

File No. 210688 Committee Item No. 4
Board Item No. 54

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date July 12, 2021

Board of Supervisors Meeting Date July 20, 2021

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- DRAFT Encroachment Agrmt
- PW Order No. 204906
- SFMTAB Reso 210601-074 060121
- PLN Gen Plan Ref 090120
- PLN Tentative Map Clearance 082720
- Referral FYI 061521
- PC Gen Plan Ref Update 062321
- Final Draft 5M MEP Agreement
- _____
- _____
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- _____
- _____

Completed by: Erica Major Date July 8, 2021

Completed by: Erica Major Date _____

1 [Street Encroachment Permit - North Mary Street Pedestrian Paseo and Underground Utilities
2 in Portions of Minna, Natoma, and Mary Streets]

3 **Resolution granting revocable permission to FC 5M M2 Exchange, LLC, to construct**
4 **and maintain the pedestrian-only alley/paseo on Mary Street between Mission and**
5 **Minna Streets fronting 434 Minna Street (Assessor’s Parcel Block No. 3725, Lot No.**
6 **132); the private underground telecommunications conduit connecting 434 Minna**
7 **Street and 415 Natoma Street below portions of Minna, Natoma, and Mary Streets; and**
8 **the private non-potable water lines connecting to 434 Minna Street and 415 Natoma**
9 **Street below portions of Minna and Natoma Streets; adopting environmental findings**
10 **under the California Environmental Quality Act; and making findings of consistency**
11 **with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

12
13 WHEREAS, Pursuant to Public Works Code, Sections 786 et seq., FC 5M M2
14 Exchange, LLC, (hereafter referred to as “Permittee”) requested permission to construct and
15 maintain a portion of the public right-of-way for (1) a pedestrian alley/paseo on North Mary
16 Street between Mission and Minna Streets fronting 434 Minna Street (Assessor’s Parcel Block
17 No. 3725, Lot No. 132); (2) private underground telecommunications conduit connecting 434
18 Minna Street and 415 Natoma Street below portions of Minna, Natoma, and Mary Streets; and
19 (3) private underground non-potable water lines connecting to 434 Minna Street and 415
20 Natoma Street below portions of Minna Street and Natoma Street, as part of the 5M
21 development project (“5M Development Project”); and

22 WHEREAS, The improvements include: a curb-less pedestrian-only alley on North
23 Mary Street with special and City-standard paving and privately maintained streetlights; a
24 separate private telecommunications conduit connecting the 434 Minna Street and 415
25 Natoma Street buildings; and a separate private underground non-potable water lines

1 connecting to the 434 Minna Street and 415 Natoma Street buildings (collectively referred to
2 as the “Encroachments”); and

3 WHEREAS, The Permittee will construct the Encroachments in conjunction with its
4 development of the 434 Minna Street building and the 415 Natoma Street building, also
5 sometimes referred to as buildings M2 and H1, respectively, as part of the 5M Development
6 Project, and the Permittee has proposed to maintain the Encroachments for the life of the
7 encroachment permit; and

8 WHEREAS, The Encroachments are shown in documents and plans on file in the office
9 of the Clerk of the Board of Supervisors in File No. 210688 and incorporated herein by
10 reference; and

11 WHEREAS, The Planning Department, in a letter dated August 27, 2020, determined
12 that the actions contemplated in this Resolution comply with the California Environmental
13 Quality Act (California Public Resources Code, Sections 21000 et seq.) and adopted findings
14 that there is no new information of substantial importance that would result in new or more
15 severe significant impacts than were addressed in the certified environmental impact report
16 and no subsequent environmental review is required (“Environmental Findings”); and

17 WHEREAS, The Planning Department determination and Environmental Findings are
18 on file with the Clerk of the Board of Supervisors in File No. 210688 and incorporated herein
19 by reference; and

20 WHEREAS, The Planning Department, in a letter dated September 1, 2020, declared
21 that the Encroachments are in conformity with the General Plan and are consistent with the
22 eight priority policies of Planning Code, Section 101.1; and

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1 WHEREAS, The Planning Department letter also references sidewalk width changes
2 that will be subject to Board of Supervisors approval as part of separate legislation in the
3 future; and

4 WHEREAS, A copy of said letter is on file with the Clerk of the Board of Supervisors in
5 File No. 210688 and incorporated herein by reference; and

6 WHEREAS, In Public Works Order No. 204906, dated June 8, 2021, the Director
7 recommended that the Board of Supervisors approve the subject Encroachment Permit and
8 its Encroachment Permit Agreement (collectively, "Permit") and determined under Public
9 Works Code, Section 786.7(f)(3) that the public right-of-way occupancy assessment fee for
10 the North Mary Street pedestrian improvements is waived because said portion of the
11 Encroachments are a condition of a City-approved development agreement for the 5M Project
12 Development; and

13 WHEREAS, In Public Works Order No. 204906, the Director also determined under
14 Public Works Code, Section 786.7 that the Permittee owes \$375.00 as the initial payment of
15 the public right-of-way occupancy assessment fee for the private telecommunications conduit
16 portion of the Encroachments, and thereafter this annual fee shall be adjusted based on the
17 applicable consumer price index; and

18 WHEREAS, Public Works Order No. 204906, is on file with the Clerk of the Board of
19 Supervisors in File No. 210688 and incorporated herein by reference; and

20 WHEREAS, The Permit for the Encroachments shall not become effective until:

21 (1) The Permittee executes and acknowledges the Permit and delivers said
22 Permit and all required documents and fees to Public Works, and

23 (2) Public Works records the Permit in the County Recorder's Office ensuring
24 constructive notice of the maintenance of the Encroachments; and

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1 WHEREAS, The Permittee, at its sole expense and as is necessary as a result of this
2 permit, shall make the following arrangements:

3 (1) To provide for the support and protection of facilities under the jurisdiction of
4 Public Works, the San Francisco Public Utilities Commission, the San Francisco Fire
5 Department, other City Departments, and public utility companies;

6 (2) To provide access to such facilities to allow said entities to construct,
7 reconstruct, maintain, operate, or repair such facilities as set forth in the Permit;

8 (3) To remove or relocate such facilities if installation of Encroachments
9 requires said removal or relocation and to make all necessary arrangements with the owners
10 of such facilities, including payment for all their costs, should said removal or relocation be
11 required; and

12 (4) The Permittee shall assume all costs for the maintenance and repair of the
13 Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to
14 Public Works by reason of this permission granted; and

15 WHEREAS, No structures shall be erected or constructed within the public right-of-way
16 except as specifically permitted herein; and

17 WHEREAS, On June 1, 2021, the Municipal Transportation Agency Board unanimously
18 adopted Resolution No. 210601-074, closing the North Mary Street pedestrian-only alleyway
19 portion of the Encroachments to vehicular traffic; and

20 WHEREAS, The Municipal Transportation Agency Board Resolution is on file with the
21 Clerk of the Board of Supervisors in File No. 210688 and incorporated herein by reference;
22 now, therefore, be it

23 RESOLVED, The Board adopts the Environmental Findings as its own; and, be it

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1 FURTHER RESOLVED, That the Board finds that the Permit is consistent with the
2 General Plan and the eight priority policies of Planning Code, Section 101.1 for the reasons
3 set forth in the September 1, 2020, determination of the Planning Department; and, be it

4 FURTHER RESOLVED, Pursuant to Public Works Code, Sections 786 et seq., the
5 Board hereby grants revocable, non-exclusive, and non-possessory permission to the
6 Permittee, FC 5M M2 Exchange, LLC, to occupy the public right-of-way for purposes of
7 constructing the Encroachments and to maintain said Encroachments under the terms of the
8 Permit; and, be it

9 FURTHER RESOLVED, The Board accepts the recommendations of the PW Order
10 No. 204906 and approves the Permit with respect to the Encroachments; and, be it

11 FURTHER RESOLVED, The Board also authorizes the Director of Public Works to
12 perform and exercise the City's rights and obligations with respect to the Encroachments
13 under the Permit and to enter into any amendments or modifications to the Permit with
14 respect to the Encroachments; and, be it

15 FURTHER RESOLVED, That such actions may include without limitation, those
16 amendments or modifications that the Director of Public Works, in consultation with the City
17 Attorney, determines are in the best interest of the City, do not materially increase the
18 obligations or liabilities of the City or materially decrease the obligations of the Permittee or its
19 successors, are necessary or advisable to effectuate the purposes of the Permit or this
20 resolution with respect to the Encroachments, and are in compliance with all applicable laws;
21 and, be it

22 FURTHER RESOLVED, The Board, under Public Works Code, Section 786.7,
23 acknowledges waiver of the public right-of-way occupancy assessment fee in accordance with
24 the Public Works Director's determination for the North Mary Street pedestrian-only alleyway
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1 portion of the Encroachments, but said fee shall be applicable to the private
2 telecommunications conduit portion of the Encroachments.

