



April 23, 2019
BKF Job #: 20180441-14

Mr. John Kwong, P.E.
Engineer
Infrastructure Task Force
San Francisco Public Works
City and County of San Francisco
30 Van Ness Ave. 5th Floor
San Francisco, CA 94103
Email: John.Kwong@sfdpw.org

**Subject: 5M Project Street Improvement Permit – Request for Deferral for Phase 1 and Phase 2
ED 17-02 Large Housing Development Project**

Dear Mr. Kwong,

This letter is being submitted to the City and County of San Francisco Public Works Bureau of Streets and Mapping to support a Request for Deferral for certain improvements within the Phase 1 and Phase 2 Street Improvement Plans for the 5M Project.

The Development Agreement by and between the City and County of San Francisco and 5M Project, LLC (the "Development Agreement"), and associated project approvals, anticipate a phased development of project components, as more fully described in Exhibit B to the Development Agreement.

Subject to a purchase and sale agreement between FC 5M H1, LLC and 5M Project, LLC, FC 5M H1, LLC (the "Phase One Subdivider") will, concurrent with the filing for record of the phase one final map, purchase certain lots within the 5M Project area and subject to an approved assignment and assumption of the Development Agreement, will develop certain project components, namely the H1 Office Building and Mary Court East Open Space. Together the H1 Office Building and Mary Court East Open Space constitute Phase 1 of the 5M Project. Please note, 5M Project, LLC as owner and FC 5M H1, LLC as buyer will jointly submit a request for extension related to certain tentative map conditions with the check print submission of the Phase 1 Final Map. This letter will follow shortly, with cc' to your office.



The City previously approved an assignment and assumption of the Development Agreement with respect to the M2 Residential Building and the Mary Court West Open Space to FC 5M M2 Exchange, LLC (the "Phase Two Subdivider"). Together the M2 Residential Building and Mary Court West Open Space constitute Phase 2 of the 5M Project.

The Phase One Subdivider and the Phase Two Subdivider have, respectively, submitted the following Street Improvement Plans to obtain Street Improvement Permits (SIP) supporting the vertical developments and associated open spaces:

- Phase 1 – 415 Natoma Street (H1 Building – Office) & 110 5th Street (Mary Court East Open Space) [Resubmitted 1/18/19]
- Phase 2 – 434 Minna Street (M2 Building - Residential) & 44 Mary Street (Mary Court West Open Space) [Resubmitted 1/18/19]

Based on review of available record plans and survey, there is an existing sub-sidewalk basement encroachment located along Minna Street connecting the existing M1 Building (the "M1 Building" or the "Chronicle Building", located at 901 Mission Street) and the existing Examiner Building (located at 110 5th Street). While a part of the 5M Project and subject to the Development Agreement (and other project approvals), the Chronicle Building and Examiner Building are not owned by, and improvements under the Development Agreement (and other project approvals) related to these project components have not been and are not anticipated to be assigned and assumed by, Phase One Subdivider or Phase Two Subdivider.

The sub-sidewalk basement connecting structure is subject to an existing Street Encroachment Agreement, recorded January 12, 1967 at Book 109 Page 871. The Encroachment Agreement obligates the owners of said encroachment to assume all costs, maintenance, and repair of the encroachment structure. The limits of this encroachment are indicated in orange on the attached exhibit "5M Project – Request for Deferral".

The limits of work proposed on the current Phase 1 and Phase 2 SIP plans include sidewalk improvements located over the existing sub-sidewalk connecting encroachment. Moreover, portions of the existing sidewalk section over the northeast section of the existing encroachment are actually part of the sub-sidewalk encroachment structure. Therefore, it is not currently feasible for either the Phase One Subdivider or the Phase Two Subdivider to construct and install sidewalk improvements within this particular area.

Phase One: Accordingly, the Phase One Subdivider requests the following changes to the Phase 1 SIP (refer to the attached exhibit "5M Project – Request for Deferral"):

- 1) Deferral of proposed curb ramp on southeastern quadrant of the Minna Street and Mary Street intersection. This deferral is requested until such time as Chronicle Building and/or

Examiner Building owner, in connection with the phased modifications of those buildings, as described in the Development Agreement (and other project approvals), itself modifies the sidewalk area adjacent to the Chronicle building, or otherwise removes or modifies the above referenced existing sub-sidewalk encroachment structure to allow for installation of the connecting curb ramp located on northeastern quadrant of Minna Street.

Note, an accessible pedestrian connection is provided across Minna Street with proposed curb ramps located on the northwestern and southwestern quadrants of Minna Street and Mary Street completed within the scope of Phase 1 and Phase 2 SIP.

