COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 23-2026

AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH FOCIL-MB, LLC FOR THE POTENTIAL DEVELOPMENT OF MISSION BAY SOUTH BLOCK 12 WEST ALLOWING FOR AN APPROXIMATELY 265-UNIT AFFORDABLE HOUSING PROJECT AND A 270-UNIT MARKET RATE PROJECT WITH INCLUSIONARY AFFORDABLE UNITS; MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA

WHEREAS, The former Redevelopment Agency of the City and County of San Francisco ("Former Agency") Commission approved the Redevelopment Plan for the Mission Bay South Redevelopment Project ("Redevelopment Plan") by Resolution No. 190-98 (Sept. 17, 1998). Concurrently, the Former Agency Commission approved the Design for Development for the Mission Bay South Redevelopment Project Area ("D for D") by Resolution No. 191-98, and a conditionally authorized execution of an Owner Participation Agreement) with Catellus Development Corporation, a Delaware corporation ("Catellus"), by Resolution No. 193-98, as amended from time to time (the "South OPA"). The San Francisco Board of Supervisors ("Board of Supervisors") adopted the Redevelopment Plan by Ordinance No. 335-98 (Nov. 2, 1998) and amended it by Ordinance Nos. 143-13 (July 9, 2013), 032-18 (Mar. 6, 2018), 128-20 (July 31, 2020), 209-20 (Oct. 1, 2020), 014-21 (Feb. 12, 2021), and 22-26 (Feb. 13, 2026). Together, the Redevelopment Plan, D for D, and South OPA are the "Plan Documents"; and,

WHEREAS, FOCIL-MB, LLC, ("FOCIL-MB"), a subsidiary of Farallon Capital Management, LLC, assumed all of Catellus's obligations under the South OPA, as well as all responsibilities under the related public improvement agreements and land transfer agreements with the City and County of San Francisco ("City"). FOCIL-MB is bound by all terms of the South OPA and related agreements, including the requirements of the affordable housing program, equal opportunity program, and design review process; and,

WHEREAS, On February 1, 2012, state law dissolved all redevelopment agencies, including the Former Agency, and created successor agencies to complete the enforceable obligations of the former redevelopment agencies and to wind down redevelopment affairs. California Health and Safety Code §§ 34170 *et seq.* (the "Redevelopment Dissolution Law"). On June 27, 2012, state law clarified that successor agencies are separate public entities and that they succeed to the organizational status of the former redevelopment agency to complete any work related to an approved enforceable obligation, Cal. Health & Safety Code § 34173 (g); and,

WHEREAS, The Board of Supervisors, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12 (Oct. 4, 2012), which, among other matters: (a) acknowledged and confirmed that the Successor Agency to the Former Agency (commonly known as the Office of Community Investment and Infrastructure) (the "Successor Agency" or "OCII") is a separate legal entity from the City, and (b) established the Successor Agency commission, the Commission on Community Investment and Infrastructure ("Commission") and delegated to it the authority to (i) act in place of the Former Agency Commission to, among other matters, implement, modify, enforce and complete the Former Agency's enforceable obligations, (ii) approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, including, without limitation, the authority to exercise land use, development, and design approval and the approval of amendments to redevelopment plans as allowed under the Community Redevelopment Law, as amended by the Redevelopment Dissolution Law, and (iii) take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that this Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations; and,

WHEREAS, Redevelopment Dissolution Law required creation of an oversight board to the successor agency and provided that, with approval from its oversight board and the State Department of Finance ("DOF"), a successor agency may continue to implement "enforceable obligations" such as existing contracts, bonds and leases, that were executed prior to the suspension of redevelopment agencies' activities; and,

WHEREAS, On January 24, 2014, DOF finally and conclusively determined, among other things, that the South OPA is an enforceable obligation pursuant to Health and Safety Code Section 34177.5(i); and,

WHEREAS, Redevelopment Dissolution Law authorizes an oversight board, subject to review by DOF, to amend an enforceable obligation, if "it finds that amendments . . . would be in the best interests of the taxing entities." Health and Safety Code Section 34181(e). Among the factors that an oversight board may consider in determining the "best interests of the taxing entities" are a reduction in liabilities and an increase in net revenues to the taxing entities. Id.; and,

WHEREAS, The Redevelopment Dissolution Law authorizes the Successor Agency "to enter into any contracts or arrangements that are related to the development [of certain affordable housing units]" as described in Section 34177.7 (a) (1) (C) (ii); and,