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**ENCROACHMENT PERMIT
AND MAINTENANCE AGREEMENT
(for Fronting Property)**

1. PARTIES

The City and County of San Francisco Public Works (the “**Department**”) enters into this Encroachment and Maintenance Agreement (“**Agreement**”) with FC 5M M2 Exchange, LLC, a Delaware limited liability company (the “**Permittee**”), on this date, _____, 2021 or the effective date of the Major Encroachment Permit, whichever first occurs. The Major Encroachment Permit or Permit collectively refers to the Encroachment Permit as shown on the Department approved plan(s), any associated Street Improvement, and this Agreement, including its Attachments and accompanying documents (the “**Permit**”). In this Agreement, “the **City**” refers to the City and County of San Francisco and all affiliated City agencies including, but not limited to, the Department, the San Francisco Public Utilities Commission (“**SFPUC**”) and the San Francisco Municipal Transportation Agency (“**SFMTA**”). For purposes of the Permit, “**Fronting Property Owner**” shall mean the property owner(s) who front, abut, or are adjacent to the public right-of-way on which the Improvements and any other elements of the Permit are located.

2. PERMIT INFORMATION

2.1 Encroachment Permit No. (“Permit”): 19ME-00021 under Public Works Code Section 786(b).

And Street Improvement Permit 18IE-0726 authorizing the construction of said Encroachment Permit.

2.2 Description/Location of Fronting Property (See Attachment 1): Assessor’s Parcel Numbers: Block 3725, Lots 93, 132, 127 and 129

2.3 Description/Location of Permit Area (See Attachment 2): (a) Right-of-Way Improvements for a curbless pedestrian paseo located on Mary Street between Mission Street and Minna Street. (b) Portions of Minna, Natoma and Mary Streets right of way under which a private telecommunication line will be installed to connect the 434 Minna and 415 Natoma buildings. The private telecommunications line also will cross the private/publicly accessible Mary Court Open Space. (c) A district scale privately owned, operated, and maintained non-portable water system will be installed below Minna, and Natoma Streets.

2.4 General Description of Proposed Improvements (See Attachment 2): The Right-of-Way Improvements include a curbless pedestrian paseo on Mary Street between Mission and Minna Streets and a private telecommunications line connecting the 434 Minna and 415 Natoma Buildings. The pedestrian paseo includes both special and City-standard paving, drainage systems, and private streetlights. Further a privately owned, operated, and maintained non-portable water system will be installed interconnecting the various buildings and private open spaces for the development.

The term “**Improvements**” shall mean those improvements in the public right-of-way as described in the attachments listed in Section 2.8 and on the Construction Plans.

2.5 Permit Type: Major Encroachment Permit. Street improvement permits for 5M Project, Phases 1 and 2 are pending approval.

2.6 Developer/Builder/Owner of the Fronting Property: FC 5M M2 Exchange, LLC, a Delaware limited liability company is the fronting property owner on the west side of North Mary; 5M Project, LLC, a Delaware limited liability company is the fronting property owner on the east side of North Mary; FC H1 Exchange, LLC, is the fronting property owner adjacent to Natoma and Mary Street, connecting to the southern portion of the underground communications line. Please see attached Attachment 1. [NOTE: M2 is the Permittee and identified Fronting Property Owner.]

2.7 Contact Information. The Permittee shall provide to Public Works, Bureau of Street Use and Mapping (“BSM”), SFMTA, 311 Service Division, and SFPUC the information below regarding a minimum of two (2) contact persons with direct relation to or association with, or is in charge of or responsible for, the Permit. Permittee shall notify both Public Works’ Bureau of Street Use and Mapping and SFMTA within thirty (30) calendar days of any relevant changes in the Permittee's personnel structure, and submit the required contact information of the current and responsible contacts. If and when the City’s 311 Service Division (or successor public complaint system program) allows direct communications with the contact person(s) for the Permit, the Permittee shall participate in this program.

Contact Person Number 1

Last Name, First Name: Bonda, Swathi
Title/Relationship to Owner: Director, Development
Phone Numbers: 415-244-7112
Email Addresses: Swathi.Bonda@brookfieldpropertiesdevelopment.com
Mailing Address: 685 Market Street, Fifth Floor, San Francisco, CA 94105
Office Address: 685 Market Street, Fifth Floor, San Francisco, CA 94105

Contact Person Number 2

Last Name, First Name: DiTullio, Dominic
Title/Relationship to Owner: Project Manager, Construction
Phone Numbers: 415-593-4235
Email Addresses: Dominic.DiTullio@brookfieldpropertiesdevelopment.com
Mailing Address: 875 Howard St., Ste 330 San Francisco, CA 94103
Office Address: 875 Howard St., Ste 330 San Francisco, CA 94103

2.8 List of Attachments. The following additional documents are attached to or accompany this Permit. All attachments shall be on sheets sizing 8.5 by 11 inches so they can be easily inserted into this agreement as an attachment:

- Attachment 1: Property Information. Written description of the fronting property and location map identifying the property.
- Attachment 2: “**Permit Area**,” which shall refer to areas that include Improvements and any real property subject to maintenance responsibilities that are Permittee’s responsibility.
 - Written description of the area where the encroachment(s) exist and the boundaries,
 - Diagram showing the boundary limits of the Permit Area and identifying all Improvements in the Permit Area (“**Precise Diagram**”). The Precise Diagram shall be a separate document from the engineered construction plans for the encroachments submitted to Public Works for review and approval. (“**Construction Plans**”).
 - Table listing all Improvements in the Permit Area and identifying the maintenance responsibility for them (“**Maintenance Table**”). The table shall include all physical treatments, facilities, and elements, whether standard or non-standard, to clarify responsibility.
- Attachment 3: Maintenance Plan. A written document that contains a detailed description of the means and methods to maintain the Improvements within the Permit Area (the “**Maintenance Plan**”). The Maintenance Plan shall identify the daily, weekly, monthly, and annual routine maintenance, repair and replacement tasks, as applicable (“**Permitted Activities**”). For each category of the Permitted Activities, Permittee shall provide the regular (e.g. daily, weekly, etc.) estimated expenses, including labor hours, cost per hour, and materials needed for maintenance. In addition, Permittee shall provide a total estimated annual operating expense and include: regular maintenance expenses, replacement costs, costs for any specialized equipment (in the event that the Improvements incorporate such specialized equipment) necessary for continued operation of the Improvements, and the expected lifespan of any non-standard materials subject to regular use. The Maintenance Plan also shall identify whether a Community Benefit District, Business Improvement District, Community Facilities District or similar Special Tax-Based Entity (a “**Special Tax Entity**”) will expend monetary or staff resources on the Permit Area for maintenance or other activities, and documentation, to the Director’s satisfaction, that the monetary and/or staff resources are available and committed to perform the maintenance obligation.
- Attachment 4: [Omitted]

The City Engineer shall review and certify the description of the Permit Area (Attachment 2) and Maintenance Plan (Attachment 3). The Department shall not issue the permit until the City Engineer has completed his or her review and certified the required attachments.

3. EFFECTIVE DATE; REVOCABLE, NON-EXCLUSIVE PERMIT; RECORDATION

(a) Following Board of Supervisors approval and confirmation the Department has received all required permit documents and fees, the Department shall issue the approved Permit. The date the Permit is issued shall be the “**Effective Date.**”

(b) The privilege given to Permittee under this Agreement is revocable, personal, non-exclusive, non-possessory, and effective only insofar as the rights of City in the PROW are concerned.

This Permit does not grant any rights to construct or install Improvements in the Permit Area until the Public Works Director issues written authorization for such work.

