

File No. 150007

Committee Item No. 1

Board Item No. 14

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use & Transportation

Date Mar. 16, 2015

Board of Supervisors Meeting

Date Mar. 24 2015

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date Mar. 12, 2015

Completed by: _____ Date _____

1 [Temporary Access and Use Licenses Extension - FOCIL-MB, LLC, and ARE-San Francisco
2 No. 15, LLC - Mission Bay South]

3 **Resolution retroactively approving exercise of options to extend two temporary access**
4 **and use licenses through July 31, 2015, for access, use, maintenance, and operation of**
5 **public infrastructure improvements at or near the intersection of Seventh Street and**
6 **Mission Bay Drive in the Mission Bay South area, and authorizing other official acts.**

7
8 WHEREAS, A portion of the land at or near the intersection of Seventh Street and
9 Mission Bay Drive is owned in fee by FOCIL-MB, LLC, a Delaware limited liability company
10 ("FOCIL"), and a portion of the land at or near such intersection is owned in fee by ARE-San
11 Francisco No. 15, LLC, a Delaware limited liability company ("ARE"); and

12 WHEREAS, The City and County of San Francisco ("City") entered into an agreement
13 with FOCIL, dated for reference purposes as of April 2, 2013, (the "FOCIL License"), a copy of
14 which is on file with the Clerk of the Board of Supervisors in File No.150007, pursuant to
15 which FOCIL granted to the City a non-exclusive temporary license for the use of certain
16 improvements and for access in, on and over certain real property owned by FOCIL located at
17 or near the intersection of the Seventh Street and Mission Bay Drive, for public pedestrian and
18 vehicular access by City and its officers, employees, agents, contractors, subcontractors, and
19 invitees, including, without limitation, the general public, for sidewalk, street and roadway
20 purposes; and

21 WHEREAS, The City also entered into an agreement with ARE, dated for reference
22 purposes as of April 2, 2013, (the "ARE License"), a copy of which is on file with the Clerk of
23 the Board of Supervisors in File No.150007, pursuant to which ARE granted to the City a non-
24 exclusive temporary license for access in, on and over certain real property owned by ARE
25 located at or near the intersection of the Seventh Street and Mission Bay Drive, for public

1 pedestrian and vehicular access by City and its officers, employees, agents, contractors,
2 subcontractors, and invitees, including, without limitation, the general public, for sidewalk,
3 street and roadway purposes; and

4 WHEREAS, The term of the FOCIL License and the ARE License were each a period
5 of one year, unless the applicable licensed improvements and licensed areas were accepted
6 by the City prior to such date, as described in the licenses, and each license provides that the
7 term of such license may be extended through action of the Board of Supervisors, as
8 described in the licenses; and

9 WHEREAS, In DPW Order No. 183201, dated December 23, 2014, a copy of which is
10 on file with the Clerk of the Board of Supervisors in File No.150007, the Director of the
11 Department of Public Works recommended that the Board of Supervisors act to extend the
12 FOCIL License and the ARE License through July 31, 2015, and designate the extension of
13 the licenses as retroactive to their respective scheduled expiration dates, with no other
14 changes to said licenses; and

15 WHEREAS, Such recommended actions are necessary to allow City access, use,
16 maintenance and operation of certain permanent City improvements that are ready to be
17 accepted by the City as described in the respective licenses; now, therefore, be it

18 RESOLVED, That this Board of Supervisors has reviewed and approves the Director of
19 the Department of Public Works' recommendation contained in Department of Public Works
20 Order No. 183,201, dated December 23, 2014; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors does hereby approve the
22 extension the FOCIL License and the ARE License through July 31, 2015, (unless terminated
23 earlier by acceptance of the public infrastructure improvements and underlying real property,
24 as provided in the licenses) and designates the extension of the licenses as retroactive to
25 their respective scheduled expiration dates; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes all action heretofore
2 taken by the officers of the City with respect to this Resolution and hereby approve, confirms
3 and ratifies such actions.
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Mission Bay Task Force



Edwin M. Lee
Mayor

Mohammed Nuru
Director

Jerry Sanguinetti
Manager

Street Use and Mapping
1155 Market St., 3rd floor
San Francisco, CA 94103
tel 415-554-5810

sfpublicworks.org
facebook.com/sfpublicworks
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December 28, 2014

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlet Place, Room 244
San Francisco, Ca 94102-4689

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
4014 DEC 29 PM 2:41
AK

Subject: Resolution-Mission Bay South-Extension of Two Temporary City Access and Use Licenses

Dear Ms. Calvillo:

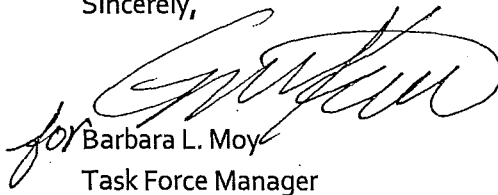
Attached please find an original and four copies of the Resolution for Board of Supervisors approval which will exercise the options to extend two licenses for access, use, maintenance and operation of public infrastructure improvements at or near the Seventh Street and Mission Bay Drive intersection.

Please find attached the original Resolution and five (5) sets of the accompanying documents:

1. Resolution-one (1) original and four (4) copies
2. DPW Order No. 183,201
3. Director of Real Estate Approval Letter
4. ARE-San Francisco No. 15, LLC License Agreement
5. FOCIL-MB, LLC License Agreement
6. Consent to extend license-ARE-San Francisco No. 15, LLC
7. Consent to extend license-FOCIL-MB, LLC

Please feel free to contact me for any assistance needed.

Sincerely,


for Barbara L. Moy
Task Force Manager

Phone: (415) 588-4050

Email: barbara.moy@sfdpw.org



Edwin M. Lee, Mayor
Mohammed Nuru, Director

GENERAL - DIRECTOR'S OFFICE

City Hall, Room 348

1 Dr. Carlton B. Goodlett Place, S.F., CA 94102

(415) 554-6920 ■ www.sfdpw.org



Barbara L. Moy

DPW Order No: 183201

Re: Recommendation for Board of Supervisors' approval of extensions of two licenses for access, use, maintenance and operation of public infrastructure improvements at the Seventh Street and Mission Bay Drive intersection and making such extensions retroactive to the date of their respective terminations.

WHEREAS, On November 2, 1998, the Board of Supervisors adopted the Mission Bay South Redevelopment Plan by its Ordinance No. 335-98; and

WHEREAS, On November 16, 1998, the Redevelopment Agency of the City and County of San Francisco (the "Redevelopment Agency") and Catellus Development Corporation ("Catellus") entered into the Mission Bay South Owner Participation Agreement; and

WHEREAS, On June 1, 2001, the Redevelopment Agency and Catellus entered into the Mission Bay South Acquisition Agreement; and

WHEREAS, On December 1, 2003, Catellus merged into Catellus Operating Limited Partnership, a Delaware limited partnership ("COLP"), and on December 31, 2003 COLP, as successor by merger to Catellus contributed most of its interests in Mission Bay to Catellus Land and Development Corporation ("CLDC") a Delaware Corporation, thereby making CLDC a wholly owned subsidiary of COLP following the merger, including all rights and obligations under the Project Permit and the Permit to Enter related to the Project; and

WHEREAS, On September 21, 2004, the Department of Public Works issued Permit No. 04IE-600 to construct the Phase 1 "Seventh Street and Common Intersection Improvements"; and

WHEREAS, On May 17, 2005, the Department of Public Works issued Permit No. 05IE-0285 to construct the Phase 2 "Seventh Street and Common Intersection Improvements"; and

WHEREAS, The Phase 1 and Phase 2 Seventh Street and Common Intersection Improvements (the "Improvements") are located on certain property depicted on Exhibit A hereto (the "Improvement Area"); and

WHEREAS, That portion of the Improvement Area depicted on Exhibit B (the "FOCIL License Area") is owned in fee by FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL"); and



WHEREAS, That portion of the Improvement Area shown depicted on Exhibit C (the "ARE License Area") is owned in fee by ARE-San Francisco No. 15, LLC, a Delaware limited liability company ("ARE"); and

WHEREAS, FOCIL, or its predecessor Catellus Development Company, or an affiliate or successor thereto, and their respective agents, have constructed the Improvements; and

WHEREAS, On May 21, 2007, the Department of Public Works issued a notice determining that the 7th Street and Mission Bay Drive Intersection-Phase 1 Improvements are substantially complete pursuant to the Improvement Permit #04IE-0600 and are ready for their intended use; and

WHEREAS, On January 15, 2008, the Department of Public Works issued a notice determining that the 7th Street and Mission Bay Drive Intersection-Phase 2 Improvements are substantially complete pursuant to the Improvement Permit #05IE-0285 and are ready for their intended use; and

WHEREAS, In a letter (attached as Exhibit D) dated May 16, 2008 the City Planning Department determined that the acceptance of the 7th and Mission Bay Drive at grade intersection Public Infrastructure Improvements are consistent with the General Plan consistency findings of Case No. 2008.0490R, the Eight Priority Policies of Planning Code Section 101.1 and the contemplated actions do not trigger the need for subsequent environmental review pursuant to the California Environmental Quality Act (CEQA) (California Public Resources Code Sections 21000 et seq.); and

WHEREAS, In a letter (attached as Exhibit E) dated May 27, 2008, the Redevelopment Agency found the acceptance of the Mission Bay 7th Street Intersection Phases 1 and Phase 2 Public Improvements and other actions are "consistent with the Mission Bay South Redevelopment Plan and Plan Documents, described therein, and recommends Board of Supervisors approval; and

WHEREAS, City and FOCIL entered into that certain "Agreement (Temporary City Access and Use — Portion of Seventh Street and Mission Bay Drive Intersection, Permanent Improvements)" dated for reference purposes as April 2, 2013 (the "FOCIL License"), pursuant to which FOCIL granted to the City a non-exclusive temporary license for the use of the Improvements and for access in, on and over the FOCIL License Area, for public pedestrian and vehicular access by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes for a term of one (1) year (unless such time is extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with FOCIL's consent, which shall not be unreasonably withheld), or, if earlier, with respect to the Improvements, City's acceptance (by action of the Board of Supervisors), of the Improvements (or a portion thereof) for public utility and public street purposes, as applicable, for public use, responsibility and maintenance and, with respect to the use of the FOCIL License Area, the date of FOCIL's grant and City's acceptance of the fee interest in the FOCIL License Area; and



WHEREAS, City and ARE entered into that certain "Agreement (Temporary City Access and Use — ARE Portion of Seventh Street and Mission Bay Drive Intersection)" dated for reference purposes as April 2, 2013 (the "ARE License") pursuant to which ARE granted to the City a non-exclusive temporary license for access in, on and over the ARE License Area, for public pedestrian and vehicular access by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes for a term) of one (1) year (unless such time is extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with ARE's consent, which shall not be unreasonably withheld), or, if earlier, the date of ARE's grant and City's acceptance of the fee interest in the ARE License Area; and

WHEREAS, in a letter from John Updike, Director of Property, dated December 5, 2014, the Real Estate Division found that the terms and conditions of the FOCIL License and the ARE License continue to be acceptable.