WHEREAS, Under the Plan Documents, Block 12 West ("MBS 12W") of the Mission Bay South Redevelopment Project Area ("Project Area") is a 1.65 acre parcel located in Height Zone 2, between Channel Street, Long Bridge Street, Mission Bay Boulevard North and a market rate residential project on Mission Bay South Block 12 East, and is designated as an Approved Site for an Agency Affordable Housing Parcel in the Mission Bay South Housing Program (Exhibit F to Attachment C to the South OPA); and,

WHEREAS, On November 18, 2025, the Commission approved, by Resolution No. 29-2025 the remaining units permitted under the Mission Bay South Housing Program and Redevelopment Plan on the southern part of Mission Bay South Block 4 East; and,

WHEREAS, By Resolution No. 34-2025 on November 18, 2025, the Commission approved an amendment to the South OPA adding 250 affordable housing units specifically for the project on the northern half of Block 4 East; and,

WHEREAS, MBS 12W currently has no entitlements to develop any housing; and,

WHEREAS, OCII and FOCIL-MB have proposed that MBS 12W can accommodate an affordable housing project totaling 265 units and a 270-unit market rate project with inclusionary affordable units ("Projects"); and,

WHEREAS, To enable the Projects, OCII and FOCIL-MB propose to pursue a series of entitlement actions (collectively, the "Proposed Entitlements") including subdividing MBS 12W into two parcels to accommodate the Projects; amending the Redevelopment Plan, the South OPA, the D4D, and the Blocks 11–12 Major Phase; and completing the environmental review required under the California Environmental Quality Act ("CEQA"). and,

WHEREAS, OCII and FOCIL-MB have proposed a Memorandum of Understanding ("MOU") that establishes the parties' respective roles and responsibilities in pursuing the Proposed Entitlements, includes non-binding terms related to the Proposed Entitlements, and confirms their mutual commitment to completing the entitlement process; and,

WHEREAS, The Commission's approval of the MOU is statutorily exempt from environmental review pursuant to CEQA Guidelines Section 15262 because it does not have a legally binding effect on later activities and it only involves feasibility and planning activities for possible future actions which the Commission has not yet approved, adopted or funded; now, therefore be it,

RESOLVED, That the Commission approves the MOU substantially in the form attached hereto as Exhibit A.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of October 6, 2026.

_____

Commission Secretary

Exhibit A: Memorandum Of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE SUCCESSOR AGENCY COMMISSION, COMMONLY KNOWN AS THE COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE AND FOCIL-MB, LLC

This Memorandum of Understanding (this "**MOU**") is dated October __, 2026 for reference purposes only, and is entered into as of the last date of execution below (the "**Effective Date**") by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure ("**OCII**"), a public body corporate and politic, organized and existing under the laws of the State of California, and FOCIL-MB, LLC, a Delaware limited liability company ("**FOCIL**"). (Together, OCII and FOCIL are referred to as the "**Parties**.") This MOU also includes provisions typically part of a Term Sheet representing the results of recent discussion between the Parties and their preliminary consensus of the scope of a project and the responsibilities of each Party to be more fully described in transaction documents. The Term Sheet provisions shall serve as a non-binding guide in the negotiation of the transaction documents, although the Parties acknowledge that review of additional information and further discussion may lead to refinement and revision of the Term Sheet provisions and changes in the project.

RECITALS

A. FOCIL owns certain unimproved real property located in the City and County of San Francisco, State of California, commonly known as Mission Bay South Block 12W, more particularly described on Exhibit A and incorporated herein by this reference (the "**Property**").

B. The Board of Supervisors of the City and County of San Francisco ("**Board**") adopted the Redevelopment Plan for the Mission Bay South development Project on November 2, 1998 by Ordinance No. 335-98 ("**Mission Bay South Redevelopment Plan**"). The Mission Bay South Redevelopment Plan as subsequently corrected and amended through the date of this MOU is referred to as the Redevelopment Plan.

C. In order to facilitate the implementation of the Mission Bay South Redevelopment Plan, the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") and FOCIL's predecessor, Catellus Development Corporation ("**CDC**"), entered into that certain Mission Bay South Owner Participation Agreement dated as of November 16, 1998 (the "**Original OPA**") and recorded December 3, 1998 as Document No. 98-G47725800 in the Official Records of San Francisco County (the "**Official Records**"), regarding the property within the South Plan Area, including the Property. The Original OPA was subsequently amended through a series of amendments adopted by and through the date of this MOU. The Original OPA as amended through the date of this MOU shall be referred to as the "**OPA**". Unless otherwise defined in this MOU, all initially capitalized defined terms in this MOU shall have the respective meanings given them in the OPA.

