

File No. 111209

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date December 5, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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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 |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>SF Redevelopment Agency Letter, dtd 8/16/11</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>General Plan Referral Letter, dtd 10/17/11</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Conditional Assignment of Warranties and Guaranties</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DPW Work Order No. 179,667</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Offer of Improvements</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Alisa Miller Date December 2, 2011

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Mission Bay South - Storm Water Pump Station No. 4 Public Infrastructure Improvements]
2
3 **Ordinance accepting the irrevocable offer of public infrastructure improvements**
4 **associated with Mission Bay Storm Water Pump Station No. 4 including acquisition**
5 **facilities located on and under portions of State Trust Parcel Nos. 2 and 6; accepting**
6 **said facilities for City maintenance and liability purposes; adopting environmental**
7 **findings and findings that such actions are consistent with the City's General Plan**
8 **eight priority policy findings of Planning Code Section 101.1, and the Mission Bay**
9 **South Redevelopment Plan; accepting a Department of Public Works Order; and**
10 **authorizing official acts in connection with this Ordinance.**

11
12 Note: Additions are single-underline italics Times New Roman;
13 deletions are ~~striketrough italics Times New Roman~~.
14 Board amendment additions are double underlined.
15 Board amendment deletions are ~~striketrough normal~~.

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

17 Section 1. Findings.

18 (a) All capitalized terms relating to Mission Bay shall have the definitions ascribed to
19 them pursuant to the Mission Bay South Redevelopment Plan and Plan Documents described
20 therein, approved and adopted by the Board of Supervisors of the City and County of San
21 Francisco by Ordinance No. 335-98, on November 2, 1998, a copy of which is in the Clerk of
22 the Board of Supervisors File No. 981441.

23 (b) The San Francisco Redevelopment Agency, in a letter dated August 16, 2011,
24 determined that the acceptance of the Mission Bay Storm Water Pump Station No. 4 Public
25 Infrastructure Improvements constructed pursuant to Street Improvement Permit #08IE-0654,
dated October 9, 2008 and Department of Building Inspection Permit #200809091047 dated

1 March 3, 2009 (the "Project") and other actions herein set forth are consistent with the Mission
2 Bay South Redevelopment Plan ("Plan") and Plan Documents described therein. A copy of
3 the Redevelopment Agency letter is on file with the Clerk of the Board of Supervisors in File
4 No. 111209 and is incorporated herein by reference.

5 (c) The City Planning Department, in a letter dated October 17, 2011 determined that
6 the acceptance of the Mission Bay Storm Water Pump Station No. 4 Public Infrastructure
7 Improvements and other actions herein set forth are within the scope of the General Plan
8 consistency findings of Case No. 2011.1094R, the Eight Priority Policies of Planning Code
9 Section 101.1 and the contemplated actions do not trigger the need for subsequent
10 environmental review pursuant to the California Environmental Quality Act (CEQA) (California
11 Public Resources Code Sections 21000 et seq.). A copy of the Planning Department letter is
12 on file with the Clerk of the Board of Supervisors in File No. 111209 and is
13 incorporated herein by reference.

14 (d) The San Francisco Public Utilities Commission on May 27, 2010 signed and
15 accepted the FOCIL-MB, LLC Conditional Assignment of Warranties and Guaranties
16 regarding the Mission Bay Storm Water Pump Station No. 4 Improvements. A copy of said
17 Conditional Assignment of Warranties and Guaranties is on file with the Clerk of the Board of
18 Supervisors in File No. 111209 and is incorporated herein by reference.

19 (e) The San Francisco Public Utilities Commission on July 7, 2011 acknowledged the
20 acceptance of the Determination of Completeness for the Mission Bay Stormwater Pump
21 Station No. 4.

22 (f) In DPW Order No. 179,667 dated October 21, 2011, the Director and the City
23 Engineer certified that: (a) FOCIL-MB, LLC ("Focil") made an irrevocable offer of the Project
24 Improvement facilities to the City ("Offer"), (b) the Mission Bay Storm Water Pump Station No.
25 4 Public Infrastructure Improvements have been inspected and were certified as complete on

1 July 13, 2011; the Project has been constructed in accordance with the Project Plans and
2 Specifications and all City codes, regulations, standards and Mission Bay South Plan and
3 Plan Documents governing this project; and such improvements are ready for their intended
4 use, (c) the facilities are recommended for acceptance as acquisition facilities and for City
5 maintenance and liability purposes. A copy of the DPW Order and Offer are on file with the
6 Clerk of the Board of Supervisors in File No. 111209 and are incorporated herein by
7 reference.

8 Section 2. Adoptions and Approvals.

9 (a) The Board of Supervisors adopts as its own the Redevelopment Plan consistency
10 findings of the San Francisco Redevelopment Agency in connection with the acceptance of
11 the Project and other actions set forth herein.

