

EXHIBIT C

PHASING SCHEDULE

EXHIBIT C
PHASING SCHEDULE

Project Phasing

OHP has proposed that the project be constructed in five phases over a period of approximately 17 years: 2008 to 2025 which are likely to occur sequentially, however, they may move forward concurrently or out of sequence as conditions require.

Phase I: Parcels A, B, C, F, G and Demolition/Remediation of Estuary Park

This phase will involve at a minimum for Parcels A,B, C, F, and G a) demolition and remediation, b) onsite improvements, c) offsite improvements and d) completion timeframes and conditions. This phase also involves demolition of the Cash and Carry warehouse and Remediation of Estuary Park.

- a) Demolition and Remediation;
 - i. Demolition of approximately 88,000 square foot of manufacturing, storage, 78,400 square foot warehouse building, approximately 160,000 square feet of the Ninth Avenue Terminal Shed Building, and approximately 120,000 square feet of timber supported pier structure.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) Onsite Improvements;
 - i. Construction of a portion of Shoreline Park to the south of parcels A, B, C and D including all landscaping, pier renovation, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
 - ii. Renovation of approximately 15,000 square of the existing 9th Avenue Terminal Shed Building as a mixed use commercial/cultural resource building.
 - iii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
 - iv. Installation of a temporary eight foot wide asphalt bay trail for phase II and phase III
- c) Offsite Improvements;
 - i. Removal of existing street section, sidewalks and landscaping of the Embarcadero from the South Bound On-Ramp to I-880 at 10th Avenue to 5th Avenue.
 - ii. Widening of the Embarcadero from the South Bound On-Ramp to I-880 at 10th Avenue to 5th Avenue including construction of street section, medians, traffic signals, sidewalks, bike trails, street trees and landscaping
 - iii. Installation of wet and dry underground utilities fronting the project on the project side of Embarcadero

- iv. All offsite mitigation measures and conditions as required for the development of this phase. The reconstruction of Embarcadero includes demolition of the existing street section and under grounding utilities.
- d) Completion Time frames;
 - i. Completed of Phase I park improvements prior to the issuance of a certificate of occupancy for the 550th residential unit for the project or five (5) years from the issuance of the first building permit for Phase I.

Phase II: Parcels D, E, H, and J

This phase will involve at a minimum a) remediation, b) onsite improvements, c) offsite improvements and d) completion timeframes and conditions.

1. Remediation:
 - i. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
2. Onsite Improvements:
 - i. Construction of the remainder of Shoreline Park and Clinton Basin Quay including all landscaping, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
 - ii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
3. Offsite Improvements:
 - i. Removal of existing street section, sidewalks and landscaping
 - ii. Widening of the Embarcadero from 5th Avenue to the existing Embarcadero Bridge including construction of street section, medians, traffic signals, sidewalks, bike trails, street trees and landscaping
 - iii. Installation of wet and dry underground utilities fronting the project on the project side of Embarcadero
 - iv. All offsite mitigation measures and conditions as required for the development of this phase.
4. Completion Time frames;
 - i. Completed of Phase II park improvements prior to the issuance of a certificate of occupancy for the 1,650th residential unit for the project or eight (8) years from the issuance of the first building permit for Phase I.

Phase III: Parcels K and L.

This phase will involve at a minimum a) demolition and remediation, b) onsite improvements, c) offsite improvements and d) completion timeframes and conditions.

- a) Demolition and Remediation:
 - i. Demolition of approximately 46,000 square feet of marine, storage, service, manufacturing, and industrial uses.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) Onsite Improvements:

- i. Construction of the South Park including all landscaping, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
- ii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
- c) Offsite Improvements:
 - i. All offsite mitigation measures and conditions as required for the development of this phase
- d) Completion Time frames:
 - i. Completed of Phase III park improvements prior to the issuance of a certificate of occupancy for the 2,340th residential unit for the project or eleven (11) years from the issuance of the first building permit for Phase I.

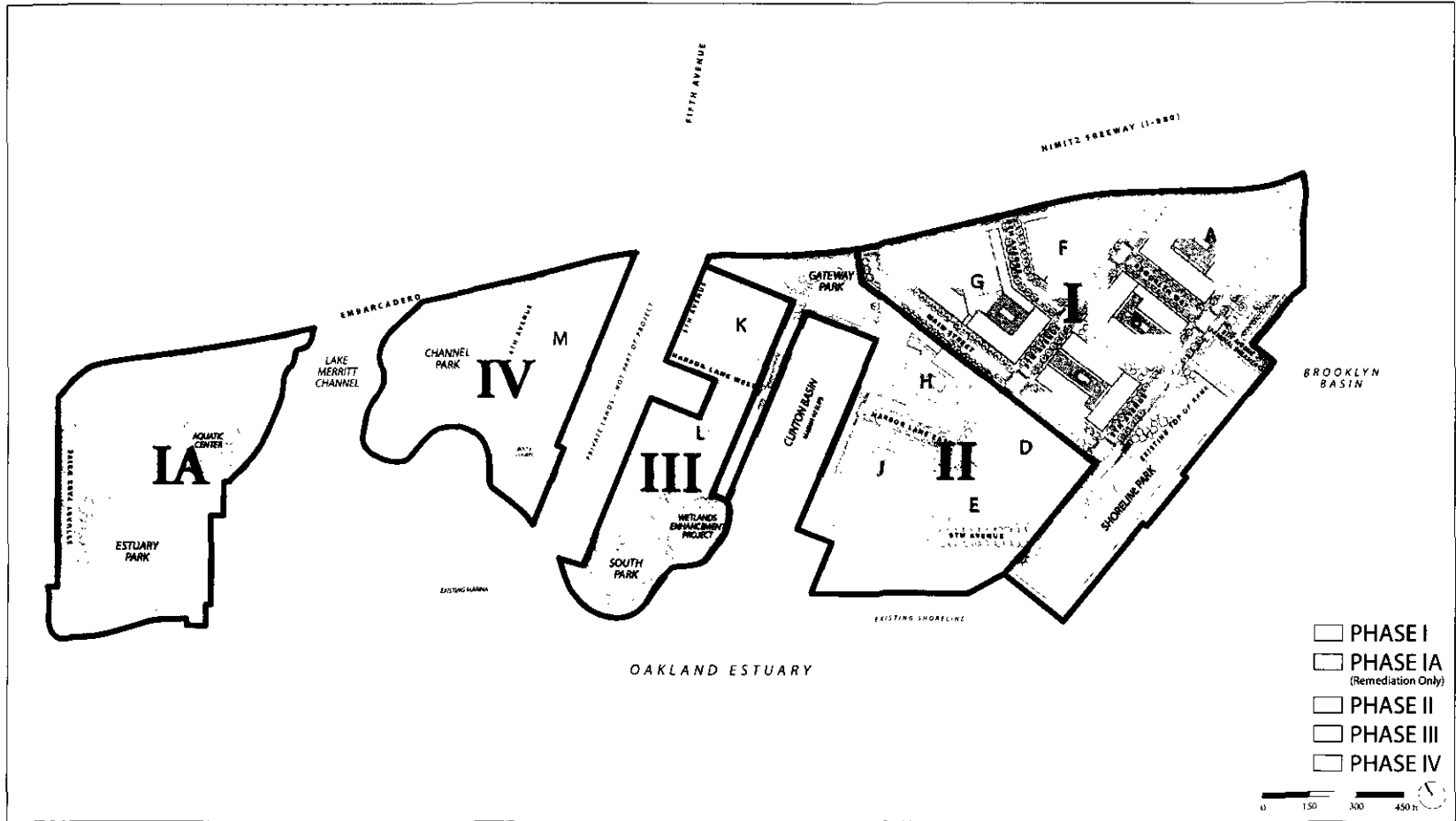
Phase IV: Parcel M

This phase will involve at a minimum a) demolition and remediation, b) onsite improvements, c) offsite improvements and d) completion timeframes and conditions.

- a) Demolition and Remediation:
 - i. Demolition of onsite structures.
 - ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).
- b) Onsite Improvements:
 - ii. Construction of Channel Park including all landscaping, tree removal and installation, bike paths, pedestrian walk ways, bay trail connections, and shoreline improvements.
 - iii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
 - iv. Installation of a temporary bay trail upon termination/expiration of the Berkeley Ready Mix lease, but no earlier than June 1,2016
- c) Offsite Improvements:
 - i. All offsite mitigation measures and conditions as required for the development of this phase.
- d) Completion Time frames;
 - i. Completed of Phase IV park improvements prior to the issuance of a certificate of occupancy for the 2,800th residential unit for the project or fourteen (14) years from the issuance of the first building permit for Phase I.

EXHIBIT C-1

PHASING PLAN



PHASING PLAN

Brooklyn Basin - Oak to 9th Development Plan

Prepared for Oakland Harbor Partners by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers

JUNE 2006

EXHIBIT D

PUBLIC OPEN SPACE ACQUISITION/HAZARDOUS MATERIALS

**ATTACHMENT I-1¹ PUBLIC OPEN SPACE ACQUISITION² HAZARDOUS
MATERIALS**

Redlined to Show Changes from June 20, 2006³

City Council Staff Report Attachment I-1⁴

1. Definitions

- A. "AB 389 Agreement" refers to any agreement entered into with an Environmental Regulatory Agency under the California Land Reuse and Revitalization Act of 2004. (Cal. Health & Safety Code, Chapter 6.82, section 25395.60 *et seq.*)
- B. "Closed" or "Closure"⁵ refers to the issuance of a "No Further Action" letter or other equivalent written determination from the appropriate Environmental Regulatory Agency confirming the completion of the Remediation (including any required groundwater monitoring) with respect to all or any identified portion of the Development Parcels or Public Open Space.
- C. "DTSC" refers to the California Department of Toxic Substances Control and any successor regulatory agency charged with overseeing the clean up of contaminated properties.
- D. "Environmental Data" means work plans, sampling results, laboratory results, analysis, reports, QAQC forms, field notes, chromatograms, response plans, Removal Action Plans, Remedial Action Plans, corrective action plans and all results thereof, whether in draft or in final form, including without limitation, electronic data, handwritten notes, and typewritten materials.
- E. "Environmental Laws" means any and all federal, state and local, statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the

EXHIBIT D

protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health and Safety Code, Section 25300 et seq.).

- F. “Environmental Regulatory Agency” means any governmental agency with jurisdiction over the clean up of environmentally impaired properties and the protection of human health, the environment, plant and animal habitat, or water resources, and any successor Environmental Regulatory Agency.
- G. “Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, “acutely hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section

EXHIBIT D

25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous substance”, or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, petroleum based products and petroleum additives and derived substances, (vi) asbestos and lead based paint, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (xii) methyl-tertiary butyl ether, (xiii) mold, fungi, viruses and bacterial matter, or (xiv) any other toxic substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to human health or the environment.

EXHIBIT D

- H. “RWQCB” means the California Regional Water Quality Control Board, San Francisco Bay Region or any successor agency authorized to oversee clean up of contaminated properties and charged with the protection of water resources.
- I. “Remediate,” “Remediation” or “Remedial Action” shall have the same meaning as those terms are defined in 42 USC section 9601(24), except that as used in this context, these terms apply to the clean up of Hazardous Materials defined above.
- J. “Removal” or “Removal Action” shall have the same meaning as those terms are defined in 42 USC section 9601(23), except that as used in this context, these terms apply to the removal of Hazardous Materials defined above.

