

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Kiku Crossing (formerly known as
Downtown San Mateo Opportunity Sites)

Proponent:

City of San Mateo
330 West 20th Avenue
San Mateo, California 94403

Docket No. HSA-FY19/20-146

Standard Voluntary Agreement

Health and Safety Code
Section 25355.5(a)(1)(C)

The California Department of Toxic Substances Control (DTSC) and City of San Mateo (Proponent) enter into this Standard Voluntary Agreement (Agreement) and agree as follows:

1. Site. This Agreement applies to the Site located at 480 East 4th Avenue and 400 East 5th Avenue, in San Mateo County, California 94401 (Site), identified by San Mateo County's Assessor's Parcel Number(s) 034-183-060 and 033-281-140 and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is approximately 2.41 acres in size. The 480 East 4th Avenue parcel (APN 034-183-060) is bordered by South Claremont Avenue, East 4th Avenue, East 5th Avenue, and South Railroad Avenue. The 400 East 5th Avenue parcel (APN 033-281-140) is bordered by East 5th Avenue, CalTrain railroad tracks, a lumber yard, PG&E Substation and an office building. The Site is comprised of two flat, paved lots that are currently used for public parking. A day laborer Worker Resource Center currently operates at the 400 East 5th Avenue parcel. A Site location map and a Site diagram are attached as Exhibits A and B.

2. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at or from the Site.

3. Purpose. The purpose of this Agreement is for Proponent to investigate, remediate, and/or evaluate a release, a threatened release, or a potential release of any

hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership and Notification.

4.1. The Site is owned by City of San Mateo.

4.2. Prior to DTSC providing oversight or review or comment on any document, Proponent shall provide DTSC with all of the following: (a) proof of the identity of all current record owners of fee title to the Site and their mailing addresses; (b) written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by Proponent; and (c) an acknowledgment of the receipt of the notice required in subparagraph (b) from the property owners or proof that Proponent has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

4.3. Proponent shall notify DTSC of any changes in ownership of the Site subsequent to the Effective Date of this Agreement and provide written evidence that Proponent notified the new owner(s) of record of the actions completed or proposed by Proponent under this Agreement.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances, including heavy metals such as arsenic and lead; total petroleum hydrocarbons comprised of gasoline and diesel; and volatile organic compounds (VOCs) benzene, tetrachloroethene (PCE), and trichloroethene (TCE).

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide

an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1. Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. Access.

Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.

10. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file compatible with Adobe Acrobat or a formatted file compatible with Microsoft Word.

11. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC

requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

12. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

13. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. The Proponent's Project Manager shall have the technical expertise in project management, regulatory compliance, and hazardous substance site investigation and remediation sufficient to fulfill his or her responsibilities. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

14. Proponent's Consultant and Contractor. All engineering work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional engineer licensed in California, with expertise in hazardous substance site investigation and remediation. All geological work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional geologist licensed in California, with expertise in hazardous substance site investigation and remediation. Proponent's contractors and consultants shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the registered professional engineer and/or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

15. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment,

DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

16. Payment.

16.1. Proponent is required to pay (a) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement; and (b) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents and activities described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice.

16.2. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an adjusted cost estimate as the work progresses. Prior to adjusting the cost estimate, DTSC will provide Proponent with a written notice and a detailed explanation of the change to the cost estimate. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 30 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

16.3. In anticipation of oversight activities to be conducted¹, Proponent shall make an advance payment of \$15,429 to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. DTSC will draw-down from the advance payment, which will be documented in DTSC's invoice.

¹ DTSC and Proponent have already been working on this project in good faith with DTSC oversight work provided on promise of execution of this agreement. To date, DTSC has billed oversight costs in the amount of \$16,353.80 and Proponent has been paying as billed. Additional oversight costs incurred before the execution of this agreement have yet to be billed and are not included in the calculation of the advance payment amount noted above.

When the advance payment is depleted, DTSC will continue to request payment through the invoice process.

16.4. All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control" and bearing on its face the project code for the Site (Site # 202309) and the docket number HSA-FY19/20-146 of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards or electronic funds transfer. Payments by check shall be sent to:

Accounting Office
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

16.5. DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

18. Termination for Convenience.

18.1. Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 18.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

18.2. If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 18.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent

or between DTSC and a party responsible for the required operation and maintenance activities.

