

File No. 190754 Committee Item No. 4  
 Board Item No. 17

**COMMITTEE/BOARD OF SUPERVISORS**  
 AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date July 22, 2019

Board of Supervisors Meeting  
 Cmte Board

Date JULY 30, 2019

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" 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 type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PW Order 201504 071119</u>            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PLN GP Referral 051419</u>            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>OCII Ltr 062119</u>                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Offer of Improvements 061319</u>      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Warranties and Guaranties 071119</u>  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PW Street Permit 14IE-0522 070714</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>DRAFT Easement Agrmt.062619</u>       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Comm Rpt Request 071719</u>           |
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Completed by: Erica Major Date July 18, 2019  
 Completed by: Erica Major Date 7/23/19

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

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair  
Land Use and Transportation Committee

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: July 23, 2019

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, July 23, 2019

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, July 23, 2019. This item was acted upon at the Committee Meeting on Monday, July 22, 2019, at 1:30 p.m., by the votes indicated.

**Item No. 62            File No. 190754**

Ordinance accepting the irrevocable offer of public infrastructure improvements associated with Mission Bay South Storm Water Pump Station No. 5, including acquisition facilities located on and under portions of State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16th Street; accepting said facilities for City maintenance and liability purposes, subject to specified limitations; approving an easement agreement for the Pump Station control room; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order; and authorizing official acts, as defined herein, in connection with this Ordinance.

### RECOMMENDED AS AMENDED A COMMITTEE REPORT

Vote: Supervisor Aaron Peskin - Aye  
Supervisor Ahsha Safai - Aye  
Supervisor Matt Haney - Aye

c: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Alisa Somera, Legislative Deputy  
Jon Givner, Deputy City Attorney

1 [Mission Bay South - Storm Water Pump Station No. 5 Public Infrastructure Improvements]

2  
3 **Ordinance accepting the irrevocable offer of public infrastructure improvements**  
4 **associated with Mission Bay South Storm Water Pump Station No. 5, including**  
5 **acquisition facilities located on and under portions of State Trust Parcel 5, adjacent to**  
6 **Terry Francois Boulevard and 16th Street; accepting said facilities for City maintenance**  
7 **and liability purposes, subject to specified limitations; approving an easement**  
8 **agreement for the Pump Station control room; adopting findings under the California**  
9 **Environmental Quality Act; making findings of consistency with the General Plan, the**  
10 **eight priority policies of Planning Code, Section 101.1, and the Mission Bay South**  
11 **Redevelopment Plan; adopting a Public Works Order; and authorizing official acts, as**  
12 **defined herein, in connection with this Ordinance.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
16 **Board amendment additions** are in double-underlined Arial font.  
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
18 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
19 subsections or parts of tables.

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Definitions and Findings.

22 (a) All capitalized terms in this ordinance relating to Mission Bay shall have the  
23 definitions ascribed to them under the Mission Bay South Redevelopment Plan and Plan  
24 Documents described therein, which the City approved in 1998 in Ordinance No. 335-98, a  
25 copy of which is on file with the Clerk of the Board of Supervisors in File No. 981441.

///

1 (b) The Storm Water Pump Station No. 5 Improvements are located on a portion of  
2 State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16th Street in Mission Bay  
3 South.

4 (c) The Successor Agency to the San Francisco Redevelopment Agency, the Office of  
5 Community Infrastructure and Investment ("OCII"), in a letter dated June 21, 2019 (the "OCII  
6 Letter"), determined that the acceptance of the Mission Bay Storm Water Pump Station No. 5  
7 Public Infrastructure Improvements, that were constructed pursuant to Street Improvement  
8 Permit No. 15IE-0451, dated December 1, 2015 (the "Storm Water Pump Station No. 5  
9 Improvements"), is consistent with the Mission Bay South Redevelopment Plan and Plan  
10 Documents described in the OCII Letter. The OCII Letter also recommended that the Board  
11 of Supervisors accept the Storm Water Pump Station No. 5 Improvements. A copy of the  
12 OCII Letter is on file with the Clerk of the Board of Supervisors in File No. 190754 and is  
13 incorporated herein by reference.

14 (d) The Planning Department, in a letter dated May 14, 2019 (the "Planning  
15 Department Letter"), determined that the acceptance of the Storm Water Pump Station No. 5  
16 Public Infrastructure Improvements is, on balance, consistent with the General Plan and the  
17 eight priority policies of Planning Code Section 101.1. In that letter, the Planning Department  
18 also found that the contemplated actions do not trigger the need for a subsequent  
19 environmental review pursuant to the California Environmental Quality Act ("CEQA")  
20 (California Public Resources Code Sections 21000 et seq.). A copy of the Planning  
21 Department Letter is on file with the Clerk of the Board of Supervisors in File No. 190754 and  
22 is incorporated herein by reference.

23 (e) The General Manager of the San Francisco Public Utilities Commission (the  
24 "SFPUC") on June 11, 2019, signed and accepted the FOCIL-MB, LLC ("FOCIL") Conditional  
25 Assignment of Warranties and Guaranties regarding the Storm Water Pump Station No. 5

1 Improvements. A copy of said Conditional Assignment of Warranties and Guaranties is on file  
2 with the Clerk of the Board of Supervisors in File No. 190754 and is incorporated herein by  
3 reference.

4 (f) ~~The SFPUC in a letter dated \_\_\_\_\_, 2019, acknowledged the issuance of~~  
5 ~~the Determination of Completeness for Mission Bay Stormwater Pump Station No. 5 as a~~  
6 ~~required step in its acceptance for City maintenance and liability purposes ("SFPUC Letter").~~  
7 ~~A copy of the SFPUC Letter is on file with the Clerk of the Board of Supervisors in File No.~~  
8 ~~\_\_\_\_\_ and is incorporated herein by reference.~~

9 (g) In Public Works ("PW") Order No. 201504, dated July 11, 2019, the City Engineer  
10 certified and the PW Director determined that: (1) Stormwater Pump Station No. 5 is currently  
11 on a portion of property under Port jurisdiction located on a portion of State Trust Parcel 5; (2)  
12 FOCIL has irrevocably offered the Storm Water Pump Station No. 5 Improvements to the City  
13 as set forth in the FOCIL Irrevocable Offer of such Public Infrastructure, dated June 13, 2019  
14 ("FOCIL Offer"); (3) Public Works inspected the pump station facilities and determined them to  
15 be complete as of June 14, 2019; (4) the Improvements have been constructed in accordance  
16 with the Plans and Specifications and all City codes, regulations, standards, and the Mission  
17 Bay South Redevelopment Plan and Plan Documents governing the Stormwater Pump  
18 Improvements; and (5) the Improvements are ready for their intended use.

19 (h g) In addition, in the PW Order, the PW Director recommended to the Board of  
20 Supervisors that the Board accept the Stormwater Pump Station No. 5 Improvements as  
21 acquisition facilities and for City maintenance and liability purposes. A copy of the PW Order  
22 is on file with the Clerk of the Board of Supervisors in File No. 190754 and is incorporated  
23 herein by reference.

24 ///

1 (i h) The City requires an easement to access, operate, and maintain the Stormwater  
2 Pump Station No. 5 control room on private property. A draft of the easement agreement is  
3 on file with the Clerk of the Board of Supervisors in File No. 190754 and is incorporated herein  
4 by reference.

5  
6 Section 2. Adoptions of Findings and Recommendations Related to the Pump Station.

7 (a) The Board of Supervisors adopts as its own the CEQA findings, the General Plan  
8 consistency findings, and the eight priority findings of Planning Code Section 101.1 in the  
9 Planning Department Letter in connection with the acceptance of the Stormwater Pump  
10 Station No. 5 Improvements.

11 (b) The Board of Supervisors adopts as its own the Mission Bay South Redevelopment  
12 Plan consistency findings in the OCII Letter in connection with the acceptance of the Storm  
13 Water Pump Station No. 5 Improvements.

14 (c) The Board of Supervisors adopts PW Order No. 201504, including the City  
15 Engineer's certification and PW Director's recommendation concerning the acceptance of the  
16 FOCIL Offer, Storm Water Pump Station No. 5 Improvements, and other actions set forth in  
17 section 1(g) and (h) of this ordinance, and adopts said recommendation and other actions as  
18 its own.

19  
20 Section 3. Acceptance of New Acquisition Facilities and Assumption of City  
21 Maintenance and Liability Responsibilities.

22 (a) The Board of Supervisors accepts the FOCIL Offer for the Storm Water Pump  
23 Station No. 5 Infrastructure Improvements located on and under a portion of State Trust  
24 Parcel No. 5 and lying adjacent to Terry Francois Boulevard and 16th Street.

25 ///

1 (b) Pursuant to Administrative Code Sections 1.51 et seq., the Acquisition Agreement  
2 dated June 1, 2001 by and between the Redevelopment Agency of the City and County of  
3 San Francisco and Catellus Development Corporation, and PW Order No. 201504, the Board  
4 of Supervisors hereby dedicates the facilities in the FOCIL Offer for public use and accepts  
5 such facilities for City maintenance and liability purposes. The Board's acceptance of  
6 improvements pursuant to this subsection (b) is for the Mission Bay Storm Water Pump  
7 Station No. 5 Improvements only and is subject to the warranty obligation under the Storm  
8 Water Pump Station No. 5 Street Improvement Permit No. 15IE-0451.

9 (c) The Board of Supervisors hereby acknowledges FOCIL's conditional assignment of  
10 all warranties and guaranties to the Public Utilities Commission related to the construction of  
11 the Stormwater Pump Station No. 5 Public Infrastructure Improvements and that its  
12 acceptance of this Infrastructure is subject to FOCIL's warranty obligations under Street  
13 Improvement Permit No. 15IE-0451 and the Mission Bay Acquisition Agreement.

14  
15 Section 4. Approval of an Easement Agreement for the Pump Station Control Room.  
16 The Board of Supervisors hereby approves the easement agreement in substantially the  
17 same form as the easement agreement on file with the Clerk of the Board of Supervisors.  
18 The Board delegates final approval authority to the Director of the Real Estate Division  
19 ("RED"). Within 30 days of recording the final easement agreement, the Director of RED shall  
20 forward the agreement to the Clerk of the Board of Supervisors to be included in Board File  
21 No. 190754 for purposes of this ordinance.

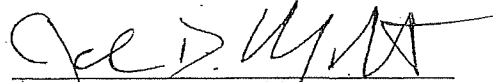
22  
23 Section 5. Authorization for Implementation. The Mayor, Clerk of the Board of  
24 Supervisors, and PW Director are hereby authorized and directed to take any and all actions  
25 which they or the City Attorney may deem necessary or advisable to effectuate the purpose

1 and intent of this ordinance, including, but not limited to, the filing of the ordinance in the  
2 Official Records of the City and County of San Francisco.

3  
4 Section 6. Effective Date. This ordinance shall become effective 30 days after  
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
7 of Supervisors overrides the Mayor's veto of the ordinance.

8  
9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA, City Attorney

11  
12 By:

  
13 JOHN D. MALAMUT  
14 Deputy City Attorney  
15 n:\legal\las2019\1900652\01376433.docx



**REVISED LEGISLATIVE DIGEST**  
(Amended in Committee, 7/22/2019)

[Mission Bay South - Storm Water Pump Station No. 5 Public Infrastructure Improvements]

**Ordinance accepting the irrevocable offer of public infrastructure improvements associated with Mission Bay South Storm Water Pump Station No. 5, including acquisition facilities located on and under portions of State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16th Street; accepting said facilities for City maintenance and liability purposes, subject to specified limitations; approving an easement agreement for the Pump Station control room; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order; and authorizing official acts, as defined herein, in connection with this Ordinance.**

Existing Law

The Board of Supervisors adopted the Redevelopment Plan for the Mission Bay South Project Area in Ordinance No. 335-98 on November 2, 1998. This Ordinance and related Mission Bay legislation established a process by which the project developer (FOCIL - MB, LLC) would construct specified public improvements and the City would dedicate the completed improvements for public use, accept such improvements for City maintenance and liability purposes, and take other related actions.

Amendments to Current Law

This legislation would accept an offer of dedication for Stormwater Pump Station No. 5 in Mission Bay South, adjacent to Terry Francois Boulevard and 16th Street; dedicate the improvements for public use; and accept the improvements for City maintenance and liability purposes, subject to specified limitations, all in accordance with the procedures established for the Mission Bay South Redevelopment Plan and applicable local and State law. This Ordinance would make certain findings, including environmental findings and findings that the legislation is consistent with the Mission Bay South Redevelopment Plan, the General Plan, and the eight priority policy findings of the Planning Code Section 101.1.

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Public Works Order No.: 201504



London N. Breed  
Mayor

Mohammed Nuru  
Director

San Francisco Public Works  
1 Dr. Carlton B. Goodlett Pl,  
Room 348  
San Francisco, CA 94102  
tel 415-554-6920

sfpublicworks.org  
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twitter.com/sfpublicworks  
twitter.com/mrcleansf

Re: Recommendation of formal acceptance of the Mission Bay South Stormwater Pump Station No. 5 Public Infrastructure Improvements located on and under a portion of State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16<sup>th</sup> Street (“Stormwater Pump Station No. 5 Public Improvements”); accepting the irrevocable offer of the acquisition facilities; dedicating such facilities to City use and acceptance for maintenance and liability purposes.

WHEREAS, California Statutes of 1968, Chapter 1333 (“the Burton Act”) and San Francisco Charter Section 4.114 empower the San Francisco Port Commission to use, conduct, operate, maintain, manage, regulate, and control the lands within Port Commission jurisdiction; and

WHEREAS, On November 2, 1998, the City, acting through its Board of Supervisors, approved the Mission Bay South Redevelopment Plan (“Mission Bay Plan”) by 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 (the “South OPA”); and

WHEREAS, On November 16, 1998, the City and County of San Francisco (the “City”) and the Redevelopment Agency entered into the South Interagency Cooperation Agreement; and

WHEREAS, On July 19, 1999, the City and Catellus entered into the Amended and Restated Mission Bay City Land Transfer Agreement (the “Land Transfer Agreement”); and

WHEREAS, On July 19, 1999, the State of California quitclaimed to the City and Port certain properties subject to a public trust, including portions of which the Stormwater Pump Station No. 5 are located (“Stormwater Pump Station No. 5 Public Infrastructure”); 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 a Delaware Corporation (“CLDC”), 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 November 22, 2004, COLP and CLDC granted all of its property in the grant deed, and assigned all rights and obligations under the OPA, as stated in the Assumption Agreement, to FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL"); and

WHEREAS, On February 1, 2012, state law dissolved the Redevelopment Agency and the transfer of all rights, obligations and liabilities of the former Redevelopment Agency to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("Successor Agency"), commonly known as the Office of Community Investment and Infrastructure ("OCIP"); and

WHEREAS, On July 7, 2014, San Francisco Public Works issued Street Improvement Permit No. 14IE-0522 to construct the "Mission Bay Storm Water Pump Station No. 5 Improvements"; and

WHEREAS, On March 22, 2019, Public Works issued a notice stating that the Project had been substantially completed as of March 19, 2019 pursuant to Improvement Permit No. 14IE-0522 and the Stormwater Pump Station No. 5 Improvements were ready for their intended use; and

WHEREAS, In a letter dated May 14, 2019, the San Francisco Planning Department determined that the acceptance of the Stormwater Pump Station No. 5 Improvements and other actions specified herein are consistent with the findings of Case No. 2019-005378GPR regarding consistency with the General Plan and the eight priority policies of Planning Code Section 101.1, and that the contemplated actions do not trigger the need for subsequent environmental review pursuant the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.); and

WHEREAS, On June 13, 2019, FOCIL irrevocably offered to the City the Stormwater Pump Station No. 5 Improvements constructed in accordance with the Project Plans, and any authorized revisions or contract change orders thereto, and a Conditional Assignment of Warranties and Guaranties related to the construction of all the Stormwater Pump Station No. 5 Improvements; and

WHEREAS, In a letter dated June 21, 2019, OCII determined the acceptance of the Stormwater Pump Station No. 5 Improvements and other actions specified herein are consistent with the Mission Bay South Redevelopment Plan and Plan Documents and recommended that the Board of Supervisors accept the improvements on behalf of the City; and

WHEREAS, On July 11, 2019, the General Manager of the Public Utilities Commission signed and accepted the FOCIL Conditional Assignment of Warranties and Guaranties with regard to the Stormwater Pump Station No. 5 Improvements; and

WHEREAS, The Director and the City Engineer hereby certify the following:

- 1) The Port currently holds jurisdiction over the portion of State Trust Parcel 5, on which the Stormwater Pump Station No. 5 Public Improvements have been constructed and which is proposed for City use.
- 2) FOCIL has irrevocably offered Stormwater Pump Station No. 5 Public Improvements to the City.

3) On behalf of FOCIL, Mission Bay Development Group, LLC has submitted a copy of a record Notice of Completion, Assignments of Warranties and Guaranties, Assignments of Reimbursements to the City from third parties, if applicable, and evidence of acceptability of the Stormwater Pump Station No. 5 Public Infrastructure from all applicable public entities and/or non-City utilities.

4) Public Works has performed all applicable inspections, obtained test results, ensured compliance with permit conditions and mitigation measures, resolved punch list items, determined Improvement Permit terms have been or will be met, and received Improvement Plan as-built drawings.

5) We hereby certify to the Board of Supervisors that Public Works has determined that as of March 19, 2019, the Stormwater Pump Station No. 5 Public Improvements are ready for their intended use and have been completed substantially in conformity with the Plans and Specifications for Mission Bay Stormwater Pump Station No. 5, approved by or on behalf of the PW Director, on July 7, 2014, and any authorized revision thereto, and that the Project has been constructed in accordance with all City codes, regulations, standards, and the Mission Bay South Plan and Plan Documents governing this Project.

**NOW THEREFORE BE IT ORDERED THAT,**

***With respect to facilities acceptance:***

We hereby recommend the Board of Supervisors accept the Stormwater Pump Station No. 5 Public Improvements, as referenced in the Acquisition Agreement dated June 1, 2001, and as further described in the Stormwater Pump Station No. 5 Irrevocable Offer of Improvements, dated June 13, 2019, and dedicate the improvements for City use.

We further recommend that the Board of Supervisors acknowledge FOCIL's Conditional Assignment of Warranties and Guaranties to the Public Utilities Commission with regard to the Stormwater Pump Station No. 5 Public Improvements.

***With respect to maintenance and liability:***

We hereby recommend that the Board of Supervisors accept the facilities for maintenance and liability purposes.

***With respect to an easement agreement for the Stormwater Pump Station No. 5 Control Room:***

The City requires an easement to access, operate, and maintain the Stormwater Pump Station No. 5 control room on private property. A draft of the easement agreement is attached to this Order and will be finalized and recorded by the Department of Real Estate or the General Manager of the Public Utilities Commission.