2. Developer and City to Cooperate

- A. City to rely on Developer’s Environmental Data. Developer has hired environmental consultants or contractors⁶ to conduct Phase I and Phase II Environmental Site Assessments and will engage environmental consultants or contractors to perform Removal or Remedial Actions. City shall be able to rely on all Environmental Data prepared or to be prepared by or on behalf of Developer to the same extent that Developer can rely on such data⁷ and all Environmental Data shall specifically state that the City can rely on such information. Notwithstanding the above, however, City may rely on any Environmental Data to the extent it is used as a basis for the satisfaction of Developer’s obligations in this Development Agreement, regardless whether developer can rely on that Environmental Data, and such Environmental Data shall explicitly state that the City may rely on such information.⁸
- B. Standard of Care for All Appropriate Inquiries. Developer shall require in its contracts with environmental consultants involved in the assessment or investigation of Hazardous Materials located at⁹on¹⁰ the Development Parcels and the Public Open Space that the performance of such consultant’s work shall satisfy or meet (as applicable) the requirements of all appropriate inquiry

EXHIBIT D

into the previous ownership and uses of the Public Open Space and the Development Parcels, consistent with the Code of Federal Regulations, part 312 or ASTM 1527-05, in an effort to minimize the Parties' liability and in order to qualify as a Bona Fide Prospective ~~Purchase~~¹¹Purchaser¹² under 42 USC section 9601(40) or for the Innocent Landowner defense under 42 USC sections 9607(b)(3) and 9601(35), or a Contiguous Landowner.

- C. City to hire Environmental Consultant. City shall, at Developer's expense, hire an independent environmental consultant of City's choosing to review the Environmental Data, to assist in identifying data gaps, to participate in meetings with Environmental Regulatory Agencies, to advise the City and to perform any additional functions related to the Remediation of the Project Site¹³ that the City may identify at a later date. Developer's obligations to fund such consultant shall terminate with respect to any portion of the Public Open Space that has been Closed.
- D. Developer to Provide Environmental Data to City. Developer shall provide copies of all Environmental Data to City immediately upon receipt by Developer.
- E. City to Review all Draft Reports and Work Plans. Developer shall make all draft reports and work plans available to City for review and comment at least seven (7) business days prior to submitting any such reports or work plans to any Environmental Regulatory Agency. City shall review and respond to Developer with comments or questions within a reasonable period of time. To the extent City is legally able, it will keep Environmental Data confidential prior to its submission to an Environmental Regulatory Agency.
- F. City to Participate in Meetings with Environmental Regulatory Agencies. City shall be included in all communications with any Environmental Regulatory Agency regarding the Project Site. Developer shall give City

EXHIBIT D

reasonable notice of all such phone calls and meetings so that City may participate.

- G. Liability Limiting Tools. Developer intends to enter into an AB 389 Agreement with DTSC for the Development Parcels, and if possible the Public Open Space. Developer will cooperate with City to obtain the same or similar protections for the City on the Public Open Space as the Developer will receive through and AB 389 Agreement. City may employ one or more liability limiting tools. Developer agrees to work reasonably with City and to modify its Removal or Remedial Action Plans, the timeline or the implementation method in order to allow City to take advantage of any available¹⁴ liability limiting tools available given the intended deal structure (whereby the City takes title to the Public Open Space in an un-Remediated condition and the Developer Remediate such property per the Phasing Schedule in Exhibit ¹⁵_____¹⁶C to the Development Agreement¹⁷). Developer may participate in meetings with the Environmental Regulatory Agencies wherein liability limiting tools for the City will be discussed.

3. **Developer's Duty to Remediate.** Developer shall Remediate, at its sole cost and expense, all Hazardous Materials on, in, below or about the ~~Development Parcels and the~~¹⁸Public Open Space and those portions of the Project Site identified on Exhibit _____, attached hereto, that are to be or are developed as rights-of-way and are subject to the Tidelands Trust restriction (the "POS Access"). Developer will Remediate the Public Open Space and the POS Access¹⁹ according to the Phasing Schedule in Exhibit C. Developer shall expeditiously complete any additional environmental investigation necessary to fill any data gaps. ~~For each phase, Developer shall complete any Remediation on the Public Open Space at the same time or before Developer conducts any necessary Remediation on the Development Parcels.~~²⁰ Developer shall be responsible for securing any unoccupied portion of the Public Open Space prior to and during the Remediation,

EXHIBIT D

including without limitation providing adequate fencing and signage.

Notwithstanding the Phasing Schedule in Exhibit C, if any Environmental Regulatory Agency issues any order, directive or notice that any part of the Public Open Space ~~require~~²¹requires²² clean up, then Developer will Remediate those areas or releases that are the subject of the Environmental Regulatory Agency's directive, order or notice in compliance with the Environmental Regulatory Agency's timeline. For the purposes of this Development Agreement, Developer shall be deemed to have completed the Remediation upon receipt of a ~~closure~~²³Closure²⁴ letter from the appropriate Environmental Regulatory Agency.

- A. Developer to Keep City Informed. Representatives of Developer will regularly meet and consult with City regarding the environmental investigation or the Removal or Remedial Action implementation and the status and results of thereof and will submit written and verbal reports to City to the extent necessary to keep City fully informed on the status of the clean up.
- B. Standard of Care. Developer shall perform the cleanup hereunder in strict compliance with applicable federal, State and local laws and regulations. Developer represents and warrants that it shall clean up the Public Open Space in accordance with generally accepted professional practices and standards for environmental Remediation.
- C. Cleanup Levels. The Development Parcels and the Public Open Space shall be Remediated to levels protective of human health, the environment and water resources (both surfacewater and groundwater).
- D. Financial Assurance. Developer shall provide the following financial assurance to secure the Remediation of the Public Open Space in the event of Developer's default of Developer's obligation to Remediate the Public Open Space (the "Secured Remediation Funds"):

EXHIBIT D

1. Timing. The Secured Remediation Funds shall be in place prior to transfer of the Public Open Space to the City.
2. Initial Amount:
 - a. For any portion of the Remediation insured by a Cost Cap Policy: Developer shall provide Secured Remediation Funds in an amount equal to the total complete cost of any additional environmental investigation necessary plus the Remediation costs up to the attachment point of the Cost Cap Policy, plus the premium amount and²⁵ for any insurance policy including without limitation, the Pollution Legal Liability insurance unless the premium has already been paid and the policy is already in place for the full 20-year term and the²⁶ amount of any deductible for²⁷ under²⁸ the Pollution Legal Liability Policy.
 - b. For any portion of the Remediation not insured by a Cost Cap Policy: Developer shall ~~provide²⁹~~ provide³⁰ Secured Remediation Funds in an amount equal to 125% of the estimated cost to implement such Remediation (which estimate shall be prepared by Developer's consultant and reasonably approved by the City). To the extent that the initial estimate is not based on an approved Response Plan, the City and the Developer shall revise the estimate (and corresponding portion of the Secured Remediation Funds) to incorporate any subsequently approved Response Plan.
 - c. ~~Priority of Use.~~³¹ The Secured Remediation Funds shall be for the benefit of the City and the State of California, acting by and through its States Lands Commission ("SLC"). The City and Developer agree that the City shall have the first priority for the use of the Secured Remediation Funds and Developer will take all necessary steps to provide the City first priority, including, without limitation, ~~Developer~~

EXHIBIT D

shall use³² using³³ its best efforts to incorporate the City's first priority right in to the Exchange Agreement with SLC, and filing necessary UCC 1 forms. In the event that SLC refuses to incorporate this right of priority into the Exchange Agreement, then the amounts set forth in subsections (a) and (b) shall be increased by 25%.

3. Adjustment of the Secured Remediation Funds.
 - a. Annual Increases. Developer shall increase the amount of Secured Remediation Funds by a percentage equal to the increase in the **[insert agreed upon engineering cost index]** over the preceding year, which increase shall occur on the anniversary of the original posting of the Secured Remediation Funds.
 - b. Decreases. Developer shall be entitled to reduce the amount of the Secured Remediation Funds by the estimate to complete the Remediation for any portion of the Public Open Space that has been Closed.
4. Form. City in its sole discretion shall have the right to approve the allowable forms of the Secured Remediation Funds and will do so prior to the expiration of the Due Diligence Period, but in no event will the Secured Remediation Funds include personal or corporate guarantees. The form of the Secured Remediation Funds shall expressly state that the use of such funds is the environmental investigation and Remediation of the Public Open Space and City may access the Secured Remediation Funds for such purposes as necessary.
5. Assignment of Claims. In the event of Developer's default of its Remediation obligations,³⁴ Developer assigns all rights and claims Developer has or may have in the future against any party liable or potentially liable party under any statutory or common law for the costs of cleanup of the Public Open Space, Parcel N and the low and moderate

EXHIBIT D

income housing parcels including all rights Developer has or may have under the California Underground Storage Tank Cleanup Fund or any successor program for funding the clean up of Hazardous Materials from underground storage tanks. The assignment regarding the low and moderate income housing parcels shall be contingent upon the Agency's acquisition of such property.³⁵ In the event of Developer's default on its obligations to obtain a Closure of the Public Open Space, City shall have the right, but not the obligation, to Remediate the Public Open Space.

E. Issuance of a Certificate of Occupancy for Development Parcels. Prior to requesting a Certificate of Occupancy for any Development Parcel, Developer shall have completed the Removal Action or Remedial Action. City may issue a Certificate of Occupancy after completion of any Removal Action or Remedial Action, but prior to Closure, if i) the only remaining issues are monitoring and ii) the Environmental Regulatory Agency and City's Environmental Consultant concur that the Development Parcels have been cleaned up appropriately. Notwithstanding the foregoing, if City disagrees a determination by the Environmental Regulatory Agency that the Development Parcels have been cleaned up appropriately, City may withhold issuance of a Certificate of Occupancy and initiate the Dispute Resolution process described in paragraph 10.

36

4. **Due Diligence and Right to Refuse Dedication.** City shall have the right to investigate the condition of the Public Open Space ("Due Diligence"), including without limitation, its environmental condition and the Developer's intended Remediation Plan. City shall conduct its Due Diligence prior to November 1, 2006 ("Due Diligence Period"); provided, however, that the City may request a thirty day extension, which request shall not be unreasonably denied by Developer. Notwithstanding the above, or anything to the contrary in this Development Agreement, City may, in its sole and absolute discretion, refuse to

EXHIBIT D

accept the transfer of the Public Open Space to the City prior to the expiration of the Due Diligence Period.

5. **Environmental Insurance.** Prior to the transfer of title to the Public Open Space to City, Developer will provide Pollution Legal Liability Insurance and Cost Cap Insurance, or sufficient evidence of its ability to obtain adequate Cost Cap Insurance, in the amounts and on the terms identified in paragraphs 5.A, and 5.B, below. The Environmental Insurance shall provide coverage for Developer's environmental indemnity³⁷Indemnity³⁸ obligations in this Development Agreement and in all other contracts or agreements in which Developer indemnifies City³⁹Indemnifies City related to the Project Site⁴⁰. Developer agrees to work jointly with City or its insurance brokers in negotiating the terms of the insurance policies that are reasonably acceptable to City.