19. Calendar of Tasks and Schedules. The attached Exhibit E (Calendar of Tasks and Schedules) is merely for the convenience of listing in one location the submittals required by this Agreement. The Calendar of Tasks and Schedules lists activities specific to this project based on the available information. DTSC and Proponent shall make a reasonable effort to complete the activity within the schedule outlined in Exhibit E. A schedule for each related activity shall be established as part of this Agreement.

If Proponent is unable to meet the activity's schedule, Proponent will notify DTSC's Project Manager 10 days prior to the scheduled action or submittal date. If DTSC is unable to meet the activity's schedule, DTSC will notify Proponent 10 days prior to the scheduled action or submittal date.

20. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

21. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to Proponent under applicable laws.

22. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

23. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

24. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or the Site resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

25. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

26. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

27. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

28. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

29. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

30. Representative Authority. Each undersigned representative of the party to his Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

31. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Juliet C. Pettijohn, MPH, CIH
Branch Chief
Site Mitigation and Restoration Program
Department of Toxic Substances Control

Date: _____

Drew Corbett
City Manager
City of San Mateo

Date: _____

LIST OF EXHIBITS TO THE AGREEMENT

EXHIBIT A: SITE LOCATION MAP

EXHIBIT B: SITE DIAGRAM & APN PARCELS

EXHIBIT C: SCOPE OF WORK

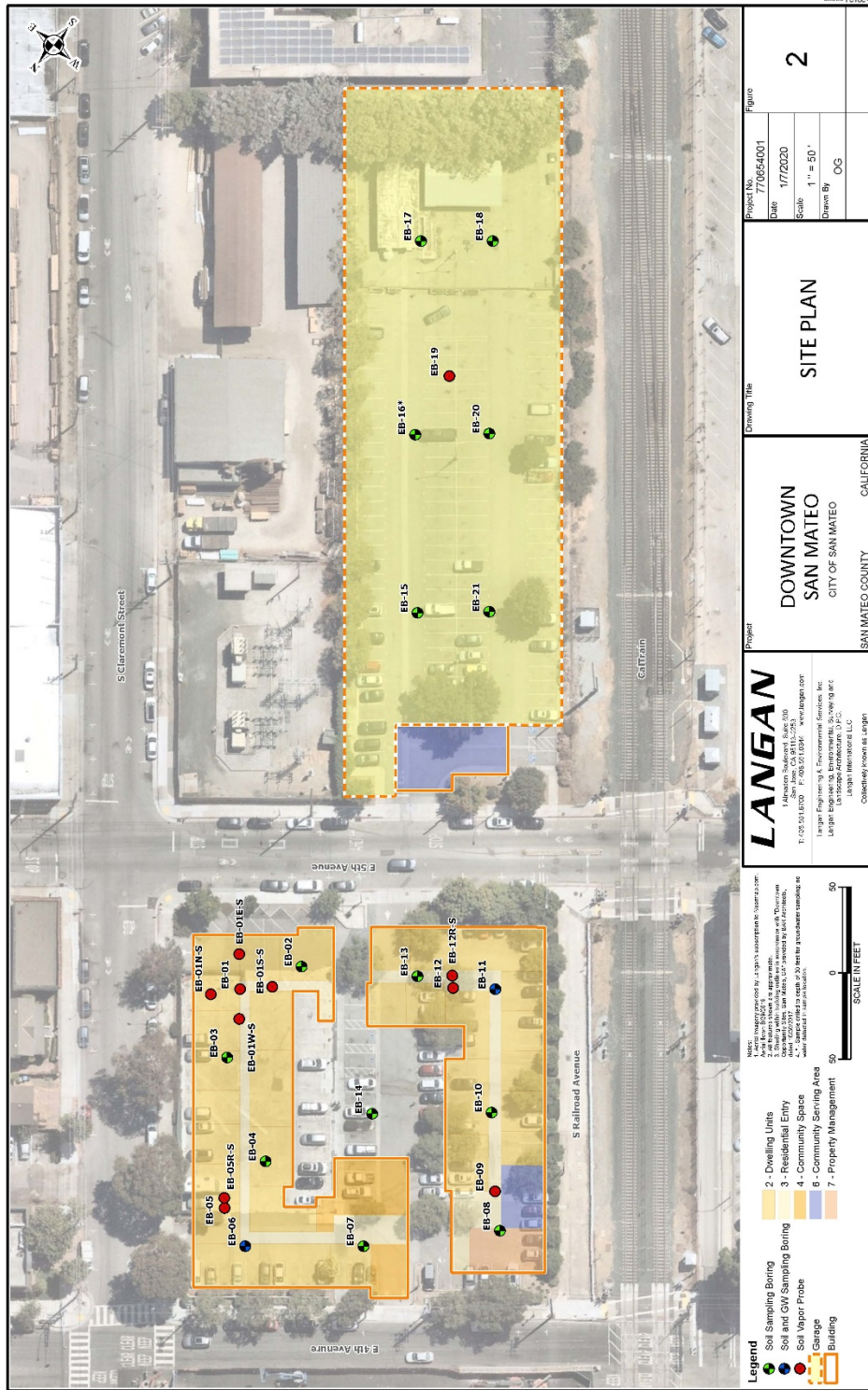
EXHIBIT D: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES

EXHIBIT E: CALENDAR OF TASKS AND SCHEDULE

EXHIBIT A SITE LOCATION MAP



EXHIBIT B SITE DIAGRAM & APN PARCELS



Standard Voluntary Agreement Model September 23, 2019



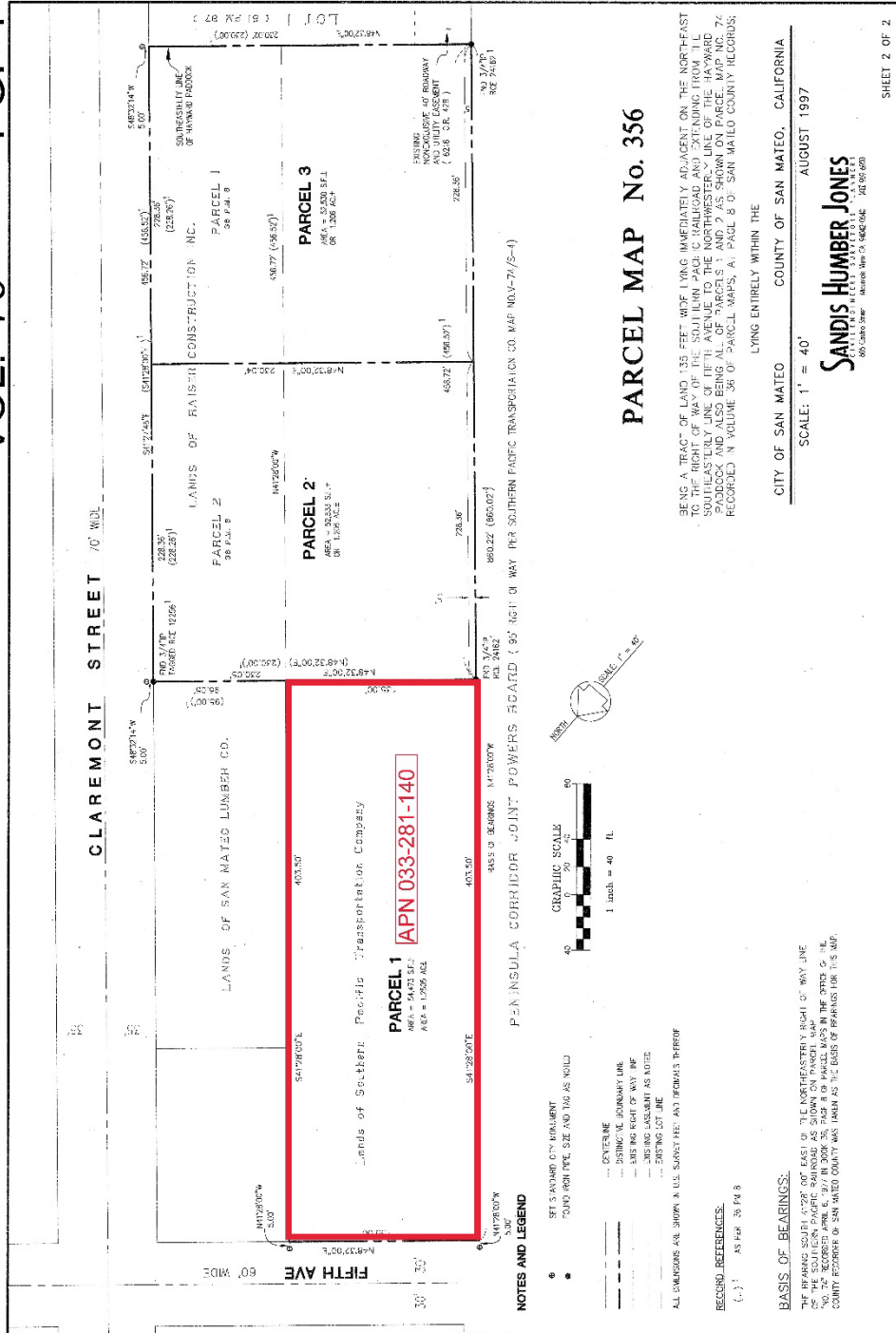


EXHIBIT C

SCOPE OF WORK

In the event that DTSC determines that further action is needed upon completion of Task 18, the following additional tasks may be requested. Additional tasks will be included as a new cost estimate and scope of work to this Agreement.