D. The Former Agency also approved that certain Design for Development for the Mission Bay South Project Area approved by Resolution No. 34-2004 on March 16, 2004 by the Agency, which was subsequently amended through as series of amendments adopted by and through the date of this MOU (as amended, the "**D4D**"), and that certain Mission Bay Blocks 11

and 12 Major Phase and Parks P2, P8, P10, P11 and P12 Concept Design Application dated May 11, 2007, approved by Resolution No. 101-200 on September 18, 2007 (the "**Major Phase**").

E. CDC's rights, interests and obligations under the OPA were transferred (i) to Catellus Operating Limited Partnership, as the successor by merger to CDC, then (ii) to Catellus Land and Development Corporation through an assignment and assumption agreement, and (iii) ultimately to FOCIL, through an assignment and assumption agreement.

F. Pursuant to the Redevelopment Plan and the OPA, including, but not limited to, the Housing Program attached as Attachment C to the OPA (the "**Housing Program**"), the Property is designated and mapped as an Agency Affordable Housing Parcel on Exhibit F, Mission Bay South Housing Program, Approved Sites, to the Housing Program.

G. On July 28, 2011, FOCIL recorded a Declaration of Restrictions and Reservation of Easement restricting Agency Affordable Housing Parcels, including MBS 12W, to the construction and operation of Agency Affordable Housing Projects as defined in the South OPA and its Housing Program, dated July 12, 2011 and recorded July 28, 2011, as Document No.2011-J221597-00 (the "**Declaration of Restrictions and Reservation**").

H. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("**AB 26**"), codified in relevant part in California's Health and Safety Code Sections 34170 et seq. and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("**AB 1484**"), which among other things, provides that a successor agency is a separate public entity from the public agency that provides for its governance. (AB 26 and AB 1484, as amended from time to time, are primarily codified in California Health and Safety Code Sections 34170 et seq., and are referred to as the "**Redevelopment Dissolution Law**").

I. Subsequent to the adoption of AB 1484, on October 2, 2012, the Board, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12, which was signed by the Mayor on October 4, 2012, and which, among other matters, delegated to OCII, the authority, consistent with the Redevelopment Dissolution Law, to (i) act in the place of the Former Agency Commission to, among other matters, implement, modify, enforce and complete the Former Agency's enforceable obligations, except for material changes to obligations to provide affordable housing, which require Board of Supervisors' approval; (ii) approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, consistent with the applicable enforceable obligations; and (iii) take any actions that the Redevelopment Dissolution Law deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations. The Successor Agency is referred to herein as "**OCII**".

J. On January 1, 2024, Senate Bill No. 593, Statutes 2023-24, Chapter 782 (codified at Cal. Health & Safety Code Section 34177.7 (1) (a) (C) et seq.,) ("**SB 593**") became effective. SB 593 authorizes OCII to use a limited form of tax increment financing to fund and develop the

5,842 affordable units that the Former Agency demolished and that were never replaced ("**Replacement Housing Obligation**"). SB 593 authorizes debt financing secured by redevelopment property tax increment that would otherwise be allocated to the City and County of San Francisco after other existing obligations of OCII are paid. The affordable housing units developed and funded as part of the Replacement Housing Obligation are additive to OCII's affordable housing production funded and required under pre-dissolution enforceable obligations.

K. On November 18, 2025, OCII approved, by Resolution Nos. 28-2025 & 29-2025, the design and development of 165 units of affordable housing at Mission Bay South Block 4 East (Phase 1), which represents, when constructed, the completion of the total number of affordable housing units funded under the tax increment financing authority of the OPA.

L. As of the Effective Date, there are no units of housing approved to be developed as Affordable Housing Units or market rate housing on the Owner and Agency sites in the South Plan Area that are available for development on the Property.

M. In order to provide for the development of housing units on the Property, OCII and FOCIL desire to cooperate with one another to (collectively, the "**Proposed Entitlements**"): (i) subdivide the Property (the "**Subdivision**") into two (2) or three (3) parcels, one (1) of which would be designated for market rate housing (the "**New Market Parcel**"), and the remainder would be designated as an Agency Affordable Housings Parcel(s) (the "**New Affordable Parcel(s)**"), (ii) amend the Redevelopment Plan, the OPA, the D4D and the Major Phase, and (iii) assist with efforts to comply with the California Environmental Quality Act ("**CEQA**") and any other applicable environmental laws in connection with the foregoing.

N. The purpose of this MOU is to outline certain roles and responsibilities of OCII and FOCIL with respect to the Proposed Entitlements and to confirm their joint commitment to accomplish the foregoing goals.

AGREEMENT

The Parties hereby agree as follows:

1. **Incorporation of Recitals**. The above recitals are specifically incorporated into this MOU.