- A. Pollution Legal Liability Insurance. Developer shall purchase pollution legal liability insurance, naming Developer and City, SLC and the Port as insureds and meeting the requirements of Paragraph 5.3.5 of the Development Agreement, to commence upon City's taking title to the Public Open Space, covering liability arising out of known, unknown and pre-existing pollution conditions, seeking damages for bodily injury, property damage, environmental investigation or Remediation. The insurance shall also cover any Developer actions that may discover or exacerbate a previously unknown release of Hazardous Materials. Such Pollution Legal Liability Insurance shall be issued with a deductible or retention of not more than Two Hundred Fifty Thousand Dollars (\$250,000) for each occurrence and indemnity limits for each occurrence or in the aggregate equal to the greater of (a) Twenty Million Dollars (\$20,000,000) or (b) such amount as may be obtained for a premium of One Million Five Hundred Thousand Dollars (\$1,500,000.000)~~but in no event shall the insurance coverage be less than Ten Million Dollars (\$10,000,000)~~⁴¹. The term of any Pollution Legal Liability Policy shall be for

EXHIBIT D

at least twenty (20) years, but may be in the form of a single policy with a term of at least twenty (20) years or in two consecutive policies with terms of at least ten (10) years each as long as coverage is continuous and the policy terms are not materially different. The remaining terms of the Pollution Legal Liability Policy shall be subject to the City's approval, which approval shall not be unreasonably withheld. Further, Developer shall obtain a form following excess insurance policy for the sole benefit of the City in an amount equal to Three Million Dollars (\$3,000,000.00). The parties agree that the City shall have the right to purchase additional excess insurance or co-insurance at its sole discretion and expense and Developer will cooperate with City, and if necessary, assist City in obtaining such excess insurance or co-insurance.

- B. Cost Cap Insurance. Developer agrees to provide a Remediation Cost Cap Insurance policy(ies) for the Remediation of the Public Open Space with limits of at least one hundred percent (100%) above the anticipated remediation costs for the Public Open Space under an approved Removal or Remedial Action Plan or equivalent cleanup plans. Such policy(ies) shall be in place for the term required to obtain Closure. The remaining terms of the Cost Cap Policy shall be subject to the City's approval, which approval shall not be unreasonably withheld. Developer, City, SLC and the Port shall either be a named insured or shall be an additional insured under the policy(ies) and shall provide that the insurance may be tendered by and the proceeds provided to City should City be conducting the Remediation efforts, either voluntarily or by reason of Developer's default. The parties agree that the Cost Cap Policy required under this Section 5(B) may be combined with any ~~cost cap~~ ~~policy~~⁴²Cost Cap Policy⁴³ for the Remediation of the Development Parcels, but such combination shall not reduce the indemnity limits required hereunder.

EXHIBIT D

C. Secured Funds Alternative. In the event that Developer is unable to obtain or the Parties are unable to agree upon the form of the insurance policies required in Sections 5(A) and 5(B), above, Developer shall provide secured funds as an alternative. The amount, term and uses of the secured funds shall conform to the insurance being replaced thereby. The allowable forms of the secured funds shall be identical to the Secured Remediation Funds in

~~section~~⁴⁴Section⁴⁵ _____.

6. **Environmental Indemnity**. Until a closure or no further action letter is issued by the appropriate Environmental Regulatory Agency, Developer will ~~indemnify~~⁴⁶Indemnify⁴⁷, protect, defend (with counsel satisfactory to the Indemnitees), and hold the Indemnitees harmless from any claims (including without limitation third party claims for personal injury or real or personal property damage, toxic tort liability suits or any claims by any agency, employee, invitee guest, vendee or tenant), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including without limitation sums paid in settlements of claims), interest, or Losses, including without limitation reasonable attorneys' and paralegals' fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), reasonable consultant fees, and expert fees, together with all other reasonable costs and expenses of any kind or nature (collectively, the "Costs⁴⁸") that arise (a)⁴⁹ prior to the later to occur of (i) Closure or (ii) the date the⁵⁰ Public Open Space ~~being~~⁵¹ is⁵² operational as a public park ~~or~~⁵³ and⁵⁴ the Public Improvements ~~being dedicated to~~⁵⁵ located thereon have been accepted by⁵⁶ the City, or (b)⁵⁷ directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release of any Hazardous Materials in, on or under the Project Site or in or into the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under or within

EXHIBIT D

the Project Site, or any portion thereof, resulting from any activity of Developer or any previous uses of the Project Site, including without limitation construction releases. The indemnification⁵⁸~~Indemnification~~⁵⁹ provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of Developer and Developer hereby expressly waives any immunity to which Developer may otherwise be entitled under any industrial or worker's compensation laws⁶⁰~~or Developer's agents, contractors or subcontractors~~⁶¹. In the event the Indemnitees shall suffer or incur any such Costs or Losses, the Developer shall pay to the Indemnitees the total of all such Costs suffered or incurred by the Indemnitees upon demand therefore by the Indemnitees. Notwithstanding anything to the contrary in this Agreement, Developer's indemnity⁶²~~Indemnity~~⁶³ shall not apply to any claims, Costs or Losses arising solely⁶⁴ from the Indemnitees' sole gross negligence or willful misconduct. The Parties agree that Developer may obtain Closure on a Phase by Phase, sub-Phase by sub-Phase or parcel by parcel basis.

7. **Termination.** In the event that (a) the City elects not to approve the acceptance of the Public Open Space during the Due Diligence Period, (b) Developer fails to post the Secured Remediation Funds in accordance with Section ____, or (c) Developer is (i) unable to obtain the insurance policies required under Sections 5(A) and 5(B), above, and fails to post the secured funds alternatives set forth in Section 5(c), above, the parties shall meet and confer to discuss alternatives acceptable to the parties. In the event the parties are unable to agree upon such alternative, then either party may terminate this Agreement in accordance with Article 11 of the Development Agreement. Notwithstanding anything to the contrary in this Development Agreement, in the event Developer fails to post the Secured Remediation Funds in accordance with Section ____, or Developer is (i) unable to obtain the insurance policies required under Sections 5(A) and 5(B), above, and fails to post the secured funds alternatives set forth in Section 5(c),

EXHIBIT D

above, and the parties meet and confer and cannot agree on acceptable alternative(s), then the Parties' sole and exclusive remedy is termination of this Development Agreement. ⁶⁵The City Administrator or his or her designee is hereby authorized to determine whether or not the City should approve the acceptance of the Public Open Space during the Due Diligence Period and to approve or disapprove the forms of the Secured Remediation Funds and insurance policies (or secured funds alternatives thereto).

8. **Right of Entry.** ~~Developer shall be provided access to the Public Open Space to accomplish the Remediation~~⁶⁶City grants to Developer a non-exclusive and revocable license to enter upon those portions of the Public Open Space not covered under the lease provisions in Section 4.3 for the purpose of conducting environmental investigation and completing Developer's Remediation obligations⁶⁷ in accordance with the terms and provisions of the Ground Lease or Right of Entry attached hereto and incorporated herein.⁶⁸conditions in the Development Agreement and with the following:⁶⁹

- A. ⁷⁰Developer will agree to split any samples that are taken of environmental media on the Public Open Space and the POS Access, if requested by City. Developer agrees that City's representative or environmental consultant may be present during any environmental investigation or Removal or Remedial work.⁷¹
- B. ⁷²Developer will permit only licensed and responsible consultants, contractors or other responsible individuals or consultants to enter upon the Public Open Space.⁷³
- C. ⁷⁴Developer will assume full responsibility for proper characterization, manifesting, storage and disposal of any materials or wastes generated as a result of Developer's environmental investigation, Removal or Remedial Actions.⁷⁵

EXHIBIT D

- D. ⁷⁶Developer agrees, and will require its agents, consultants, employees and contractors, to agree to comply with all applicable laws, regulations, rules and permits pertaining to the Public Open Space, including, but not limited to, the Occupational Health and Safety Act and all applicable Environmental Laws, health and safety laws and regulations, whether federal, state or local. City will be a third-party beneficiary of such agreements by the Developer's agents, consultants, employees and contractors.⁷⁷
- E. ⁷⁸Developer agrees to promptly pay before delinquency any and all labor and materials expended or used in connection with any and all investigations on the Public Open Space.⁷⁹
- F. ⁸⁰Developer agrees to comply with all Hazardous Materials notification requirements and will provide copies of those notices to City immediately upon giving such notice, or in advance of giving such notice if possible.⁸¹
- G. ⁸²Developer's Indemnity obligations in this Exhibit D expressly apply to protect City from and against any Claims resulting from the work conducted under this Section by Developer, its agents, consultants or contractors.⁸³
- H. ⁸⁴The right of entry granted in this Section will terminate upon Closure as to each parcel, phase or subphase.⁸⁵
- I. ⁸⁶Throughout the term of the right of entry, Developer, its contractors, subcontractors, consultants and any other person permitted onto the Public Open Space shall obtain and maintain the following insurance coverages:⁸⁷
- (i) ⁸⁸Workers' Compensation Insurance as required by law.⁸⁹

EXHIBIT D

- (ii) ⁹⁰Commercial General Liability Insurance with coverage of not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage, naming the City as an additional insured.⁹¹
- (iii) ⁹²Pollution Liability Insurance with limits of \$2,000,000 per claim for bodily injury and property damage, naming the City as an additional insured; and⁹³
- (iv) ⁹⁴Professional Liability Insurance with limits of \$2,000,000 per claim for injury to or damage arising out of the rendering or failure to render professional services.⁹⁵

9. **Parcel N/Estuary Park.** The City will not accept the dedication of Parcel N until the Developer has completed the Remediation of Parcel N as provided in section ____ of this Development Agreement. City shall have the right to participate in any discussions with DTSC or any other Environmental Regulatory Agency regarding any liability limiting tools that Developer intends to use, including AB 389, on Parcel N and the low income housing parcels to ensure that all risk and liability protections are transferable to City. Developer shall have the obligation to maintain and secure the unoccupied portions of Parcel N until the City accepts the dedication. Nothing herein obligates the City to accept the dedication of Parcel N.

10. **Dispute Resolution.**

A. Technical Disputes. Because the Parties believe that it is in the best interest of the Project for technical disputes to be resolved prior to presenting proposals to the Environmental Regulatory Agencies, in the event the Parties cannot agree on any issues of a technical nature, each party shall submit two names of

EXHIBIT D

neutral environmental consultants (consultants who have no prior knowledge of the Development Parcels or the Public Open Space), and the Parties will choose one consultant among the four to resolve the technical dispute. If the Parties cannot agree on one neutral consultant within ten (10) business days after either party triggers the dispute resolution provision of this Section in writing, then the parties will submit the names of the environmental consultants to the Chief Judge of the Alameda County Superior Court and the Chief Judge will select a consultant from the list of four to render a neutral decision. The Parties agree to abide by the technical decision made by the neutral consultant.

- B. All non-technical disputes will be resolved according to the procedures provided elsewhere in this Development Agreement.

11. Release and Covenant Not to Sue by City. Effective upon transfer of the Public Open Space to the City, the City:

- A. ~~(a)~~⁹⁶ fully and finally releases the Port from all claims related to the physical condition of the Project Site, including, but not limited to all claims associated with the presence of Hazardous Materials located at or under the Project Site, and
- B. ~~(b)~~⁹⁷ covenants not to sue each of the Persons identified on the attached Exhibit D-1 (which is⁹⁸ Exhibit 13-1 of Exhibit A to the Option Agreement (who have been identified by the Port as current or former lessees of portions of the Project Site))⁹⁹ for claims relating to the presence of Hazardous Materials at, under or emanating from the Ninth Avenue Terminal, the Seabreeze Yacht Center or the Praxair site, nor initiate any action to recover costs or other damages resulting from presence of Hazardous Materials at, under or emanating from the Ninth Avenue Terminal, the Seabreeze Yacht Center or the Praxair site as those locations are

EXHIBIT D

specifically identified and defined in Exhibit 13-2 of Exhibit A to the Option Agreement.