(c) Upon Board of Supervisors' approval of this Permit, Permittee shall record this Permit against the Fronting Property.

4. MONITORING AND MAINTENANCE RESPONSIBILITIES

Permittee acknowledges its responsibility to monitor the Permit Area and its Improvements and document performance of the maintenance activities as described herein, and retain such documents for a minimum of three (3) years from the date of applicable maintenance activities. Within ~~three (3)~~ ten (10) days from the date of the Director's written request for maintenance information, the Permittee shall provide proof that the maintenance activities have been performed.

The Permittee shall: 1) on a regular ~~quarterly~~, at least semi-annual, basis, document the general condition of the entire Permit Area and all elements with date stamped digital images in JPEG format, or other video or picture imaging acceptable to the Director, and 2) maintain a written and image log of all maintenance issues, including, but no limited to: defects, damages, defacing, complaints, and repairs performed on Permit elements and the Permit Area. The regular monitoring images and/or video shall be taken from all angles necessary to show the entirety of the Permit Area and all Improvements. The images for the logged maintenance issues and repairs shall clearly show the location and detail of the damaged or defaced element or area, and its repair and restoration. Permittee shall maintain all files and provide them in a format and media consistent with current standards for data retention and transfer, such as a USB flash drive with connective capability to a commonly available personal computer.

The maintenance log, at a minimum, shall include the following information: date and time of maintenance; description and type of encroachment element requiring repair, resolution, or restoration and method used to repair, resolve, or restore it; time and duration to repair, resolve, or restore such element; company (and contact information for the company) that performed the repair, resolution, or restoration.

~~If the Permit does not include any surface level or above grade elements, the~~ The Director shall ~~not~~ require the maintenance monitoring set forth in this Section only as to surface level or above grade elements described in the Permit.

5. CONDITIONS OF ENTRY AND USE

By entering into this Agreement, Permittee acknowledges its responsibility to comply with all requirements for maintenance of the Improvements as specified in this Agreement, Public Works Code Section 786, Article 2.4 of the Public Works Code ("**Excavation in the Public Right-**

of-Way”), and as directed by the Director. Permittee shall comply and cause its agents to comply, with each of the following requirements in its performance of the Permitted Activities.

5.1 Permits and Approvals

5.1A Requirement to Obtain all Regulatory Permits and Approvals.

Permittee shall obtain any permits, licenses, or approvals of any regulatory agencies (“**Regulatory Permits**”) required to commence and complete construction of the Improvements and any of the Permitted Activities. Promptly upon receipt of any such Regulatory Permits, Permittee shall deliver copies to the Department. Permittee recognizes and agrees that City’s approval of the Permit and this Agreement for purposes of construction of the Improvements and the Permitted Activities shall not be deemed to constitute the grant of any or all other Regulatory Permits needed for the Permitted Activities, and nothing herein shall limit Permittee's obligation to obtain all such Regulatory Permits, at Permittee's sole cost.

5.1B Subsequent Excavation within Permit Area. When maintenance of the Improvements requires excavation as described in Article 2.4 of the Public Works Code, or prevents public access through the Permit Area, or obstructs the movement of vehicles or bicycles where allowed by law, Permittee shall apply for applicable permits from the Department and any other affected City agencies. Permittee or agent of Permittee shall comply with all excavation permit bonding and security requirements that the Department deems necessary when performing or causing to be performed any excavations or occupancies within the Permit Area, except to the extent such security or bonding was provided in connection with the Public Improvement Agreement applicable to the work.

5.1C Additional Approvals. Further permission from the Department may be required prior to Permittee’s performance of work within the Permit Area including, but not limited to, the restoration of a temporarily restored trench, removal and replacement of a tree or other landscaping, or repair of damaged or uplifted sidewalk or other paving material. This Agreement does not limit, prevent, or restrict the Department from approving and issuing permits for the Permit Area including, but not limited to, occupancy, encroachment, and excavation permits. The Department shall include as a condition in all subsequent permits issued in the Permit Area that any subsequent permittee notify and coordinate with the Permittee prior to occupying, encroaching, or excavating within the Permit Area.

5.2 Exercise of Due Care

During any entry on the Permit Area to perform any of the Permitted Activities, Permittee shall, at all times and at its sole cost, perform the Permitted Activities in a manner that maintains the Permit Area in a good, clean, safe, secure, sanitary, and attractive condition. Permittee shall use due care at all times to avoid any damage or harm to the Permit Area or any Improvements or property located thereon or adjacent to, and to take such soil and resource conservation and protection measures within the Permit Area as are required by applicable laws and as City may reasonably request in writing. Permittee shall not perform any excavation work without City's prior written approval. Under no circumstances shall Permittee knowingly or intentionally damage, harm, or take any rare, threatened, or endangered species on or about the Permit Area. While on

the Permit Area to perform the Permitted Activities, Permittee shall use commercially reasonable efforts to prevent and suppress fires on and adjacent to the Permit Area attributable to such entry.

5.3 Cooperation with City Personnel and Agencies

Permittee shall work closely with City personnel to avoid unreasonable disruption (even if temporary) of access to the Improvements and property in, under, on or about the Permit Area and City and public uses of the Permit Area. Permittee shall perform work in accordance with the Permit and this Agreement. Permittee also shall perform work pursuant to one or more Street Improvement Permits or General Excavation Permits and in accordance with Public Improvement Agreements if either or both are applicable.

5.4 Permittee's Maintenance and Liability Responsibilities

5.4A Permittee's Maintenance and Liability. (a) Permittee acknowledges its maintenance and liability responsibility for the Improvements (including, but not limited to, materials, elements, fixtures, etc.) in accordance with the Permit and this Agreement, and all other applicable City permits, ordinary wear and tear excepted. Permittee agrees to maintain said Improvements as described in the Permit, as determined by the Director consistent with City standards for similar improvements or facilities, and in accordance with any other applicable City permits. Permittee shall reimburse the Department for any work performed by the Department as a result of the Permittee's failure to comply with the maintenance and restoration terms as specified in this Agreement under Section 8. Permittee is wholly responsible for any facilities installed in the Permit Area that are subject to this Permit's terms and for the quality of the work performed in the Permit Area under this Agreement. Permittee is liable for all claims related to the installed facilities and any condition caused by Permittee's performed work. Neither the issuance of any permit nor the inspection, nor the repair, nor the suggestion, nor the approval, nor the acquiescence of any person affiliated with the City shall excuse the Permittee from such responsibility or liability.

(b) Notwithstanding the foregoing, the City acknowledges that while the Permittee retains the primary responsibility for all construction, installation, maintenance and repair activities, certain limited or supplemental maintenance and repair activities may be performed by a Special Tax Entity (such activities shall be denoted on the Maintenance Plan) rather than the Permittee. Nevertheless, the Department shall hold the Permittee responsible for compliance with all provisions of the Permit and this Agreement without regard to whether the violation occurred through an act, omission, negligence, or willful misconduct of the Permittee or the Special Tax Entity. Only if Permittee can demonstrate to the satisfaction of the Director that the Special Tax Entity is solely responsible for the act, omission, negligence, or willful misconduct and the Director makes a written finding to this effect, shall the Director take action directly against the Special Tax Entity. Under such circumstances, the Permittee shall not be responsible and liable hereunder for the act, omission, negligence, or willful misconduct that the Director identifies in writing, and no Uncured Default (as hereinafter defined) shall be deemed to have occurred by the Permittee, as a result of the Special Tax Entity's acts, omissions, negligence or willful misconduct. In the event that the Special Tax Entity should cease to exist or that the Special Tax Entity's maintenance and repair responsibilities are changed, then Permittee shall be responsible or assume

responsibility for all activities that are no longer the responsibility of or being performed by the Special Tax Entity.

(c) In the event that the Director agrees to maintain one or more of the Improvements pursuant to Section 5.9B of this Agreement, Permittee shall not be responsible for the quality of maintenance or restoration work performed, nor liable for the resulting consequences of City work.

5.4B Abatement of Unsafe, Hazardous, Damaged, or Blighted Conditions.