The following tasks will be completed as part of this Agreement:

TASK 1 Document Review

Proponent will submit to DTSC available background information, environmental assessment reports, and any other information pertinent to the hazardous substance management, release, characterization, and/or cleanup of the Site. DTSC may review some or all the information to identify areas and media of concern and to determine the additional work, if any, required to complete the investigation (which includes assessment/evaluation activities not requiring field sampling) and/or remediation of the Site. Proponent may also provide environmental investigation and/or cleanup-related documents for a specific review to determine if actions conducted without DTSC oversight were protective of human health and the environment. The information submitted by Proponent shall be reviewed for conformance with DTSC standards for quality assurance/quality control, investigation, and remediation.

Based on DTSC's review, these documents may be considered to be Preliminary Endangerment Assessment equivalent documents.

Subsequent to its review, DTSC may issue correspondence to the Proponent describing deficiencies of the environmental investigation or cleanup, indicate a limited concurrence with the findings, or make a different determination based on specific circumstances and documents included in the review. For projects where the scope of work is limited to document review only, a formal scoping meeting may not be required, based on mutual agreement between DTSC and the Proponent.

TASK 2 Scoping Meeting

Scoping meetings are required for all voluntary projects where investigation or cleanup is an anticipated aspect of the scope of work; these are conducted shortly after the agreement has been executed, or depending on specific circumstances, may be held during the agreement-negotiation period. During the scoping meeting, potential issues,

concerns, opportunities to optimize and expedite the investigation (which includes assessment/evaluation activities not requiring field sampling) and cleanup process, as applicable, and end-points/exit criteria will be discussed.

An abbreviated version of the scoping meeting is recommended prior to submittal of work plans, reports and cleanup plans to ensure that both the Proponent and DTSC are moving forward with clear and well-defined expectations.

The following elements may be addressed during the Scoping Meeting:

- a) **Site Objectives:** current and proposed future land uses and redevelopment plans and timetables, etc.
- b) **Site History:** historic operations and land uses, chemical uses, hazardous substance releases, permits, etc.
- c) **Conceptual Site Model:** identification of size, location, geology, lithology, hydrogeology, areas of concern, contaminants of concern, recognized environmental conditions, historic sampling locations and results, data gaps, risk assessments, offsite concerns, etc.
- d) **Scope of Work:** scope of work (phases) as specified in the Agreement based on the available information and preliminary document review; may include discussion about the cleanup determination (e.g., “No Further Action”) and decision document proposed for the Site, e.g., Preliminary Endangerment Assessment, Removal Action Work Plan for removal action with costs below \$2 million, or Remedial Action Plan for projects exceeding \$2 million in capital costs, or proposing innovative technologies, etc.
- e) **Data Quality Objectives and Remedial Action Objectives:** discussion of specific Data Quality Objectives to ensure that appropriate data of sufficient quality is collected to facilitate decision-making; discussion of potential cleanup goals and objectives.
- f) **Risk Assessment and Models:** evaluation of published screening levels, if available and appropriate, or use of project-specific risk assessments; discuss risk management and risk communication strategies.
- g) **California Environmental Quality Act (CEQA) requirements:** identification of project-specific requirements where applicable, e.g., cultural resources, traffic concerns, ecological resource protection, etc.; identify what DTSC’s CEQA role is predicted to be, which documents will be developed, and how to integrate CEQA needs within the overall schedule.
- h) **Public Participation & Tribal Outreach:** discussion of community and tribal involvement and public outreach process, methods, translation needs, and schedule.