12. **Survival of Terms.** ~~Most of the environmental terms should survive termination—this can be added later when we know paragraph numbers.~~¹⁰⁰The obligations in this Exhibit D shall survive any earlier Termination of the Development Agreement unless (1) City elects not to accept the transfer of the Public Open Space in accordance with this Exhibit D, and (2) Developer does not proceed with development of the Project in accordance with any of the Project Approvals.¹⁰¹

EXHIBIT E

**DEVELOPMENT PARCELS
VESTING TENTATIVE MAP NO. 7621**

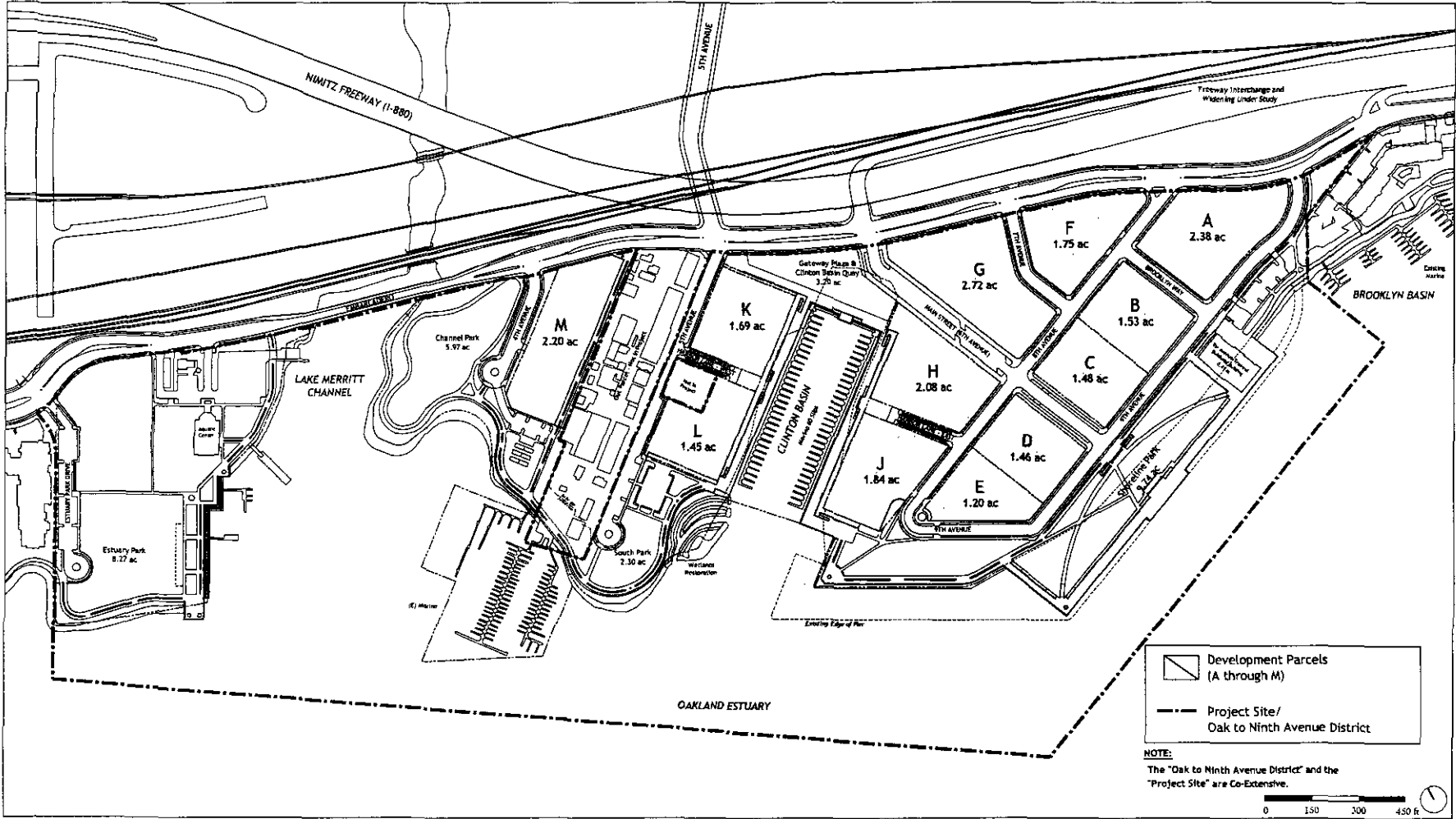


EXHIBIT "E"

Brooklyn Basin - Oak to 9th Site Plan

Prepared for Oakland Harbor Partners by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers

JUNE 2006

EXHIBIT F

PARK AND OPEN SPACE MAINTENANCE GUIDELINES

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th

Maintenance Guidelines for Landscape Planting Landscape

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Trees									
Planting	X	X				All tree selections to be based upon sound branching structure, drought tolerance, low maintenance and salt tolerance criteria.	Remove and salvage tree stakes. Inspect tree ties and remove if they are girdling the trunk. Pruning shall follow the International Society of Arboriculture's Pruning Guidelines	If tree grates are specified, remove sections of tree grates that will interfere with tree trunk. Inspect tree ties and remove if they are girdling the trunk	If tree grates are specified, remove sections of tree grates that will interfere with tree trunk. Inspect tree ties and remove if they are girdling the trunk
Fertilization		X	X	X		Do NOT use string trimmers to cut weeds around trees unless a tree trunk protector is installed..	Prune lower branches that may potentially be hazardous.		
Mulch		X				Eucalyptus species are to be avoided.			
Weed Control	X	X	X	X		Trees shall be removed if determined to be a hazard by an Arboricultural Inspector of the City's PWA. Weed Control will follow the Cities Integrated Pest Management Guidelines	Initial training of the tree's structure shall be completed in the third year after planting.		
Pest Control		X	X			Replace removed trees no later than November. Pest Control will follow the Cities Integrated Pest Management Guidelines			
Plant Repair				X		Provide two bubblers per tree per City Standard. Restake as necessary.			
Pruning	X					Stake with 'Reddy Tree Stakes' per City Standard.	Future pruning shall occur every three years for the first fifteen years and every five years thereafter.		

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th

Watering		X	X	X	Water twice weekly with between 5 and 10 gallons of water per tree between the beginning of April and November. Hand water first two years.			
Inspections	X	X	X	X	Inspections shall be performed by a Certified Arborist annually and followed by a detailed recommendations of maintenance report. If using ornamental gravel in tree wells replace backfill annually and abate weeds as necessary.			

Planting								
	Year	Spring	Summer	Fall	Season	2 Years	5 Years	10-15+ Years
Shrubs								
Planting	X	X			All shrub selections to be based upon disease resistance, drought tolerance, low maintenance and salt tolerance criteria. Do not select "burnout" shrubs that mature too quickly and get leggy. For median strips only use shrubs with good track record.	Prune back woody branches where this will improve the look of the shrubs.	Prune back woody branches where this will improve the look of the shrubs.	Replace shrubs that are thin and overly woody.
Fertilization		X	X	X		Selectively replace shrubs that have become overly woody.	Selectively replace shrubs that have become overly woody.	
Mulch		X			Include 'Biobarrier II' weed control and 3" bark mulch all over planting areas. Do not use where runoff may enter bodies of water.	Add mulch as necessary to maintain minimum 2" cover over Biobarrier.	Add mulch as necessary to maintain minimum 2" cover over Biobarrier.	

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th

Pest Control		X	X		Pest Control will follow the Cities Integrated Pest Management Guidelines	Never shear/clip or prune shrubs into balls or tight form. Allow plant to develop it's natural character.	Never shear/clip or prune shrubs into balls or tight form. Allow plant to develop it's natural character.	
Plant Repair				X				
Pruning	X							

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th

	Spring	Summer	Fall	Special Events		By 5 Years	By 10 Years	
Groundcovers								
Planting	X	X			All groundcover selections to be based upon drought tolerance, low maintenance and salt tolerance criteria.	In area where establishment proves unsuccessful, amend soil and re-plant.	Replace dead plant material with same variety unless the decline was due to plant selection.	Replace groundcovers in areas where they have become too woody.
Fertilization		X	X	X				
Mulch		X			Include 'Biobarrier II' weed control and 3" bark mulch all over planting areas.	Where pedestrian traffic is prohibiting groundcover establishment, replant and fence area off during re-establishment period.		
Pest Control		X	X		Pest control will follow the Cities Integrated Pest Management Guidelines			
Trimming	X					Add mulch as necessary to maintain minimum 2" cover over Biobarrier.		
Weed Control	X	X	X	X	Weed control will follow the Cities Integrated Pest Management Guidelines			
Vines								
Planting	X	X			All vine selections to be based upon drought tolerance, low maintenance (e.g. use Boston Ivy over Creeping Fig) and salt tolerance criteria.	Train vines to trellises or provide proper wire support and prune selectively to direct growth.	Confirm and remove support wiring as necessary to ensure vigorous growth.	
Fertilization		X	X	X				
Mulch		X				Prune runners that grow along ground.		
Pest Control		X	X		Pest control will follow the Cities Integrated Pest Management Guidelines			
Pruning	X					Protect young vines at base against damage from pedestrians.		

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th

Planting Tree								
	Winter	Spring	Summer	Fall	Special Notes	1-3 Years	4-5 Years	6-10+ Years
Fertilization		X						
Mulch		X						
Pest Control		X	X					
Plant Division	X							
Pruning	January					Prune annually 1/3 height in January.		
Lawn - (Low Use)								
De-thatching & Aeration		X		X (for high use)	All sod selections to be based upon drought tolerance, low maintenance and salt tolerance criteria.	Regrade sections that may have subsided.		Assess reason for sod decline and resod as necessary, area of dead or dying grass.
Fertilization		X				Remove invasive grass types, clover, etc. (Chamomile may be desirable).		
Mowing & Weed Control	monthly	bi-weekly	bi-weekly	bi-weekly	Weed control will follow the Cities Integrated Pest Management Guidelines			
Re-sodding		X	X			Remove lawn, by hand, from area around trunk of trees to 6" from bark face. Or use a tree guard plus a pre-emergent in tree wells.		
Re-seeding		X		X				

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th

Draft Maintenance Guidelines for Landscape Planting for Oak to 9th								
		Spring	Summer	Fall	Notes	Notes	Notes	Notes
Fertilization		X		X		Remove invasive grass types, clover, and other weeds.		
Mowing & Weed Control	3 weeks	Every 7-10 days	Every 7-10 days	Every 7-10 days	Sub surface drainage system shall be provided for all high use Turf Fields. Pest control will follow the <i>Cities Integrated Pest Management Guidelines</i>			
Re-sodding		X	X			Resodding in the Fall will be acceptable if alternative fields are identified for displaced soccer.	Resodding in the Fall will be acceptable if alternative fields are identified for displaced soccer.	
Naturalized Areas and Aquatic Zones								
Planting	X			X	All planting selections to be based upon drought tolerance, low maintenance, native material and salt tolerance criteria.	Weeding and landscape management is critical during the first two years of establishment with the goal of minimizing efforts in subsequent years.	Species selection should be modified based on evaluation of the success rate of plant species according to the unique conditions present in soil, salt, wildlife, use, water level, maintenance, and irrigation. Major reseeding should be provided as required to reduce invasive non-native plant material.	Long-term management should consider the habitat quality. Plant species should be further modified to improve foraging, nesting, and aesthetic qualities.
						Weed-out non-native plant species.		
Weed Control				X	Weed control will follow the <i>Cities Integrated Pest Management Guidelines</i>	As a wildlife habitat zone, human intrusion for maintenance purposes should be carefully timed around nesting periods.		Plants should be replaced or reseeded as required due to die-back

Draft Maintenance Guidelines for Irrigation, Trash Collection and Litter Removal for Oak to 9th

Irrigation

Material Type	Annual Maintenance Procedure							
	Winter	Spring	Summer	Fall	Selection Criteria and Specifications	At 2 Years	At 5 Years	At 10+ Years
Irrigation Equipment								
Controller			Annually		Rain Bird or Calsense master controller.	Repair as required.	Repair as required.	Repair or replacement as required.
Valves		Annually			Rain Bird Valves.			
Shrub spray nozzles	Bi-Monthly	weekly	weekly	Bi-weekly	Rain Bird Manufacturer.			
Lawn Spray Nozzles and Rooters		weekly	weekly		Hunter Manufacturer			
Moisture or Rain Sensors	yearly				Rain Bird Manufacturer.			