NOW THEREFORE BE IT ORDERED THAT,

With respect to the FOCIL License:

I hereby recommend the Board of Supervisors approve an extension of the FOCIL License through July 31, 2015 (unless such time is further extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with FOCIL's consent, which shall not be unreasonably withheld), or, if earlier, with respect to the Improvements, City's acceptance (by action of the Board of Supervisors), of the Improvements (or a portion thereof) for public utility and public street purposes, as applicable, for public use, responsibility and maintenance and, with respect to the use of the FOCIL License Area, the date of FOCIL's grant and City's acceptance of the fee interest in the FOCIL License Area, and that the Board of Supervisors designate the extension of the FOCIL License as retroactive to its scheduled expiration date, with no other changes thereto.

With respect to the ARE License:

I hereby recommend the Board of Supervisors approve an extension of the ARE License through July 31, 2015 (unless such time is further extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with ARE's consent, which shall not be unreasonably withheld), or, if earlier, the date of ARE's grant and City's acceptance of the fee interest in the ARE License Area, and that the Board of Supervisors designate the extension of the ARE License as retroactive to its scheduled expiration date, with no other changes thereto.



12/23/2014

X Mohammed Nuru

Nuru, Mohammed
Approver 1





Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator



John Updike
Director of Real Estate

December 5, 2014

Mohammed Nuru
Department of Public Works – Director
City and County of San Francisco
City Hall, Room 348
1 Carlton B. Goodlett Place
San Francisco, VA 94102

RE: Extension of License Agreements at Intersection of Seventh Street and Mission Bay Drive

Dear Mohammad:

This letter confirms my approval of the terms and conditions related to a proposed extension of the terms of the following license agreements through July 31, 2015:

Agreement (Temporary City Access and Use — Portion of Seventh Street and Mission Bay Drive Intersection, Permanent Improvements), between FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL") and the City and County of San Francisco, dated for reference purposes as of April 2, 2013, pursuant to which FOCIL granted to the City a non-exclusive temporary license for the use of certain improvements and for access in, on and over certain real property located at or near the intersection of the Seventh Street and Mission Bay Drive, for public pedestrian and vehicular access by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes; and

Agreement (Temporary City Access and Use — ARE Portion of Seventh Street and Mission Bay Drive Intersection), ARE-San Francisco No. 15, LLC, a Delaware limited liability company ("ARE"), dated for reference purposes as of April 2, 2013, pursuant to which ARE granted to the City a non-exclusive temporary license for access in, on and over certain real property located at or near the intersection of the Seventh Street and Mission Bay Drive, for public pedestrian and vehicular access by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes.

The terms and conditions of such licenses continue to be acceptable through the proposed extension term.

Respectfully,

John Updike
Director of Real Estate

2014 NOV -4 PM 1:27

COPY

**CONSENT TO EXTENSION OF
AGREEMENT**

**(Temporary City Access and Use —
Portion of Seventh Street and Mission Bay Drive Intersection;
Permanent Street and Utility Improvements)**

This **CONSENT TO EXTENSION OF AGREEMENT (Temporary City Access and Use — Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements)** (this "Consent") is made effective as of August 1, 2014 (the "Effective Date"), by FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL").

RECITALS

A. FOCIL and the City and County of San Francisco, a municipal corporation ("City"), have entered into that certain "Agreement (Temporary City Access and Use — Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements)" (the "Agreement") dated as of April 2, 2013, whereby FOCIL granted to City a non-exclusive temporary license for the use, maintenance and repair of the "Improvements" (as defined in the Agreement) and for access in, on and over the "License Area" (as defined in the Agreement) for public pedestrian and vehicular access, ingress and egress and for use of utility facilities by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes and utility purposes ("Temporary License") for the term specified in Section 4 of the Agreement, on the terms and conditions set forth in the Agreement. Unless otherwise defined herein, all capitalized words and terms used in this Consent shall have the meanings given to them in the Agreement.

B. Section 4 of the Agreement provides that the term of the Temporary License shall continue until the earlier of (A) one (1) year from the Commencement Date (unless such time is extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with FOCIL's consent, which shall not be unreasonably withheld), or (B) City's acceptance of dedication, by action of the Board of Supervisors, of the Improvements (or a portion thereof) for public utility and public street purposes, as applicable, for public use, responsibility and maintenance. Unless otherwise extended, the term of the Agreement was scheduled to expire on April 1, 2014.

C. City's Director of Public Works has recommended or will recommend that City's Board of Supervisors adopt a Resolution extending the term of the Temporary License, and FOCIL is willing to consent to such extension, on the terms and conditions set forth in this Consent.

NOW THEREFORE, FOCIL hereby consents to the extension of the term of the Temporary License on the following terms and conditions:

1. Consent. FOCIL hereby consents to the extension of the Temporary License as set forth in the Agreement, retroactively from April 1, 2014 to June 30, 2015 (except to the extent it expires earlier in accordance with the provisions of clause (B) of the first sentence of Section 4 of the Agreement).

2. Miscellaneous.

(a) No Further Extension. FOCIL consents to the extension of the Temporary License only to June 30, 2015. Any further extension of the Temporary License shall require FOCIL's written consent, which shall not be unreasonably withheld.

(b) Ratification. Except as modified by this Consent, all of the terms, conditions, and provisions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed.

(c) Conflicts. To the extent the terms of the Agreement and this Consent are inconsistent, the terms of this Consent shall control.

(d) Entire Agreement. This Consent contains the entire agreement of FOCIL with respect to the subject matter hereof.

(Signature appears on following page)

IN WITNESS WHEREOF, FOCIL has executed this Consent as of the date set forth below to be effective upon the Effective Date.

FOCIL:

FOCIL-MB, LLC
a Delaware limited liability company

By: FARALLON CAPITAL
MANAGEMENT, L.L.C.,
a Delaware limited liability company

Its: Manager

By: 

Name: Richard B. Fried
Managing Member

Title: _____

Date: 10/25/14



2014 NOV -4 PM 2:27
**CONSENT TO EXTENSION OF
AGREEMENT**

**(Temporary City Access and Use —
ARE Portion of Seventh Street and Mission Bay Drive Intersection;
Permanent Street and Utility Improvements)**

This **CONSENT TO EXTENSION OF AGREEMENT (Temporary City Access and Use — ARE Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements)** (this "Consent") is made effective as of August 1, 2014 (the "Effective Date"), by ARE-San Francisco No 15, LLC, a Delaware limited liability company ("ARE").

RECITALS

A. ARE and the City and County of San Francisco, a municipal corporation ("City"), have entered into that certain "Agreement (Temporary City Access and Use — ARE Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements)" (the "Agreement") dated as of April 2, 2013, whereby ARE granted to City a non-exclusive temporary license for the use, maintenance and repair of the "License Area Improvements" (as defined in the Agreement), to the extent, if any, of ARE's interest therein, and for access in, on and over the "License Area" (as defined in the Agreement) for public pedestrian and vehicular access, ingress and egress and for use of utility facilities by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes and utility purposes ("Temporary License") for the term specified in Section 4 of the Agreement, on the terms and conditions set forth in the Agreement. Unless otherwise defined herein, all capitalized words and terms used in this Consent shall have the meanings given to them in the Agreement.

B. Section 4 of the Agreement provides that the term of the Temporary License shall continue until the earlier of (A) one (1) year from the Commencement Date (unless such time is extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with ARE's consent, which shall not be unreasonably withheld), or (B) with respect to the license to use the License Area Improvements, City's acceptance of dedication, by action of the Board of Supervisors, of the License Area Improvements (or a portion thereof) for public utility and public street purposes, as applicable, for public use, responsibility and maintenance, and with respect to the license to use the License Area, the date of ARE's grant and City's acceptance of the fee interest in the License Area. Unless otherwise extended, the term of the Agreement was scheduled to expire on April 1, 2014.

C. City's Director of Public Works has recommended or will recommend that City's Board of Supervisors adopt a Resolution extending the term of the Temporary License, and ARE is willing to consent to such extension, on the terms and conditions set forth in this Consent.

NOW THEREFORE, ARE hereby consents to the extension of the term of the Temporary License on the following terms and conditions:


IN WITNESS WHEREOF, ARE has executed this Consent as of the date set forth below to be effective upon the Effective Date.

ARE:

ARE-SAN FRANCISCO NO. 15, LLC,
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P.,
a Delaware limited partnership, Managing Member

By: ARE-QRS Corp.,
a Maryland corporation, General Partner

By: 
Print Name: Eric S. Johnson
Print Title: Vice President
Print Title: Real Estate Legal Affairs
Dated: 10/8/14

**NOTE: THIS AGREEMENT COVERS THE TEMPORARY USE OF CERTAIN
IMPROVEMENTS PENDING ACCEPTANCE BY CITY.**

**AGREEMENT
(Temporary City Access and Use—
Portion of Seventh Street and Mission Bay Drive Intersection;
Permanent Street and Utility Improvements)**

This Agreement (Temporary City Access and Use — Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements) ("Agreement") is made by and between FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL"), and the City and County of San Francisco, a municipal corporation, acting by and through its Director of Property ("City"), and is dated for reference purposes only as of APRIL 2, 2013 (the "Execution Date") with reference to the following facts:

A. FOCIL, or its predecessor Catellus Development Company, or an affiliate or successor thereto, and their respective agents, have constructed, is constructing, or caused or is causing to be constructed certain permanent right-of-way improvements and associated improvements or facilities, including, without limitation, pavement, curbs, sidewalk, slopes, utility facilities and traffic signals and related conduits, conductors, fasteners and other appurtenances, described as the Seventh Street and Common Intersection Improvements (Phase 1) in Street Improvement Permit #041E-600 dated September 21, 2004, and described in the Seventh Street and Mission Bay Blvd Intersection (Phase 2) Improvement Permit #051E-0285 dated May 17, 2005, including any amendments or supplements thereto (collectively, the "SIP"). The improvements described in the SIP (the "Improvements") are located on certain property (the "Improvement Area") depicted on Exhibit A hereto.

B. That portion of Improvement Area depicted on Exhibit B hereto (the "License Area") is owned in fee by City and is leased to FOCIL under that Certain Master Lease recorded on July 29, 1999 as Document No. 99-G622218 in Reel H429, Image 570, Official Records of the City and County of San Francisco. That portion of the Improvement Area depicted on Exhibit C hereto (the "ARE Property") is owned in fee by ARE-San Francisco No. 15, LLC, a Delaware limited liability company ("ARE"). ARE has offered the ARE Property to the City and the City has not yet accepted such offer. Portions of the License Area are or may be subject to an easement, franchise or other rights in favor of the Peninsula Corridor Joint Powers Board, a joint powers agency formed pursuant to California law ("JPB"). Certain improvements in the License Area, not part of the defined "Improvements", are owned by the JPB.