X DocuSigned by:  
*John Thomas*  
Thomas, John B3944D53BAFD487...  
Deputy Director and City Engineer

X DocuSigned by:  
*Nuru, Mohammed*  
Nuru, Mohammed H45AB17F474FA...  
Director

**RECORDING REQUESTED BY:**

City and County of San Francisco

**AND WHEN RECORDED RETURN TO:**

Real Estate Director  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102

**WITH A CONFORMED COPY TO:**

Real Estate Division  
General Services Agency of the City and  
County of San Francisco  
Attention: Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

Documentary Transfer Tax is Zero.  
Official Business Entitled to Free Recordation  
Pursuant to Government Code § 6103

APN: Block 3940, Lots 003 and 005

(Space above this line reserved for Recorder's use only)

**EASEMENT AGREEMENT  
(Pump Station No. 5 Control Room)  
(Assessor's Block 3940, Lots 3 and 5)**

This Easement Agreement ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by **ARE-SAN FRANCISCO NO. 43, LLC**, a Delaware limited liability company ("**Grantor**"), and **THE CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through its Public Utilities Commission ("**City**"). Grantor and City are each individually, together with their permitted successors and assigns, referred to in this Agreement as a "**Party**" and, collectively, as the "**Parties**".

**RECITALS**

A. Grantor owns certain real property located in the City and County of San Francisco, State of California, commonly known as the 409-499 Illinois Street project (the "**Project**"), which includes (i) an airspace parcel that contains the six-story 409 Illinois Street building (the "**North Building**"), (ii) an airspace parcel that contains the six-story 499 Illinois Street building, and (iii) an airspace parcel that contains the three-level subsurface parking garage for the Project (the "**Garage**"). The airspace parcels that comprise the Project are more particularly described on the attached *Exhibit A*. A site plan depicting the relevant portions of the Project plus the relevant

portions of the public open space located generally to the east of the Project (sometimes known as Park P23) (“**Park P23**”) is attached as *Exhibit A-1*.

B. The Mission Bay South Infrastructure Plan (which generally governs construction and development of infrastructure in the Mission Bay South Redevelopment Plan Area) generally contemplates, and San Francisco Planning Commission Motion No. 17223 (which approved the Project) specifically contemplates, the construction on Park P23 of a pump station serving City's municipal storm water system (the “**Pump Station**”). The Project includes space on the ground floor of the northeast corner of the North Building that is designated for a "control room" for the Pump Station.

C. City anticipates that FOCIL-MB, LLC, a Delaware limited liability company (“**FOCIL**”), as the master developer under that certain Mission Bay South Owner Participation Agreement, dated as of November 16, 1998, between FOCIL, as successor to Catellus Development Corporation, and the Redevelopment Agency of the City and County of San Francisco (as amended, the “**South OPA**”), will construct the Pump Station and install the “**Equipment**” (as defined in *Section 1.2(d)* below) and the associated infrastructure (the “**Infrastructure**”) pursuant to the terms of (i) a building permit or other agreement between FOCIL and City, (ii) the South OPA, and (iii) the improvement plans prepared by BKF Engineers entitled “Mission Bay Project Storm Water Pump Station No. 5,” dated April 15, 2014, approved by or on behalf of the San Francisco Department of Public Works Director, on July 7, 2014, and as may be further amended and approved from time to time (collectively, the “**SWPS #5 Agreements**”). To facilitate the work required by the SWPS #5 Agreements, Grantor and FOCIL entered into a certain License Agreement dated February 28, 2014 (the “**License Agreement**”), pursuant to which Grantor granted FOCIL a temporary license to enter upon and use various areas of the Project for, among other purposes, installing, constructing, repairing, maintaining, inspecting, operating, and using the Equipment and the Infrastructure before its acceptance by City.

D. City further anticipates that upon completion of the Pump Station, the Equipment, the Infrastructure, and the Control Room to the satisfaction of City and a Determination of Completion by City's Board of Supervisors, City will accept the Pump Station, the Equipment, the Infrastructure, and the Control Room as a public utility for public use, and FOCIL will no longer be responsible for the repair, maintenance, inspection, operation, or use of the Pump Station, the Equipment, the Infrastructure, or the Control Room. Accordingly, City desires to obtain the benefit of an easement after the “**Acceptance Date**” (as defined in *Section 1.2(a)* below), as well as the benefit of an easement prior to the Acceptance Date in the event that FOCIL fails to install, construct, repair, maintain, inspect, operate, or use the Pump Station, the Equipment, the Infrastructure, or the Control Room as required by the SWPS #5 Agreements.

E. City desires that Grantor grant to City easements to the “**Easement Areas**” (as defined in *Section 1.2(b)* below) for the installation, construction, reconstruction, replacement, augmentation, alteration, removal, repair, maintenance, inspection, operation and use of the Equipment and the Infrastructure, and to set forth the respective responsibilities of the Parties with respect thereto, on the terms and conditions more specifically set forth in this Agreement.

**AGREEMENT**

In consideration of the respective representations, warranties, covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, each of the Parties agrees as follows:

## ARTICLE I

### GRANT OF EASEMENTS AND OTHER RIGHTS

**Section 1.1. Grant; Easement Areas.** Upon the terms and conditions set forth in this Agreement, Grantor hereby grants to City the following irrevocable easements (each, an “Easement” and collectively, the “Easements”), in gross and not appurtenant to Park P23 or any portion of the North Building that includes the Control Room, such Easements to commence on the Acceptance Date or, if City provides Grantor written notice that City has properly exercised any rights under the SWPS #5 Agreements, to commence on a date prior to the Acceptance Date, as set forth in such notice from City (as applicable, the “Commencement Date”):

(a) the exclusive right (i) to install, construct, reconstruct, replace, augment, alter, remove, repair, maintain, inspect, operate and use any of the Equipment or Infrastructure within the control room located on the ground floor of the northeast corner of the North Building described in the attached *Exhibit B* and depicted on the attached *Exhibit B-1* (the “Control Room Easement Area” or the “Control Room”), and (ii) to use the Control Room in connection with the repair, maintenance, inspection, operation, or use of the Pump Station.

(b) the nonexclusive right to install, construct, reconstruct, replace, augment, alter, remove, repair, maintain, inspect, operate and use any of the Equipment, including, without limitation, conduits, cables and wiring and any related utilities between the Control Room and the Pump Station to be installed in the subsurface area under the Control Room Easement Area and under the portion of the ground floor of the Project described in the attached *Exhibit C*, and depicted on the attached *Exhibit C-1* (the “Utility Lines Easement Area”); and

(c) the nonexclusive right (i) to have access to the Control Room over that portion of the ground floor of the Project described in the attached *Exhibit D* and depicted on the attached *Exhibit D-1* (the “Access Easement Area”), (ii) to place, use, and operate power cables and generators (“Generators”) in the Access Easement Area if reasonably necessary or appropriate to provide emergency, back-up, or additional power to the Equipment, the Control Room, and/or the Pump Station; and (iii) to use the Access Easement Area as reasonably necessary or appropriate for equipment staging in connection with, and parking of vehicles of any employees and agents of the San Francisco Public Utilities Commission (“SFPUC”) and its contractors who are engaged in, the installation, construction, reconstruction, replacement, augmentation, alteration, removal, repair, maintenance, inspection, operation or use of the Pump Station, the Equipment, the Infrastructure, or the Control Room Equipment.

### **Section 1.2. Definitions.**

(a) “Acceptance Date” means the date of City’s acceptance (by action of City’s Board of Supervisors) of the Pump Station, the Equipment, the Infrastructure, and the Control Room for public utility purposes and for public use, responsibility and maintenance.



(b) **"Easement Areas"** means, collectively, the Control Room Easement Area, the Utility Lines Easement Area, and the Access Easement Area.

(c) **"Environmental Laws"** means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of **"Governmental Authorities"** (as defined below) relating to the environment, to any **"Hazardous Substance"** (as defined below) or to any activity involving Hazardous Substances, including, without limitation, the **"RMP"** (as defined below).

(d) **"Equipment"** means any conduits, cables, wiring, environmental controls, electric, heating, ventilation, air conditioning, fire suppression, alarm, or other system servicing the Control Room and the control system for the Pump Station, including, without limitation, electronic and computerized switchboards and monitors, and any conduits, cables, wiring, or other equipment connecting the Control Room and the Pump Station, any transformers and Generators used to supply emergency, back-up, or additional power to the Control Room and/or the Pump Station, and any conduits, cables, wiring or other equipment connecting any Generators to the Control Room and/or Pump Station.

(e) **"Governmental Authorities"** means any local, state or federal agency, court, board, bureau or other governmental or quasi-governmental authority having jurisdiction with respect to any portion of the Project.

(f) **"Hazardous Substances"** means any chemical, compound, material, mixture, living organism or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity including any petroleum, polychlorinated biphenyls (PCBs), asbestos, radon, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(g) **"RMP"** means the Risk Management Plan for the Mission Bay Area approved by the California Regional Water Quality Control Board in May 1999 and any amendments thereto affecting any portion of the Project (including, without limitation, the amendment effective May 31, 2005, by which the RMP was amended to include the Project).

*Section 1.3. **Reserved Rights.*** Grantor reserves the right to use the above ground areas of the Utility Lines Easement Area and the Access Easement Area for any and all purposes permitted by law that will not unreasonably interfere with the rights granted City hereunder, subject to the provisions of *Section 4.1.*

## ARTICLE II

### TERM AND TERMINATION

**Section 2.1. Term.** The term of this Agreement (the “Term”) shall commence on the Commencement Date and shall be perpetual, unless terminated, in whole or in part, in accordance with **Section 2.2, Section 9.3** or applicable law.

**Section 2.2. Termination and Effect of Termination.**

(a) **Unilateral Termination By City.** This Agreement may be terminated at any time as to all or any portion of the Easement Areas by action of the SFPUC Commission, or if required, the City’s Board of Supervisors. No termination fee shall be due from or to any Party in connection with such termination.

(b) **Effect of Termination; Survival.** The termination of this Agreement, in whole or in part, shall not extinguish or otherwise affect any obligations or liabilities of the Parties that have accrued prior to such termination, and those provisions that expressly survive the termination of this Agreement.

**Section 2.3. No Obligation To Remove Equipment.** Other than the Equipment in the Control Room, City shall have no obligation to remove any of the Equipment on, before, or after termination of this Agreement.

**ARTICLE III**

**CITY’S RIGHTS AND RESPONSIBILITIES**

**Section 3.1. City’s Responsibilities.** From and after the Acceptance Date (or earlier if City, pursuant to **Section 1.1** above, provides Grantor written notice that City has properly exercised any rights under the SWPS #5 Agreements, to commence on a date prior to the Acceptance Date, as set forth in such notice from City), City shall fulfill the following responsibilities:

(a) City shall be solely responsible for, and shall pay for all costs associated with, City’s activities within any Easement Area pursuant to this Agreement, including, without limitation, the reconstruction, replacement, augmentation, alteration, removal, repair, maintenance, inspection, operation and use of the Equipment, the Infrastructure, and the Control Room. City shall use commercially reasonable efforts to keep the Equipment, the Infrastructure, and the Control Room (excluding the exterior walls of the Control Room) in safe condition.

(b) City shall be solely responsible for obtaining any other permits, licenses, approvals and other governmental entitlements necessary for any of City’s activities within any Easement Area.

(c) To the extent not previously completed pursuant to the License Agreement and City elects to perform such work, the construction of the Pump Station and the installation of the Equipment and the Infrastructure shall be conducted and performed by City in a good and workmanlike manner. In addition, during any such construction or installation, City shall take reasonable precautionary measures to protect the public from bodily injury or death, and the Project from damage, from City’s activities on, and use of, any portion of the Project.

(d) City may remove any of the Equipment at any time without prior notice to Grantor. If City removes any Equipment, City shall be responsible for the repair of any damage to the North Building and/or the Garage caused by City during the removal of such Equipment.

(e) Following any excavation by City in, or other work by City disturbing the surface of, the Utility Lines Easement Area, City, subject to *Section 4.1(h)*, shall promptly restore the surface area of the Utility Lines Easement Area to its base condition (which means basic pavement or compacted soil, as applicable). Grantee shall not be responsible for restoring any enhanced treatment that has been added to the Utility Lines Easement Area, including the use of cobblestone, brick, tile and other similar treatments.

*Section 3.2. City's Access.* City shall have access to the Easement Areas twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.

*Section 3.3. Use of Generators.* Grantor acknowledges that City's operation of the Generators may block portions of the Access Easement Area and create excess noise, odors, and visual and physically hazardous obstructions, including, but not limited to, high voltage electrical cabling; provided, however, City shall use good faith efforts to minimize the disruption to the Project, to Grantor's use or operation of the Project, or to any tenant's use or operation of the Project. Grantor hereby releases City from any claims, demands, losses, liabilities, or damages (collectively, "Claims") based upon any diminution of value of, or damage to, the Project or any restriction on, or interference with, the activities or operations of Grantor at the Project resulting from City's placement and/or operation of any Generators in the Access Easement Area, other than Claims resulting from the negligence or willful misconduct of City or its contractors, agents, officers, or employees.

*Section 3.4. Specific Purpose Only.* City shall use the Easements only for the purposes set forth in this Agreement, and no other entry or activities upon or use of any part of the Project by City shall be permitted. City hereby acknowledges that, except for the exclusive right granted in *Section 1.1(a)* above, City's right to enter upon and use the various Easement Areas is non-exclusive (provided that Grantor may not give any other person or entity any easement, license, or other right (i) to use the Utility Lines Easement Area that will interfere with the rights granted City hereunder, or (ii) to use the Access Easement Area that will unreasonably interfere with the rights granted City hereunder).

*Section 3.5. Legal Use.* City agrees not to use any of the Project (including, without limitation, the North Building), the Easement Areas, or the Equipment and/or the Infrastructure for any purpose that is illegal or in violation of any applicable laws, regulations, or ordinances applicable to the Project.

*Section 3.6. Expertise of Persons Entering.* All persons to whom City grants access to the Control Room for the purpose of installing, constructing, reconstructing, replacing, augmenting, altering, removing, repairing, maintaining, inspecting, operating, or using the Control Room, the Equipment, and/or the Infrastructure shall have sufficient expertise and experience to perform such task.

## ARTICLE IV

### GRANTOR'S RESPONSIBILITIES

*Section 4.1. Grantor's Responsibilities.* Grantor shall fulfill the following responsibilities:

(a) Grantor shall be solely responsible for maintaining and repairing the North Building (including, but not limited to, the structural elements of the North Building and the exterior walls of the Control Room), and shall use commercially reasonable efforts to keep any building systems of the North Building (e.g., heating, venting, and air conditioning (HVAC) or fire suppression systems) that actually serve the Control Room in good operating condition.

(b) Grantor shall coordinate with City the performance of any maintenance, repair, or other work by Grantor that could potentially have a direct or indirect impact on the Equipment, the Infrastructure, and/or the Control Room, in accordance with any procedures and guidelines agreed upon from time to time by City and Grantor.

(c) If Grantor acquires actual knowledge of any unauthorized parties entering or attempting to enter the Control Room or of any damage to the entrance or door to the Control Room, Grantor shall promptly notify City of such unauthorized entrance, attempted entrance, or damage. While Grantor does not assume any responsibility to City to provide any security measures or assume any liability to City for failure to provide the same or for any inadequacy thereof, if Grantor (in Grantor's sole discretion) actually engages a company or directly employs individuals to provide security for the Project, Grantor shall use commercially reasonable efforts to cause representatives of such company or such individuals to periodically check the exterior entrance or door to the Control Room for evidence of unauthorized parties entering or attempting to enter the Control Room and of any damage to the entrance or door to the Control Room and to promptly notify Grantor of any such evidence or of any such damage.

(d) Grantor shall promptly notify City when Grantor (including its property manager for the North Building) becomes aware of any flooding or bursting or leaking of water pipes above the Control Room, or in any area in the North Building where there would likely be water intrusion into the Control Room, and shall use commercially reasonable efforts to protect the Control Room from water intrusion from any such flooding or bursting or leaking of water pipes.

(e) If City provides Grantor notice of City's intent to place or operate any Generators or other heavy equipment (such as excavators, cranes, lifts, fueling trucks, or similar equipment necessary to perform maintenance, repairs, renovations, or other necessary work) near the North Building or in the Access Easement Area, Grantor shall use commercially reasonable efforts to notify tenants or other occupants of the North Building prior to the City's placement and/or operation of any such Generators or other heavy equipment (provided that the foregoing shall not be deemed, construed, or interpreted as requiring prior notice to such tenants or other occupants in the event of an emergency).

(f) Grantor shall use commercially reasonable efforts to remedy, or cause to be remedied, any latent or patent defects in the construction of the Control Room's core and shell or of

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any building systems that actually serve the Control Room of which Grantor acquires actual knowledge within one (1) year after the Acceptance Date (“Defective Work”); provided however, if the Defective Work is covered for a longer period by warranty, then such one (1) year period will be extended until expiration of the warranty period. Further, Grantor shall use commercially reasonable efforts to enforce on behalf of City any rights or warranties Grantor may have against other parties related to any Defective Work (“Enforcement Obligation”); provided, however, in no event shall Grantor have any Enforcement Obligation beyond the time periods available at law.

(g) Upon receipt of an invoice from City, Grantor shall promptly reimburse City for the cost to repair any damage to the Equipment or the Control Room resulting from the negligence or willful misconduct of Grantor or its contractors, agents, officers, or employees.

(h) Grantor agrees that no trees or shrubs shall be planted, no structures or improvements of any kind or character shall be constructed or placed, and, following the installation of any Equipment in the Utility Lines Easement Area, no excavation (including the installation of any other public or private utilities) shall occur, above, under, on or within the Utility Lines Easement Area without the prior written consent of the General Manager of the SFPUC, which consent may be granted or withheld in his or her sole discretion. If the General Manager of the SFPUC consents to the installation of additional public or private utilities above, under, on or within the Utilities Lines Easement Area, then the General Manager of the SFPUC shall have the further right to approve, in his or her sole discretion, the location of any such utilities to limit the impact of such utilities on the Equipment and/or the Infrastructure. A request for approval under this *Section 4.1(h)* (“Utility Placement Approval Request”) shall be made to the General Manager of the SFPUC, with a copy to the Director of City’s Department of Public Works (“DPW”), in writing, delivered by messenger or certified mail, and shall include the contact information for the utility company and a plat showing the proposed location for placement of the utility lines in the Utility Lines Easement Area. 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 during the permit process 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. To prevent damage to the Equipment, Grantor shall not use vehicles or equipment in excess of the standards established by AASHTO-H20 within the Utility Lines Easement Area during construction and/or maintenance of any improvements on or adjacent to the Utility Lines Easement Area, or for any other purpose, without SFPUC’s prior written approval.

