

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
facebook.com/sfpublicworks
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 16th 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 (“OCII”); 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 45AB17F474FA...

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

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

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
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	DPW DocuSign
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	30 Van Ness Ave. Suite 4400
	San Francisco, CA 94102
	dpw-docusign.service@sfdpw.org
	IP Address: 208.121.64.7

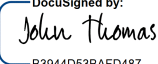
Record Tracking

Status: Original 7/11/2019 2:10:44 PM	Holder: DPW DocuSign dpw-docusign.service@sfdpw.org	Location: DocuSign
--	--	--------------------

Signer Events

John Thomas
John.Thomas@sfdpw.org
Deputy Director
Public Works
Security Level: Email, Account Authentication (None)

Signature

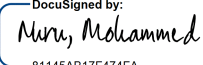
DocuSigned by:

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:

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"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.