12 (b) The Board of Supervisors adopts as its own the General Plan and Planning Code
13 Section 101.1 consistency findings and CEQA findings of the Planning Department in
14 connection with the Project and other actions set forth herein.

15 (c) The Board of Supervisors has reviewed and approves the City Engineer's
16 certification and Director's recommendation concerning the acceptance of the Focil Offer
17 dated May 18, 2010 for the Project; acceptance of said facilities for City maintenance and
18 liability responsibilities; and other related actions.

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

21 (a) The Board of Supervisors accepts the Focil Offer for the Mission Bay Storm Water
22 Pump Station No. 4 located on and under portions of Mission Bay South Park P8, known as
23 Mission Creek Park along Mission Bay Boulevard.

24 (b) Pursuant to San Francisco Administrative Code Sections 1.51 et seq., the
25 Acquisition Agreement dated June 1, 2001 by and between the Redevelopment Agency of the

1 City and County of San Francisco and Catellus Development Corporation, and the
2 Department of Public Works Order No. 179,667 dated October 21, 2011, the Board of
3 Supervisors hereby dedicates the facilities described in the Focil Offer for public use and
4 accepts such facilities for City maintenance and liability purposes. The Board's acceptance of
5 improvements pursuant to this Subsection is for the Mission Bay Storm Water Pump Station
6 No. 4 Improvements only and is subject to the warranty obligations under the Stormwater
7 Pump Station No. 4 Street Improvement Permit No. 08IE-0654 and Department of Building
8 Inspection Permit No. 200809091047.

9 (c) The Board of Supervisors hereby acknowledges Focil's conditional assignment of
10 guaranties and warranties in accordance with the related Street Improvement Permit and the
11 Mission Bay South Acquisition Agreement.

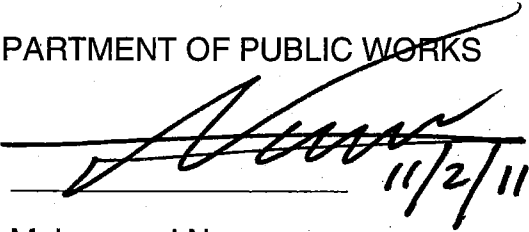
12 Section 7. Authorization for Implementation.

13 All actions heretofore taken by the officers of the City with respect to such Ordinance
14 are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board, and Director
15 of Public Works are hereby authorized and directed to take any and all actions which they or
16 the City Attorney may deem necessary or advisable in order to effectuate the purpose and
17 intent of this Ordinance, including, but not limited to, the recordation of this Ordinance in the
18 Official Records of the City and County of San Francisco.

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RECOMMENDED:

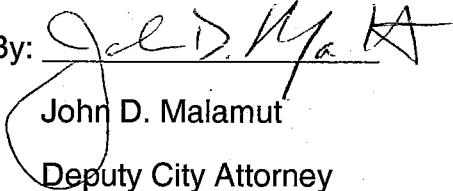
DEPARTMENT OF PUBLIC WORKS

By:  11/2/11

Mohammed Nuru
Director of Public Works

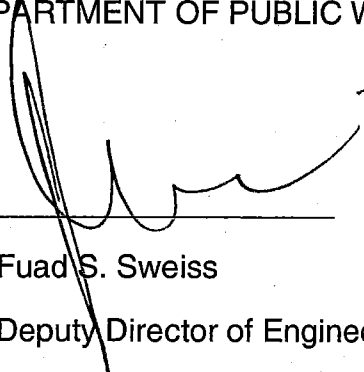
APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

By: 
John D. Malamut
Deputy City Attorney

DESIGNATION CERTIFIED BY:

DEPARTMENT OF PUBLIC WORKS

By: 
Fuad S. Sweiss
Deputy Director of Engineering
and City Engineer

LEGISLATIVE DIGEST

[Mission Bay South - Storm Water Pump Station No. 4 Public Infrastructure Improvements]

Ordinance accepting the irrevocable offer of public infrastructure improvements associated with Mission Bay Storm Water Pump Station No. 4 including acquisition facilities located on and under portions of State Trust Parcel Nos. 2 and 6; accepting said facilities for City maintenance and liability purposes; adopting environmental findings and findings that such actions are consistent with the City's General Plan eight priority policy findings of Planning Code Section 101.1, and the Mission Bay South Redevelopment Plan; accepting a Department of Public Works Order; and authorizing official acts in connection with this Ordinance.

Existing Law

The Board of Supervisors adopted and approved the Redevelopment Plan for the Mission Bay South Project Area by 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 dedicate said improvements to the City. Upon dedication, the City would initiate the local and State law procedures to accept the improvements for City use.

Amendments to Current Law

This legislation would accept the dedicated facilities; dedicate the improvements for City use; and accept the improvements for maintenance and liability purposes, 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 priority policy findings of the Planning Code Section 101.1.