(i) If Grantor plans any construction or installation activities that would affect the Control Room, the Equipment, the Infrastructure, or the Control Room or Utility Lines Easement Areas, Grantor will submit its engineering and construction plans (which plans will also include cross-section(s) showing the applicable Easement Area(s) impacted by such activity) to SFPUC for its review and approval at least thirty (30) days before commencing such activities, which approval may be granted or withheld in SFPUC’s reasonable discretion. All such notices shall display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following capitalized words in bold and underlined: “**PROPOSED CONSTRUCTION NOTICE FOR MISSION BAY SOUTH–CONTROL ROOM AND SWPS #5. IMMEDIATE ATTENTION REQUIRED.**” SFPUC shall complete its review and note its concerns within thirty (30) days after its receipt of plans conforming to this Section and such other information requested by SFPUC to conduct its review. If SFPUC fails to respond within such thirty (30) day

period, then SFPUC shall be deemed to have disapproved Grantor's request. SFPUC may condition any approval of Grantor's proposed construction or installation activity on any reasonable grounds, including, but not limited to, (i) Grantor delivering commercially reasonable security to protect, as applicable, the Control Room, the Equipment, the Infrastructure, or the Control Room or Utility Lines Easement Areas, (ii) SFPUC assigning personnel to monitor Grantor's activities, at no cost to Grantor, and (iii) delaying commencement of Grantor's proposed activities to ensure that such proposed activities do not damage the Equipment or the Infrastructure or impair City's rights under this Agreement.

**Section 4.2. No Grantor Access To Control Room.** Grantor shall have no access to the Control Room unless City gives prior written consent for each entry, which consent may be granted or withheld in City's sole discretion.

**Section 4.3. No Interference.** After the Acceptance Date, Grantor will not knowingly allow (unless permitted under a lease or occupancy agreement in effect before the Acceptance Date) the installation of any equipment, devices, systems, or physical obstructions in the North Building that would result in unreasonable technical interference with the operation of the Equipment or the Infrastructure. For purposes of this Agreement, "technical interference" may include, but is not limited to, any equipment, device, system, or physical obstruction in the North Building that causes electronic or physical obstruction of the operation of the Equipment or the Infrastructure; provided, however, that any standard maintenance equipment, mechanical equipment (e.g., elevators or HVAC systems), office equipment, information technology equipment, or other similar equipment, device, or system shall be conclusively deemed not to cause technical interference with the Equipment or the Infrastructure. City shall give Grantor written notice if there is any unreasonable technical interference with the operation of the Equipment or the Infrastructure, describing the nature of such interference. Upon notice of any such interference, Grantor shall cooperate with City to identify the source of such interference, and Grantor shall use commercially reasonable efforts to mitigate such interference.

## ARTICLE V

### ADDITIONAL RIGHTS AND OBLIGATIONS

**Section 5.1. Cooperation.** During the term of this Agreement, each Party shall provide such assistance and cooperation as the other Party may reasonably request in connection with performance of the applicable Party's duties and obligations under this Agreement.

**Section 5.2. Party Contacts.** Each Party shall appoint at least one representative as a contact for purposes of this Agreement. Each Party shall provide the other Party with written notice setting forth the names or titles and contact information of the individuals who are authorized to act for and on their behalf of such Party under this Agreement.

## ARTICLE VI

### INSURANCE

*Section 6.1. Grantor's Insurance Requirement.* Grantor shall maintain property insurance coverage, extended coverage and special extended coverage insurance for the North Building. Such coverage shall (i) be written on the broadest available "all risk" (special-causes-of-loss) policy form or an equivalent form reasonably acceptable to Grantor, (ii) include an agreed-amount endorsement for no less than the full replacement cost of the Project or such lesser coverage amount as Grantor may reasonably elect (provided, such coverage amount is not less than 90% of such full replacement cost), and (iii) from and after the Acceptance Date (or earlier if City, pursuant to *Section 1.1* above, provides Grantor written notice that City has properly exercised any rights under the SWPS #5 Agreements, to commence on a date prior to the Acceptance Date, as set forth in such notice from City), by written endorsement, name City, the SFPUC and their officers, directors, employees and agents as additional insureds or otherwise directly insure City's interest in the Project pursuant to this Agreement. Upon City's written request, Grantor shall promptly deliver to City certificates of insurance or the insurance policy evidencing the insurance coverage required hereunder (and, if applicable, showing City, the SFPUC and their officers, directors, employees and agents as additional insureds).

*Section 6.2. City Not Required To Carry 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 Easements herein granted solely because it is the policy of City to self-insure as to the matters covered by such insurance. The City hereby agrees that if to any extent said policy changes so that City does use liability insurance, it will reasonably negotiate with Grantor to provide liability insurance coverage for the use of the Easements to the extent such new policy allows and in such event the waiver of subrogation provisions of *ARTICLE VII* shall also be applicable.

## ARTICLE VII

### WAIVER OF SUBROGATION

The terms and provisions of this *ARTICLE VII* shall be inoperative as to City unless and until City's policy of self-insurance changes and City is procuring liability insurance covering its use of the Easements 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 *ARTICLE VII* 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 Parties, any rights and/or claims that might give rise to a right subrogation in any such insurance carrier.

**ARTICLE VIII**  
**INDEMNIFICATION**

**Section 8.1. City's Indemnification Obligations.** City shall indemnify, defend and hold Grantor, its partners, members, shareholders, and other owners, and their respective officers, directors, employees, agents, successors and assigns (for purposes of this **Section 8.1**, "**Indemnified Parties**") harmless from all liabilities, penalties, costs, damages, expenses, claims or judgments (including, without limitation, reasonable attorneys' fees) (collectively, "**Indemnified Claims**"), resulting from injury or the death of any person, physical damage to property, or the emission, discharge, or release of Hazardous Substances on or about the Project, which injury, death, physical damage, or emission, discharge, or release of Hazardous Substances arises out of or is connected with City's (or City's officers, employees, agents, or contractors) use or occupancy of any part of the Project under the authority of this Agreement, but only in proportion to and to the extent that such Indemnified Claims arise from the negligent or wrongful acts or omissions of City or its contractors, agents, officers, or employees. For purposes of any indemnification obligations of City, FOCIL or any of its officers, employees, agent, contractors, or invitees will not be deemed an agent, employee, or contractor of City.

Grantor 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 that Grantor has reason to believe is likely to give rise to an Indemnified Claim hereunder. If prompt notice is not given to City, then City's liability hereunder shall terminate as to the matter for which such notice is not given but only to the extent City is prejudiced by such failure. City shall, at its option but subject to the reasonable consent and approval of Grantor, 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 Grantor shall be entitled to participate in such defense, compromise, or settlement at its own expense.

**Section 8.2. Grantor's Indemnification Obligations.** Without limiting the effect of the release set forth in **Section 3.3** above, from and after the Commencement Date, Grantor shall indemnify, defend and hold City, its officers, directors, shareholders, employees, agents, successors and assigns (for purposes of this **Section 8.2**, "**Indemnified Parties**") harmless from all Indemnified Claims, resulting from injury or the death of any person or physical damage to property, which injury, death or physical damage arises out of Grantor's failure to comply with the terms and conditions of this Agreement or any Defective Work, but only in proportion to and to the extent that such Indemnified Claims arise from the negligent or wrongful acts or omissions of Grantor or its contractors, agents, officers, or employees. In no event shall Grantor be liable for any consequential, incidental or punitive damages.

City agrees to give prompt notice to Grantor with respect to any Indemnified Claims initiated or threatened against any Indemnified Party, at the address for notices to Grantor 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 that City has reason to believe is likely to give rise to an Indemnified



Claim hereunder. If prompt notice is not given to Grantor, then Grantor's liability hereunder shall terminate as to the matter for which such notice is not given but only to the extent Grantor is prejudiced by such failure. Grantor shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise or settlement of any such matter through counsel of Grantor's own choice; provided, however, that in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense.

## ARTICLE IX

### DAMAGE AND DESTRUCTION

**Section 9.1. Repair of Damage By Grantor.** If the Control Room or portions of the North Building necessary for City's exercise of one or more of its Easements is damaged by a fire, earthquake, or any other act of nature ("**Casualty**") and Grantor elects (in Grantor's sole discretion) to repair or restore the North Building, Grantor shall repair or restore the Control Room to shell condition as part of Grantor's repair or restoration of the North Building. Grantor, within ninety (90) days after the date of the Casualty, shall provide written notice to City indicating whether Grantor has elected to repair or restore the North Building. In no circumstances shall Grantor have any responsibility to restore or rebuild any portion of the Equipment or the Infrastructure.

**Section 9.2. Repair Period Notice.** If Grantor elects (in Grantor's sole discretion) to repair or restore the North Building, Grantor, within thirty (30) days after notifying City of such election, shall provide written notice to City indicating, in Grantor's good faith judgment, the anticipated period for repairing or restoring the North Building to the extent necessary for City to resume its exercise of the Easements affected by the Casualty ("**Repair Period Notice**").

**Section 9.3. Suspension of City's Easement Rights.** Subject to **Section 9.4** below, if the North Building is substantially damaged by a Casualty, SFPUC determines that, as a result of such Casualty, the Pump Station cannot be reliably operated using the Equipment remaining in the original Control Room, and Grantor elects (in Grantor's sole discretion) not to repair or restore the North Building, City's Easement rights shall be suspended until Grantor or any of its successors or assigns commences the repair or restoration of the North Building or the construction of a new project at the North Building site.

**Section 9.4. Temporary Space.** In the event of a Casualty affecting the Easements, Grantor shall reasonably cooperate with City to provide City with accommodations at the Project site for a temporary control room for the Pump Station ("**Temporary Control Room**") to minimize the disruption caused by such Casualty. The location of any Temporary Control Room at the Project site shall be within the general location of the original Control Room or such other location reasonably acceptable to each Party. The footprint of any Temporary Control Room at the Project site shall not be more than 50% larger than the footprint of the original Control Room (unless necessary to comply with then current law), and the Easement Areas may be reasonably modified, on a temporary basis, to account for the expanded footprint of any Temporary Control Room. If providing such accommodations at the Project site would materially and adversely impair Grantor's operations at the Project and City is able to find a location off the Project site that is reasonably satisfactory to City for a Temporary Control Room, then City will locate the Temporary Control Room off the Project site. If, after construction of a Temporary Control Room, Grantor or any of its

successors or assigns elects to repair or restore the North Building or to construct a new project, then Grantor shall provide written notice of such election to City at least six (6) months before commencing any repairs, restoration, or construction so that City may construct a Temporary Control Room off the Project site during such repairs, restoration, or construction. Grantor shall be responsible for the reasonable costs of constructing and dismantling the "core and shell" of any Temporary Control Room. In no circumstances, however, shall Grantor have any responsibility for the costs of constructing or installing any equipment or infrastructure for any Temporary Control Room.

**Section 9.5. Grantor's Obligation If Rebuild.** If Grantor or any of its successors or assigns repairs or restores the North Building or constructs a new project, then City's Easement rights will be automatically reinstated without the need for additional notice or other documentation from and after the commencement of such repair or restoration or such construction; provided, however, upon commencing construction of a new project, the dimensions and location of the new control room ("**New Control Room**") and the new easement areas may be reasonably modified to account for the then footprint of the new project and any other developments surrounding such project; provided, further, that Grantor will use its good faith efforts to keep the New Control Room within the general location of the original Control Room and to keep the dimensions of the New Control Room substantially the same as the dimensions of the original Control Room (unless necessary to comply with then current law) so that the operation, maintenance, or repair of the Pump Station is not adversely impacted by a change in the location or a reduction in the dimensions of the New Control Room. Grantor shall be responsible for the reasonable costs of repairing or restoring the "core and shell" of the Control Room or constructing the "core and shell" of any New Control Room. In no circumstances, however, shall Grantor have any responsibility for the costs of repairing or restoring any portion of the Equipment or the Infrastructure or for the costs of constructing or installing any equipment or infrastructure for any New Control Room. The provisions of this **Section 9.5** shall expressly survive the termination of this Agreement.

**Section 9.6. Waiver of Statutory Provisions.** The provisions of this Agreement, including those in this **ARTICLE IX**, constitute an express agreement between Grantor and City that applies in the event of any Casualty. Accordingly, the Parties hereby fully waive the provisions of California Civil Code Sections 1932(2) and 1933(4), and any similar statute now or hereafter in force.

**Section 9.7. No Termination Fee.** No Termination Fee shall be due in connection with any termination of this Agreement pursuant to this **ARTICLE IX**.

## ARTICLE X

### MECHANICS LIENS

City's obligations pursuant to this **ARTICLE X** shall not apply to any work or other activities performed by FOCIL. City shall keep the Project free and clear of all mechanics', material suppliers' or similar liens, or claims thereof, arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by City or at its request or for its benefit in the Easement Areas. If any mechanics' liens are placed on the Project in connection with the activities of City set forth in this Agreement, City shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner

specified in California Civil Code Section 8424 or any successor statute. If City shall fail to release or remove such lien within forty-five (45) days of City's receipt of notice from Grantor and City is not diligently proceeding to release or remove such lien, Grantor shall have the right, but not the obligation, to record a lien release bond in the manner specified in California Civil Code Section 8424 or any successor statute, and City shall reimburse Grantor for the reasonable costs of obtaining and recording such bond within thirty (30) days after Licensee's receipt of an invoice therefor, together with reasonably acceptable substantiation thereof.

## ARTICLE XI

### SUBORDINATION

*Section 11.1. Subordination of Encumbrances.* The Parties agree that this Agreement shall become or remain superior in priority to the lien of any mortgage, deed of trust, or any other security instrument now or hereafter affecting or encumbering the Project, or any part thereof or interest therein.

*Section 11.2. Grantor To Obtain Subordination Agreement.* Grantor shall promptly obtain from any holder (the "Mortgagee") of any existing lien of any mortgage, deed of trust, or any other security instrument affecting or encumbering the Project, or any part thereof or interest therein, a written agreement from such Mortgagee acknowledging the subordination of such security instrument to this Agreement or, in lieu of such acknowledgment, agreeing that (a) a breach of or default under the mortgage, deed of trust, or other security instrument shall not defeat or render invalid the lien or charge of this Agreement against the Project, (b) the Agreement shall be binding upon and effective against any person whose title to any portion of the Project is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or trustee's sale, or otherwise through the exercise of any rights or remedies provided for in the mortgage, deed of trust, or other security instrument, and (c) any lien or charge created pursuant to this Agreement shall be a continuous lien or charge against the Project unaffected by and not subject to being extinguished as a result of any right or remedy under or any action that may be taken in connection with the mortgage, deed of trust, or other security instrument. Such agreement shall be in a form reasonably satisfactory to City and will be recorded concurrently with this Agreement; provided, however, failure to record such agreement will not affect the Mortgagee's agreement as set forth in this Section.

## ARTICLE XII

### ENVIRONMENTAL MATTERS

*Section 12.1. Use and Storage of Hazardous Materials.* City shall not cause or permit any hazardous materials to be transported to, brought upon, produced, manufactured, generated, stored, handled, used, treated, released, discharged, emitted or disposed of in, on or about the Project without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion; provided, however, that City shall have the right to use and store reasonable and customary amounts of hazardous materials necessary for the installation, construction, alteration, maintenance, and operational requirements of the Equipment and/or the Infrastructure without obtaining Grantor's prior approval, so long as such use and storage complies with all applicable environmental laws.

**Section 12.2. Covenant and Environmental Restriction on Property.** This Agreement and the use of the Easement Areas shall be subject to, and 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”) 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 Easement Areas and other property. In addition, as required by the Covenant, in the use and enjoyment of the Easement Areas under this Agreement, City shall: (i) comply with the RMP, (ii) obligate other entities which with 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) Grantor’s or its successors or assigns compliance with the RMP. City hereby acknowledges that it has a copy of the RMP. This Section 12.2 shall survive the expiration or earlier termination of this Agreement.

### ARTICLE XIII

#### LITIGATION FEES

**Section 13.1. Meet and Confer.** The Parties will meet and confer in good faith in an effort to reach an agreement regarding the matters at issue if there is a dispute between the Parties regarding the meaning or applicability of any terms or conditions of this Agreement, if either Party desires clarification on the meaning or applicability of any terms or conditions of this Agreement, or if either Party desires to amend or modify this Agreement. Either Party may request a meeting pursuant to this **Section 13.1** by giving written notice of such request to the other Party. Such meeting shall be at a time and place mutually convenient to each Party. Any agreement reached by the Parties shall be memorialized in writing and signed by each Party. This **Section 13.1** shall survive the termination of this Agreement.

**Section 13.2. General.** If any Party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against any other Party or Parties 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, which shall be payable whether or not such action is prosecuted to judgment. Notwithstanding the foregoing, no Party may institute any action or proceeding against any other Party or Parties unless and until the meet and confer procedures set forth in **Section 13.1** above have been satisfied. “Prevailing Party” within the meaning of this **ARTICLE XIII** 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.

**Section 13.3. Appeal.** Attorneys’ fees under this **ARTICLE XIII** 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.

*Section 13.4. Fee Award For In-House Counsel.* For purposes of this Agreement, reasonable fees of attorneys of the City Attorney's Office or any in-house counsel of Grantor 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 the City Attorney's Office or Grantor'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.

#### ARTICLE XIV

#### MISCELLANEOUS

*Section 14.1. Complete Agreement.* This Agreement and the Exhibits referenced in or attached to this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, both written and oral, with respect to such subject matter.

*Section 14.2. Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, but all of which, when taken together, shall be deemed to constitute one and the same agreement.

*Section 14.3. Notices.* Any notices, demands, consents, approvals, and requests 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, in addition to but not in lieu of, the notice served as set forth above, copies of notices may also be given by telefacsimile, to the telefacsimile numbers listed below or such other numbers as may be provided from time to time.

City 6/26/19 Draft

Grantor: ARE San Francisco No. 43, LLC  
385 E. Colorado Blvd., Suite 299  
Pasadena, California 91101  
Attention: Corporate Secretary  
Re: 409-499 Illinois St. (SF, CA)  
Telefacsimile: (626) 578-0770

with copies to: ARE San Francisco No. 43, LLC  
1700 Owens Street, Suite 590  
San Francisco, CA 94158  
Attention: Stephen A. Richardson  
Re: 409-499 Illinois St. (SF, CA)  
Telefacsimile: (415) 554-0142

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

SFPUC: SF Public Utilities Commission  
525 Golden Gate Ave, 10th Floor  
San Francisco, CA 94102-3220  
Attention: Real Estate Services Division/Mission Bay South  
Telefacsimile: (415) 934-5770

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) 554-4755

and to: Director of Property  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Telefacsimile: (415) 552-9216

City 6/26/19 Draft

and to: Director of Department of Public Works  
 Department of Public Works  
 City and County of San Francisco  
 c/o Barbara Moy, Task Force Manager  
 Mission Bay Project  
 30 Van Ness Avenue, Suite 4200  
 San Francisco, California 94102

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, demands, consents, approvals, and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day) or if mailed, the next business day after being deposited with an overnight courier or two business days after being deposited with the U.S. Postal Service (as evidenced by a postmark date). A person may not give official or binding notice by telefacsimile. 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.