- i) **Schedule:** agreed-upon submittal and review dates and timelines for work plans, fact sheets, reports and other key documents; development of optimal sequencing of activities to efficiently reach project goals.
- j) **Resources:** Review checklists, quick reference sheets, and templates are available for use by those developing documents for DTSC review and approval. (These tools will be periodically updated and may be made available to Proponents by the DTSC Project Manager)
- k) **Exit Strategy & Completion of Agreement:** proposed future land use, Site acquisition and construction dates, funding limitations or requirements, approval for occupancy, etc. to ensure alignment of Proponent and DTSC goals.
- l) **Site Visit:** A visit to the Site will be conducted to verify and confirm current conditions and project discussions; the visit may take place on the same date as the scoping meeting. Subsequent visits may be needed if Site conditions change, if new staff are assigned, or for field oversight.

TASK 3 Preliminary Endangerment Assessment (PEA)

Proponent shall conduct a PEA, or utilize PEA-equivalent documentation, to determine whether a release or threatened release of hazardous substances exists at the Site which poses a threat to human health or the environment. The PEA shall be conducted in accordance with the most current DTSC guidance manual for evaluating hazardous substance release sites, titled, Preliminary Endangerment Assessment Guidance Manual, State of California, Environmental Protection Agency, Department of Toxic Substances Control. Specific requirements of the PEA that are not typically required for other types of investigations include the site-specific human health and ecological screening evaluations, public participation requirements, data collection, and scoping activities.

Documents are required as part of the PEA are:

3.1 PEA Work Plan.

This work plan shall include a sampling plan designed to determine the type and general extent of contamination at the Property; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control plan to produce data of known quality.

3.2 PEA Report.

This report will document whether a release has occurred or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.

3.3 PEA with a Land Use Covenant

If a Land Use Covenant (LUC) is being implemented during the PEA phase as a final remedy, Proponent, under the direction of DTSC, will comply with applicable public notice requirements and requirements to notify the current and adjacent property owners.

TASK 4 Supplemental Site Investigation (SSI)

4.1 SSI Work Plan.

Proponent will submit a work plan that describes the activities proposed to further characterize soil, soil gas, surface water and/or groundwater. The work plan should also include a health and safety plan, quality assurance/quality control plan, sampling plan, and implementation schedule. Proponent will begin implementation of the approved work plan in accordance with the approved implementation schedule. DTSC may provide oversight of work plan implementation.

4.2 SSI Report.

Proponent will submit an SSI Report that, at a minimum, presents the data, summarizes the findings of the investigation, validates the data, and includes recommendations and conclusions.

TASK 5 Health Risk Assessment

Proponent will conduct a risk evaluation consistent with U.S. EPA Risk Assessment Guidance for Superfund and the most current version of the applicable DTSC guidance documents. This evaluation must identify chemicals of concern and potential routes of exposure; characterize the potential risk and/or non-cancer hazard; evaluate potential threats to environmental receptors; consider existing and contemplate uses; and identify cleanup goals.

TASK 6 Remedial Investigation/Feasibility Study (RI/FS)

If requested by DTSC, an RI/FS shall be conducted consistent with the U.S. Environmental Protection Agency's Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA, October 1988, (EPA/540-G-89/004).

TASK 7 Remedy Selection Document

For the petroleum release controlled recognized environmental condition (CREC) at 480 East 4th Avenue, the concentrations of benzene in former well MW-1 was 2,900 ug/L prior to closure on 11/21/2002. The science of vapor intrusion has evolved since 2002, and this as-closed condition warrants further study.

Per the Proponent's 11/16/2020 project CEQA Initial Study/Mitigated Negative Declaration (hereafter IS/MND) issued for public comment, groundwater and soil gas at

some locations of the Site exceed residential screening levels. Additionally, there is a nearby dry cleaner business (Wardrobe Cleaners) that appears to have operated at multiple locations approximately 150 feet west of the site. These operations may have led to groundwater impacts that exceed residential screening levels for PCE and TCE. The IS/MND suggests the potential for bioattenuation of benzene under the Site, the proponent completed supplemental soil gas sampling on August 28, 2020. Sampling results were shared with DTSC to determine the presence of a bioattenuation zone for petroleum constituents.

Vapor intrusion risks were investigated across the street at 330 South Claremont Street as well. For this Site, 480 East Fourth Avenue and 400 East Fifth Avenue, all vapor intrusion concerns need to be addressed prior to this Site's reuse/occupancy (following construction and proper mitigation measures to make the property suitable for its intended uses).

Based on the above considerations, and the representations to the public in the draft IS/MND mitigation # MM HAZ-2.1, and the IS/MND Condition of Approval, the remedy for vapor intrusion to the proposed residential building may include (to the extent required by DTSC) vapor barriers and/or passive venting beneath the proposed residential building on the 480 East 4th parcel.