Permittee acknowledges its maintenance responsibility to abate any unsafe, hazardous, damaged, or blighted conditions in the Permit Area. Following receipt of a notice by the Department of an unsafe, damaged, or blighted condition of the Permit Area, Permittee shall immediately respond to the notice and restore the site to the condition specified on the Construction Plans within thirty (30) calendar days, unless the Department specifies a shorter or longer compliance period based on the nature of the condition or the problems associated with it; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period or other period specified by the Department, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such restoration. In addition, Permittee acknowledges its responsibility to abate any hazardous conditions as a direct or indirect result of the Improvement (e.g., slip, trip, and fall hazards), promptly upon receipt of notice from the Department. For unsafe or hazardous conditions, the Permittee shall immediately place or cause to be placed temporary measures to protect the public. Failure to promptly respond to an unsafe or hazardous condition or to restore the site within the specified time may result in the Department's performing the temporary repair or restoration in order to protect the public health, safety, and welfare. Permittee shall reimburse the Department for any such temporary repair or restoration. Failure to abate the problem also may result in the Department's issuance of a Correction Notice or Notice of Violation citation and/or request for reimbursement fees to the Department for departmental and other City services necessary to abate the condition in accordance with Section 8.

5.4C Permittee Contact Information, Signage.

Upon the Department's determination that the Permittee has completed the Improvements in accordance with the Construction Plans, Permittee shall post a sign(s) within the Permit Area, in conformity with any applicable signage program for the Permittee's property and in a location approved by the Department, that provides a telephone number and other Permittee contact information so that members of the public can contact the Permittee to report maintenance issues, problems, or any other complaints about the Permit.

5.4D Non-standard Materials and Features.

If the Permittee elects to install materials, facilities, fixtures, or features ("Non-standard Elements") that do not meet the City's criteria for standard operation, maintenance, and repair, and the City approves such Non-standard Elements, the Permittee shall (i) acknowledge its responsibility for the operation, maintenance, repair, and replacement of the Non-standard Elements as constructed per the Construction Plans, (ii) separately meter any service utility required to operate the Non-standard Elements, and (iii) be responsible for providing such utility service at Permittee's own cost. As an exception, if the Non-standard Elements are facilities such as street lights, and they are installed in locations identified by the City as standard streetlight locations, the City may elect to power the streetlights and not

require a separate meter. Permittee shall indemnify and hold City harmless against any claims related to Permittee's operation, maintenance, repair, and replacement of Non-standard Elements.

5.4E Requirements for Design and Materials. The Permittee shall construct and maintain the private non-potable water facility with the same materials specified by the San Francisco Public Utilities Commission, in order for emergency replacement and repairs to be performed by the SFPUC, if necessary, in a timely manner. This facility shall be either a 1-inch or 2-inch copper pipe with standard SFPUC fittings, valves, and other appurtenances, as specified in the Water Enterprise City Distribution Division Standard Plans and Standard Specifications, dated December 16, 2016, as may be amended from time to time.

5.4F Work by the City on Permittee's Facilities. The Permittee intends to operate a non-potable water facility in the public right-of-way under this permit. The City may perform emergency repairs, operations, or improvements of the water facility, to the extent that the permittee does not have any staff on-call to perform emergency work and may not be notified of an emergency until the City has already mitigated the emergency. The permittee shall allow the City to perform this work and indemnify the City for any liability incurred by working on the permittee's water facility. The permittee shall reimburse the City for the City's materials and labor within 30 days of the City providing an invoice. The Permittee also shall maintain the water facility to the City's standard, such that the City, if necessary, can operate and repair the facility with ease in an emergency. This includes providing City standard valves within the right-of-way to shut off the pipe and constructing the water facility with City standard materials.

5.4G Other Obligations. The Permittee shall maintain membership in U.S.A. for North Mary Street during the term of this Permit and provide location and marking services. The Permittee shall be obligated to provide utility support for future City projects as required under the Utility Support and Work Around requirements for 3rd party utilities.

5.5 Permittee's Maintenance, Liability, and Notice Responsibilities.

The Permittee's maintenance responsibility shall be limited to the portion of the Permit Area, as described and shown in the attachments and as determined by the Director, and its immediate vicinity, including any sidewalk damage directly related to the Improvement or Permitted Activities. If it is unclear whether sidewalk maintenance is the responsibility of Permittee or a Fronting Property Owner who is not the Permittee under Public Works Code Section 706, the Department shall determine which party or parties are responsible. If the situation so warrants, the Department may assign responsibility for sidewalk maintenance to one or more parties, including a Fronting Property Owner who is not the Permittee.

If Permittee is the Fronting Property Owner, Permittee must notify any successor owner(s) of the existence of the Permit and the successor owner's obligations at the time of closing on the subject property. In addition, prior to the time of closing on the subject property, Permittee shall record a Notice of Assignment that provides constructive notice to any successor owner(s) of the Permit and the Permittee's responsibilities thereunder.

5.6 Annual Certification of Insurance

Upon receipt of a written request by the Department, but no more than annually, Permittee shall submit written evidence to the Department indicating that the requirements of Section 7 (Insurance) and, if applicable, Section 8 (Security), have been satisfied.

5.7 Damage to and Cleanliness and Restoration of Permit Area and City Owned or Controlled Property

Permittee, at all times, shall maintain the Permit Area in a clean and orderly manner to the satisfaction of the Director. Following any construction activities or other activities on the Permit Area, Permittee shall remove all debris and any excess dirt from the Permit Area and Improvements.

If any portion of the Permit Area, any City-owned or controlled property located adjacent to the Permit Area, including other publicly dedicated PROW, or private property in the vicinity of the Permit Area is damaged by any of the activities conducted by Permittee hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or affected property to its previous condition to the satisfaction of the Director.

5.8 Excavation or Temporary Encroachment within the Permit Area

Permittee acknowledges its maintenance responsibility following any excavation or temporary encroachment of any portion or portions of the Permit Area as described below.

5.8A Excavation by City or UCP Holders. After providing public notice according to Article 2.4 of the Public Works Code, any City Agency or Public Utility may excavate within the PROW, which may include portions of the Permit Area. A “City Agency” shall include, but not be limited to, the SFPUC, SFMTA, and any City authorized contractor or agent, or their sub-contractor. “Public Utility” shall include any company or entity currently holding a valid Utility Conditions Permit (“UCP”) or a valid franchise with the City or the California Public Utilities Commission. Permittee acknowledges that it will provide and not obstruct access to any utilities and facilities owned and operated by any City Agency or a Public Utility at any time within the Permit Area for maintenance, repair, and/or replacement.

Emergency work. In the case of an emergency, a City Agency or Public Utility need not notify the Permittee of the work until after the emergency situation has been abated at which point the Department will strive to cooperate with affected City department to provide written notice to the Permittee concerning the emergency work.

In the performance of any excavation in the Permit Area by a City Agency or Public Utility, it shall be the responsibility of the Permittee to coordinate with the City Agency or Public Utility and restore the site to the condition specified on the Construction Plans, provided, however, the excavator shall implement commercially reasonable precautions to protect the Permit Area and any Improvements located within the Permit Area from injury or damage during the excavation or future work. Following excavation by a City Agency or Public Utility, (a) in the case where there are non-standard materials the excavator shall only be obligated to back-fill and patch the site to a

safe condition; (b) in the case there are only City Standard materials the excavator shall be obligated to backfill the site to a safe condition, and where feasible restore the site to City Standards. The City Agency or Public Utility shall not replace non-City Standard materials or Improvements that the City may remove or damage in connection with such excavation or site access. Permittee shall be responsible for and bear all costs for the restoration of all disturbed Improvements to the condition as specified on the Construction Plans.

In the case where the excavated portion of the Permit Area consists of only City Standard materials, the City Agency or Public Utility shall complete its restoration work within thirty (30) calendar days following the completion of the excavation or temporary encroachment; provided, however, to the extent that such restoration cannot be completed within such thirty (30) calendar day period due to weather or unforeseen circumstances, then such period shall be extended provided that the excavator has commenced and is diligently pursuing such restoration.

In the case where the excavated portion of the Permit Area consists partially or fully of non-standard materials, the Permittee shall restore or cause to be restored the Improvements in the excavated portions of the Permit Area to the condition specified on the design for the Improvements within thirty (30) calendar days; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period, then the Department shall extend such period provided that the Permittee has commenced and is diligently pursuing such restoration.