2. **Term**. This MOU will be in effect as of the Effective Date, and subject to either party's ability to terminate this MOU for any reason upon 30 days' notice, will expire upon the earlier to occur of (a) the date that is two (2) years following the Effective Date, and (b) the date that the last of (i) the Final Map, the Memorandum of Option, and all of the Amendments (as such terms are defined below) are recorded in the Official Records, and (ii) the D4D Amendment and the Major Phase Amendment are Finally Approved (the "**Completion Date**").

3. **Good Faith Negotiations**. This MOU is entered into to memorialize the preliminary and non-binding terms, as negotiated and agreed upon by the parties, of the transactions and further agreements discussed herein. The provisions and terms in this MOU are preliminary and shall

not be construed to limit the consideration of alternative terms. This MOU is intended to provide a general framework for subsequent good-faith negotiation of definitive agreements regarding the Proposed Entitlements, and, except for the Binding Provisions (as defined below), is not intended to create any binding contractual obligations on either party or to commit either party to a particular course of action. A transaction of this type involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the Parties that in order to seek the Proposed Entitlements, the Proposed Entitlement Submittals and the Memorandum of Option would have to be agreed to by the party, each in such party's sole and absolute discretion. For purposes of this MOU, the Binding Provisions shall mean Section 2 (Term), Section 8 (Costs), and this Section 3. The Parties agree that the Binding Provisions represent the Parties' legally binding agreements, enforceable in accordance with their terms. The enforceability of the Binding Provisions is not conditioned on proceeding with the Proposed Entitlement Submittals and/or the successful outcome of the Proposed Entitlements.

4. **General Principles**. By and through this MOU the Parties agree to:

a. Work collaboratively and cooperate in good faith to jointly pursue the timely submittal and approval of the Proposed Entitlement Submittals (as defined below) described in Section 6 below in order to pursue the Proposed Entitlements to allow for the Subdivision of the Property and development of the New Affordable Parcel(s) and the New Market Parcel as contemplated herein;

b. Delineate the specific roles and responsibilities for FOCIL and OCII related to the Proposed Entitlements;

c. Allocate responsibility for the costs and expenses for the Proposed Entitlements;

d. Memorialize the timing and sequencing; and

e. Provide a framework to address the scope of the cooperation and rights of the Parties if any of the Proposed Entitlement Submittals are not Finally Approved (as defined below) and the Completion Date does not occur.

5. **The Project.** The Parties propose amendments to the Redevelopment Plan, Plan Documents, and other regulatory requirements to accomplish the following (the "**Project**"):

i. accomplish the Subdivision to create the New Market Parcel and the New Affordable Parcel(s);

ii. increase the maximum number of (i) Affordable Housing Units to permit an additional two hundred sixty-five (265) Affordable Housing Units, which such units shall be allocated to the New Affordable Parcel(s) (the "**New Affordable Housing Units**"), and (ii) market rate units to permit up to an additional two hundred seventy (270) units, which such units shall be subject to the equivalent of the applicable city-wide inclusionary requirements for provision of on-site

affordable units or payment of an in-lieu fee to OCII, and allocated to the New Market Parcel (the "**New Market Units**"); and

iii. increase the maximum height permitted for the New Market Parcel to two hundred fifty feet (250'), not including mechanical penthouses (the "**Maximum Height**").

6. **Proposed Entitlements Submittals**. The Parties will jointly and equally share the following responsibilities unless an item is identified as the individual responsibility of a Party below:

a. Environmental Review. FOCIL will contract with an environmental review consultant to prepare the environmental review necessary for compliance with CEQA as required by OCII, the lead agency under CEQA.

b. Subdivision. The Parties will use good faith efforts to cooperate, collaborate, agree, and seek approval from the applicable governmental authority (which may be the Office of the City and County of San Francisco Surveyor or the Board, if required) to accomplish the Subdivision to create a New Market Parcel and New Affordable Parcel(s). FOCIL will be prepare (or shall cause its contractor to prepare) the applicable document submittals, including, but not limited to the final map (the "**Final Map**").

c. Redevelopment Plan Amendment. The Parties will use good faith efforts to cooperate, collaborate, agree, and seek approval from the Commission on Community Investment and Infrastructure (the "**OCII Commission**"), the City and County of San Francisco Planning Commission (the "**Planning Commission**"), and the Board to amend the Redevelopment Plan with respect to the Property in furtherance of the Project (the "**Redevelopment Plan Amendment**").