C. This Agreement addresses the temporary use of and access to the Improvements and a temporary license in the License Area. This Agreement does not grant any rights with respect to real property other than the License Area or improvements other than the Improvements.

D. In connection with the execution of this Agreement, it is anticipated that the following agreements (collectively, the "Ancillary Agreements") related to, among other things,

the use and maintenance of the Improvements and the License Area have been or will be entered into by the parties and others: (i) a "Letter of Understanding Regarding the Opening of Mission Bay Drive Crossing" dated October 1, 2009, by and among FOCIL, the City's Director of Real Estate, the Director of City's Department of Public Works, the Executive Director of the San Francisco Port Commission, and the CEO of JPB; (ii) a "Railroad Maintenance Agreement" by and between JPB and the City (the "City-JPB Use Agreement"); and (iii) an "Agreement (Temporary City Access and Use — ARE Portion of Seventh Street and Mission Bay Drive Intersection)" by and between City and ARE (the "ARE License").

E. The Improvements are substantially complete and the Director of City's Department of Public Works (the "Director") has issued a final completeness determination with regard to the Improvements, subject to approval by the California Public Utilities Commission. FOCIL and City desire to make the Improvements in the Improvement Area available for public pedestrian and vehicular access prior to the Acceptance of the Improvements by City (as defined in Section 4 below), subject to the terms and conditions set forth herein. Accordingly, City and FOCIL have entered into this Agreement to provide a non-exclusive temporary license to City for use of the Improvements and for access in, on and over the License Area for sidewalk, street and roadway and utility purposes prior to Acceptance, on the terms and conditions set forth herein.

F. Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the Mission Bay South Redevelopment Plan (the "Plan"), and the "Plan Documents", as described therein.

G. All the terms, obligations and responsibilities set forth herein shall commence as of the Commencement Date.

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

1. Grant of Temporary License. Subject to the provisions of this Agreement, FOCIL hereby grants to City a nonexclusive temporary license for the use, maintenance and repair of the Improvements and for access in, on and over the License Area, for public pedestrian and vehicular access, ingress and egress and for use of utility facilities by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes and utility purposes ("Temporary License") for the term specified in Section 4 below.

2. Limitation on Use. Without limiting City's rights under Section 5 below, City acknowledges that the Temporary License herein granted is nonexclusive and is effective only insofar as the rights of FOCIL in the License Area are concerned, and City shall obtain any further permission necessary because of any other existing rights affecting the License Area or Improvement Area. City agrees that the use of the Temporary License granted herein shall not (a) unreasonably impede work required to be performed by a private or public utility company to repair or maintain any functioning, in-place utility facility located in, on or under the License Area or to install new utility facilities in the License Area, subject to obtaining any required permits or other authorizations, provided that FOCIL shall use reasonable efforts to attempt to

cause the utility to perform such work in a manner that will not unreasonably interfere with City's use of the Improvements, at no additional cost to FOCIL, (b) unreasonably impede work by FOCIL or its agents, contractors, subcontractors or employees as may reasonably be required for the construction, installation, maintenance, repair or replacement of Improvements in, on, under or above the Improvement Area to complete the Improvements and to perform warranty work consistent with FOCIL's rights and obligations for the Improvements under the SIP, and any authorized amendments thereto, without incurring additional costs or delay, or (c) unreasonably impede the use of the License Area or applicable portions thereof, as a roadway by FOCIL or its invitees in a manner consistent with the Temporary License. FOCIL acknowledges that City's use of the Improvements and License Area shall be subject to certain terms and conditions of the City-JPB Use Agreement, and City's compliance with the requirements thereof shall not be considered an unreasonable impediment to the work or use of others under the provisions of the immediately preceding sentence.

3. DPW Notification and Approval Requirements. The Director has the right to approve the location of any public or private improvements, facilities, or utilities to be located on, in or under the License Area. In connection with any approval provided by the Director under this Section, the Director shall make reasonable efforts, at no additional cost to City, to attempt to coordinate and consolidate any work to be performed by City or any licensee or permittee with FOCIL to minimize the disruption and interference with the development or use of the License Area or development of, and existing uses of, immediately adjacent properties. A request for approval under this Section ("**Utility Placement Approval Request**") shall be made to the Director in writing, delivered by messenger or certified mail, and shall, where applicable, include the contact information for the utility company and a plat showing the proposed location for placement of the utility lines on, in or under the License Area or adjoining properties. The Director shall have ten (10) days from the date of delivery of the Utility Placement Approval Request to approve or disapprove such request. The Utility Placement Approval Request shall be deemed approved if the Director or the Director's designee does not make a response within the ten (10) day approval period. All Utility Placement Approval Requests made to the Director or the Director's designee shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following words: "**UTILITY PLACEMENT APPROVAL REQUEST FOR MISSION BAY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED.**" The parties acknowledge that, in addition, any private or public utility provider subject to the approval requirements of this Section may also be subject to additional requirements imposed by City, including that such utility provider relocate its utility facilities at its sole cost and expense as may be reasonably required by City in the exercise of City's rights under this Agreement, City ordinances or other applicable law.

4. Term of License. The term of the Temporary License shall commence as of the later of (i) the Execution Date or (ii) the date on which the ARE License is fully executed and delivered (the "**Commencement Date**"), and shall continue until the earlier of (A) one (1) year from the Commencement Date (unless such time is extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with FOCIL's consent, which shall not be unreasonably withheld), or (B) City's acceptance of dedication by action of the Board of Supervisors (the "**Acceptance**") of the Improvements (or a portion thereof) for public utility and public street purposes, as applicable, for public use, responsibility and maintenance. In the event

City accepts a portion of the Improvements, then this Agreement shall terminate only as to that portion on the date the Acceptance is effective. FOCIL shall cooperate with City's attempts to receive the ARE License, however neither FOCIL nor City makes any representation or warranty regarding when, or if, the ARE License or other Ancillary Agreements shall be executed and delivered.

5. Condition of the License Area.

(a) As-Is. FOCIL makes no representations or warranties whatsoever, under this Agreement with respect to the current physical condition of the License Area and FOCIL shall have no responsibility under this Agreement with respect thereto (except as otherwise specifically set forth herein), and the use of the Temporary License granted herein shall be with the License Area in its "as is" physical condition, except as otherwise specifically provided herein. Except as provided in the SIP or in the Plan or Plan Documents, City hereby waives any and all claims against FOCIL arising from, out of or in connection with the suitability of the physical conditions of the License Area for the uses permitted under Section 1 above. However, except as provided in Section 2, FOCIL shall not take any action that would unreasonably impair the ability of City to use the Temporary License herein granted without City's consent. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve FOCIL or City of any of their respective responsibilities with regard to the physical condition of the License Area (including without limitation, responsibilities with regard to environmental investigation and remediation) set forth in any other document, instrument or agreement by and among the parties.

(b) Maintenance by City. In consideration of FOCIL's agreement in accordance with the terms of this Agreement to allow use and access in, on or over the License Area prior to Acceptance of the Improvements, City agrees to operate and maintain the Improvements in good working order and condition consistent with City's standards for the operation and maintenance of other similar facilities. Except as specifically herein provided, FOCIL and City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description to the Improvements. In the event City, in the exercise of its rights granted herein, is required to excavate or otherwise remove or repair all or a portion of the pavement, sidewalk or landscaping improvements associated with or adjacent to the Improvements, City agrees to return such improvements to their former condition. Except in the event this Agreement terminates upon Acceptance of the Improvements, upon termination of the Temporary License, or any portion thereof, City shall surrender use and possession of the Improvements and the License Area, or applicable portion thereof, free and clear of any liens or encumbrances relating to or arising in connection with the use of the Improvements by reason of the Temporary License. City, and its agents, contractors, licensees and invitees shall at all times keep the Improvements and the License Area free and clear of liens, claims, security interests or encumbrances in their favor or in favor of any contractor, subcontractor, material supplier or other person or entity making a claim by reason of having provided labor, materials and equipment relating to the use of the Improvements.

(c) Warranty. Nothing in this Agreement, including, without limitation, Sections 5(a) and 5(b) above, shall be construed in any way to alter, amend or otherwise relieve FOCIL of its warranty responsibilities under the SIP with respect to the Improvements, except FOCIL's warranty responsibilities are waived for work that is performed or caused to be

performed by the City under Sections 5(a) and 5(b) above. FOCIL shall not perform any warranty or any other work under the SIP or otherwise until any required permits have been obtained for the work involved, including all necessary rights, permission, easements, permits to enter, or licenses for construction access.

6. Indemnification.

(a) Indemnity. City shall indemnify, defend and hold FOCIL, Mission Bay Development Group, LLC, and their respective officers, directors, shareholders, members, employees, agents, successors and assigns (hereinafter collectively called "**Indemnified Parties**") harmless from all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation reasonable attorneys fees) (collectively, "**Indemnified Claims**"), resulting from (i) injury or the death of any person (including without limitation any Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by an Indemnified Party), which injury, death or physical damage arises out of or is connected with City's (or City's officers, employees, agents, contractors, licensees, or invitees, including, without limitation, the general public) use or occupancy of any of the Improvements or the License Area under the authority of the Temporary License, except to the extent that such Indemnified Claims are caused by the negligence or intentional wrongful acts or omissions of any Indemnified Party, and (ii) the use, generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials (as that term is defined herein below) on or about the Improvements or the License Area by City, its agents, employees, contractors, invitees or licensees in connection with the exercise of City's rights under the Temporary License, except that City will not indemnify any specific Indemnified Party to the extent that such Indemnified Claims are caused by the negligence or intentional wrongful acts or omissions of that Indemnified Party with respect to the generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials. For purposes of this Section 6, the term "**Hazardous Materials**" shall mean any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

(b) Notice. FOCIL agrees to give prompt notice to City with respect to any Indemnified Claims initiated or threatened against FOCIL, at the address for notices to City set forth herein, and in no event later than the earlier of (i) ten (10) business days after valid service of process as to any suit, or (ii) fifteen (15) business days after receiving written notification of the filing of such suit or the assertion of a claim, which FOCIL has reason to believe is likely to give rise to an Indemnified Claim hereunder. If notice is not given to City within the time frames required in this Section, then City's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify City shall not affect the rights of FOCIL or the obligations of City hereunder unless City is prejudiced by such failure, and then only to the extent of such prejudice. City shall, at its option but subject to the reasonable consent and approval of FOCIL, be entitled to control the defense, compromise or settlement of any such

matter through counsel of City's own choice; provided, however, that in all cases FOCIL shall be entitled to participate in such defense, compromise, or settlement at its own expense.

7. Litigation Expenses.

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees and expert fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 7 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this Section 7 shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Fee Award for City Attorney's, FOCIL's In-House Counsel. For purposes of this Agreement, reasonable fees of attorneys of City's Office of City Attorney and any in-house counsel of FOCIL shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's or FOCIL's in-house counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney, or, in the case of FOCIL's in-house counsel, as employed by the outside counsel for FOCIL.