The Permittee shall not seek or pursue compensation from a City Agency or a Public Utility for Permittee's coordination of work or the inability to use of the Permit Area for the duration of excavation or occupancy.

5.8B Excavation by Private Parties. Following any excavation of any portion or portions of the Permit Area by a private party (e.g., contractor, property owner, or resident), it shall be the responsibility of the private party and the Permittee to coordinate the restoration of the site and the private party shall bear all the cost of restoration; provided, however, that in all events the private party shall be required to restore the excavated portion or portions of the Permit Area to the condition specified on the design for the Improvements within thirty (30) calendar days after completion of the excavation or temporary encroachment, provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period, then the Department shall extend such period provided that the private party has commenced and is diligently pursuing such restoration.

If the private party fails to perform such restoration, then the Permittee should notify the Department of such failure in writing and allow any Departmental corrective procedures to conclude prior to pursuing any and all claims against such private party related thereto should the permittee have such third-party rights. The City, through its separate permit process with that private party, shall require that private party to bear all the costs of restoration and cooperate with the Permittee on how the restoration is performed and how any costs that the Permittee assumes for work performed (time and materials) are reimbursed.

The Permittee only shall seek or pursue compensation for work performed (time and materials) and shall not seek or request compensation for coordination or the inability to use

the Permit Area for the duration of excavation or occupancy, provided that Permittee is provided with access to Permittee's property.

5.8C Temporary Encroachments for Entities Other Than Permittee. In the case of temporary encroachments, which may include the temporary occupancy of portions of the Permit Area or the temporary relocation of Improvements (elements or fixtures) from the Permit Area, Permittee shall work collaboratively with the entity that will be temporarily encroaching the Permit Area ("Temporary Encroacher") to coordinate the temporary removal and storage of the Improvements from the affected portion of the Permit Area, when necessary. It shall be the responsibility of the Temporary Encroacher to protect in-place any undisturbed portion of the Permit Area.

Where the Temporary Encroacher is a private party, the private party shall be responsible for any costs for removal, storage, and maintenance of the Improvements, and restoration associated with restoration of the Permit Areas. The obligation to coordinate and restore under this section shall be a condition of the City permit issued to the Temporary Encroacher. If the Temporary Encroacher fails to coordinate with Permittee and compensate the Permittee or restore the Permit Area, then the Permittee should notify the Department of such failure in writing.

The Permittee may only seek or pursue compensation for costs incurred (time and materials) to temporarily relocate and replace Improvements, and shall not seek or request compensation for coordination or the inability to use the Permit Area for the duration of the Temporary Encroacher's occupancy.

Where the Temporary Encroacher is a City Agency or a Public Utility, Permittee shall be responsible for any costs for removal, storage, maintenance, and restoration associated with the Improvements and any associated areas within the Permit Area, and the City Agency or Public Utility, as applicable, shall be responsible for restoration of any standard City features or improvements. The City Agency or the Public Utility or its contractors shall not be responsible for Permittee's temporary removal and storage costs.

The Permittee shall be responsible for ensuring the Permit Area has been restored within thirty (30) calendar days following the completion of the temporary encroachment; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such restoration.

5.8D Additional Time to Complete Site Restoration Where Future Work Is Anticipated. Prior to the Permittee's undertaking of any restoration of the applicable portion of the Permit Area to the conditions specified in the Construction Plans or Maintenance Plans, the Permittee and the City shall confer as to whether any party (e.g., any City Agency, Public Utility, or private party) intends to perform any future work (e.g., any excavation or temporary encroachment) that would be likely to damage, disrupt, disturb or interfere with any restoration of the Permit Area.

If such future work is anticipated within six (6) months following completion of any then proposed excavation or temporary encroachment, then the Permittee's deadline for restoring the site shall be automatically extended. The Permittee may submit to the Department a written request for an extension to the restoration deadline if future work is anticipated to commence more than six (6) months from the completion of the prior excavation and temporary encroachment. If the restoration deadline is extended as set forth above, then the Permittee shall be obligated to complete the restoration within the timeframes specified in this Agreement.

5.9 Permit Revocation; Termination; Modification of Agreement

5.9A Permit Revocation or Termination.

Permittee acknowledges and agrees that the obligations of the Permittee, successor owner(s), or Permittee's successor(s) in interest to perform the Permitted Activities shall continue for the term of the Permit. ~~The City reserves the~~ or as provided in the Development Agreement recorded on the Permit Area, whichever is later. City has made a policy decision that the 5M Project, including the use and development of the Permit Area as described in the Permit and this Agreement, is in the best interests of the City and promotes the public health, safety and welfare. In accordance with the Development Agreement, City (i) will limit the exercise of its future discretion with respect to the Permit to the extent that Permittee's actions are consistent with the Development Agreement and the associated approvals thereunder, and (ii) will not use its discretionary authority, including its reserved right to revoke the Permit under the procedures set forth in the Public Works Code Sections 786 et seq. and, if applicable, as specified in the Board of Supervisors or Public Works Director's approval of this Permit to change the policy decisions reflected in the Development Agreement and associated approvals, absent a Material Change, as described in the Development Agreement, or the Permittee's breach of its obligations under the Permit.

If the Permit is terminated by Permittee or revoked or terminated by City (each an "MEP Termination Event") with respect to a portion or portions of the Permit Area, Permittee shall convert the Improvements therein to a condition specified by City for a standard PROW or as the Director of Public Works deems appropriate under the circumstances, at Permittee's sole cost (the "**Right-of-Way Conversion**") by (i) applying for, and providing the materials necessary to obtain, a street improvement permit or other authorization from City for the performance of such conversion work; (ii) performing such conversion work pursuant to the terms and conditions of such street improvement permit or other City authorization; and (iii) warranting that the conversion work that meets the standards required by a Public Works street improvement permit with a duration not less than one (1) year from the date Public Works confirms that the work is complete.

A termination or revocation of the Permit under the procedures set forth in Public Works Code Sections 786 et seq., and subject to rights and limitations in the Development Agreement as further specified in this Section 5.9A, shall result in an automatic termination of this Agreement as to the affected portion of the Permit Area, and all of Permittee's responsibilities and obligations hereunder shall terminate, unless otherwise provided for in this Agreement. The City may partially terminate or revoke the Permit as to those portions of the Permit Area subject

to default and the City may elect to allow the Permit to remain effective as to all portions of the Permit Area that are not subject to default.

The obligation of Permittee, successor owner, or Permittee's successor in interest to remove the Improvements and restore the PROW to a condition satisfactory to Director of Public Works shall survive the revocation, expiration, or termination of this Permit. Upon completion of the Right-of-Way Conversion, and subject to Section 5.9B, Permittee shall have no further obligations under the Permit for the portion of the Permit area subject to the Right-of-Way Conversion and to the extent the Director has agreed to terminate the Permittee's obligations in regard to all or a portion of the Right-of-Way Conversion, except as to any applicable warranty.

The City and any and all City subdivisions or agencies shall be released from the responsibility to maintain the existence of the Improvements and shall not be required to preserve or maintain the Improvements in any capacity following the termination or revocation of the Permit unless the Department, in its discretion and in accordance with this Agreement, agrees to an alternative procedure.

5.9B Modification or Termination of the Agreement.

(a) This Agreement shall continue and remain in full force and effect at all times in perpetuity, except if City elects to terminate Permittee's maintenance obligations pursuant to this Section 5.9B and provides written notice to the address provided in Section 2.7. Under such circumstances, this Agreement shall terminate at the time specified in such written notice with exception to those terms as specified in this Agreement that apply to the any remaining Permit obligations. City shall record evidence of any such termination in the Official Records.

(b) At any time during the term of the Permit, Permittee may request to amend the scope of such Permitted Activities through a written amendment to this Agreement. The Director, in his or her sole discretion, may approve, approve with conditions, or deny the requested amendment. If the Director approves an amendment, both parties shall execute and record the approved amendment. Further, Permittee and Director may, but are not required to, execute a written modification of this Agreement to provide for the Department's maintenance of a portion or all of the Improvements as described in the Permit Area (Attachment 2). In the event of such modification of this Agreement, Department may require Permittee to pay the Department for the cost of maintaining specified Improvements as described in the Maintenance Plan (defined in Section 2.8) and Attachment 3. The Director's written modification shall, among other relevant terms, identify the specific portion of the Improvements that the Department shall maintain and the terms of Permittee's payments.