d. OPA Amendment. The Parties will use good faith efforts to cooperate, collaborate, agree, and seek approval from the OCII Commission, the OCII Oversight Board, and the Department of Finance of the State of California (the "**DOF**") to amend the OPA with respect to the Property as follows (the "**OPA Amendment**"):

i. Amend the Housing Program and any other applicable provisions of the OPA to permit the New Affordable Housing Units and the New Market Units, including replacing Exhibit F to the Housing Program with a revised Approved Sites depicting the New Affordable Parcel and New Market Parcel as shown in Exhibit B to this MOU; and

ii. Extend the term of the OPA with respect to the Property.

e. D4D. The Parties will use good faith efforts to cooperate, collaborate, and agree on the proposed revisions to the D4D (the "**D4D Amendment**") to enable the development of the New Affordable Parcel(s) and New Market Parcel, and seek approval from the OCII Commission of the D4D Amendment. The D4D Amendment may include,

without limitation, revisions with respect to the height limit, required setbacks, and number of buildings permitted on the Property. FOCIL shall prepare (or shall cause its contractor to prepare) the initial draft D4D Amendment, and shall contract with ICF Environmental Inc. ("**ICF**") to conduct the wind and shadow studies in connection with the D4D Amendment.

f. Major Phase. The parties will use good faith efforts to cooperate, collaborate, and agree on the proposed revisions to the Major Phase (the "**Major Phase Amendment**") to enable the development of the New Affordable Parcel(s) and New Market Parcel as contemplated herein, and seek approval from the OCII Commission of the Major Phase Amendment. FOCIL shall prepare (or shall cause its contractor to prepare) the initial draft Major Phase Development Amendment.

g. Other. The parties will take all such further action as any party hereto may reasonably request from time to time in order to enable each party to effectuate the intent of this MOU and to utilize the New Affordable Parcel(s) and New Market Parcel as contemplated herein. The entitlement submittals described in the foregoing Sections 6(a) – (f) shall be referred to herein individually as a "**Proposed Entitlement Submittal**" and collectively as the "**Proposed Entitlement Submittals**".

h. Memorandum of Option. The Parties will use good faith efforts to cooperate, collaborate, and agree on a Memorandum of Option to be recorded concurrently with the Final Map (i) evidencing OCII's acceptance of the New Affordable Parcel(s) as part of FOCIL's Agency Affordable Housing Contribution and (ii) ensuring that OCII does not have any interest in the New Market Parcel (as an Agency Affordable Housing Parcel contribution or otherwise, including any quitclaim to ensure the New Market Parcel is not encumbered by any of the housing obligations in the OPA and a quitclaim of the Declaration of Restrictions and Reservations with respect to the New Market Parcel), generally in the form of Exhibit C attached to the Housing Program as modified to effectuate the intent of this Section 6(g) (the "**Memorandum of Option**")

i. Final Approval. As used herein, "**Final Approval**" and/or "**Finally Approved**" shall have been obtained when the applicable governmental authority has finally and lawfully voted to approve the applicable Proposed Entitlement Submittal subject to no condition affecting the Property (other than those conditions acceptable to OCII and FOCIL, each in their sole and absolute discretion) and the time in which to file an administrative and judicial appeal, reconsideration, referendum or other challenge (each a "**Challenge**") thereto has expired and no Challenge has been filed or is pending or if a Challenge has been filed subject to the terms and conditions below, that the challenge has been resolved on terms satisfactory to each party in its reasonable discretion so that no further Challenges to the applicable entitlement is possible under applicable Laws. If a Challenge has been filed, either party shall have the right, in such party's sole and absolute discretion, to terminate this MOU, in which event the Parties shall have no further obligations hereunder except for any such obligations that expressly survive the termination thereof.

7. Cooperation; Relationship of the Parties.

a. Generally. OCII and FOCIL agree to cooperate in good faith during the Term on the preparation, submittal, processing and joint pursuit of the Proposed Entitlement Submittals, providing other supporting documentation as may be necessary to effectuate the intent of this MOU, and participating in meetings upon the reasonable request of the other party. The Parties understand, acknowledge, and agree that the Proposed Entitlements Submittals may need to be refined as the Parties commence the process of seeking the Proposed Entitlements, and the Parties agree to cooperate in good faith on such refinement, provided, however, in no event shall either party have any obligation to agree to any modification of the terms set forth in this MOU, including, but not limited to modification of the number of New Affordable Housing Units, the New Market Units or the Maximum Heights.

b. Outcome of Proposed Entitlement Submittals.