As required in the City of San Mateo Planning Application Conditions of Approval, PA-2019-033, approved November 16, 2020, the following condition shall be addressed on the construction plans submitted for a building permit for the superstructure, and shall be satisfied prior to issuance of the building permit of the superstructure, or if another deadline is specified in a condition, then at that time.

Condition of Approval 70 is: "VAPOR BARRIERS/PASSIVE VENTING – The project applicant shall, to the extent required by the Department of Toxic Substances Control (DTSC), install vapor barriers and/or passive venting beneath the proposed residential building on the 480 East 4th parcel to the satisfaction of DTSC. To the extent so required, the applicant shall include the improvement on the project plans prior to approval of the Foundation and/or Superstructure building permit application, whichever comes first. (BUILDING)"

Therefore, the terms in this Conditions of Approval remains operative providing DTSC with the yet to be determined remedy decision under the RAW. This is true despite the fact that the final IS/MND mitigation changed the mitigation language to read "engineered barrier" (instead of the prior language). Since DTSC has yet to make its decision about the extent to which the "engineered barrier" to be used to mitigate the threat to indoor air includes or requires vapor barriers and/or passive venting, DTSC's

decision on protectiveness measures remains a condition of approval before occupancy.

7.1 Removal Action Work Plan

If DTSC determines a removal action is appropriate, Proponent will prepare a Removal Action Work Plan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1.

The Removal Action Work Plan will include:

- 1) a description of the onsite contamination;
- 2) the goals to be achieved by the removal action;
- 3) an analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- 4) a description of the recommended alternative (including any required land use covenants, financial assurance, and operation and maintenance plan and agreement requirements).
- 5) administrative record list;
- 6) Sampling and Analysis Plan with corresponding Quality Assurance Plan to confirm the effectiveness of the RAW, if applicable; and
- 7) Health and Safety Plan describing methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action. A detailed community air monitoring plan shall be included if requested by DTSC.

7.2 Remedial Action Plan

If the proposed removal action does not meet the requirements of Health and Safety Code section 25356.1(h), Proponent will prepare a Remedial Action Plan (RAP) in accordance with Health and Safety Code section 25356.1(c) for DTSC review and approval.

The RAP summarizes the results of the site characterization, risk evaluation and feasibility study and sets forth in detail appropriate steps to remedy soil, surface water and groundwater contamination at the Site and adjacent areas. In addition, the RAP shall contain a schedule for implementation of all proposed removal and remedial actions.

TASK 8 California Environmental Quality Act (CEQA)

All CEQA compliance obligations must be met for this “project.” As noted above, some CEQA work has already been performed by the City as the Responsible Agency for the

project. DTSC will prepare appropriate CEQA documents associated with any Remedial Action Work Plan that is approved by DTSC. Those documents analyze CEQA impacts for both the necessary remediation and the development activities. DTSC anticipates that, while DTSC may be the Responsible Agency for the remedial decision documents, DTSC's role as to the overall "project" for CEQA purposes would be that of Support Agency (to the City as Responsible Agency for the CEQA compliance obligations of the "project"). To the extent that is not the case, for the remedial action to be performed at the site that is overseen by DTSC, in order to meet CEQA obligations, as noted above, DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents.

TASK 9 Remedial Design and Implementation Plan

Proponent will either (a) prepare and submit a Remedial Design and Implementation Plan (RDIP) in accordance with the agreed upon schedule contained in the approved Remedy Selection Document; or (2) depending on the complexity of the proposed removal or remedial action, incorporate the factors typically addressed in a RDIP into the Remedy Selection Document.

The factors typically addressed in a RDIP are:

- a) technical and operational plans and engineering designs for implementation of the approved remedial or removal action alternative(s);
- b) a schedule for implementing the construction phase;
- c) a description of the construction equipment to be employed;
- d) a site specific hazardous waste transportation plan (if necessary);
- e) any required registration requirements for contractors, transporters and other persons conducting the removal and remedial activities for the Site;
- f) post-remedial sampling and monitoring procedures for air, soil, surface water and groundwater;
- g) operation and maintenance procedures and schedules;
- h) a health and safety plan; and
- i) a community air monitoring plan, if required by DTSC.

TASK 10 Implementation of Remedy

Upon DTSC approval of the final RAW or RAP and RDIP (if required), the Proponent shall implement the remedy, as approved.

TASK 11 Remedial Action Completion Report

Proponent shall submit a report documenting the implementation of the final RAW or RAP and RDIP and noting any deviations from the approved plan.