(c) In addition, Permittee and City may mutually elect to modify Permittee's obligation to perform the Right-of-Way Conversion described in Section 5.9.A including any modification necessary to address any Improvements that cannot be modified or replaced with a PROW improvement built according to the City's standard specifications. Any such modification may include, but not be limited to, Permittee's agreement to convert, at its sole cost, specified Improvements to a PROW built according to the City's standard specifications while leaving other specified Improvements in their as-is condition, with Permittee assuming a continuing obligation to pay for City's costs to maintain and replace such remaining Improvements. In addition, any

such modification may address any applicable City requirements for maintenance security payment obligations and City's acquisition of specialized equipment needed to perform the maintenance work, however, no such specialized equipment shall be required for Improvements built to City standards. If City and the Permittee mutually agree to any modification to the Right-of-Way Conversion that results in Permittee assuming such a maintenance payment obligation, Permittee shall execute and acknowledge, and City shall have the right to record in the Official Records of San Francisco County, an amendment to this Agreement that details such payment obligation.

5.10 Green Maintenance Requirements

In performing any Permitted Activities that require cleaning materials or tools, Permittee, to the extent commercially reasonable, shall use cleaning materials or tools selected from the Approved Alternatives List created by City under San Francisco Environmental Code, Chapter 2, or any other material or tool approved by the Director. Permittee shall properly dispose of such cleaning materials or tools.

6. USE RESTRICTIONS

Permittee agrees that the following uses of the PROW by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below. The list of prohibited uses includes, but is not limited to, the following uses.

6.1 Improvements

Other than the approved Improvements, Permittee shall not make, construct, or place any temporary or permanent alterations, installations, additions, or improvements on the PROW, structural or otherwise, nor alter any existing structures or improvements on the PROW (each, a "**Proposed Alteration**"), without the Director's prior written consent in each instance. The in-kind replacement or repair of existing Improvements shall not be deemed a Proposed Alteration.

Permittee may request approval of a Proposed Alteration. The Director shall have a period of twenty (20) business days from receipt of request for approval of a Proposed Alteration to review and approve or deny such request for approval. Should the Director fail to respond to such request within said twenty (20) business day period, Permittee's Proposed Alteration shall be deemed disapproved. In requesting the Director's approval of a Proposed Alteration, Permittee acknowledges that the Director's approval of such Proposed Alteration may be conditioned on Permittee's compliance with specific installation requirements and Permittee's performance of specific on-going maintenance thereof or other affected PROW. If Permittee does not agree with the Director's installation or maintenance requirements for any Proposed Alteration, Permittee shall not perform the Proposed Alteration. If Permittee agrees with the Director's installation or maintenance requirements for any Proposed Alteration, prior to Permittee's commencement of such Proposed Alteration, Permittee and the Director shall enter into a written amendment to this Agreement that modifies the Permitted Activities to include such requirements. Prior approval

from the Director shall not be required for any repairs made pursuant to and in accordance with the Permitted Activities.

If Permittee performs any City-approved Proposed Alteration, Permittee shall comply with all of the applicable terms and conditions of this Agreement, including, but not limited to, any and all conditions of approval of the Proposed Alteration(s).

Permittee shall obtain all necessary permits and authorizations from the Department and other regulatory agencies prior to commencing work for the Proposed Alteration. The Director's decision regarding a Proposed Alteration shall be final and not appealable.

6.2 Dumping

Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under, or about the PROW.

6.3 Hazardous Material

Permittee shall not cause, nor shall Permittee allow any of its agents to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the PROW, or transported to or from the PROW. Permittee shall immediately notify City if Permittee learns or has reason to believe that a release of Hazardous Material has occurred in, on, or about the PROW. In the event Permittee or its agents cause a release of Hazardous Material in, on, or about the PROW, Permittee shall, without cost to City and in accordance with all laws and regulations, (i) comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination, and (ii) return the PROW to a condition which complies with applicable law. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the PROW or are naturally occurring substances in the PROW, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the PROW.

Notwithstanding anything herein to the contrary, if the Director determines that neither Permittee nor its agents caused the release or threatened release of the Hazardous Material, Permittee shall have no liability whatsoever (including, without limitation, the costs of any investigation, any required or necessary repair, replacement, remediation, cleanup or detoxification, or preparation and implementation of any closure, monitoring, or other required plans) with respect to any release or threatened release of any Hazardous Material on, in, under or about the PROW. If the Director finds that neither Permittee nor its agents was the source and did not cause the release of such Hazardous Material, Permittee shall not be listed or identified as the generator or responsible party of any waste required to be removed from the PROW, and will not sign any manifests or similar environmental documentation, with respect to any Environmental Condition (as hereinafter defined). "Environmental Condition" shall mean any adverse condition relating to the release or discharge of any Hazardous Materials on, in, under, or about the PROW by any party other than Permittee or its agents.

6.4 Nuisances

Permittee shall not conduct any activities on or about the PROW that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or to the public. The parties hereby acknowledge that customary use of landscaping and similar equipment (such as lawn mowers, clippers, hedge trimmers, leaf blowers, etc.) that would typically be used to perform the Permitted Activities shall not be considered a nuisance under this Section 6.4 if such equipment is used in compliance with all applicable laws.

6.5 Damage

Permittee shall use due care at all times to avoid causing damage to any of the PROW or any of City's property, fixtures, or encroachments thereon. If any of the Permitted Activities or Permittee's other activities at the PROW causes such damage, Permittee shall notify City, and, if directed by City, restore such damaged property or PROW to the condition it was in prior to the commencement of such Permittee activity to the Director's satisfaction; or, if the City chooses to restore the damaged property, Permittee shall reimburse City for its costs of restoration.

7. INSURANCE

7.1 As described below, Permittee shall procure and keep insurance in effect at all times during the term of this Agreement, at Permittee's own expense, and cause its contractors and subcontractors to maintain insurance at all times, during Permittee's or its contractors' performance of any of the Permitted Activities on the PROW. If Permittee fails to maintain the insurance in active status, such failure shall be a Permit default subject to the Department's enforcement remedies. The insurance policy shall be maintained and updated annually to comply with the Department's applicable requirements. The following Sections represent the minimum insurance standard as of the Effective Date of this Permit.

7.1A An insurance policy or insurance policies issued by insurers with ratings comparable to A-VIII, or higher that are authorized to do business in the State of California, and

that are satisfactory to the City. Approval of the insurance by City shall not relieve or decrease Permittee's liability hereunder;

7.1B Commercial General Liability Insurance written on an Insurance Services Office (ISO) Coverage form CG 00 01 or another form providing equivalent coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage, including coverages for contractual liability, personal injury, products and completed operations, independent permittees, and broad form property damage;

7.1C Commercial Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired automobiles, as applicable for any vehicles brought onto PROW; and

7.1D Workers' Compensation Insurance, in statutory amounts, with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

7.2 All liability policies required hereunder shall provide for the following: (i) name as additional insured the City and County of San Francisco, its officers, agents, and employees, jointly and severally; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement; and (iii) stipulate that no other insurance policy of the City and County of San Francisco will be called on to contribute to a loss covered hereunder.

7.3 Limits may be provided through a combination of primary and excess insurance policies. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

7.4 All insurance policies shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal or material reduction in coverage, or depletion of insurance limits, except for ten (10) days' notice for cancellation due to non-payment of premium, to both Permittee and City. Permittee shall provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to Department within one business day of Permittee's receipt. Permittee also shall take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced or depleted coverage, or obtain the full coverage required by this Section from a different insurer meeting the qualifications of this Section. **Notices shall be sent to the Department of Public Works, Bureau of Street Use and Mapping, 49 South Van Ness Avenue, San Francisco, CA, 94103, or any future address for the Bureau.** The permission granted by the Permit shall be suspended upon the termination of such insurance. Upon such suspension, the Department and Permittee shall meet and confer to determine the most appropriate

way to address the Permit. If the Department and Permittee cannot resolve the matter, the Permittee shall restore the PROW to a condition acceptable to the Department without expense to the Department. As used in this Section, "Personal Injuries" shall include wrongful death.