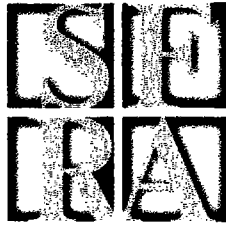
Background Information

This legislation relates to the Stormwater Pump Station No. 4 Infrastructure Improvements located on and under portions of State Trust Parcels 2 and 6 lying adjacent to Mission Bay Drive.

San Francisco
Redevelopment Agency

One South Van Ness Avenue
San Francisco, CA 94103

415.749.2400



EDWIN M. LEE, Mayor

Rick Swig, President
Darshan Singh, Vice President
Rosario M. Anaya
Miguel M. Bustos
Francee Covington
Leroy King
Agnes Briones Ubalde

Fred Blackwell, Executive Director

August 16, 2011

126-051.11-206

Ms. Grace Kwak
Project Manager
Mission Bay Task Force
Department of Public Works
30 Van Ness, Room 4200
San Francisco, CA 94102

RE: Mission Bay South Stormwater Pump Station No. 4 Public Infrastructure Improvements
Consistency Determination

Dear Ms. Kwak:

The Agency has received your request regarding the Stormwater Pump Station No. 4 public infrastructure improvements and their consistency with the Mission Bay South Redevelopment Plan and Plan Documents.

The Agency has reviewed the documents and related materials concerning the acceptance of the Stormwater Pump Station No. 4 public infrastructure improvements and other related actions thereto, 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.

Sincerely,

Catherine Reilly
Assistant Project Manager

Cc: Barbara Moy, MBTF
Fred Blackwell, SFRA
Kelley Kahn, SFRA



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

Date: October 17, 2011

Case No. Case No. 2011.1094R
Dedication of Mission Bay South Stormwater Pump Station No. 4

Block/Lot No.: 3809/002 and 8709/003

Project Sponsor: FOCIL-MB LLC
c/o Mission Bay Development Group LLC
255 Channel Street
San Francisco, CA 94158

Referred By: Grace Kwak
Department of Public Works c/a Mission Bay Task Force
30 Van Ness Avenue, Suite 4200
San Francisco, CA 94102

Staff Contact: Lily Langlois - (415) 575-9083
lily.langlois@sfgov.org

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

Recommended By: Kerley Anderson for
John Rahaim, Director of Planning

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

2011 OCT 20 PM 1:34

PROJECT DESCRIPTION

On September 22, 2011, the Planning Department (herein "the Department") received a request from Department of Public Works for a General Plan Referral as required by Section 4.105 of the Charter and Section 2A.53 of the Administrative Code. The proposed project calls for the acceptance and dedication of public infrastructure. Specifically, for the acceptance and dedication of Mission Bay South Stormwater Pump Station #4 improvements, including underground and surface improvements on City Property.

PROPOSED ACTIONS BY BOARD OF SUPERVISORS

Acceptance of Dedication of the Public Infrastructure Improvements

The Department of Public Works (DPW) has determined that the public infrastructure improvements have been constructed in accordance with the approved Plans and Specifications and are ready for their intended use. Accordingly, the Developer is obligated to dedicate the Infrastructure Improvements to the City. The dedication will be for the improvements located in areas adjacent to Assessor's Block/Lot 3809/002 and 8709/003. The improvements include the Mission Bay South Stormwater Pump Station No. 4.

PREVIOUS ACTIONS RELATED TO THIS PROJECT

The Planning Commission found that the Mission Bay North and Mission Bay South Redevelopment Plans, dated September 4, 1998, were consistent with the San Francisco General Plan, by adopting Resolution No. 14699 on September 17, 1998. The project referenced above was proposed as part of the Mission Bay South Redevelopment Plan.

The Mission Bay Tentative Map and Land Transfers were found to be consistent with the General Plan and Section 101.1 of the Planning Code.

An Owner Participation Agreement (OPA) was executed between the Redevelopment Agency of the City and County of San Francisco and the project sponsor, on November 16, 1998. The OPA included the Infrastructure Plan that defined the horizontal infrastructure plans and improvements that are incorporated into the subject project.

In addition to these actions, the final land transfer map was approved by the Board of Supervisors by Motion No. M99-79.

ENVIRONMENTAL REVIEW

The Major Environmental Analysis section of the Planning Department completed Environmental Review of the Mission Bay Final Subsequent Environmental Impact Report (FSEIR). The FSEIR included analysis of regulatory and physical aspects of the Plan, including: the vacation of public rights-of-way, property acquisition, acceptance of offers of dedication of land for road rights-of-way, and acceptance of offers of Dedication of horizontal improvements (street and public rights-of-way), among other actions.

The Final Subsequent Environmental Impact Report for Mission Bay (FSEIR) was prepared pursuant to the California Environmental Quality Act and was certified as adequate, accurate and objective in the following actions:

- Redevelopment Commission Resolution No. 182-98 on September 17, 1998
- Planning Commission Resolution No. 14696 on September 17, 1998, certifying the FSEIR
- Board of Supervisors affirmed the Planning Commission's certification by Resolution No. 854-98 on October 19, 1998.

