

1 [Consent to Provisions - Regents of the University of California - Mission Bay South
2 Agreements Related to Affordable Housing]

3 **Resolution of the Board of Supervisors acting in its capacity as the legislative body to**
4 **the Successor Agency to the former Redevelopment Agency of the City and County of**
5 **San Francisco approving provisions in agreements as they relate to affordable housing**
6 **obligations that would effectuate the transfer of Block Nos. 33 and 34 in the Mission**
7 **Bay South Plan Area to the Regents of the University of California for the future**
8 **development of up to 500,000 gross square feet in the Mission Bay South**
9 **Redevelopment Project Area; and making environmental findings under the California**
10 **Environmental Quality Act.**

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12 WHEREAS, The Board of Supervisors by Motion No. 98-132 (October 19, 1998) under
13 the California Environmental Quality Act (CEQA) affirmed certification of the Final Subsequent
14 Environmental Impact Report for the Mission Bay North and South Redevelopment Plans
15 (FSEIR) and by Resolution No. 854-98, adopted CEQA findings, including a statement of
16 overriding considerations and a Mission Bay mitigation monitoring and reporting program
17 ("Mission Bay MMRP") in support of various approval actions taken by the Board to implement
18 the Mission Bay North and Mission Bay South Redevelopment Plans. Resolution No. 854-98
19 is on file with the Clerk of the Board in File No. 140426, and incorporated in this Resolution by
20 this reference; and

21 WHEREAS, The Board of Supervisors approved and adopted, by Ordinance No. 335-
22 98 (November 2, 1998), the Mission Bay South Redevelopment Plan (the "South Plan") for the
23 Mission Bay South Redevelopment Project Area (the "South Plan Area"); and

24 WHEREAS, The former Redevelopment Agency of the City and County of San
25 Francisco ("Agency" or "Redevelopment Agency") approved, by Resolution No. 193-98, the

1 Mission Bay South Owner Participation Agreement (the "South OPA") and related documents
2 between Catellus Development Corporation, a Delaware corporation, and the Agency.
3 FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL" or "Owner" or "Master
4 Developer"), entered into an Assignment, Assumption and Release Agreement, dated
5 November 22, 2004, under which FOCIL assumed the rights and obligations of the prior
6 owner under the South OPA; and

7 WHEREAS, Subsequent to the certification of the FSEIR, the Agency and Planning
8 Department have issued nine addenda to the FSEIR to address proposed changes to the
9 Mission Bay project, none of which identify any substantial new information or new significant
10 impacts or a substantial increase in the severity of previously identified significant effects that
11 alter the conclusions reached in the FSEIR as a result of proposed changes to the Mission
12 Bay project. When referenced below, the FSEIR refers to the 1998 FSEIR and addenda; and

13 WHEREAS, The South OPA has been amended four times and when referenced
14 below, the South OPA shall be deemed to incorporate such amendments; and

15 WHEREAS, State law dissolved redevelopment agencies on February 1, 2012 and
16 established successor agencies to fulfill the remaining obligations of the former agencies, Cal.
17 Health & Safety Code, Sections 34170 et seq. ("Redevelopment Dissolution Law"); and

18 WHEREAS, The Redevelopment Dissolution Law required creation of an oversight
19 board to each successor agency ("Oversight Board"), which has authority to review and
20 approve any amendment to an enforceable obligation, such as the South OPA Amendment,
21 as defined below, if it finds that the amendment would be in the best interests of the affected
22 taxing entities; further, the California Department of Finance (DOF) must receive notice and
23 information about all Oversight Board actions, which do not take effect until DOF has either
24 not requested additional review within five business days of the notice or requested additional
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1 review and approved the action within 40 days of its request for additional review (“DOF
2 Approval”); and

3 WHEREAS, In accordance with Redevelopment Dissolution Law, the Board of
4 Supervisors, as the legislative body of the successor agency, established by Ordinance 215-
5 12, the Successor Agency Commission for the Successor Agency to the Redevelopment
6 Agency of the City and County of San Francisco (the “Successor Agency,” also commonly
7 known as the Office of Community Investment and Infrastructure, or “OCII”), and delegated to
8 the Successor Agency Commission, among other powers, the authority to act in place of the
9 Redevelopment Agency to implement, modify, enforce and complete surviving redevelopment
10 projects, including, without limitation, three major integrated, multiphase revitalization projects,
11 which are the Mission Bay North and Mission Bay South Projects, the Hunters Point
12 Shipyard/Candlestick Point Project, and the Transbay Redevelopment Project (collectively,
13 the “Major Approved Development Projects”), and which are subject to enforceable
14 obligations requiring the implementation and completion of those projects. The Mission Bay
15 South Project encompasses the South Plan Area; and