i. If, at any time during the processing of any Proposed Entitlements Submittals, the applicable governmental authority (A) does not approve (or either party believes, in its sole and absolute discretion, that the applicable governmental authority is not likely to approve) any of the Proposed Entitlement Submittals in the form submitted, or (B) imposes (or either party believes, in its sole and absolute discretion, is likely to impose) conditions of approval that are not acceptable to such party, in its sole and absolute discretion, then such party may, upon written notice to the other party, elect to (1) have the applicant withdraw any of the pending application(s) and/or request that the applicable governmental authority cease processing such submittal(s) and/or request a continuance for any Proposed Entitlement Submittal that has not yet been Finally Approved, and/or (2) terminate this MOU effective upon delivery of such notice. Following any such termination, the Parties shall have no further obligations hereunder except for any obligations that expressly survive termination (including, without limitation, any cost reimbursement or payment obligations incurred prior to the effective date of termination). Notwithstanding anything in the foregoing to the contrary, if either party elects to proceed under this Section 5(b)(i), then the Parties agree to meet and confer in good faith to discuss whether to revise and resubmit the pending Proposed Entitlements Submittals, but shall have no obligation to do so.

ii. In no event shall either party be required to execute or enter into any agreement, including any Amendments. Neither OCII nor FOCIL shall have any right to record any of the Final Map, Memorandum of Option or Amendments without the other Party's prior written consent, which may be withheld in its sole and absolute discretion.

c. No Joint Venture. Nothing in this MOU shall in any manner be interpreted, deemed or construed as constituting OCII and FOCIL as partners or joint venturers, or as creating any partnership, joint venture, association or other joint relationship.

8. Costs.

a. OCII Staff Time. Except as specifically provided in this MOU, OCII and the City Agencies shall continue to have the right to seek reimbursement of costs in accordance with the OPA, the Interagency Cooperation Agreement, and Redevelopment Plan.

b. Cost Sharing. The Parties shall split all costs proportionately based on the ratio that (i) the number of New Market Units approved for development on the New Market Parcel bears to the total number of units approved for development on the Property, and (ii) the number of New Affordable Housing Units approved for development on the New Affordable Parcel(s) bears to the total number of units approved for development on the Property. For purposes of this MOU, the party currently anticipate that the applicable approvals will provide for two hundred seventy (270) New Market Units and two hundred sixty-five (265) New Affordable Housing Units (and hundred thirty-five (535) total units); provided, however, that the party acknowledge and agree that the foregoing allocation shall be adjusted after the Completion Date based on the final number of New Market Units and New Affordable Housing Units approved for development on the Property. Such costs include, but are not limited to: the costs of the Subdivision, including, but not limited to, costs and the fees of any third party consultant, which has been approved by both Parties (e.g. surveyor or engineer); and costs of City staff related to Subdivision (e.g. planning staff, attorneys' fees).

c. Billing Procedures.

i. Throughout the term of this MOU, each party shall periodically submit invoices to the other party for the costs incurred by such party in connection with this MOU for which the other party is responsible for in accordance with this MOU. No later than thirty (30) days following receipt, the reimbursing party shall pay such invoices or notify the requesting party of any questions regarding the invoice.

ii. Following the Completion Date or earlier termination of this MOU, each party will submit an invoice to the other party for any costs for which such party is responsible that have not been reimbursed, including any adjustments to the prorations.

iii. The Parties hereby agree to reasonably cooperate with each other following the earlier to occur of (A) termination of this MOU and (B) the Completion Date to correctly adjust and prorate all costs and expenses which were not reimbursed to either party prior to the termination or Completion Date, as applicable, or which were not accurately allocated based on the final number of New Market Units and Affordable Housing Units approved for development on the Property.

iv. If at the time any reimbursement (or other payment) is due under this MOU, each party owes amounts to the other, then, upon written agreement of the Parties (which agreement may be via email), the Parties may settle such amounts by netting the amounts owed and making a single payment by the party

owing the greater amount to the other party in an amount equal to the net difference, rather than each party paying the full amounts separately.

The provisions of this Section 8 shall survive the Completion Date and the expiration or sooner termination of this MOU.

9. <u>Completion of Proposed Entitlement Submittals</u>.

a. If the Final Map is Finally Approved, then no later than fifteen (15) days following the Final Approval of the Subdivision Map, OCII shall use good faith efforts to deliver an executed and acknowledged original counterpart of the Memorandum of Option to FOCIL, and FOCIL shall use good faith efforts to deliver an executed and acknowledged .pdf counterpart of the Memorandum of Option. FOCIL shall use good faith efforts to record the Final Map and the Memorandum of Option promptly after the Final Map and the Memorandum of Option has been fully executed and acknowledged by all Parties.

b. For each of the Proposed Entitlement Submittals other than the Subdivision described in Section 6(a), if a Proposed Entitlement Submittal is Finally Approved, then the Parties will cooperate in good faith to promptly take any actions reasonably required to ensure such Proposed Entitlement Submittal becomes effective, which may include, but is not limited to, obtaining originals of the Redevelopment Plan Amendment and the OPA Amendment, fully executed and acknowledged by all of the applicable Parties, and thereafter, FOCIL recording such originals in the Official Records.