8. Alternative Dispute Resolution. FOCIL and City, by mutual agreement, may submit any factual or other (to the extent City is not prohibited by law or otherwise from doing so) dispute arising under this Agreement to non-binding arbitration, mediation or other alternate dispute resolution mechanism ("ADR") of non-judicial dispute resolution. The party requesting ADR shall give written notice of its request, specifying the requested ADR procedure, to the other parties, who shall notify the requesting parties of its agreement or refusal to proceed within a reasonable time after receipt of the requesting notice. If the parties agree to proceed, they shall select a mutually acceptable individual, with qualifications appropriate to the subject matter of the dispute, to conduct the designated ADR, or, if the parties cannot agree on such individual, they shall submit the dispute for the applicable ADR to a commercial ADR service. In all events, the proceedings shall be conducted only in a manner acceptable to both parties. The parties may enter into operating memoranda from time to time to establish procedures for the initiation and conduct of such ADR mechanisms.

9. Time. Time is of the essence of this Agreement and each and every part hereof.

10. Covenant and Environmental Restriction on License Area. This Agreement and the license contained herein shall be subject to, and in the use and enjoyment of the Improvements and the License Area under this Agreement City shall at all times comply with, all

of the terms, covenants and conditions set forth in, and/or imposed as a result of that certain Covenant and Environmental Restriction on Property ("**Covenant**") made by (or to be made by) FOCIL, for the benefit of (and in the form previously approved by) the California Regional Water Quality Control Board for the San Francisco Bay Region ("**Board**"), in order to satisfy one or more conditions imposed by resolution of the Board dated May 20, 1998, to the issuance of a Certificate of Completion under Section 25264 of the California Health and Safety Code with respect to some or all of the License Area and other property. In addition, as required by the Covenant, in the use and enjoyment of the Improvements and the License Area under this Agreement, City shall: (i) comply with the Risk Management Plan ("**RMP**") approved by the Board to the extent applicable to such area, (ii) obligate other entities with which it contracts for construction, property maintenance or other activities which may disturb soil or groundwater, to comply with the applicable provisions of the RMP, and (iii) not interfere with (and ensure that entities with which it contracts do not interfere with) FOCIL 's or its successors or assigns compliance with the RMP.

11. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by FOCIL and City, or the successors and assigns of each, subject to the provisions of Section 16 hereof.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

14. References: Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

15. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number listed below or such other numbers as may be provided from time to time.

FOCIL: FOCIL-MB, LLC
c/o Mission Bay Development Group, LLC
410 China Basin Street
San Francisco, California 94158
Attention: Philip Owen and Legal Department
Telefacsimile: (415) 355-6666

With copies to: FOCIL-MB, LLC
c/o Farallon Capital Management, LLC
One Maritime Plaza, Suite 2100
San Francisco, California 94111
Attention: Richard B. Fried and Joshua Dapice
Telefacsimile: (415) 956-8852

And to: Joshua Steinhauer, Esq.
Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213
Telefacsimile: (415) 989-1663

City: Director of Public Works
City and County of San Francisco
c/o Grace Kwak, Project Manager
Mission Bay Project
30 Van Ness Avenue, Suite 4200
San Francisco, CA 94102
Telefacsimile: (415) 581-2569

With copies to: City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Real Estate/Finance Team
Telefacsimile: (415) 554-4757

And to: Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Telefacsimile: (415) 554-6177

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A person may not give official or

binding notice by telefacsimile or email. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, or a telefacsimile copy of the notice.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (except as otherwise specifically provided in Section 18 below), including without limitation all grantees and other successors-in-interest of FOCIL in any of the property on which or in which the Improvements are located.

17. Representations and Warranties. FOCIL represents, warrants and covenants to City the following:

(a) Good Standing. FOCIL is a limited liability company validly existing and in good standing under the laws of the State of Delaware.

(b) Authority. FOCIL has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of FOCIL and no other action on the part of FOCIL is necessary to authorize the execution and delivery of this Agreement.

18. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of FOCIL and City and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except FOCIL and City. Nothing herein shall be deemed a dedication of any portion of the Improvements or License Area to or for the benefit of the general public. The license herein granted is in gross and for the personal benefit solely of City.

19. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

20. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the license which is the subject matter of this Agreement. This Agreement shall control in the event of any inconsistency between this Agreement and any other agreement in connection with performance of the Temporary License and the rights and obligations of the parties with respect thereto.

21. Compliance With Laws/Agreements. City, and City's agents, contractors, licensees or invitees, at its and their expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Improvements, now in force or hereafter adopted, with respect

to the use by City of the Improvements under the authority of the license herein granted. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve FOCIL or City of any of their respective responsibilities with regard to completion and Acceptance and acquisition of the Improvements set forth in any other document, instrument or agreement by and among the parties, including, without limitation, the Mission Bay South Interagency Cooperation Agreement.

22. Default. City's, and City's agents, contractors, licensees or invitees, failure to perform any covenant or obligation of City hereunder and to cure such non-performance within thirty (30) days of written notice by FOCIL shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion. Upon such default FOCIL shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easements herein granted.

23. Burden on Land. The Temporary License created by this Agreement shall be a burden on the License Area, which burden shall run with the land and shall be binding on any future owners and encumbrances of the License Area or any part thereof and their successors and assigns.

24. Insurance: Waiver of Subrogation.

(a) Self-Insurance. It is acknowledged by the parties hereto that this Agreement does not require City to carry liability insurance with respect to its use of the Improvements or the License Area herein granted solely because it is the policy of City to self-insure as to the matters covered by such insurance. City hereby agrees that if to any extent said policy changes so that City does use liability insurance, it will reasonably negotiate with FOCIL to provide liability insurance coverage for the use of said License Area to the extent such new policy allows and in such event the terms and provisions of Section 24(b) shall also be applicable.

(b) Waiver. The terms and provisions of this Section 24(b) shall be inoperative unless and until City's policy of self-insurance changes and City is procuring liability insurance covering its use of the licenses granted herein. If City does obtain liability insurance, each party, for itself and, to the extent it is legally permissible for it to do so and without affecting the coverage provided by insurance maintained by such party, on behalf of its insurer hereby releases and waives any right to recover against the other party from any liability for (i) damages for injury to or death of persons, (ii) any loss or damage to property, (iii) any loss or damage to buildings or other improvements, or (iv) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under (i) through (iv) are covered (and only to the extent of such coverage) by insurance actually carried by each party irrespective of any negligence on the part of such party which may have contributed to such loss or damage. The provisions of this paragraph (b) are intended to restrict each party (as permitted by law) to recovery for loss or damage against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of the other party, any rights and/or claims that might give rise to a right subrogation in any such insurance carrier.

25. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

26. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. FOCIL acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

27. Survival. All representations, warranties, waivers, indemnities and maintenance obligations given or made hereunder shall survive termination of this Agreement.

28. Notices Concerning Use. FOCIL reserves the right to record, post and publish notices as referred to in Section 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of FOCIL and City hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement.

(signatures on following page)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on
APRIL 2, 2013.

FOCIL-MB, LLC,
a Delaware limited liability company

By: Farallon Capital Management, LLC,
a Delaware limited liability company

Its: Managing Member

By: 

Name: Richard B. Fried
Title: Managing Member

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 

JOHN UPDIKE
Director of Property

RECOMMENDED:

By: 

MOHAMMED NURU
Director of Public Works

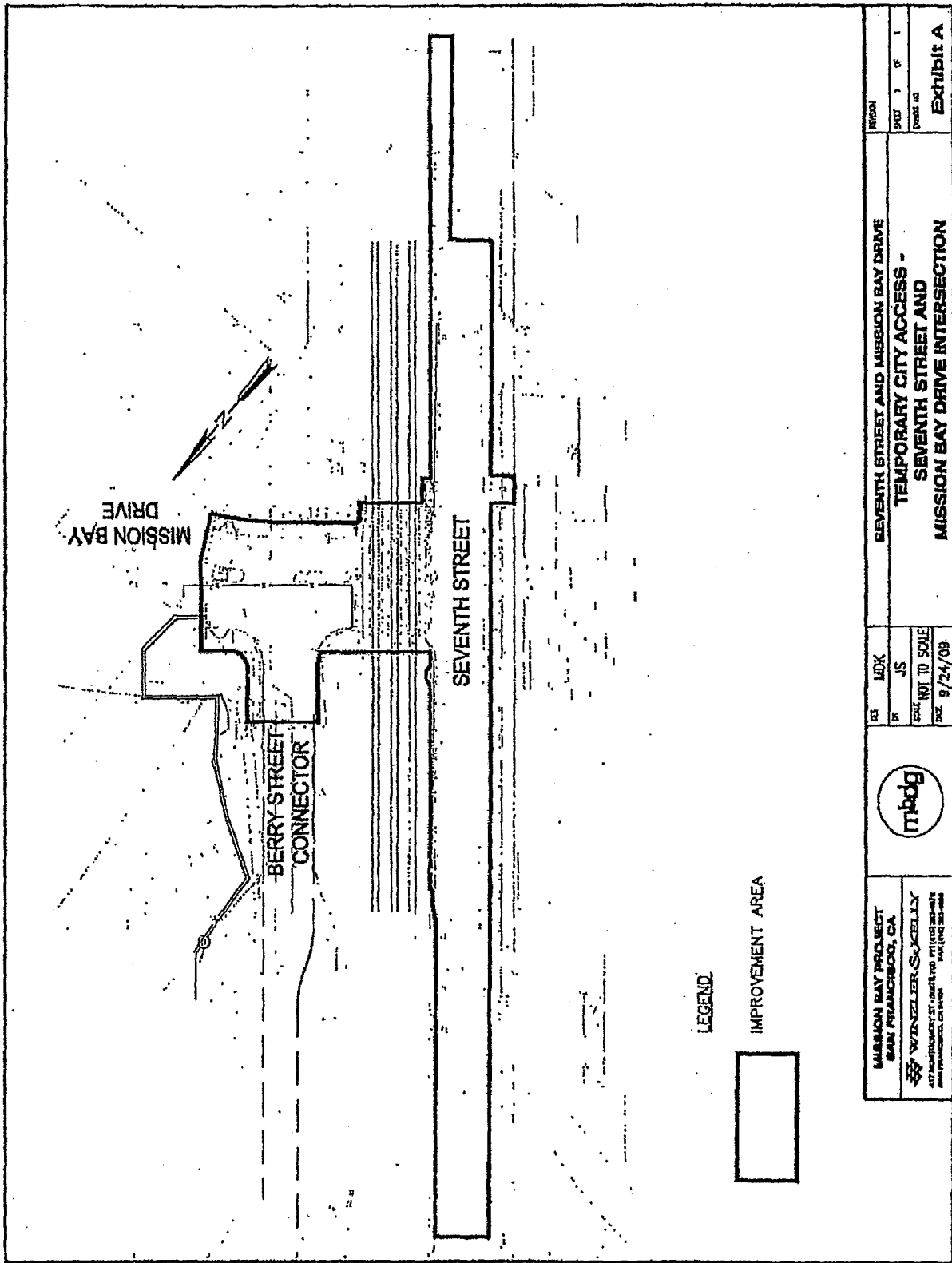
APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: 

