costs, including without limitation, reasonable attorneys’ fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment, including any assignment to a Permitted Assignee.

**20.7. No Release of Licensee.** The acceptance by Port of Fees or other payment from any other person shall not be deemed to be a waiver by Port of any provision of this License or to be a consent to any assignment, or to be a release of Licensee from any obligation under this License. No assignment of this License shall in any way diminish, impair or release any of the liabilities and obligations of Licensee unless expressly agreed by Port.

**20.8. Failure to Comply.** Any assignment that does not comply with this Section fully may constitute an Event of Default under Section 22.1(b) and will be void as to Port and this License.

**20.9. Acknowledgement.** Licensee acknowledges and agrees that each of the rights of Port set forth in Section 20 is a reasonable limitation on Licensee’s right to assign or sublet for purposes of California Civil Code Section 1951.4.

**20.10. Waiver of Liability.** The Indemnified Parties shall not be liable for any damage to the property of Licensee or its Agents, or for any bodily injury or death to any such Agent, resulting or arising from the condition of the License Area or its use by Licensee or for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, with the exception of damage or injury caused by the gross negligence, willful or intentional misconduct of the Indemnified Parties. Under no circumstances shall any of the Indemnified Parties be liable under any circumstances for any consequential, incidental or punitive damages.

## **21. INSURANCE.**

**21.1. Required Insurance.** Except as limited in Section 21.1(e), during the Term, Licensee shall maintain in full force and effect, at its own cost and expense at all times while Permitted Activities are being conducted, insurance in the amounts and coverages set forth below. Licensee shall have the right to self-insure with respect to any of the insurance requirements required of Licensee under this License. In the event that Licensee elects to self-insure, on or before the Effective Date and thirty (30) days in advance of each Anniversary Date or the date Licensee intends to begin self-insurance for any coverage, Licensee shall submit a letter statement of self-insurance satisfactory to the Port signed by a duly authorized

representative of Licensee, such letter evidencing that Licensee's self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this License.

**(a)** Workers' Compensation, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance as required by Law, with Employers' Liability limits not less than One Million Dollars (\$1,000,000.00) for each accident. In the event Licensee is self-insured for the insurance required pursuant to this Section 21.1(a), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

**(b)** Comprehensive General Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000.00) for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and Ten Million Dollars (\$10,000,000.00) General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting from any drilling or excavation conducted as part of the Permitted Activities. However, this provision shall not apply to claims relating to investigation or remediation of any environmental conditions on the License Area.

**(c)** Comprehensive Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

**(d)** Pollution Legal Liability Insurance with combined single limit of Five Million Dollars (\$5,000,000.00) each claim, Ten Million Dollars (\$10,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

**(e)** Construction Activities. At all times during any period during which Licensee performs maintenance, repair, removal or relocation of the Utility Facility within the License Area, Licensee shall require its contractors that perform any services on or about the License Area to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. If Licensee has engaged Agents to work on or about the License Area other than Licensee's contractors, Licensee shall cause such Agents to carry insurance that is consistent with industry custom and practice for work of similar nature and scope.

**(i)** Licensee shall carry "All Risk Property Insurance," which includes coverage during construction, testing, and start-up for any and all materials, equipment and machinery intended for the Project while at the site, off-site and during transit to the site.

**(ii)** Licensee shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Licensee in connection with Permitted Activities within the License Area for any

improvements or any alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Licensee therefor.

## **21.2. General Insurance Matters.**

(a) All liability insurance policies required to be maintained by Licensee hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the “**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS,**” shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

(c) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(d) Licensee shall deliver to Port certificates of insurance (if policies are obtained), letters of self-insurance (if Licensee elects to self-insure) in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking system such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Licensee's broker shall complete the insurance questionnaire and submit all required documentation. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) So long as PG&E has not assigned this License (including to an Affiliate of PG&E), then not more often than every five (5) years and upon not less than sixty (60) days prior written notice, Port may require Licensee to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be reasonably required by Law, the City's Risk Manager or as is generally required by commercial owners of facilities similar in size, character, age and location as the Utility Facility with respect to risks comparable to those associated with the use of the License Area. Port expressly reserves the right to annually require Licensee to increase insurance limits or provide other coverage or coverage amounts upon assignment or transfer of this License.

(f) If at any time during the Term, Licensee or its Agents, as the case may be, fail to maintain the required insurance in full force and effect, all work under this License shall be discontinued immediately, and shall not resume until notice is received by Port that the required insurance has been renewed to full force and effect for a period satisfactory to Port.

(g) **Claims Made Policy.** Should any of the insurance that Licensee is required to hold under this License be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

(h) **Annual Aggregate Limit.** Should any of the insurance that Licensee is required to hold under this License be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

(i) **Waiver of Subrogation Rights.** Notwithstanding anything to the contrary contained herein, Port and Licensee (each a “**Waiving Party**”) each hereby waives any right of recovery against the other Party for any loss or damage sustained by such other Party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this License or is actually covered by insurance obtained by the Waiving Party.

## **22. DEFAULT; REMEDIES; EMERGENCY CONDITION.**

**22.1. Default.** The occurrence of either of the following constitutes an “**Event of Default:**” Licensee fails to cure any violation of a term, covenant, or condition of this License within thirty (30) calendar days after written notice of violation from Port, or if it reasonably would require more than thirty (30) calendar days to remedy such default, then within a time reasonably necessary to remedy such default so long as Licensee has commenced actions to cure such default within the thirty (30) calendar day period and diligently pursues its efforts to cure to completion. Any such notice of violation shall specify the nature of the default. If the default has been remedied to the reasonable satisfaction of Port during this time, Port shall not terminate this License based upon such default. For purposes of this provision, written notice of violation shall be deemed sufficiently given if sent to the applicable Party at address set forth in **Section 24**. Nothing in this Section shall be interpreted to limit Port’s rights under **Section 23**.

**22.2. Remedies.** Upon an Event of Default by Licensee and following the applicable cure period set forth in Section 22.1 above, Port may, in its sole discretion, in addition to any other remedy Port may have at law or in equity, elect to terminate this License and Licensee’s right to use the License Area. Upon any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and surrender the License Area in accordance with Section 13 above and Port may take any and all action to enforce Licensee’s obligations.

### **22.3. Emergency Condition.**

(a) In the Event of an Emergency Condition, Licensee must take all necessary immediate actions to the extent practicable to address the Emergency Condition, and then provide such notice to Port in accordance with Section 16.4.

(b) In the event Port notifies Licensee of an Emergency Condition, Licensee must immediately take all reasonably practicable actions to address the Emergency Condition, including but not limited actions to confine or limit the extent or impact of the Emergency Condition, and must notify the Port of the status of the Emergency Condition and all reasonably practicable actions to address it within twenty-four hours of Port’s notice.

(c) An “**Emergency Condition**” means an event or circumstance that in the reasonable opinion of the Port requires immediate action for the protection of the health or safety of any person or the prevention of substantial property damage.

(d) Failure to comply with this Section 22.3 shall constitute an Event of Default under Section 22.1 of this License. In addition, upon failure to comply with this Section the Port may require Licensee to suspend operation of the Utility Facility and/or cease Licensee’s activities on the License Area until such Emergency Condition has been remedied to the reasonable satisfaction of Port.

### **23. PORT'S ENTRY ON LICENSE AREA.**

Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; and, except as provided in Section 10(b) of this License, to perform any necessary maintenance, repairs or restoration to the License Area. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area, provided no excavation shall occur unless Port notifies Underground Service Alert (USA) and opens an emergency ticket prior to any excavation and Licensee may have an inspector present during such excavation provided that Port shall have no obligation to modify its schedule or planned operations in case of emergency. Port shall comply with Licensee's reasonable standards when working near the Utility Facility. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages that result from inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area for the purposes described in this Section (except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees), or entry by the public onto the License Area.

### **24. NOTICES.**

Any notice given under this License shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

***Licensee:*** Pacific Gas and Electric Company  
Land Management  
300 Lakeside Drive, Suite 210  
Oakland, CA 94612  
Attn: Land Rights Library

***With a copy to:*** Pacific Gas and Electric Company  
Law Department  
P.O. Box 1018  
Oakland, CA 94612-9991  
Attn: Managing Counsel,  
Law Regulatory

***Port:*** Port of San Francisco  
Pier 1  
San Francisco, California 94111  
Attention: Director of Real Estate and Development  
  
Telephone: (415) 274-0400

**With a copy to:** Port of San Francisco  
Pier 1  
San Francisco, California 94111  
Attention: General Counsel

Telephone: (415) 274-0400

Any mailing address 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 License 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.

**25. RECORDATION.**

Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

**26. EXCLUSIVE BENEFIT.**

The provisions of this License are for the exclusive benefit of City and Port and its successors and assigns and Licensee and shall not be deemed to be for the benefit of or confer rights upon any other person except as provided herein. Nothing herein shall be deemed a dedication of any portion of the License Area to or for the benefit of the general public.

**27. SIGNS.**

Except for any signs that may be required by Laws relating to the operation of the Utility Facility, Licensee shall not have the right to place, construct or maintain any sign, advertisement, awning, banner or other exterior decoration in the License Area without Port's prior written consent which consent may be granted or withheld in Port's sole discretion. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, and Licensee shall obtain all Regulatory Approvals required by Laws.

**28. HOLDING OVER.**

Any holding over after the expiration of the Term with the prior written consent of Port shall not constitute a renewal hereof, but shall be deemed a month-to-month license and shall be upon each and every one of the terms, conditions and covenants of this License, except that Port and Licensee shall meet and confer as to any monthly License Fee. Either Party may cancel said month-to-month license upon thirty (30) days written notice to the other Party.

**29. MISCELLANEOUS.**

This License may be amended or modified only by a written amendment signed by each of the Parties hereto. No waiver by a Party of any of the provisions of this License shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. This License may be executed in one or more originals or counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. Time is of the essence as to each and every provision of this License. This License shall be construed and interpreted in accordance with the laws of the State of California and the City's Charter. This License contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in

interpreting this License. This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

### **30. WAIVER OF CLAIMS.**

Licensee hereby waives on behalf of itself and its heirs, successors, and assigns, any and all rights which it may have to file a claim or bring an action of any kind or character against the City, Port, or their respective officers, agents, or employees, for damage to property or personal injury, including death, which might arise out of the use of the License Area under this License, except such damage, loss, or injury that results from any claims caused by the gross negligence, willful or intentional misconduct of City or Port or their officers, agents, or employees.

### **31. ATTORNEYS' FEES.**

If any Party hereto brings an action or proceeding (including any cross complaint or counterclaim) against any other Party by reason of a default, or otherwise arising out of this License, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this section shall include, without limitation, a Party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other Party of its claim or defense. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this License, reasonable fees of attorneys of Licensees' in-house Law Department and the City Attorney's Office shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by Licensee's in-house Law Department or the City Attorney's Office, respectively.

### **32. AUTHORITY.**

If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of such Licensee does hereby covenant and warrant that such Licensee is a duly authorized and existing entity, that such Licensee has and is qualified to do business in California, that such Licensee has full right and authority to execute this License and that each and all of the persons signing on behalf of such Licensee is authorized to do so. Upon Port's request, a Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

### **33. MINERAL RESERVATION.**

The State of California ("State"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Rent or otherwise relieve Licensee from any of its obligations under this License.

### **34. CITY AND PORT REQUIREMENTS.**

The San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this Section 34 relating to any applicable code provision shall be deemed an Event of Default under Section 22.1 of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

#### **34.1. *Nondiscrimination.***

(a) **Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code) and shall require all Sublicensees and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively “**Core Benefits**”) as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

(d) **CMD Form.** On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) **Penalties.** Licensee understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

**34.2. Requiring Health Benefits for Covered Employees.** Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 121.3(d) of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a “small business” by the City pursuant to Section 121.3 of the HCAO, it shall have no obligation to comply with Section 34.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Licensee shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Licensee based on the Sublicensee’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that

fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

**34.3. *First Source Hiring.*** The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply, to the extent applicable to Licensee, with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this License.

**34.4. *Local Business Enterprises.*** The Port Commission encourages the participation of local business enterprises (LBEs) in Licensee's operations. Licensee agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

**34.5. *Indoor Air Quality.*** Licensee agrees if applicable to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

**34.6. *Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.*** Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

**34.7. *Prohibition of Alcoholic Beverages Advertising.*** Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

**34.8.** *[Reserved.]*

**34.9. *Restrictions on the Use of Pesticides.*** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City’s written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee’s primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee’s staff or contractors. If Licensee or Licensee’s contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

**34.10. *MacBride Principles Northern Ireland.*** Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

**34.11. *Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**34.12. *Preservative-Treated Wood Containing Arsenic.*** Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term “**preservative-treated wood containing arsenic**” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the

Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “**saltwater immersion**” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**34.13. Notification of Limitations on Contributions.** If this License is subject to the approval by City’s Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.13 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee’s board of directors, and Licensee’s principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee’s bid or contract. Additionally, Licensee certifies that if this Section 21.13 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

**34.14. Sunshine Ordinance.** In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**34.15. Conflicts of Interest.** Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

**34.16. Drug-Free Workplace.** Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

**34.17. Prevailing Wages and Working Conditions.** Licensee shall comply to the extent applicable to Licensee with all prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section

1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii ) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee’s failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Licensee shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

#### **34.18. *Consideration of Criminal History in Hiring and Employment Decisions.***

(a) Licensee agrees to comply with and be bound by all applicable provisions of Labor and Employment Code Division II, Article 142 (formerly San Francisco Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; “**Article 142**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee shall incorporate by reference the provisions of Article 142 in all sublicensees of some or all of the License Area, and shall require all sublicensees to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection shall constitute an Event of Default under Section 22.1(b) of this License.

(c) Licensee and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

(f) Licensee and sublicensees shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 142.8.

**34.19. Local Hire.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Licensee's improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee's improvements or alterations, Licensee shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section shall constitute an Event of Default under Section 22.1(b) of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

**34.20. San Francisco Bottled Water Ordinance.** Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the

License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

**34.21. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.** Licensee shall not install or permit any vending machine on the License Area without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall constitute an Event of Default under Section 22.1(b) of this License. Without limiting Port’s other rights and remedies under this License, Port shall have the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

**34.22. Licensee’s Compliance with City Business and Tax Regulations Code.** Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 34.24 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**34.23. Consideration of Salary History.** Licensee shall comply if applicable with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K) (Consideration of Salary History Ordinance or “Pay Parity Act”). For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

### **35. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS.**

No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License.

### **36. DOCUMENTS AND INFORMATION SHARING.**

Licensee shall provide to Port and, upon request, to any other City department without charge, copies of all publicly-available documents required to be submitted to Regulatory Agencies in connection with the Utility Facility, including, copies of any studies, applications, reports, documents, memorandums, permit applications, permits, licenses, plans, drawings,

applications of rate approvals, or other agreements (collectively, “**Studies**”). Studies may be provided electronically in the format in which they were received by Licensee or in PDF format. Upon request, which shall identify the document(s) or categories of document(s) subject to the request, Licensee shall also provide the requesting City Department with supporting documentation for any Studies that Licensee is not contractually prohibited from sharing with a third party relating to the Project, including but not limited to, any Studies relating to the San Francisco transmission grid and its substations and any Studies (including but not limited to, Studies regarding marine resources, Hazardous Materials, geotechnical conditions, and navigation/shipping channel locations) related to alternative routing of submarine cables. In addition, Licensee shall, without charge, meet with Port or other City agencies as designated by Port as reasonably required to assist Port or City agencies in reviewing the Studies, determining their potential applicability to other City or Port projects, and assessing the feasibility of, or, under commercially reasonable prices and terms, assisting in or undertaking the construction of projects to the extent authorized by the Board of Supervisors. Such meetings shall take place at Port’s office or another location within the City, as designated by Port or another City agency.

For purposes of this Section, “Licensee” shall mean PG&E, an Affiliate of PG&E or any successor or assign.

### **37. ESTOPPEL CERTIFICATES.**

Licensee shall execute and deliver the certificate form attached to this Lease as ***Exhibit B*** within ten (10) business days of receipt by Licensee of a written request by Port.

### **38. APPROVAL OF BOARD OF SUPERVISORS.**

Notwithstanding anything to the contrary contained in this License, Licensee acknowledges and agrees that no officer or employee of City has authority to commit City to this License unless and until City’s Board of Supervisors shall have duly adopted a Resolution approving this License and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a Resolution, and this License shall be null and void if City’s Mayor and the Board of supervisors do not approve this License, in their respective sole discretion. Approval of this License by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted, nor will any such approval create any binding obligations on City.

### **39. MISCELLANEOUS PROVISIONS.**

**39.1. California Law; Venue.** This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City’s Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

**39.2. Entire Agreement.** This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this License.

**39.3. Amendments.** No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

**39.4. Severability.** If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

**39.5. Interpretation of License.**

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either Party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this License.

(g) The Party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

**39.6. Successors.** The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

**39.7. Real Estate Broker's Fees.** Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

**39.8. Counterparts.** For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

**39.9. Electronic Signature.** This License may be executed by electronic signatures and transmitted in a pdf version by email and such electronic signatures shall be deemed as original for purposes of this License and shall have the same force and effect as a manually executed original.

**39.10. Authority.** If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

**39.11. No Implied Waiver.** No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

**39.12. Time is of Essence.** Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

**39.13. Cumulative Remedies.** All rights and remedies of either Party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

**39.14. Survival of Indemnities.** Termination or expiration of this License shall not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

**39.15. *Relationship of the Parties.*** Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither Party shall act as the agent of the other Party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

**39.16. *No Recording.*** Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

**39.17. *Additional Written Agreement Required.*** Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or their designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

#### **40. DEFINITIONS.**

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"**ADA**" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"**Affiliate of PG&E**" shall mean (A) an entity that controls, is controlled by or is under common control with, PG&E, or (B) an entity that acquires all or substantially all of the business and assets of PG&E or a division thereof or results from a merger with PG&E or such a division. A party shall be deemed to "control" another party for purposes of the aforesaid definition only if the first party owns more than fifty percent (50%) of the stock or other beneficial interests of the second party.

"**Agents**" when used with reference to either Party to this License or any other person, means the officers, directors, employees, agents, and contractors of the Party or other person, and their respective heirs, legal representatives, successors, and assigns. References in this License to a Party's acts or omissions will mean acts or omissions by that Party and its Agents and Invitees unless the context requires or specifically states otherwise.

"**Anniversary Date**" means the first and each subsequent anniversary of the Effective Date.

"**CEQA**" means the California Environmental Quality Act.

"**Claims**" mean claims, judgments, losses, costs, expenses, injuries, settlements, liens, damages, penalties, fines or liabilities.

"**days**" mean calendar days unless otherwise specified, provided that if the last day on which a Party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

"**Effective Date**" is defined in Section 5.

"**Emergency Condition**" is defined in Section 22.3.

"**Environmental Covenants**" means any recorded deed restrictions, as may be in effect from time to time, which impose conditions under which certain land uses will be permitted at designated portions of the License Area.

**“Environmental Laws”** means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this License. **“Environmental Laws”** include the City’s Pesticide Ordinance (Chapter 3 of the San Francisco Environment Code), the Soil Management Plan, and Environmental Covenants.

**“Environmental Regulatory Action”** when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

**“Environmental Regulatory Agency”** means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

**“Environmental Regulatory Approval”** means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

**“Equipment Removal Plan”** is described in Section 13.

**“Event of Default”** is defined in Section 22.1.

**“Exacerbate” or “Exacerbating”** “Exacerbate” or “Exacerbating” when used with respect to Hazardous Materials means any act or omission, including the disturbance, removal or generation of Hazardous Materials in the course of the Permitted Activities, that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission of Licensee or its Agents, or otherwise requires Investigation or Remediation that would not have been required but for such act or omission. **“Exacerbation”** has a correlating meaning.

**“Expiration Date”** is defined in Section 6.

**“Fees”** means the License Fee, if any, and all other fees, charges and sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 9.

**“Force majeure”** means a delay in Licensee’s performance of its obligations under this License to the extent caused by (a) acts of nature, enemy action, civil commotion, fire, flood, earthquake or other casualty, (b) strikes or other labor disputes (to the extent not resulting from the labor practices of Licensee), (c) material shortages of or inability to obtain labor or materials beyond the reasonable control of Licensee, (d) any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, brought by plaintiffs unaffiliated with Licensee that challenges the validity of: (A) any action taken by a Regulatory Agency in connection with the obligation to be performed, or (B) the failure of a

Regulatory Agency to impose conditions to a Regulatory Approval for the obligation to be performed or (C) the validity of any other Regulatory Approval required in connection with the obligation to be performed, and (e) delays by Regulatory Agencies in issuing requisite approvals or consents beyond the reasonable control of Licensee so long as Licensee is diligently proceeding to obtain the necessary Regulatory Approvals. Delays beyond Licensee's reasonable control exclude delays to the extent caused by the negligent act or omission or willful misconduct of Licensee.

**"Force Majeure Delay"** is defined in Section 14.2.

**"Force Majeure Notice"** is defined in Section 14.2.

**"Handle"** or **"Handling"** when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material.

**"Hazardous Material"** means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. "Hazardous Materials" also includes any chemical identified in the Soil Management Plan.

**"Hazardous Materials Claim"** means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

**"Hazardous Material Condition"** means the Release or Exacerbation, or threatened Release or Exacerbation of Hazardous Materials in, on, over or under the License Area emanating from the License Area, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or from any vehicles Licensee or its Agents and Invitees use in, on, or under the License Area during the Term.

**"Horizontal DDA"** is defined in Recital A.

**"Horizontal Developer"** is defined in Recital A.

**"HRC"** means the San Francisco Human Rights Commission.

**"Indemnified Parties"** means Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents.

**"Indemnify"** means to indemnify, protect, defend, and hold harmless forever.

**"Indemnification"** and **"Indemnity"** have correlating meanings.

**“Interest Rate”** means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

**“Investigate”** or **“Investigation”** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that may be located, have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property, or the environment, or events affecting receptors or the environmental condition in, on, over, or under, the License Area. Investigation will include, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

**“Invitees”** means Licensee’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires and any other person whose rights arise through them.

**“Late Charge”** means a fee of ten percent (10%) of the amount outstanding.

**“Law”** means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan) and any amendments, and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area including Regulatory Approvals issued to Port which require Licensee’s compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the Parties.

**“License Area”** is defined in Section 1.1.

**“Master Lease”** is defined in Recital A.

**“Other Utilities”** is defined in Section 1.2.

**“Permitted Activities”** is defined in 4.1.

**“Prevailing Party”** is defined in Section 31.

**“Prohibited Use”** is defined in Section 4.3.

**“Project Site”** is defined in Recital A.

**“Regulatory Agency”** means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, potentially including the Federal Energy Regulatory Commission (“FERC”), the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port’s Chief Harbor Engineer, the United States Department of Labor, now or later having jurisdiction over Port property, Licensee, and the Project.

**“Regulatory Approval”** means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

**“Release”** when used with respect to Hazardous Materials means any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, releasing or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

**“Remediate”** or **“Remediation”** when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize,

monitor, remediate, or otherwise control Hazardous Materials located in, on, over, or under the License Area or which have been, are being, or threaten to be Released into the environment from the License Area or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under, the License Area or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“**Serviced Building**” is defined in the Basic License Information.

“**Soil Management Plan**” means that certain Soil Management Plan dated as of October 18, 2019 and prepared by Ramboll US Corporation for the Project Site, approved by Port, DPH, and DTSC, a copy of which is attached as ***Exhibit C*** hereto.

“**Studies**” is defined in Section 36.

“**SWPPP**” is defined in Section 16.5(a).

“**Term**” is defined in Section 6.

“**Utility Facility**” is defined in the Basic License Information.

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IN WITNESS WHEREOF, the undersigned have executed this License as of dates indicated below.