Trash Collection and Litter Removal

Level of use will determine the level of service

	Winter	Spring	Summer	Fall	Selection Criteria and Specifications	At 2 Years	At 5 Years	At 10+ Years
Picnic Areas								
Trash Collection	2 Times per week	3 Times per week	3 Times per week	3 Times per week	Side opening 36-gallon trash receptacle with lid cover.	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Replacement as required.
Litter and illegal dumping removal	Daily	Daily	Daily	Daily				
Park/Open Space								
Trash Collection	1 Time per week	1-2 Times per week	1-2 Times per week	1-2 Times per week	Side opening Trash receptacle	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Replacement as required.
Litter and illegal dumping removal	Daily	Daily	Daily	Daily				
Along the Trail								
Trash Collection	1 Time per week	1-2 Times per week	1-2 Times per week	1-2 Times per week	Side opening Trash receptacle	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Replacement as required.
Litter and illegal dumping removal	Daily	Daily	Daily	Daily				

Draft Maintenance Guidelines for Irrigation, Trash Collection and Litter Removal for Oak to 9th

Material Type	Seasonal Maintenance Procedure				Season & Time and Specifications	At 2 Years	At 5 Years	At 10 Years
	Winter	Spring	Summer	Fall				
On sidewalks								
Trash Collection	Mon-Sat before 11:00 am	Mon-Sat before 11:00 am	Mon-Sat before 11:00 am	Mon-Sat before 11:00 am	Side opening Trash receptacle	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Regalvanize and re-paint as required.	Replacement as required.

Draft Guidelines for Hardscape Maintenance for Oak to 9th

Guidelines for Hardscape Maintenance			
	Design Specifications	Maintenance Procedure	Frequency
Hardscape Elements	All hardscape vertical elements and fixtures to be coated with anti-graffiti coating	Remove graffiti	Promptly
Concrete Paths	Materials and finishes to be determined and maintained throughout project boundaries.		
Cleaning		Mechanical/Manual Sweeping	Monthly
Maintenance		Check for uneven or lifting sections. Recaulk expansion joints matching existing color.	Monthly
Repair		Saw-cut along existing score lines. Replace with matching concrete. Score and finish to match existing.	Bi-Annually
Replacement		Replace as necessary - see "repair".	As Required
Porous Concrete Paths	Materials and finishes to be determined and maintained throughout project boundaries.		
Cleaning		Mechanical/manual sweeping, vacuum or back pack blower to reduce the accumulation of debris in the porous concrete.	Monthly
Maintenance		Check for uneven or lifting sections. Recaulk expansion joints.	Monthly
Repair		Saw-cut along existing score lines. Replace with matching concrete. Score and finish to match existing.	Bi-Annually
Replacement		Replace as necessary - see "repair".	As Required
Unit Pavers	Specify tight joints, filter fabric and maximum base compaction. Materials and finishes to be determined and maintained throughout project boundaries.		
Cleaning		Mechanical Sweeping. Abate weeds as necessary	Monthly
Maintenance		Check for uneven or lifting sections.	Monthly
Reseal		Reseal the unit pavers.	Every 2 Years
Repair		Check for uneven or lifting sections. Check for loose stones. Reset pavers as necessary.	Bi-Annually
Replacement		Replace as necessary - see "repair".	As Required

Draft Guidelines for Hardscape Maintenance for Oak to 9th

	Design Specifications	Maintenance Procedure	Frequency
Stone Pavers	Specify tight joints, filter fabric and maximum base compaction. Materials and finishes to be determined and maintained throughout project boundaries.	Check for uneven, lifting sections, broken or missing pavers. Reset and replace as required	
Cleaning		Mechanical Sweeping. Abate weeds as necessary	Monthly
Maintenance		Check for uneven or lifting sections.	Monthly
Reseal		Reseal the unit pavers.	Every 2 Years
Repair		Check for uneven or lifting sections. Check for loose stones. Reset pavers as necessary.	Bi-Annually
Replacement		Replace as necessary - see "repair".	As Required
Decomposed Granite Paths	Decomposed granite selection to be Diablo Red color. Specify 4-6" depth minimum with binder, filter fabric and maximum base compaction. Signage should discourage bike use in the rainy season		
Maintenance		Groom surface by raking smooth any uneven areas	twice annually
Repair		Check for uneven section and fill depressions	annually
Replacement		Excavate effected areas. Re-mix with binder and add matching material as necessary. Recompact in place	As required
Wood Docks and Piers			
Maintenance		Inspect all hardware and tighten if necessary. Re-apply wood treatment on docks and piers.	Yearly
Repair		Replace hardware with same type. Replace damaged wooden parts with same materials and construction.	On an As Reported Basis
Replacement		Replace docks and piers as required.	As Required
Stone Seat Walls			
Maintenance		Power wash stone facing and wall caps. Inspect for and remove graffiti (as needed). Check for loose stones, re-mortar and re-point where necessary.	Bi-Annually
Repair		Clean graffiti proof coating per manufacturers specification. Do not paint over graffiti unless it is a painted surface. Replace irreparable art tiles, stones and caps with the same type of material. Match grout color.	As Reported Basis
Replacement		Replace as necessary - see "repair".	As required

Draft Guidelines for Hardscape Maintenance for Oak to 9th

	Design Specifications	Maintenance Procedure	Frequency
Special Metal Railing			
Maintenance		Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots. Re-paint as req'd. Clean railings with water or mild nonphosphorous soap as required to remove food, gum, graffiti, bird feces, and dirt.	Monthly
Repair		Replace hardware with same type. Re-weld, re-galvanize and re-paint or powdercoat broken custom metal fabrications in shop specializing in metal work.	On an As reported Basis
Replacement		Replace as necessary - see "repair".	As Required
Wood Railing			
Cleaning		Clean railings with water or mild nonphosphorous soap as required to remove food, gum, graffiti, bird feces, and dirt.	Monthly
Maintenance		Inspect all wood railing for structural stability and deterioration.	Monthly
Reseal		Re-apply wood treatment on arbors and benches.	Annualy
Repair		Replace connections or wood with materials to match existing. Replace damaged wooden parts with same type of materials as existing.	On an As Reported Basis
Replacement		Replace as necessary - see "repair".	As Required
Site Furnishings			
	Benches, bollards, bike racks, trash receptacles and signage		
Maintenance		Clean tables, benches, etc. with water or mild, nonphosphorous soap as required to remove food, gum, graffiti, bird feces, and dirt. Inspect for chipped or cracked paint and rust spots. Inspect all hardware and tighten if necessary. Inspect metal parts for chipped paint and rust spots.	Monthly
Repair		Re-paint where necessary with matching color. Re-galvanize and re-paint as req'd. Replace hardware with same type. Re-weld, re-galvanize and repaint or powdercoat broken custom metal fabrications in shop specializing in metal work. Replace damaged wooden parts with same type of materials.	On an As Reported Basis
Replacement		Replace irreparable furnishings with the same make and models.	As Required

Draft Guidelines for Hardscape Maintenance for Oak to 9th

	Design Specifications	Maintenance Procedure	Frequency
Drinking Fountains			
Cleaning		Clean and polish drinking fountain bowls and fixtures.	Weekly
Maintenance		Check for water pressure and adjust according to manufacturer's instructions.	Monthly
Repair		Repair per manufacturer's instructions.	As Reported Basis
Replacement		Replace with the same make and model (if available).	As Required
Play Surfaces and Structures			
Maintenance		Rake/sweep/clean play surface by hand or with a mechanical tractor to keep friable and free of objects. Verify depth of surface. If applicable maintain required depth per industry ratio of height play equipment versus depth of fall impact material. Check structure for dangerous conditions such as worn equipment, sharp edges, rust, and loose bolts.	Monthly
Repair		Remove graffiti, trash, feces, and other materials potentially harmful to people and children from play structures and area surfacing. Replace material to match play surface as required to maintain depth standards. Repair structure as required to correct dangerous conditions such as worn equipment, sharp edges, rust, and loose bolts.	As Reported Basis
Replacement		Replace as required.	As Required
Fencing			
Maintenance		Inspect for rust, dents, and potential security breaches.	Monthly
Repair		Repaint with matching rust inhibiting paint. Grind rust spots clean and prime before painting.	Bi-Annualy
Replacement		Replace sections or whole fence as required to match existing or per design direction of City Engineer.	As Required
Restroom Facilities			
Cleaning		Clean, mop, disinfect, remove trash and replenish all supplies.	Daily
Maintenance		Check all plumbing fixtures and pressure.	Bi-Weekly
Repair		Repair fixtures, plumbing and vandalism. Remove graffiti as required.	On an As Reported Basis

EXHIBIT G

**APPROVAL DOCUMENTS FOR THE OAK TO NINTH
MIXED USE DEVELOPMENT PROJECT**

EXHIBIT G
**APPROVAL DOCUMENTS FOR THE OAK TO NINTH
MIXED USE DEVELOPMENT PROJECT**

- (1) A Resolution Denying the Appeal of Arthur D. Levy, Sustaining the March 15, 2006 Planning Commission Actions on the Oak to Ninth Mixed Use Development Project and Certifying the Final Environmental Impact Report for the Oak to Ninth Project**
- (2) A Resolution Amending the General Plan Estuary Policy Plan to Create a New Land Use Designation, Planned Waterfront Development-4, and to Adopt Land Use Map and Text Changes in Connection with the Oak to Ninth Avenue Mixed Use Development Project**
- (3) A Resolution Approving and Recommending Adoption of the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site**
- (4) An Ordinance Adopting the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site**
- (5) An Agency Resolution Approving and Recommending Adoption of an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site**
- (6) An Ordinance Adopting an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site**
- (7) An Ordinance Adopting the Planned Waterfront Zoning District-4 (PWD-4) for the Oak to Ninth Mixed Use Development Project**
- (8) An Ordinance Rezoning Property in the Oak to Ninth Avenue Mixed Use Development Project Site from Heavy Industrial (M-40) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP), and from Civic Center/Design Review Combining Zone (S-2/S-4) to Open Space-Regional Serving Park (OS-RSP) with the exception of the Jack London Aquatic Center which will remain S-2/S-4**
- (9) Resolution Approving Vesting Tentative Map (No. 7621) for the Oak-to-Ninth Mixed Use Development Project**
- (10) A Resolution Approving a Preliminary Development Plan and Design Guidelines for the Oak to Ninth Mixed Use Development Project**
- (11) An Ordinance Approving a Development Agreement Between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City**
- (12) An Agency Resolution Authorizing a Development Agreement with the City of Oakland and Oakland Harbor Partners, LLC**