c. The Parties acknowledge and agree that nothing in this MOU shall modify the terms and provisions of the Redevelopment Plan, the OPA, the D4D or the Major Phase, except to the extent that any Amendments are Finally Approved. The provisions of this Section 9(c) shall survive the termination of this MOU or the Completion Date.

d. The Parties agree to allow licenses for pre-development work to occur on the New Affordable Parcel(s) and the New Market Parcel, provided however, that any construction, work or activities permitted under such licenses does not interfere with the construction, work, or activities of the other Party on its respective parcel. The Parties further agree to allow licenses for construction staging to occur on the New Affordable Parcel(s) and the New Market Parcel, provided however, that any construction, work or activities permitted under such licenses does not unreasonably interfere with the construction, or construction related activities of the other Party on its respective parcel. The provisions of this Section 9(d) shall survive the termination of this MOU or the Completion Date.

10. <u>Miscellaneous</u>.

a. <u>Notices</u>. Any demands, notices or statements herein requested or required to be given by one party to the other shall be given in writing and sent by email (with a copy of such notice also sent within one (1) business day after such email by first class mail or delivered by hand or by nationally recognized overnight courier service if receipt of such email transmission is not confirmed by a party or its legal counsel), to the Parties at the address set forth below, or to such other place as either party may designate in a written notice given to the other party. Such notice shall be effective upon successful transmission and, upon receipt of such notice, each party agrees to notify (or cause its counsel to notify) the other party, by email, of any such receipt. If any such notice or other communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given pursuant to this Section 10(a) to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Any notice or other communication under this MOU may be given on behalf of a party by the attorney for such party.

If to FOCIL: FOCIL-MB, LLC
c/o Mission Bay Development Group
401 Terry A. Francois Blvd., Suite 129
San Francisco, California 94158
Attention: Legal Department
Telephone No.: (415) 355-6600
Email: legal@mbaydevelopment.com

With a copy to: FOCIL-MB, LLC
c/o Mission Bay Development Group
401 Terry A. Francois Blvd., Suite 129
San Francisco, California 94158
Attention: Seth Hamalian
Telephone No.: (415) 355-6612
Email: shamalian@mbaydevelopment.com

and: Miller Starr Regalia
1331 North California Boulevard, Suite 600
Walnut Creek, CA 94596
Attention: Joy Spezeski
Telephone No.: (925) 941-3236
Email: joy.spezeski@msrlegal.com

If to OCII: _____
_____
_____
_____

Attention: _____
Telephone No.: _____
Email: _____

With a copy to: _____
_____
_____
_____
Attention: _____
Telephone No.: _____
Email: _____

b. Interpretation. The neuter gender includes the feminine and masculine, and vice-versa, and the singular number includes the plural. The captions of the sections of this MOU are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, or aid in the interpretation, construction or meaning of the provisions of this MOU. The Parties hereto agree that each party and its counsel or advisor have reviewed and revised this MOU and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this MOU or any amendments or exhibits hereto.

c. Severability. Should any part, term or provision of this MOU or any document required herein to be executed or delivered be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

d. Assignment. Neither FOCIL nor OCII may assign its rights or obligations under this MOU to any party without the prior written consent of the other, which consent may be withheld in the consenting party's sole and absolute discretion. Notwithstanding the foregoing, FOCIL may assign its rights and obligations hereunder without first obtaining OCII's consent so long as such assignment is in conjunction with a permitted Transfer of the Property in accordance with the OPA.

e. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all party hereto notwithstanding that each of the party hereto may have signed different counterparts. Delivery of this MOU may be effectuated by hand delivery, mail, overnight courier services, or electronic communication (including by PDF sent by electronic mail, facsimile, or similar means of electronic communication). Any electronic signatures shall have the same legal effect as manual signatures.

f. Governing Law; Attorneys' Fees. This MOU shall be governed and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. Should either party hereto institute legal proceedings or alternative dispute proceedings to enforce the provisions of this MOU, the prevailing party shall be entitled to recover its attorneys' fees and costs.

MOU EXHIBITS

Exhibit A: Legal Description of the Property

Exhibit B: New Affordable Parcel and New Market Parcel

[*Remainder of Page Intentionally Left Blank; Signatures Follow*]

IN WITNESS WHEREOF, the Parties have signed this MOU on the date(s) noted below.