***Section 14.4. Successors and Assigns; Burden on Land.*** This Agreement shall be binding in all respects upon, inure to the benefit of and be enforceable by the successors and permitted assigns of the Parties; provided, however, City may not assign its rights or delegate its obligations under this Agreement to a non-City person or entity without Grantor's prior written consent, in its reasonable discretion, unless such assignment or delegation is part of a broader assignment of City's rights and delegation of City's obligations to one non-City person or entity with respect to the Pump Station and at least one other pump station serving City's municipal storm water system. The Easements and this Agreement shall be a burden on the Project, which burden shall run with the land and shall be binding on any future owners and encumbrances of the Project or any part thereof and their successors and assigns.

***Section 14.5. Third Party Beneficiaries.*** This Agreement and all of its provisions and conditions are solely for the benefit of the Parties and shall not be deemed to confer upon third parties any remedy, claim, liability, right of reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

***Section 14.6. Governing Law.*** This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of California.

***Section 14.7. Severability.*** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Furthermore, if any provision of this Agreement or the application thereof to any person, entity, or circumstance is determined by a non-appealable decision by a court, administrative agency or arbitrator with jurisdiction of the matter to be invalid, void or unenforceable in any respect, the remaining provisions of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it has been held invalid,

void or unenforceable, shall remain in full force and effect and in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to a Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.

**Section 14.8. No Joint Venture.** Nothing in this Agreement creates or is intended to create an association, trust, partnership or joint venture.

**Section 14.9. Limitation on Waivers.** Except as expressly set forth in this Agreement, no failure to exercise and no delay in exercising, on the part of a Party, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement shall be released, waived or renounced, in whole or in part, by the Party holding such claim or right, unless in writing signed by such Party; (b) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (c) no notice to or demand on a Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

**Section 14.10. Amendments and Waivers.** The Parties may, from time to time, (a) enter into written amendments, supplements or modifications hereto for the purpose of adding or modifying any provisions to this Agreement or changing in any manner the rights of the Parties hereunder, or (b) waive, on such terms and conditions as may be specified in writing, any of the requirements of this Agreement.

**Section 14.11. Exculpation.** No Party shall have any claim or cause of action against any disclosed or undisclosed elective or appointed body, commission, principal, shareholder, trustee, member, director, officer, employee, partner, parent, subsidiary, or other affiliate of any other Party, or any principal, shareholder, trustee, member, director, officer, employee, or partner of any such parent, subsidiary, or other affiliate (collectively, "**Party Affiliates**"), arising out of or in connection with this Agreement. In the event of a default under this Agreement by another Party, the other Party's recourse for the satisfaction of any resulting liability or obligation arising under this Agreement shall be limited solely to the defaulting Party and its assets. Each such other Party hereby expressly agrees not to seek recourse of any kind against any Party affiliates of any other Party with respect to any matters arising out of or in connection with this Agreement. This Section shall survive the termination of this Agreement.

**Section 14.12. Disclaimer of Grantor's Responsibility.** Grantor shall have no responsibility or liability whatsoever (i) for the construction, installation, or completion of, or the performance of any warranty work on, the Pump Station, the Equipment, or the Infrastructure, (ii) if City elects not to accept the Pump Station, the Control Room, the Equipment, or the Infrastructure, (iii) for the operation and maintenance of the Pump Station, the Equipment, or the Infrastructure, or (iv) for any latent or patent defect in the Pump Station, the Equipment, or the Infrastructure. This Section shall survive the termination of this Agreement.



*Section 14.13. Authority.* Grantor is a limited liability company, formed, validly existing and in good standing under the laws of the Delaware and is duly qualified and in good standing under the laws of the State of California. Each Party represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate or other requisite actions, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and general principles of equity.

*Section 14.14. Saturdays, Sundays, Holidays, Etc.* If the last or appointed day for the taking of any action required or permitted by this Agreement shall be a day which is not a Business Day, then such action may be taken on the next succeeding day which is a Business Day. "Business Day" means Monday through Friday that is not a City holiday.

*Section 14.15. Time.* Time is of the essence of this Agreement and each and every part hereof.

*Section 14.16. No Dedication; Notices Concerning Use.* Nothing in this Agreement shall be deemed a dedication of any portion of the Project to or for the benefit of the general public. Grantor 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 Grantor and City hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:

**ARE-SAN FRANCISCO NO. 43, 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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

Board of Supervisors Resolution: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS HERRERA,  
City Attorney

RECOMMENDED

By: \_\_\_\_\_  
Shari Geller Diamant  
Deputy City Attorney

By: \_\_\_\_\_  
HARLAN KELLY, JR.  
General Manager, San Francisco Public  
Utilities Commission

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this easement agreement dated \_\_\_\_\_, from the grantor to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Sections 23.4 and 23.31 of the San Francisco Administrative Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 201\_\_

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Legal Description of Project**

North Building:

Parcel 1 (Assessor's Block 3940, Lot 3), as said parcel is shown on that certain map entitled "Parcel Map No. 4859", filed June 4, 2009, in Book 47 of Parcel Maps, at Pages 192 through 196, inclusive, in the Office of the Recorder of the City and County of San Francisco, State of California (the "Project Parcel Map").

South Building:

Parcel 2 (Assessor's Block 3940, Lot 4), as said parcel is shown on the Project Parcel Map.

Garage:

Parcel 3 (Assessor's Block 3940, Lot 5), as said parcel is shown on the Project Parcel Map.

[The foregoing legal descriptions do not include any exceptions or reservations or any easements or other rights that may be appurtenant to such real property]

City 6/26/19 Draft

**EXHIBIT A-1**  
**Project Site Plan**

**EXHIBITS B and B-1**

**Legal Description and Plat Map of Control Room Easement Area**



City 6/26/19 Draft

**EXHIBITS C and C-1**  
**Legal Description and Plat Map of Utility Lines Easement Area**

**EXHIBITS D AND D-1**

**Legal Description and Plat Map of Access Easement Area**

**Certificate Of Completion**

Envelope Id: 670FBB77906143FE9881D42D77F10837

Status: Completed

Subject: Order 201504 - Mission Bay South Acceptance - Stormwater Pump Station No. 5

Source Envelope:

Document Pages: 33

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

DPW DocuSign

AutoNav: Enabled

30 Van Ness Ave. Suite 4400

EnvelopeId Stamping: Enabled

San Francisco, CA 94102

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

dpw-docusign.service@sfdpw.org

IP Address: 208.121.64.7

**Record Tracking**

Status: Original

Holder: DPW DocuSign

Location: DocuSign

7/11/2019 2:10:44 PM

dpw-docusign.service@sfdpw.org

**Signer Events**

John Thomas

John.Thomas@sfdpw.org

Deputy Director

Public Works

Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
*John Thomas*  
B3944D53BAFD487...

Signature Adoption: Pre-selected Style  
Using IP Address: 208.121.64.13

**Timestamp**

Sent: 7/11/2019 2:10:45 PM

Viewed: 7/11/2019 3:32:31 PM

Signed: 7/11/2019 3:32:41 PM

Electronic Record and Signature Disclosure:

Accepted: 9/25/2017 8:51:22 AM

ID: 4e0d5871-b73d-4fc1-9628-bc63968c2df6

Nuru, Mohammed

Mohammed.Nuru@sfdpw.org

Director

Public Works

Security Level: Email, Account Authentication (None)

DocuSigned by:  
*Nuru, Mohammed*  
81145AB17F474FA...

Signature Adoption: Pre-selected Style  
Using IP Address: 208.121.64.13

Sent: 7/11/2019 3:32:42 PM

Viewed: 7/11/2019 3:46:49 PM

Signed: 7/11/2019 3:46:55 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent

Hashed/Encrypted

7/11/2019 3:32:42 PM

Certified Delivered

Security Checked

7/11/2019 3:46:49 PM

Envelope Summary Events	Status	Timestamps
Signing Complete	Security Checked	7/11/2019 3:46:55 PM
Completed	Security Checked	7/11/2019 3:46:55 PM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Public Works (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Public Works:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: dannie.tse@sfdpw.org

**To advise Public Works of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at dannie.tse@sfdpw.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from Public Works**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to dannie.tse@sfdpw.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Public Works**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to dannie.tse@sfdpw.org and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Public Works as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Public Works during the course of my relationship with you.



# SAN FRANCISCO PLANNING DEPARTMENT

## General Plan Referral

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

*Date:* May 14, 2019  
*Case No.* Case No. 2019-005378GPR  
Acceptance of Dedication, Mission Bay South Park P23-P24 and  
Pump Station No. 5

Reception:  
415.558.6378

Fax:  
415.558.6409

*Block/Lot No.:* 8940/002 and 8741/001

Planning  
Information:  
415.558.6377


*Project Sponsor:* FOCIL-MB, LLC  
410 China Basin St  
San Francisco, CA 94158

*Applicant:* Janea Hoey  
Mission Bay Development Company, LLC  
410 China Basin St  
San Francisco, CA 94158

*Staff Contact:* Amnon Ben-Pazi – (415) 575-9077  
Amnon.Ben-Pazi@sfgov.org

*Recommendation:* Finding the project, on balance, is in conformity with  
the General Plan

*Recommended  
By:*

  
John Rahaim, Director of Planning

### PROJECT DESCRIPTION

The Mission Bay South Redevelopment Plan and subsequent Plan Documents include requirements to construct various infrastructure elements, which once constructed would be dedicated to the City. Public Works has determined that open space improvements and Pump Station facilities in Mission Bay parcels Park P23 and Park P24 (Parks P23-P24) have been constructed in accordance with the relevant Plans and Specifications and are ready for their intended use, thus the Developer is now obligated to dedicate the facilities to the City.

The infrastructure to be dedicated includes but is not limited to curbs, minor sidewalks, lighting, low pressure, high pressure and reclaimed water, sewer, storm, gas and electric lines and services, site furnishings, and landscaping. On Parks P23-P24, infrastructure to be dedicated consists of approximately 1.92 acres of park improvements designed for passive recreation and enjoyment of the waterfront setting. Stormwater Pump Station Number 5



improvements are located on a portion of Park P23. The parcels upon which the infrastructure to be dedicated has been constructed have been accepted by the City.

The facilities, including background information, are summarized in the letter from the Mission Bay Task Force dated April 13, 2019 (see attachment). The submittal is for a General Plan Referral to recommend whether the Project is in conformity with the General Plan, pursuant to Section 4.105 of the Charter, and Section 2A.52 and 2A.53 of the Administrative Code.

#### ENVIRONMENTAL REVIEW

The project was covered in the Mission Bay Subsequent EIR, certified by the San Francisco Planning Commission and the San Francisco Redevelopment Agency on 9/17/98, San Francisco Planning Department File No. 96.771E.

#### GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The Project is the City's acceptance of infrastructure improvements in Mission Bay Parks P23-P24, including Pump Station No. 5, to be dedicated to the City for use as public-serving park space directly benefitting the surrounding neighborhood. The Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 as described in the body of this letter and is, on balance, in-conformity with the following Objectives and Policies of the General Plan:

#### RECREATION AND PUBLIC SPACE ELEMENT

##### POLICY 2.2

Provide and promote a balanced recreation system which offers a variety of high quality recreational opportunities for all San Franciscans.

The City's goal is to ensure that all San Franciscans are within a reasonable walk from an open space with a range of active and passive recreational opportunities. To ensure the highest quality of recreational opportunities for its resident, the City must be able to respond to changing demographics, neighborhood demand, and emerging recreational trends as it plans for new or expanded recreation and open space. The recreation systems should provide an equitable distribution of facilities and services and consistent hours of operation. It should also provide sufficient opportunities for populations who are frequent users of open space, such as seniors and children.

#### URBAN DESIGN ELEMENT

##### POLICY 4.8

Provide convenient access to a variety of recreation opportunities.

As many types of recreation space as possible should be provided in the city, in order to serve all age groups and interests. Some recreation space should be within walking distance of every

dwelling, and in more densely developed areas some sitting and play space should be available in nearly every block. The more visible the recreation space is in each neighborhood, the more it will be appreciated and used.

## HOUSING ELEMENT

### OBJECTIVE 12

Balance housing growth with adequate infrastructure that serves the City's growing population.

*The Project would provide for and improve access to new public parks in an area of significant new residential, commercial, and institutional development, located in an area of the City that has historically included very limited open space for recreation.*

### PROPOSITION M FINDINGS – PLANNING CODE SECTION 101.1

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project, acceptance by the City of Mission Bay Park parcels P5 and P6, is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

#### Eight Priority Policies Findings

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

*The Project would have no adverse effect on neighborhood serving retail uses or opportunities for employment in or ownership of such businesses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood.

*The Project would have no adverse effect on the City's housing stock or on neighborhood character. The Project will support and enhance the surrounding neighborhood's character providing shared public open space for residents of diverse backgrounds, and will improve access to the waterfront.*

3. That the City's supply of affordable housing be preserved and enhanced.

*The Project would have no adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The Project would not result in commuter traffic impeding MUNI's transit service, overburdening the streets or altering current neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced.

*The Project would not affect the existing economic base in this area.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project would not adversely affect achieving the greatest possible preparedness against injury and loss of life in an earthquake.*

7. That landmarks and historic buildings be preserved.

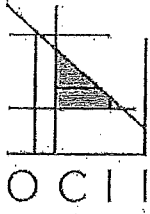
*The Project would have no impact on landmarks or historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project would have no adverse effect on parks and open space or their access to sunlight and vista. The project would increase parks and open space in the City.*

<b>RECOMMENDATION:</b>	<b>Finding the Project, on balance, in-conformity with the General Plan</b>
------------------------	---

cc: Barbara Moy, Mission Bay Task Force, San Francisco Public Works



OCII  
office of  
COMMUNITY INVESTMENT  
and INFRASTRUCTURE

126-0162019-197

June 21, 2019

Ms. Barbara L. Moy, Manager  
Infrastructure Task Force  
Department of Public Works  
30 Van Ness, Room 4200  
San Francisco, CA 94102

RE: Mission Bay South-Stormwater Pump Station No. 5 Public Infrastructure  
Improvements  
Consistency Determination

Dear Ms. Moy:

OCII has received your request regarding the Stormwater Pump Station No. 5 public infrastructure improvements and their consistency with the Mission Bay South Redevelopment Plan and Plan Documents.

OCII has reviewed the documents and related materials concerning the acceptance of the Stormwater Pump Station No. 5 public infrastructure improvements and other related actions thereof, and finds these consistent with the Mission Bay South Redevelopment Plan and Plan Documents, and recommends that the Board of Supervisors accept the facilities on behalf of the City.

London N. Breed  
MAYOR

Nadia Sesay  
EXECUTIVE DIRECTOR

Miguel Bustos  
CHAIR

Mara Rosales  
Dr. Carolyn Ransom-Scott  
COMMISSIONERS

One S. Van Ness Ave.  
5th Floor  
San Francisco, CA  
94103

415 749 2400

www.sfocii.org

Sincerely,

Marc Slutzkin  
Project Manager

Cc: Nadia Sesay, OCII  
Sally Oerth, OCII

[Not for Recording]  
City and County of San Francisco  
Director of Property  
25 Van Ness Avenue  
Suite 400  
San Francisco, CA 94102

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**OFFER OF IMPROVEMENTS**

**(Mission Bay Stormwater Pump Station No. 5 Infrastructure Improvements)**

FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL"), does hereby irrevocably offer to the City and County of San Francisco, a municipal corporation ("City"), and its successors and assigns, all of the right-of-way improvements and underground public utility facilities constructed or installed by or on behalf of FOCIL pursuant to Street Improvement Permit #14IE-0522 (Mission Bay), dated July 7, 2014, issued thereunder, for Mission Bay Stormwater Pump Station No. 5 Infrastructure Improvements, and the improvement plans and specifications described therein, but excepting therefrom those portions of the facilities which are identified on the "as-built" drawings delivered to and on file with the City as PG&E service conduits and vaults, and Comcast service conduits, and AT&T service conduits.

The property where the improvements are located is shown on Exhibit A hereto, constituting City property located in the City.

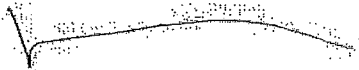
It is understood and agreed that: (i) upon acceptance of this offer of public improvements the City shall own and be responsible for maintenance of the offered public facilities and improvements, and (ii) the City and its successors or assigns shall incur no liability or obligation whatsoever hereunder with respect to such offer of public improvements, and, except as may be provided by separate instrument, shall not assume any responsibility for the offered improvements, unless and until such offer has been accepted by appropriate action of the Board of Supervisors.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 13 day of June, 2019.