During implementation of the final RAW or RAP and RDIP, DTSC may specify such additions, modifications and revisions to the RAW or RDIP as deemed necessary to protect human health and safety or the environment or to implement the RAW or RAP.

TASK 12 Public Participation

DTSC requires that specific public engagement activities be conducted for projects undergoing a PEA, RAW, or RAP. However, based on the level of community interest, media interest, sensitive land uses, demographics and other factors, as determined by DTSC, public engagement activities may be requested for other projects types as well. Proponent will be responsible for all costs associated with the translation and/or interpretation of public participation content required under DTSC's policies, procedures, guidance documents, and state and federal law.

12.1 Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest, if needed. Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 and with DTSC's review and approval.

12.2 A scoping meeting regarding the RAW or RAP will include a discussion on the appropriate activities that will be conducted to address public participation.

12.3 DTSC may conduct an assessment of community interest in the Site, which may include, but will not be limited to, the development of a survey, outreach to local elected and public officials and community members, distribution of the survey through mail and/or social media, analysis of survey results, and community interviews. Results of the survey will be shared with the Proponent and should be included in the community profile.

12.4 Proponent, working collaboratively with DTSC, shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; surrounding land uses; demographic profile and languages; CalEnviroScreen results; information repositories; recommended public engagement activities; and involvement of community groups and elected officials. The community profile may also include a quarter-mile radius mailing list for the Site, a list of applicable elected officials, and any known community members who may have expressed an interest in the Site.

12.5 Proponent, working collaboratively with DTSC, shall develop and submit fact sheets or community updates to DTSC for review and approval when specifically requested by DTSC. Proponent may be responsible for printing and distribution of fact sheets or community updates upon DTSC approval using the approved community mailing list.

12.5 Proponent, as directed by DTSC, shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW/RAP for public review and comment. The public comment period shall last a minimum of thirty (30) days.

12.6 DTSC may require that Proponent hold a public meeting to inform the public of the proposed activities and to receive public comments on the RAW/RAP.

12.7 After the close of the public comment period, DTSC will prepare a response to the public comments received. If required, Proponent shall submit the information necessary for DTSC to prepare this document.

12.8 If appropriate, Proponent will revise the RAW/RAP on the basis of comments received from the public and submit the revised RAW/RAP to DTSC for review and approval. If significant or fundamental changes are required, additional public participation activities, including an additional review and comment period, may be required. Proponent will also notify the public of any significant changes from the action proposed in the RAW/RAP.

TASK 13 Tribal Outreach and Consultation

DTSC's assigned Project Manager will coordinate with DTSC's Office of Environmental Equity to ensure compliance with DTSC's Tribal Consultation Policy. This process may include consultation with California tribes to determine whether or not they have an interest in Site activities.

TASK 14 Land Use Covenant

A land use covenant (LUC) pursuant to California Code of Regulations, title 22, section 67391.1 may be necessary to ensure full protection of the environment and human health. DTSC may require such a LUC in a DTSC-approved remedy based on a RAW, RAP, PEA, or other decision document. If Proponent is the owner of the Site, Proponent agrees to record the LUC as approved by DTSC within ten (10) days of receipt of a fully executed original.

If the Proponent is not the owner of the Site and a LUC is required, Proponent will work with the owner to provide DTSC with written confirmation that the owner will cooperate in implementing the DTSC-approved remedy, which may include a LUC. The Proponent must provide DTSC with the owner's written confirmation prior to the date the draft

decision document is to be circulated for public notice and comment. If the Proponent is unable to provide DTSC with written confirmation from the owner, a LUC may not be executed for the Site and the proposed remedy will be reevaluated.

TASK 15 Operation and Maintenance (O&M)

Proponent shall comply with any and all operation and maintenance requirements in accordance with the final RAW, final RAP, or a DTSC-approved RDIP or O&M Plan. If deemed necessary, DTSC may require Proponent to enter into an O&M Agreement with DTSC.

TASK 16 Financial Assurance

Proponent shall establish and maintain a financial assurance mechanism pursuant to California Health and Safety Code section 25355.2 and DTSC's costs incurred in overseeing these activities prior to implementing any required O&M activities, LUC-related activities, and five-year review activities. Proponent shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations. If Proponent wishes to assert an exemption/waiver under 25355.2, Proponent must request such, and prove that it qualifies for any waiver requested.