- Redevelopment Agency issued Addendum #6 to the FSEIR on September 10, 2008.

Further Environmental Analysis is not required, as the subject project (acceptance of dedication of public infrastructure) was analyzed as part of the FSEIR certified by the Planning Commission and affirmed by the Board of Supervisors. In addition, acceptance of real property and infrastructure improvements (non-physical actions) is exempt from further environmental review, pursuant to Sec. 15060(c)(2) of CEQA guidelines.

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

Following are relevant policies from the General Plan and associated analysis and comment. General Plan Objectives and Policies and in **bold** font, policy text is in regular font, and staff comments are in *italic*.

COMMUNITY FACILITIES ELEMENT

Objective 10

Locate Wastewater facilities in a manner that will enhance the effective treatment of storm and wastewater.

Policy 10.1

Provide facilities for treatment of storm and wastewater prior to discharge into the Bay or ocean. Locate such facilities according to the Wastewater and Solid Waste Facilities Plan.

Comment: The stormwater pump station dedicated as part of this Project will serve as part of a storm water system that will discharge stormwater efficiently to the Bay. Unlike most areas of the City, Mission Bay has separate systems for stormwater and wastewater. Wastewater will continue to be delivered to facilities for treatment before discharge.

ENVIRONMENTAL PROTECTION ELEMENT

Objective 3

Maintain and improve the quality of the Bay, Ocean and Shoreline Areas.

Policy 3.3

Implement plans to improve sewage treatment and halt pollution of the Bay and Ocean.

Objective 5

Assure a permanent and adequate supply of fresh water to meet the present and future needs of San Francisco.

Policy 5.1

Maintain an adequate water distribution system within San Francisco.

Policy 5.3

Ensure water purity

EIGHT PRIORITY POLICIES

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 existing housing or neighborhood character.

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

The project would increase the City's affordable housing supply

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

The project would have no adverse effect on MUNI transit service or 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 adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

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 the City's preparedness against injury and loss of life in an earthquake.

7. That landmarks and historic buildings be preserved.

The site does not have any landmarks or historic buildings to be demolished.

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 vistas.

RECOMMENDATION: Finding the Project, on balance, in-conformity with the General Plan

CONDITIONAL ASSIGNMENT OF WARRANTIES AND GUARANTIES

Assignment

FOR VALUE RECEIVED, FOCIL-MB, LLC, a Delaware limited liability company (“**FOCIL**”), conditionally assigns 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**”), effective on the effective date of a License Agreement relating to the Acquisition Facilities between FOCIL and the City, dated for reference purposes as of MAY 27, 2010.

This Conditional Assignment of Warranties and Guaranties (the “**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 (“**Agency**”), 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, 5th 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: Anita L. Wood
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
255 Channel Street
San Francisco, CA 94158
Attn: Phil Owen, President
Facsimile No.: (415) 355-6696

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

To FOCIL:

Joe Antonio
Mission Bay Development Group
email to: jantonio@mbaydevelopment.com
Mobile: (415) 373-8436

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 5/27, 2010.

FOCIL:

FOCIL-MB, LLC,
a Delaware limited liability company

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

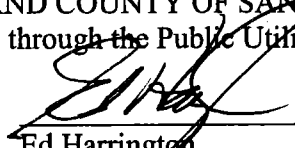
Its: Manager

By: 
Name: Richard B. Fried
Its: Managing Member

Accepted.

CITY:

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

By: 
Ed Harrington
General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: Joanne Sakai
Joanne Sakai
Deputy City Attorney

EXHIBIT A

List of Acquisition Facilities

The facilities include the Mission Bay Stormwater Pump Station No.4 – improvements and ancillary facilities constructed or installed by or on behalf of FOCIL pursuant to Street Improvement Permit #08IE-0654, dated October 9, 2008 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 and SBC 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:

- 2610 - Site Preparation and demolition; including surface treatment.
- 2611 - Furnish and install all materials for underground structures associated with and including the pump station wet well including sheet piles, excavation, trenching, soil spoil screening, handling, hauling and stockpiling along with backfill, compaction, etc.
- 2612 - Furnish and install all materials for above and underground structures associated with and including the pump station outfall improvements including sheet piles, excavation, trenching, railings, soil spoil screening, handling, hauling and stockpiling along with backfill and compaction.
- 2613 - Furnish and install CDS units with connecting storm drain to pump station wet well, also storm drain from CDS units to storm drain manhole (to be furnished and installed), includes all excavation, shoring, sheet piles, trenching, soil spoil screening, handling, hauling, stockpiling, backfill and compaction.
- 2614 - Furnish and install sanitary sewer piping from pump station wet well to existing box sewer, includes manhole, all connections, valves, excavation, shoring, sheet piles, trenching, soil spoil screening, handling, hauling, stockpiling, backfill and compaction.
- 2615 - Furnish and install storm drain piping from pumps in the pump station wet well to outfall, includes pumps, all internal and external piping, valves, fittings and appurtenances, all excavation, shoring, sheet piles, trenching, soil spoil screening, handling, hauling, stockpiling, backfill and compaction.
- 2616 - Furnish and install all yard piping, includes all trenching, yard piping, soil spoil screening, handling, hauling backfill and compaction.
- 2617 - Furnish and install all electrical and instrumentation equipment, conduit, conductors, sensors and appurtenances for control building and pump station, both external and internal. Includes conduit, ductbanks, concrete, equipment pads, mounting hardware, cable seals, bollards, excavation, shoring, soil spoil screening, handling, hauling, backfill, and compaction. Also includes all connections, grounding, programming, and testing to deliver a pump station in working order.