Exhibits to Each Document (1 through 12) Listed Above:

- Exhibit A – CEQA Findings and Statement of Overriding Considerations**
- Exhibit B – Mitigation Monitoring and Reporting Program**
- Exhibit C – Conditions of Approval**
- Exhibit D – General Findings Related to the Approval of the Oak to Ninth Project**

EXHIBIT H

PRELIMINARY DEVELOPMENT PLAN

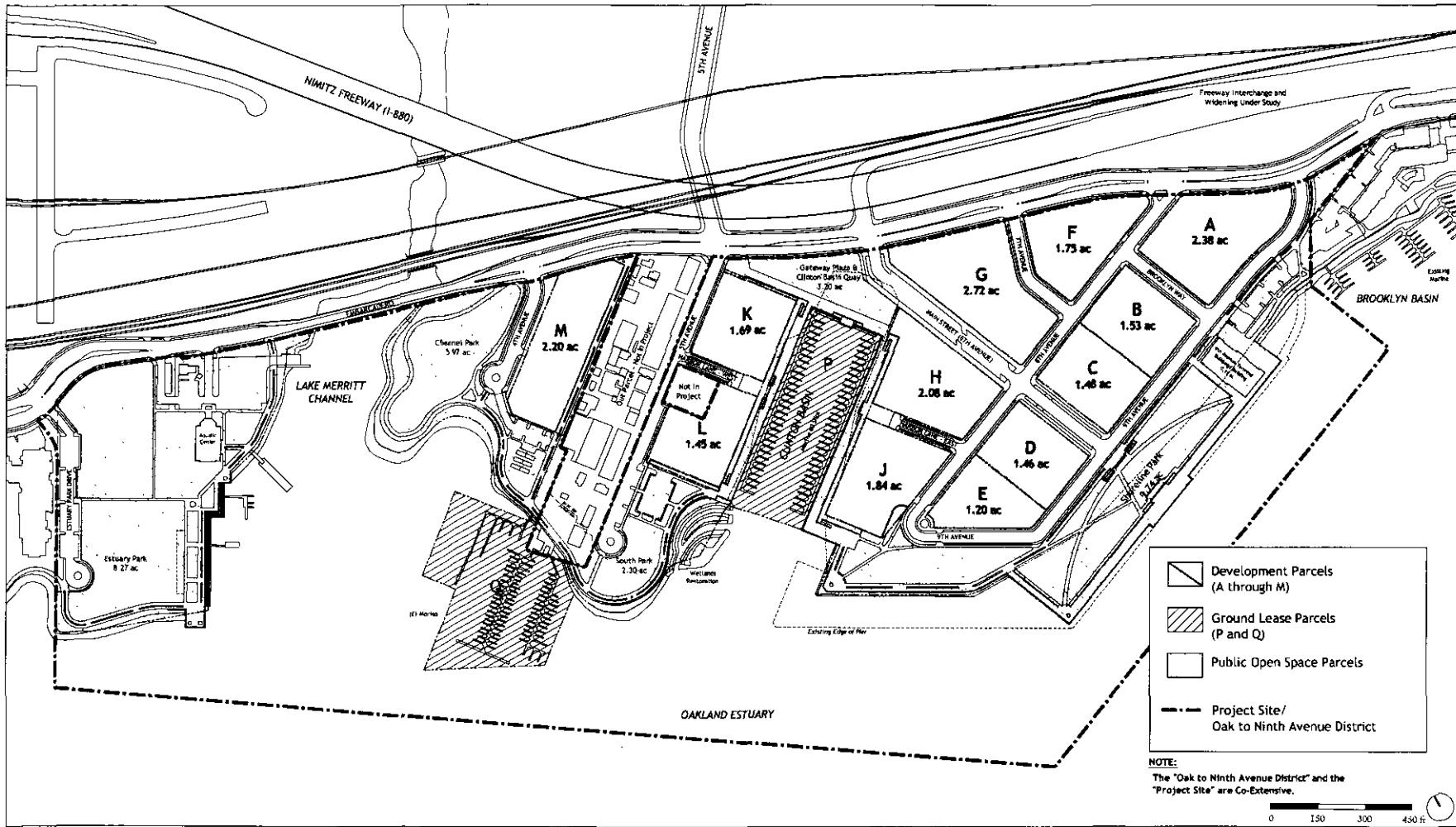


EXHIBIT "H"

Brooklyn Basin - Oak to 9th Site Plan

Prepared for Oakland Harbor Partners by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers

JUNE 2006

EXHIBIT J

LOCAL HIRING AND CONSTRUCTION JOB TRAINING BENEFITS

EXHIBIT J
LOCAL HIRING AND CONSTRUCTION JOB TRAINING BENEFITS

1. Local Hiring: The Project shall be subject to a local hiring program based on the following:

a. Definitions:

- (i) "Qualified Job Hours" are (i) all job hours worked by Qualified Oakland Residents on the Project site, (ii) all job hours worked by Qualified Oakland Residents under continuous employment for one employer where such resident's initial employment was for work on the Project site and (iii) all job hours worked by Oakland residents between the Effective Date and the date the first building permit is pulled for the Project on job sites owned by Signature Properties, Inc., Reynolds & Brown or their affiliates.
- (ii) "Qualified Oakland Residents" are Oakland residents that (a) have not worked in the construction trades within the last five (5) years and have not completed an apprenticeship program; or (b) have worked in the construction trades within the last five (5) years but have not completed more than twenty five percent (25%) of an apprenticeship program.

- b. Each parcel within the Project shall create a number of Qualified Job Hours equal to 6% of the construction hours worked in the construction of the improvements on such parcel (subject to a Project-wide maximum requirement of 300,000 Qualifying Job Hours).
- c. Developer(s) would receive a bonus of 100 hours for each Qualified Oakland Resident that works at least 900 hours for a particular employer within any 12 month period.
- d. Developers would be able to transfer Qualifying Job Hours in excess of their 6% requirement to other developers subject to this program upon written notice to the City.
- e. Prior to the issuance of a building permit for a particular parcel, the parcel developer shall provide the City with estimates of (i) total construction hours to be created through the development of such parcel and (ii) total apprentice construction hours to be created through the development of such parcel.
- f. Parcel developers shall submit a certified payroll to the City on a quarterly basis. The first certified payroll shall be due to the City at the end of the first quarter after the first building permit is issued. In the event that a parcel developer fails to submit any required certified payroll, the City shall not issue any permits or perform any inspections until the parcel developer has submitted the delinquent report to the City.
- g. In the event that a parcel developer fails to meet the 6% minimum requirement, such developer shall pay an amount equal to the number of deficit hours multiplied by an amount equal to 50% of the average hourly apprentice compensation (including wages and benefits) for the Project to the City as liquidated damages (the average hourly apprentice compensation rate for the Project shall be determined by the certified payrolls submitted through the date of default); and
- h. City staff shall present a report on Project compliance with this requirement to the City Council annually every 5 years during the term of the Agreement.

2. Job Training Assistance:

- a. Upon the issuance of the first building permit for the Project, Developer will provide \$1,000,000 to be equally distributed among four existing job training programs: Youth Employment Partnership, Cypress/Mandela, Allen Temple Training Center, and Men of Valor. In the event one or more of these programs is not in existence at the time the funds are to be distributed, Developer shall have the right to find a similar replacement program or increase the amount to be distributed to the remaining programs.
- b. Prior to the issuance of the building permits for 40% of the Project residential units and 60% of the Project residential units, respectively, Developer will provide an additional \$325,000 for a provider or partnership of providers that will use the funds to serve local residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods.

EXHIBIT L

AFFORDABLE HOUSING OBLIGATION

EXHIBIT L
AFFORDABLE HOUSING

AFFORDABLE HOUSING OBLIGATIONS

In order to assist the Agency to meet the obligations created by the construction of the Project imposed by Health and Safety Code Section 33413 and the Central City East Redevelopment Plan to make available units affordable to very low, low, and moderate income households, Developer and the Agency agree to the following:

1. Development of Affordable Housing.

The Agency and Developer intend to promote the development of affordable rental housing in the Project by reserving those the Development Parcels identified on Exhibit E as Parcel F (approximately 1.75 acres) and Parcel G (approximately 2.7 acres) for affordable rental housing development under the terms of this Exhibit, and by funding such affordable housing development through a combination of a Developer monetary contribution, as set forth herein, and Agency funding of such development. Parcels F and Parcel G are referred to in this Exhibit as the “Affordable Housing Parcels.”

2. Site Improvement Work to Affordable Housing Parcels.

The work necessary (1) to render each of the Affordable Housing Parcels into a Finished Parcel, and (2) to Remediate any Hazardous Materials on, in below, or about each of the Affordable Housing Parcels as necessary to receive a “no further action letter” or other equivalent written closure determination from the appropriate Environmental Regulatory Agency, is together referred to in this Exhibit as the “Site Improvement Work.” Developer has the obligation to perform the Site Improvement Work at its sole expense for the Affordable Housing Parcels. Developer must commence and complete the Site Improvement Work for the Affordable Housing Parcels no later than the time it commences and completes the Site Improvement Work for other Development Parcels comprising Phase 1.

3. Agency Purchase of Affordable Housing Parcels.

3.1. Purchase. The Agency shall purchase the Affordable Housing Parcels for the development of affordable housing under the terms of this Exhibit. The Agency and Developer shall cause the conveyance of each of the Affordable Housing Parcels to close on or before the later to occur of (a) the date that is 90 calendar days after the Site Improvement Work has been completed for the applicable Affordable Housing Parcel or (b) the date that the purchase price has been determined for the applicable Affordable Housing Parcel.

3.2. Purchase Price. The purchase price for Parcel F shall be the lesser of (1) the Fair Market Value of Parcel F at the time of purchase, less \$1 million, or (2) Developer Cost for Parcel F. The purchase price for Parcel G shall be the lesser of (1) the Fair Market Value

of the residential portion of Parcel G at the time of purchase, less \$1 million, or (2) Developer Cost for the residential portion of Parcel G. The purchase price of either Affordable Housing Parcel shall be subject to an additional discount in the event of an Early Purchase by the Agency as set forth below.

As used in this Exhibit, the term "Fair Market Value" shall mean the purchase price that an unrelated party negotiating at arm's length would pay to purchase such property, in its condition as a Finished Parcel and Remediated as required by this Exhibit, unrestricted by affordable housing requirements, taking into account all then current market factors, including without limitation the quality, design, condition and location of the property including the extent and condition of the construction completed to date, if any, the amount of any and all liens, mortgages, and encumbrances against the property, and the value of the existing improvements to such party.