***San Francisco Port Commission:*** **CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation operating by and through the  
**SAN FRANCISCO PORT COMMISSION**

By: \_\_\_\_\_  
Elaine Forbes  
Executive Director

Date Executed: \_\_\_\_\_

***Licensee:*** **PACIFIC GAS AND ELECTRIC COMPANY,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Executed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Executed: \_\_\_\_\_

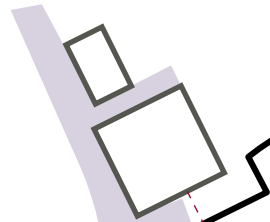
**APPROVED AS TO FORM:**  
**DAVID CHIU**  
**CITY ATTORNEY**

By: \_\_\_\_\_  
Nancy Taylor  
Deputy City Attorney

Drafted By: Caroline Morris, Project Manager \_\_\_\_\_  
(initial)

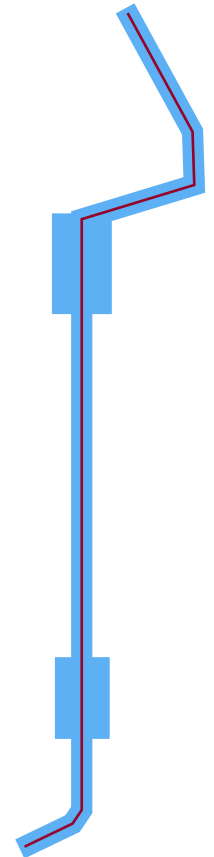
**EXHIBIT A**  
**LICENSE AREA**

# 3RD STREET BRIDGE PILOT HOUSE



CHINA BASIN PARK

BLOCK A



License Area  
approximately  
82' long x 2'  
wide (164 sqft)

**EXHIBIT B**  
**ESTOPPEL CERTIFICATE**

The undersigned, \_\_\_\_\_, is the licensee of a portion of the real property commonly known as [Insert License Area Address/Location] located in San Francisco, California (the "Property"), and hereby certifies to THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port") [and to \_\_\_\_\_ ("Other Party")] the following:

1. That there is presently in full force and effect a license (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "License") dated as of \_\_\_\_\_, 20\_\_, between the undersigned and Port, covering approximately \_\_\_\_ square feet of the Property (the "License Area").
2. That the License has not been modified, assigned, supplemented or amended except by:
3. That the License represents the entire agreement between Port and the undersigned with respect to the License Area.
4. That the commencement date under the License was \_\_\_\_\_, 20\_\_, the expiration date of said License is \_\_\_\_\_, 20\_\_.
5. That the present minimum monthly license fee which the undersigned is paying under the License is \$\_\_\_\_\_.
6. The security deposit held by Port under the terms of the License is \$\_\_\_\_\_ and Port holds no other deposit from Licensee for security or otherwise.
7. That the undersigned acknowledges that Port has no obligation to make any improvements to the License Area.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the License or otherwise against the fees or other charges due or to become due pursuant to the terms of the License.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the License, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the License by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the License, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the License by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, Other Party and [its/their respective] successors and assigns.

Dated: \_\_\_\_\_, 20\_\_.

[Name of Licensee]

By:

Name:

Title:

**EXHIBIT C**  
**SOIL MANAGEMENT PLAN**

Prepared by

**Ramboll US Corporation  
Emeryville, California  
Irvine, California**

Submitted to:

**California Environmental Protection Agency  
Department of Toxic Substances Control  
Berkeley, California**

**San Francisco Department of Public Health  
San Francisco, California**

Project Number

**1690001737**

Date

**October 18, 2019**

**SOIL MANAGEMENT PLAN**  
**MISSION ROCK DEVELOPMENT**  
**SAN FRANCISCO, CALIFORNIA**

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## 1. INTRODUCTION

On behalf of Mission Rock Development Partners (Mission Rock), Ramboll US Corporation (Ramboll) has prepared this Soil Management Plan (SMP) related to redevelopment activities within the approximately 21 acre Mission Rock Development Project Area (Development Area or Site), including the former H&H Ship Service Company facility (Former H&H Facility) that was located at 220 Terry Francois/China Basin Street, San Francisco, California, in the northeast portion of the Site (see Figures 1 and 2). All portions of the Development Area are owned by the City and County of San Francisco ("Owner") and are subject to a Master Lease and Disposition and Development Agreement between the Port of San Francisco and the Master Developer, Seawall Lot 337, Associates. The site will be subdivided to create development parcels, which will be leased by vertical developers for development. As discussed in further detail below, this SMP is intended to concurrently serve as a Site Mitigation Plan for the Development Area, as required by the City of San Francisco, and as an SMP required by the California Department of Toxic Substances Control (DTSC) for the Former H&H Facility. This SMP supersedes a previous SMP prepared in 1999 (Geometrix, 1999).

The Development Area is currently comprised of China Basin Park in the north, with the remaining and largest portion consisting of an asphalt-paved parking lot. The approximately 2.4 acre Former H&H Facility is located in the northeast corner of the surrounding Development Area. The property that is the Former H&H Facility is entirely within the asphalt-paved surface parking lot.

The Former H&H Facility has been subject to oversight by the DTSC since 1978, when the DTSC's predecessor agency determined that some of the wastes handled by H&H were "hazardous wastes" under California law. The facility was closed under the DTSC corrective action program in phases, with DTSC approving facility closure in 1999. As part of the approval of the Former H&H Facility remediation, DTSC required the recordation of two DTSC-approved land use covenants (LUCs) for separate portions of the Former H&H Facility. One LUC, recorded in 2000, applies to a 1.8 acre portion of the Former H&H Facility ("2000 LUC Area"), and another LUC recorded in 2002 was recorded for a 0.6 acre area ("2002 LUC Area") within the facility. Both LUCs outline certain land use restrictions and prohibit direct contact with "native" soils (i.e. historical fill material currently in place). To implement these requirements, both LUCs require a DTSC-approved SMP for the areas subject to the LUCs.

In light of the land uses projected for the Development Area (described in Section 1.7 below) and based on an updated Human Health Risk Assessment for those land uses, the Owner recently proposed revisions to the LUC recorded in 2000. DTSC approved those revisions on September 16, 2019, and an amended LUC for the 1.6 acre portion of the Former H&H Facility (the "2019 Amended LUC") was recorded on September 24, 2019. The 2019 Amended LUC superseded the 2000 LUC, and continues to require an SMP for the area subject to the LUC.

In addition to DTSC oversight of the Former H&H Facility, the entire Development Area is subject to the requirements of Article 22A of the San Francisco Health Code (Maher Ordinance), which was adopted in 1986 by the San Francisco Board of Supervisors in response to public concern regarding hazardous materials exposure to fill material that was

placed in areas along the historical shoreline areas of San Francisco due to the placement of fill material after the 1906 earthquake and fire. The fill typically contains elevated concentrations of contaminants such as petroleum hydrocarbons and heavy metals. The applicability of the ordinance was expanded in 2013 to include areas in San Francisco with current or historical industrial use or zoning, areas within 100 feet of current or historical underground tanks or filled former Bay or creek areas and areas within 150 feet of a current or former elevated highway. For any site covered by the ordinance for which a City of San Francisco or Port of San Francisco building permit is necessary and for which there are plans to disturb at least 50 cubic yards of soil, the ordinance requires SFDPH review of the site history (e.g., a Phase I environmental site assessment), prior sampling data, future construction plans, and other available information. In a letter dated December 22, 2016, SFDPH confirmed that no additional sampling was necessary for Maher Ordinance compliance in relation to the Development Area, and requested the submittal and approval of a Site Mitigation Plan and Dust Control Plan for the project.

Based on the collective procedures and best management practices that will apply across the entire Development Area, this Soil Management Plan satisfies several regulatory requirements:

1. The requirements for a DTSC-approved SMP specified in the 2019 amended LUC and the 2002 LUC for the areas subject to those LUCs (i.e., the 2000 and 2002 LUC Areas, respectively).
2. The requirements for a Site Mitigation Plan for the entire Development Area under the Maher Ordinance.
3. In addition, a small portion of the Site (approximately 0.37 acres along the entirety of the southern Site boundary) was formerly located within the Mission Bay Redevelopment Area of San Francisco. This approximately 20 to 25 foot strip of land was historically known as Mission Bay Block (Parcel) 20. Although the Parcel 20 portion of the Site has been removed from the Mission Bay Redevelopment Area, it currently remains subject to the Mission Bay Risk Management Plan (RMP).<sup>1</sup>

This SMP provides protocols and guidance that Site contractors must follow in the event that evidence of soils impacted by petroleum products or other contaminants are encountered during the Site demolition, grading, or other redevelopment activities at the Site. It also incorporates and implements certain requirements specified in the 2019 Amended LUC, including ensuring that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing soil.

The Owner, future and current lessees or sublessees, developers, occupants and managers, as well as contractors delegated or authorized to perform construction and/or property maintenance activities on their behalf ("Contractor"), are required to comply with the measures identified in this SMP when engaging in (or soliciting or directing others to engage

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<sup>1</sup> In 2017, the San Francisco Regional Water Quality Control Board transferred authority for implementation of the RMP to SFDPH. See Section 3.10 and Attachment 5 for a summary of RMP-based requirements specific to this portion of the site.

in) the relevant activities discussed below. The LUCs recorded against portions of the Site also require the Owner, lessees, occupants and their agents to comply.

For that reason, as used in this SMP, the term “Responsible Entity” shall mean those persons (whether individuals, corporations, or other legal entities) on whose behalf the activities regulated by this SMP are conducted. For example, the Owner may contract with a third party to perform ground-intrusive activities in the parks or open spaces on the Site. Similarly, the San Francisco Department of Public Works may contract with a third party to install or repair utilities in the public streets within the Site, or a lessee may contract with a construction company or property maintenance company or similar entities to perform certain activities on the Site. In addition, a Master Association comprised of commercial and/or residential tenants at the Site may assume responsibility for maintaining certain buildings, other structures, and landscaped common areas, such that the Association contracts with third parties to conduct ground-intrusive maintenance activities. Each of these entities and their respective general contractors and other contractors performing such work are “Responsible Entities” or “Contractors” obligated to comply with this SMP. A former lessee, licensee, permittee, or other former holder of a property or contract right who, at such time when activities regulated by this SMP are conducted, no longer holds an interest in title to a parcel or no longer has a property or contract interest in a parcel, will not be considered a Responsible Entity for purposes of this SMP.

### **1.1 Purpose of SMP**

The purpose of the SMP is to generally describe the procedures that will be employed when areas of known or potentially impacted soils are encountered during Site redevelopment activities. The SMP has been developed to facilitate the redevelopment of the Site, by outlining procedures that will be used for identifying, testing, handling, and disposal of impacted soil that may be encountered during the redevelopment activities. Implementing the procedures in this SMP will ensure that impacted soil (if encountered, see Section 3) is handled in a manner that is protective of human health and the environment, in accordance with State and local regulations.

The results of various subsurface investigations performed at the Site from 1994 to present are summarized in Section 1.5.

### **1.2 Site Setting**

The Development Area is approximately 21 acres in size and is located adjacent to the Mission Bay neighborhood of San Francisco (Figures 1 and 2). The Development Area is bound by the San Francisco Bay to the north and east, Mission Rock Street to the south, and 3<sup>rd</sup> Street to the west. The Former H&H Facility was formerly located at 220 Terry A. Francois Boulevard/China Basin Street (as streets and addresses have changed over time, this location is west of Pier 54) in the northeast portion of the Development Area (Figures 1 and 2).

China Basin Park comprises the northern portion of the Development Area. The remainder of the Development Area is comprised of an asphalt-paved parking lot.

### **1.3 Site Background**

Prior to 1906, the Development Area was comprised of shallow tidal flats of San Francisco Bay. In 1906, the Development Area and surrounding properties were created by filling and raising the land surface above the Bay following the 1906 earthquake and fire. After 1906, historical Site uses include railway yards and warehouses, metal fabrication and machine shops, truck repair shops, and shipping services.

#### **1.3.1 Railway Yards and Warehouses**

Between approximately 1913 and 1956, the Development Area was occupied by the Atchison, Topeka, and Santa Fe (ATSF) railway yards and associated structures, including storage warehouses on the western portion of the Development Area, a railroad supply depot on the southern portion of the Development Area, and a roundhouse south of the Development Area. Although the ATSF railway yards closed in the 1950s, the storage warehouses remained on Site as late as 1999.

#### **1.3.2 Metal Fabrication and Machine Shops**

Metal fabrication and machine shops were located in the northern portion of the Development Area from approximately 1949 to 1993.

#### **1.3.3 Truck Repair Shops**

Two truck repair shops operated in the northern portion of the Development Area beginning in 1968.

#### **1.3.4 H&H Ship Services Company**

In 1950, H&H began operating a marine and industrial tank cleaning facility at the Site. H&H's operations included cleaning bulk oil cargo and fuel tanks on ships and barges and recycling of waste oil and water. These activities were later found by DTSC's predecessor to be subject to hazardous waste regulation and in 1978, H&H began operating under Resource Conservation and Recovery Act (RCRA) interim status pending approval of its RCRA operating permit and facility upgrades. In 1982, H&H began underground storage tank (UST) cleaning operations, which involved cleaning and dismantling discarded USTs. The Former H&H Facility included the former Tank Transfer Area (TTA), which was located near Pier 48 and San Francisco Bay at the northeast side of the site, and the Tank Cleaning Area (TCA), Container Storage Unit (CSU) area, and Solidification Unit (SU), which were centrally located on Site.

In 1993 H&H ceased operations at the Site, and subsequently implemented closure activities under the DTSC corrective action program including removal of remaining hazardous wastes and equipment, and cleaning of remaining facilities e.g., concrete pads. Sampling was conducted at the Site in 1999 to document clean closure of H&H's hazardous waste management units. DTSC approved the final closure of the Former H&H Facility in 1999 subject to the placement of certain restrictions and requirements contained in land use covenants.

The 2000 LUC covered the former TTA operations. The 2002 LUC covered H&H's wastewater treatment and transfer operations (including the TCA, CSU, and SU) from approximately 1950 through 1996, including the use of aboveground storage tanks (ASTs) for receiving,

settling, and treating wastewater containing petroleum. Sampling at the 2002 LUC Area was conducted as part of closure activities in 1995, and additional samples were collected in 2001.

#### **1.4 Site Geology and Hydrogeology**

The Site and overall Development Area are currently relatively flat and at an elevation of approximately five feet above mean sea level (msl).

Approximately 13 to 37 feet of fill material underlays the Development Area, some of which may contain rubble and debris from the 1906 San Francisco earthquake and resulting fire. Beneath the fill is approximately 46 to 72 feet of compressible clay or "Bay Mud," under which is approximately 68 to 74 feet of medium stiff to stiff clay, or "Old Bay Clay." In some areas, dense to very dense sand layers are present beneath the Old Bay Clay. Bedrock is present at approximately 160 to 260 feet below ground surface (bgs).

Groundwater is anticipated to be present beneath the Development Area at depths of approximately seven to nine feet bgs, and due to proximity to San Francisco Bay, is likely to be tidally influenced.

#### **1.5 Land Use Covenants for the Former H&H Facility**

Two separate land use covenants (LUCs), or deed restrictions, address the Former H&H Facility within the Development Area:

The Former H&H Facility has been regulated by the DTSC since 1978. The 2000 LUC (which was superseded by the 2019 Amended LUC) did not allow the 1.8 acre 2000 LUC Area to be used for single family homes, hospitals, schools, or day care facilities, or for recreational uses with direct contact with soils.

In approving the 2019 Amended LUC, DTSC relied upon the Ramboll 2019 Updated Human Health Risk Assessment (Updated HHRA) and its recommendations. The Updated HHRA recommended that future building construction on the Site incorporate vapor intrusion mitigation systems (VIMS) to mitigate potential vapor intrusion risks to future occupants unless additional media sampling demonstrates that there is no unacceptable risk to future occupants via the vapor intrusion pathway. In addition, the Updated HHRA further recommended that, as part of the development plans, capping materials such as hardscape, streets, foundations, and imported clean fill will be placed over existing soil to prevent direct contact with the existing soil. Based on the implementation of these additional mitigation measures, the 2019 Amended LUC now allows residential, day care, and outdoor recreational uses provided that residential uses are not on the first floor, that all uses are separated from the existing soil by a capping material, and that no buildings be built without an engineered VIMS approved in advance by the DTSC subject to the further sampling caveat identified above. The Updated HHRA is further detailed in Section 1.5.2, below.

The 2002 LUC Area is currently occupied by China Basin Park and is subject to the 2002 LUC covering 0.6 acres of the northern-most portion of the Development Area, which was formerly occupied by H&H's treatment and transfer area. The 2002 LUC allows use of the subject area as a park, provided that specified conditions on future construction are met. China Basin Park consists of green space with ballpark and water views and the "Junior

Giants Baseball Field.” The area was determined to be acceptable under DTSC and SFDPH standards for development of China Basin Park and no changes to the 2002 LUC are necessary based on current Development Area plans that incorporate the current park.

#### **1.5.1 Phase I and Phase II Environmental Site Assessments (ESAs)**

Phase I ESAs were conducted by ERM-West (ERM) and Langan Engineering and Environmental Services, Inc. (Langan) on all or portions of the Development in 1994 and 2018, respectively. The presence of fill material containing low levels of petroleum hydrocarbons, volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and heavy metals was noted as a recognized environmental condition (REC) in Langan’s Phase I.

ERM conducted a Phase II ESA in 1995 and 1996 that included soil sampling. The results of the soil sampling are not available for review.

#### **1.5.2 Updated Risk Assessment (for the 1.8 acre portion of the Former H&H Facility – the 2000 LUC Area)**

A baseline risk assessment was conducted in 1999 by Harding Lawson Associates (HLA) based on the results of the soil and groundwater sampling at the H&H TTA and service yard. Geomatrix also conducted sampling across the site and presented a risk evaluation in 1999. The assessments concluded that the calculated non-cancer hazards and cancer risk levels did not pose a threat to any of the human (and in the case of the HLA report, biological) receptors.

In June 2019, Ramboll submitted the Updated HHRA for the Site to the DTSC. The Updated HHRA was based on data from the soil and groundwater sampling conducted by HLA in 1999. The following steps were recommended to be undertaken as part of the redevelopment of the Site, and were incorporated as requirements in the 2019 Amended LUC:

- Except as stated below, future construction of buildings at the Site (i.e., Blocks F, G, K and J) will incorporate VIMS to mitigate the potential risks of vapor intrusion to future Site occupants. VIMS details will be submitted in a subsequent design document for review/approval by DTSC.
- Absent further sampling, the VIMS design described above will be proposed to DTSC and (with DTSC approval) installed at the time of construction. However, if, prior to development, the Owner or Developer conducts additional sampling and DTSC concurs with the findings that the then-current concentrations do not pose an unacceptable risk to future occupants via the vapor intrusion pathway under both the residential and commercial scenarios, then the need for a VIMS beneath one or more future buildings may be reevaluated in consultation with DTSC.
- Future earth-disturbing activities associated with the redevelopment will be performed in accordance with an SMP, which will be submitted to the DTSC for approval prior to implementation. The SMP will include measures to mitigate potential risks to construction workers. The updated LUC will also describe measures to eliminate direct contact exposure to future Site occupants.

## **1.6 Known Contaminants of Potential Concern (COPCs)**

Sampling conducted at the 2000 LUC Area, the 2002 LUC Area, and the remaining portions of the Development Area has identified a variety of chemicals that may be encountered in soil (fill material) that is affected by redevelopment activities, including petroleum hydrocarbons, VOCs, PAHs, and heavy metals such as arsenic and lead. In addition, it is possible that the fill material historically placed at the Site may contain naturally-occurring asbestos depending on the origin of the fill (e.g., native serpentinite bedrock present in some areas of San Francisco).

Groundwater is approximately 7 to 9 feet bgs and dewatering is expected to take place on an as-needed basis during excavation activities. Given the depth of groundwater and the anticipated dewatering activities as well as health and safety and personal protective measures outlined in Section 2, it is not anticipated that construction workers will come into direct contact with groundwater.

## **1.7 Planned Site Redevelopment**

Plans for the Development Area consist of commercial, retail, and residential developments, as well as parks and open space, as shown on Figure 2, with individual buildings designated as Blocks A through K. Development plans specify that all residential uses will be on the second floor and above in the future buildings. No residential use at the ground level is anticipated; blocks designated for residential use will have non-residential ground level uses such as retail/commercial, restaurants, tenant amenity spaces, day care, and storage. The building blocks will be separated by roadways and open space as indicated in Figures 2 and 3. Key characteristics of the development plans include the following:

- Redevelopment is anticipated to include the addition of a minimum of two feet of clean fill in areas of open space and landscaping, with the remainder of the Development Area covered by pavement, sidewalks, hardscape, or building foundations. Street and building floor slab elevations will be raised up to approximately five feet above the existing surface grade to account for anticipated future sea level rise;
- First floor will be limited to commercial use (i.e., residential use will be limited to the second floor and above); and
- Drinking water will be provided by the San Francisco Public Utilities Commission and use of on-site groundwater will be prohibited.

## 2. WORKER HEALTH AND SAFETY REQUIREMENTS

The Responsible Entity and its Contractor<sup>2</sup> will be responsible for establishing and maintaining its own appropriate health and safety procedures to minimize worker and public exposure to Site contaminants during construction. These procedures will be documented in a Site-specific Health and Safety Plan (HASP), which will be prepared prior to beginning intrusive Site redevelopment activities.

The components of the Contractor's HASP shall be consistent with all applicable California Occupational Safety and Health Administration (Cal/OSHA) standards and currently available toxicological information. The Contractor and its subcontractors will assure that on-Site construction workers have the appropriate level of health and safety training and use the appropriate level of personal protective equipment, as determined in the HASP based upon the evaluated job hazards and relevant monitoring results. To the extent that any construction activities may constitute "clean-up operations" or "hazardous substance removal work" as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response (HAZWOPER), 8 Cal. Code Reg. § 5192, Contractor will assure that on-Site personnel conducting such activities, who may contact chemicals in soil have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards ("HAZWOPER-trained personnel"). Soil that is visibly stained, discolored, shiny, or oily, or has a noticeable odor, will be handled only by such HAZWOPER-trained personnel until the Environmental Professional(s) (personnel to be determined by the Responsible Entity and/or Contractor; for the purposes of the initial development, ) evaluates the situation (see Section 3) to understand whether the soil contains unacceptable concentrations of contaminants.

### 2.1 Site Specific Health and Safe Plan Components

The required components of the HASP are outlined below. The HASP should be tailored to current Site conditions, current occupational safety and health standards, and task-specific activities then known to the preparer of the HASP.

#### 2.1.1 Key Personnel/Health and Safety Responsibilities

This section of the HASP will identify the Contractor's key personnel by name and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the Site. The Contractor will provide its employees who will potentially contact soil or previously unidentified soil contamination a copy of the HASP and brief its employees as to its contents. The health and safety responsibilities of each individual worker will be described in this section of the HASP.

#### 2.1.2 Job Hazard Analysis/Hazard Mitigation

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with soil or previously unidentified contamination will be presented in this section of the HASP. The hazards that will be discussed include, at a minimum, chemical, temperature, and explosion hazards, if applicable. As part of the job hazard analysis, the HASP will identify the chemicals likely to be encountered during the

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<sup>2</sup> For the initial major phases of redevelopment, the general contractor is anticipated to be Granite Construction, Inc.

construction activities and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit [PEL]). The procedures to mitigate the hazards identified in the job hazard analysis will also be presented in this section of the HASP. The use of appropriate Personal Protective Equipment (PPE) will likely be the principal mitigation procedure.

### **2.1.3 Personal Protective Equipment**

This section of the HASP will identify the PPE that will be used to protect workers from the identified COPCs present in soil. Personal Protective Equipment will be selected based on the COPCs identified at the work site, and the known route(s) of entry into the human body. The primary exposure routes include direct contact with soil and inhalation of dust.

Although considered unlikely, certain construction activities, such as the installation of deep utility trenches or foundations, could result in workers coming into direct contact with groundwater. This contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavations. In the event that excavations are conducted in areas and groundwater is encountered, the HASP will identify any additional PPE required to minimize direct contact with COPCs in water, including water repellent gloves and boots.