- 2618 Furnish and install all surface improvements, including but not limited to curbs, asphalt and concrete surfacing, erosion control materials at the channel, grading, baserock.
- 2619 Integrated testing and start up of all mechanical, electrical, and instrumentation systems to provide a fully functional storm drain pump station and control building.
- 2620 Furnish and install all materials for above and underground structures associated with and including the control building. Includes all excavations, foundations, shoring, trenching, soil spoil screening, handling, hauling, backfill and compaction.

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
Shimmick Construction Company, Inc. written guarantee	Defects in workmanship and materials for Stormwater Pump Station No. 4	2 yrs	03/19/10	03/19/12	
Shimmick Construction Company, Inc. guarantee bond	Defects in workmanship for Stormwater Pump Station No. 4	2 yrs	03/19/10	03/19/12	
ITT FLYGT	Defects in workmanship and material covering parts and labor on pump and accessories, excluding cutting plates and expellers	5 yrs or 10,000 hours from shipment	12/07/09	See Term	
Tesco	Defects in workmanship and material covering parts and labor on electrical control panels and accessories.	2 yrs	03/19/10	03/19/12	
NTK Construction Company written guarantee	Defects in workmanship and materials for Storm Drain Facility; Connection from SWPS-04 CDS Unit to the existing SD Facility within Block P7.	2 yrs	01/28/10	01/28/12	
NTK Construction Company guarantee bond	Defects in workmanship for Storm Drain Facility; Connection from SWPS-04 CDS Unit to the existing SD Facility within Block P7.	2 yrs	01/28/10	01/28/12	

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
Infrastructure Plan § I.A.2.c.ii.D	Monitoring-TSS removal rate of at least 40%	Monitoring to demonstrate 40% removal rate over 3 years	Goal to test 15-20 representative storms over a 3 year period
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.			



Edwin M. Lee, Mayor

Mohammed Nuru, ..., Director



(415) 554-6920

FAX (415) 554-6944

<http://sfdpw.org>

Department of Public Works
GENERAL - DIRECTOR'S OFFICE

City Hall, Room 348

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

DPW Order No: 179,667

October 21, 2011

Re: Recommendation for formal acceptance of the Mission Bay South Storm Water Pump Station No. 4 improvements located on and under portions of State Trust Parcels 2 and 6 adjacent to Mission Bay Drive; accepting the irrevocable offer of the Acquisition facilities; dedication of such facilities to City use and acceptance for maintenance and liability purposes.

WHEREAS, On November 2, 1998, the City, acting through its Board of Supervisors approved the Mission Bay South Redevelopment Plan ("Mission Bay Plan") by its Ordinance No. 335-98; and

WHEREAS, On November 16, 1998, the Redevelopment Agency of the City and County of San Francisco (the "Redevelopment Agency") and Catellus Development Corporation ("Catellus") entered into the South Mission Bay Owner Participation Agreement; 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 June 1, 2001, the Redevelopment Agency and Catellus entered into the Mission Bay South Acquisition Agreement; and

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

WHEREAS, On November 22, 2004, Catellus Land and Development Corporation granted certain properties, and all its right, title, interest and obligations with respect thereto, to FOCIL—MB, LLC, a Delaware limited liability company ("FOCIL"), recorded December 1, 2004 in Reel I774, Image 005, Official Records of the City and County of San Francisco; and

WHEREAS, On October 9, 2008 the City, Department of Public Works issued Street Improvement Permit No. 08IE-0654 to construct the "Mission Bay Storm Water Pump Station No. 4 Improvements"; and

WHEREAS, On March 3, 2009 the City, Department of Building Inspection issued Building Permit No. 200809091047 to construct the "Mission Bay Storm Water Pump Station No. 4 Improvements"; and

WHEREAS, On May 18, 2010, FOCIL irrevocably offered to the City the public infrastructure improvements and facilities as constructed or installed pursuant to the Improvement Plans for Mission Bay Storm Water Pump Station No. 4 approved by the Department of Public Works on October 9, 2008, and any authorized revisions or contract change orders thereto (Focil Irrevocable Offer); and together with an assignment of all guaranties and warranties related to the construction of all the improvements; and