7.5 Prior to the Effective Date, Permittee shall deliver to the Department certificates of insurance and additional insured policy endorsements from insurers in a form reasonably satisfactory to Department, evidencing the coverages required hereunder. Permittee shall furnish complete copies of the policies upon written request from City's Risk Manager. In the event Permittee shall fail to procure such insurance, or to deliver such certificates or policies (following written request), Department shall provide notice to Permittee of such failure and if Permittee has not procured such insurance or delivered such certificates within five (5) days following such notice, City may initiate proceedings to revoke the permit and require restoration of the PROW to a condition that the Director deems appropriate.

7.6 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

7.7 Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should any occurrences during the term of this Agreement give rise to claims made after expiration of this Agreement, such claims shall be covered by such claims-made policies.

7.8 Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the PROW, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

7.9 Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Agreement or any of Permittee's other obligations hereunder. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

8. VIOLATIONS; CITY ENFORCEMENT OF PERMIT AND AGREEMENT; SECURITY DEPOSIT. Permittee acknowledges that the Department may pursue the remedies described in this Section in order to address a default by Permittee of any obligation under this Permit with respect to any Permit Area for which Permittee is responsible pursuant to the relevant Notice of Assignment, if applicable. In addition to the procedures below and as set forth in Section 5.4B, if Permittee fails to promptly respond to an unsafe or hazardous condition or to restore the site within the time the Department specifies, the Department may perform the temporary repair

or restoration in order to protect the public health, safety, and welfare. Permittee shall reimburse the Department for any such temporary repair or restoration.

(a) Correction Notice (CN). The Department may issue a written notice informing Permittee that there is an unsafe, hazardous, damaged, or blighted condition within the Permit Area, or stating that the Permittee has otherwise failed to maintain the Permit Area as required by this Permit or stating that the Permittee has otherwise failed to comply with a term or terms of this Agreement (“**Correction Notice**”). The Correction Notice shall identify the issue, deficiency, or maintenance obligation that is the subject of the notice with reasonable particularity and specify the time for correction, which shall be no less than thirty (30) days; provided, however, to the extent that such correction cannot be completed using reasonable efforts within the initially specified timeframe, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such correction. In the event of an emergency or other situation presenting a threat to public health, safety, or welfare, the Director may require correction in less than thirty (30) days.

(b) Notice of Violation (NOV).

(i) The Department may issue a written notice of violation to the Permittee for failure to maintain the Permit Area and creating an unsafe, hazardous, damaged, or blighted condition within the Permit Area, failure to comply with the terms of this agreement, or failure to respond to the Correction Notice by abating the identified condition(s) within the time specified therein. The NOV shall identify each violation and any fines imposed per applicable code(s) or Agreement sections and specify the timeframe in which to cure the violation and pay the referenced fines (“**Notice of Violation**”), thirty (30) days if not specified.

(ii) Permittee shall have ten (10) days to **submit to the Department, addressed to the Director via BSM Inspection Manager at 1155 Market St, 3rd Floor, San Francisco, CA 94103, or future Bureau address**, a written appeal to the NOV or a written request for administrative review of specific items. If Permittee submits said appeal or request for review, the Director shall hold a public hearing on the dispute in front of an administrative hearing officer. The Director shall then issue a final written decision on his or her determination to approve, conditionally approve, modify, or deny the appeal based on the recommendation of the hearing officer and the information presented at the time of the hearing.

(c) Uncured Default. If the violation described in the Notice of Violation is not cured within ten (10) days after the latter of (1) the expiration of the Notice of Violation appeal period or (2) the written decision by the Director following the hearing to uphold the Notice of Violation or sections thereof, said violation shall be deemed an “**Uncured Default**.” In the event of an Uncured Default, the Director may undertake either or both of the following:

(i) Cure the Uncured Default and issue a written demand to Permittee to pay the Department’s actual reasonable costs to remedy said default in addition to any fines or penalties described in the Notice of Violation within ten (10) days (each such notice shall be referred to as a “**Payment Demand**”).

(ii) Notify Permittee that it must submit a Security Deposit (as defined in Section 8(d)) for the maintenance obligation that is the subject of the Notice of Violation. Alternatively, the Director may initiate the procedures under Public Works Code Section 786 to revoke the Permit with respect to the particular portion of the Permit Area that is the subject of the Notice of Violation and require a Right-of-Way Conversion (as defined in Section 5.9.A) with respect to that area, in the Director's discretion.

(d) Security Deposit Required for Uncured Default.

If there is an Uncured Default as defined in Section 8(c) of this Agreement, then within thirty (30) business days of the Director's request, Permittee shall deposit with the Department via the Permit Manager of the Bureau of Street Use and Mapping (or successor Bureau) the sum of no less than twice the annual cost of maintenance as set forth in the Maintenance Plan on file with the Director (the "**Security Deposit**") with respect to the maintenance obligation that is the subject of the Uncured Default, to secure Permittee's faithful performance of all terms and conditions of this Agreement, including, without limitation, its obligation to maintain the PROW in the condition that the Director deems acceptable. When Permittee delivers the Security Deposit to the Department pursuant to the foregoing sentence, the Department shall have the right to require Permittee to proportionately increase the amount of the Security Deposit by an amount that reflects the increase in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the date the amount of the Security Deposit was established and the Index published most immediately preceding the date the Department delivers written notice of the increase in the Security Deposit. The amount of the Security Deposit shall not limit Permittee's obligations under this Agreement.

Permittee agrees that the Department may, but shall not be required to, apply the Security Deposit in whole or in part to remedy any damage to the PROW caused by Permittee, its agents, or the general public using the Permit Area to the extent that the Director of Public Works required Permittee to perform such remediation under this Agreement and Permittee failed to do so, or Permittee failed to perform any other terms, covenants, or conditions contained herein (including, but not limited to, the payment of any sum due to the Department hereunder either before or after a default). Notwithstanding the preceding, the Department does not waive any of the Department's other rights and remedies hereunder or at law or in equity against the Permittee should Department use all or a portion of the Security Deposit. Upon termination of the Permitted Activities after an MEP Termination Event as described herein, the Department shall return any unapplied portion of the Security Deposit to Permittee, less any administrative processing cost.

Should the Department use any portion of the Security Deposit to cure any Uncured Default, Permittee shall replenish the Security Deposit to the original amount within ten (10) days of the date of a written demand from the Department for reimbursement of the Security Deposit. Subject to the following sentence, the Permittee's obligation to replenish the Security Deposit shall continue for two (2) years from the date of the initial payment of the Security Deposit unless the Director, in his or her sole discretion, agrees to a shorter period; provided, however, that if the Director does not issue a new Notice of Violation related to the issues triggering the MEP Termination Event for a period of one year from the date of the initial payment of the Security

Deposit, then, upon Permittee's written request, the Director shall submit a check request to City's Controller's Office to have any remaining Security Deposit, less any administrative processing cost, delivered to Permittee. The Department's obligations with respect to the Security Deposit are solely that of debtor and not trustee. The Department shall not be required to keep the Security Deposit separate from its general funds, and Permittee shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Permittee under any provision of the Permit or this Agreement. Upon termination of the Permitted Activities after an MEP Termination Event, the Department shall return any unapplied portion of the Security Deposit to Permittee, less any administrative processing cost.

(e) Demand for Uncured Default Costs. Where the Permittee, or the owner of the Fronting Property associated with the Permit Area that is the subject of the Notice of Violation, has failed to timely remit the funds described in a Payment Demand, the Security Deposit, or to pay the City's costs associated with the City's performance of a Right-of-Way Conversion (collectively, "**Uncured Default Costs**"), the Director may initiate lien proceedings against the Fronting Property Owner for the amount of the Uncured Default Costs pursuant to Public Works Code Sections 706.4 through 706.7, Public Works Code Section 706.9, Administrative Code Section 80.8(d), or any other remedy in equity or at law.

9. COMPLIANCE WITH LAWS

Permittee shall, at its expense, conduct and cause to be conducted all activities under its control on the PROW allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the PROW any and all business and other licenses or approvals necessary to conduct the Permitted Activities. Nothing herein shall limit in any way Permittee's obligation to obtain any required regulatory approvals from City departments, boards, or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers. At the Director's written request, Permittee shall deliver written evidence of any such regulatory approvals Permittee is required to obtain for any of the Permitted Activities.