### **2.1.4 Work Zones and Site Security Measures**

This section of the HASP will identify the specific work zones of the construction site and describe the site security measures, such as the placement of barricades, fencing, access control, and access logs. All workers within the work zone, who will have direct contact with soil, will perform the work in compliance with relevant aspects of the HASP. The support zone will be located outside of the work zone, but within the boundaries of the construction site. All end-of-the day cleanup operations, such as cleaning of truck wheels (for vehicles exiting the construction site that could be tracking contaminated soils off Site), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the construction site. The entire construction site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

### **2.1.5 Decontamination Measures**

This section of the HASP will describe the specific procedures that will be used to decontaminate both equipment and personnel that have been performing work in direct contact with soil. Decontamination measures will include cleaning the wheels of all vehicles that have been in contact with soil in the support zone prior to their exiting the Site. Additionally, workers will be required to remove any contaminated PPE and place it in a designated area in the support zone prior to leaving the Site.

### **2.1.6 General Safe Work Practices**

This section of the HASP will discuss the general safe work practices to be followed at the construction site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, precautions near heavy equipment, confined space entry, and any special precautions that may be specific to the construction site and construction worker.

### **2.1.7 Contingency Plans/Emergency Information**

This section of the HASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash stations, first aid kits, and fire extinguishers will be presented, and emergency telephone numbers and contacts will be identified. A map indicating the route to the nearest hospital will also be provided in this section of the HASP.

### **2.1.8 Medical Surveillance**

This section of the HASP will describe medical surveillance that would be required for certain workers. To the extent that any construction activities may constitute “clean-up operations” or “hazardous substance removal work” as defined in the Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, 8 Cal. Code Reg. § 5192, each construction Contractor will assure that its on-site personnel conducting such activities have had training, and are subject to medical surveillance, in accordance with Cal/OSHA standards (“HAZWOPER-trained personnel”).

### **2.1.9 Construction Safety Measures**

These procedures include construction safety measures for excavations and require preparation of activity hazard analyses.

### **3. SOIL AND GROUNDWATER MANAGEMENT DURING EXCAVATION AND GRADING**

To mitigate potential concerns related to contact with soil that may be contaminated during future grading at the Site, soil management procedures are described below.

#### **3.1 Dust Control**

At the request of SFDPH, a separate Dust Control Plan (DCP) has been prepared for redevelopment activities at the Site (an original draft of this document included both elements of the SMP and DCP), and is being issued in parallel to this SMP. An Asbestos Dust Mitigation Plan (ADMP) developed in accordance with Bay Area Air Quality Management District (BAAQMD) requirements has also been prepared under separate cover.

Dust control measures will be implemented during construction activities at the Site to minimize the generation of dust. It is particularly important to minimize the exposure of on-Site construction workers to dust and to prevent dust from migrating off Site. Dust generation may be associated with concrete foundation slab and paving removal and processing (including potential concrete grinding for reuse at the Site), excavation and grading activities, truck traffic, ambient wind traversing soil stockpiles, loading of transportation vehicles, and other earthwork.

#### **3.2 Procedures for Soil Inspection and Notifications**

During grading and excavation activities, potentially contaminated soil may be identified via observation of any of the following characteristics:

- Presence of free product. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on soil or water.
- Oily or other staining. Oily staining is not consistent in appearance, but often has a black, dark gray, dark brown, or greenish hue. Other unusual staining or soil discoloration (e.g., blue soils) should also be considered potential evidence of contamination.
- Petroleum or Chemical Odor. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered. If odorous soil or debris is encountered, the material may be contaminated and should be evaluated as soon as possible by field screening with a PID and, if warranted based on the field screening results, sampling for laboratory analysis. Areas exhibiting elevated PID readings above health and safety action levels should not be entered until laboratory data is available to evaluate potential health risks.
- Presence of Elevated Metals. Elevated metals in soil may be identified by strong and sometimes bright discoloration. Any chemical or metal odor should be noted regardless of whether a visible sign of elevated metals is encountered.
- Presence of Waste Debris. If debris such as concrete, scrap metal, bricks or other garbage is identified, the debris and surrounding soil may be contaminated.

- Presence of serpentine-containing fill materials or base rock. If dark gray or greenish serpentine rock (potentially having white fibrous inclusions) is identified, the fill material may potentially contain naturally-occurring asbestos (NOA).

Evaluation of whether soil is potentially contaminated should include input from the Environmental Professional(s) (for the initial redevelopment phase, these personnel are listed in Attachment 1).

Upon identification and confirmation that soil is potentially contaminated, the following actions should immediately be taken:

1. Stop work in the area of impact.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. Complete the Field Reporting Form (Attachment 2) (see Section 3.2.1 for further information relating to documentation).
4. Contain the impacted material, as instructed (see Section 3.2.2 for additional information relating to containment of potentially impacted material).
5. Work should not resume within the area of potential impact until clearance is received from the Environmental Professional.

A copy of this SMP will be kept in project construction trailers (or office, as appropriate) for reference and use in the event that potentially contaminated soil is encountered.

### **3.2.1 Documentation**

In the event potentially contaminated soil and material are encountered during construction activities, information regarding the characteristics, location, and extent of the soil and material impacts must be collected. This information should be documented as follows:

- The approximate location (marked on a site map).
- Extent of potential contamination (How large an area of impacts has been identified?).
- What indications of potential impacts were observed (Odor? Discoloration? Free product? Waste material?).
- Is groundwater or a surface water body (surface puddles not included) impacted (sheen or product on water surface?).
- If possible, take photographs.

### **3.2.2 Containment**

If instructed to do so, the reporting individual should work with the Contractor to contain the potentially-impacted soil and material. The Environmental Professional(s) will evaluate whether potentially-impacted soil and material should be contained based on information provided. The purpose of containment is to ensure that potentially impacted soil does not spread to other portions of the Site or mobilize off Site in the event of rain.

Generally, containment will include one or more of the following steps:

- Relocation of impacted soils to a constructed containment cell created using an earthen berm lined with plastic sheeting. Soils placed within containment cells are subsequently covered with plastic sheeting that extends outside the cell and is sufficiently anchored to minimize exposure to wind and rain.
- Covering impacted soil and material with plastic sheeting and marking the area "Do Not Disturb."
- Placement of silt fencing around the area of potential impacts.
- In the event that free product is observed, applying oil dry or sorbent cloths to soak up oily material.

### **3.2.3 Site Investigation and Disposal of Impacted Soil**

If necessary and as requested by the Responsible Entity, the Contractor, SFDPH, or DTSC, the Environmental Professional(s) will mobilize to the Site to further investigate the nature and extent of the potential contamination. Further investigation including sampling of the soil and/or excavation may be warranted depending on Site conditions.

If necessary, impacted soil will be transported off Site for appropriate disposal per Section 3.7.

### **3.2.4 Waste Segregation Operations**

If soil is determined following laboratory analysis to contain COPCs and off-Site removal of the soil is required, such soil will be segregated and stockpiled in separate containment areas to prevent mixing with non-impacted soil. Soil stockpiles shall be documented (e.g., labeled, identified on a figure or map along with approximate volume estimates) by the Contractor and/or Responsible Entity. Any waste that is determined to be hazardous shall be managed, transported and disposed in accordance with applicable hazardous waste requirements under RCRA (e.g., 90-day limit on site). Information regarding transportation and disposal is presented in Section 3.7.

### **3.2.5 Decontamination Procedures**

If soil containing COPCs is identified by the Contractor during excavation/grading activities, the Environmental Professional(s) will develop and oversee appropriate decontamination procedures for the field personnel and equipment that have come into contact with soil containing COPCs. Specific procedures may vary depending on the type of contamination that is identified.

## **3.3 Procedures for Groundwater Inspection and Reporting**

Based on anticipated depth to groundwater and implementation of localized construction dewatering, it is not expected that grading and excavation work up to five and six feet bgs will encounter groundwater. It is expected that localized dewatering will take place for excavations that are deep enough to encounter groundwater (e.g., future roadways). Construction dewatering via temporary wells will be discharged to the sanitary sewer (with the approval of the San Francisco PUC) or to San Francisco Bay (with the approval of the San Francisco Bay Regional Water Quality Control Board [SFRWQCB] under a National Pollutant Discharge Elimination System [NPDES] permit). Under either discharge scenario, groundwater sample(s) will be collected and analyzed in order to obtain discharge approval. Discharge requirements are project specific and are not specified by this document.

If encountered during excavation, to identify if groundwater is impacted by contaminants, the Responsible Entity, Contractor and/or Environmental Professional will first evaluate whether the soil in the immediate proximity is impacted (see Section 3.2), via field observations such as the following:

- *Presence of Free Product*. Free product is defined as a petroleum product (e.g., oil) or chemical in its natural state, un-mixed with water. Free product is often identifiable by the presence of an oily substance or the presence of an oily sheen on top of water.
- *Presence of Chemical Odor*. Any petroleum or other chemical odor should be noted regardless of whether a visible sign of oil or staining is encountered.

Such groundwater will be initially segregated by pumping into appropriate containers for permitted discharge or off-site transport for disposal (Section 3.7). Upon characterization, disposal may be via discharge to the on-site dewatering treatment system (if acceptable), or transported off site. The procedures for notification and reporting of impacted groundwater are the same as those prescribed for soil, as detailed in Section 3.2.

Discharge of water generated during large-scale construction activities to surface waters will be performed under a state-specific NPDES permit or under the requirements of the local permitting authority (e.g., municipal wastewater agency). Prior to any large site redevelopment (i.e. greater than one acre), a SWPPP must be developed. The SWPPP must comply with the requirements of the applicable state and/or local environmental agency.

### **3.4 Management of Buried Drums, Tanks or Abandoned Pipes**

If buried drums, USTs, underground hydraulic lifts, or abandoned pipes are encountered during construction, the following actions should immediately be taken:

1. Stop work in the area where the buried drums, tanks and/or pipelines were identified.
2. Contact the individuals in Attachment 1 to report the finding; leave a message if the individual does not pick up the phone.
3. The Contractor or the Environmental Professional(s) should notify the appropriate local, state, and/or federal agency of the discovery if required by applicable regulations. Removal permits may be required for certain features (e.g., USTs, hydraulic lifts).
4. Mark the location on a site map and take photographs if possible.

If potentially contaminated soil is co-located with the drums, tank and/or pipes, then the procedures identified in Section 3.2 with respect to the potentially contaminated soil should be implemented.

#### **3.4.1 Buried Drum Removal**

Buried drums and their contents shall be removed from the excavation. The drums and contents should be placed in a sealed bin or bermed area that is covered with visqueen or other material to prevent discharge to soil or the atmosphere. Drum contents shall be characterized by the Environmental Professional(s) in accordance with hazardous waste laws and regulations and profiled for off-site disposal as required by the disposal facility. Following characterization, drums and contents shall be transported off site for disposal at an authorized facility in accordance with applicable laws and regulations.

### **3.4.2 Tank and/or Pipeline Removal**

If USTs and associated piping systems are discovered during grading and excavation activities, removal shall be performed under appropriate permits and agency oversight. Collection of soil samples is likely to be required, and the Contractor performing the removal shall prepare or provide the Environmental Professional(s) with appropriate information with which to prepare a UST removal report.

## **3.5 Spills**

In the event of a release of equipment fuel or other chemical, the Contractor will take the following actions, using appropriately trained personnel and appropriate personal protective equipment (PPE) as defined by the Contractor's health and safety plan:

### Immediately clean up the spill to the extent possible

- If possible and appropriate for the situation, place containers under leaking equipment or damaged equipment or containers on secondary containment.
- Spills onto hard surfaces can be cleaned up by applying sorbent cloths or quick-dry material to the spill and subsequently containerizing the sorbent material in a rain-proof container, such as a 55-gallon drum.
- Spills onto soil can be cleaned up by excavating impacted soils and placing them into rain-proof containers or by creating a bermed, plastic-lined area to contain the impacted soils (see Section 3.2.2).

### Report the Spill

- As soon as possible, following initial spill cleanup, contact the individuals identified in Attachment 1 to report the spill. In addition, the Environmental Professional(s) after consultation with the Responsible Entity or Contractor (as appropriate) should notify the appropriate local, state, and/or federal agencies of the spill if required by applicable laws or regulations.

### Document the Spill

- Once initial spill response has been conducted, complete the Spill Reporting Form included as Attachment 3 and provide copies of the completed form to the individuals identified in Attachment 1. If possible, take photographs of the spill, spill area, and/or spill response activities.

### Final Reporting

- Following cleanup of the spill, the Environmental Professional(s) will, if requested by Responsible Entity and/or required by applicable laws or regulations, report the results of cleanup activities to the appropriate agencies.

### Obtain Approval Before Resuming Work

- Approval should be obtained from the Environmental Professional(s) before resuming work within the potentially affected area of the Site.

## **3.6 Notification of Discovery**

If determined to be required and/or necessary and at the request of and on behalf of the Responsible Entity or Contractor, the Environmental Professional(s) will make the

appropriate notifications and report environmental findings to relevant agencies. Examples of such reportable findings may include discovery of significant impacts, free product, USTs, drums, or other subsurface features indicative of a known or potential release to the subsurface.

### **3.7 Off-Site Disposal**

Soil that will be removed from the Site for off-site disposal will be characterized prior to transportation off site. Soil samples representative of the volume to be transported off site will be collected in-situ and/or from stockpiles and characterized using an analytical program developed in consideration of off-site disposal facility or third party acceptance requirements, and the DTSC's Information Advisory on Clean Imported Fill Material (Attachment 4). The soil to be off-hauled will be accepted by the disposal facility or third party prior to being removed from the Site.

All water to be removed from the Site, including excavation dewatering, storm water and vehicle wash water will be handled, and if necessary, transported and disposed in accordance with applicable local, state and federal regulations. Contaminated water will not be discharged to the land surface or subsurface of the Site. If encountered, impacted groundwater may be stored on Site temporarily pending characterization and disposal via transport to an off-site disposal facility, or via permitted discharge. Discharge to the sanitary sewer system is typically subject to the requirements of the local permitting authority (e.g., municipal wastewater agency), and depending on available characterization data, the agency may require additional sampling, on-site pre-treatment, and/or specify other limitations or conditions.

The Contractor, on behalf of the Responsible Entity, will arrange for transportation of all wastes off site using a permitted, licensed, and insured transportation company, and will be responsible for tracking final soil dispositions at appropriate disposal facilities. The Contractor must obtain approval from the Responsible Entity when identifying a potential disposal facility. Any soil considered Federal Resource Conservation and Recovery Act (RCRA) or California (non-RCRA) hazardous waste (hazardous waste) will be tracked using the Uniform Hazardous Waste Manifest System (USEPA Form 8700-22), as applicable. An appropriate USEPA Generator Identification Number will be recorded on the hazardous waste manifests used to document transport of hazardous waste off site. The hazardous waste transporter, disposal facility, and U.S. Department of Transportation (DOT) waste description required for each manifest will be determined on a case-by-case basis. Soil not considered hazardous waste will be tracked using non-hazardous bills of lading. These two systems will be used to comply with appropriate federal, state, and local requirements.

The Contractor will be responsible for accurate completion of the hazardous waste manifests and non-hazardous bills of lading. Records of all wastes shipped off site, including manifests and bills of lading, will be maintained by the Contractor and will be provided to the Environmental Professional(s) within a reasonable time, as they are generated, and included in the completion summary or report prepared at the conclusion of the project.

### **3.8 On-Site Soil Reuse**

During initial redevelopment, soil on Site may be moved within site boundaries, and re-used without need for sampling, provided the soil is not obviously impacted (e.g., based on visual

or olfactory observations noted above), and is not generated in close proximity (i.e., within 20 feet) of impacted areas. The Environmental Professional shall be consulted and provide approval prior to reusing soil on Site. An on-site inspection by the Environmental Professional may be required.

As noted in Section 1, LUC areas are required to ensure that either hardscape or an adequate amount of clean fill (underlain by a demarcation layer) prevents human contact with the existing “native” soil.

Following completion of initial construction activities and within the boundaries of the LUC areas, soil that is impacted (or generated from areas in close proximity as described above), located beneath hardscaped areas, or located beneath the demarcation layer may not be re-used on site.

If sampling is conducted and soil is proposed for on-site reuse, sample data will be compared to then-current regulatory screening criteria appropriate for the proposed area of reuse (e.g., residential or commercial land use criteria such as DTSC Screening Levels [SLs], USEPA Regional Screening Levels [RSLs], or SFRWQCB Environmental Screening Levels [ESLs]). Soil that meets residential screening criteria may be reused without restriction, except for in the LUC areas as described above. Because health risk based screening criteria for arsenic are typically well below concentrations typically found in native soil in the Bay Area, the comparison criterion for arsenic will be 11 milligrams per kilogram (mg/kg), which is considered representative of typical Bay Area background concentrations (Duvergé, 2011).

### **3.9 Import Fill**

No backfilling of an area containing potentially contaminated soil will be conducted without prior approval from the Environmental Professional(s).

Evaluation of any imported fill soil for the presence of contaminants must be concluded prior to consideration for use at the site (e.g. as backfill for excavations or trenching, or for raising site elevations). Unless from a documented “clean” import fill source such as a quarry, import fill will be evaluated to confirm the absence of chemical contaminants in accordance with the DTSC Information Advisory on Clean Imported Fill Material (Attachment 4).

Requirements for soil generated on Site that is proposed for re-use are outlined above.

Import fill data will be compared to DTSC SLs, USEPA RSLs, or SFRWQCB Environmental Screening Levels based on direct exposure and and/or vapor intrusion concerns, whichever is more stringent. As noted above, the comparison criterion for arsenic will be 11 mg/kg.

If the source location for the import fill cannot provide appropriate documentation acceptable to the Responsible Entity, Owner, and/or Environmental Professional(s) (e.g., data demonstrating that the soil does not contain unacceptable concentrations of contaminants), evaluation of the material should be conducted before it is transported and placed at the site. Information regarding import fill will be included in the completion summary or report prepared at the conclusion of the project.

### **3.10 Mission Bay RMP Requirements Summary (Applicable to Parcel 20)**

Work conducted along the southern boundary of the Site (Mission Bay Parcel 20) shall be conducted in accordance with the Mission Bay RMP. The RMP for Mission Bay was prepared

in 1999 and provides specific protocols for managing chemicals in soil and groundwater in a manner that is protective of human health and the environment. The RMP was approved by the SFRWQCB with significant input from the DTSC and the SFDPH. Initially, the SFRWQCB was designated as lead agency for the Mission Bay Redevelopment Area, a responsibility that the agency passed to the SFDPH in approximately 2017.

The RMP delineates the specific risk management measures that must be implemented prior to, during, and after development of each parcel within the Mission Bay Redevelopment Area. Text of the Mission Bay RMP is included as Attachment 5 of this document; notification and reporting requirements (generally outlined in Sections 3 through 5 of the RMP) include a pre-work notification of plans for earth work, quarterly reporting regarding dust control activities, soil stockpile inspections and any new discoveries (e.g., USTs), a final completion report, and annual inspections. Many of these requirements overlap with the procedures outlined in this SMP.

### **3.11 Reporting**

A Completion Report shall be prepared by the Responsible Entity following completion of activities covered by this SMP, in accordance with SFDPH requirements and the Maher Ordinance. The report shall describe SMP implementation, including a description and chronology of events, summary of any new analytical data collected, documentation regarding off-site disposal, and other backup information (e.g., figures, data tables, lab reports, hazardous waste manifests). The document will also be used to satisfy completion requirements for the portion of the site subject to the Mission Bay RMP.

In addition, in accordance with the 2019 Amended LUC, the Owner or Owner's designee shall conduct an annual inspection of the portion of the site to which the 2019 Amended LUC applies, verifying compliance with the LUC and shall submit an annual inspection report to the Department for its approval by January 30th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the annual inspection identifies any violations of the 2000/2019 LUC during the annual inspection or at any other time, the Owner or Owner's designee must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the LUC; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of the LUC shall be sent to the DTSC within 10 calendar days of its original transmission.

### **3.12 Future SMP Modifications**

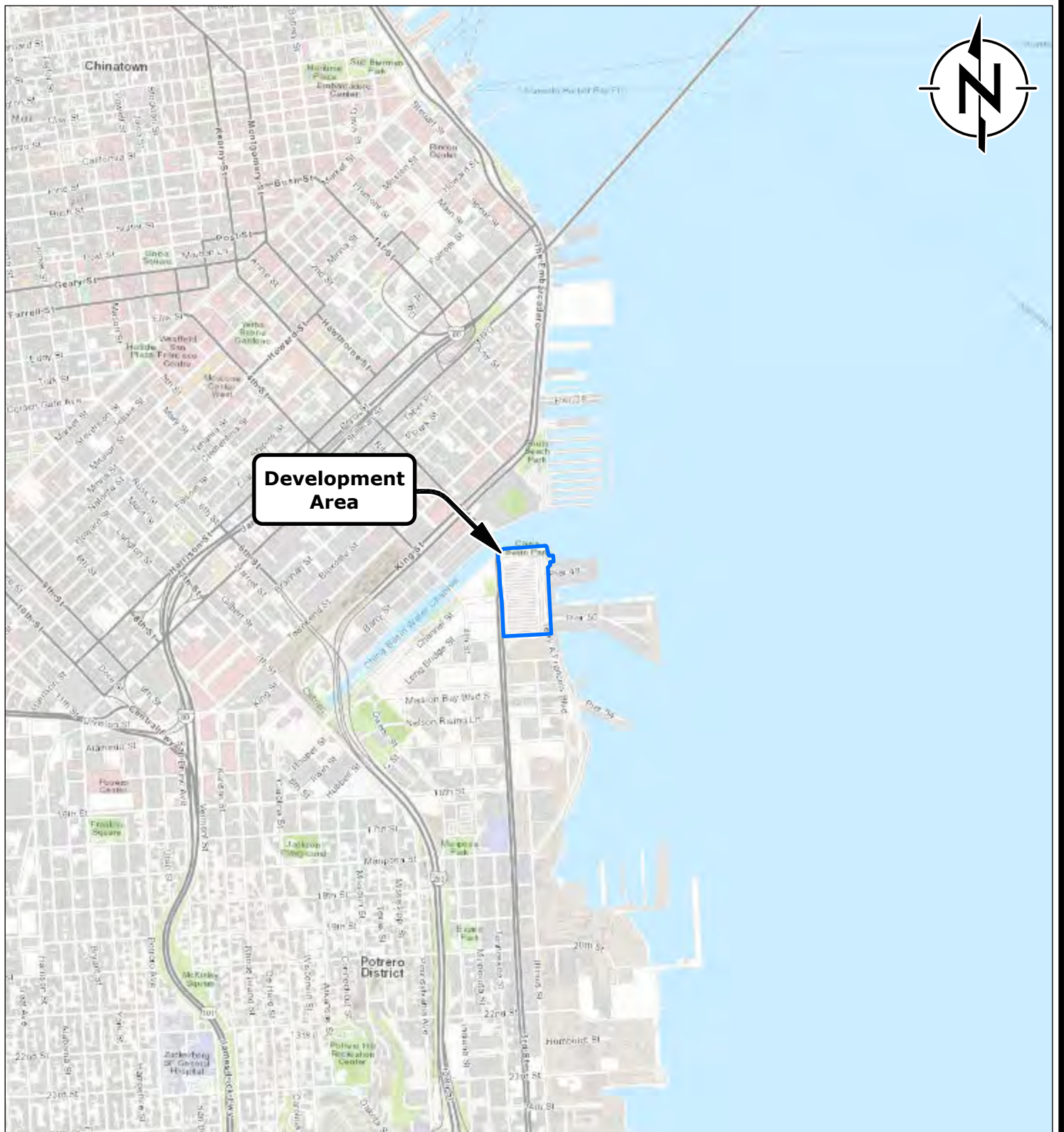
As redevelopment progresses, this SMP may require updates or modifications to accommodate changes in Site conditions or redevelopment plans, or to address localized issues that may arise during construction activities. Such requests for modification will be included in an SMP amendment, and (as warranted) submitted to SFDPH (and DTSC, if pertinent to a LUC Area) for review and approval.

## 4. REFERENCES


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## FIGURES

C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 1 - Site Location Map



**Legend**

 Development Area

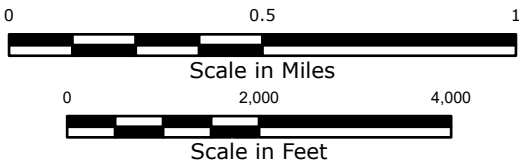
**SOURCE:**

The National Map, 2018.