WHEREAS, On May 27, 2010 the San Francisco Public Utilities Commission reviewed and accepted the FOCIL-MB, LLC Conditional Assignment of Warranties and Guaranties with regard to the Storm Water Pump Station No. 4 Improvements; and

WHEREAS, On July 7, 2011, the San Francisco Public Utility Commission issued a notice determining that the "Mission Bay Storm Water Pump Station No. 4 Improvements" has been substantially completed pursuant to Improvement Permit No. 08IE-0654 and is ready for its intended use; and

WHEREAS, On July 19, 2011 the Department of Public Works issued a notice determining that as of July 13, 2011 the "Mission Bay Storm Water Pump Station No. 4 Improvements" has been substantially completed pursuant to Improvement Permit No. 08IE-0654 and is ready for its intended use; and

WHEREAS, In a letter (attached as Exhibit B) dated August 16, 2011 the Redevelopment Agency found the acceptance of the Mission Bay Storm Water Pump Station No. 4 Improvements and other actions are "consistent with the Mission Bay South Redevelopment Plan and Plan Documents, described therein, and recommends Board of Supervisors approval"; and

WHEREAS, In a letter (attached as Exhibit A) dated October 17, 2011 the City Planning Department determined that the acceptance of the Mission Bay Storm Water Pump Station No. 4 Improvements and other actions are consistent with the General Plan consistency findings of Case No. 2011.1094R, the Eight Priority Policies of Planning Code Section 101.1 and the contemplated actions do not trigger the need for subsequent environmental review pursuant to the California Environmental Quality Act (CEQA) (California Public Resources Code Sections 21000 et seq.); and

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

- a. All Inspections have been performed, test results have been obtained, permit conditions and mitigation measures have been complied with, punch list items have been resolved, and improvement plan As-Built drawings have been received for the Mission Bay Storm Water Pump Station No. 4 Improvements.
- a. Mission Bay Development Group, LLC on behalf of FOCIL-MB, LLC, has submitted a copy of record Notice of Completion, Assignments of Warranties and Guaranties, Assignments of Reimbursements to the Agency from third parties, if applicable, and evidence of acceptability of the facilities from all applicable public entities and/or non-City utilities.
- c. By the letter dated July 19, 2011 the Department of Public Works has determined that as of July 13, 2011 the work is ready for its intended use and has been completed substantially in conformance with the Plans and Specifications for Mission Bay Storm Water Pump Station No. 4 approved by the Department of Public Works on October 9, 2008 or any authorized revision thereto, and 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,

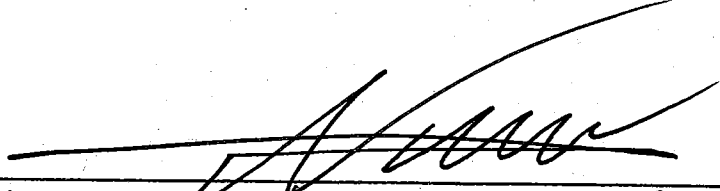
With respect to facilities acceptance:

I hereby recommend the Board of Supervisors accept the Focil Irrevocable Offer of Improvements and dedicate the improvements for public use.


I recommend that the Board of Supervisors acknowledge FOCIL's Conditional Assignment of Warranties and Guaranties to the City and County of San Francisco with regard to the Storm Water Pump Station No. 4 Improvements.

With Respect to Maintenance and Liability:

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

 11/4/11

MOHAMMED NURU, INTERIM DIRECTOR

 [Click here to sign this section](#)

11/2/2011

X Fuad Sweiss, City Engineer

Signed by Sweiss, Fuad [View details](#)
on Wednesday, November 02, 2011 2:36 PM (Pacific Daylight Time)

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

OFFER OF IMPROVEMENTS

(Stormwater Pump Station No. 4)

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 open space, right-of-way improvements and underground public utility facilities constructed or installed by or on behalf of FOCIL pursuant to the Street Improvement Permit #08IE-0654, dated October 9, 2008, pursuant to the Department of Building Inspection Permit #200809091047 dated March 3, 2009 issued thereunder, for Stormwater Pump Station No. 4, 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.

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

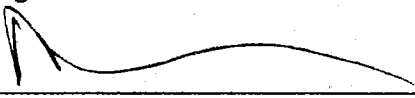
It is understood and agreed that: (i) upon acceptance of this offer of public improvements the City shall own and be responsible for maintenance of the offered public facilities and improvements, and (ii) the City and its successors or assigns shall incur no liability or obligation whatsoever hereunder 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 19 day of May, 2010.