Anita L. Wood
Deputy City Attorney

EXHIBIT A
Depiction of Improvement Area
(See attached)



DRAWING NAME: P:\Projects\Caltrans - NUL\8-Seventh St Intersections\CD\Figures - 7th and 10th Lane\Exhibit A-2009-09-24.dwg
 PLOT DATE: Sep 24, 2009 - 7:15pm
 PLOTTED BY: jseabg



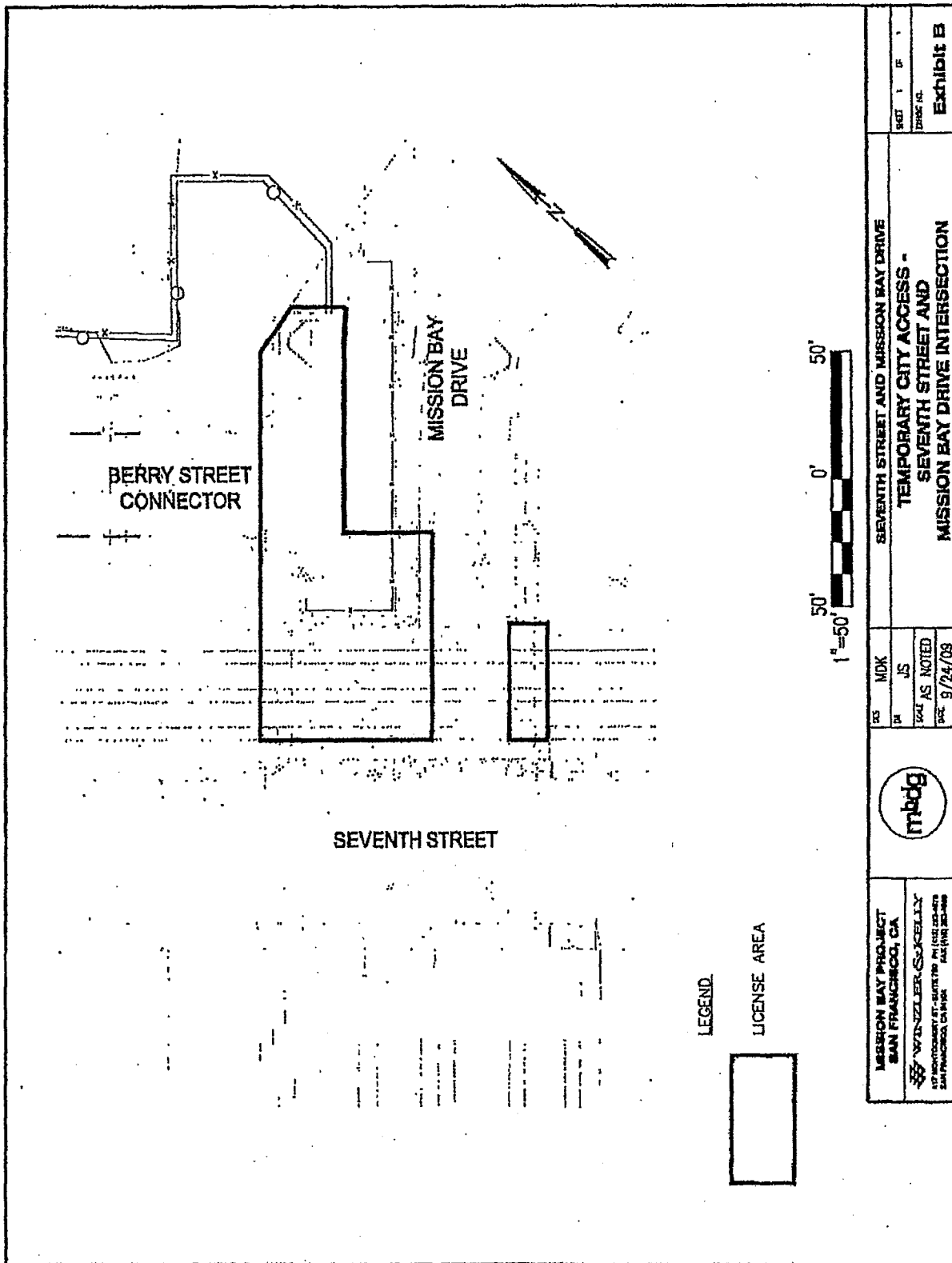


MISSION BAY PROJECT SAN FRANCISCO, CA			SEVENTH STREET AND MISSION BAY DRIVE		REGION SUT 1 of 1 SHEET NO.
 WENZELER SOXELLY 477 MARKET STREET, SUITE 100 SAN FRANCISCO, CA 94102 PH: (415) 398-4818 FAX: (415) 398-4818			TEMPORARY CITY ACCESS - SEVENTH STREET AND MISSION BAY DRIVE INTERSECTION		
DATE: 9/24/09 BY: JS		LDK JS		EXHIBIT A	

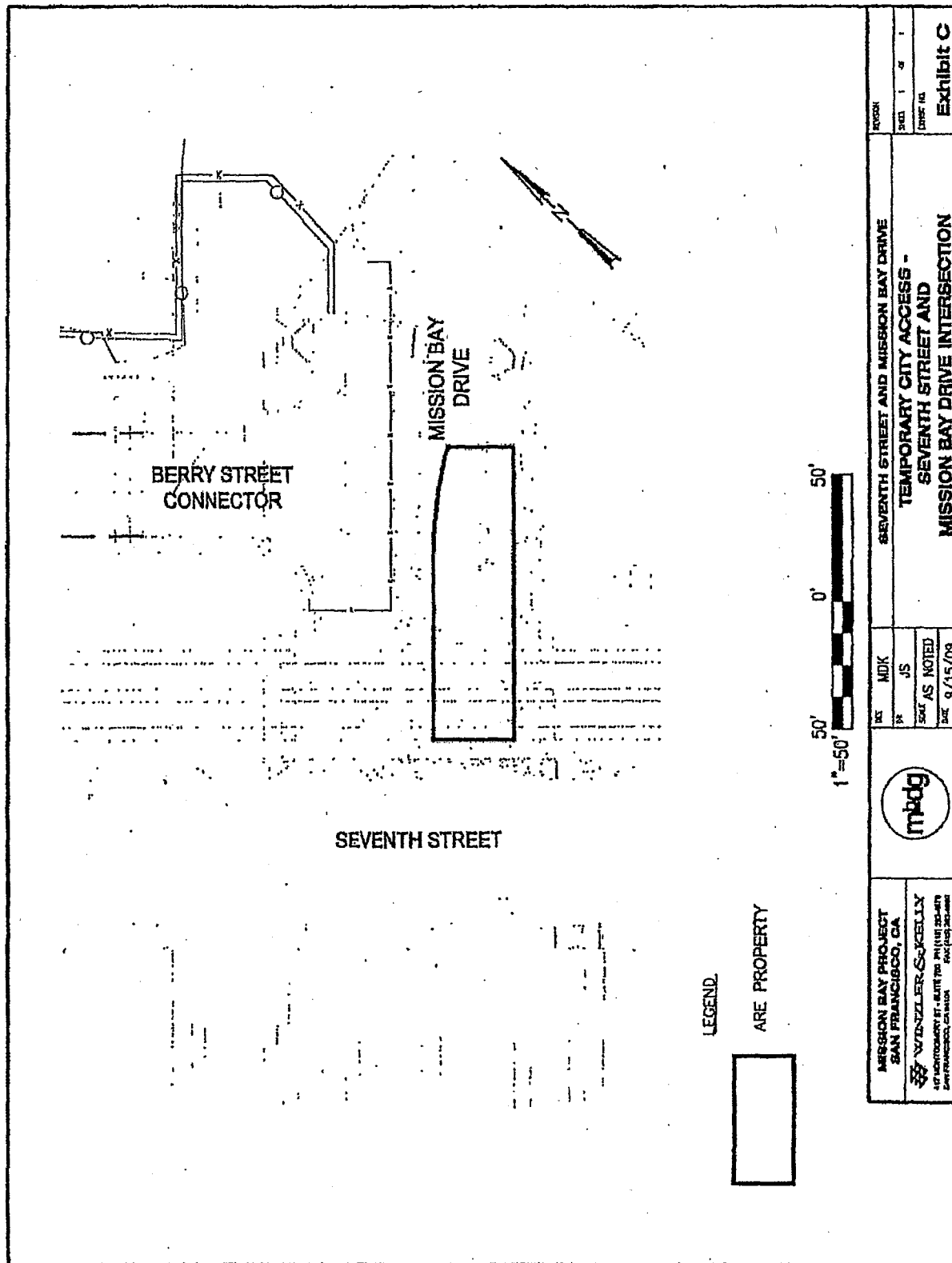
EXHIBIT B
Depiction of License Area
(See attached)



MISSION BAY PROJECT SAN FRANCISCO, CA				SEVENTH STREET AND MISSION BAY DRIVE		SHEET 1 OF 1	EXHIBIT B
 WINZLER-SKELLY 117 MONTGOMERY ST., SUITE 700 PM (415) 222-4678 SAN FRANCISCO, CA 94104 FAX (415) 222-4689				TEMPORARY CITY ACCESS - SEVENTH STREET AND MISSION BAY DRIVE INTERSECTION			
ISS	MDK	DATE	DATE				
	JS	10/11/09	9/24/09				

DRAWING NAME: P:\Projects\Caltrans - I-10-San Jose\SI Intersections\CAD\Figures - 7th and MI Drive\Figures - 7th and MI Drive\10-2009-09-24.dwg
 PLOT DATE: Sep 24, 2009 - 7:08pm
 PLOTTED BY: jsa

EXHIBIT C
Depiction of ARE Property
(See attached)



PLANNING FILE: P:\Projects\Caltrans - MB\B-Seventh St Intersection\CAD\Figures - 70a and 100 Drive\Exhibit-C-2009-09-18.dwg
 PLOT DATE Sep 18, 2009 - 3:44pm PLOTTED BY: jseery

NOTE: THIS AGREEMENT COVERS THE TEMPORARY USE OF CERTAIN IMPROVEMENTS PENDING ACCEPTANCE BY CITY.