Map Scale: 1: 1:24,000

Spatial Reference

Name: NAD 1983 StatePlane California III FIPS 0403 Feet; Map Center:



**KEY MAP**



**Project Location Map**  
Mission Rock Development Area  
San Francisco, California

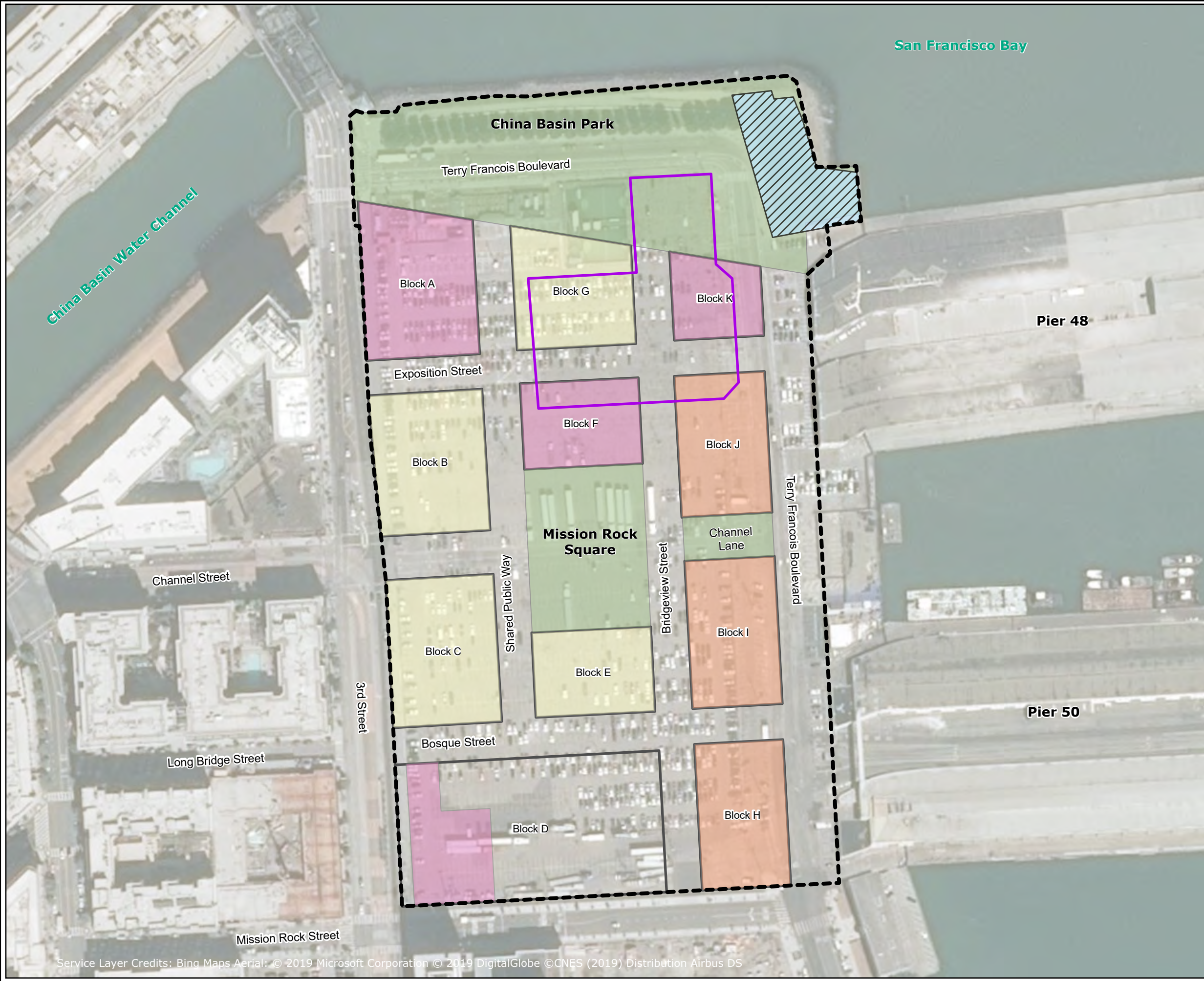
**FIGURE**  
**1**

DRAFTED

DATE: 7/17/2019

PROJECT: 1690001737

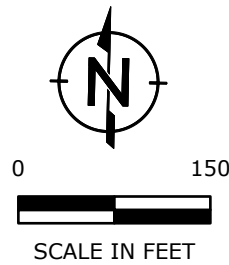
C:\Users\rebeccase\OneDrive - Ramboll\Graphics\Mission Rock GIS\aprx\Figure 2 - Site Plan



Service Layer Credits: Bing Maps Aerial: © 2019 Microsoft Corporation © 2019 DigitalGlobe ©CNES (2019) Distribution Airbus DS

**Legend**

- Development Boundary
- Site Boundary
- 2002 LUC Area (approximate)
- Proposed Land Use
  - Commercial
  - Open Space
  - Residential
  - Flex Residential/Commercial
- Block Boundary



Project Layout		
Mission Rock Development Area San Francisco, California		
RAMBOLL		FIGURE 2
DRAFTED BY: REBECCACASE	DATE: 7/17/2019	PROJECT: 1690001737

**ATTACHMENT 1**  
**CONTACT INFORMATION FOR NOTIFICATION**

## NOTIFICATION INFORMATION (UPDATE AS NEEDED)

Name (Entity)	Responsibilities	Contact Details
Steve Minden (Tishman Speyer)	Responsible Entity Representative	O: (415) 536 1850 C: (213) 458 1272 SMinden@TishmanSpeyer.com
To Be Determined	Contractor Representative	O: C:
Nick Walchuk, PG (Ramboll)	Environmental Professional	O: (510) 420-2559 C: (510) 847-5905 nwalchuk@ramboll.com

**ATTACHMENT 2**  
**FIELD REPORT FORM**

Field Reporting Form – Potentially Contaminated Soil		
Name:	Date:	Time:
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional(s)		
Soil Information		
Describe the potentially-impacted material (e.g. discoloration/staining, odor, oily sheen, presence of free flowing or floating oil/petroleum, serpentine-containing fill material, etc.)		
Estimated Extent of Potentially Impacted Soil (ft) (horizontal and vertical):		
<ul style="list-style-type: none"> <li>Estimated horizontal extent (in feet):</li> <li>Estimated depth below ground surface (in feet):</li> </ul>		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Groundwater and Surface Water Information		
If impacts were discovered while excavating, was water encountered? YES / NO		
If groundwater was encountered, was any sheen or oil visible on the surface of the water? YES / NO		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

**ATTACHMENT 3**  
**SPILL REPORTING FORM**

Spill Reporting Form		
<b>Name:</b>	<b>Date:</b>	<b>Time:</b>
General Site Information		
Location (mark a copy of the attached site map and return with this form):		
Have photographs been taken: YES / NO		
If so, please email to Environmental Professional		
Spill Information		
What kind of material was spilled?		
What is the estimated volume of material spilled (in gallons)?		
Was the material spilled on a paved (asphalt/concrete) surface or on bare ground?		
Did any of the spilled material enter storm water or sewer drains, enter drainage ditches, or leave the site?		
Estimated Extent of the spill-affected area: <ul style="list-style-type: none"> <li>• Estimated horizontal extent (in feet):</li> <li>• Estimated depth below ground surface (in feet):</li> </ul>		
Mitigation Actions Taken		
Describe any actions that were taken to clean-up the potentially impacted material, to isolate the material, or to mark the area of potential impacts.		
Submit this form to <u>name</u> at the Main construction trailer and to the Environmental Professional(s) at <u>email and/or fax number</u>		

**ATTACHMENT 4**  
**DTSC'S INFORMATION ADVISORY**  
**ON CLEAN IMPORTED FILL MATERIAL**

October 2001

# Information Advisory

## Clean Imported Fill Material



### DEPARTMENT OF TOXIC SUBSTANCES CONTROL

*It is DTSC's mission to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.*

State of California



California  
Environmental  
Protection Agency



### Executive Summary

*This fact sheet has been prepared to ensure that inappropriate fill material is not introduced onto sensitive land use properties under the oversight of the DTSC or applicable regulatory authorities. Sensitive land use properties include those that contain facilities such as hospitals, homes, day care centers, and schools. This document only focuses on human health concerns and ecological issues are not addressed.*

*It identifies those types of land use activities that may be appropriate when determining whether a site may be used as a fill material source area. It also provides guidelines for the appropriate types of analyses that should be performed relative to the former land use, and for the number of samples that should be collected and analyzed based on the estimated volume of fill material that will need to be used. The information provided in this fact sheet is not regulatory in nature, rather is to be used as a guide, and in most situations the final decision as to the acceptability of fill material for a sensitive land use property is made on a case-by-case basis by the appropriate regulatory agency.*

### Introduction

The use of imported fill material has recently come under scrutiny because of the instances where contaminated soil has been brought onto an otherwise clean site. However, there are currently no established standards in the statutes or regulations that address environmental requirements for imported fill material. Therefore, the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has prepared this fact sheet to identify procedures that can be used to minimize the possibility of introducing contaminated soil onto a site that requires imported fill material. Such sites include those that are undergoing site remediation, corrective action, and closure activities overseen by DTSC or the appropriate regulatory agency. These procedures may also apply to construction projects that will result in sensitive land uses. The intent of this fact sheet is to protect people who live on or otherwise use a sensitive land use property. By using this fact sheet as a guide, the reader will minimize the chance of introducing fill material that may result in potential risk to human health or the environment at some future time.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).*

# Overview

Both natural and manmade fill materials are used for a variety of purposes. Fill material properties are commonly controlled to meet the necessary site specific engineering specifications. Because most sites requiring fill material are located in or near urban areas, the fill materials are often obtained from construction projects that generate an excess of soil, and from demolition debris (asphalt, broken concrete, etc.). However, materials from those types of sites may or may not be appropriate, depending on the proposed use of the fill, and the quality of the assessment and/or mitigation measures, if necessary. Therefore, unless material from construction projects can be demonstrated to be free of contami-

nation and/or appropriate for the proposed use, the use of that material as fill should be avoided.

# Selecting Fill Material

In general, the fill source area should be located in nonindustrial areas, and not from sites undergoing an environmental cleanup. Nonindustrial sites include those that were previously undeveloped, or used solely for residential or agricultural purposes. If the source is from an agricultural area, care should be taken to insure that the fill does not include former agricultural waste process byproducts such as manure or other decomposed organic material. Undesirable sources of fill material include industrial and/or commercial sites where hazardous ma-

## Potential Contaminants Based on the Fill Source Area

Fill Source:	Target Compounds
Land near to an existing freeway	Lead (EPA methods 6010B or 7471A), PAHs (EPA method 8310)
Land near a mining area or rock quarry	Heavy Metals (EPA methods 6010B and 7471A), asbestos (polarized light microscopy), pH
Agricultural land	Pesticides (Organochlorine Pesticides: EPA method 8081A or 8080A; Organophosphorus Pesticides: EPA method 8141A; Chlorinated Herbicides: EPA method 8151A), heavy metals (EPA methods 6010B and 7471A)
Residential/acceptable commercial land	VOCs (EPA method 8021 or 8260B, as appropriate and combined with collection by EPA Method 5035), semi-VOCs (EPA method 8270C), TPH (modified EPA method 8015), PCBs (EPA method 8082 or 8080A), heavy metals including lead (EPA methods 6010B and 7471A), asbestos (OSHA Method ID-191)

*\*The recommended analyses should be performed in accordance with USEPA SW-846 methods (1996). Other possible analyses include Hexavalent Chromium: EPA method 7199*

## Recommended Fill Material Sampling Schedule

Area of Individual Borrow Area	Sampling Requirements
2 acres or less	Minimum of 4 samples
2 to 4 acres	Minimum of 1 sample every 1/2 acre
4 to 10 acres	Minimum of 8 samples
Greater than 10 acres	Minimum of 8 locations with 4 subsamples per location
Volume of Borrow Area Stockpile	Samples per Volume
Up to 1,000 cubic yards	1 sample per 250 cubic yards
1,000 to 5,000 cubic yards	4 samples for first 1000 cubic yards + 1 sample per each additional 500 cubic yards
Greater than 5,000 cubic yards	12 samples for first 5,000 cubic yards + 1 sample per each additional 1,000 cubic yards

terials were used, handled or stored as part of the business operations, or unpaved parking areas where petroleum hydrocarbons could have been spilled or leaked into the soil. Undesirable commercial sites include former gasoline service stations, retail strip malls that contained dry cleaners or photographic processing facilities, paint stores, auto repair and/or painting facilities. Undesirable industrial facilities include metal processing shops, manufacturing facilities, aerospace facilities, oil refineries, waste treatment plants, etc. Alternatives to using fill from construction sites include the use of fill material obtained from a commercial supplier of fill material or from soil pits in rural or suburban areas. However, care should be taken to ensure that those materials are also uncontaminated.

### Documentation and Analysis

In order to minimize the potential of introducing contaminated fill material onto a site, it is necessary

to verify through documentation that the fill source is appropriate and/or to have the fill material analyzed for potential contaminants based on the location and history of the source area. Fill documentation should include detailed information on the previous use of the land from where the fill is taken, whether an environmental site assessment was performed and its findings, and the results of any testing performed. It is recommended that any such documentation should be signed by an appropriately licensed (CA-registered) individual. If such documentation is not available or is inadequate, samples of the fill material should be chemically analyzed. Analysis of the fill material should be based on the source of the fill and knowledge of the prior land use.

Detectable amounts of compounds of concern within the fill material should be evaluated for risk in accordance with the DTSC Preliminary Endangerment Assessment (PEA) Guidance Manual. If

metal analyses are performed, only those metals (CAM 17 / Title 22) to which risk levels have been assigned need to be evaluated. At present, the DTSC is working to establish California Screening Levels (CSL) to determine whether some compounds of concern pose a risk. Until such time as these CSL values are established, DTSC recommends that the DTSC PEA Guidance Manual or an equivalent process be referenced. This guidance may include the Regional Water Quality Control Board's (RWQCB) guidelines for reuse of non-hazardous petroleum hydrocarbon contaminated soil as applied to Total Petroleum Hydrocarbons (TPH) only. The RWQCB guidelines should not be used for volatile organic compounds (VOCs) or semi-volatile organic compounds (SVOCS). In addition, a standard laboratory data package, including a summary of the QA/QC (Quality Assurance/Quality Control) sample results should also accompany all analytical reports.

When possible, representative samples should be collected at the borrow area while the potential fill material is still in place, and analyzed prior to removal from the borrow area. In addition to performing the appropriate analyses of the fill material, an appropriate number of samples should also be determined based on the approximate volume or area of soil to be used as fill material. The table above can be used as a guide to determine the number of samples needed to adequately characterize the fill material when sampled at the borrow site.

## Alternative Sampling

A Phase I or PEA may be conducted prior to sampling to determine whether the borrow area may have been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with DTSC or appropriate regulatory agency. However, if it is not possible to analyze the fill material at the borrow area or determine that it is appropriate for use via a Phase I or PEA, it is recommended that one (1) sample per truckload be collected and analyzed for all com-

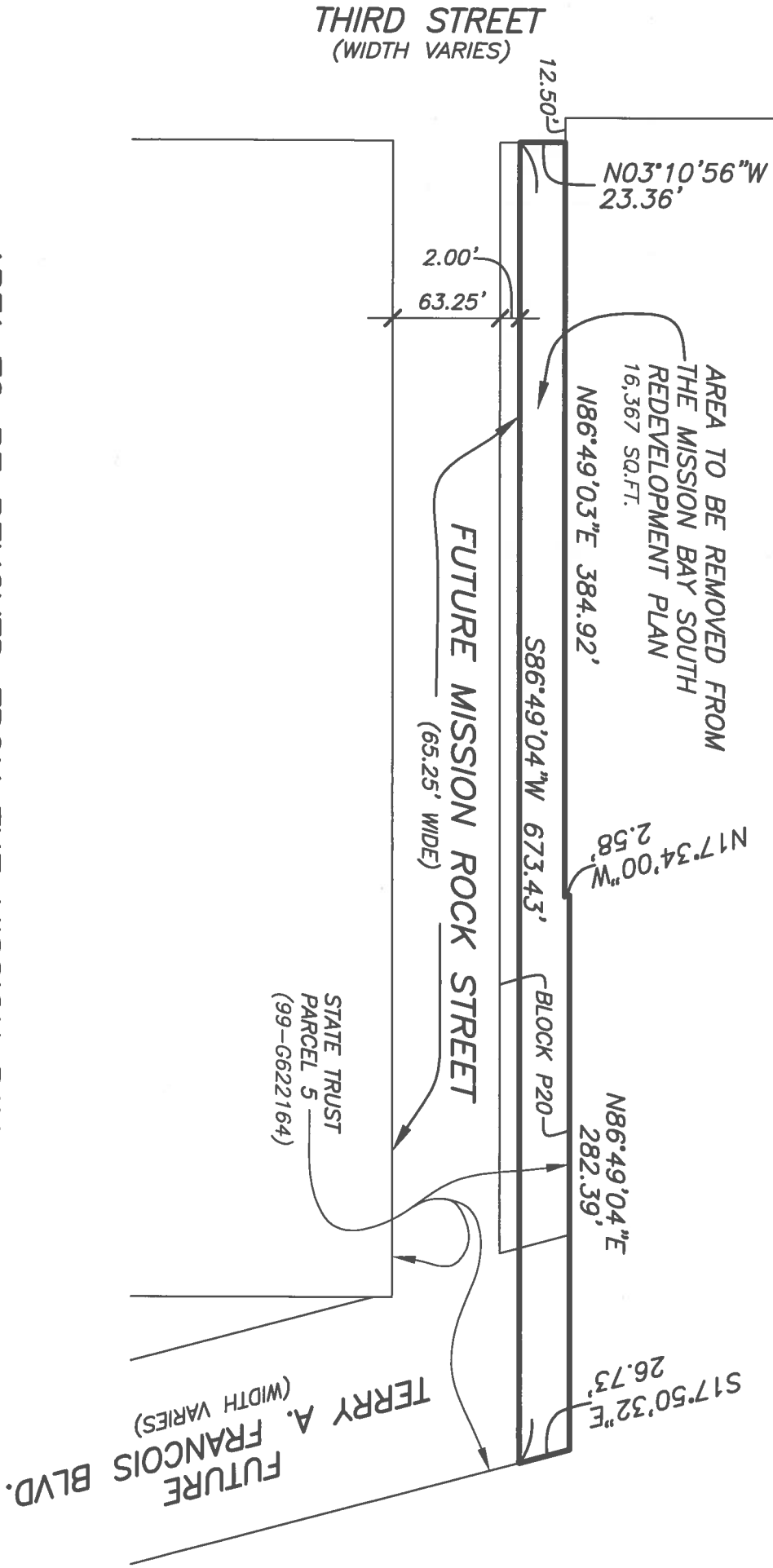
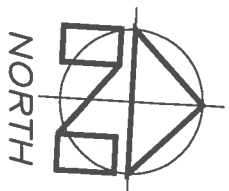
pounds of concern to ensure that the imported soil is uncontaminated and acceptable. (See chart on Potential Contaminants Based on the Fill Source Area for appropriate analyses). This sampling frequency may be modified upon consultation with the DTSC or appropriate regulatory agency if all of the fill material is derived from a common borrow area. However, fill material that is not characterized at the borrow area will need to be stockpiled either on or off-site until the analyses have been completed. In addition, should contaminants exceeding acceptance criteria be identified in the stockpiled fill material, that material will be deemed unacceptable and new fill material will need to be obtained, sampled and analyzed. Therefore, the DTSC recommends that all sampling and analyses should be completed prior to delivery to the site to ensure the soil is free of contamination, and to eliminate unnecessary transportation charges for unacceptable fill material.

Composite sampling for fill material characterization may or may not be appropriate, depending on quality and homogeneity of source/borrow area, and compounds of concern. Compositing samples for volatile and semivolatile constituents is not acceptable. Composite sampling for heavy metals, pesticides, herbicides or PAH's from unanalyzed stockpiled soil is also unacceptable, unless it is stockpiled at the borrow area and originates from the same source area. In addition, if samples are composited, they should be from the same soil layer, and not from different soil layers.

When very large volumes of fill material are anticipated, or when larger areas are being considered as borrow areas, the DTSC recommends that a Phase I or PEA be conducted on the area to ensure that the borrow area has not been impacted by previous activities on the property. After the property has been evaluated, any sampling that may be required can be determined during a meeting with the DTSC.

*For further information, call Richard Coffman, Ph.D., R.G., at (818) 551-2175.*

**ATTACHMENT 5**  
**EXCERPT: MISSION BAY RISK MANAGEMENT PLAN**  
**APPLICABLE TO SOUTHERN SITE BOUNDARY ONLY**



AREA TO BE REMOVED FROM THE MISSION BAY  
SOUTH REDEVELOPMENT PLAN

BY JP CHKD. BR DATE 9/8/17 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-9229

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9229-MASTER LEASE  
PROPERTY PLATS.dwg

**RISK MANAGEMENT PLAN  
MISSION BAY AREA  
SAN FRANCISCO, CALIFORNIA**

*Submitted to:*

California Regional Water Quality Control Board  
San Francisco Bay Region

California Environmental Protection Agency  
Department of Toxic Substances Control

*Prepared by:*

ENVIRON Corporation  
Emeryville, CA

May 11, 1999  
03-6381S

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## GLOSSARY

ABAG	Association of Bay Area Governments
Agency	San Francisco Redevelopment Agency
BMP	Best Management Practices
BTEX	benzene, toluene, ethylbenzene and xylenes
Cal/EPA	California Environmental Protection Agency
City	City and County of San Francisco
DataRAM	Real-time dust monitoring instrument
Development	defined in Section 1.0
DTSC	Department of Toxic Substances Control
EHASP	Environmental Health and Safety Plan
Fill	defined in Section 4.3.5.5
Free Product	defined in Section 4.4
FSEIR	Final Subsequent Environmental Impact Report
General Permit	General Permit for discharge of stormwater from construction sites per SWRCB Order No. 92-08 DWQ, discussed in Section 4.3.3
HI	Hazard Index
ITL	Interim Target Level; defined in Section 3.1
Inorganics	Metals (identified in Appendix A), Asbestos, Fluoride and Sulfide
Interim Period	defined in Section 3.1
IRRM	Interim Risk Management Measures
Native Soils	defined in Section 1.0
NPDES	National Pollutant Discharge Elimination System
OVA	Organic Vapor Analyzer
OMV	Organic Vapor Meter
Owner	defined in Section 1.0
PAH	Polycyclic Aromatic Hydrocarbons
PCBs	Polychlorinated Biphenyls
PEL	Permissible Exposure Limit; defined in Section 4.3.8.2
PM <sub>10</sub>	Particulate Matter with aerodynamic diameter less than 10 microns
PPE	Personal Protective Equipment; defined in Section 4.3.8.2
Redevelopment Plans	defined in Section 1.0
RMP	Risk Management Plan
RMP Area	defined in Section 1.0
RWQCB	Regional Water Quality Control Board for the San Francisco Bay Region
SSTL	Site Specific Target Level; defined in Section 4.3.5.5.1
SVOC	Semivolatile organic compounds
SFDPH	San Francisco Department of Public Health
SFDPW	San Francisco Department of Public Works
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TPH-d	Total Petroleum Hydrocarbons, in the diesel range
TPH-g	Total Petroleum Hydrocarbons, in the gasoline range
TPH-mo	Total Petroleum Hydrocarbons, in the motor oil range

## **GLOSSARY (Continued)**

UCL	Upper confidence limit
UCSF	University of California, San Francisco
USEPA	United States Environmental Protection Agency
UST	Underground Storage Tank
VOC	Volatile Organic Compound

### **3.0 RISK MANAGEMENT MEASURES PRIOR TO DEVELOPMENT**

#### **3.1 Introduction**

The purpose of the following section is to describe the interim risk management measures (IRMM) that will be implemented to minimize potential impacts associated with the exposed Native Soils that may exist on parcels within the RMP Area during the Interim Period, which is defined for each parcel as the period of time between: (i) the date that the RMP is approved and the Environmental Covenant is recorded against the parcel and; (ii) the commencement of development of that parcel. These management measures apply to all parcels within the RMP Area before development of the parcel commences; the IRMMs are developed to be protective of populations on both the undeveloped parcel and on developed parcels that may be located directly adjacent to areas that have not been developed and therefore may contain exposed Native Soils. The IRMMs are based, in part, on an analysis of the potential human health risks posed by the exposed Native Soils that exist on parcels within the RMP Area. The human health risk evaluation was conducted by developing chemical-specific interim target levels (ITLs) that will be protective of the human populations that could be exposed to the uncovered soils based on projected future uses, prior to commencement of development (ENVIRON 1999). A comparison of the concentrations of chemicals detected in soils to the health-based ITLs provided the basis for identifying areas where interim risk management measures are appropriate, and the foundation for developing an overall site-wide interim plan that will manage existing conditions in the RMP Area until development throughout the RMP Area is complete. Implementation of the IRMMs outlined in this section will reduce the potential human health impacts posed by exposed Native Soils prior to development, and will simultaneously fulfill other long-term property management objectives. Risk management measures outlined here are protective of human health and the environment during the respective Interim Periods for each parcel. The risk management measures that will be implemented to lessen impacts associated with the actual construction and development of parcels within the RMP Area (e.g., impacts associated with dust

generated during construction), including the soil management procedures and the measures to protect the construction workers involved in the buildout of the RMP Area, are discussed in Section 4.0.