FOCIL-MB, LLC,  
a Delaware limited liability company

By: Farallon Capital Management, L.L.C.,  
a Delaware limited liability company,  
Its Manager

By:   
\_\_\_\_\_

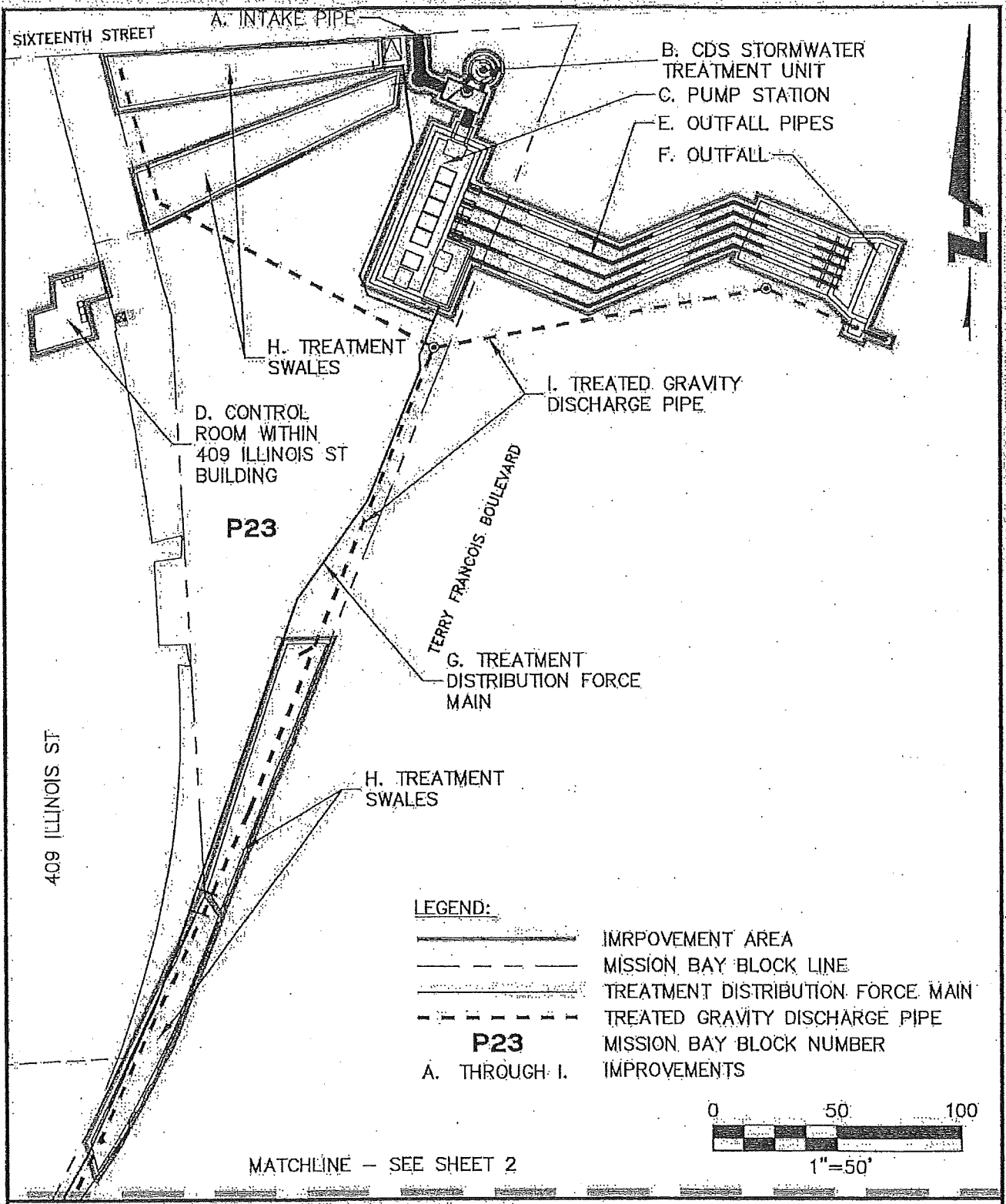
Name: Richard B. Fried  
Managing Member

Title: \_\_\_\_\_



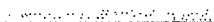

EXHIBIT A  
[Plat Map]

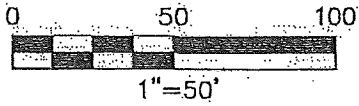
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I



**LEGEND:**

-  IMPROVEMENT AREA
-  MISSION BAY BLOCK LINE
-  TREATMENT DISTRIBUTION FORCE MAIN
-  TREATED GRAVITY DISCHARGE PIPE
- P23** MISSION BAY BLOCK NUMBER
- A. THROUGH I. IMPROVEMENTS



MATCHLINE - SEE SHEET 2

DRAWN BY: TREG



4670 WILLOW RD.  
 SUITE 250  
 PLEASANTON, CA 94588  
 925-396-7700  
 925-398-7799 (FAX)

SUBJECT: OFFER OF IMPROVEMENTS EXHIBIT A  
 STORMWATER PUMP STATION NO. 5  
 Job No. 20070101  
 By BF Date 2/4/2019 Chkd EG  
 SHEET 1 OF 2



MATCHLINE → SEE SHEET 1

H. TREATMENT SWALES

G. TREATMENT DISTRIBUTION FORCE MAIN

I. TREATED GRAVITY DISCHARGE PIPE

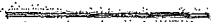
P24

I. TREATED GRAVITY DISCHARGE PIPE

TERRY FRANCOIS BOULEVARD

H. TREATMENT SWALES

LEGEND:



IMPROVEMENTS AREA



MISSION BAY BLOCK LINE



TREATMENT DISTRIBUTION FORCE MAIN



TREATED GRAVITY DISCHARGE PIPE

P23

MISSION BAY BLOCK NUMBER

A. THROUGH I.

IMPROVEMENTS

0 50 100



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

SUBJECT: OFFER OF IMPROVEMENTS, EXHIBIT A,  
STORMWATER PUMP STATION NO. 5

Job No. 20070101

By BF Date 2/4/2019 Chkd. EG

SHEET 2 OF 2

## CONDITIONAL ASSIGNMENT OF WARRANTIES AND GUARANTIES

### Assignment

FOR VALUE RECEIVED, FOCIL-MB, LLC, a Delaware limited liability company ("FOCIL"), does hereby conditionally assign to the City and County of San Francisco (the "City"), acting by and through the San Francisco Public Utilities Commission ("SFPUC"), to the extent permissible, all of its right, title and interest in and to any and all warranties and guaranties (individually a "Warranty", and collectively, "Warranties") applicable to the Acquisition Facilities set forth on Exhibit A (the "Acquisition Facilities").

This Conditional Assignment of Warranties and Guaranties (this "Assignment") is being made in connection with Section 4.3(c) of that certain Acquisition Agreement dated as of June 1, 2001, by and between Catellus Development Corporation and the Redevelopment Agency of the City and County of San Francisco, as supplemented by that certain Supplement No. 1 to Acquisition Agreement dated as of October 1, 2002, as assigned to FOCIL pursuant to that certain Assignment, Assumption and Release Agreement (Mission Bay South) dated November 22, 2004, applicable to the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6 (Mission Bay South Public Improvements) (as may be further supplemented or amended from time to time, the "Acquisition Agreement"). SFPUC is the City agency that will have jurisdiction of and operate the Acquisition Facilities for the City, as contemplated in Section 4.2 of the Acquisition Agreement.

In this Assignment, FOCIL acknowledges that the City, as the owner of the Acquisition Facilities, will be entitled to exercise rights under certain indemnities, warranties or other commitments given by FOCIL under the Mission Bay Plan and Plan Documents or subsequent Permits (the "Other Obligations"), to the extent provided therein, and which are not affected by this Assignment. The Warranties and Other Obligations are listed on Exhibit B.

FOCIL represents that it: (1) will not and has not taken any action, and has not failed to take any required action or done anything that could limit the enforceability of the Warranties and Other Obligations; and (2) has followed all start-up and monitoring procedures required to keep the Warranties in effect.

### Conditions

1. **Warranty Repairs.** FOCIL either has entered into a contract to provide repair services for the Acquisition Facilities while the Warranties are in effect, or has the right to demand that a contractor, manufacturer, or supplier make repairs while the applicable Warranties are in effect. Therefore, FOCIL and the City agree that:

a. In non-emergency circumstances, the City must provide notice to FOCIL at least ten (10) business days before the City exercises a right of repair, warranty, guaranty, or similar right with respect to Acquisition Facilities subject to a Warranty (the "Warranty Notice

Period”), Within the Warranty Notice Period, FOCIL, at its option, without any requirement that it do so, may enforce the Warranty directly, but, if it does so, FOCIL must provide notice to the City before the Warranty Notice Period expires. If FOCIL either fails to provide such notice to the City, or provides notice but then fails to pursue the Warranty diligently (as determined in the City’s reasonable judgment), the City will have the sole right and privilege to enforce the Warranty.

b. In the event of emergency circumstances, the City will have the right to use any and all means it deems proper to repair the Acquisition Facilities without prior notice to FOCIL, and the City’s actions will not impair its rights in relation to FOCIL under this Assignment or the Other Obligations. The City agrees to provide FOCIL with notice of emergency repairs and the costs of the repairs to be claimed under the applicable Warranties within 24 hours or, if not practicable, as soon as reasonably practicable. In the event the City fails to provide FOCIL with reasonable notice FOCIL will not be obligated to reimburse the City for expenses or costs not covered by the Warranties.

c. In all circumstances, FOCIL agrees to cooperate and assist the City with its efforts to enforce any Warranties.

## 2. Notices and Communications.

a. Any notice under this Assignment by any party to any other party will be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

To the City:

Public Utilities Commission  
1145 Market Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Services  
Facsimile No.: 415) 487-5200

with a copy to:

City Attorney’s Office  
City & County of San Francisco  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attention: John Malamut  
Facsimile No.: (415) 554-4757

To FOCIL:

FOCIL-MB, LLC  
c/o Farallon Capital Management  
One Maritime Plaza, Suite 2100  
San Francisco, CA 94111  
Attn: Joshua Dapice and Richard B. Fried  
Facsimile No.: (415) 956-8852.

with a copy to:

Mission Bay Development Group, LLC  
410 China Basin Street  
San Francisco, CA 94158  
Attn: Legal Department  
Email: legal@mbaydevelopment.com  
Telephone No.: (415) 355-6600

b. Day-to-day communications should be directed to:

To FOCIL:

Project Manager  
Mission Bay Development Group  
Telephone No.: (415) 355-6600

To the City: Chief on Watch, SFPUC Southeast Facility, Tel.: (415) 648-6882

c. Any contact information for day-to-day communications, mailing address for notices, or facsimile number may be changed 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 Assignment will 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. For the convenience of the parties, copies of notices may also be given by facsimile. The effective time of a notice will not be affected by the receipt of a facsimile copy of the notice prior to receipt of the original.

3. General Provisions.

a. This Assignment may be executed in one or more counterparts, each of which will constitute an original and all of which will constitute one instrument.

b. The terms of this Assignment may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

c. The waiver or failure to enforce any provision of this Assignment will not operate as a waiver of any future breach of any such provision or any other provision hereof.

d. This Assignment will be binding upon and inure to the benefit of the successors and assigns of FOCIL and the City.

e. This Assignment will be governed by and construed and enforced in accordance with the laws of the State of California.

f. Nothing in this Assignment may be construed in any way to alter, amend or otherwise relieve FOCIL of its indemnity, warranty, and guaranty obligations with respect to any improvements under the Mission Bay Plan and Plan Documents or subsequent Permits.

g. Attached exhibits are incorporated into this Assignment by reference.

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of July 11, 2019.

FOCIL:

FOCIL-MB, LLC,  
a Delaware limited liability company

By: Farallon Capital Management, L.L.C.,  
a Delaware limited liability company

Its: Manager

By: 

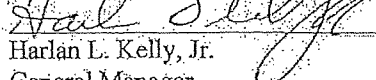
Name: Richard B. Fried  
Managing Member

Its: \_\_\_\_\_

Accepted.

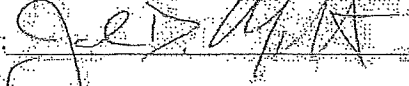
CITY:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,  
acting by and through the Public Utilities Commission

By:   
Harlan L. Kelly, Jr.  
General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By:   
Deputy City Attorney

## EXHIBIT A

### List of Acquisition Facilities

The facilities include the Mission Bay Stormwater Pump Station No. 5 improvements and ancillary facilities constructed or installed by or on behalf of FOCIL pursuant to Street Improvement Permit #14IE-0522, dated July 7, 2014 for said improvements, and the improvement plans and specifications described therein (the "Improvements"), but excepting therefrom those portions of the improvements which are identified on the as-built drawings as PG&E service conduits and vaults, AT&T service conduits and Comcast service conduits, which are facilities to be transferred to "private" joint trench participants. The list of facilities delivered to and on file with the City is as follows:

- 7400 Site preparation and demolition: Includes but not limited to mobilization costs, clearing and grubbing, all required SWPPP measures, dust control, fence, tree relocation/removal, demolition and removal of structures, utilities and pipe, off-haul and disposal of demolished materials, backfill with engineered screened fill and/or CDF, screening and hauling of native backfill.
- 7401 Pump Station Wet Well, Valve Vault and any associated underground structures: Includes but not limited to the shoring system for the construction of the underground structures, excavation, dewatering, the screening, handling, hauling, and stockpiling of all excavated soil along with backfill and compaction, furnish and install import backfill and rock. The work also includes all work and associated work for the placement of the reinforcing steel, anchors, embeds, dowels, couplers and concrete for the structures.
- 7402 Pump Station Treatment Systems: Includes but not limited to CDS unit and Weir Structure, all excavation, shoring system, dewatering, trenching, soil spoil screening, handling, hauling, stockpiling, backfill, compaction, all work associated with the placement of the reinforcing steel, anchors, embeds, dowels, couplers and concrete for the structures.
- 7403 Storm Drain Pumps, Pipe, and Miscellaneous Metals for Wet Well and Valve Vault: Includes but not limited to Storm drain piping from pumps in the pump station wet well to valve vault and to valve vault outflow, includes pumps, all internal and external piping, valves, fittings and appurtenances, all excavation, shoring, sheet piles, trenching, excavated soil screening/handling/hauling/stockpiling, backfill, compaction, testing. Includes all hatches manhole lids within the roof of the Wet Well and Valve Vault Structure and all miscellaneous metal components such as grating, handrails, ladders, sluice Gate and flow splitter.
- 7404 Yard Piping: Includes but not limited to all furnishing and installing pipe, fittings, manholes and other structures, trenching, excavation, shoring, yard piping, excavated soil screening/handling/hauling/stockpiling, backfill, compaction, pipe and manhole testing. All connections to new pump station and valve vault with flexible couplers, as well as connections to existing pipes are included, as is furnishing and installation of the storm drain from CDS units to storm drain manhole, plus traffic control and roadway restoration.
- 7405 Joint Trench and Site Electric: Includes but not limited to all conduit, supporting hardware, equipment pads, vaults, concrete, ductbanks, mounting hardware, sensors and appurtenances, external and internal, cable seals, bollards, pullboxes, grounding, settlement boxes, mandrelling,

excavation, shoring, excavated soil screening / handling /hauling / stockpiling, backfill, and compaction for the Pump Station Wet Well and Valve Vault.

- 7406 Control Room: Includes but not limited to all lighting, power, fire alarm, security, mechanical ventilation, and other improvements to Control Room. Furnish and install all of the electrical and instrumentation equipment for the Control Room, including all panels, conduit, supporting hardware, equipment pads, concrete, ductbanks, mounting hardware, conductors, sensors and appurtenances, external and internal, cable seals, bollards, connections to the pullboxes to the north of the Control Room, grounding, testing, trenching, shoring, excavated soil screening / handling /hauling / stockpiling, backfill, and compaction. Furnish and install all wiring, conductors, and connections for the Control Room, Pump Station Wet Well and Valve Vault. Perform programming and testing to deliver a pump station in working order.
- 7407 Outfall Improvements: Includes but not limited to erosion protection, removal and replacement of existing rip rap and soil material, structural concrete, safety guardrail and miscellaneous metals and grates.
- 7408 Bio-Swale Improvements; Includes but not limited to material excavation, grading, impermeable membrane, filter fabric, weed barrier, amended soil material, landscape, irrigation and minor storm drain facilities installation.
- 7409 Integrated testing and start up of all mechanical, electrical, and instrumentation systems to provide a fully functional storm water pump station and control building.

THIS LIST IS NOT INTENDED TO INCLUDE FACILITIES TO BE TRANSFERRED TO "PRIVATE" JOINT TRENCH PARTICIPANTS. THOSE WARRANTIES AND GUARANTEES ARE BEING ASSIGNED DIRECTLY TO THOSE PARTICIPANTS.



EXHIBIT B

Schedule of Warranties and Other Obligations

Warranties					
Warrantor	Coverage	Term	Began	Ends	Conditions
NTK Construction, written guarantee	Defects in workmanship and materials for Stormwater Pump Station No. 5	2yrs	January 1, 2018	December 31, 2019	
NTK Construction, guarantee bond	Defects in workmanship for Stormwater Pump Station No. 5	2yrs	January 1, 2018	December 31, 2019	
ITT FLYGT	Defects in workmanship and material covering parts and labor on pump and accessories, excluding cutting plates and expellers	5yrs or 10,000 hours from shipment	January 1, 2017	December 31, 2021	
Eaton	Defects in workmanship and material covering parts and labor on electrical control panels and accessories	2yrs	January 1, 2018	December 31, 2019	

1071

Other Obligations			
Document:	Coverage	Time Limits	Notes
OPA Art. 15	General indemnification	None stated, but see Acq. Agmt.	Hazardous Substances, Agency's willful misconduct or negligence excluded
Owner's Consent to ICA § 3	Includes, e.g., noncompliance with laws and regulations and claims under third-party contracts	Survives termination of ICA, but see Acq. Agmt.	Hazardous Substances, noncompliance with new laws, City's willful misconduct or negligence excluded
Acq. Agmt. §7.2	Negligent or defective construction, nonpayment of suppliers or contractors	Claims must be brought within 2 years after DOC	
PIA § 4(a)	Defects	1 yr from completion	Security limited to 10% of performance bond
SF Subdiv. Code § 1451(a)(b)	Release and indemnity to be included in Public Improvement Agreement		
SF Subdiv. Code § 1451.1(d)	City self-help rights, including all necessary costs to correct deficiencies that are not corrected within 12 months after completion.		
Note: Coverages, time periods and notes are provided for convenience of reference only. Actual obligations are as provided in the referenced documents.			



City and County of San Francisco  
 San Francisco Public Works Bureau of Street Use and Mapping  
 1155 Market Street, 3<sup>rd</sup> Floor, San Francisco, CA 94103  
 sfpublishworks.org · tel 415-554-5810 · fax 415-554-6161



14IE-0522

**Street Improvement Permit**

Address : Multiple Locations

Cost: \$1,203.85

Block: Lot: Zip:

Pursuant to article 2.4 of the Public Works Code in conjunction to DPW Order 187,005, permission, revocable at the will of the Director of Public Works, to construct improvements within the public right-of-way is granted to Permittee.

**FOCIL - MB, LLC**

Name: FOCIL - MB, LLC

<b>Conditions</b>	
NTR	0
<b>Curb Cut Sq Footage</b>	
<b>Completion</b>	This permit is valid until work is completed/signed-off by inspector
<b>Remove, replace or reconstruct:</b>	to construction infrastructure improvement fo Mission Bay Pump Station #5.
<b>Expiration Date</b>	
<b>Bond Amount:</b>	8000000
<b>Linear Footage</b>	0
<b>Bond Holder:</b>	
<b>Contact247</b>	Refer to Agent
<b>DPW Resolution #</b>	
<b>Inspection</b>	This permit is invalid until the permittee contacts DPW at 554-7149 to activate the permit and schedule an inspection at least 72 hours prior to work. Failure to comply with the stated conditions will render this permit null and void.

The undersigned Permittee hereby agrees to comply with all requirements and conditions noted on this permit

Approved Date : 07/07/2014

Excavation and grading of subject area for street reconstruction shall be in accordance with approved plans and City specifications. Damaged areas adjacent to this construction shall be properly patched per City Inspector. Also, the permittee shall be responsible for any ponding due to the permitted work.