TASK 17 Discontinuation of Remedial Technology

Any remedial technology employed in implementation of the final RAP/RAW shall be left in place and operated by Proponent until and except to the extent that DTSC authorized Proponent in writing to discontinue, move or modify some or all of the remedial technology because Proponent has met the criteria specified in the final RAW/RAP for its discontinuance, or because the modifications would better achieve the goals of the final RAW/RAP.

TASK 18 Health and Safety Plan

The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192. The Health and Safety Plan shall be submitted before field activities begin.

EXHIBIT D COST ESTIMATE

COST ESTIMATE WORKSHEET									
Type of Agreement: Standard Voluntary Cleanup Agreement									
Site Name: DOWNTOWN SAN MATEO OPPORTUNITY SITES									
Site Code: 202309									
DTSC Project Team	Project Management	Supervision	Toxicology	Industrial Hygienist	HQ Engineering	Public Participation	HQ CEQA	Legal	Project Assistants
Classification (personnel)	EG	EPM1 (Sup)	Staff Toxicologist	Assoc IH	HSE	PPS	AEP	Attorney III	Office Technician (Typing)
TASK: (enter # hrs)									
Agreement Prep./Negotiation	16	16						20	
Project Management	20	8				1			6
Scoping Meeting	6	4					1		
Cost Estimating	4	1							
Review and comment on existing data	10	2	12						
Supplemental Investigation									
Findings Review	4	1	8						
Public Participation									
- Community Assessment	2	1				20			
- Community Profile	2	1				20			
CEQA									
Removal Action Workplan (RAW)	8	2					14		
Site Visit	20	6	6	4	20				
- Initial visit	6								
- Implementation oversight	6								
- Remedy confirmation	6								
Cleanup Completion Report	8	2			12				
Certification/NFA	6	2							
Total No. Hours/Class	124	46	26	4	32	41	15	20	6
Hourly Rate/Class	\$234	\$299	\$224	\$190	\$233	\$145	\$159	\$265	\$89
Cost/Class	\$29,016	\$13,754	\$5,824	\$760	\$7,456	\$5,945	\$2,385	\$5,300	\$534
Subtotal	\$70,974								
Contingency (10%)	\$7,097								
Grand Total Cost	\$61,718								
Advance Payment	\$15,429								

Note: Grand Total Cost accounts for \$16,353.80 deduction previously paid by Billable Party

EXHIBIT E

CALENDAR OF TASKS AND SCHEDULE

Activity	Schedule
Scoping Meeting	Ongoing as needed
Advance Payment	Within 10 days of Agreement execution
Submit existing data	Completed
DTSC Completion of Document Review	Completed
DTSC decision on investigation work plan	Completed
Submit investigation report	Completed
DTSC decision on investigation report	Completed
Submit draft cleanup plan	Completed
Submit Community Profile	Ongoing
Submit CEQA documentation	Concurrent with the cleanup plan
Public Review/Comment Period, mailing of fact sheet to site mailing list and placement of public notice.	Upon DTSC's approval of cleanup plan for public review and comment.
DTSC decision on cleanup plan	DTSC to approve cleanup plan, if appropriate, after addressing public comments, within ~150 days of receipt of draft.
Implement cleanup	Within 270 days of DTSC approval of cleanup plan, or as directed by DTSC in conjunction with Proponent ³
Submit cleanup completion report	Within 90 days from the date of implementation of cleanup plan
DTSC decision on cleanup completion report	Within ~100 days of received by DTSC ¹ . May include recommendation for no further action, or no further action with conditions.
Submit Operation and Maintenance Plan	As required by the Remedial Action, or as deemed prudential by Proponent
Operations and Maintenance Agreement	As required by the Remedial Action, or as deemed prudential by Proponent
Financial Assurance	If O&M Agreement is entered into.
Land Use Covenant	As required by the Remedial Action, or as deemed prudential by Proponent
Invoices	DTSC issues quarterly
Cost estimate and Scope of Work Updates and Amendments	DTSC updates the scope and cost estimate annually, or as needed, based on work needed to complete the Agreement. Amendments are issued on an as-need basis.

¹ Note that DTSC approvals in the target timeframes are contingent upon receiving documents that meet industry standards, comply with DTSC's direction, and that responses to DTSC questions and/or comments are received in a timely manner.

² If workplan activities are not initiated within six months of the date of DTSC approval, DTSC may require additional investigation, public participation activities, and/or revision to the document.

³ If cleanup plan activities are not initiated within one year of the date of DTSC approval, DTSC may require additional investigation, public participation activities, or revision to the document.