16 WHEREAS, On January 24, 2014, DOF finally and conclusively determined that the
17 South OPA is an enforceable obligation pursuant to Health and Safety Code, Section
18 34177.5(i); and

19 WHEREAS, With respect to the Major Approved Development Projects, Ordinance
20 215-12 granted the Successor Agency Commission authority to approve all contracts and
21 actions related to the assets transferred to or retained by the Successor Agency, including,
22 without limitation, the authority to exercise land use, development and design approval
23 authority for the Major Approved Development Projects; and

24 WHEREAS, The authority of the Successor Agency Commission, with respect to the
25 Major Approved Development Projects includes the authority to approve amendments to

1 enforceable obligations as allowed under Redevelopment Dissolution Law, subject to any
2 required approval by the Oversight Board and DOF, consistent with applicable enforceable
3 obligations; and

4 WHEREAS, Ordinance 215-12 acknowledged that the Successor Agency has retained
5 enforceable obligations for the development of affordable housing, including Retained
6 Housing Obligations as defined therein, required to fulfill the Major Approved Development
7 Projects; and

8 WHEREAS, Ordinance 215-12 provides that the Successor Agency Commission shall
9 not modify the Major Approved Development Projects or the Retained Housing Obligations in
10 any manner that would decrease the commitment of property tax revenue for affordable
11 housing or materially change the obligations to provide affordable housing without obtaining
12 the approval of the Board of Supervisors, in its capacity as the legislative body of the
13 Successor Agency, and any required approval of the Oversight Board; and

14 WHEREAS, The Regents of the University of California (the "Regents") is under
15 contract to purchase Block Nos. 33 and 34 of the South Plan Area from Bay Jarcaranda No.
16 3334 LLC ("Current Owner"), and intends to expand the facilities of the University of California
17 at San Francisco (UCSF) in the South Plan Area by constructing a project on Block Nos. 33
18 and 34 that is consistent with the uses allowed under the South Plan and the allocation of
19 square footage for the site contemplated by the FSEIR. While the Regents has not identified
20 the final use of Block Nos. 33 and 34, the Regents is purchasing from the Current Owner the
21 right to construct 500,000 gross square feet of development and all parking spaces allocable
22 to Block Nos. 33 and 34 under the South Plan, South OPA, and related documents (which
23 may not exceed 1.0 parking spaces for each 1,000 square feet of gross floor area); and

24 WHEREAS, Under the State Constitution, the Regents is exempt from local land use
25 and redevelopment regulations and from local property taxes, where the Regents uses

1 property in furtherance of its educational purposes, as it intends to do with Block Nos. 33 and
2 34. However, the Regents is subject to third party contractual obligations that run with the
3 land, such as the South OPA; and

4 WHEREAS, Block Nos. 33 and 34 are subject to the South Plan and the South OPA.
5 Under Section 14.7(a) of the South OPA, prior to transfer of property to a tax exempt entity
6 such as the Regents, the tax exempt entity or the party transferring the property to the tax
7 exempt entity is required to enter into an agreement for payment in lieu of taxes ("PILOT
8 Agreement") equal to the full amount of the property taxes that would have been assessed
9 against the property notwithstanding such ownership by a tax exempt entity, or the written
10 consent of the City and the Successor Agency in their respective sole discretion; and

11 WHEREAS, To effectuate the provisions of Section 14.7 of the South OPA, FOCIL has
12 entered into and recorded a PILOT Agreement that is applicable to Block Nos. 33 and 34 and
13 binding on its successors-in-interest to the property that requires any transferee of the
14 property to obtain the consent of the Successor Agency and the City to transfer the property
15 to a tax-exempt entity free of the PILOT Agreement; and

16 WHEREAS, On April 29, 2014, after holding a duly noticed public hearing and
17 consistent with its authority under Redevelopment Dissolution Law and Ordinance 215-12, the
18 Successor Agency Commission conditionally approved, by Resolution No. 30-2014, a
19 Memorandum of Understanding (MOU) between OCII and the Regents, a fifth amendment to
20 the South OPA between OCII and FOCIL ("South OPA Amendment"), and a Release
21 Agreement and Covenant Regarding Assumption of the South OPA with the Regents and the
22 Current Owner ("Release Agreement"). The Successor Agency Resolution No. 30-2014 is on
23 file with the Clerk of the Board of Supervisors in File No. 140426, and incorporated in this
24 Resolution by this reference; and
25