Applicant/Permittee

Date

Distribution:

Outside BSM: BOE (Streets and Hyws) - P. Riviera  
 Inside BSM: Street Improvement Inspection

Printed : 10/18/2018 9:51:59 AM Plan Checker

John Kwong

## STREET EXCAVATION REQUIREMENTS

1. The permittee shall call Underground Service Alert (U.S.A.), telephone number 811, 48 hours prior to any excavation.
2. All work including sidewalk and pavement cutting and removal, lagging, excavation, backfill, and sidewalk and pavement restoration shall be done by a licensed paving contractor and in accordance with the requirements of the Current Standard Specifications of Public Works.
3. All work including sidewalk and pavement cutting and removal, lagging, excavation, backfill, and sidewalk and pavement restoration shall be done by a licensed contractor and in accordance with the requirements of the latest edition of Standard Specifications and Plans of San Francisco Public Works, and Department of Public Works Order Nos. 187,005.
4. Sidewalk and pavement restoration shall include the replacement of traffic lane and crosswalk striping, parking stall markings, and curb painting that might have been obliterated during street excavation. The permittee shall perform their work under on the following options:
  - a. Have the City forces do the striping and painting work at the permittees expense. The permittee shall make a deposit with the Department of Parking & Traffic for this purpose in an amount estimated by the Municipal Transportation Agency (MTA) 7th Floor 1 South Van Ness Ave telephone 701-4500, and notify the MTA at least 48 hours in advance of the time the work is to be done.
  - b. Perform the work themselves following instructions available at the Department of Parking & Traffic and MTA.
5. The permittee shall submit a non-refundable fee to Bureau of Street-Use and Mapping to pay for City Inspection of the backfill and pavement restoration. At least 48 hours in advance, the permittee shall make arrangements with the Street Improvement Section Inspectors, 554-7149, for an inspection schedule.
6. The permittee shall file and maintain an excavation bond in the sum of \$25,000.00 with the Department of Public Works, to guarantee the maintenance of the pavement in the excavation area for a period of 3 years following the completion of the backfill and pavement restoration. pursuant to Article 2.4.40 of the Public Works Code.
7. The permittee shall conduct construction operations in accordance with the requirements of Article 900 Section 903(a) and (b) of the Traffic Code. The permittee shall contact the MTA 7th Floor 1 South Van Ness Ave telephone 701-4500, for specific restrictions before starting work.
8. The permittee shall obtain the required permits, if any, from regulating agencies of the State of California.
9. The permittee shall verify the locations of any City or public service utility company facilities that may be affected by the work authorized by this permit and shall assume all responsibility for any damage to such facilities. The permittee shall make satisfactory arrangements and payments for any necessary temporary relocation of City or public utility company facilities.
10. The permittee shall pay the required fee for sewer installation permit at the Plumbing Inspection Division, Department of Building Inspection, 1660 Mission Street and arrange for inspection of this work, telephone 558-6054.
11. Planting of trees and performance of any work in the right-of-way which may affect a tree and/or landscaping shall not be performed prior to obtaining a permit and/or another form of approval from Bureau of Urban Forestry (BUF), telephone: 554-6700.
12. Per DPW Order 178,806, the recycling of Cobble Stones and Granit Curb shall follow as:
  - a. Cobblestones shall be clean of dirt prior to transporting. Extreme care shall be taken during the transporting the cobblestones to minimize damage before delivery to City. The cobblestones shall be neatly and securely placed on pallets so they can be moved about safely after the delivery. The Minimum size of cobblestone shall be 4 inches square (16 square inches). The cobblestones shall be delivered, including off loading, to 901 14th Street on Treasure Island or at alternative location directed by the Department within the City of San Francisco. Contact the Department forty-eight hours (48 hours) prior to delivery. The Department can be reached at (415) 695-6673.
  - b. Granite Curb shall be neatly and securely placed on pallets so they can be moved about safely after delivery. The Contractor shall exercise care in transporting the granite curb to minimize damage. The length limit of recyclable granite curbs shall be no less than four feet. The granite curb shall be delivered, including off loading, to 901 14th Street on Treasure Island or at an alternative location directed by the Department within the City of San Francisco. Contact Bureau of Street and Sewer Repair (BSSR) at least forty-eight hours (48 hours) prior to delivery. BSSR can be reached at (415) 695-6673.
13. In consideration of this Permit being issued for the work described in the application, Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, promises and agrees to perform all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.
14. Permittee agrees on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Permittee or its subcontractors, or the officers, agents, or employees of either, while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, facilities or structures authorized under this Permit, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) injuries or damages to real or personal property, good will, and persons in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and (iv) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Permittee in, under, on or about the property subject to this Permit or into the environment. As used herein, "hazardous material" means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.
15. Permittee must hold harmless, indemnify and defend the City regardless of the alleged negligence of the City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.
16. Permittee shall obtain and maintain through the terms of this Permit general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.
17. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.
18. Separate permit is required for excavation of side sewers. Installation authorized only by Class "A" or "C-42" Licensed Contractor or "C-12" with "C-36" Licensed Contractor. Authorization requires the filing of a \$25,000 excavation bond to cover the cost of City inspection and having obtained authorization to excavate in the roadway. The contractor shall obtain the proper permits and arrange for an inspection, for the section of pipe from the trap to the property, with the Plumbing Inspection Division at 1660 Mission Street, telephone 558-6054.
19. Pursuant to state law, all survey monuments must be preserved. No work (including saw cutting) may commence within 20' of a survey monument until an application for Monument Referencing has been approved and notification of monument referencing has occurred. Prior to construction, all CCSF survey monuments shall be referenced by a licensed Land Surveyor on a Corner Record or Record of Survey if any construction will take place within 20 ft. of a monument. For any questions please email Monument.Preservation@sfdpw.org or call 415-554-5827. Note, all survey monuments shall be preserved per state law and disturbance of a survey monument is a crime.

"IMPROVING THE QUALITY OF LIFE IN SAN FRANCISCO" We are dedicated individuals committed to teamwork, customer service and continuous improvement in partnership with the community.

Customer Service

Teamwork

Continuous Improvement

Not all survey monuments are visible.

# Permit Addresses

14IE-0522

\*RW = RockWheel, SMC = Surface Mounted Cabinets, S/W = Sidewalk Work, DB = Directional Boring,  
 BP= Reinforced Concrete Bus Pad, UB = Reinforced Concrete for Utility Pull Boxes and Curb Ramps  
 Green background: Staging Only

Number of blocks: 3    Total repair size:0 sqft    Total Streetspace:0    Total Sidewalk: sqft

ID	Street Name	From St	To St	Sides	*Other	Asphalt	Concrete	Street Space Feet	Sidewalk Feet
2	16TH ST	TERRY A FRANCOIS BLVD	ILLINOIS ST	Both	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	0	0	0	
<b>Total</b>						<b>0</b>	<b>0</b>	<b>0</b>	
1	TERRY A FRANCOIS BLVD	END	ILLINOIS ST \ MARIPOSA ST	Both	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	0	0	0	
3		16TH ST	Intersection	All	RW : False SMC : False S/W Only : False DB: False BP: False UB: False	0	0	0	
<b>Total</b>						<b>0</b>	<b>0</b>	<b>0</b>	

# Exceptions

4IE-0522

Street Name	From St.	To St.	Message	Job	Contact	Dates
TERRY A FRANCOIS BLVD	TERRY A FRANCOIS BLVD	ILLINOIS ST -	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.	N/A		
TERRY A FRANCOIS BLVD						
	END	ILLINOIS ST \ MARIPOSA ST -	Blocks with Bicycle Route designations require special attention. For details see Section 10 of DPT's Blue Book and Section 6.3 of DPW's Order No. 171.442.	N/A		
	END	ILLINOIS ST \ MARIPOSA ST -	Port Jurisdiction call (415) 274-0565.	N/A		

No Diagram submitted



**RECORDING REQUESTED BY:**

City and County of San Francisco

**AND WHEN RECORDED RETURN TO:**

Real Estate Director  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102

**WITH A CONFORMED COPY TO:**

Real Estate Division  
General Services Agency of the City and  
County of San Francisco  
Attention: Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

Documentary Transfer Tax is Zero.  
Official Business Entitled to Free Recordation  
Pursuant to Government Code § 6103

APN: Block 3940, Lots 003 and 005

(Space above this line reserved for Recorder's use only)

**EASEMENT AGREEMENT  
(Pump Station No. 5 Control Room)  
(Assessor's Block 3940, Lots 3 and 5)**

This Easement Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by ARE-SAN FRANCISCO NO. 43, LLC, a Delaware limited liability company ("Grantor"), and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Public Utilities Commission ("City"). Grantor and City are each individually, together with their permitted successors and assigns, referred to in this Agreement as a "Party" and, collectively, as the "Parties".

**RECITALS**

A. Grantor owns certain real property located in the City and County of San Francisco, State of California, commonly known as the 409-499 Illinois Street project (the "Project"), which includes (i) an airspace parcel that contains the six-story 409 Illinois Street building (the "North Building"), (ii) an airspace parcel that contains the six-story 499 Illinois Street building, and (iii) an airspace parcel that contains the three-level subsurface parking garage for the Project (the "Garage"). The airspace parcels that comprise the Project are more particularly described on the attached *Exhibit A*. A site plan depicting the relevant portions of the Project plus the relevant

portions of the public open space located generally to the east of the Project (sometimes known as Park P23) ("**Park P23**") is attached as *Exhibit A-1*.

B. The Mission Bay South Infrastructure Plan (which generally governs construction and development of infrastructure in the Mission Bay South Redevelopment Plan Area) generally contemplates, and San Francisco Planning Commission Motion No. 17223 (which approved the Project) specifically contemplates, the construction on Park P23 of a pump station serving City's municipal storm water system (the "**Pump Station**"). The Project includes space on the ground floor of the northeast corner of the North Building that is designated for a "control room" for the Pump Station.

C. City anticipates that FOCIL-MB, LLC, a Delaware limited liability company ("**FOCIL**"), as the master developer under that certain Mission Bay South Owner Participation Agreement, dated as of November 16, 1998, between FOCIL, as successor to Catellus Development Corporation, and the Redevelopment Agency of the City and County of San Francisco (as amended, the "**South OPA**"), will construct the Pump Station and install the "**Equipment**" (as defined in *Section 1.2(a)* below) and the associated infrastructure (the "**Infrastructure**") pursuant to the terms of (i) a building permit or other agreement between FOCIL and City, (ii) the South OPA, and (iii) the improvement plans prepared by BKF Engineers entitled "Mission Bay Project Storm Water Pump Station No. 5," dated April 15, 2014, approved by or on behalf of the San Francisco Department of Public Works Director, on July 7, 2014, and as may be further amended and approved from time to time (collectively, the "**SWPS #5 Agreements**"). To facilitate the work required by the SWPS #5 Agreements, Grantor and FOCIL entered into a certain License Agreement dated February 28, 2014 (the "**License Agreement**"), pursuant to which Grantor granted FOCIL a temporary license to enter upon and use various areas of the Project for, among other purposes, installing, constructing, repairing, maintaining, inspecting, operating, and using the Equipment and the Infrastructure before its acceptance by City.

D. City further anticipates that upon completion of the Pump Station, the Equipment, the Infrastructure, and the Control Room to the satisfaction of City and a Determination of Completion by City's Board of Supervisors, City will accept the Pump Station, the Equipment, the Infrastructure, and the Control Room as a public utility for public use, and FOCIL will no longer be responsible for the repair, maintenance, inspection, operation, or use of the Pump Station, the Equipment, the Infrastructure, or the Control Room. Accordingly, City desires to obtain the benefit of an easement after the "**Acceptance Date**" (as defined in *Section 1.2(a)* below), as well as the benefit of an easement prior to the Acceptance Date in the event that FOCIL fails to install, construct, repair, maintain, inspect, operate, or use the Pump Station, the Equipment, the Infrastructure, or the Control Room as required by the SWPS #5 Agreements.

E. City desires that Grantor grant to City easements to the "**Easement Areas**" (as defined in *Section 1.2(b)* below) for the installation, construction, reconstruction, replacement, augmentation, alteration, removal, repair, maintenance, inspection, operation and use of the Equipment and the Infrastructure, and to set forth the respective responsibilities of the Parties with respect thereto, on the terms and conditions more specifically set forth in this Agreement.

## AGREEMENT

In consideration of the respective representations, warranties, covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, each of the Parties agrees as follows:

## ARTICLE I

### GRANT OF EASEMENTS AND OTHER RIGHTS

*Section 1.1. Grant; Easement Areas.* Upon the terms and conditions set forth in this Agreement, Grantor hereby grants to City the following irrevocable easements (each, an “Easement” and collectively, the “Easements”), in gross and not appurtenant to Park P23 or any portion of the North Building that includes the Control Room, such Easements to commence on the Acceptance Date or, if City provides Grantor written notice that City has properly exercised any rights under the SWPS #5 Agreements, to commence on a date prior to the Acceptance Date, as set forth in such notice from City (as applicable, the “Commencement Date”):

(a) the exclusive right (i) to install, construct, reconstruct, replace, augment, alter, remove, repair, maintain, inspect, operate and use any of the Equipment or Infrastructure within the control room located on the ground floor of the northeast corner of the North Building described in the attached *Exhibit B* and depicted on the attached *Exhibit B-1* (the “Control Room Easement Area” or the “Control Room”), and (ii) to use the Control Room in connection with the repair, maintenance, inspection, operation, or use of the Pump Station.

(b) the nonexclusive right to install, construct, reconstruct, replace, augment, alter, remove, repair, maintain, inspect, operate and use any of the Equipment, including, without limitation, conduits, cables and wiring and any related utilities between the Control Room and the Pump Station to be installed in the subsurface area under the Control Room Easement Area and under the portion of the ground floor of the Project described in the attached *Exhibit C*, and depicted on the attached *Exhibit C-1* (the “Utility Lines Easement Area”); and

(c) the nonexclusive right (i) to have access to the Control Room over that portion of the ground floor of the Project described in the attached *Exhibit D* and depicted on the attached *Exhibit D-1* (the “Access Easement Area”), (ii) to place, use, and operate power cables and generators (“Generators”) in the Access Easement Area if reasonably necessary or appropriate to provide emergency, back-up, or additional power to the Equipment, the Control Room, and/or the Pump Station, and (iii) to use the Access Easement Area as reasonably necessary or appropriate for equipment staging in connection with, and parking of vehicles of any employees and agents of the San Francisco Public Utilities Commission (“SFPUC”) and its contractors who are engaged in, the installation, construction, reconstruction, replacement, augmentation, alteration, removal, repair, maintenance, inspection, operation or use of the Pump Station, the Equipment, the Infrastructure, or the Control Room Equipment.

### *Section 1.2. Definitions.*

(a) “Acceptance Date” means the date of City’s acceptance (by action of City’s Board of Supervisors) of the Pump Station, the Equipment, the Infrastructure, and the Control Room for public utility purposes and for public use, responsibility and maintenance.

(b) **“Easement Areas”** means, collectively, the Control Room Easement Area, the Utility Lines Easement Area, and the Access Easement Area.

(c) **“Environmental Laws”** means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of **“Governmental Authorities”** (as defined below) relating to the environment, to any **“Hazardous Substance”** (as defined below) or to any activity involving Hazardous Substances, including, without limitation, the **“RMP”** (as defined below).

(d) **“Equipment”** means any conduits, cables, wiring, environmental controls, electric, heating, ventilation, air conditioning, fire suppression, alarm, or other system servicing the Control Room and the control system for the Pump Station, including, without limitation, electronic and computerized switchboards and monitors, and any conduits, cables, wiring, or other equipment connecting the Control Room and the Pump Station, any transformers and Generators used to supply emergency, back-up, or additional power to the Control Room and/or the Pump Station, and any conduits, cables, wiring or other equipment connecting any Generators to the Control Room and/or Pump Station.

(e) **“Governmental Authorities”** means any local, state or federal agency, court, board, bureau or other governmental or quasi-governmental authority having jurisdiction with respect to any portion of the Project.

(f) **“Hazardous Substances”** means any chemical, compound, material, mixture, living organism or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity including any petroleum, polychlorinated biphenyls (PCBs), asbestos, radon, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(g) **“RMP”** means the Risk Management Plan for the Mission Bay Area approved by the California Regional Water Quality Control Board in May 1999 and any amendments thereto affecting any portion of the Project (including, without limitation, the amendment effective May 31, 2005, by which the RMP was amended to include the Project).

*Section 1.3. **Reserved Rights.*** Grantor reserves the right to use the above ground areas of the Utility Lines Easement Area and the Access Easement Area for any and all purposes permitted by law that will not unreasonably interfere with the rights granted City hereunder, subject to the provisions of *Section 4.1.*

## ARTICLE II

### TERM AND TERMINATION

**Section 2.1. Term.** The term of this Agreement (the “Term”) shall commence on the Commencement Date and shall be perpetual, unless terminated, in whole or in part, in accordance with **Section 2.2, Section 9.3** or applicable law.

**Section 2.2. Termination and Effect of Termination.**

(a) **Unilateral Termination By City.** This Agreement may be terminated at any time as to all or any portion of the Easement Areas by action of the SFPUC Commission, or if required, the City’s Board of Supervisors. No termination fee shall be due from or to any Party in connection with such termination.

(b) **Effect of Termination; Survival.** The termination of this Agreement, in whole or in part, shall not extinguish or otherwise affect any obligations or liabilities of the Parties that have accrued prior to such termination, and those provisions that expressly survive the termination of this Agreement.

**Section 2.3. No Obligation To Remove Equipment.** Other than the Equipment in the Control Room, City shall have no obligation to remove any of the Equipment on, before, or after termination of this Agreement.

**ARTICLE III**

**CITY’S RIGHTS AND RESPONSIBILITIES**

**Section 3.1. City’s Responsibilities.** From and after the Acceptance Date (or earlier if City, pursuant to **Section 1.1** above, provides Grantor written notice that City has properly exercised any rights under the SWPS #5 Agreements, to commence on a date prior to the Acceptance Date, as set forth in such notice from City), City shall fulfill the following responsibilities:

(a) City shall be solely responsible for, and shall pay for all costs associated with, City’s activities within any Easement Area pursuant to this Agreement, including, without limitation, the reconstruction, replacement, augmentation, alteration, removal, repair, maintenance, inspection, operation and use of the Equipment, the Infrastructure, and the Control Room. City shall use commercially reasonable efforts to keep the Equipment, the Infrastructure, and the Control Room (excluding the exterior walls of the Control Room) in safe condition.

(b) City shall be solely responsible for obtaining any other permits, licenses, approvals and other governmental entitlements necessary for any of City’s activities within any Easement Area.

(c) To the extent not previously completed pursuant to the License Agreement and City elects to perform such work, the construction of the Pump Station and the installation of the Equipment and the Infrastructure shall be conducted and performed by City in a good and workmanlike manner. In addition, during any such construction or installation, City shall take reasonable precautionary measures to protect the public from bodily injury or death, and the Project from damage, from City’s activities on, and use of, any portion of the Project.

(d) City may remove any of the Equipment at any time without prior notice to Grantor. If City removes any Equipment, City shall be responsible for the repair of any damage to the North Building and/or the Garage caused by City during the removal of such Equipment.

(e) Following any excavation by City in, or other work by City disturbing the surface of, the Utility Lines Easement Area, City, subject to *Section 4.1(h)*, shall promptly restore the surface area of the Utility Lines Easement Area to its base condition (which means basic pavement or compacted soil, as applicable). Grantee shall not be responsible for restoring any enhanced treatment that has been added to the Utility Lines Easement Area, including the use of cobblestone, brick, tile and other similar treatments.