### **3.2 Risk Management Measures to be Implemented on Parcels Prior to Commencement of Development**

The risk management objective for the Interim Period is to protect current and future populations from the potential impacts associated with exposed Native Soils that exist on various parcels throughout the RMP Area. To achieve this objective, risk-based evaluations were conducted to determine whether exposure to Native Soils present on parcels within the RMP Area could pose a risk to populations who could be present in the RMP Area throughout the period of development. Health-based ITLs were calculated for each of the chemicals present in the exposed Native Soils using standard United States Environmental Protection Agency (USEPA) and Department of Toxic Substance Control (DTSC) risk assessment protocols. The ITLs were developed by assuming that human populations in the area could be exposed to the Native Soils through the inhalation of fugitive dusts, soil ingestion, and dermal contact exposure pathways for an extended 25- to 30- year period.

The results of the risk-based evaluations indicated that exposure to the chemicals present in the Native Soils through the inhalation of fugitive dusts generated from natural wind erosion will not adversely impact the health of either current or future populations who may be present in or adjacent to the RMP Area. In addition, mean chemical concentrations in surface soil (estimated by calculating the 95 percent upper confidence limit (UCL) of the arithmetic mean) were below the ITLs developed under assumptions of long-term (i.e., 25 to 30 years) direct contact pathways (i.e., soil ingestion and dermal contact). However, several individual locations within the RMP Area contain chemicals (primarily metals) that exceed the health-based ITLs. The health-based ITLs (Tables B-1 through B-3), a comparison of the lowest of the ITLs to concentrations detected within the RMP Area (Table B-4), and a figure indicating the specific locations where levels of chemicals exceed the health-based ITLs (Figure B-1), are presented in Appendix B.

Although a review of the average concentrations of chemicals in surface soils indicates that even long-term (i.e., 25 to 30 year) direct contact with exposed Native Soil would not be

expected to adversely impact human health, any form of risk management that minimizes long-term direct contact with the Native Soils will be effective in minimizing potential risks associated with long-term direct contact with the soils and will be protective of all individuals that may be present in the RMP Area throughout the Interim Period. Risk management measures which will restrict unauthorized access to the exposed Native Soils will minimize the potential for long-term direct contact, and will provide additional benefits such as limiting the unauthorized use of the RMP Area by trespassers, reducing the potential for unauthorized dumping, and improving the overall aesthetic quality of the area. Given the multiple benefits gained from controlling access, the following IRMMs will be implemented by Owners or their designees:

- i) Install Fencing and Gates to Restrict Unauthorized Access to Exposed Native Soils. Fencing and gates will be installed on all parcels that contain areas of exposed Native Soils, as depicted in Figure B-2. The fences will be chain link or equivalent fences that are a minimum of 6 feet in height. The fences will be of sufficient integrity such that they can withstand adverse weather conditions (e.g., heavy rains or winds). As indicated in Figure B-2, the portions of the RMP Area that are not fenced include: i) areas that are covered by asphalt, concrete, or buildings; or ii) railroad right-of-ways which are covered with a minimum of one-foot of ballast (aggregate). The installation of fencing will restrict unauthorized access to vacant parcels with exposed Native Soil. Fencing will also limit the potential for vehicles to travel on unauthorized areas and generate dusts. In addition to the installation of fencing, "No Trespassing" signs will be posted every 250 feet to inform individuals that access to the fenced areas is illegal. Fencing will remain until the areas of exposed Native Soils are covered or until development of a parcel commences, at which time the management measures governing the development of a parcel (described in Section 4.0) must be followed. It is the responsibility of the Owner or Lessee of each parcel (or the Owner or Lessee's delegate) to maintain fencing.

- ii) Install Fencing on Parcels that Become Vacant During the Interim Period. Any parcels where demolition or other activities will result in the uncovering of soils during the Interim Period shall be fenced within three working days after demolition so that access to any exposed Native Soils on the parcels is restricted. As described above, fencing will be maintained until development of the parcel commences or the parcel is paved or otherwise covered.
  
- iii. Regulatory Approval Required for Specified Interim Uses. As described in the Redevelopment Plans, there will from time to time be additional industrial/commercial uses which may occur in areas with exposed Native Soils within the RMP Area prior to the time “development”, as defined in Section 1.0, occurs. A comparison of the maximum concentrations detected in the surface soils to the ITLs developed for the commercial/industrial scenario indicates that only substantial daily contact with exposed Native Soils occurring for more than two and one-half years would potentially be of concern and would warrant any form of further evaluation or regulatory approval<sup>1</sup>. New interim leases, which would permit substantial contact with exposed Native Soils for more than two and one-half years are not permitted, absent written approval of the RWQCB. The phrase “substantial contact with exposed Native Soils” would include any enterprise whose primary area of activity was located over or in the exposed Native Soils. An example of a new interim lease that would require RWQCB approval would include a parking lot operation located on exposed Native Soils where employees could potentially be continuously exposed to such Native Soils for more than 2.5 years. Examples of contact with exposed Native Soils which are not substantial in nature are businesses whose route of egress and ingress involve driving or walking across such Native Soils or involves employee parking on such Native Soils.

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<sup>1</sup> The threshold exposure period of two and one half years was determined by adjusting the commercial worker ITLs to account for worker exposures that might occur for periods of less than the assumed 25 years. Commercial worker ITLs developed

- iv) Notification of Tenants. All Lessees and other tenants in the RMP Area will be notified by the Owner that the existing cover (asphalt, concrete, vegetation) is to remain intact. Lessees and tenants will be informed of the need to adopt certain health and safety measures, described in Section 4.0 of this RMP, if such measures are necessary.
- v) Conduct All Subsurface Repair Work in Compliance with the Worker Health and Safety Guidelines. All subsurface repair work where workers will come into direct contact with Native Soils, such as the repair of an existing utility or sewer line, will be conducted in compliance with the relevant health and safety guidelines, as described in Section 4.0.
- vi) Conduct Periodic Monitoring. In order to verify that the risk management measures that are implemented remain effective in restricting unauthorized access to exposed Native Soils during development of the RMP Area, the RMP Area will be inspected on a quarterly basis by the respective property Owners (or designees). The inspections will be conducted to verify that the access restriction measures are in place, and will identify areas where temporary fencing might need to be reinstalled. Additionally, the monitoring will include inspections of the asphalt-covered areas to verify that breaches in the existing cover have not occurred. A breach in the cover is a condition in which prolonged direct contact with Native Soils could occur. If the inspections identify areas where the fencing has been removed, or the existing cover has been breached, then one of the following response actions will be implemented as soon as reasonably practicable: 1) restore the fencing or install new fencing; or 2) repair the cover. Owners shall submit copies of the quarterly inspection reports to the RWQCB and the SFDPH by January 31 of each year on an annual basis. A Reporting Checklist

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assuming daily direct contact with soils for 2.5 years (as opposed to the default assumption of 25 years) are less than the maximum concentrations detected in the surface soil across the RMP Area.

is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample inspection sheet, which contains the minimum items that are to be inspected during the monitoring program, is also provided in Appendix C.

- vii) Existing Soil Stockpiles: Management of soil stockpiles that exist within the RMP Area prior to the commencement of development, will occur in accordance with the soil stockpile procedures delineated in Section 4.3.5.2.

Implementation of these IRMMs will control access to exposed Native Soils that exist within the RMP Area and may exist throughout the Interim Period, and will protect the health of individuals who may be present during the phased development and occupancy of the RMP Area. This Section 3.0 is not intended to and does not set forth all environmental requirements unrelated to hazardous materials which might apply to the RMP Area prior to development, such as general dust control requirements. Any such applicable requirements will continue to apply independent of the RMP.

## **4.0 RISK MANAGEMENT MEASURES DURING DEVELOPMENT**

### **4.1 Introduction**

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to control potential impacts to human health and the environment associated with exposure to constituents present in the soil and ground water that could result from the construction activities and development of the RMP Area. The risk management measures were developed following the identification and analysis of each potential impact; implementation of these management measures will protect human health, including on-site construction workers, nearby residents and workers, and the environment from potential impacts that may arise during the construction and development of the RMP Area. As described below in Section 4.3.11, additional sampling may be required on individual development parcels in order to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Depending on the results obtained during any additional sampling, supplemental management measures, in addition to the management measures identified below, may be required on a parcel-by-parcel basis.

Section 4.2 identifies the potential activities associated with the construction and development of the RMP Area that could impact human health and the ecological environment. The risk management measures that will be implemented during development within the RMP Area are described in Section 4.3. Section 4.4 describes measures to be implemented in the Free Product Area in addition to those described in Section 4.3.

### **4.2 Identification of Development Activities that Could Impact Human Health and/or the Ecological Environment**

Development activities in the RMP Area are likely to include various site preparation activities, such as but not limited to excavation, stockpiling, trenching, grading, backfilling and dewatering that will disturb the Native Soils and ground water within the RMP Area.

Based on the types of constituents detected in the Native Soils and ground water (discussed in Section 2.0), the potential events or activities associated with the development of the RMP Area that could result in potential impacts on human health and/or the ecological environment without implementation of appropriate risk management measures are listed below.

- Dust generation associated with soil excavation and trenching, grading and loading activities, backfilling, movement of construction and transportation equipment, and fugitive dust generation from winds traversing an exposed soil stockpile;
- Off-site transport of soils as sediments through surface water run-off from exposed soil stockpiles and graded areas;
- The inadvertent creation of horizontal conduits from utility trenches resulting in preferential pathways for ground water flow within the RMP Area;
- Management/movement of soils during construction;
- Identification of unknown subsurface structures and unknown areas of contamination;
- Unauthorized access to site during construction; and
- Dewatering activities.

The risk management measures that will control potential impacts associated with each of the events or activities listed above are described in the following section. Management measures that will be implemented to control potential impacts on the construction worker, contractors and short-term intrusive workers who may be engaged in limited excavation activities such as utility repair, are also described below.

### **4.3 Risk Management Measures to be Implemented During Development Activities**

The following subsections identify the risk management measures that will be implemented to reduce potential impacts from the development of the RMP Area and describe the compliance monitoring that will be implemented during development. The risk management measures described below are applicable to all locations within the RMP Area. Additional management measures that will be implemented during development within the Free Product Area are described in Section 4.4.

#### **4.3.1 Dust Control**

Contractors will implement the following dust control measures during development activities in order to minimize and control the generation of dust. Effective dust control will reduce potential

impacts on construction workers, and will simultaneously control nuisance dust and dust containing chemicals from migrating outside of the development area to surrounding populations. Dust control measures will minimize dust that may be generated from excavation and trenching activities, grading, the loading of trucks, truck traffic, and soil stockpiles. The dust control measures described below apply to soil stockpiles that are in place for less than a 30-day period (referred to as construction stockpiles). Management measures specific to stockpiles that are stored for more than 30 days are identified in Section 4.3.5.2.

Prior to the initiation of development on a given parcel, the Owner, Lessee, or their designee (most likely a contractor) will submit to SFDPH and to the RWQCB written notification indicating whether the proposed development is of the type that will require dust monitoring, as described in Section 4.3.2.

#### **4.3.1.1 Specific Dust Control Measures**

The dust control measures that will be implemented at all construction sites within the RMP Area are identified below. The dust control measures identified below correspond to the PM<sub>10</sub> control measures recommended by the Bay Area Air Quality Management District (BAAQMD) in their California Environmental Quality Act Guidelines. The BAAQMD dust control guidelines are to be implemented during construction activities regardless of whether chemicals are present in the soil. Some of the dust control measures recommended by the BAAQMD, as described below, are similar to the measures that will be implemented to control off-site runoff, described in Section 4.3.3. Where management measures specified to control dust are different from those specified to control off-site runoff, the more stringent of the measures will apply.

The following dust control measures will be implemented at construction sites of all sizes:

- Water all active construction areas at least twice a day or as necessary to prevent visible dust plumes from migrating outside of the parcel under development.

- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed construction stockpiles. Management measures for stockpiles stored for more than 30 days are described under Section 4.3.5.2.
- Mist or spray water while loading transportation vehicles.
- Minimize drop heights while loading transportation vehicles.
- Use tarpaulins or other effective covers for trucks carrying soils that travel on streets.
- Pave, apply water three times per day, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily all paved access routes, parking areas and staging areas.
- Sweep street daily if visible soil material is carried onto public streets.

If construction sites are greater than four acres in size, then the following additional dust control measures will be implemented:

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Limit traffic speeds on unpaved roads to 15 miles per hour (mph).
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways (discussed further under the control of off-site runoff, Section 4.3.3).
- Replant vegetation in disturbed areas as quickly as possible.

The following additional optional dust control measures may be implemented by the contractor, as necessary, particularly if windy conditions persist before the area being developed is covered. A determination as to whether optional dust control measures should be implemented will be made by the contractor on a case-by-case basis based, in part, on the results of the Dust Plan outlined in 4.3.2. Additional control measures that could be implemented to reduce dust may include:

- Installing wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Installing wind breakers, or plant trees/vegetative wind breakers at windward sides(s) of construction areas.
- Suspending excavation and grading activities when winds (instantaneous gusts) exceed 25 mph.
- Limiting the area subject to excavation, grading and other construction activities at any one time.

#### **4.3.1.2 Documentation of Dust Control Measures**

Contractors will keep daily logs of all dust control measures that are implemented throughout the course of the day. Logs will be kept on file for three months following the completion of the activities that triggered implementation of the dust control measures.

#### **4.3.2 Dust Plan**

In conjunction with the dust control measures identified above, the Owner or Lessee, (or some other entity, such as a contractor, designated or certified by the Owner or Lessee), will follow this dust plan (the “Plan”) during construction activities to demonstrate that the health and safety of all off-site populations (where off-site refers to areas outside of the construction zone) is not being adversely impacted by the construction/development activities based on the chemicals that could be attached to the dusts. Potential exposures to the onsite construction worker are discussed in Section 4.3.8. If the Plan described in the following sections is implemented, then additional regulatory approvals will not be required.

A screening-level risk analysis was conducted to determine the potential impacts associated with unmitigated dusts generated during construction activities (ENVIRON 1998b). Based on the results of the risk analysis, it was concluded that as long as the annual average respirable dust levels at off-site receptor locations remained below  $250 \mu\text{g}/\text{m}^3$ , exposure to the chemicals that may be attached to the dusts will not adversely impact human health. This analysis assumed that exposure to the dusts will occur continuously for 20 years. Accordingly, the Plan has been devised to verify that the long-term average off-site dust levels to which

individuals could be exposed during the course of the 20-year development are at or below the 250  $\mu\text{g}/\text{m}^3$  target level.

The Plan is comprised of two parts. The first part identifies those conditions where real-time dust monitoring is not required. The exclusion of certain sites from the dust monitoring requirements was based on a conservative screening-level analysis. Those sites where it was concluded that off-site annual average concentrations would not exceed 250  $\mu\text{g}/\text{m}^3$  were identified, and will be exempt from the dust monitoring requirements. The second part of the Plan presents a real-time dust monitoring program (the "Program"). An Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can implement the following procedures or can choose to prepare its own monitoring program, as long as it has, at a minimum, the elements of the Program described in Part II below. In the sections below, 'Site' is defined as the area on which the development by that contractor is occurring. 'Dust-generating activity' is defined to be the activity for which dust monitoring may be necessary, and includes grading, excavation, trenching, soil stockpiling, backfilling, the handling and movement of Native Soils, or vehicular traffic on an unpaved surface.

#### **4.3.2.1 Part I: Sites Excluded from Dust Monitoring Program**

Implementation of a dust monitoring program will not be necessary if it can be shown that the off-site annual average concentration will not exceed 250  $\mu\text{g}/\text{m}^3$ . Listed below are situations for which  $\text{PM}_{10}$  (i.e., particulate matter with aerodynamic diameter less than 10 microns in diameter) concentrations will not exceed an annual average concentration of 250  $\mu\text{g}/\text{m}^3$ , even assuming the dust control measures identified in Section 4.3.1 have not been implemented. The following examples are not intended as a comprehensive list; if an Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee) can demonstrate to the RWQCB other conditions satisfying the 250  $\mu\text{g}/\text{m}^3$  threshold, a monitoring program will not be required. Note that even if a monitoring program is not required, the dust control measures discussed in Section 4.3.1 are still required.

- Potentially exposed populations are not closer than the distances shown in Figure 4. Worst-case annual average concentrations were modeled using USEPA's SCREEN3 air dispersion model to determine the distance at which ambient concentrations will be below an annual average of 250  $\mu\text{g}/\text{m}^3$ . Modeling was performed for an area source using an uncontrolled emission rate of 51 lb/acre/day (used in the Mission Bay Final Subsequent Environmental Impact Report (FSEIR) as the estimate of emissions from construction sites) and worst-case meteorological conditions.

Figure 4 presents the relationship between the size of the Site (determined by either the length or width of the Site, whichever is greater) and the distance at which the annual average concentration will be below 250  $\mu\text{g}/\text{m}^3$ , and identifies those combinations where dust monitoring will not be required. Conditions that fall above the line in Figure 4 would not require any dust monitoring, whereas conditions below the line would require implementation of the dust monitoring program described below. As an example, if the length of the Site (widest or longest dimension) is 440 feet, dust monitoring would need to be conducted if receptors (i.e., off-site workers or residents) are located within 100 feet of the Site.

- Repair or maintenance of underground utility lines. In contrast to large grading projects, underground utility maintenance or repair projects are typically relatively narrow in depth and width would thus not normally provide a significant source area for dust to be generated and sustained. A dust monitoring program will not be implemented during underground utility maintenance or repair work.
- Dust-generating activities that occur for less than four weeks. The analysis from which the acceptable dust concentration was derived assumes that the exposure would occur continuously for 20 years. A four-week project represents less than 0.4 percent of this total assumed 20-year exposure period. Since it is unlikely that dust-generating activities

occurring for a period of less than four weeks will contribute significantly to an individual's total dust exposure during construction activities in the RMP Area, dust generating activities that occur for less than four weeks will not require any dust monitoring.

#### **4.3.2.2 Part II: Dust Monitoring Program**

The objective of the Dust Monitoring Program (the "Program") is to collect data that is reflective of the levels of dusts generated during construction activities so that additional dust suppression measures can be implemented, if necessary, to reduce potential impacts to nearby populations. The Program will consist of real-time monitoring for PM<sub>10</sub> concentrations, as discussed in the following sections. Except as exempted in Section 4.3.2.1 above, the Program must be implemented during the period when development of the Site will involve dust-generating activities. However, once the development of a Site reaches a point that dust-generating activities are no longer occurring, dust monitoring will not be necessary. Compliance with the Program will be the responsibility of the Owner or Lessee (or some other entity, such as a contractor, or qualified consultant, designated or certified by the Owner or Lessee). Construction personnel will be periodically briefed in the field about the substance of the Program and will inform the construction supervisor if the dust levels exceed the criteria.

##### **4.3.2.2.1 Monitoring Equipment**

Monitoring will be performed for PM<sub>10</sub> using a portable real-time dust monitor, such as a DataRAM or equivalent instrument. The monitor will have a minimum detection limit of no more than 100 µg/m<sup>3</sup>, a minimum accuracy of 1 µg/m<sup>3</sup> or 1 percent, and should be calibrated to greater than 250 µg/m<sup>3</sup>. Calibration of the monitor will be based on the manufacturer's specifications.

##### **4.3.2.2.2 Sampling Frequency**

There are two options available for sampling frequency that meet the objectives of the Program. For Option One, sampling will occur during the first two days of a new operation involving dust-generating activities, as well as every day that a new dust-

generating activity occurs on the Site. Samples will be collected once per hour, for a duration of 10-15 minutes, by a site walker carrying the dust monitor. If the concentrations on-site never exceed  $250 \mu\text{g}/\text{m}^3$  during these first two days, sampling will occur one day per week for the remainder of the dust-generating activity, unless the 10-minute average concentration exceeds  $250 \mu\text{g}/\text{m}^3$  during one of the once-a-week sampling events. If the 10-minute average concentration exceeds  $250 \mu\text{g}/\text{m}^3$  during one of the once-a-week sampling events, then sampling must occur daily or until two successive day sampling events occur with no exceedance of the  $250 \mu\text{g}/\text{m}^3$  threshold.

For Option Two, sampling will occur continuously during any dust-generating activity. The dust monitor will be set up in one location, as discussed below. The monitor will be checked four times during the course of the day to ensure that concentrations are not exceeding an average of  $250 \mu\text{g}/\text{m}^3$ .

#### **4.3.2.2.3 Sampling Locations**

Samples will be collected as close to the center of the dust-generating activity as possible. In this way, samples will represent worst-case levels of dust to which the nearby populations could be exposed. Samples typically should be collected from an approximate height of five feet above the ground surface.

If sampling is occurring with a site walker (Option One), the walker should start as close to the dust-generating activity as possible. If the concentrations are approaching  $250 \mu\text{g}/\text{m}^3$ , the walker should move towards the downwind Site boundary and continue to take measurements without interfering with the construction activities. Factors that will be taken into account when selecting the walker's route and destination will include the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. A demonstration that the levels within or directly downwind of the dust-generating activities are below  $250 \mu\text{g}/\text{m}^3$  is sufficient documentation that levels off-site are well below the threshold.

If sampling is occurring through the use of continuous monitoring (Option Two), the monitor should be stationed as close to the dust-generating activity as possible without interfering in the activity. When the monitor needs to be stationed at the edge of the dust-generating activity due to the nature of the dust-generating activity, the monitor

should be placed on the downwind side of the Site. Unless site-specific data to the contrary is available, downwind will be to the east-southeast of the dust generating activity (consistent with the information used in FSEIR). As with Option One, other factors should also be taken into account when locating the monitor, including the local wind direction, the location of the dust generation, the location of the nearest Site boundary and the nearest off-site receptors. It should be noted that during the course of the day, it may be necessary to relocate the dust monitor as any of these Site conditions change. A demonstration that the levels within or directly downwind of the dust-generating activities are below  $250 \mu\text{g}/\text{m}^3$  is sufficient documentation that levels off-site are well below the threshold.

#### **4.3.2.2.4 Recording of Quantitative Measurements**

All  $\text{PM}_{10}$  data should be logged with a data recorder, downloaded from the DataRAM or equivalent instrument, and attached to the field logbook. Notes regarding the location of the monitors, the dust generating activities, and the nearby populations should also be recorded in the field logbook. In addition, any recommended mitigation and follow-up measurements will also be recorded.

#### **4.3.2.2.5 Sampling Personnel**

The sampling personnel should be selected at the initiation of the project, along with a backup person, in case the first person is absent. The individual conducting the sampling should be an individual experienced with the operation and handling of the sampling equipment to be used.