1 WHEREAS, Under the terms of the MOU, OCII agreed to release the Regents from
2 certain obligations under the South Plan, South OPA and the PILOT Agreement and agreed
3 to release the Current Owner from the obligations under the PILOT Agreement, conditioned
4 on the Regents' agreement to, among other things, (a) make an affordable housing payment
5 ("Affordable Housing Payment") to OCII of \$10.2 million, which exceeds the tax increment that
6 OCII would have received from Block Nos. 33 and 34 if owned and developed by a taxable
7 entity; (b) enter into an agreement with FOCIL regarding infrastructure ("Infrastructure
8 Agreement") and make an infrastructure payment of \$21.9 million ("Infrastructure Payment")
9 to FOCIL, which is comparable to the tax increment that OCII would have received from Block
10 Nos. 33 and 34 for infrastructure purposes if owned and developed by a taxable entity; (c) pay
11 the special taxes under the community facility districts that the Block Nos. 33 and 34 are part
12 of; (d) abide by certain requirements under the South Plan in developing Block Nos. 33 and
13 34, including without limitation, agreeing to abide by the permitted land uses, height, setback,
14 bulk, and development intensity controls for the site in the Redevelopment Plan; and (e)
15 provide an agreement assuming obligations under the South OPA and related Plan
16 Documents and a tax allocation promissory note in connection with any future transfer of
17 Block Nos. 33 and 34 or use of Block Nos. 33 and 34 for purposes other than the Regents
18 educational mission. To implement certain of the terms of the MOU, FOCIL and OCII will
19 enter into the South OPA Amendment and OCII, the Regents and Current Owner will enter
20 into a Release Agreement; and

21 WHEREAS, Under the terms of the South OPA Amendment, OCII and FOCIL
22 agreed, among other things, (a) to suspend the requirement that a transferee assume all
23 of the transferor's obligations under the South OPA with respect to transferred property;
24 (b) that OCII will consent to the transfer of Block Nos. 33 and 34 by the Current Owner to
25 the Regents, subject to the requirements of the MOU being met; (c) to release the

1 Current Owner from certain obligations under the South OPA pertaining to Block Nos. 33
2 and 34; and (d) that FOCIL will apply the Infrastructure Payment toward the cost of
3 infrastructure that would otherwise be reimbursable from the Successor Agency from tax
4 increment, all conditioned on OCII's receipt of the Affordable Housing Payment and
5 FOCIL's receipt of the Infrastructure Payment and execution of the MOU and
6 Infrastructure Agreement by the applicable parties; and

7 WHEREAS, Under the terms of the Release Agreement, OCII agreed to, (a) suspend
8 the effects of the South Plan, the South OPA, and other Plan documents so long as and
9 to the extent that Block Nos. 33 and 34 are used in furtherance of UCSF's educational
10 mission; and (b) consent to the termination of the existing PILOT Agreement. The
11 Release Agreement provides that the South Plan, South OPA and other Plan Documents
12 will "spring back" into effect if Block Nos. 33 and 34 are not used for such purposes, and
13 at OCII's request the Regents will then provide an agreement assuming the obligations
14 under such documents together with a tax allocation promissory note and a new PILOT
15 Agreement. Because the City's consent is required under the South OPA for any
16 transfers that are not subject to a PILOT Agreement, the Successor Agency
17 Commission's approval of the Release Agreement was conditioned on approval by the
18 Board of Supervisors of the transfer to the Regents of Block Nos. 33 and 34; and

19 WHEREAS, The MOU, South OPA Amendments and Release Agreements together
20 provide that OCII will release the Regents from certain obligations under the South Plan,
21 South OPA and the PILOT Agreement and release the Current Owner from the obligations
22 under the PILOT Agreement, conditioned on the Regents' agreement to, among other things,
23 make an affordable housing payment ("Affordable Housing Payment") to OCII of \$10.2 million
24 designed to avoid any material change in the South OPA obligations to provide affordable
25 housing; and

1 WHEREAS, The South OPA Amendment and Release Agreement (the "Agreements")
2 will allow the acquisition by the Regents' of Block Nos. 33 and 34 to proceed. The acquisition
3 and subsequent development of Block Nos. 33 and 34 will provide significant public benefits
4 to OCII, the City, and other taxing agencies, including: (a) an Affordable Housing Payment
5 that exceeds the amount of tax increment that would have been collected if Block Nos. 33 and
6 34 were developed by a taxable owner; (b) immediately available funds for the production of
7 affordable housing and infrastructure, thereby accelerating the completion of development
8 under the South Plan, the South OPA, and related enforceable obligations; and (c) the likely
9 consolidation of UCSF's operations and relocation from remote locations in San Francisco,
10 thereby potentially returning these other properties to the City tax rolls and generating new
11 general fund revenues to the City and tax revenues for the other taxing agencies. The
12 Agreements do not propose any new capital expenditures by OCII or any change in OCII's
13 overall method of financing the redevelopment of the South Plan Area. Rather, the
14 Agreements will accelerate the completion of development under the South Plan and the
15 South OPA; and