As used in this Exhibit, the term "Developer Cost" shall mean the aggregate of (1) a pro rata share of the cost to enter into the Option Agreement and acquire the Project Site (including, but not limited to, the purchase price payable under the Option Agreement, financing costs, feasibility study costs and attorneys fees and settlement costs related to the negotiation and drafting of the Exclusive Negotiation Agreement and Option Agreement and the settlement of the lawsuits related to the Option Agreement and the adoption of the Central City East Redevelopment Plan); (2) a pro rata share of the cost to acquire the Project Approvals (including, but not limited to, consultant fees, application fees, processing and plan check fees, and attorneys fees, court costs and settlement costs associated with the defense of any action filed to challenge the Project Approvals); (3) a pro rata share of the cost to Remediate any Hazardous Materials for Phase 1 (including, but not limited to, remediation costs, consultants fees, regulatory fees and insurance premiums); (4) a pro rata share of the cost to design and construct the off-site and on-site infrastructure for Phase 1; (5) holding costs associated with the Affordable Housing Parcel being acquired; (6) Developer overhead (but not including Developer profit); and (7) Developer's return on equity equal to 10% per annum. The pro rata share for items (1) and (2) shall be calculated on the basis of the developable square footage of the Affordable Housing Parcel being acquired compared to the developable square footage of all Development Parcels within the Project Site; and the pro rata share for items (3) and (4) shall be calculated on the basis of the developable square footage of the Affordable Housing Parcel being acquired compared to the developable square footage of all Development Parcels included in Phase 1.

- 3.3. Determination of Fair Market Value. The Fair Market Value of the Affordable Housing Parcel to be acquired by the Agency shall be initially determined by an independent appraisal obtained by Developer. Developer shall submit the appraisal for the Affordable Housing Parcel being acquired no later than 120 days after the Site Improvement Work has been completed for that the applicable Affordable Housing Parcel or, in the case of an Early Purchase, within 120 calendar days after the Agency has delivered written notice of its intent to exercise the Agency's option for an Early Purchase. If the Agency disputes the Fair Market Value set forth in an appraisal submitted by Developer, the Agency shall notify Developer in writing within 30 calendar days of its receipt of such

appraisal, which notice shall set forth the Agency's determination of the Fair Market Value. The Agency and Developer shall thereupon attempt to resolve their differences within ten business days following Developer's receipt of the Agency's notice. If the Agency and Developer cannot agree on Fair Market Value during such ten-business day period, the Agency shall retain an appraiser to appraise the Fair Market Value. The Agency's appraiser shall complete its written determination of Fair Market value within 30 calendar days after the appointment of such appraiser. If the valuations vary by ten percent or less of the higher value, the Fair Market Value shall be the average of the two valuations. If the valuations vary by more than ten percent of the higher value, the two appraisers shall, within ten calendar days after submission of the Agency's appraisal report, appoint a third disinterested appraiser. If the two appraisers are unable to agree in a timely manner on the selection of the third appraiser, then either appraiser, on behalf of both, may request appointment of such third appraiser by the presiding judge of the Superior Court of Alameda County. Such third appraiser shall, within 15 calendar days after appointment, make a determination of Fair Market Value by selecting one of the prior appraisals. The third appraiser shall have no right to select a Fair Market Value other than as determined by one of the prior appraisals. All appraisers retained pursuant to this Section shall be an M.A.I. and a State of California licensed general appraiser experienced in appraising commercial and residential real estate in Alameda County, and all appraisals must conform to the current Uniform Standards of Professional Appraisal practice (USPAP).

The parties shall mutually agree upon the form of appraisal instructions to direct the appraisers to determine the Fair Market Value of the residential portion of Parcel G (as distinct from the Fair Market Value of the commercial portion of Parcel G).

- 3.4. Determination of Developer Cost. Developer shall submit a written certification of Developer Cost no later than 120 days after the Site Improvement Work has been completed for that the applicable Affordable Housing Parcel. The Agency shall have the right, at Developer's cost, to retain a third party consultant to review Developer's certification. If the Agency disputes Developer's determination of Developer Cost as contained in Developer's notice, the Agency shall notify Developer in writing within 30 calendar days of its receipt of Developer's notice, which notice shall set forth the Agency's determination of Developer Cost. The Agency and Developer shall thereupon attempt to resolve their differences within 10 business days following Developer's receipt of the Agency's notice. If the Agency and Developer cannot agree on Developer Cost during such 10 business day period, the Agency and Developer shall jointly retain a nationally or regionally recognized accounting firm to audit Developer's project books and determine Developer Cost based on the parameters set forth in this Section. The auditor's determination shall be binding on both parties.

For purposes of calculating the Developer Cost for the residential portion of Parcel G, the Developer Cost for Parcel G shall be pro rated by a fraction where the numerator is the Fair Market Value of the residential portion of Parcel G and the denominator is the Fair Market Value of the entire mixed-use (residential and commercial) project for Parcel G.

- 3.5. Escrow Fees and Costs. The Agency shall pay all applicable title and escrow fees and city and county transfer taxes associated with the purchase of the Affordable Housing Parcels.
- 3.6. Title. At the close of escrow transferring title to the Affordable Housing Parcels to the Agency, title to the Affordable Housing Parcel being acquired shall be subject only to the following exceptions:
- 3.6.1. Liens for property taxes and assessments not yet due and payable;
 - 3.6.2. Such title exceptions as are reasonably necessary to develop the Project Site into the Project (including, but not limited to, this Agreement, easements shown on the applicable final map, deed restrictions required pursuant to the Remediation of any Hazardous Materials on the Project Site, any restrictions set forth in any Project approval or permit issued by a local, state or federal agency, the CSD and the CFD and any community facilities districts (or other mechanisms) to finance construction or acquisition of public improvements within the Project);
 - 3.6.3. With respect to Parcel G only, the obligation to develop the commercial component and the option/put rights set forth in Section 7, below; and
 - 3.6.4. Any other agreed upon title exceptions.
- 3.7. Feasibility Investigations. The Agency and its employees, contractors, agents, or assignees may enter the Affordable Housing Parcels for purposes of inspection, survey, tests, or other actions reasonably related to acquisition of the property by the Agency. The Agency shall indemnify and defend Developer from and against any liability, claims or damages arising from such entry, unless the liability, claims or damages are caused by the negligence or willful misconduct of Developer. The Agency shall name Developer as an additional insured on a Commercial General Liability insurance policy with limits of liability not less than \$2 million prior to any entry upon the Affordable Housing Parcels.
- 3.8. Assignment of Agency Purchase Rights. The Agency's right to purchase either Affordable Housing Parcel, including its optional rights to an Early Purchase, shall be assignable by the Agency to an Affordable Housing Developer selected according to the selection process and approved by Developer pursuant to Section 4, below.
- 3.9. Early Purchase.
- 3.9.1. Early Purchase Option. The Agency may in its sole discretion elect to purchase either Affordable Housing Parcel, or both, prior to the completion of the Site Improvement Work for the Affordable Housing Parcel (an "Early Purchase"). The Agency may exercise its option to make an Early Purchase at any time after Developer acquires title to the Affordable Housing Parcels by delivering written notice of the Agency's intent to exercise this option to Developer. The purchase

and sale under an Early Purchase shall be on those terms and conditions as set forth above, except as modified in this Section 3.9.

- 3.9.2. Initial Early Purchase Price. The initial purchase price for Parcel F under an Early Purchase shall be the Fair Market Value of Parcel F at the time of the Early Purchase, less \$1 million, and less the Early Purchase Discount as provided for below. The initial purchase price for Parcel G under an Early Purchase shall be the Fair Market Value of the residential portion of Parcel G at the time of Early Purchase, less \$1 million, and less the Early Purchase Discount as provided for below. The initial purchase price for an Affordable Housing Parcel shall be paid at close of escrow on the Affordable Housing Parcel, with a later downward adjustment to such price as provided for below. The “Early Purchase Discount” shall be a dollar amount equal to the Fair Market Value of the Affordable Housing Parcel being acquired (or, in the case of Parcel G, the Fair Market Value of the residential portion of Parcel G) at the time of the Early Purchase, less \$1 million, multiplied by the “Early Purchase Discount Rate.” The “Early Purchase Discount Rate” shall be a percentage equal to the number of years the Affordable Housing Parcel is purchased prior to the expected completion of the Site Improvement Work for Phase 1 multiplied by the Blended Rate. The “Blended Rate” shall be a rate equal to Developer’s cost of debt financing and preferred rate of return on equity for Phase 1, weighted by the relative proportion of debt and equity that will be used to finance Phase 1. For example, if Developer’s cost of debt financing is 8 percent and Developer’s preferred rate of return on equity is 10 percent, and the proportions of debt and equity for Phase 1 are 75 percent and 25 percent respectively, then the Blended Rate would be 8.5 percent. If the Early Purchase of Parcel F in this example occurred two years prior to the expected completion of the Site Improvement Work for Phase 1, then the initial purchase price for Parcel F would be discounted by 17 percent of the Fair Market Value of Parcel F at the time of the Early Purchase less \$1 million.
- 3.9.3. Adjustment to Initial Early Purchase Price. In the event of an Early Purchase, the initial purchase price paid by the Agency as provided for above shall be subject to a possible downward adjustment at the completion of the Site Improvement Work based on a calculation of Developer Cost. Within 120 days after the completion of the Site Improvement Work for an Affordable Housing Parcel, Developer shall submit a written certification of Developer Cost, and Developer Cost shall be determined pursuant to the process set forth above. If Developer Cost is less than the initial purchase price for the Affordable Housing Parcel, then the final purchase price for the Affordable Housing Parcel shall be adjusted to Developer Cost. In the case where an adjustment is warranted, Developer shall reimburse the Agency for the difference between the initial purchase price and the final purchase price within 60 days of the final determination of Developer Cost.
- 3.9.4. Early Purchase Site Improvements. Developer shall continue to have an obligation to perform the Site Improvement Work at its expense on the Affordable Housing Parcels as set forth in this Exhibit, notwithstanding an Early Purchase by

the Agency. Notwithstanding the definition of Fair Market Value set forth in Section 3.2, above, to the contrary, the appraisal of Fair Market Value under an Early Purchase shall consider the Affordable Housing Parcel's value based on its condition as a Finished Parcel and Remediated as required by this Exhibit even though such work has not been performed as of the date of the Early Purchase.

3.9.5 Environmental Remediation. In the event of an Early Purchase, the Agency and the selected Affordable Housing Developer shall be entitled to the same rights and protections, including without limitation Developer duties to Remediate and provide financial assurance, environmental insurance coverage, and environmental indemnity and access to liability limiting measures, with respect to Hazardous Materials and Remediation of the Affordable Housing Parcels that the City will receive under this Development Agreement for the Public Open Space.

4. Selection of Affordable Housing Developer.

The Agency and Developer shall work together to identify, recruit, and select an experienced developer or developers of affordable housing (singularly or collectively, the "Affordable Housing Developer") to purchase the Affordable Housing Parcels and develop affordable housing on the Affordable Housing Parcels. The Affordable Housing Developer shall be selected as follows: Developer shall have the right to propose one or more affordable housing developers, with respect to each Affordable Housing Parcel, prior to the earlier to occur of (a) one year after the Agency's acquisition of the Affordable Housing Parcel or (b) the date that is 120 days after the completion of the Site Improvement Work. The Agency shall have the right to approve or reject an affordable housing developer proposed by Developer, which approval shall not be unreasonably withheld, conditioned or delayed. The Agency's approval or disapproval of the proposed affordable housing developer shall be in writing and, in the event of a disapproval, state with specificity the basis for such disapproval. If the Agency disapproves of Developer's proposed affordable housing developer, then the Agency shall then have the right to propose one or more affordable housing developers. The Agency may conduct a Request for Proposals ("RFP") process or other competitive process to identify a prospective developer. Developer shall then have the right to approve or reject the affordable housing developer proposed by the Agency. Developer shall have the right to participate in the development and distribution of the RFP. This right to reject may be exercised only where Developer can demonstrate that the proposed developer does not meet the following criteria: a nationally or regionally recognized affordable housing development company which (a) has developed, on its own or through its assembled development team, an urban residential project similar to the project contemplated for the Affordable Housing Parcel (as applicable) within the preceding ten-year period, (b) has an established track record for developing projects that exhibit excellence in architectural design, quality of construction and operation, (c) has the financial capacity to complete the development of the subject Affordable Housing Parcel, and (d) neither it nor its principals, members or partners have been convicted, found or admitted or assumed (including any plea of no contest) liability for any felony, criminal fraud or misrepresentation or any act of moral turpitude.