- 2) Remove that certain curb ramp described in the Phase 2 SIP plans, located on northeastern quadrant of Minna Street and Mary Street intersection, and instead include said ramp in the Phase 1 SIP plans. This improvement is required to complete the crossing anticipated across Minna Street, east of Mary Street and as such is properly included as an obligation of Phase One Subdivider rather than Phase 2, as previously included in the prior plan submission of the Phase Two SIP plans.

This Northeastern quadrant of Minna/Mary Street ramp improvement is further requested to be deferred until such time as Chronicle Building and/or Examiner Building owner improves the sidewalk area along Minna Street as part of the Chronicle/Examiner phased improvements or otherwise removes or modifies the existing encroachment structure above referenced to allow for installation of the curb ramp, as described above.

Deferred improvements within this Phase One SIP will, in accordance with provisions to be included in the Phase 1 PIA, remain bonded until said deferred improvements are completed.

Phase Two. Please note there are no Deferrals requested for Phase 2 improvements. However, the Phase Two Subdivider requests the following changes to the Phase 2 SIP plans (refer to the attached exhibit "5M Project – Request for Deferral"):

- 1) Proposed curb ramp within Phase 2 SIP located on northeastern quadrant of Minna Street and Mary Street intersection have been removed from Phase 2 SIP plans and will instead be included in Phase 1 SIP plans, and be deferred, as described in the deferral requested above.
- 2) Proposed sidewalk improvements within Phase 2 SIP plans located on the northern side of Minna Street have been removed from Phase 2 SIP plans. These improvements, also located above the above referenced sub-sidewalk encroachment, would instead be included in a future set of SIP plans associated with the future modification of the adjacent Chronicle building, consistent with the phase plan for associated sidewalk improvements described in the Development Agreement (and other associated project approvals).

Note that these improvements do not front Phase 2 properties, so they are not required as part



of the Phase 2 SIP plans. Additionally, these improvements are described in the Development Agreement as an obligation associated with the modification of the Chronicle building, rather than the Phase 2 development. Accordingly, these improvements on the north side of Minna between 5th, Mission Street and Mary Street are an obligation of M1 (Chronicle Building) developer (future phase).

We respectfully request your consideration in approving this Deferral for Phase 1 and Phase 2 improvements and contact me if you require further information to support this request.

Sincerely,

Simon R. North, P.E., LEED® AP
Vice President
BKF Engineers

Attachments:

Exhibit: 5M Project – Request for Deferral
Street Encroachment Agreement, dated 01/12/1967
Board of Supervisors Resolution 8-67
Development Agreement: Exhibit B

Copies:

Phillip Wong – OEWD
Robert Pears – Brookfield Properties
Swathi Bonda – Brookfield Properties

BANK OF AMERICA - CONFIDENTIAL
DATE: MAY 21, 2019
IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68146668

PAGE: 1

APPLICANT
FOREST CITY ENTERPRISES, LP
127 PUBLIC SQUARE
SUITE 2500
CLEVELAND OH 44114

BENEFICIARY
SAN FRANCISCO PUBLIC WORKS
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, 1 DR. CARLTON B GOODLETT
PLACE, ROOM 348

SAN FRANCISCO, CA 94102
ATTN: INFRASTRUCTURE TASK FORCE

ISSUING BANK
BANK OF AMERICA, N.A.
ONE FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

AMOUNT
NOT EXCEEDING USD 25,000.00
NOT EXCEEDING TWENTY FIVE THOUSAND AND 00/100'S US DOLLARS

EXPIRATION
MAY 13, 2020 AT OUR COUNTERS

WE HEREBY OPEN OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER
68146668 IN YOUR FAVOR.

THIS CREDIT IS AVAILABLE WITH BANK OF AMERICA, N.A. BY PAYMENT
AGAINST PRESENTATION OF BENEFICIARY'S DRAFT(S) AT SIGHT DRAWN ON BANK
OF AMERICA N.A.

DRAFT(S) MUST BE ACCOMPANIED BY:

1. THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY.
2. A DATED STATEMENT SIGNED BY AN AUTHORIZED OFFICER OF THE
BENEFICIARY ON BENEFICIARY'S LETTERHEAD READING AS FOLLOWS:

QUOTE

WE DRAW IN THE AMOUNT OF _____ DUE TO A DEFAULT THAT HAS
OCCURRED AND ALL APPLICABLE NOTICE AND CURE PERIODS HAVE EXPIRED
WITHOUT CURE. "

UNQUOTE

PARTIAL DRAWINGS: ARE ALLOWED

ORIGINAL