OCII:

_____
Office of Community Investment and Infrastructure
Thor Kaslofsky, Executive Director
Date: _____

Approved as to form:

By: _____
James B. Morales
General Counsel and Deputy Director
Date: _____

FOCIL:

FOCIL-MB, LLC,
a Delaware limited liability company

By: FOCIL Management, LLC,
a California limited liability company,
Its: Manager

By: _____
Name: Seth Hamalian
Its: Managing Member
Date: _____

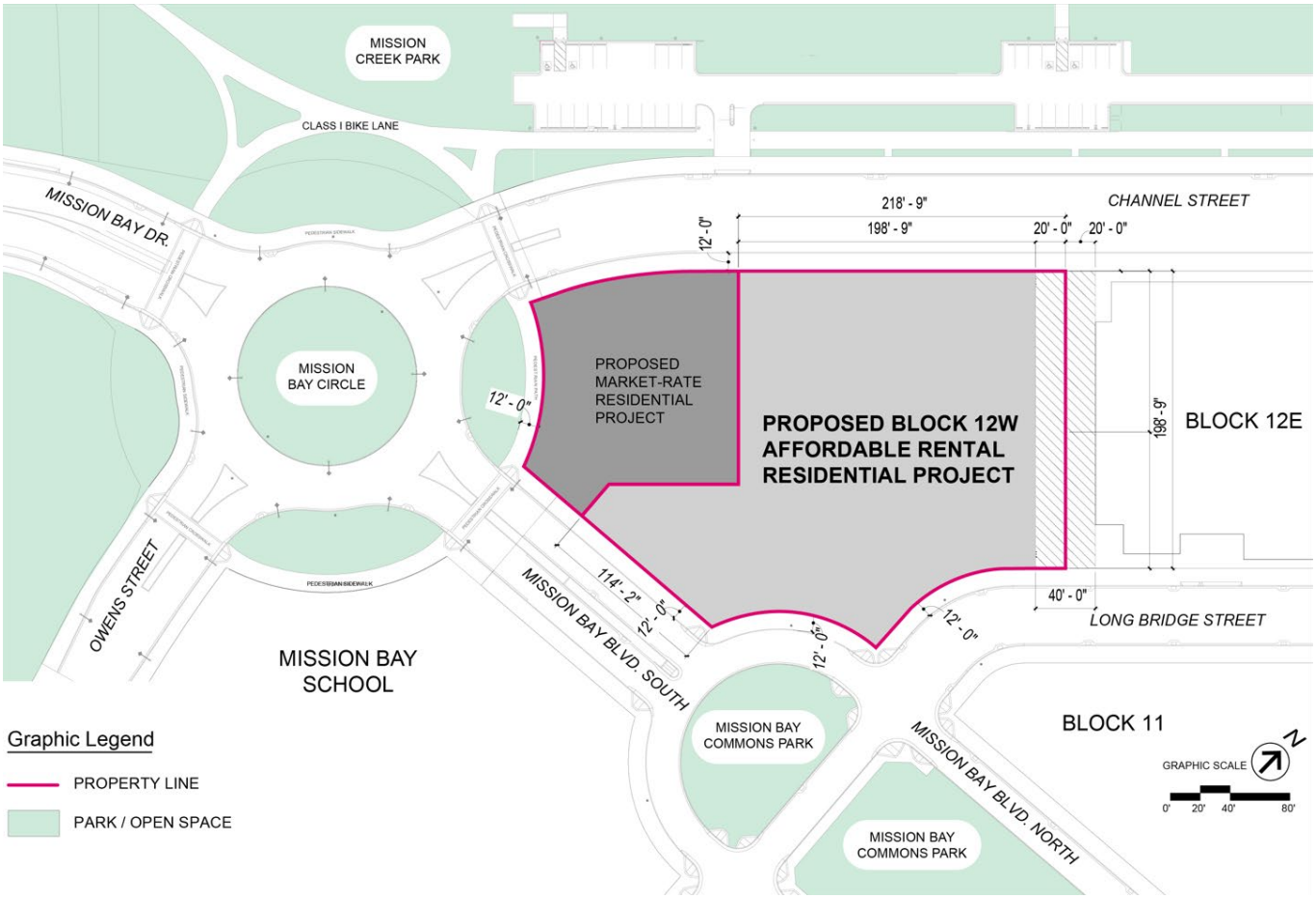
Exhibit A

Legal Description of the Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 3 AS SHOWN ON THE MAP ENTITLED "FINAL MAP NO. 4343," RECORDED APRIL 8, 2011, IN BOOK DD OF SURVEY MAPS, PAGES 116 THROUGH 121, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APN: LOT 006, BLOCK 8710

Exhibit B

NEW AFFORDABLE PARCEL AND NEW MARKET PARCEL