As between the City, Agency and the selected Affordable Housing Developer, the Agency, the City, and the Affordable Housing Developer will be responsible for negotiating the terms and conditions of the sale of the Affordable Housing Parcels to the Affordable Housing Developer, the development of affordable housing on the Affordable Housing Parcels, any Agency or City funding of or other assistance to the affordable housing projects on those Development Parcels, and the affordability restrictions that would attach to the Affordable Housing Parcels as a condition of such assistance.

5. Agency Funding of Affordable Housing.

The Agency shall reserve any funds deposited into the Agency's Low and Moderate Income Housing Fund from tax increment revenues generated by the Project to subsidize the development of affordable housing on the Affordable Housing Parcels. Any such reservation shall be subordinate and subject to any obligations in connection with any tax allocation bonds that have been issued or will be issued by the Agency. The Agency and/or City may allocate additional subsidy funds to such development, consistent with the Agency's and City's guidelines, policies and processes for funding affordable housing development.

6. Timeline for Affordable Housing Development.

It is anticipated that the project developed on Parcel F will consist of approximately 150 affordable housing units, while the project developed on Parcel G will consist of approximately 315 affordable housing units, along with the commercial component set forth below. It is anticipated that the Parcel G affordable housing project will be developed in three phases. The Agency shall cause the Affordable Housing Developer to develop the affordable housing projects when it is economically feasible for the Affordable Housing Developer to do so. A project shall be considered economically feasible when, given (1) the projected cost of development (hard and soft costs) of the project, (2) the planned levels of affordability of the project, and (3) the Agency and City's guidelines and policies for providing development funding to affordable housing projects then in effect, adequate private and public financing and subsidy sources (such as bond proceeds, low income housing tax credits, state funding, federal funding, tax increment revenue from the Central City East Redevelopment Area, and the Agency's Low and Moderate Income Housing Fund) are available to complete construction of and operate the project. Following the Effective Date, the Agency's governing board shall annually review the projected level of funding that would be available to develop the Affordable Housing Parcels, relative to the Agency's overall projected levels of affordable housing funds and current and proposed Agency commitments to fund other affordable housing development. Notwithstanding the foregoing to the contrary, a project for one or both of the Affordable Housing Parcels shall be considered economically feasible if the Low and Moderate Income Housing Funds generated by the Project and reserved for affordable housing development pursuant to Section 5 are sufficient (alone or along with other available sources) to complete construction and operate the project, irrespective of whether the use of such reserved funds is consistent with the Agency's guidelines and policies for funding affordable housing.

Subject to economic feasibility, the Agency (or the Affordable Housing Developer) shall commence construction of the affordable housing projects according to the following schedule:

- a. Parcel F, Phase 1 (150 units): Not later than the later of (1) July 1, 2013, or (2) the completion of the 1,000th market rate unit in the Project.
- b. Parcel G, Phase II (132 units): Not later than the later of (1) July 1, 2016, or (2) the completion of the 1,800th market rate unit in the Project.
- c. Parcel G, Phase III (77 units): Not later than the later of (1) July 1, 2017, or (2) the completion of the 2,100th market rate unit in the Project.
- d. Parcel G, Phase IV (106 units): Not later than the later of (1) July 1, 2018, or (2) the completion of the 2,300th market rate unit in the Project.

The Agency may elect to cause the construction of the affordable housing projects sooner, provided sufficient funding is available.

7. Commercial Development of Parcel G.

As a condition of the sale of Parcel G to the Affordable Housing Developer, the Affordable Housing Developer shall have the obligation to include an approximately 42,000 square foot retail condominium (cold shell) and a 400 space parking condominium within the Parcel G project (each designed to specifications supplied by Developer). The terms of the sale of Parcel G to the Affordable Housing Developer shall include an option right in favor of Developer to purchase and a put right in favor of the Affordable Housing Developer to require Developer to purchase the retail and parking condominiums. Either option shall be exercisable within 30 calendar days after the issuance of a temporary certificate of occupancy by the City for the retail and parking condominiums, and the purchase by Developer shall close on or before the later to occur of (a) the date that is 30 calendar days after exercise, (b) the date that is 30 days after the determination of the purchase price and (c) the creation of the retail condominium and parking condominium as a separate legal parcel. The purchase price for the retail and parking condominiums shall be equal to the Affordable Housing Developer's development costs (including hard and soft costs, financing and equity costs, holding costs, entitlement costs, and the Affordable Housing Developer overhead, but not including land acquisition costs or the Affordable Housing Developer profit) for the commercial portion of the Parcel G project. To the extent that the development costs associated with the commercial portion of the project cannot be determined separately from the development costs associated with the Parcel G project as a whole, the development costs of the entire project shall be prorated to the commercial portion of the project based on the relative square footage of the commercial portion in relation to the square footage of the project as a whole.

8. Rights to Purchase or Transfer Affordable Housing Development Rights.

Developer may propose to purchase the right to develop market rate units on Parcel G from the Agency or the Affordable Housing Developer. Such a purchase shall not affect Developer's obligation to make the Developer Contribution to affordable housing as set forth below. Developer may also propose to develop market rate units on Parcel G, in exchange for granting the Agency or the Affordable Housing Developer the right to develop a like number of affordable housing units elsewhere in Phase 1. The Agency and the Affordable Housing Developer reserve the right to reject any Developer proposal to purchase or transfer development rights.

9. Developer Contribution to Affordable Housing.

Developer shall contribute a minimum of \$2 million (the "Developer Contribution") to the Agency to be used by the Agency to subsidize affordable housing. In addition, should the City elect to pay from City sources any costs to Remediate the Public Open Space that would otherwise be the responsibility of the Developer under this Development Agreement, the Developer Contribution to the Agency shall be increased by an amount equal to the amount of such City payments, with interest accruing on such payments when disbursed by the City until the Developer Contribution is paid at the Local Agency Investment Fund rate in effect at the time of City disbursement. Developer shall pay the Developer Contribution, less \$1 million, to the Agency no later than the first issuance of a building permit by the City for the first affordable housing project on an Affordable Housing Parcel, and Developer shall pay the remaining \$1 million in Developer Contribution no later than the first issuance of a building permit by the City for the affordable housing project on the other Affordable Housing Parcel. The increase in the Developer Contribution shall be limited to funds received from the City as a reimbursement for Remediation Costs and shall not apply to any other funds received from the City.

10. Further Assurances.

Developer, the Agency, the City and the Affordable Housing Developer shall negotiate in good faith and enter into any additional agreements and documents as needed to effect the transactions contemplated by this Exhibit consistent with the purpose and intent of this Exhibit.

11. Defined Terms.

Terms capitalized in this Exhibit shall have that meaning set forth in this Exhibit or elsewhere in this Development Agreement.

EXHIBIT M

**CONDITIONS OF APPROVAL
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE DEVELOPMENT PROJECT
“MASTER DEVELOPER OBLIGATIONS”**

Conditions of Approval and Mitigation Monitoring and Reporting Program for the Oak to Ninth Mixed Use Development Project – “Master Developer Obligations”

Conditions of Approval

4.	PUD Design and Specification Document for Brooklyn Basin – Oak to Ninth Development Project
11, 12, 13, 14	Indemnification Requirements
18, 19, 20, 21	Transportation and Circulation
22	Transportation Demand Management
25, 26	Cultural Resources
27, 28, 29, 30 31, 32, 33, 34	Vesting Tentative Map and Master Improvement Plans
36	Off-site Sewer Project Requirement
40	Landscaping, Open Space, Park and Trail Requirements
48	Affordable Housing Provisions

Mitigation Monitoring and Reporting Program

Transportation, Circulation and Parking

B.1.a, B.1.c, B.1.d, B.1.e, B.2.a, B.2.b, B.2.d, B.2.e, B.2.f, B.2.g, B.2.h, B.2.i, B.2.j, B.2.k, B.2.l, B.2.m, B.2.n, B.2.o, B.2.p, B.2.q, B.3.a, B.3.b, B.3.d, B.3.e, B.3.f, B.3.h, B.3.i, B.3.m, B.3.n, B.3.o, B.4a and b, B.6, B.7

Air Quality

C.7

Cultural Resources

E.1, E.2, E.3, E.8

Hazardous Materials

H.1

Biological Resources

I.1, I.2, I.3

EXHIBIT N

CONSTRUCTION OF TEMPORARY BAY TRAIL

EXHIBIT N

Construction of Temporary Trail

Redlined to show changes from the version submitted by applicant and conceptually approved the City Council meeting of 6-20-06

Temporary Bay Trail Requirement –

4.16–Temporary Trail. Developer shall use best commercially reasonable efforts to obtain the California Department of Toxic Substances Control’s (DTSC) and the San Francisco Bay Conservation and Development Commission’s (BCDC) approval for the installation of temporary trail improvements for the Bay Trail within Phases II, III and IV prior to the Remediation of such Phases. A Temporary Trail Plan shall be submitted to the City, DTSC and BCDC which includes plans and specifications following the criteria set forth below, as well as any requested information and construction management provisions for dust control, setbacks and directional signs and proposed routes.

As used in this Section 4.16 the term “temporary trail improvements” means (a) the establishment of a level grade, (b) a six (6) foot wide asphalt trail along a mutually agreed upon alignment and (c) a chain link fence along the landward side of the temporary trail. The temporary trail improvements shall not include any lighting. If approved, the temporary trail improvements shall be installed as follows:

- a. Phases II and III: Concurrently with the installation of the permanent Bay Trail improvements located in Phase I; and
- b. Phase IV: Upon the termination/expiration of the Berkeley Ready Mix lease (if development of permanent improvements for Phase IV have not commenced concurrently therewith), but in no event earlier than June 1, 2016.

The temporary trail improvements shall be installed and removed at Developer’s cost.

Developer shall have the right to remove or suspend the use of the temporary trail improvements as necessary ~~in Developer’s sole and absolute discretion~~ in order to allow for completion of remediation, construction of the project and to provide for public safety during -the development of the Project.

Subject to the foregoing, the temporary trail improvements shall be open to the public (a) after the formation and funding of the CSD/CFD and (b) from dawn to dusk. The CSD/CFD shall be responsible for the maintenance of the temporary trail improvements.

Indemnity obligations of Developer, City and CSD pertaining to the obligations in the Exhibit N are set forth in Section 4.16 of the Development Agreement

~~Developer hereby agrees to Indemnify the Indemnities from any Losses arising out of or related to the construction of the temporary trail improvements.~~

EXHIBIT N

Construction of Temporary Trail

~~The CSD shall Indemnify the Indemnities and Developer from any Losses arising out of the public's use of the temporary trail improvements during permitted hours.~~

~~The City hereby agrees to indemnify the Developer and the CSD from any Losses arising out of or related to (a) any criminal activity occurring within the temporary trail improvements or (b) the public's use of the temporary trail improvements outside of the permitted hours.~~

~~The foregoing Indemnity obligations shall not include Losses caused solely by willful misconduct or gross negligence of the indemnified party.~~