AGREEMENT
(Temporary City Access and Use —
ARE Portion of Seventh Street and Mission Bay Drive Intersection;
Permanent Street and Utility Improvements)

This Agreement (Temporary City Access and Use — ARE Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements) ("**Agreement**") is made by and between ARE-San Francisco No. 15, LLC, a Delaware limited liability company ("**ARE**"), and the City and County of San Francisco, a municipal corporation, acting by and through its Director of Property ("**City**"), and is dated for reference purposes only as of APRIL 2, 2013 (the "**Execution Date**"), with reference to the following facts:

A. FOCIL-MB, LLC, a Delaware limited liability company ("**FOCIL**"), or its predecessor Catellus Development Company, or an affiliate or successor thereto, and their respective agents, have constructed, is constructing, or has caused or is causing to be constructed certain permanent right-of-way improvements and associated improvements or facilities, including, without limitation, pavement, curbs, sidewalk, slopes, utility facilities and traffic signals and related conduits, conductors, fasteners and other appurtenances, described as the Seventh Street and Common Intersection Improvements (Phase 1) in Street Improvement Permit #041E-600 dated September 21, 2004, and described in the Seventh Street and Mission Bay Blvd Intersection (Phase 2) Improvement Permit #051E-0285 dated May 17, 2005, including any amendments or supplements thereto (collectively, the "**SIP**"). The improvements described in the SIP (the "**Improvements**"), are located on certain property (the "**Improvement Area**") depicted on Exhibit A hereto.

B. That portion of the Improvement Area depicted on Exhibit B hereto (the "**FOCIL License Area**") is either owned in fee by FOCIL or owned in fee by the City and FOCIL is the Tenant under that certain Master Lease recorded on July 29, 1999 as Document No. 99-G622218 in Reel H429, Image 570, Official Records of the City and County of San Francisco. That portion of the Improvement Area depicted on Exhibit C hereto (the "**License Area**") is owned in fee by ARE. ARE has no contractual obligation to construct, install, maintain, repair, replace, and/or warrant any of the Improvements, wherever located. The License Area is more particularly described as Lot 23, as shown on Final Map No. 4375, filed for record April 8, 2009, in Book CC of Survey Maps at Pages 123 to 131, inclusive, in the Office of the Recorder of the City and County of San Francisco (the License Area is otherwise known as Assessor's Block 8709, Lot 23). ARE has offered the License Area for dedication to the City and the City has not yet accepted such offer. Portions of the License Area are or may be subject to an easement, franchise or other rights in favor of the Peninsula Corridor Joint Powers Board, a joint powers agency formed pursuant to California law ("**JPB**"). Certain improvements in the License Area, not part of the defined "Improvements", are owned by the JPB.

C. This Agreement addresses the temporary use of and access to the Improvements in the License Area (the "**License Area Improvements**"), to the extent (if any) ARE has an interest therein, and a temporary license for the License Area. This Agreement does not grant any rights with respect to real property other than the License Area or with respect to improvements other than the License Area Improvements.

D. In connection with the execution of this Agreement, it is anticipated that the following agreements (collectively, the "**Ancillary Agreements**") related to, among other things, the use and maintenance of the Improvements and the Improvement Area have been or will be entered into by the parties and others: (i) a "Letter of Understanding Regarding the Opening of Mission Bay Drive Crossing" dated October 1, 2009, by and among FOCIL, the City's Director of Real Estate, the Director of City's Department of Public Works, the Executive Director of the San Francisco Port Commission, and the CEO of JPB; (ii) a "Railroad Maintenance Agreement" by and between JPB and the City (the "**City-JPB Use Agreement**"); and (iii) an "Agreement (Temporary City Access and Use — Portion of Seventh Street and Mission Bay Drive Intersection; Permanent Street and Utility Improvements)" by and between City and FOCIL (the "**FOCIL License**").

E. FOCIL has informed ARE that the Improvements are substantially complete and the Director of City's Department of Public Works (the "**Director**") has issued a final completeness determination with regard to the Improvements, subject to approval by the California Public Utilities Commission. City desires to make the License Area Improvements available for public pedestrian and vehicular access prior to the Improvement Acceptance (as defined in Section 4 below), subject to the terms and conditions set forth herein. Accordingly, City and ARE are entering into this Agreement to provide a non-exclusive temporary license to City (i) for use of the License Area Improvements and for access in, on and over the License Area Improvements, to the extent (if any) ARE has an interest therein, and (ii) for access in, on and over the License Area for sidewalk, street and roadway and utility purposes prior to the Property Acceptance (as defined in Section 4 below), on the terms and conditions set forth herein.

F. Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the Mission Bay South Redevelopment Plan (the "**Plan**"), and the "**Plan Documents**", as described therein.

G. All of the terms, obligations and responsibilities set forth herein shall commence as of the Commencement Date (as defined below).

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

I. Grant of Temporary License. Subject to the provisions of this Agreement, ARE hereby grants to City a non-exclusive temporary license for the use, maintenance and repair of the License Area Improvements, to the extent (if any) of ARE's interest therein, and for access in, on and over the License Area, for public pedestrian and vehicular access, ingress and egress and for use of utility facilities by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street

and roadway purposes and utility purposes ("**Temporary License**") for the term specified in Section 4 below.

2. Limitation on Use. Without limiting City's rights under Section 5 below, City acknowledges that the Temporary License herein granted is non-exclusive and is effective only insofar as the rights of ARE in the License Area and License Area Improvements are concerned, and City shall obtain any further permission necessary because of any other existing rights affecting the License Area or License Area Improvements. City agrees that the use of the Temporary License granted herein shall not (a) unreasonably impede work required to be performed by a private or public utility company to repair or maintain any functioning, in-place utility facility located in, on or under the License Area or to install new utility facilities in the License Area, subject to obtaining any required permits or other authorizations, provided that ARE shall use reasonable efforts to attempt to cause the utility to perform such work in a manner that will not unreasonably interfere with City's use of the License Area Improvements, at no additional cost to ARE, or (b) unreasonably impede the use of the License Area or applicable portions thereof, as a roadway by ARE or its invitees or by FOCIL or its invitees in a manner consistent with the Temporary License. ARE acknowledges that City's use of the License Area Improvements and License Area shall be subject to certain terms and conditions of the City-JPB Use Agreement, and City's compliance with the requirements thereof shall not be considered an unreasonable impediment to the work or use of others under the provisions of the immediately preceding sentence.

3. DPW Notification and Approval Requirements. The Director has the right to approve the location of any public or private improvements, facilities, or utilities to be located on, in or under the License Area. In connection with any approval provided by the Director under this Section, the Director shall make reasonable efforts, at no additional cost to City, to attempt to coordinate and consolidate any work to be performed by City or any licensee or permittee in the License Area with any work to be performed by ARE or any licensee or permittee to minimize the disruption and interference with the use of the License Area or development or existing uses of immediately adjacent properties. A request for approval under this Section ("**Utility Placement Approval Request**") shall be made to the Director in writing, delivered by messenger or certified mail, and shall, where applicable, include the contact information for the utility company and a plat showing the proposed location for placement of the utility lines on, in or under the License Area or adjoining properties. The Director shall have ten (10) days from the date of delivery of the Utility Placement Approval Request to approve or disapprove such request. The Utility Placement Approval Request shall be deemed approved if the Director or the Director's designee does not make a response within the ten (10) day approval period. All Utility Placement Approval Requests made to the Director or the Director's designee shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following words: **"UTILITY PLACEMENT APPROVAL REQUEST FOR MISSION BAY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED."** The parties acknowledge that, in addition, any private or public utility provider subject to the approval requirements of this Section may also be subject to additional requirements imposed by City, including that such utility provider relocate its utility facilities at its sole cost and expense as may be reasonably required by City in the exercise of City's rights under this Agreement, City ordinances or other applicable law.

4. Term of License. The term of the Temporary License shall commence as of the later of (i) the Execution Date or (ii) the date on which the FOCIL License is fully executed and delivered (the "Commencement Date"), and shall continue until the earlier of (A) one (1) year from the Commencement Date (unless such time is extended through appropriate action of the Board of Supervisors, in its sole discretion, prior to such date, with ARE's consent, which shall not be unreasonably withheld), or (B) with respect to the license to use the License Area Improvements, City's acceptance of dedication by action of the Board of Supervisors (the "Improvement Acceptance") of the License Area Improvements (or a portion thereof) for public utility and public street purposes, as applicable, for public use, responsibility and maintenance, and with respect to the license to use the License Area, the date of ARE's grant and City's acceptance of the fee interest in the License Area (the "Property Acceptance"). The Improvement Acceptance and the Property Acceptance are collectively referred to as the "Acceptance." In the event City accepts a portion of the License Area Improvements, then this Agreement shall terminate only as to that portion of the License Area Improvements on the date the applicable Improvement Acceptance is effective. Neither ARE nor City makes any representation or warranty regarding when, or if, the FOCIL License or other Ancillary Agreements shall be executed and delivered, and neither party shall be liable to the other for any loss or damage resulting from any delay in the Commencement Date resulting from a delay in execution and delivery of FOCIL License.

5. Condition of the License Area.

(a) As-Is. ARE makes no representations or warranties whatsoever under this Agreement with respect to the current physical condition of the License Area or the License Area Improvements and ARE shall have no responsibility under this Agreement with respect thereto (except as otherwise specifically set forth herein), and the use of the Temporary License granted herein shall be with the License Area and the License Area Improvements in their "as is" physical condition, except as otherwise specifically provided herein. City hereby waives any and all claims against ARE arising from, out of or in connection with the suitability of the physical conditions of the License Area or the License Area Improvements for the uses permitted under Section 1 above. However, except as provided in Section 2, ARE shall not take any action that would unreasonably impair the ability of City to use the Temporary License herein granted without City's consent. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve FOCIL or City of any of their respective responsibilities with regard to the physical condition of the License Area or the License Area Improvements (including without limitation, responsibilities with regard to environmental investigation and remediation) set forth in any document, instrument or agreement by and between FOCIL and City (including, without limitation, the SIP and the Mission Bay South Redevelopment Plan and Plan Documents).

(b) Maintenance by City. In consideration of ARE's agreement in accordance with the terms of this Agreement to allow use and access in, on or over the License Area prior to the Property Acceptance, City agrees to operate and maintain the License Area Improvements in good working order and condition consistent with City's standards for the operation and maintenance of other similar facilities. Except as specifically herein provided, ARE and City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description to the License Area Improvements. In the event City, in the exercise of its rights granted herein, is required to excavate or otherwise remove or repair all or a portion of the

pavement, sidewalk or landscaping improvements associated with or adjacent to the License Area Improvements, City agrees to return such improvements to their former condition. Except in the event this Agreement terminates upon the Improvement Acceptance, upon termination of the Temporary License, or any portion thereof, City shall surrender use and possession of the License Area Improvements and the License Area, or applicable portion thereof, free and clear of any liens or encumbrances relating to or arising in connection with the use of the License Area Improvements by reason of the Temporary License. City, and its agents, contractors, licensees and invitees shall at all times keep the License Area Improvements and the License Area free and clear of liens, claims, security interests or encumbrances in their favor or in favor of any contractor, subcontractor, material supplier or other person or entity making a claim by reason of having provided labor, materials and equipment relating to the use of the License Area Improvements by City.

(c) Warranty. Nothing in this Agreement, including, without limitation, Section 5(a) and Section 5(b) above, shall be construed in any way to alter, amend or otherwise relieve FOCIL of its warranty responsibilities under the SIP with respect to the Improvements (including, without limitation, the License Area Improvements).

