

## CONDITIONAL ASSIGNMENT OF WARRANTIES AND GUARANTIES

### Assignment

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

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

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

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

### Conditions

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

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

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

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

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

2. Notices and Communications.

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

To the City:

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

with a copy to:

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

To FOCIL:

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

with a copy to:

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

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

To FOCIL:

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

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

c. Any contact information for day-to-day communications, mailing address for notices, or facsimile number may be changed by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Assignment will be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the parties, copies of notices may also be given by facsimile. The effective time of a notice will not be affected by the receipt of a facsimile copy of the notice prior to receipt of the original.

### 3. General Provisions.

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

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

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

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

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

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

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

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

**FOCIL:**

FOCIL-MB, LLC,  
a Delaware limited liability company

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

Its: Manager

By: 

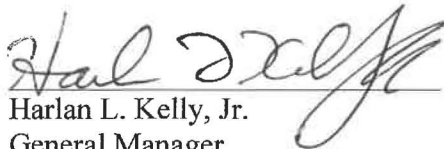
Name: Richard B. Fried  
Managing Member

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

Accepted.


**CITY:**

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

By:   
Harlan L. Kelly, Jr.  
General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA,  
City Attorney

By:   
Deputy City Attorney

## EXHIBIT A

### **List of Acquisition Facilities**

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

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

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

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

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

**EXHIBIT B**

**Schedule of Warranties and Other Obligations**

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



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