#### **4.3.2.2.6 Criteria for Emissions Mitigation Activities**

If the on-site, day-long average concentrations exceed  $250 \mu\text{g}/\text{m}^3$ , additional dust suppression measures as discussed in Section 4.3.1 shall be implemented for the next day, assuming the dust-generating activity continues to occur. Furthermore, additional dust suppression measures should be implemented if visible dust plumes are seen crossing the site boundary, regardless of the measured  $\text{PM}_{10}$  concentrations.

#### **4.3.2.2.7 Reporting Requirements**

If the on-site, day long average concentrations exceed  $250 \mu\text{g}/\text{m}^3$ , the RWQCB and the SFDPH will be notified by telephone as soon as practicable. A brief letter report describing the exceedance, and the response undertaken by the contractor to achieve compliance will be submitted to the RWQCB and the SFDPH within 5 business days after the exceedance.

### **4.3.3 Control of Off-Site Runoff**

To minimize risks associated with storm water runoff during construction, Storm Water Pollution Prevention Plans (SWPPP) that meet the objectives of the San Francisco RWQCB will be developed by the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) which undertakes construction activities in the RMP Area. Preparation and implementation of a SWPPP is required regardless of whether any chemicals are present in the soil. A primary goal of the SWPPP is to reduce or eliminate off-site discharge of sediments and other pollutants during construction activities. If these procedures are implemented, then potential releases of chemicals in the soils will also be controlled. The SWPPPs will be prepared in accordance with SWRCB Order No. 92-08 DWQ (the "General Permit") and guidelines contained in the following documents: *"Information on Erosion and Sediment Controls for construction Projects: A Guidebook (RWQCB 1998a)* or later edition; and *"Erosion and Sediment Control Field Manual"* second or later edition (RWQCB, 1998b), or succeeding regulatory guidance documents. The provisions of the General Permit require the implementation of Best Management Practices ("BMPs") to control and abate the discharge of sediments, the monitoring of the BMPs to verify their effectiveness in controlling discharges, and revising the BMPs, if necessary.

For the RMP Area, the SWPPP development will be divided into two sequential phases: 1) the development of a "Conceptual SWPPP" that covers the entire Mission Bay RMP Area; and 2) the development of site-specific SWPPPs prepared for each applicable individual construction project. A brief description of each of the two phases is provided below.

#### **Phase 1: Conceptual SWPPP for Mission Bay RMP Area**

The Conceptual SWPPP prepared for the entire RMP Area is to be submitted to the RWQCB within 120 days after approval of the RMP. The general process for preparing the Conceptual SWPPP is described in Chart I-1 of Appendix I. As indicated in Chart I-1, the Conceptual SWPPP will consider the proposed outline presented in Table I-1 (in Appendix I), and will include those general elements that are practicable to include during the conceptual phase and that are not dependent on the specific details of the construction activities which will not be known until later. The Conceptual SWPPP will also address the pollution prevention measures for dry and wet months from construction related activities.

The initial step in the development of the Conceptual SWPPP is to define the organizational structure for the site-specific SWPPPs' Pollution Prevention Teams (PPTs) that will be responsible for preparing, implementing, and monitoring compliance with each of the site-specific SWPPPs. The Conceptual SWPPP will identify the essential roles of these PPTs and will describe the responsibilities each team will have in implementing, monitoring and enforcing its own site-specific SWPPP. Additionally, the training requirements for the members of each site-specific SWPPPs' PPT will be described in the Conceptual SWPPP.

### **Phase 2: Site-Specific SWPPPs**

Following development of the Conceptual SWPPP, site-specific SWPPPs will be prepared as individual parcels in the RMP Area are developed. The overall process for preparing the site-specific SWPPP is described in Chart I-2 of Appendix I. The site-specific SWPPP will follow the proposed outline in Table I-1. A site-specific SWPPP must be developed by the Owner or the Lessee which undertakes the construction activities (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) for each construction project in the RMP Area greater than one acre in size, if the construction activities will involve soil disturbance as defined in 40 CFR Parts 122-124 and State Water Resources Control Board (SWRCB) Order 92-08 DWQ. As indicated in Chart I-2, the site-specific SWPPPs will largely follow the Conceptual SWPPP, but will include additional site-specific pollution prevention procedures and specific inspection, monitoring and record keeping procedures for the given construction activities at that particular development area. Site inspections, to determine the effectiveness of the BMPs and identify repair needs, will be conducted routinely during the dry months and more frequently during the wet months. In conformance with the Conceptual

SWPPP, the site-specific SWPPP will identify the name, organization and phone numbers of the Pollution Prevention Team members who are responsible for preparing, implementing, monitoring compliance, enforcing, and revising the site-specific SWPPP, if necessary. The site-specific SWPPP will include requirements that those with inspection responsibilities are qualified and/or trained in the field of erosion and sediment control practices and are familiar with the storm water pollution control rules and regulations.

Compliance with the site-specific SWPPP is the responsibility of the Owner or the Lessee which undertakes the construction activities (or other entity, such as a contractor who is knowledgeable in erosion and sediment control, designated or certified by the Owner or Lessee).

The SWPPPs will identify, at a minimum, the following BMPs<sup>2</sup>, or substantially equivalent measures as described in detail in the above references (ABAG 1995 and RWQCB 1998b).

- Minimize dust during demolition, grading, and construction by lightly spraying exposed soil on a regular basis.
- Minimize wind and water erosion on temporary soil stockpiles by spraying with water during dry weather and covering with plastic sheeting or other similar material during the rainy season (October through April).
- Minimize the area and length of time during which the site is cleared and graded.
- Prevent the release of construction pollutants such as cement, mortar, paints, solvents, fuel and lubricating oils, pesticides, and herbicides by storing such materials in a bermed, or otherwise secured area.
- As needed, install filter fences around the perimeter of the construction site to prevent off-site sediment discharge. Prior to grading the bank slopes of China Basin Channel for the proposed channel-edge treatments, install silt or filter fences to slow water and remove sediment. As needed, properly trench and anchor the silt or filter fences so that they stand up to the forces of tidal fluctuation and wave action and do not allow sediment-laden water to escape underneath them.

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<sup>2</sup> These nine BMPs are requirements set forth in the FSEIR.

- Follow design and construction standards found in *The Manual of Standards for Erosion and Sediment Control Measures* (ABAG 1995) for the placement of riprap and stone size.
- Install and maintain sediment and oil and grease traps in local stormwater intakes during the construction period, or otherwise properly control oil and grease discharges.
- Clean wheels and cover loads of trucks carrying excavated soils before they leave the construction site.
- Implement a hazardous material spill prevention, control, and cleanup program for the construction period. As needed, the program would include measures such as constructing swales and barriers that would direct any potential spills away from the Channel and the Bay and into containment basins to prevent the movement of any materials from the construction site into water.

Additional BMPs that may be included in the SWPPPs include the following:

- Stabilize all banks during rainy months using Interim or Permanent BMPs (e.g., an erosion control blanket).
- All construction entrances and exit points will be stabilized per RWQCB Erosion Control Field Manual to minimize tracking of mud outside the parcel boundaries.

#### **4.3.4 Methods to Minimize the Potential for Creating Conduits**

Utility trenches will be constructed within the RMP Area for the installation of underground utilities along alignments in the streets and on individual parcels. The trench depths could vary from approximately two to ten feet below ground surface (bgs). In general, the depth to ground water in the RMP Area is between two to ten feet bgs. If the trenches extend into the ground water, then the presence of such trenches could create a horizontal conduit for ground water flow and migration of chemicals. The management measures that will be implemented to minimize the potential for creating horizontal conduits include the following:

- Material that is less permeable than the surrounding soil will be placed through a variety of methods at 300-foot intervals and at the RMP Area boundaries along the trench to disrupt the flow within the trench backfill. One method during initial trench backfilling is the construction of a short section backfilled with a concrete or cement and bentonite mixture. Another method is the creation of a clay plug by compacting clay around the pipe for about a five-foot section of trench. A third method is the installation of barrier collars around the pipes by forming and pouring concrete in place. The appropriate method will be determined by a qualified environmental professional.

The ground water monitoring data collected to date have identified only one “plume” area (i.e., the Free Product Area) where the preferential ground water flow through the trenches could result in the migration of chemicals to nonimpacted areas. Nevertheless, to assure control of chemicals by way of preferential horizontal ground water flow, one or more of the management measures identified above will be incorporated by the contractor as standard trench construction protocol wherever the trenches in the RMP Area extend below the surface of the ground water, unless a qualified environmental professional determines that the ground water conditions do not warrant such measures.

#### **4.3.5 Soil Management Protocols During Site Development**

The following section presents the management protocols for handling, moving, stockpiling, and reusing soils during the development of the RMP Area and delineates the contingency protocols to be followed when unknown contamination or underground structures are identified.

##### **4.3.5.1 Measures to Minimize Dust and Erosion from Soil Movement and Handling**

Throughout the development of the RMP Area, soil may be handled and moved from one portion of the Project Area to another location (See Appendix D: Soil Reuse Within the Mission Bay Area). Impacts from soil movement can result from exposures to dusts generated during the soil handling and movement, and from exposures to soils that have

been transported outside of the development area either with a truck or through off-site runoff.

Potential impacts associated with the handling and movement of Native Soils will be addressed through the implementation of the dust control plan (see Section 4.3.1), and the SWPPP. The dust control measures are described in Section 4.3.1, and the requirements of the SWPPP are described in Section 4.3.3.

#### **4.3.5.2 Management of Soil Stockpiles**

Soil which is excavated within the RMP Area may need to be stockpiled before it is re-used. There are three potential concerns associated with the stockpiling of soils: dust generation, erosion, and unauthorized access to the stockpiles. The risk management measures that will be implemented to control each of these impacts are described below. The management measures described below apply to soil stockpiles that are in place for a period of greater than 30 days.

##### **4.3.5.2.1 Risk Management Guidelines to Control Dust from Soil Stockpiles**

As previously described in Section 4.3.1.1, the performance standard applicable to all stockpiled soils is to prevent visible dust plumes from migrating outside the parcel boundary. Water will be used to mitigate dust generation during the creation, movement, or use of the soil stockpiles. Over-watering, which could result in excessive runoff, will be avoided. Dust palliatives or other methods of dust control may be used if water proves to be inadequate.

While stockpiles are in place, dust will be controlled either through the use of a cover, or an alternative method that provides equivalent protection. If the stockpiles are covered, the cover will consist of either anchored plastic sheeting, hydroseeding (spraying a mixture of grass seed and mulch to create a vegetative cap), or an equivalent cover. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. If, however, stockpiles are to be in place and unused for one year or greater, then the stockpile will be covered with either hydroseeding or an equivalent cover.

#### **4.3.5.2.2 Risk Management Guidelines to Control Erosion from Stockpiles**

If soil stockpiles are to be in place during the rainy season (generally October through April), they will be covered with anchored plastic sheeting, hydroseeding, or an equivalent cover to minimize erosion of the soil. The method of covering will be determined based on anticipated time the stockpiles will be in place, weather conditions (i.e., whether favorable to hydroseeding or not), and other practical factors such as the size of the stockpiles. As described above, if stockpiles are to be in place and unused for one year or greater, the stockpile will be covered with either hydroseeding or an equivalent cover. Stockpiles that are placed within the boundaries of an active construction parcel greater than one-acre in size will not require additional erosion control measures, because the SWPPP will contain specific provisions to prevent off-site sediment discharges. As previously described in Section 4.3.3, the SWPPP may require that filter fences (or equivalent BMPs) be installed around the perimeter of the construction site to prevent off-site sediment discharge, if necessary. Filter fences (or equivalent BMPs) would likewise capture any sediments that may erode from the covered stockpile in place during the rainy season. The sediment traps that will be placed at the local stormwater intakes will also prevent sediments, including those that may result from erosion of the stockpiles, from entering the City's storm water system. Further details of storm water management will be included in the SWPPP (described in Section 4.3.3).

If, however, soil stockpiles are to be placed outside of the boundaries of a one acre active construction site, then additional erosion control measures may be appropriate, particularly if the stockpiles will be in place during the rainy season. To further prevent stockpile erosion, a silt fence constructed of geotextile fabric and hay bales (or other appropriate BMPs) will be constructed around all stockpiles that are placed outside of a construction site and that will exist for a period of greater than six months. Such fencing shall be placed so as to be able to encompass within the fenced area the volume of soil stockpiled.

#### **4.3.5.2.3 Risk Management Guidelines to Control Access to Stockpiles**

Access to all stockpiles located within the boundaries of an active construction site will be controlled by six-foot chain link fences or equivalent with lockable gates or, in a street, other appropriate barrier that will limit unauthorized access to the construction site (see Section 4.3.6). Additionally, warning signs will be posted on the fences to inform visitors that access is prohibited. Access to any stockpiles located outside of an active construction site will be restricted by placing fences with locked gates around the stockpiles and placing appropriate warning signs on the fences and gates.

#### **4.3.5.2.4 Inspections of Soil Stockpiles**

The Owner (or some other entity, such as a contractor, designated or certified by the Owner) shall conduct quarterly inspections of the soil stockpiles to ensure the integrity of covers, berms, and silt fences (as applicable), and to verify that the fencing is in place and that gates are locked and that the warning signs are visible. In the case of washouts of soil, the soil will be replaced to the stockpile and the area will be seeded or otherwise appropriately covered. In cases where anchored plastic sheeting is present, visible rips longer than six inches and wider than 1/4-inch will be sealed with membrane patches or replaced. The results of the quarterly inspections and a description of any material repairs undertaken will be reported to the RWQCB and the SFPDH by January 31 of each year. The RWQCB will be notified when the soil stockpiles have been fully removed.

#### **4.3.5.3 Reuse of Native Soil within the RMP Area**

The DTSC and RWQCB have determined that the soil within the RMP Area may be moved around, managed and reused within the RMP Area without triggering hazardous waste regulatory requirements, provided that the reuse is conducted in accordance with an RMP that specifies the soil management procedures. The soil management procedures are described in Section 4.3.5. Soil that is excavated and remains within the RMP Area will be placed under buildings or other covered areas such as streets, sidewalks, parking lots, roads or landscaping as described below under Section 4.3.5.5; provided, however, that before any soil removed from portions of the RMP Area currently designated for commercial use is placed as fill in any portion of the RMP Area designated for residential

use, the Owner will determine that the placement of such soil in the residential area is consistent with the human health risk Site Specific Target Levels (SSTLs) as established and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). Native Soil will not be used in the RMP Area in any manner other than described in this Section 4.3.5.3, unless the owner submits to the RWQCB supporting documentation and obtains written approval from the RWQCB.

#### **4.3.5.4 Soil Disposal**

Many of the projected construction activities in the RMP Area will require limited excavation of Native Soil to construct building pilings, elevator shafts, and other facilities. Other construction activities will require soil to be added for grading. The net balance of soil in the RMP Area is likely to be such that most excavated soil will be used for grading within the RMP Area. Based on this condition, off-site soil disposal is likely to be limited. Any soil disposed of off-site is subject to all applicable federal and state laws and regulations.

The nature of much of the Native Soil in the RMP Area is historic fill which includes construction debris, rock, glass, wood, bricks, bay mud and may contain other debris, such as pieces of metal. For use of the soil as fill material it may be necessary to remove material greater than four inches in diameter. Material not suitable for use as fill will be profiled and disposed of in accordance with all applicable laws and regulations.

#### **4.3.5.5 Soil for Landscaped Areas**

This Section 4.3.5.5 applies to landscaped areas accessible for human use. This section does not apply to landscaped areas (such as grassy swales) enclosed with fencing, covered with grates, or similarly protected to effectively prevent human access.

Materials that will be used for landscaped areas will consist of imported materials whose composition is sand, topsoil or fill that meets the prevailing commercial standards for fill used in commercial developments, or onsite material (such as Native Soil) that has been approved by the RWQCB ("Fill") in accordance with Section 4.3.5.3. The minimum depth of Fill that will be required for the landscaped areas will be between 1.0 and 1.5 feet. This depth of Fill is selected because generally accepted risk assessment protocols

assume individuals with access to surface soils may be exposed to the top 1.0 to 1.5 feet of soil. Before any Fill (including in the tree wells) is placed on top of the Native Soils in the landscaped areas, a water permeable synthetic netting fabric will be placed on top of the Native Soils, and the Fill will be placed on top of this fabric. The purpose of this fabric is as a “marker” to assist in identifying whether erosion of the Fill down to the level of the Native Soils has occurred. Irrigation systems, (defined as that portion of the system between the valve and the sprinkler head) in the landscaped areas are to be placed in Fill. The fabric will be in color other than brown or black, and will have a minimum tensile strength of 50 lbs/foot.

#### **4.3.5.6 Contingency Protocols for Identifying Unknown Areas of Contamination and/or Unknown Underground Structures**

The protocols to be followed in the event that unknown areas of contamination and/or underground structures are identified during site development are described in this section. These protocols will be conducted by the Owner, Lessee, or some other entity, such as a contractor or qualified consultant, designated or certified by the Owner or Lessee.

##### **4.3.5.6.1 Procedures for Discovery of Unknown Areas of Contamination**

Site development activities may result in the identification of previously unknown areas or types of contamination. The Soil Analysis Report, prepared per the requirements described in Appendix F and described further in Section 4.3.11, will summarize the results of the analytic testing that have been conducted on the parcel prior to Site development activities. A review of the Soil Analysis Report will allow the contractor to know the types of compounds which were previously discovered on the parcel, the magnitude of the detections, and the specific locations where they were discovered. This information, and other information in the RMP Area, will guide the contractor in determining whether an encountered environmental condition is unknown and therefore will trigger contingency monitoring, as described in the succeeding paragraphs below.

Unknown conditions which may trigger contingency monitoring procedures during site development include, but are not limited to, the following:

- oily, shiny, or saturated soil or Free Product in previously undocumented areas;
- soil with a significant chemical or hydrocarbon-like odor in previously undocumented areas;
- significantly discolored soil that reasonably indicates a concentrated source of metals within the RMP Area other than metals naturally occurring or otherwise known to be present in the Native Soils.

Upon the discovery of one of the conditions identified above, and if the conditions on the parcel vary materially from those previously documented in the RMP Area such that they could require either alternative or additional RMP measures to protect human health or additional calculations and assessments to confirm that the existing RMP measures will be sufficiently protective, the contractor will conduct the contingency monitoring.

Contingency monitoring, if conducted, will consist of the following steps: If unknown areas of potential concentrated metals are encountered, additional analyses should be conducted for the suspected constituents to assess the potential leachability of the metals, or the RWQCB should be contacted for assistance in determining if additional sampling and potential mitigation is necessary. If the encountered materials are suspected to be volatiles, the following contingency monitoring procedures may be followed:

- i) Conduct contingency monitoring by taking organic vapor readings using an organic vapor meter (OVM) or an organic vapor analyzer (OVA) to screen for the presence of fuel, oil, or solvents. If the OVM/OVA indicates that an unknown area of fuel, oil, or solvents has been detected, then the RWQCB will be notified to determine if additional sampling is appropriate prior to continuing construction in that area. Such additional characterization will not be required if the RWQCB concurs that the risk management measures currently specified in this RMP already mitigate the risk of the chemicals detected in this area. OVM or equivalent screening methods will be conducted by experienced personnel only.

- ii) If an unknown area of fuel, oil or solvents has been identified, and the RWQCB has requested additional characterization, the following steps will be taken:
  - a) Samples will be collected from the identified area and analyzed for volatiles and/or TPH compounds, depending on the suspected type of contamination. The sampling strategy will be discussed with the RWQCB prior to the initiation of the sampling activities. Analytical results collected from the suspected source will be compared to the health-based site-specific target levels (SSTLs) developed and approved for the RMP Area (ENVIRON 1998a) (a copy of the SSTLs is provided in Appendix E). If the levels are below the relevant health-based SSTLs, and the RWQCB concludes that the potential for ecological impacts is insignificant and does not require mitigation, then soil removal activities will not be required and the soil may be temporarily stored elsewhere pending reuse in the RMP Area. All soils will be contained during transport within the RMP Area so as to minimize the potential for spillage.
  - b) If the soil contains volatiles or petroleum constituents at levels that exceed the relevant health-based SSTLs, or if the RWQCB concludes that the potential for ecological impacts requires mitigation, then management measures, such as the following, will be undertaken:
    - 1. remove soil and dispose of off-site;
    - 2. install physical barrier, such as a vapor barrier or passive venting system, to prevent the accumulation of vapors in indoor environment;
    - 3. stockpile soil and aerate onsite, or in a staging area as may be appropriate, in compliance with all applicable laws and regulations;
    - 4. conduct *in situ* bioremediation measures;
    - 5. implement liquid or vapor extraction measures.

The appropriateness of one of the above management measures over another will depend on many factors, such as the type of constituent detected, the size of the identified impacted area, and the estimated cost of implementing the remedy.

- c) If Free Product is encountered, its areal extent and thickness will be characterized. The RWQCB will determine the appropriate response to the Free Product based on recommendations from the Owner or Lessee (or some other entity such as a contractor or qualified environmental consultant designated by the Owner or Lessee).
- d) The Owner or Lessee (or some other entity such as a contractor or qualified consultant designated by the Owner or Lessee) shall report the results of the sampling activities and the proposed course of action (e.g., no action necessary, soil excavation and off-site disposal, on-site treatment and soil reuse) to the RWQCB and obtain concurrence before implementing the remedial measures. Notification of the proposed action will also be provided to SFDPH. Construction activities in the specific area where the unknown conditions were identified will resume following the completion of the additional sampling activities and the implementation of any required responses.

#### **4.3.5.6.2 Requirements for Underground Structures**

During the course of excavation and construction activities within the RMP Area, it is possible that underground storage tanks (UST), sumps, maintenance pits for rail cars or other underground structures that were not discovered during previous site searches will be discovered. For example, USTs may be identified during grading and site excavation activities by the presence of vent pipes that extend above the ground surface, product distribution piping that leads to the UST, fill pipes, back fill materials and the UST itself. Other structures might not have any features that extend above the surface, and could be

unearthed when construction equipment comes into contact with them. As described below under Section 4.3.8.1, Environmental Health and Safety Guidelines, the on-site Health and Safety Officer will conduct periodic briefing meetings with all construction personnel on the procedures and reporting requirements to be undertaken when underground structures are identified. The following section outlines the measures that govern identification and removal of UST, and appropriate measures for addressing other underground structures identified during development.

#### **4.3.5.6.2.1 Removal Requirements for Underground Storage Tanks**

Chapter 6.7 of the California Health and Safety Code contains the specific requirements for removing and remediating contamination associated with a leaking UST. While the City of San Francisco's Local Oversight Program (LOP) is responsible for overseeing the removal of any UST, the RWQCB will maintain responsibility for overseeing environmental investigations and responses arising from releases from any UST in the RMP Area. Accordingly, in the event that a UST or appurtenant piping is discovered during construction and development of the RMP Area, then the RWQCB will be notified. Environmental investigations and responses required following removal of the UST will be conducted under the direction of the RWQCB and in accordance with the specific provisions delineated in Chapter 6.7 of the Health and Safety Code.

#### **4.3.5.6.2.2 Procedures Governing the Identification, Investigation and Potential Removal of Other Subsurface Structures**

For other subsurface structures that may have been related to former use and storage of chemicals, such as underground vaults and sumps, the following procedures should be followed to determine the proper disposition of the encountered structure.

- i) The structure should be inspected to assess whether it contains any indication of chemical residuals or free liquids other than water. This determination will be made with field observations by the Owner or Lessee's designated environmental engineer relying on visual observations, detection of chemical odors, and the results of vapor monitoring using a field OVM/OVA (as described above). If

there is no indication based on visual, odor, or OVM/OVA readings, that chemicals are or were present within the vault or sump, then removal of the structure is not necessary for environmental reasons.

ii) If a sump or vault contains liquids that appear, based on field observations (visual, odor, or OVM/OVA readings) to be chemical-containing, then the following steps shall be undertaken:

a) Characterize the chemical-containing liquids and/or soils, and determine the appropriate response action. Chemical-containing liquids are to be sampled for profiling purposes then properly removed and disposed under the direction of the Owner or Lessee's designated environmental engineer. The RWQCB would be notified prior to the selection of an appropriate response.