6. Indemnification.

(a) Indemnity. City shall indemnify, defend and hold ARE and its officers, directors, shareholders, members, employees, agents, successors and assigns (hereinafter collectively called "**Indemnified Parties**") harmless from all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation reasonable attorneys' fees) (collectively, "**Indemnified Claims**"), resulting from (i) injury to or the death of any person (including, without limitation, any Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by an Indemnified Party), which injury, death or physical damage arises out of or is connected with City's (or City's officers, employees, agents, contractors, licensees, or invitees, including, without limitation, the general public) use or occupancy of any of the License Area Improvements or the License Area under the authority of the Temporary License, except to the extent that such Indemnified Claims are caused by the negligence or intentional wrongful acts or omissions of any Indemnified Party, and (ii) the use, generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials (as that term is defined herein below) on or about the License Area Improvements or the License Area by City (or City's officers, employees, agents, contractors, licensees or invitees, including, without limitation, the general public) in connection with the exercise of City's rights under the Temporary License, except that City will not indemnify any specific Indemnified Party to the extent that such Indemnified Claims are caused by the negligence or intentional wrongful acts or omissions of that Indemnified Party with respect to the generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials. For purposes of this Section 6, the term "**Hazardous Materials**" shall mean any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or

other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

(b) Notice. ARE agrees to give prompt notice to City with respect to any Indemnified Claims initiated or threatened against any Indemnified Party, at the address for notices to City set forth herein, and in no event later than the earlier of (i) ten (10) business days after valid service of process as to any suit, or (ii) fifteen (15) business days after receiving written notification of the filing of such suit or the assertion of a claim, which ARE has reason to believe is likely to give rise to an Indemnified Claim hereunder. If notice is not given to City within the time frames required in this Section, then City's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify City shall not affect the rights of ARE or the obligations of City hereunder unless City is prejudiced by such failure, and then only to the extent of such prejudice. City shall, at its option but subject to the reasonable consent and approval of ARE, be entitled to control the defense, compromise or settlement of any such matter through counsel of City's own choice; provided, however, that in all cases ARE shall be entitled to participate in such defense, compromise, or settlement at its own expense.

7. Litigation Expenses.

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees and expert fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 7 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this Section 7 shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Fee Award for City Attorney's, ARE's In-House Counsel. For purposes of this Agreement, reasonable fees of attorneys of City's Office of City Attorney and any in-house counsel of ARE shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's or ARE's in-house counsel's services were rendered who practice in the City and County of San Francisco, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney, or, in the case of ARE's in-house counsel, as employed by the outside counsel for ARE.

8. Alternative Dispute Resolution. ARE and City, by mutual agreement, may submit any factual or other (to the extent City is not prohibited by law or otherwise from doing so) dispute arising under this Agreement to non-binding arbitration, mediation or other alternate dispute resolution mechanism ("ADR") of non-judicial dispute resolution. The party requesting

ADR shall give written notice of its request, specifying the requested ADR procedure, to the other party, who shall notify the requesting parties of its agreement or refusal to proceed within a reasonable time after receipt of the requesting notice. If the parties agree to proceed, they shall select a mutually acceptable individual, with qualifications appropriate to the subject matter of the dispute, to conduct the designated ADR, or, if the parties cannot agree on such individual, they shall submit the dispute for the applicable ADR to a commercial ADR service. In all events, the proceedings shall be conducted only in a manner acceptable to both parties. The parties may enter into operating memoranda from time to time to establish procedures for the initiation and conduct of such ADR mechanisms.

9. Time. Time is of the essence of this Agreement and each and every part hereof.

10. Covenant and Environmental Restriction on License Area. The land described herein may contain hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction (Covenant and Environmental Restriction on Property) dated as of February 23, 2000, and recorded on March 21, 2000, in the Official Records of San Francisco County, California, as Document No. 2000-G748552 (the "Covenant and Restriction"), which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. The foregoing statement is required by the Covenant and Restriction and is not a declaration that a hazard exists. This Agreement and the Temporary License contained herein shall be subject to, and in the use and enjoyment of the License Area Improvements and the License Area under this Agreement City shall at all times comply with, all of the terms, covenants and conditions set forth in and/or imposed as a result of the Covenant and Restriction. Further, the Covenant and Restriction references and requires compliance with the provisions of the Risk Management Plan, Mission Bay Area, San Francisco, California, dated May 11, 1999 (the "RMP"). Accordingly, City hereby acknowledges that it has a copy of the RMP, and hereby covenants that (i) City will comply with the RMP (to the extent the RMP applies to City's activities in the License Area); (ii) City will obligate other entities with which it contracts for construction, property maintenance or other activities in the License Area which may disturb soil or groundwater to comply with the applicable provisions of the RMP; and (iii) City (and the entities with which it so contracts) will refrain from interfering with ARE's compliance with the RMP in the License Area.

11. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by ARE and City, or the successors and assigns of each, subject to the provisions of Section 16 hereof.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

14. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

15. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number listed below or such other numbers as may be provided from time to time.

ARE: ARE-San Francisco No. 15, LLC
385 E. Colorado Blvd., Suite 299
Pasadena, California 91101
Attention: Corporate Secretary
Re: Mission Bay Blocks 41-43, SF, CA
Telefacsimile: (626) 578-0770

With copies to: ARE-San Francisco No. 15, LLC
1700 Owens Street, Suite 590
San Francisco, California 94158
Attention: Ms. Terezia Nemeth
Telefacsimile: (415) 554-0142

And to: David S. Meyer, Attorney-At-Law
4535 Don Pío Drive
Woodland Hills, California 91364-5308
Telefacsimile: (818) 346-4196

City: Director of Public Works
City and County of San Francisco
c/o Grace Kwak, Project Manager
Mission Bay Project
30 Van Ness Avenue, Suite 4200
San Francisco, CA 94102
Telefacsimile: (415) 581-2569

With copies to: City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Real Estate/Finance Team
Telefacsimile: (415) 554-4757

And to: Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Telefacsimile: (415) 554-6177

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A person may not give official or binding notice by telefacsimile or email. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, or a telefacsimile copy of the notice.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (except as otherwise specifically provided in Section 18 below). Without limiting the foregoing, the Temporary License created by this Agreement shall be binding on any future owners and encumbrancers of the License Area or any part thereof and their successors and assigns.

17. Representations and Warranties. ARE represents, warrants and covenants to City the following:

(a) Good Standing. ARE is a limited liability company validly existing and in good standing under the laws of the State of Delaware.

(b) Authority. ARE has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of ARE and no other action on the part of ARE is necessary to authorize the execution and delivery of this Agreement.

18. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of ARE and City and their successors and assigns, subject to the provisions hereof, and not for the benefit of, nor shall give rise to any claim or cause of action by, any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except ARE and City. Nothing herein shall be deemed a dedication of any portion of the License

Area Improvements or the License Area to or for the benefit of the general public. The license herein granted is in gross and for the personal benefit solely of City.

19. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

20. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the Temporary License that is the subject matter of this Agreement. This Agreement shall control in the event of any inconsistency between this Agreement and any other agreement in connection with performance of the Temporary License and the rights and obligations of the parties with respect thereto.

21. Compliance With Laws/Agreements. City, and City's agents, contractors, licensees or invitees, at its and their expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the License Area and/or License Area Improvements, now in force or hereafter adopted, with respect to the use by City of the License Area and/or License Area Improvements under the authority of the Temporary License herein granted. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve FOCIL or City of any of their respective responsibilities with regard to completion of the License Area Improvements and the Acceptance set forth in any other document, instrument or agreement by and between FOCIL and City (including, without limitation, the Mission Bay South Interagency Cooperation Agreement).

22. Default. City's, and City's agents, contractors, licensees or invitees, failure to perform any covenant or obligation of City hereunder and to cure such non-performance within thirty (30) days of written notice by ARE shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion. Upon such default ARE shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the Temporary License herein granted.

23. Insurance: Waiver of Subrogation.

(a) Self-Insurance. It is acknowledged by the parties hereto that this Agreement does not require City to carry liability insurance with respect to its use of the License Area Improvements or the License Area herein granted solely because it is the policy of City to self-insure as to the matters covered by such insurance. City hereby agrees that if to any extent said policy changes so that City does use liability insurance, it will reasonably negotiate with

ARE to provide liability insurance coverage for the use of said License Area to the extent such new policy allows and in such event the terms and provisions of Section 23(b) shall also be applicable.

(b) Waiver. The terms and provisions of this Section 23(b) shall be inoperative unless and until City's policy of self-insurance changes and City is procuring liability insurance covering its use of the Temporary License granted herein. If City does obtain liability insurance, each party, for itself and, to the extent it is legally permissible for it to do so and without affecting the coverage provided by insurance maintained by such party, on behalf of its insurer, hereby releases and waives any right to recover against the other party from any liability for (i) damages for injury to or death of persons, (ii) any loss or damage to property, (iii) any loss or damage to buildings or other improvements, or (iv) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under (i) through (iv) are covered (and only to the extent of such coverage) by insurance actually carried by each party irrespective of any negligence on the part of such party which may have contributed to such loss or damage. The provisions of this Section 23(b) are intended to restrict each party (as permitted by law) to recovery for loss or damage against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of the other party, any rights and/or claims that might give rise to a right subrogation in any such insurance carrier.

24. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

25. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. ARE acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

26. Survival. All representations, warranties, waivers, indemnities and maintenance obligations given or made hereunder shall survive termination of this Agreement.

27. No Easement By Implication; Prevention of Prescriptive Rights. Neither the execution and delivery of this Agreement nor the granting of the Temporary License shall be deemed to grant or establish any easement by implication or prescription. ARE reserves the right to record, post and publish any of the notices referred to in Sections 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of ARE and City hereunder and, where appropriate, any such notice shall include a recognition of the provisions of this Agreement.

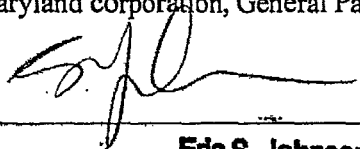
(signatures on following page)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on
APRIL 2, 2013.