*Section 3.2. City's Access.* City shall have access to the Easement Areas twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.

*Section 3.3. Use of Generators.* Grantor acknowledges that City's operation of the Generators may block portions of the Access Easement Area and create excess noise, odors, and visual and physically hazardous obstructions, including, but not limited to, high voltage electrical cabling; provided, however, City shall use good faith efforts to minimize the disruption to the Project, to Grantor's use or operation of the Project, or to any tenant's use or operation of the Project. Grantor hereby releases City from any claims, demands, losses, liabilities, or damages (collectively, "Claims") based upon any diminution of value of, or damage to, the Project or any restriction on, or interference with, the activities or operations of Grantor at the Project resulting from City's placement and/or operation of any Generators in the Access Easement Area, other than Claims resulting from the negligence or willful misconduct of City or its contractors, agents, officers, or employees.

*Section 3.4. Specific Purpose Only.* City shall use the Easements only for the purposes set forth in this Agreement, and no other entry or activities upon or use of any part of the Project by City shall be permitted. City hereby acknowledges that, except for the exclusive right granted in *Section 1.1(a)* above, City's right to enter upon and use the various Easement Areas is non-exclusive (provided that Grantor may not give any other person or entity any easement, license, or other right (i) to use the Utility Lines Easement Area that will interfere with the rights granted City hereunder, or (ii) to use the Access Easement Area that will unreasonably interfere with the rights granted City hereunder).

*Section 3.5. Legal Use.* City agrees not to use any of the Project (including, without limitation, the North Building), the Easement Areas, or the Equipment and/or the Infrastructure for any purpose that is illegal or in violation of any applicable laws, regulations, or ordinances applicable to the Project.

*Section 3.6. Expertise of Persons Entering.* All persons to whom City grants access to the Control Room for the purpose of installing, constructing, reconstructing, replacing, augmenting, altering, removing, repairing, maintaining, inspecting, operating, or using the Control Room, the Equipment, and/or the Infrastructure shall have sufficient expertise and experience to perform such task.

## ARTICLE IV

### GRANTOR'S RESPONSIBILITIES

*Section 4.1. Grantor's Responsibilities.* Grantor shall fulfill the following responsibilities:

(a) Grantor shall be solely responsible for maintaining and repairing the North Building (including, but not limited to, the structural elements of the North Building and the exterior walls of the Control Room), and shall use commercially reasonable efforts to keep any building systems of the North Building (e.g., heating, venting, and air conditioning (HVAC) or fire suppression systems) that actually serve the Control Room in good operating condition.

(b) Grantor shall coordinate with City the performance of any maintenance, repair, or other work by Grantor that could potentially have a direct or indirect impact on the Equipment, the Infrastructure, and/or the Control Room, in accordance with any procedures and guidelines agreed upon from time to time by City and Grantor.

(c) If Grantor acquires actual knowledge of any unauthorized parties entering or attempting to enter the Control Room or of any damage to the entrance or door to the Control Room, Grantor shall promptly notify City of such unauthorized entrance, attempted entrance, or damage. While Grantor does not assume any responsibility to City to provide any security measures or assume any liability to City for failure to provide the same or for any inadequacy thereof, if Grantor (in Grantor's sole discretion) actually engages a company or directly employs individuals to provide security for the Project, Grantor shall use commercially reasonable efforts to cause representatives of such company or such individuals to periodically check the exterior entrance or door to the Control Room for evidence of unauthorized parties entering or attempting to enter the Control Room and of any damage to the entrance or door to the Control Room and to promptly notify Grantor of any such evidence or of any such damage.

(d) Grantor shall promptly notify City when Grantor (including its property manager for the North Building) becomes aware of any flooding or bursting or leaking of water pipes above the Control Room, or in any area in the North Building where there would likely be water intrusion into the Control Room, and shall use commercially reasonable efforts to protect the Control Room from water intrusion from any such flooding or bursting or leaking of water pipes.

(e) If City provides Grantor notice of City's intent to place or operate any Generators or other heavy equipment (such as excavators, cranes, lifts, fueling trucks, or similar equipment necessary to perform maintenance, repairs, renovations, or other necessary work) near the North Building or in the Access Easement Area, Grantor shall use commercially reasonable efforts to notify tenants or other occupants of the North Building prior to the City's placement and/or operation of any such Generators or other heavy equipment (provided that the foregoing shall not be deemed, construed, or interpreted as requiring prior notice to such tenants or other occupants in the event of an emergency).

(f) Grantor shall use commercially reasonable efforts to remedy, or cause to be remedied, any latent or patent defects in the construction of the Control Room's core and shell or of

any building systems that actually serve the Control Room of which Grantor acquires actual knowledge within one (1) year after the Acceptance Date (“**Defective Work**”); provided however, if the Defective Work is covered for a longer period by warranty, then such one (1) year period will be extended until expiration of the warranty period. Further, Grantor shall use commercially reasonable efforts to enforce on behalf of City any rights or warranties Grantor may have against other parties related to any Defective Work (“**Enforcement Obligation**”); provided, however, in no event shall Grantor have any Enforcement Obligation beyond the time periods available at law.

(g) Upon receipt of an invoice from City, Grantor shall promptly reimburse City for the cost to repair any damage to the Equipment or the Control Room resulting from the negligence or willful misconduct of Grantor or its contractors, agents, officers, or employees.

(h) Grantor agrees that no trees or shrubs shall be planted, no structures or improvements of any kind or character shall be constructed or placed, and, following the installation of any Equipment in the Utility Lines Easement Area, no excavation (including the installation of any other public or private utilities) shall occur, above, under, on or within the Utility Lines Easement Area without the prior written consent of the General Manager of the SFPUC, which consent may be granted or withheld in his or her sole discretion. If the General Manager of the SFPUC consents to the installation of additional public or private utilities above, under, on or within the Utilities Lines Easement Area, then the General Manager of the SFPUC shall have the further right to approve, in his or her sole discretion, the location of any such utilities to limit the impact of such utilities on the Equipment and/or the Infrastructure. A request for approval under this *Section 4.1(h)* (“**Utility Placement Approval Request**”) shall be made to the General Manager of the SFPUC, with a copy to the Director of City’s Department of Public Works (“**DPW**”), in writing, delivered by messenger or certified mail, and shall include the contact information for the utility company and a plat showing the proposed location for placement of the utility lines in the Utility Lines Easement Area. 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 during the permit process 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. To prevent damage to the Equipment, Grantor shall not use vehicles or equipment in excess of the standards established by AASHTO-H20 within the Utility Lines Easement Area during construction and/or maintenance of any improvements on or adjacent to the Utility Lines Easement Area, or for any other purpose, without SFPUC’s prior written approval.

(i) If Grantor plans any construction or installation activities that would affect the Control Room, the Equipment, the Infrastructure, or the Control Room or Utility Lines Easement Areas, Grantor will submit its engineering and construction plans (which plans will also include cross-section(s) showing the applicable Easement Area(s) impacted by such activity) to SFPUC for its review and approval at least thirty (30) days before commencing such activities, which approval may be granted or withheld in SFPUC’s reasonable discretion. All such notices shall display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following capitalized words in bold and underlined: “**PROPOSED CONSTRUCTION NOTICE FOR MISSION BAY SOUTH–CONTROL ROOM AND SWPS #5. IMMEDIATE ATTENTION REQUIRED.**” SFPUC shall complete its review and note its concerns within thirty (30) days after its receipt of plans conforming to this Section and such other information requested by SFPUC to conduct its review. If SFPUC fails to respond within such thirty (30) day



period, then SFPUC shall be deemed to have disapproved Grantor's request. SFPUC may condition any approval of Grantor's proposed construction or installation activity on any reasonable grounds, including, but not limited to, (i) Grantor delivering commercially reasonable security to protect, as applicable, the Control Room, the Equipment, the Infrastructure, or the Control Room or Utility Lines Easement Areas, (ii) SFPUC assigning personnel to monitor Grantor's activities, at no cost to Grantor, and (iii) delaying commencement of Grantor's proposed activities to ensure that such proposed activities do not damage the Equipment or the Infrastructure or impair City's rights under this Agreement.

*Section 4.2. No Grantor Access To Control Room.* Grantor shall have no access to the Control Room unless City gives prior written consent for each entry, which consent may be granted or withheld in City's sole discretion.

*Section 4.3. No Interference.* After the Acceptance Date, Grantor will not knowingly allow (unless permitted under a lease or occupancy agreement in effect before the Acceptance Date) the installation of any equipment, devices, systems, or physical obstructions in the North Building that would result in unreasonable technical interference with the operation of the Equipment or the Infrastructure. For purposes of this Agreement, "technical interference" may include, but is not limited to, any equipment, device, system, or physical obstruction in the North Building that causes electronic or physical obstruction of the operation of the Equipment or the Infrastructure; provided, however, that any standard maintenance equipment, mechanical equipment (e.g., elevators or HVAC systems), office equipment, information technology equipment, or other similar equipment, device, or system shall be conclusively deemed not to cause technical interference with the Equipment or the Infrastructure. City shall give Grantor written notice if there is any unreasonable technical interference with the operation of the Equipment or the Infrastructure, describing the nature of such interference. Upon notice of any such interference, Grantor shall cooperate with City to identify the source of such interference, and Grantor shall use commercially reasonable efforts to mitigate such interference.

## ARTICLE V

### ADDITIONAL RIGHTS AND OBLIGATIONS

*Section 5.1. Cooperation.* During the term of this Agreement, each Party shall provide such assistance and cooperation as the other Party may reasonably request in connection with performance of the applicable Party's duties and obligations under this Agreement.

*Section 5.2. Party Contacts.* Each Party shall appoint at least one representative as a contact for purposes of this Agreement. Each Party shall provide the other Party with written notice setting forth the names or titles and contact information of the individuals who are authorized to act for and on their behalf of such Party under this Agreement.

## ARTICLE VI

### INSURANCE

**Section 6.1. Grantor's Insurance Requirement.** Grantor shall maintain property insurance coverage, extended coverage and special extended coverage insurance for the North Building. Such coverage shall (i) be written on the broadest available "all risk" (special-causes-of-loss) policy form or an equivalent form reasonably acceptable to Grantor, (ii) include an agreed-amount endorsement for no less than the full replacement cost of the Project or such lesser coverage amount as Grantor may reasonably elect (provided, such coverage amount is not less than 90% of such full replacement cost), and (iii) from and after the Acceptance Date (or earlier if City, pursuant to *Section 1.1* above, provides Grantor written notice that City has properly exercised any rights under the SWPS #5 Agreements, to commence on a date prior to the Acceptance Date, as set forth in such notice from City), by written endorsement, name City, the SFPUC and their officers, directors, employees and agents as additional insureds or otherwise directly insure City's interest in the Project pursuant to this Agreement. Upon City's written request, Grantor shall promptly deliver to City certificates of insurance or the insurance policy evidencing the insurance coverage required hereunder (and, if applicable, showing City, the SFPUC and their officers, directors, employees and agents as additional insureds).

**Section 6.2. City Not Required To Carry 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 Easements herein granted solely because it is the policy of City to self-insure as to the matters covered by such insurance. The City hereby agrees that if to any extent said policy changes so that City does use liability insurance, it will reasonably negotiate with Grantor to provide liability insurance coverage for the use of the Easements to the extent such new policy allows and in such event the waiver of subrogation provisions of *ARTICLE VII* shall also be applicable.

## ARTICLE VII

### WAIVER OF SUBROGATION

The terms and provisions of this *ARTICLE VII* shall be inoperative as to City unless and until City's policy of self-insurance changes and City is procuring liability insurance covering its use of the Easements 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 *ARTICLE VII* 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 Parties, any rights and/or claims that might give rise to a right subrogation in any such insurance carrier.

## ARTICLE VIII

### INDEMNIFICATION

**Section 8.1. City's Indemnification Obligations.** City shall indemnify, defend and hold Grantor, its partners, members, shareholders, and other owners, and their respective officers, directors, employees, agents, successors and assigns (for purposes of this **Section 8.1**, "**Indemnified Parties**") harmless from all liabilities, penalties, costs, damages, expenses, claims or judgments (including, without limitation, reasonable attorneys' fees) (collectively, "**Indemnified Claims**"), resulting from injury or the death of any person, physical damage to property, or the emission, discharge, or release of Hazardous Substances on or about the Project, which injury, death, physical damage, or emission, discharge, or release of Hazardous Substances arises out of or is connected with City's (or City's officers, employees, agents, or contractors) use or occupancy of any part of the Project under the authority of this Agreement, but only in proportion to and to the extent that such Indemnified Claims arise from the negligent or wrongful acts or omissions of City or its contractors, agents, officers, or employees. For purposes of any indemnification obligations of City, FOCIL or any of its officers, employees, agent, contractors, or invitees will not be deemed an agent, employee, or contractor of City.

Grantor 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 that Grantor has reason to believe is likely to give rise to an Indemnified Claim hereunder. If prompt notice is not given to City, then City's liability hereunder shall terminate as to the matter for which such notice is not given but only to the extent City is prejudiced by such failure. City shall, at its option but subject to the reasonable consent and approval of Grantor, 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 Grantor shall be entitled to participate in such defense, compromise, or settlement at its own expense.

**Section 8.2. Grantor's Indemnification Obligations.** Without limiting the effect of the release set forth in **Section 3.3** above, from and after the Commencement Date, Grantor shall indemnify, defend and hold City, its officers, directors, shareholders, employees, agents, successors and assigns (for purposes of this **Section 8.2**, "**Indemnified Parties**") harmless from all Indemnified Claims, resulting from injury or the death of any person or physical damage to property, which injury, death or physical damage arises out of Grantor's failure to comply with the terms and conditions of this Agreement or any Defective Work, but only in proportion to and to the extent that such Indemnified Claims arise from the negligent or wrongful acts or omissions of Grantor or its contractors, agents, officers, or employees. In no event shall Grantor be liable for any consequential, incidental or punitive damages.

City agrees to give prompt notice to Grantor with respect to any Indemnified Claims initiated or threatened against any Indemnified Party, at the address for notices to Grantor 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 that City has reason to believe is likely to give rise to an Indemnified

Claim hereunder. If prompt notice is not given to Grantor, then Grantor's liability hereunder shall terminate as to the matter for which such notice is not given but only to the extent Grantor is prejudiced by such failure. Grantor shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise or settlement of any such matter through counsel of Grantor's own choice; provided, however, that in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense.

## ARTICLE IX

### DAMAGE AND DESTRUCTION

**Section 9.1. Repair of Damage By Grantor.** If the Control Room or portions of the North Building necessary for City's exercise of one or more of its Easements is damaged by a fire, earthquake, or any other act of nature ("**Casualty**") and Grantor elects (in Grantor's sole discretion) to repair or restore the North Building, Grantor shall repair or restore the Control Room to shell condition as part of Grantor's repair or restoration of the North Building. Grantor, within ninety (90) days after the date of the Casualty, shall provide written notice to City indicating whether Grantor has elected to repair or restore the North Building. In no circumstances shall Grantor have any responsibility to restore or rebuild any portion of the Equipment or the Infrastructure.

**Section 9.2. Repair Period Notice.** If Grantor elects (in Grantor's sole discretion) to repair or restore the North Building, Grantor, within thirty (30) days after notifying City of such election, shall provide written notice to City indicating, in Grantor's good faith judgment, the anticipated period for repairing or restoring the North Building to the extent necessary for City to resume its exercise of the Easements affected by the Casualty ("**Repair Period Notice**").

**Section 9.3. Suspension of City's Easement Rights.** Subject to **Section 9.4** below, if the North Building is substantially damaged by a Casualty, SFPUC determines that, as a result of such Casualty, the Pump Station cannot be reliably operated using the Equipment remaining in the original Control Room, and Grantor elects (in Grantor's sole discretion) not to repair or restore the North Building, City's Easement rights shall be suspended until Grantor or any of its successors or assigns commences the repair or restoration of the North Building or the construction of a new project at the North Building site.

**Section 9.4. Temporary Space.** In the event of a Casualty affecting the Easements, Grantor shall reasonably cooperate with City to provide City with accommodations at the Project site for a temporary control room for the Pump Station ("**Temporary Control Room**") to minimize the disruption caused by such Casualty. The location of any Temporary Control Room at the Project site shall be within the general location of the original Control Room or such other location reasonably acceptable to each Party. The footprint of any Temporary Control Room at the Project site shall not be more than 50% larger than the footprint of the original Control Room (unless necessary to comply with then current law), and the Easement Areas may be reasonably modified, on a temporary basis, to account for the expanded footprint of any Temporary Control Room. If providing such accommodations at the Project site would materially and adversely impair Grantor's operations at the Project and City is able to find a location off the Project site that is reasonably satisfactory to City for a Temporary Control Room, then City will locate the Temporary Control Room off the Project site. If, after construction of a Temporary Control Room, Grantor or any of its

successors or assigns elects to repair or restore the North Building or to construct a new project, then Grantor shall provide written notice of such election to City at least six (6) months before commencing any repairs, restoration, or construction so that City may construct a Temporary Control Room off the Project site during such repairs, restoration, or construction. Grantor shall be responsible for the reasonable costs of constructing and dismantling the “core and shell” of any Temporary Control Room. In no circumstances, however, shall Grantor have any responsibility for the costs of constructing or installing any equipment or infrastructure for any Temporary Control Room.

**Section 9.5. Grantor’s Obligation If Rebuild.** If Grantor or any of its successors or assigns repairs or restores the North Building or constructs a new project, then City’s Easement rights will be automatically reinstated without the need for additional notice or other documentation from and after the commencement of such repair or restoration or such construction; provided, however, upon commencing construction of a new project, the dimensions and location of the new control room (“**New Control Room**”) and the new easement areas may be reasonably modified to account for the then footprint of the new project and any other developments surrounding such project; provided, further, that Grantor will use its good faith efforts to keep the New Control Room within the general location of the original Control Room and to keep the dimensions of the New Control Room substantially the same as the dimensions of the original Control Room (unless necessary to comply with then current law) so that the operation, maintenance, or repair of the Pump Station is not adversely impacted by a change in the location or a reduction in the dimensions of the New Control Room. Grantor shall be responsible for the reasonable costs of repairing or restoring the “core and shell” of the Control Room or constructing the “core and shell” of any New Control Room. In no circumstances, however, shall Grantor have any responsibility for the costs of repairing or restoring any portion of the Equipment or the Infrastructure or for the costs of constructing or installing any equipment or infrastructure for any New Control Room. The provisions of this **Section 9.5** shall expressly survive the termination of this Agreement.

**Section 9.6. Waiver of Statutory Provisions.** The provisions of this Agreement, including those in this **ARTICLE IX**, constitute an express agreement between Grantor and City that applies in the event of any Casualty. Accordingly, the Parties hereby fully waive the provisions of California Civil Code Sections 1932(2) and 1933(4), and any similar statute now or hereafter in force.

**Section 9.7. No Termination Fee.** No Termination Fee shall be due in connection with any termination of this Agreement pursuant to this **ARTICLE IX**.