Chemical-containing soils are to be characterized as described above under 4.3.5.6.1. The procedures used to determine the appropriate action for the soils are identical to those described above in 4.3.5.6.1.

b) Inspect the sump or vault for cracks and holes once the liquids and/or chemical-containing soils are removed.

1) If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that the structure of the sump or vault is intact, and that subsurface releases of the chemicals to the underlying soils did not likely occur, then removal of the sump or vault is not required for environmental reasons.

2) If the physical inspection of the vault or sump suggests that chemicals may have been released to the underlying soils, then:

A) Conduct additional environmental investigations of the underlying soils to determine whether a release, sufficient to warrant removal, has occurred. If, based on the opinion of the Owner or Lessee's designated environmental engineer, it is determined that a release, sufficient to warrant removal, has not occurred, then removal of the sump or vault is not required for environmental measures; or

B) Remove the sump or vault under the guidance of the Owner or Lessee's designated environmental engineer. Response to the chemicals in the soils underlying the sump or vault, if necessary, will be consistent with the procedures described above in Section 4.3.5.6.1.

#### **4.3.6 Access Control During Construction**

The potential for trespassers or visitors to gain access to construction areas and come into direct contact with potentially contaminated soils or ground water will be controlled through the implementation of the following access and perimeter security measures:

- Except in streets, fence construction site to prevent pedestrian/vehicular entry except at controlled (gated) points. Gates will be closed and locked during non-construction hours. Fencing will consist of a six foot chain link or equivalent fence unless particular safety considerations warrant the use of a higher fence.
- In streets, use a combination of K-rails or similar barriers and fences with locked gates.
- Post "No Trespassing" signs every 250 feet.

Implementation of appropriate site-specific measures as outlined above would reduce the potential for trespassers or visitors to access construction areas and to come into direct contact with soil or ground water. The access control measures will be detailed in the Environmental

Health and Safety Plan (EHASP) (see Section 4.3.8) that will be developed prior to the initiation of construction activities. Compliance with the specific access control measures is the responsibility of the Owner or Lessee (or other entity, such as a contractor designated or certified by the Owner or Lessee).

#### **4.3.7 Protocols for Dewatering Activities**

Dewatering could be initiated within the RMP Area to facilitate excavation and subsurface construction work, such as the installation of foundations, to proceed without the constraint of working in wet conditions. Uncontrolled and extensive dewatering could adversely impact ground water by drawing ground water that contains chemicals toward the dewatered area thus causing those areas to be degraded with chemicals. If it is determined that building construction necessitates the use of dewatering methods, and the dewatering activities are to occur in or around a known area of contamination (e.g., the Free Product Area) the following risk management measures will be implemented to minimize potential impacts:

- Conduct preliminary estimates of the amount of water that will need to be removed for the specific construction activity.
- Based on the location of the proposed dewatering, determine whether the volume of water that would need to be removed would result in the enlargement of an existing ground water plume, if present, or significant alterations in the ground water flow patterns in the RMP Area.
- If the estimates of the volume and location of the ground water dewatering suggest that such activities are not likely to result in the enlargement of a ground water plume, or significant alterations in the flow patterns, then simple dewatering methods, such as the those employed through the use of a sump pump, would be implemented. These simple methods would be sufficient to prevent ground water from accumulating in an open excavation or trench.

- If, based on the opinion of the Owner or Lessee's qualified environmental engineer, dewatering is likely to result in the enlargement of an existing ground water plume or result in significant alterations in ground water flow, such as could occur in the Free Product Area, then other engineering techniques will be employed to minimize the potential dewatering impacts. One engineering technique that could be employed involves the installation of sheetpiles. In this example, the excavations will first be ringed with sheetpiles. With proper installation, sheet piles limit the volume of water entering the excavation and thus limit the dewatering operation's effect on surrounding ground water flow paths. Dewatering pumps installed inside the area surrounded by sheetpiles will lower the ground water level. Properly installed sheet piles that are interlocked and driven through dense clay materials will effectively limit ground water flow through the piles and minimize the volume of water being pumped. The appropriateness of one engineering technique over another will depend on the construction specifications and other site-specific factors and will be determined by the Owner or Lessee's qualified environmental engineer on a site-by-site basis.
- All water removed during dewatering activities will be discharged in accordance with appropriate permits from the City . It is anticipated that ground water removed during dewatering activities would be discharged into the City's sewer system. Discharge of ground water into the City's sewer system would be conducted in compliance with a discharge permit issued by the San Francisco Department of Public Works (SFDPW) or the Public Utilities Commission. If direct discharge to the surface water is determined to be the appropriate method for disposal of ground water removed during dewatering, permits issued by the RWQCB under the National Pollution Discharge Elimination System would be required. Compliance with the provisions of the discharge permit is the responsibility of the Owner or Lessee (or other entity such as a contractor or qualified environmental consultant designated or certified by the Owner or Lessee). Alternatively, it may be desirable to use the water generated during dewatering activities to control dust. If the shallow ground water is to be used for

this purpose, the Owner or Lessee will obtain advanced approval from the RWQCB on a parcel-by-parcel basis.

#### **4.3.8 Construction Worker Management Measures**

During construction activities, workers that may directly contact the Native Soil and/or the ground water will conduct the work in accordance with California Occupational Safety and Health Administration (Cal/OSHA) training and worker protection rules and regulations. The types of hazards that construction workers, or other workers involved in soil disruptive activities, are most likely to encounter include identifying previously unknown structures or areas of contamination, and having direct contact with fill materials that contain inorganic constituents and petroleum compounds and ground water that contains limited quantities of inorganics and petroleum products. Cal/OSHA is the state agency that is responsible for monitoring compliance with worker health and safety laws and requirements. Compliance with standard Cal/OSHA regulations, particularly Title 8, Chapter 4, "Division of Industrial Safety", will minimize the potential impacts associated with excavation activities, as the intent of these standards is to prepare workers for the types of hazards that are likely to be encountered during such activities. All activities conducted within the RMP Area must be in compliance with current Cal/OSHA rules and regulations, even if not expressly noted in this RMP. Further, all workers involved in subsurface activities must conduct the work in compliance with an Environmental Health and Safety Plan (EHASP). The EHASP will be an additional mechanism that will protect workers engaging in intrusive work. To achieve that goal, the EHASP will delineate the specific potential hazards associated with contact with Native Soils or ground water on the parcel under development, will specify to all workers that the fill material is likely to contain inorganic constituents, petroleum compounds and, on a parcel-by-parcel basis, other constituents, and will define the methods to be employed to minimize the hazards associated with such activities.

The minimum health and safety guidelines for all intrusive workers within the RMP Area, and a discussion of the components of the environmental health and safety plans, are provided below. Compliance with all aspects of the EHASP is the responsibility of the individuals engaged in the intrusive activities. An EHASP that meets the requirements specified in Section 4.3.8.2 will not require any further environmental approvals by any city agency, or any state agency which participated in the designation of the RWQCB as the Administering

Agency for the RMP Area under Chapter 6.65 of the California Health and Safety Code. EHASPs prepared for any construction projects will be submitted to the RWQCB as soon as reasonably practicable prior to the initiation of construction. Nothing in this RMP requires that construction workers working in the RMP Area comply with Cal/OSHA standards for Hazardous Waste Operations and Emergency Response, unless such workers are required to comply with those requirements under Cal/OSHA rules and regulations.

#### **4.3.8.1 Environmental Health and Safety Guidelines**

While this RMP establishes the minimum requirements for an EHASP, the EHASP is a stand alone document developed by the Owner or Lessee's designated contractor or qualified environmental consultant prior to the initiation of any construction activities that would disrupt the Native Soils. It is the responsibility of the individual preparing the EHASP to verify that the components of the EHASP are consistent with current worker health and safety rules and regulations. All workers, including utility repair workers or other workers who may directly contact Native Soil or the ground water, would perform all activities in accordance with an EHASP. Consistent with the Cal/OSHA standards, an EHASP would not be required for workers such as carpenters, painters or others, who would not be performing activities that disrupt the Native Soils.

The EHASP will be designed to identify, evaluate and control safety and health with respect to the chemicals present in the soil and ground water. The EHASP will require that the on-site Health and Safety Officer conduct periodic briefing meetings (tailgate meetings) with construction personnel on the reporting requirements to be undertaken when underground structures are identified. Compliance with all aspects of the EHASP is the responsibility of the party conducting the construction activities.

#### **4.3.8.2 Components of the Environmental Health and Safety Plans**

The objectives of the EHASP are 1) to identify, evaluate and control site health and safety hazards related to the Native Soils or ground water, thereby helping to ensure the health and safety of all field personnel involved in the development activities on-site; and 2) to inform all contractors and subcontractors of the known chemical conditions present at the site so they are able to make prudent health and safety decisions related to soils and

ground water that will protect the health of the workers and the surrounding community throughout the development of the site.

The following section presents the minimum requirements for all EHASP that will be prepared prior to construction.

### **General Information**

This section of the EHASP will contain general information about the site, including the location of the site, the objectives of the work that the EHASP is intended to cover, and the name of the individual(s) who prepared the EHASP. This section will also contain a brief summary of the possible hazards associated with the soil and ground water conditions at the site. Based on the known conditions in the RMP Area, the principal hazards posed by the soils and ground water that construction workers will encounter will be direct contact with the inorganics present in the Native Soils and ground water.

### **Key Personnel/Health and Safety Responsibilities**

This section of the EHASP will identify the key personnel by name, and will include identification of the Project Manager, the Site Supervisor, Site Safety Officer, and the subcontractors that will be working at the site. All workers at a given parcel who will potentially contact Native Soils or ground water will be provided a copy of the EHASP and briefed as to its contents. The health and safety responsibilities of each individual will be described in this section of the EHASP.

### **Facility/Site Background**

Background information is provided in this section of the EHASP concerning past operations, the types of contaminants that may be encountered, and a brief description of the types of construction activities that will be conducted at the site. The description of the construction activities will focus on those activities that will result in the movement of Native Soils, and/or the potential for workers to have direct contact with the soil or the ground water. This section will provide a general map indicating the location of the site under construction, highlighting those particular areas where soil movement activities or direct contact with ground water may occur. The types of contaminants that may be

encountered during the construction activities that will be clearly identified in the EHASP include the following: inorganics (including metals and asbestos), petroleum hydrocarbons, and potentially low levels of volatiles (including methane) and semivolatiles.

### **Job Hazard Analysis/Hazard Mitigation**

A description of the hazards associated with the specific construction activities that give rise to contact or potential contact with Native Soils or ground water is presented in this section of the EHASP. The hazards that will be discussed include, at a minimum, chemical, temperature and explosion hazards, if applicable. As part of the job hazard analysis, the EHASP will identify the chemicals likely to be encountered during the construction activities, and will present a table indicating the symptoms of exposure and the relevant regulatory exposure limits for each compound (i.e., the Cal/OSHA Permissible Exposure Limit (PEL)). The procedures to mitigate the hazards identified in the job hazard analysis are also presented in this section of the EHASP. The principal measure that will mitigate the hazards associated with chemicals present in soil and ground water will be the use of appropriate Personal Protective Equipment (PPE).

### **Air Monitoring Procedures**

The air monitoring procedures will be detailed in the EHASP. The air monitoring that will be conducted during the site construction activities includes monitoring for both volatile constituents and respirable dust. The objectives and monitoring protocols for each are described below.

### **Air Monitoring for Volatiles**

Air monitoring for volatile constituents will be conducted in the event that unknown areas of contamination are identified during the construction activities. The purpose of the air monitoring as described in the EHASP is to verify that the workers are not exposed to levels of volatiles that exceed the Cal/OSHA PELs, the relevant exposure standards for workers. The presence of those constituents with the lowest OSHA PELs will dictate the level of PPE that will be required. Of the volatiles that are likely to be

present within the RMP Area, the chemical with the lowest OSHA PEL is benzene, with a PEL of 1 ppm.

If previously unknown areas of contamination are identified, real time air monitoring for volatiles will be conducted using an OVM/OVA. Monitoring will be conducted within the breathing zone of the workers. Sustained 5-minute readings in the worker's breathing zone in excess of 1 ppm will require additional sampling methods to determine whether any of the chemicals with OSHA PELs of 1 ppm are present in the breathing zone. The most common chemical-specific monitoring instrument that provides real-time data is the Draeger Tube. Draeger tubes for benzene, and a few of the chlorinated solvents that also have OSHA PELs of 1 ppm (i.e., 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,2,2-tetrachloroethane, and vinyl chloride) may be used to measure the concentration of vapors in the worker's breathing zone if the sustained 5-minute readings using the OVM/OVA exceed 1 ppm above background.

The table below summarizes the protocols in effect as of 1999 for conducting the volatile monitoring, including the instrument, the frequency and duration of the air monitoring, the specific actions levels and the mitigation measures that should be taken in the event that the trigger levels are reached. All of these actions are based on protecting the health of the workers involved in the construction activities. It is the responsibility of the individual preparing the EHASP to verify that the air monitoring protocols and action levels are consistent with current worker health and safety rules and regulations.

### Real-Time Air Monitoring for Volatiles

Instrument	Calibration Gas Standard	Frequency/Duration of Air Monitoring	Action Level Above Background	Action <sup>a</sup>
OVM/OVA Calibrated daily	100 ppm isobutylene	5 minutes	For unknown constituents:	
			< 1 ppm	Work Proceeds in Level D
			1 – 5 ppm	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 5 ppm	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action
Draeger Tube for Benzene, 1,2-DCA, tetrachloroethane, vinyl chloride, and 1,1-DCE	none required	Immediately following OVM/OVA reading above background in breathing zone	For known constituents:	
			< OSHA PEL	Work Proceeds in Level D
			> OSHA PEL	Don Respirator (Level C, with cartridge appropriate for the exposure)
			> 10 times OSHA PEL	Discontinue Work. Contact Health and Safety Coordinator to determine appropriate action

<sup>a</sup> Levels of Personal Protective Equipment, identified as Level D and Level C, are described in the following section.

## **Air Monitoring for Particulates**

As described in Section 4.3.2.2, air monitoring for particulates will be conducted to demonstrate that the health and safety of the off-site populations is not being impacted by the development/construction activities. Dust monitoring, where appropriate, will verify that concentrations of PM<sub>10</sub> at the site boundary do not exceed 250 µg/m<sup>3</sup>.

Additional dust monitoring to verify that the workers are not exposed to nonvolatile constituents at levels greater than the chemical-specific OSHA PELs for nonvolatiles is not warranted<sup>3</sup>. If significant levels of asbestos from the serpentinite-rock in the Native Soils are likely to be disturbed during the construction activities, or if other suspect material is unearthed during construction, such as pipe insulation material, then personal monitoring for asbestos may be appropriate. In that circumstance, a determination as to whether personal monitoring for asbestos is warranted will be based on the conditions specific to the parcel being developed.

## **Personal Protective Equipment**

This section of the EHASP will identify the appropriate required PPE that will adequately protect the workers from the hazards related to contact with Native Soils or ground water that are expected to be encountered at the site. Personal Protective Equipment is selected based on the known contaminants present at a site, and the known route(s) of entry into the human body. The primary constituents present within the RMP Area that workers will be exposed to include the inorganic constituents (including metals) present in the Native Soil. The primary exposure routes include direct contact

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<sup>3</sup> A screening-level evaluation was performed to determine the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs. The equation used to calculate the level of dust that would result in a potential exceedance of the chemical-specific OSHA PELs is as follows:

$$\text{Dust Level (mg/m}^3\text{)} = \frac{\text{OSHA PEL (mg/m}^3\text{)}}{\text{Average Soil Concentration (mg/kg)}} \times \text{Conversion Factor (10}^6\text{ mg/kg)}$$

Using the 95 percent Upper Confidence Limit (UCL) of the arithmetic mean to estimate the average concentration of each of the nonvolatile constituents present in the soil, the level of dust that would need to be present within the workers breathing zone over an eight-hour period in order to exceed a chemical-specific OSHA PEL is 54 mg/m<sup>3</sup>. Given the fact that dust levels greater than 5 mg/m<sup>3</sup> would seriously reduce visibility, and would cause unpleasant deposits in the eyes, ears and nasal passages, it is highly unlikely that levels of dust would ever reach sustained concentrations of 5 mg/m<sup>3</sup>. Thus, additional dust monitoring to determine whether workers are exposed to nonvolatile constituents at levels greater than the OSHA PELs is not necessary.

with the Native Soils (i.e., dermal contact with soil and incidental ingestion). Based on the known conditions in the Project Area, the minimum level of PPE for intrusive workers that will come into direct contact with Native Soils or ground water will be modified Level D. For the RMP Area, modified Level D protection will include a long-sleeved shirt, long pants, gloves, and boots. If unknown areas of contamination are identified during the construction activities, and if the air monitoring for volatiles indicates that the levels of volatiles present in the breathing zone exceed the OSHA-PELs, then the worker PPE will be upgraded to Level C. Upgrading to Level C is accomplished by donning a half-face air purifying respirator with the appropriate cartridge. Certain construction activities, such as the installation of utility trenches could result in workers coming into direct contact with ground water. The contact is expected to be minimal, because Cal/OSHA regulations prohibit accumulation of water in open excavation. However, limited direct contact with ground water could occur. In the event that excavations are occurring in areas with shallow ground water, additional PPE that will minimize contact with water, including water repellant gloves and boots, will be worn by workers.

### **Work Zones and Site Security Measures**

This section of the EHASP will identify the specific work zones of the site, and will describe the site security measures such as the placement of barricades, fencing, access control and access logs. The work zone will be defined as the area of the site where the Native Soil movement or ground water activities are being conducted. All workers within the work zone who will have direct contact with the Native Soils or ground water will perform the work in compliance with all aspects of the EHASP. The support zone will be located outside of the work zone, but within the boundaries of the site. All end-of-the day cleanup operations, such as cleaning of the trucks wheels (for vehicles exiting the site that could be tracking Native Soils offsite), and the removal of any PPE, will occur in the support zone. If possible, the support zone will be located in close proximity to the entry and exit point of the site. The entire site will be fenced to control pedestrian and vehicular entry, except at controlled (gated) points. The fences will remain locked during non-construction hours, and all visitors will be required to sign a visitor log.

### **Decontamination Measures**

This section of the EHASP will describe the specific procedures that will be used to decontaminate both equipment and personnel. Decontamination measures will include cleaning the wheels of all vehicles in the support zone prior to their exiting the site, if applicable. Additionally, any contaminated PPE will be removed and placed in a designated area in the support zone prior to leaving the site.

### **General Safe Work Practices**

This section of the EHASP will discuss the general safe work practices to be followed at the site, including entry restrictions, tailgate safety meetings, use of PPE, personal hygiene, hand washing facilities, eating and smoking restrictions, the use of warning signs and barricades, and any special precautions that may be specific to the site.

### **Contingency Plans/Emergency Information**

This section of the EHASP will provide information regarding the procedures to be followed in the event of an emergency. The location of specific emergency equipment, such as eyewash, first aid kit and a fire extinguisher, and emergency telephone numbers and contacts are identified. A map indicating the route to the nearest hospital is also provided in this section of the EHASP. San Francisco General Hospital is the closest hospital to the RMP Area. The address and phone number for San Francisco General is as follows:

San Francisco General Hospital  
1001 Potrero Avenue  
San Francisco, CA  
(415) 206-8111

#### **4.3.9 Quarterly Reports During Development**

During periods of development on a given parcel that could result in disturbance of Native Soils or ground water, the Owner, Lessee, or their designee will prepare a quarterly status report

summarizing the activities occurring on that parcel. The primary purpose of the quarterly report is to keep the regulatory agencies apprised of the conditions arising during development. The quarterly status report will summarize the dust control measures being implemented, the results of the dust monitoring program, and any notification requirements that were triggered by the dust monitoring. Additionally, the quarterly report will summarize the results of the soil stockpile inspections, the discovery of any unknown contaminants or underground structures, and all response actions undertaken to manage such conditions. The quarterly report will be submitted within 30 days after the end of the calendar quarter to the SFDPH and the RWQCB. The Owner may request that the reports be submitted on a less frequent basis, if, based on the scale of the development, the anticipated time that the development activities will be occurring, or based on experience to date the Owner believes that less frequent reporting is appropriate. Upon the expressed approval of the RWQCB, the summary status reports may be submitted on an alternative, less frequent schedule. Quarterly reports will not be required for periods of development that will last less than four weeks.

#### **4.3.10 Documentation of the Completion of Construction Work**

At the conclusion of the development activities on parcels within the RMP Area, all Native Soils remaining on that parcel will be covered by buildings, parking lots, roads, sidewalks, or landscaping with between 1.0 to 1.5 feet of Fill, as specified in Sections 4.3.5.3 and 4.3.5.5. Following development of each parcel, a completion letter documenting that the cover is in place and is in compliance with Sections 4.3.5.3 and 4.3.5.5 of the RMP will be submitted to the RWQCB and the SFDPH. The completion letter will include a figure that will identify the location of any buildings, parking lots, roads, sidewalks and landscaping on the developed parcel.

#### **4.3.11 Framework for Complying with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes**

All construction activities in the RMP Area must comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. Prior to the initiation of site development activities, a site contractor proposing to disturb 50 cubic yards or more of soil at sites located bayward of the 1851 high tide line must conduct environmental assessments of that

soil to determine if the chemicals are of sufficient concentration to cause the soil to be designated as hazardous waste, in connection with obtaining a building permit. Figure 5 presents a map of the 1851 high tide line.

As described in Appendix F, chemicals present at levels that exceed the state or federal hazardous waste levels trigger the need for the site contractor to propose measures, through a Site Mitigation Report, to address any significant health or environmental impacts, if any exist, prior to obtaining a building permit.

The framework provided below summarizes the steps that will be followed to implement and comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. As described in the preceding sections, the overall RMP for the entire RMP Area enumerates the various site mitigation measures that will be implemented throughout the development of the RMP Area and that will mitigate potential risks to human health and the environment that could be caused by the presence of chemicals in the soils or ground water. These measures will be completed at all times during the course of development, regardless of whether a building permit is required. As described more fully below, the approved RMP will become the Site Mitigation Report referred to in the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F and in the framework below, unless additional sampling conducted to comply with Appendix F indicates that the measures contained in the RMP are not sufficient. Unless additional measures not addressed in the RMP are necessary to mitigate risks, a separate Site Mitigation Report will not be submitted. The following steps shall be followed to implement compliance with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes:

- (1) Prior to obtaining a building permit from the City for a particular development activity in a portion of the RMP Area, the Owner, Lessee, or their designee will obtain confirmation from the SFDPH that the site history and sampling completed for that portion of the RMP Area (hereafter the "Site") to date are either (a) adequate to meet the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes, in Appendix F or (b) must be supplemented. In making this determination, the Owner, Lessee, or their designee will consider the analytes that had been analyzed in previous sampling events. As an example, methane sampling may be required.

- (2) If the Owner, Lessee, or their designee or SFDPH determine that supplementation of the site history or sampling is required, the Owner, Lessee or their designee will supplement the site history or sampling according to the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F.
- (3) After the Owner, Lessee, or their designee and SFDPH determine that the site history and sampling are complete, the Owner, Lessee, or their designee will review the sampling results to confirm that the RMP, using the risk-based corrective action approach and health-based criteria previously adopted by the RWQCB for the RMP Area in its approval of Mission Bay risk assessments (ENVIRON 1998a) satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified person is prepared to certify that the RMP will mitigate significant health and environmental risks).
- (4) If the Owner, Lessee, or their designee determines that the RMP meets the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit supporting documentation of that determination to the SFDPH and will provide the necessary certification required under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.
- (5) If the Owner, Lessee, or their designee determines that the RMP does not meet the criteria set forth in Step Three above, the Owner, Lessee or their designee will submit a site-specific RMP Supplement to the SFDPH and the RWQCB containing additional risk mitigation or management measures for that Site. The submittal of the site-specific RMP Supplement will be accompanied by a certification necessary under the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F. The certification shall confirm that the site-specific RMP Supplement, using the risk-based corrective action approach and the health-based criteria previously adopted for the RMP Area in approval of Mission Bay risk assessments, satisfies the requirements in Appendix F for a Site Mitigation Report (i.e., a qualified individual is prepared to certify that the site-specific RMP Supplement will mitigate significant health and environmental risks).
- (6) Upon receipt of the certification specified in Steps Four or Five, the SFDPH will confirm that the Owner's or Lessee's certification is complete, that the applicant will have complied with the requirements of the Ordinance Requirements for Analyzing the Soil

for Hazardous Wastes presented in Appendix F upon completion of the mitigation measures applicable prior to and during construction, and will forward the certification to SFDPW so that the building permit may be issued.