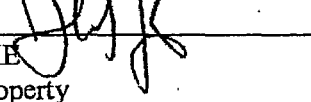
ARE-SAN FRANCISCO NO. 15, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, Managing Member

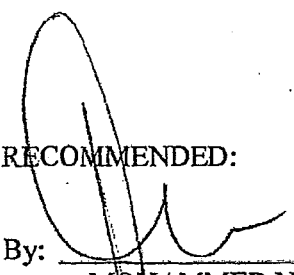
By: ARE-QRS CORP.,
a Maryland corporation, General Partner

By: 
Print Name: Eric S. Johnson
Vice President
Print Title: Real Estate Legal Affairs

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
JOHN UPDIKE
Director of Property

RECOMMENDED:

By: 
MOHAMMED NURU
Director of Public Works

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

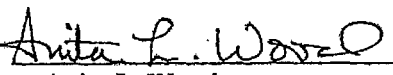
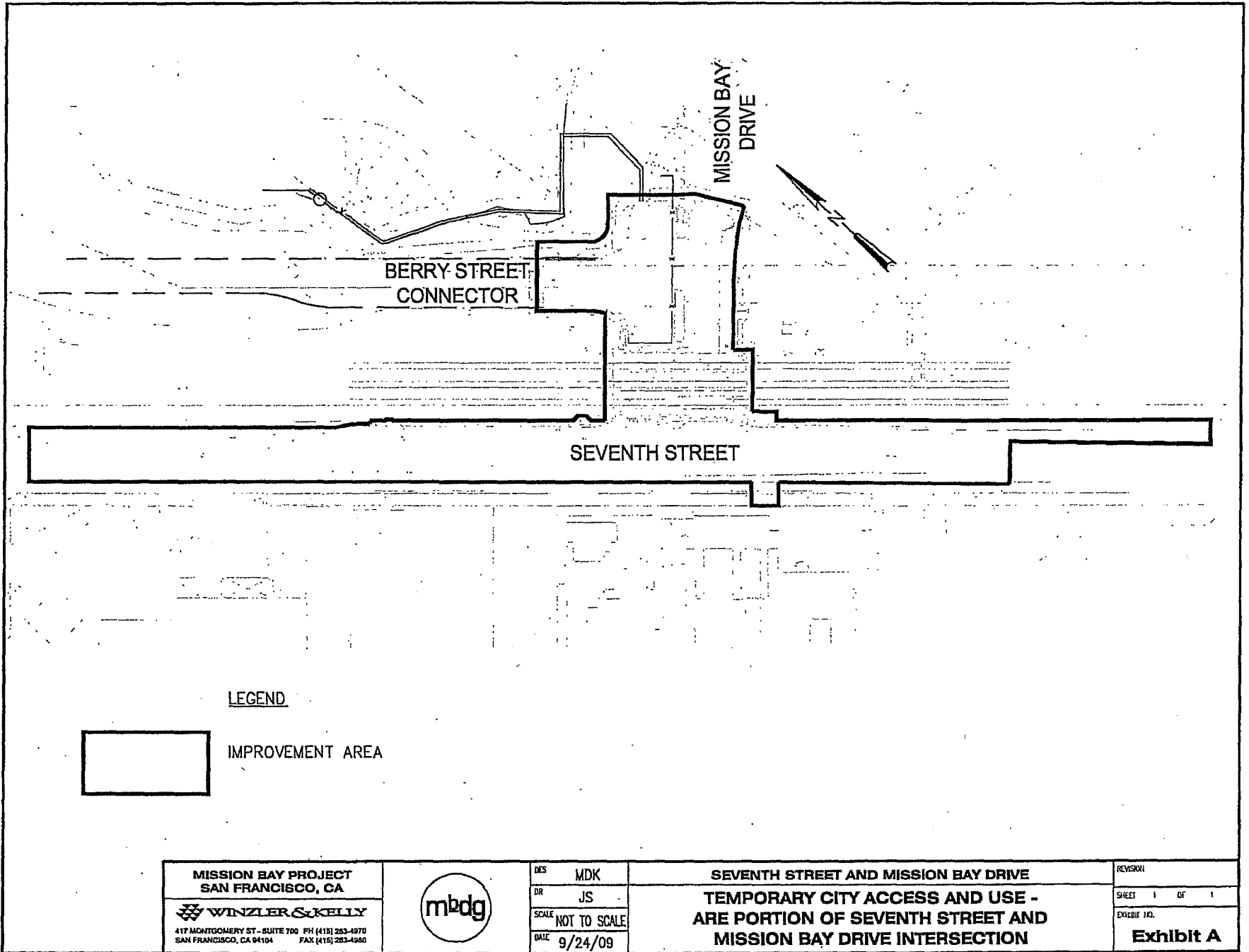
By: 
Anita L. Wood
Deputy City Attorney

EXHIBIT A
Depiction of Improvement Area
(See attached)

DRAWING NAME: P:\Projects\Castellus - MB\18-Seventh St Intersections\CAD\figures - 7th and MB Drive\ARE-Exhibit-A-2009-09-24.dwg
 PLOT DATE: Sep 24, 2009 - 7:16pm
 PLOTTED BY: JSeelig



LEGEND



IMPROVEMENT AREA

MISSION BAY PROJECT
 SAN FRANCISCO, CA

WINZLER & KELLY
 417 MONTGOMERY ST. - SUITE 700 PH (415) 283-4970
 SAN FRANCISCO, CA 94104 FAX (415) 283-4980



DES	MDK
DR	JS
SCALE	NOT TO SCALE
DATE	9/24/09

**SEVENTH STREET AND MISSION BAY DRIVE
 TEMPORARY CITY ACCESS AND USE -
 ARE PORTION OF SEVENTH STREET AND
 MISSION BAY DRIVE INTERSECTION**

REVISION
SHEET 1 OF 1
EXHIBIT NO. Exhibit A

EXHIBIT B
Depiction of FOCIL License Area
(See attached)

DRAWING NAME: P:\Projects\Cadellus - MB\18-Seven St Intersections\CAD\Figures - 7th and MB Drive\ARE-Exhibit-B-2009-09-24.dwg
 PLOT DATE: Sep 24, 2009 - 7:06pm PLOTTED BY: JSaellig



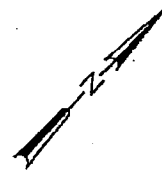
LEGEND

FOCIL LICENSE AREA

SEVENTH STREET

BERRY STREET
CONNECTOR

MISSION BAY
DRIVE




<p>MISSION BAY PROJECT SAN FRANCISCO, CA</p> <p>WINZLER & KELLY 417 MONTGOMERY ST. - SUITE 700 PH (415) 283-4970 SAN FRANCISCO, CA 94104 FAX (415) 283-4960</p>	<p></p> <p>DES MDK DR JS SCALE AS NOTED DATE 9/24/09</p>	<p>SEVENTH STREET AND MISSION BAY DRIVE TEMPORARY CITY ACCESS AND USE - ARE PORTION OF SEVENTH STREET AND MISSION BAY DRIVE INTERSECTION</p>	<p>SHEET 1 OF 1</p> <p>EXHIBIT NO. Exhibit B</p>
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EXHIBIT C
Depiction of License Area
(See attached)



LEGEND



LICENSE AREA

SEVENTH STREET

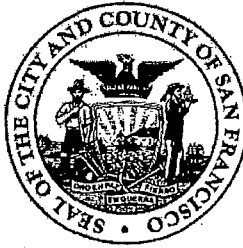
BERRY STREET
CONNECTOR

MISSION BAY
DRIVE



MISSION BAY PROJECT SAN FRANCISCO, CA		DES MDK	SEVENTH STREET AND MISSION BAY DRIVE TEMPORARY CITY ACCESS AND USE - ARE PORTION OF SEVENTH STREET AND MISSION BAY DRIVE INTERSECTION	SHEET 1 OF 1
 WINZLER & KELLY		DR JS		EXHIBIT NO.
417 MONTGOMERY ST - SUITE 700 PH (415) 283-4970 SAN FRANCISCO, CA 94104 FAX (415) 283-4960		SCALE AS NOTED		Exhibit C
		DATE 9/22/09		

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Rahaim, Director, Planning Department
Tiffany Bohee, Executive Director, Office of Community Investment and Infrastructure

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development Committee, Board of Supervisors

DATE: January 27, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following legislation, introduced by Public Works on January 13, 2015:

File No. 150007

Resolution retroactively approving exercise of options to extend two temporary access and use licenses through July 31, 2015, for access, use, maintenance, and operation of public infrastructure improvements at or near the intersection of Seventh Street and Mission Bay Drive in the Mission Bay South area, and authorizing other official acts.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Claudia Guerra, Office of Infrastructure and Community Investment
Natasha Jones, Commission on Community Investment and Infrastructure

LEGISLATION RECEIVED CHECKLIST

Date 12/28/14

File Number (if applicable) 150007

- | | |
|--|--------------------------------|
| <input checked="" type="checkbox"/> Legislation for Introduction (NEW) | ▶▶▶ Legislative Clerk |
| <input type="checkbox"/> Legislation Pending in Committee (AMENDED) | ▶▶▶ Committee Clerk |
| <input type="checkbox"/> Legislation for Board Agenda (AMENDED) | ▶▶▶ Dep Clerk, Legislative Div |

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- ☒ **Legislation:** Original and 1 hard copy and 1 electronic copy in word format
- ☐ **Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- ☐ **Supporting documents:** 1 full set (see below) and pdf copies of each in email*
 - ☐ Cover letter (original)
 - ☐ Grant budget/application
 - ☐ Grant information form, including disability checklist
 - ☐ Letter of Intent or grant award letter from funding agency
 - ☐ Contract, Leases/Agreements (if applicable)
 - ☐ Ethics Form 126 (if applicable)*Word format
- ☐ **E-Copy of legislation/supporting documents:** Sent to BOS.Legislation@sfgov.org

Ordinance

- ☐ **Legislation:** Original and 1 hard copy and 1 electronic copy in word format
- ☐ **Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- ☐ **Supporting documents:** 1 full set (see below) and pdf copies of each in email
 - ☐ Cover letter (original and 1 hard copy)
 - ☐ Settlement Report/Agreement (for settlements)
 - ☐ Other (Explain)
- ☐ **E-Copy of legislation/supporting documents:** Sent to BOS.Legislation@sfgov.org

Grant Resolution

- ☐ **Legislation:** Original and 1 hard copy and 1 electronic copy in word format
- ☐ **Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- ☐ **Supporting documents:** 1 full set (see below) and pdf copies in email*
 - ☐ Cover letter (original and 1 hard copy)
 - ☐ Grant budget/application
 - ☐ Grant information form, including disability checklist
 - ☐ Letter of Intent or grant award letter from funding agency
 - ☐ Contract, Leases/Agreements (if applicable)
 - ☐ Ethics Form 126 (if applicable)*Word format
- ☐ **E-Copy of legislation/supporting documents:** Sent to BOS.Legislation@sfgov.org

Resolution

- ☒ **Legislation:** Original and 1 hard copy and 1 electronic copy in word format
- ☐ **Signature:** None (Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- ☒ **Supporting documents:** 1 full set (see below) and pdf copies in email
 - ☒ Cover letter (original and 1 hard copy)
 - ☐ Settlement Report/Agreement (for settlements)
 - ☒ Other (Explain)
- ☒ **E-Copy of legislation/supporting documents:** Sent to BOS.Legislation@sfgov.org

MAURITS WERDMULLER VON BULG
Name and Telephone Number

DPW - INFRASTRUCTURE TASK FORCE
Department

Clerk's Office/Forms/Legislation Received Checklist (11/2013) for more help go to: sfbos.org/about-the-board/general/legislative-process-handbook

581-2577