## ARTICLE X

### MECHANICS LIENS

City’s obligations pursuant to this **ARTICLE X** shall not apply to any work or other activities performed by FOCIL. City shall keep the Project free and clear of all mechanics’, material suppliers’ or similar liens, or claims thereof, arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by City or at its request or for its benefit in the Easement Areas. If any mechanics’ liens are placed on the Project in connection with the activities of City set forth in this Agreement, City shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner

specified in California Civil Code Section 8424 or any successor statute. If City shall fail to release or remove such lien within forty-five (45) days of City's receipt of notice from Grantor and City is not diligently proceeding to release or remove such lien, Grantor shall have the right, but not the obligation, to record a lien release bond in the manner specified in California Civil Code Section 8424 or any successor statute, and City shall reimburse Grantor for the reasonable costs of obtaining and recording such bond within thirty (30) days after Licensee's receipt of an invoice therefor, together with reasonably acceptable substantiation thereof.

## ARTICLE XI

### SUBORDINATION

*Section 11.1. Subordination of Encumbrances.* The Parties agree that this Agreement shall become or remain superior in priority to the lien of any mortgage, deed of trust, or any other security instrument now or hereafter affecting or encumbering the Project, or any part thereof or interest therein.

*Section 11.2. Grantor To Obtain Subordination Agreement.* Grantor shall promptly obtain from any holder (the "Mortgagee") of any existing lien of any mortgage, deed of trust, or any other security instrument affecting or encumbering the Project, or any part thereof or interest therein, a written agreement from such Mortgagee acknowledging the subordination of such security instrument to this Agreement or, in lieu of such acknowledgment, agreeing that (a) a breach of or default under the mortgage, deed of trust, or other security instrument shall not defeat or render invalid the lien or charge of this Agreement against the Project, (b) the Agreement shall be binding upon and effective against any person whose title to any portion of the Project is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or trustee's sale, or otherwise through the exercise of any rights or remedies provided for in the mortgage, deed of trust, or other security instrument, and (c) any lien or charge created pursuant to this Agreement shall be a continuous lien or charge against the Project unaffected by and not subject to being extinguished as a result of any right or remedy under or any action that may be taken in connection with the mortgage, deed of trust, or other security instrument. Such agreement shall be in a form reasonably satisfactory to City and will be recorded concurrently with this Agreement; provided, however, failure to record such agreement will not affect the Mortgagee's agreement as set forth in this Section.

## ARTICLE XII

### ENVIRONMENTAL MATTERS

*Section 12.1. Use and Storage of Hazardous Materials.* City shall not cause or permit any hazardous materials to be transported to, brought upon, produced, manufactured, generated, stored, handled, used, treated, released, discharged, emitted or disposed of in, on or about the Project without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion; provided, however, that City shall have the right to use and store reasonable and customary amounts of hazardous materials necessary for the installation, construction, alteration, maintenance, and operational requirements of the Equipment and/or the Infrastructure without obtaining Grantor's prior approval, so long as such use and storage complies with all applicable environmental laws.

**Section 12.2. Covenant and Environmental Restriction on Property.** This Agreement and the use of the Easement Areas shall be subject to, and 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**”) 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 Easement Areas and other property. In addition, as required by the Covenant, in the use and enjoyment of the Easement Areas under this Agreement, City shall: (i) comply with the RMP, (ii) obligate other entities which with 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) Grantor’s or its successors or assigns compliance with the RMP. City hereby acknowledges that it has a copy of the RMP. This Section 12.2 shall survive the expiration or earlier termination of this Agreement.

### ARTICLE XIII

#### LITIGATION FEES

**Section 13.1. Meet and Confer.** The Parties will meet and confer in good faith in an effort to reach an agreement regarding the matters at issue if there is a dispute between the Parties regarding the meaning or applicability of any terms or conditions of this Agreement, if either Party desires clarification on the meaning or applicability of any terms or conditions of this Agreement, or if either Party desires to amend or modify this Agreement. Either Party may request a meeting pursuant to this **Section 13.1** by giving written notice of such request to the other Party. Such meeting shall be at a time and place mutually convenient to each Party. Any agreement reached by the Parties shall be memorialized in writing and signed by each Party. This **Section 13.1** shall survive the termination of this Agreement.

**Section 13.2. General.** If any Party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against any other Party or Parties 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, which shall be payable whether or not such action is prosecuted to judgment. Notwithstanding the foregoing, no Party may institute any action or proceeding against any other Party or Parties unless and until the meet and confer procedures set forth in **Section 13.1** above have been satisfied. “**Prevailing Party**” within the meaning of this **ARTICLE XIII** 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.

**Section 13.3. Appeal.** Attorneys’ fees under this **ARTICLE XIII** 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.

*Section 13.4. Fee Award For In-House Counsel.* For purposes of this Agreement, reasonable fees of attorneys of the City Attorney's Office or any in-house counsel of Grantor 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 the City Attorney's Office or Grantor'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.

#### ARTICLE XIV

#### MISCELLANEOUS

*Section 14.1. Complete Agreement.* This Agreement and the Exhibits referenced in or attached to this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, both written and oral, with respect to such subject matter.

*Section 14.2. Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, but all of which, when taken together, shall be deemed to constitute one and the same agreement.

*Section 14.3. Notices.* Any notices, demands, consents, approvals, and requests 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, in addition to but not in lieu of, the notice served as set forth above, copies of notices may also be given by telefacsimile, to the telefacsimile numbers listed below or such other numbers as may be provided from time to time.



Grantor: ARE San Francisco No. 43, LLC  
385 E. Colorado Blvd., Suite 299  
Pasadena, California 91101  
Attention: Corporate Secretary  
Re: 409-499 Illinois St. (SF, CA)  
Telefacsimile: (626) 578-0770

with copies to: ARE San Francisco No. 43, LLC  
1700 Owens Street, Suite 590  
San Francisco, CA 94158  
Attention: Stephen A. Richardson  
Re: 409-499 Illinois St. (SF, CA)  
Telefacsimile: (415) 554-0142

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

SFPUC: SF Public Utilities Commission  
525 Golden Gate Ave, 10th Floor  
San Francisco, CA 94102-3220  
Attention: Real Estate Services Division/Mission Bay South  
Telefacsimile: (415) 934-5770

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) 554-4755

and to: Director of Property  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Telefacsimile: (415) 552-9216

and to: Director of Department of Public Works  
Department of Public Works  
City and County of San Francisco  
c/o Barbara Moy, Task Force Manager  
Mission Bay Project  
30 Van Ness Avenue, Suite 4200  
San Francisco, California 94102

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, demands, consents, approvals, and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day) or if mailed, the next business day after being deposited with an overnight courier or two business days after being deposited with the U.S. Postal Service (as evidenced by a postmark date). A person may not give official or binding notice by telefacsimile. 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.

**Section 14.4. Successors and Assigns; Burden on Land.** This Agreement shall be binding in all respects upon, inure to the benefit of and be enforceable by the successors and permitted assigns of the Parties; provided, however, City may not assign its rights or delegate its obligations under this Agreement to a non-City person or entity without Grantor's prior written consent, in its reasonable discretion, unless such assignment or delegation is part of a broader assignment of City's rights and delegation of City's obligations to one non-City person or entity with respect to the Pump Station and at least one other pump station serving City's municipal storm water system. The Easements and this Agreement shall be a burden on the Project, which burden shall run with the land and shall be binding on any future owners and encumbrances of the Project or any part thereof and their successors and assigns.

**Section 14.5. Third Party Beneficiaries.** This Agreement and all of its provisions and conditions are solely for the benefit of the Parties and shall not be deemed to confer upon third parties any remedy, claim, liability, right of reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

**Section 14.6. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of California.

**Section 14.7. Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Furthermore, if any provision of this Agreement or the application thereof to any person, entity, or circumstance is determined by a non-appealable decision by a court, administrative agency or arbitrator with jurisdiction of the matter to be invalid, void or unenforceable in any respect, the remaining provisions of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it has been held invalid,

void or unenforceable, shall remain in full force and effect and in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to a Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.

**Section 14.8. No Joint Venture.** Nothing in this Agreement creates or is intended to create an association, trust, partnership or joint venture.

**Section 14.9. Limitation on Waivers.** Except as expressly set forth in this Agreement, no failure to exercise and no delay in exercising, on the part of a Party, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement shall be released, waived or renounced, in whole or in part, by the Party holding such claim or right, unless in writing signed by such Party; (b) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (c) no notice to or demand on a Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

**Section 14.10. Amendments and Waivers.** The Parties may, from time to time, (a) enter into written amendments, supplements or modifications hereto for the purpose of adding or modifying any provisions to this Agreement or changing in any manner the rights of the Parties hereunder, or (b) waive, on such terms and conditions as may be specified in writing, any of the requirements of this Agreement.

**Section 14.11. Exculpation.** No Party shall have any claim or cause of action against any disclosed or undisclosed elective or appointed body, commission, principal, shareholder, trustee, member, director, officer, employee, partner, parent, subsidiary, or other affiliate of any other Party, or any principal, shareholder, trustee, member, director, officer, employee, or partner of any such parent, subsidiary, or other affiliate (collectively, "**Party Affiliates**"), arising out of or in connection with this Agreement. In the event of a default under this Agreement by another Party, the other Party's recourse for the satisfaction of any resulting liability or obligation arising under this Agreement shall be limited solely to the defaulting Party and its assets. Each such other Party hereby expressly agrees not to seek recourse of any kind against any Party affiliates of any other Party with respect to any matters arising out of or in connection with this Agreement. This Section shall survive the termination of this Agreement.

**Section 14.12. Disclaimer of Grantor's Responsibility.** Grantor shall have no responsibility or liability whatsoever (i) for the construction, installation, or completion of, or the performance of any warranty work on, the Pump Station, the Equipment, or the Infrastructure, (ii) if City elects not to accept the Pump Station, the Control Room, the Equipment, or the Infrastructure, (iii) for the operation and maintenance of the Pump Station, the Equipment, or the Infrastructure, or (iv) for any latent or patent defect in the Pump Station, the Equipment, or the Infrastructure. This Section shall survive the termination of this Agreement.

*Section 14.13. Authority.* Grantor is a limited liability company, formed, validly existing and in good standing under the laws of the Delaware and is duly qualified and in good standing under the laws of the State of California. Each Party represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate or other requisite actions, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and general principles of equity.

*Section 14.14. Saturdays, Sundays, Holidays, Etc.* If the last or appointed day for the taking of any action required or permitted by this Agreement shall be a day which is not a Business Day, then such action may be taken on the next succeeding day which is a Business Day. "**Business Day**" means Monday through Friday that is not a City holiday.

*Section 14.15. Time.* Time is of the essence of this Agreement and each and every part hereof.

*Section 14.16. No Dedication; Notices Concerning Use.* Nothing in this Agreement shall be deemed a dedication of any portion of the Project to or for the benefit of the general public. Grantor 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 Grantor and City hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:

**ARE-SAN FRANCISCO NO. 43, 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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

Board of Supervisors Resolution: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS HERRERA,  
City Attorney

RECOMMENDED

By: \_\_\_\_\_  
Shari Geller Diamant  
Deputy City Attorney

By: \_\_\_\_\_  
HARLAN KELLY, JR.  
General Manager, San Francisco Public  
Utilities Commission

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this easement agreement dated \_\_\_\_\_, from the grantor to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Sections 23.4 and 23.31 of the San Francisco Administrative Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 201\_\_

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of San Francisco )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**EXHIBIT A**

**Legal Description of Project**

North Building:

Parcel 1 (Assessor's Block 3940, Lot 3), as said parcel is shown on that certain map entitled "Parcel Map No. 4859", filed June 4, 2009, in Book 47 of Parcel Maps, at Pages 192 through 196, inclusive, in the Office of the Recorder of the City and County of San Francisco, State of California (the "Project Parcel Map").

South Building:

Parcel 2 (Assessor's Block 3940, Lot 4), as said parcel is shown on the Project Parcel Map.

Garage:

Parcel 3 (Assessor's Block 3940, Lot 5), as said parcel is shown on the Project Parcel Map.

[The foregoing legal descriptions do not include any exceptions or reservations or any easements or other rights that may be appurtenant to such real property]

**EXHIBIT A-1**  
**Project Site Plan**

**EXHIBITS B and B-1**

**Legal Description and Plat Map of Control Room Easement Area**

**EXHIBITS C and C-1**

**Legal Description and Plat Map of Utility Lines Easement Area**

**EXHIBITS D AND D-1**

**Legal Description and Plat Map of Access Easement Area**

Member, Board of Supervisors  
District 3



City and County of San Francisco

**AARON PESKIN**  
佩斯金 市參事

Cor Dep  
Leg Clerk  
LU Clerk

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2019 JUL 17 PM 4:35  
AK

---

DATE: July 17, 2019  
TO: Angela Calvillo  
Clerk of the Board of Supervisors  
FROM: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee  
RE: Land Use and Transportation Committee  
COMMITTEE REPORTS

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Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, July 23, 2019, as Committee Reports:

**190754 Mission Bay South - Storm Water Pump Station No. 5 Public Infrastructure Improvements**

Ordinance accepting the irrevocable offer of public infrastructure improvements associated with Mission Bay South Storm Water Pump Station No. 5, including acquisition facilities located on and under portions of State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16th Street; accepting said facilities for City maintenance and liability purposes, subject to specified limitations; approving an easement agreement for the Pump Station control room; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order; and authorizing official acts, as defined herein, in connection with this Ordinance.

**190755 Mission Bay South - Parks P2 Parking Lot, P11-11A, P23, and P24 Acceptance**

Ordinance dedicating Park P2 Parking Lot (a portion of Assessor's Parcel Block No. 8710; Lot No. 2, adjacent to Channel Street), Park P11-11A (east of Mission Bay Drive and Circle), and Parks P23 and P24 (adjacent to Terry Francois Boulevard between 16th Street and Illinois Street), as open public right-of-way in Mission Bay South; accepting an irrevocable offer for the acquisition facilities that comprise the Park improvements; designating said facilities for public open space and park purposes only; accepting the Parks for City maintenance and liability purposes, subject to specified limitations; amending Ordinance No. 1061 entitled "Regulating the Width of Sidewalks" to establish a new official sidewalk width on the north side of Channel Street adjacent to Park P2 Parking Lot; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order that recommends acceptance of the abovementioned Parks and related actions; and authorizing official acts, as defined herein, in connection with this Ordinance.

**COMMITTEE REPORT MEMORANDUM**  
Land Use and Transportation Committee

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**190661            Planning Code - Permitting Polk/Pacific Special Area Design Guidelines**

Ordinance amending the Planning Code to reference the Polk/Pacific Special Area Design Guidelines; affirming the Planning Department's determination under the California Environmental Quality Act; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

**180777            Planning Code - Conditional Use Authorization Required for Employee Cafeterias within Office Space**

Ordinance amending the Planning Code to require a Conditional Use authorization for Employee Cafeterias, as defined, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

**190165            Planning Code - Legitimization Program for Non-Residential Uses at 3150-18th Street**

Ordinance amending the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, July 22, 2019, at 1:30 p.m.

President, District 7  
BOARD of SUPERVISORS



BO, H, Aides, COB,  
LU, Dep City Atty,  
Mayor's Ofc, Deps  
City Hall

1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Tel. No. 554-6516

Fax No. 554-7674

TDD/TTY No. 544-6546

Norman Yee

PRESIDENTIAL ACTION

Date: 7/15/2019  
To: Angela Calvillo, Clerk of the Board of Supervisors

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2019 JUL 16 PM 4:05  
AK

Madam Clerk,  
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. 190754 Mayor  
(Primary Sponsor)

Title. Mission Bay South - Storm Water Pump Station No. 5 Public  
Infrastructure Improvements

Transferring (Board Rule No 3.3)

File No. \_\_\_\_\_  
(Primary Sponsor)

Title. \_\_\_\_\_

From: \_\_\_\_\_ Committee

To: \_\_\_\_\_ Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: \_\_\_\_\_ Replacing Supervisor: \_\_\_\_\_

For: \_\_\_\_\_ Meeting  
(Date) (Committee)

Start Time: \_\_\_\_\_ End Time: \_\_\_\_\_

Temporary Assignment:  Partial  Full Meeting

*Norman Yee*  
Norman Yee, President  
Board of Supervisors



OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2019 JUL -9 PM 4:35

BY AK

A handwritten signature in black ink, appearing to be "AK", written over a horizontal line.

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Sophia Kittler  
RE: Mission Bay South - Storm Water Pump Station No. 5 Public Infrastructure Improvements  
DATE: 7/9/19

---

Ordinance accepting the irrevocable offer of public infrastructure improvements associated with Mission Bay South Storm Water Pump Station No. 5, including acquisition facilities located on and under portions of State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16th Street; accepting said facilities for City maintenance and liability purposes, subject to specified limitations; approving an easement agreement for the Pump Station control room; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order; and authorizing official acts, as defined herein, in connection with this ordinance.

Please note that Supervisor Haney is a co-sponsor of this legislation.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200  
SAN FRANCISCO, CALIFORNIA 94102-4681  
TELEPHONE: (415) 554-6141



London N. Breed,  
Mayor

Mohammed Nuru,  
Director

Suzanne Suskind,  
Acting Bureau Manager

Project Management  
and Construction

30 Van Ness Ave., 5th floor  
San Francisco, CA 94102  
tel 415-558-5259

[sfpublicworks.org](http://sfpublicworks.org)  
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[twitter.com/sfpublicworks](https://twitter.com/sfpublicworks)

Infrastructure Task Force

July 11, 2019

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

Subject: Accompanying Documents – Acceptance of Stormwater Pump Station No. 5  
Infrastructure Improvements

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2019 JUL 11 PM 4:52  
Dr

Ms. Calvillo:

The above legislation (Ordinance/Legislative Digest) was delivered to the Clerk's office on 6/25/19. We are now submitting the accompanying documents as listed below. This constitutes the full package needed for the Clerk of the Board. We have also submitted the subject documents electronically via email to [bos.legislation@sfdpw.org](mailto:bos.legislation@sfdpw.org) as required.

Documents Attached:

1. PW Order No. 201,493<sup>504</sup>
2. Formal letter from the City Planning Department determining consistency with the General Plan and making environmental findings.
3. Formal letter from the Office of Community Infrastructure and Investment consistency determination and recommendation for Board of Supervisors acceptance of facilities.
4. Irrevocable Offer of Improvements
5. Conditional Assignment of Warranties & Guaranties
6. Project Improvement Permit No. 14IE-0522
7. Draft Easement Agreement – Pump Station Control Room

Please feel free to contact me for any assistance needed.

Sincerely,

Cathal Hennessy  
Project Manager, Infrastructure Task Force  
San Francisco Public Works  
Phone: 415-558-5285  
Email: [cathal.hennessy@sfdpw.org](mailto:cathal.hennessy@sfdpw.org)