

MEMORANDUM OF UNDERSTANDING # _____
5M Project

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") dated as of June 1 2013, is made by and between the San Francisco Office of Economic and Workforce Development ("**OEWD**") and Forest City California Residential Development , Inc. ("**Forest City**") in connection with the proposed 5M project in San Francisco.

RECITALS

This MOU is made with regard to the following facts, intentions and understandings:

A. In January 2012, Forest City filed an environmental evaluation application (Case No. 2011.0409E) for a multi-phased, mixed-use development plan covering 22 parcels (approximately four acres) in the northeast portion of the block bounded by Mission, Fifth, Howard, and Sixth Streets (as described in the application, and as may be revised and updated from time to time, the "**5M Project**").

B. The 5M Project currently contemplates the construction of up to 890,000 square feet of new office space, 750 new dwelling units, 100,000 square feet of retail space, and 34,000 square feet of open space. The 5M Project also seeks to modify and improve circulation throughout the area, and add parking and loading facilities. The final scope of the 5M Project is not fixed at this stage in the public process. Accordingly, Forest City and OEWD understand and agree that the 5M Project may be refined and modified through the community and stakeholder review, environmental review, and planning processes.

C. Forest City intends to apply for the approval of a special use district and planning code and zoning map amendments, a Section 309 approval and to negotiate for other City agreements related to workforce and other public benefits. These agreements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies.

D. The parties anticipate that a special use district ordinance and supplementary planning and design standards documents will establish the review and design guidelines and requirements for the 5M Project, including the process by which the design of individual phases of the 5M Project are approved by the City.

E. OEWD is currently working with Forest City, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the 5M Project transaction and entitlement documents. This MOU is to provide a payment mechanism for Forest City to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the 5M Project.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and Forest City agree to the following:

1. Negotiations and Entitlement Process. OEWD, working in close consultation with the Planning Department, shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package (with design guidelines and requirements, project phasing, workforce requirements, transportation improvements, and other appendices) and any other transaction or approval documents (such documents shall be referred to as the "Project Documents"). OEWD shall consult with staff from affected City agencies, and such City agencies shall contribute personnel and staff time as may be directed by their respective directors or department heads. Following negotiations, all Project Documents shall be subject to review and approval of the Planning Commission, applicable City agencies, and the Board of Supervisors, each in their sole discretion.

2. Reimbursement of City Costs.

(a) Forest City shall reimburse OEWD for the actual costs incurred by the City for all work associated with the preparing, adopting or negotiating the Project Documents for the 5M Project. Eligible costs shall include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) actual costs related to public outreach and information; and (4) costs of staff time for the City agencies consulted in communication with the Project Documents. Eligible costs shall not include costs that are paid or reimbursed through planning department or other project applications. Before engaging any outside counsel or consultants, OEWD shall obtain Forest City's approval regarding the proposed engagement, which approval shall not be unreasonably withheld. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.

(b) OEWD will provide Forest City with monthly invoices. These invoices shall indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs incurred by the City and a brief non-confidential description of the work completed.

(c) Forest City will reimburse OEWD \$10,560 for the work performed by OEWD before the start of calendar year 2013. The parties anticipate that OEWD and other City staff time to be reimbursed under subsection (a)(1)-(4) above, shall not exceed \$265,000 based on following staffing (under a 40-hour work week): up to 10% of Director of Development's time and up to 30% of the Project Manager or Managers' time. See Appendix A for current billing rates.

(d) Forest City shall pay the invoiced amount within 45 calendar days of receipt from OEWD, provided that (i) that the maximum amount payable shall not exceed the budget established in subsection (c) above, as the same may be revised from time to time as provided in Section 14(a), (ii) in the event that City's costs and expenses exceed the amounts set forth in the

approved budget, then, notwithstanding anything in this MOU to the contrary, City shall have the right to suspend additional work on the 5M Project until the parties reach agreement on a revised budget and additional payments to be made by Forest City, including any amounts due by Forest City for work previously performed, and (iii) in the event the parties cannot reach agreement on a revised budget, or if Forest City fails to pay any amounts due and owing hereunder, then City shall have the right to terminate this MOU without cost or liability.