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


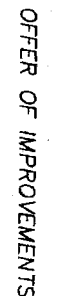

Title: _____

EXHIBIT A
[Plat Map]

NOTE

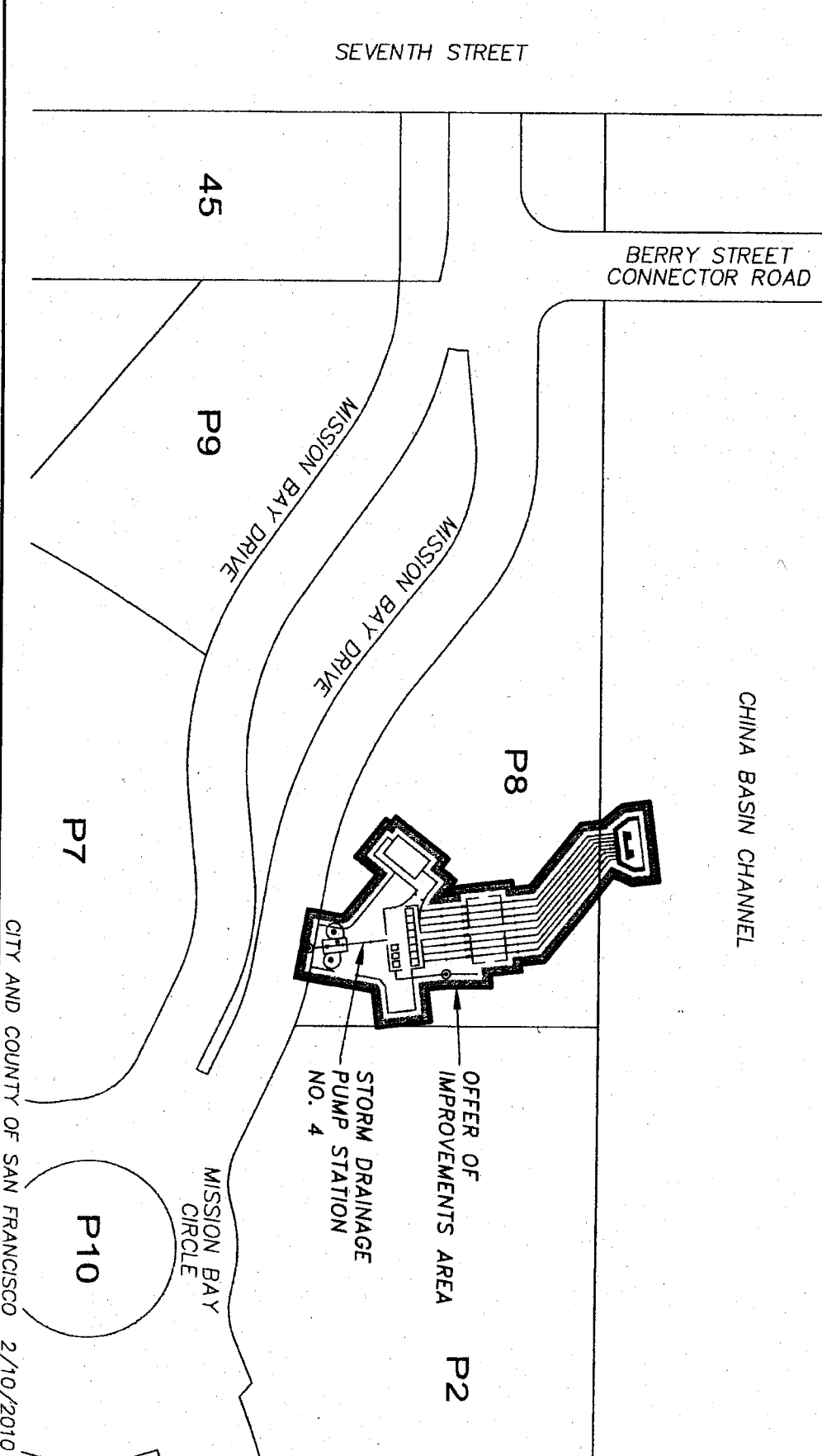
PUMP STATION LAYOUT AND PARCEL CONFIGURATION SHOWN HERE ARE PER THE IMPROVEMENT PLAN ENTITLED "SHEET C2 - UTILITY PLAN, MISSION BAY DRIVE "NORTH" FOR MISSION BAY DRIVE EXTENSION" DATED 10/7/2009 BY FREYER & LAURETA.

LEGEND

-  OFFER OF IMPROVEMENTS AREA
-  MISSION BAY BLOCK LINE
-  P8 MISSION BAY BLOCK NUMBER



SCALE
1" = 100'



F&L Freyer & Laureta, Inc.
 civil engineers • surveyors • construction managers
 144 North San Mateo Drive • San Mateo, CA 94401
 (650)344-9901 • Fax (650)344-9920 • www.freyerlaureta.com

STORM DRAINAGE PUMP STATION NO. 4
 OFFER OF IMPROVEMENTS EXHIBIT

CITY AND COUNTY OF SAN FRANCISCO 2/10/2010

NOTE

PUMP STATION LAYOUT AND PARCEL CONFIGURATION SHOWN HERE ARE PER THE IMPROVEMENT PLAN ENTITLED "SHEET C2 - UTILITY PLAN, MISSION BAY DRIVE 'NORTH' FOR MISSION BAY DRIVE EXTENSION" DATED 10/7/2009 BY FREYER & LAURETA.