16 WHEREAS, Since the consent of the Board of Supervisors is required by Section 14.7
17 of the South OPA to the transfer of property to tax exempt entities free of a PILOT agreement,
18 in a related action, the Board of Supervisors by Resolution No 169-14, on file with the
19 Clerk of the Board in File No. 140423, is asked to consent to the transfer of Block Nos. 33 and
20 34 to the Regents in accordance with the terms of the MOU, South OPA Amendment and
21 Release Agreement on file with the Clerk of the Board in File No. 140426; and

22 WHEREAS, Consent by the Board of Supervisors acting in its capacity as the
23 legislative body to the Successor Agency to the provisions of the MOU, South OPA
24 Amendments and Release Agreement as they relate to the Affordable Housing Payment in
25

1 lieu of a PILOT Agreement is an undertaking pursuant to and in furtherance of the South Plan
2 in conformance with CEQA Guidelines, Section 15180; and

3 WHEREAS, The Board of Supervisors held a public hearing on May 6, 2014, on the
4 provisions in the MOU, South OPA Amendments and Release Agreement as they relate to
5 the Affordable Housing Payment in lieu of a PILOT Agreement in the Board Chamber, Room
6 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, California. The hearing has been
7 closed. At such hearing the Board of Supervisors considered the report and
8 recommendations of the Successor Agency and the FSEIR, including the various addenda
9 thereto in accordance with CEQA, and the CEQA Findings, including without limitation the
10 statement of overriding considerations and Mission Bay MMRP that it previously adopted in
11 Resolution No. 854-98, and all evidence and testimony for and against the proposed transfer
12 of Block Nos. 33 and 34 to the Regents; now, therefore, be it

13 RESOLVED, That the Board has reviewed and considered the CEQA Findings,
14 including the statement of overriding considerations and the Mission Bay MMRP that it
15 previously adopted in Resolution No. 854-98, and hereby adopts these CEQA Findings in
16 support of the transfer of Block Nos. 33 and 34 to the Regents. The Board additionally finds
17 that: (a) the proposed agreements do not require major revisions in the FSEIR due to the
18 involvement of new significant environmental effects or a substantial increase in the severity
19 of previously identified significant effects; (b) no substantial changes have occurred with
20 respect to the circumstances under which the project analyzed in the FSEIR will be
21 undertaken that would require major revisions to the FSEIR due to the involvement of new
22 significant environmental effects, or a substantial increase in the severity of effects identified
23 in the FSEIR; and (c) no new information of substantial importance to the project analyzed in
24 the FSEIR has become available which would indicate that (1) the proposed agreements will
25 have significant effects not discussed in the FSEIR; (2) significant environmental effects will

1 be substantially more severe; (3) mitigation measures or alternatives found not feasible which
2 would reduce one or more significant effects have become feasible; or (4) mitigation
3 measures or alternatives which are considerably different from those in the FSEIR will
4 substantially reduce one or more significant effects on the environment; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors conditionally approves the
6 provisions in the MOU, South OPA Amendments and Release Agreement on file with the
7 Board in File No. 140426 as they relate to the Affordable Housing Payment in lieu of a PILOT
8 Agreement subject to approval of the South OPA Amendment by the Oversight Board and
9 DOF in accordance with the MOU, South OPA Amendment and Release Agreement.

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City and County of San Francisco

**Tails
Resolution**

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 140426

Date Passed: May 20, 2014

Resolution of the Board of Supervisors acting in its capacity as the legislative body to the Successor Agency to the former Redevelopment Agency of the City and County of San Francisco approving provisions in agreements as they relate to affordable housing obligations that would effectuate the transfer of Block Nos. 33 and 34 in the Mission Bay South Plan Area to the Regents of the University of California for the future development of up to 500,000 gross square feet in the Mission Bay South Redevelopment Project Area; and making environmental findings under the California Environmental Quality Act.

May 06, 2014 Board of Supervisors - CONTINUED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 13, 2014 Board of Supervisors - CONTINUED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 20, 2014 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 140426

I hereby certify that the foregoing Resolution was ADOPTED on 5/20/2014 by the Board of Supervisors of the City and County of San Francisco.

**Angela Calvillo
Clerk of the Board**

Mayor

05/28/2014

Date Approved