- (7) Upon the completion of construction, the Owner, Lessee, or their designee will submit certification to the SFDPH that it has carried out those measures specified in the RMP or the Site-specific RMP Supplement (which satisfies the requirements for the Site Mitigation Report, as specified in Steps Three or Five) applicable prior to and during construction. Upon receipt of the certification, the SFDPH will provide the Owner, Lessee or their designee and the SFDPW with written notification that the Owner has complied with all requirements of the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes presented in Appendix F.

#### **~~4.4 Additional Management Measures Applicable to Development in the Free Product Area~~**

~~A part of the RMP Area contains a measurable thickness of free petroleum product on the ground water table ("Free Product"), resulting from the historic use of that area for bulk petroleum storage and transport by numerous oil companies. The area affected by Free Product is located in the southeast quadrant of the RMP Area. As was summarized in Section 2.0, and presented in the risk assessments, the presence of Free Product will not adversely affect the health of the future populations in the area, either before or after development. However, additional management measures may be warranted when developing in the designated Free Product Area (defined below) in order to minimize impacts on construction workers and the environment. These additional measures are specified below. If Free Product is encountered in an area that is not contained in the Free Product Area (as that geographic area is deemed to change over time), then the procedures in Section 4.3.5.6.1 (Procedures for Discovery of Unknown Areas of Contamination) will apply.~~

~~All measures described below would be implemented in addition to other applicable risk management measures required by this RMP. These measures only apply to work in the area designated below as the Free Product Area.~~

## **5.0 RISK MANAGEMENT MEASURES AFTER DEVELOPMENT IS COMPLETE**

### **5.1 Introduction**

The purpose of the following section is to identify the appropriate risk management measures that will be implemented to reduce long-term risks to human health and the environment from residual chemicals present in the soil and ground water after the development of parcels in the RMP Area is complete. The identification of the appropriate risk management measures was based on a comprehensive human health and ecological risk evaluation conducted to determine whether the existing environmental conditions would pose a risk to human health or the environment given the specific development plans for the RMP Area. Implementation of the management measures identified in this section is the responsibility of each Owner, Lessee, or their delegates with relevant property maintenance responsibilities.

The potential human health and ecological risks posed by the chemical constituents in the soil and ground water after development is complete are identified and discussed in Section 5.2. Section 5.3 describes the long-term risk management measures to be implemented in the RMP Area.

### **5.2 Identification of Potential Human Health and Ecological Impacts After Development is Complete**

As described in Section 1.0, a human health and ecological risk assessment was conducted to determine whether the presence of chemicals in the soil or ground water would adversely impact human health or the environment once development of the RMP Area was complete. The populations included in the risk evaluation and the pathways through which each of the populations could be exposed to the chemicals present in the soil and ground water once development of the RMP Area is complete is presented in Appendix G. The conclusion of the risk assessment is that none of the chemicals is present at concentrations that will pose a threat to human health following the completion of the planned development. Further, with the potential exception of the Free Product Area, none of the chemicals is present at concentrations that would adversely impact the aquatic ecosystem. The potential ecological impacts associated with the Free Product Area is the subject of a separate investigation which is being conducted in accordance with RWQCB Order No. 98-028.

### **5.3 Long-Term Management of Risks After Development is Complete**

The purpose of the following section is to describe the long-term management measures that will be undertaken to mitigate potential long-term risks to human health and the environment after construction and development of parcels in the RMP Area is completed and in the event of further construction or development at some point in the future. The components of the long-term risk management of the RMP Area are as follows:

- Covering of the RMP Area;
- Limiting future residential development within the RMP Area to preclude single family homes with private front yards or back yards;
- Restricting the future use of ground water for domestic, industrial or irrigation purposes through recordation of the Environmental Covenant;
- Providing protocols for future subsurface activities; and
- Implementing a long-term monitoring program.

These long-term risk management measures are discussed in the following sections. Compliance with all aspects of the RMP and the specific institutional controls that must remain in place during the occupancy of the RMP Area, is the specific responsibility of the Owner, Lessee or their delegates of each development area and is described further in Section 6.0.

#### **5.3.1 Covering of the RMP Area**

After development, all Native Soils will be covered by buildings, parking lots, roads, sidewalks or landscaping with between 1.0 and 1.5 feet of Fill, unless alternative measures are approved by the RWQCB. Any future development must ensure that Native Soils are precluded from contact with humans, by using buildings, pavement or appropriate Fill for landscaping.

#### **5.3.2 Limitations on Future Development Within the RMP Area**

The parcels within the RMP Area with land use designations permitting future residential development are identified in Figure 2. As indicated, the parcels targeted for residential use in Mission Bay North and Mission Bay South area are as follows:

- **Mission Bay North:** Parcels N1, N2, N3, N3a, N4, N4a and N5
- **Mission Bay South:** Parcels 2, 3, 4, 5, 6, 7, 9, 9a, 10, 10a, 11, 12, 13 and X2

Residential development within the RMP Areas identified above will be limited to preclude single family homes with private front or back yards. If residential development were to allow individual Owners or Lessees to have access to Native Soils, then those individuals would be subject to the applicable provisions of the RMP (Section 4.0).

If the Redevelopment Plans are amended to permit residential uses in areas currently designated for nonresidential use, then further risk assessment analysis will be conducted before additional residences could be built in these areas.

### **5.3.3 Use of Ground Water Within the RMP Area**

The ground water within the RMP Area may not be used for domestic, industrial or irrigation purposes. Ground water wells will not be installed within the RMP Area except for environmental monitoring or dewatering purposes or for RWQCB-approved remediation. Environmental monitoring wells within the RMP Area would be installed in compliance with any City guidelines and would be secured and locked to prevent unauthorized access to the ground water. The ground water within the RMP Area would remain unused unless at some point in the future an assessment of the risks from direct exposure to the ground water is conducted and subsequently if the RWQCB as the Administering Agency under AB2061 approves the use of the ground water. The provision is detailed in the Environmental Covenant recorded against the properties within the RMP Area.

### **5.3.4 Protocols for Future Subsurface Activities**

Entities contracting with Owners or Lessees to conduct maintenance, construction, or repair work which would result in the disturbance of soils under buildings, parking lots, walkways or landscaped areas would be bound by the specific requirements set forth in Section 4.0, as appropriate. Following construction, excavation, or soil disturbance, all Native Soil will be covered as described in Section 5.3.1 so that direct contact with the Native Soils will be precluded.

### **5.3.5 Long-Term Monitoring Program**

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner (or some other entity such as a Lessee, which has by contract assumed the Owner's responsibility for compliance with the RMP after development) shall conduct an annual physical inspection of the property that confirms the following:

- The Native Soils continue to have the cover specified in Section 5.3.1 and the cover is maintained such that Native Soils are not exposed;
- Single family homes with private front or back yards are not developed within the RMP Area in accordance with Section 5.3.2;
- Ground water is not being used for domestic, industrial or irrigation purposes, as required in Section 5.3.3 and
- To the extent that the Owner or other entity procured subsurface work, the protocols for the subsurface activities were followed, as required by Section 5.3.4.

A Reporting Checklist is presented in Appendix C, identifying each management measure and the specific reporting requirements for the different periods of development. A sample monitoring form identifying the items that should be included in the annual physical inspection is presented in Appendix C. Owners shall submit the annual inspection report to the RWQCB and the SFDPH by January 31 of each year. As indicated, the physical integrity of the cover, both the Fill in the landscaped areas and the asphalt/concrete in the other areas, will be monitored to verify that prolonged direct contact with Native Soils will not occur. For the landscaped areas, the identification of breaches in the landscaping will be aided by the synthetic fabric that will be placed between the Native Soils and the Fill during the initial development of the landscaped areas. If during the inspections, the synthetic fabric is observed, then this will serve as an indication that the Fill has deteriorated significantly and that the Fill needs repair. Similarly, the inspections of the asphalt or concrete covered areas will focus on identifying areas where breaches in the cover, and the potential for prolonged direct contact with exposed Native Soils could occur. Descriptions of the condition of the asphalt or concrete covered areas will be noted in the inspection reports, and any necessary repairs will be conducted and documented. As

the risk analyses have indicated that it is only the potential for prolonged (i.e., 25 to 30 year) daily direct contact with Native Soil that warrants management, an annual inspection/monitoring and repair program is appropriate.

## **6.0 REGULATORY OVERSIGHT AND ENFORCEMENT OF RMP**

The purpose of this Section is to describe the regulatory oversight and enforcement mechanisms that will provide the structure for the risk management measures applicable to the RMP Area to remain in place and continue to be effective. Each Owner of any portion of the RMP Area will be notified of the RMP and its contents, and required to comply with it. This Section describes how and where the RMP will be maintained, and specifies the process through which Owners and Lessees will be notified of the RMP and informed of compliance obligations. Additionally, this Section identifies the monitoring/reporting requirements and enforcement procedures that can be exercised by the RWQCB to ensure compliance with all provisions of the RMP.

### **6.1.1 Public Repositories of the RMP**

The RMP for the entire RMP Area shall be maintained in two locations:

- With the Administrative Clerk of the Regional Water Quality Control Board for the San Francisco Bay Region in a file labeled “Mission Bay Risk Management Plan Area” and maintained in the public record room for active RWQCB oversight sites. This file shall be available for public review during the normal business hours in the public record room.
- With the SFDPH for the City and County of San Francisco in a file labeled “Mission Bay Risk Management Plan Area” and available for public review during the normal business hours of the Department of Public Health.

Each page of the RMP approved by the RWQCB shall be dated with the month and year that the RWQCB has approved the RMP or its modifications. A page shall be added to the front of each copy of the RMP when modifications are inserted, indicating the dates and pages of the substitutions.

### **6.1.2 Contents of RMP Area File**

Both the RWQCB and SFDPH will maintain an index for all RMP Area technical reports and data submitted. It shall include any technical reports submitted to the RWQCB or SFDPH for

the RMP Area, including without limitation, any reports or documents submitted to comply with the Ordinance Requirements for Analyzing the Soil for Hazardous Wastes in Appendix F. These files shall be available for public review during normal business hours.

## **6.2 Modifications to the RMP**

It is anticipated that the provisions of the RMP may need to be amended from time to time.

Examples of circumstances that may require RMP modifications include but are not limited to:

- When currently unanticipated conditions are encountered during construction, the response to which is not specified in this RMP and it is believed that the conditions may recur;
- When the manner of construction used for particular buildings in the RMP Area is materially changed and necessitates different safeguards; or
- Evolving construction or landscape technologies or techniques allow the long-term management of risks identified in Section 5.0 to be accomplished in a different but equally protective ways.

This list is not exhaustive but merely representative of the kinds of changes that may trigger the need for appropriate modifications over the life of this project.

A proposed RMP modification will not be presented to the RWQCB unless the following entities concur in proposing the amendment: (i) the current Owner of the affected parcel; and (ii) Catellus, the City and/or the Redevelopment Agency, and the Regents of the University of California, to the extent that the proposed RMP modification affects RMP compliance obligations that are imposed upon them in their agreements with each other. All modifications proposed to the RWQCB must include a certification from the Owner that the Owner has reviewed all relevant technical reports and data on file with both the RWQCB and SFDPH, and that the modification complies with the FSEIR.

When such affected parties concur upon a proposed modification to the RMP, they will jointly present such proposed modifications to the RWQCB for their approval. The RWQCB will review the proposed changes, request any additional background information if needed, and issue a decision regarding the proposal within 45 days of receipt of a fully complete application supporting the requested modification. The decision of the RWQCB regarding the request for

modification shall be considered final and shall be accepted by all involved parties except that any aggrieved party can request that a RWQCB decision which is contrary to their interests be reviewed by the RWQCB itself at a regularly scheduled public hearing. Once the RWQCB has approved the RMP modifications, the RMP changes will be filed in the RWQCB public copy and with the Department of Public Health. The procedures for modification and review of the RMP proposed modifications set forth in this Section 6.0 are in addition to, and not in lieu of, any procedures for advance review, notice, approval and dispute resolution set forth in private contracts between Catellus Development Corporation, UCSF, the City, and the Redevelopment Agency.

### **6.3 Notification of Owners and Lessees and Identification of Compliance Obligations**

An Environmental Covenant is recorded in the Official Records of the City and County of San Francisco against each parcel in the RMP Area and runs with the real property under California Civil Code 1471. The Environmental Covenant references the RMP and requires compliance with its provisions.

Because the Environmental Covenant is recorded, the Covenant will be provided to the Owners in the RMP Area, who will also become bound to comply, as a matter of law, with the Environmental Covenant. The Owners who have executed or become bound by the Environmental Covenant have also agreed by its terms to provide a copy of the RMP governing the parcel being transferred to applicable transferees.

The Environmental Covenant provides, among other things, that:

- Each Owner or Lessee will be deemed by their purchase, leasing or exclusive possession of the parcel within the RMP Area to be in compliance with the Environmental Covenant and the RMP. Recordation of the Environmental Covenant shall be binding on all Owners and Lessees, regardless of whether a copy of the Environmental Covenant has been attached to or incorporated into any given deed or lease.
- In all future leases, licenses, permits or other agreements between, on the one hand, an Owner or Lessee, and, on the other hand, another entity, which authorizes such entity to undertake or to engage in subject to one or more

requirements in this RMP, the Owner or Lessee will provide a copy of the RMP or its relevant provisions to such parties prior to the execution of the agreements and ensure that the agreements contain covenants that (i) such entity will comply with the RMP (to the extent the RMP applies to such parties' activities); (ii) that such entity will obligate other entities with which it contracts for construction, property maintenance or other activities that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP; and, (iii) such entity (and the entities with which it so contracts) will refrain from interfering with the title Owners' or Lessees' compliance with the RMP.

- In all agreements between an Owner and another entity provided for access to an affected parcel for the purpose of environmental mitigation, monitoring or remediation ("Environmental Response") by such entity, the Owner will provide the entity with a copy of the RMP prior to execution of the agreement and ensure that the agreements contain covenants by the entity that the entity will (i) comply with the RMP (to the extent the RMP applies to the entity's activities); and (ii) obligate any person or company with which it contracts for Environmental Response that may disturb Native Soil or ground water to comply with the applicable provisions of the RMP.

## **6.4 Monitoring and Reporting**

There are several junctures during the development of the RMP Area where this RMP, by its terms, requires monitoring and/or reporting. The monitoring and reporting requirements prior to, during, and after development are identified below. A Reporting Checklist, identifying each management measure and the specific reporting requirements for the different periods of development, is presented in Appendix C.

### **6.4.1 Prior to Commencement of Development**

The Owner or Lessee (or some other entity, such as a property management company, designated or certified by the Owner or Lessee) shall follow the pre-development monitoring requirements described in Sections 3.2(v) and 3.2(vi). Appendix C presents a checklist summarizing the reporting requirements for parcels prior to the initiation of development.

## **6.4.2 During Development**

- Prior to the initiation of construction activities within the Free Product Area, the Owner or Lessee will notify the RWQCB as described in Section 4.4.2(i).
- Prior to the commencement of development, the Owner or Lessee shall submit the dust monitoring notification to the RWQCB and the SFDPH, as described in Section 4.3.1.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall document implementation of the dust control measures, as described in Section 4.3.1.2 and shall comply with the requirements of the Dust Monitoring Program, set forth in Section 4.3.2.2. Further, the Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall comply with the specific reporting requirements of the Dust Monitoring Program, as described in Section 4.3.2.2.7.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) must prepare, prior to certain types of construction activities, a Storm Water Pollution Prevention Plan (SWPPP), (as described in Section 4.3.3), must submit the SWPPP to the RWQCB, and must comply with the provisions detailed in the SWPPP.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) shall conduct quarterly inspections of any soil stockpiles as described in Section 4.3.5.2.4.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will provide any notification required under state, federal or local law and will provide notice of such conditions to the RWQCB as the Administering Agency for the RMP Area whenever the construction contractor encounters: (i) unknown areas of contamination in the soil or ground water, per the notification requirements described in Section 4.3.5.6.1(i) and 4.3.5.6.1(ii)(d); (ii) any other unanticipated environmental

condition, the response to which is not specified in the RMP; (iii) other indications of a release of hazardous substances or hazardous materials which is required by state or federal law to be reported to a state environmental agency; (iv) a UST, per the notification requirements described in Section 4.3.5.6.2.1; or (v) any underground structure such as a sump, vault, or other subsurface structure if it is determined that the structure was related to former use and storage of chemicals and/or releases to the underlying soils occurred, as described in Sections 4.3.5.6.2.2 (ii)(a) and 4.3.5.6.2.2(ii)(b)(2).

- The Owner or Lessee's designated contractor will submit the EHASP to the RWQCB prior to the initiation of construction if the construction project is projected to last more than four weeks, as described in Section 4.3.8.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare the quarterly status report, as described in Section 4.3.9.
- The Owner or Lessee (or some other entity, such as a contractor, designated or certified by the Owner or Lessee) will prepare a completion letter, as described in Section 4.3.10.

Appendix C presents a checklist summarizing the reporting requirements for parcels during the period of development.

### **6.4.3 After Development is Complete**

After the construction of the permanent improvements on any parcel in the RMP Area, the Owner or Lessee (or some other entity such as a long-term lessee, which has by contract assumed the Owner's or Lessee's responsibility for compliance with the RMP after development) shall follow the long-term monitoring program described in Section 5.3.5. Appendix C presents a checklist summarizing the reporting requirements for parcels after development of the parcel is complete.

## **6.5 Enforcement Authority**

Responsibility for determining whether RMP requirements have been breached and, if so, the initiation of any enforcement action where it is appropriate shall rest with the RWQCB. The information provided to the RWQCB, as set forth in Section 6.4 will apprise the RWQCB of the status of RMP compliance for the RMP Area. Upon learning that a particular parcel is not RMP compliant, the RWQCB has the authority to enforce the provisions of the Porter Cologne Water Quality Control Law, Sections 13000, *et seq.* of the Water Code, against certain entities, including those who have caused or permitted the discharge of pollutants to land where it may create a nuisance. Additionally, as the stated beneficiary of the Environmental Covenant, the RWQCB may enforce the RMP restrictions through a civil action brought against an Owner or a Lessee which is not in compliance with the RMP.

The RWQCB's enforcement activity is separate from and in addition to the enforcement authority retained by the City in ensuring compliance with Appendix F requirements during construction.

## 7.0 REFERENCES

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- ENVIRON Corporation. 1999. *Development of Health-Based Interim Target Levels for the Mission Bay Project Area. San Francisco, CA*. April.
- Regional Water Quality Control Board (RWQCB). 1998a. *Information on Erosion and Sediment controls for Construction Projects: A Guidebook (Note: date in manual is not listed)*.
- Regional Water Quality Control Board (RWQCB). 1998b. *Erosion and Sediment Control Field Manual (Note: date in manual is not listed)*.

## Reporting Checklist

Period of Development	Risk Management Measure	Reporting Requirement
Pre-Development	<ol style="list-style-type: none"> <li>Access Restriction Measures <ol style="list-style-type: none"> <li>Fences</li> <li>Asphalt/Concrete Cover</li> </ol> </li> <li>Monitoring of Soil Stockpiles</li> </ol>	Annual report to RWQCB and SFDPH pursuant to Section 3.2(v) and Section 3.2 (vi).
During Development	<ol style="list-style-type: none"> <li>Dust Control Measures</li> <li>Dust Monitoring</li> <li>Control of Off-site Runoff: Storm Water Pollution Prevention Plan</li> <li>Management of Soil Stockpiles</li> <li>Protocols to Manage/Control the Identification and/or Release of Unknown Contaminants from Underground Structures or USTs.</li> </ol>	<p><b><u>Prior to Commencement of Development</u></b></p> <ul style="list-style-type: none"> <li>Submit dust monitoring notification to RWQCB and SFDPH pursuant to Section 4.3.1.</li> <li>Submit EHASP to RWQCB pursuant to Section 4.3.8</li> <li>Notification to the RWQCB prior to initiation of development in the Free Product Area, pursuant to Section 4.4.2 (i).</li> <li>Submit site-specific SWPPP to RWQCB pursuant to Section 4.3.3</li> </ul> <p><b><u>During Development</u></b></p> <ul style="list-style-type: none"> <li>Notification to RWQCB and SFDPH if daily average dust levels exceed the dust monitoring target concentration, pursuant to Section 4.3.2.2.7.</li> <li>Notification to RWQCB and SFDPH of the identification of unknown underground structures and unknown contaminants pursuant to Section 4.3.5.6.</li> <li>Annual report to RWQCB and SFDPH documenting inspections of soil stockpiles pursuant to Section 4.3.5.2.4.</li> <li>Quarterly status report to RWQCB and SFDPH during development pursuant to Section 4.3.9.</li> </ul> <p><b><u>Conclusion of Development</u></b></p> <ul style="list-style-type: none"> <li>Completion letter regarding cover submitted to the RWQCB and SFDPH pursuant to Section 4.3.10.</li> </ul>
Post Development	<ol style="list-style-type: none"> <li>Cover <ol style="list-style-type: none"> <li>Asphalt/Concrete</li> <li>Landscaping</li> </ol> </li> <li>No Single Family Homes</li> <li>No Use of Groundwater</li> <li>Subsurface Activities Conducted in Compliance with Health and Safety Protocols</li> </ol>	Annual report submitted to RWQCB and SFDPH pursuant to Section 5.3.5.

**INSPECTION/MONITORING SAMPLE FORM <sup>a</sup>:  
PRIOR TO DEVELOPMENT**

**Parcel ID:** \_\_\_\_\_

**Owner:** \_\_\_\_\_

**Individual Conducting  
Inspection:** \_\_\_\_\_

**Date of Inspection:** \_\_\_\_\_

**1) FENCES**

**Description of Condition:**

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**Description of Repairs/Areas Requiring Repairs:**

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**Date of Repair:**

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**2) ASPHALT AND/OR CONCRETE COVER**

**Description of Condition:**

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**Description of Repairs/Areas Requiring Repairs:**

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**Date of Repair:**

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**3) SOIL STOCKPILES**

**Description of Condition:**

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**Description of Repairs/Areas Requiring Repairs:**

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**Date of Repair:**

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<sup>a</sup> The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

**INSPECTION/MONITORING SAMPLE FORM <sup>a</sup>:  
LONG-TERM MONITORING AFTER DEVELOPMENT IS COMPLETE**

**Parcel ID:** \_\_\_\_\_

**Owner:** \_\_\_\_\_

**Individual Conducting  
Inspection:** \_\_\_\_\_

**Date of Inspection:** \_\_\_\_\_

**1) LANDSCAPED AREAS**

**Description of Condition:**

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**Description of Repairs/Areas Requiring Repairs:**

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**Date of Repair:**

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**2) ASPHALT AND/OR CONCRETE COVER**

**Description of Condition:**

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**Description of Repairs/Areas Requiring Repairs:**

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**Date of Repair:**

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**3) ARE SINGLE FAMILY RESIDENCES PRESENT?**

Yes ☐ No ☐

**Comment:**

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**4) CONFIRMATION THAT GROUND WATER USE IS NOT OCCURING**

Yes ☐ No ☐

**Comment:**

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**5) CONFIRMATION THAT SUBSURFACE ACTIVITIES CONDUCTED IN COMPLIANCE WITH HEALTH AND SAFETY PROTOCOLS**

Yes ☐ No ☐

**Comment:**

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<sup>a</sup> The items provided in this form are intended to be examples only; it is the Owner's responsibility to determine whether other items, categories, or types of descriptions are relevant and should be included in the annual submittal to the RWQCB.

**SCHEDULE 1**

**HAZARDOUS MATERIALS DISCLOSURE**

## Hazardous Substances

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## Hazardous Substances

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## **SCHEDULE 2**

**04/12/2021**

### **FEMA-National Flood Insurance Program Disclosure Notice**

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

[www.FloodSmart.gov](http://www.FloodSmart.gov).