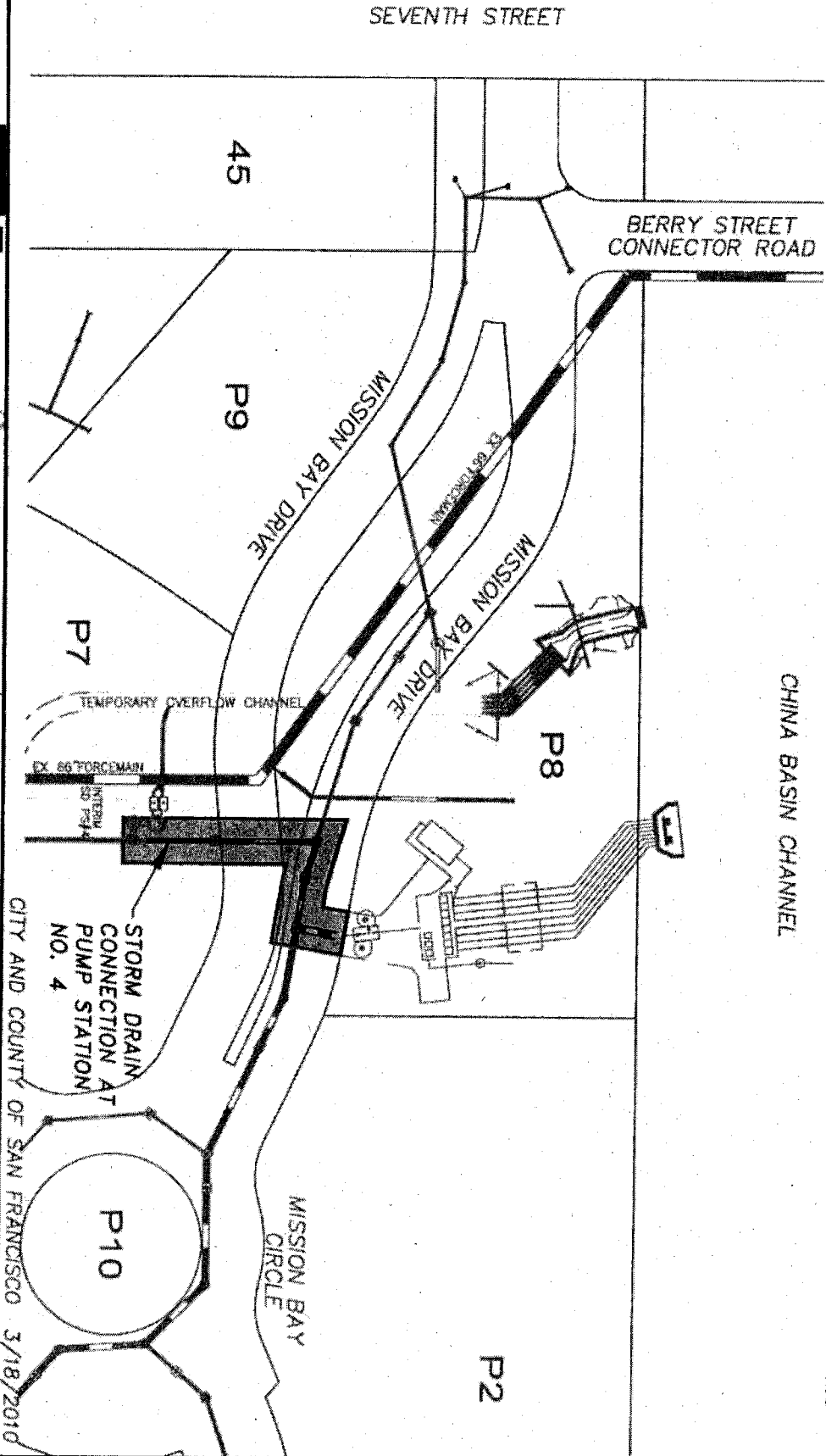
LEGEND

-  MISSION BAY BLOCK LINE
-  MISSION BAY BLOCK NUMBER

CHINA BASIN CHANNEL



SCALE
1" = 100'



FREYER & LAURETA, INC.

CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS
144 North San Mateo Drive • San Mateo, CA 94401
(650) 344-9901 • Fax (650) 344-9920 • www.freyerlaureta.com

STORM DRAIN CONNECTION

AT SWPS-04

CITY AND COUNTY OF SAN FRANCISCO 3/18/2010