(e) If Forest City in good faith disputes any portion of an invoice, then within 60 calendar days of receipt of the invoice Forest City shall provide written notice of the amount disputed and the reason for the dispute, and the parties shall use good faith efforts to reconcile the dispute as soon as practicable. Forest City shall have no right to withhold the disputed amount. If any dispute is not resolved within 90 days of Forest City's notice to City of the dispute, Forest City may pursue all remedies at law or in equity to recover the disputed amount. Forest City shall have no obligation to reimburse City for any cost that is not invoiced to Forest City within forty-eight (48) months from the date the cost was incurred.

(f) If Forest City submits an application for a development agreement, the parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all City costs consistent with San Francisco Administrative Code Chapter 56.

4. City Limitation. Nothing in this MOU shall obligate OEWD or any other City department to expend funds or resources, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the 5M Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the 5M Project.

5. No Liability; Termination. The parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the 5M Project. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that Forest City believes that the City has violated any of the terms of this MOU, Forest City's sole remedy shall be to terminate this MOU. Forest City shall be responsible for the eligible costs incurred by any of the City agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either party shall have the right to terminate this MOU at any time and for any reason without cost or liability by providing notice of termination to the other party, provided any such termination shall not relieve Forest City of its reimbursement obligations with respect to work performed before the date of termination.

6. City Discretion. Forest City acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City agency, commission or department, and that the Project Documents and approvals are subject to the prior approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City agencies, as applicable), each in their sole and absolute discretion.

7. Assignment. Forest City may assign its rights and obligations under this MOU to an affiliate or subsidiary entity at any time with notice to but without the consent of OEWD, provided, if such affiliate or subsidiary fails to pay amounts due hereunder, then Forest City shall remain liable for such payment.

8. Environmental Review. The final project ultimately proposed by OEWD and Forest City shall be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project; and the 5M Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the 5M Project as required under CEQA has been completed. Accordingly, all references to the "5M Project" in this MOU shall mean the proposed project as revised and subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the 5M Project shall have the absolute discretion before approving that project to: (i) make such modifications to the 5M Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the 5M Project; (iv) balance the benefits of the 5M Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the 5M Project.

9. Notices. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD: Ken Rich
Director of Development
c/o Jon Lau, Project Manager
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: 415.554.5194
Email: ken.rich@sfgov.org

To Forest City: Alexa Arena
Senior Vice President
c/o Audrey Tendell, Project Manager
Forest City
875 Howard Street, Suite 330
San Francisco, CA 94103
Phone: 415-836-5980
Fax: 415-896-1213
Email: alexaarena@forestcity.net

Any notice of default must be sent by registered mail.

10. California Political Reform Act. The parties acknowledge that payments pursuant to this MOU from Forest City to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

11. Notification of Limitations on Contributions. Forest City acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Forest City acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

12. No Joint Liability. Nothing in this MOU shall be construed as giving a party the right or ability to bind other parties and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

13. Sunshine. Forest City understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 *et seq.*) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.

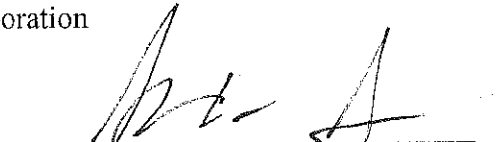
14. Miscellaneous. (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by all OEWD and Forest City. It shall remain in effect until terminated in writing by either party. (c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party. (d) This MOU shall be governed by the applicable laws of California. (e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth herein.

City and County of San Francisco, a
municipal corporation, acting by and through its
Office of Economic and Workforce Development

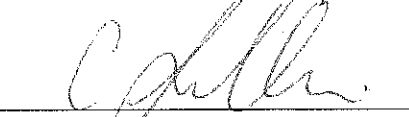
By: 
Todd Rufo, Director

Forest City California Residential Development, Inc., a California
corporation

By: 
Alexa Arena, Senior Vice President

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Charles Sullivan, Deputy City Attorney

Appendix A

OEWD / Other City Staff – Billing Rates

(Hourly rates as of April 1, 2013)

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|--------------------------|----------|
| Jon Lau | \$105.36 |
| Ken Rich | \$139.44 |
| Administrative Analyst | \$55.44 |
| Senior Workforce Analyst | \$97.68 |
| Rhonda Simmons | \$148.77 |
| Peter Albert (MTA) | \$92.60 |
| City attorney | \$365 |