10. SIGNS

Permittee shall not place, erect, or maintain any sign, advertisement, banner, or similar object on or about the PROW without the Director's written prior consent, which the Director may give or withhold in its sole discretion; provided, however, that Permittee may install any temporary sign that is reasonably necessary to protect public health or safety during the performance of a Permitted Activity.

11. UTILITIES

The Permittee shall be responsible for locating and protecting in place all above and below grade utilities from damage, when Permittee, or its authorized agent, elects to perform any work in, on, or adjacent to the Permit Area. If necessary prior to or during the Permittee's execution of

any work, including Permitted Activities, a utility requires temporary or permanent relocation, the Permittee shall obtain written approval from the utility owner and shall arrange and pay for all costs for relocation. If Permittee damages any utility during execution of its work, the Permittee shall notify the utility owner and arrange and pay for all costs for repair. Permittee shall be solely responsible for arranging and paying directly to the City or utility company for any utilities or services necessary for its activities hereunder.

Permittee shall be responsible for installing, maintaining, and paying for utility services necessary to support any Improvements, such as light fixtures, water fountains, storm drains, etc. in the Permit Area that are included in the Permit.

12. NO COSTS TO CITY; NO LIENS

Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the PROW pursuant to this Agreement, and shall keep the PROW free and clear of any liens or claims of lien arising out of or in any way connected with its (and not others') use of the PROW pursuant to this Agreement.

13. "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION OF PROW; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS

Permittee acknowledges and agrees that Permittee shall install the Improvements contemplated in the permit application for the Improvements and has full knowledge of the condition of the Improvements and the physical condition of the PROW. Permittee agrees to use the PROW in its "AS IS, WHERE IS, WITH ALL FAULTS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, including, without limitation, the suitability, safety, or duration of availability of the PROW or any facilities on the PROW for Permittee's performance of the Permitted Activities. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules, and ordinances governing the use of the PROW, and to any and all covenants, conditions, restrictions, encroachments, occupancy, permits, and other matters affecting the PROW, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the PROW and all matters relating to its use of the PROW hereunder, including, without limitation, the suitability of the PROW for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the PROW in the manner contemplated hereby.

Under California Civil Code Section 1938, to the extent applicable to this Agreement, Permittee is hereby advised that the PROW has not undergone inspection by a Certified Access Specialist ("CAS") to determine whether it meets all applicable construction-related accessibility requirements.

14. TERMS OF ASSIGNMENT; PERMIT BINDING UPON SUCCESSORS AND ASSIGNEES; NOTICE OF ASSIGNMENT

(a) This Agreement shall be the obligation of Permittee and each future fee owner of all or any of the Permittee's Property, and may not be assigned, conveyed, or otherwise transferred to any other party, including a homeowners' association or commercial owners' association established for the benefit of the Permittee, unless approved in writing by the Director which approval shall be in accordance with the Development Agreement. This Agreement shall bind Permittee, its successors and assignees, including all future fee owners of all or any portion of the Fronting Property, with each successor or assignee being deemed to have assumed the obligations under this Agreement at the time of acquisition of fee ownership or assignment; provided, however, that unless this Agreement is assigned to a master owner's association for maintenance in accordance with the Development Agreement, if any or all of the Fronting Property is converted into condominiums, the obligations of Permittee under this Agreement shall be those of the homeowners' association or commercial owners' association established for such condominiums, except the individual owners of such condominiums shall assume the Permittee's obligations in the event the homeowners association ceases to exist or fails to remit the Uncured Default Costs in the time that the Director specifies in the Payment Demand.

It is intended that this Agreement binds the Permittee and all future fee owners of all or any of the Fronting Property only during their respective successive periods of ownership; and therefore, the rights and obligations of any Permittee or its respective successors and assignees under this Agreement shall terminate upon transfer, expiration, or termination of its interest in the Fronting Property, except that its liability for any violations of the requirements or restrictions of this Agreement, or any acts or omissions during such ownership, shall survive any transfer, expiration, or termination of its interest in the Fronting Property.

Subject to the approval of the Director, which shall not unreasonably be withheld, and in accordance with the Development Agreement, Permittee may assign this permit to a homeowners' association (for residential or mixed-use properties), a commercial owners' association (for commercial properties) or a master association with jurisdiction over the Fronting Property by submitting a "Notice of Assignment" to the Department.

The **Notice of Assignment** shall include: [Confirm consistency with maintenance association plans]

(1) Identification of the Assignee and written acknowledgment of the Assignee's acceptance of the responsibilities under this permit;

(2) The contact person for the Assignee and the contact information as required under Section 2.7;

(3) If the Assignee is a homeowners' association or commercial owners' association, a copy of recorded CC&Rs, if there are such CC&Rs evidencing (a) the homeowners association's or commercial owners association's obligation to accept maintenance responsibility for the subject Improvements consistent with this Agreement upon assignment; and (b) City's right to enforce maintenance obligations as a third-party beneficiary under such CC&Rs and the San Francisco Municipal Code; and

(4) A statement identifying whether a Community Facilities District or other Special Tax Entity will expend monetary or staff resources on the Permit area for maintenance or other activities;

(5) A copy of the Assignee's general liability insurance that satisfies Section 7 and security under Section 8 if applicable;

(6) For encroachments with a construction cost of \$1 million or greater, Assignee must provide security in the form of a bond, other form of security acceptable to the Department, or payment into the Maintenance Endowment Fund in an amount required to restore the public right-of-way to a condition satisfactory to the Public Works Director based on a cost that the City Engineer determines; and

(7) Any other considerations necessary to promote the health, safety, welfare, including demonstration to the Director's satisfaction that the Assignee has the monetary and/or staff resources are available and committed to perform the maintenance obligation.

Permittee shall submit to Public Works a Notice of Assignment in a form acceptable to Public Works. Prior to approval from the Director, the Department shall provide a written determination that the proposed assignee satisfies Section 7 (Insurance) and Section 8 (Security). Following such assignment, the obligations of the assigning Permittee shall be deemed released and the assigning Permittee shall have no obligations under this Agreement.

(b) Lender. A "**Lender**" means the beneficiary named in any deed of trust that encumbers all or a portion of the Fronting Property and is recorded in the Official Records of San Francisco County (the "Deed of Trust"). All rights in the Fronting Property acquired by any party pursuant to a Deed of Trust shall be subject to each and all of the requirements and obligations of the Permit and this Agreement and to all rights of City hereunder. Any Lender that takes possession or acquires fee ownership of all or a portion of the Fronting Property shall automatically assume the Owner's obligations under the Permit and this Agreement for the period that Lender holds possession or fee ownership in the Fronting Property. None of such requirements and obligations is or shall be waived by City by reason of the giving of such Deed of Trust, except as specifically waived by City in writing.

15. TRANSFER AND ACCEPTANCE PROCEDURES

This Permit, and the accompanying benefits and obligations are automatically transferred to any successor property owner(s). If the Permittee is selling the property, the successor owner(s) shall submit contact information to the Department immediately upon closing on the property sale along with an acknowledgement that the successor owner(s) shall accept and assume all Permit responsibilities. The Department may require that such a transfer be evidenced by a new written Agreement with the Director and require evidence of insurance to be submitted within a specified period of time.

16. POSSESSORY INTEREST TAXES

Permittee recognizes and understands that this Agreement may create a possessory interest subject to property taxation with respect to privately-owned or occupied property in the PROW, and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee agrees to pay taxes of any kind, including any possessory interest tax, if any, that may be lawfully assessed on Permittee's interest under this Agreement or use of the PROW pursuant hereto and to pay any other taxes, excises, licenses, permit charges, or assessments based on Permittee's usage of the PROW that may be imposed upon Permittee by applicable law (collectively, a "Possessory Interest Tax"). Permittee shall pay all of such charges when they become due and payable and before delinquency. The parties hereto hereby acknowledge that the PROW will be a public open space during the term of this Agreement and Permittee's use of the PROW pursuant to this Agreement is intended to be non-exclusive and non-possessory.

17. PESTICIDE PROHIBITION

Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (a) prohibit the use of certain pesticides on PROW, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Permittee to submit to the Director an integrated pest management ("IPM") plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the PROW during the term of this Agreement, (ii) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (iii) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Permittee, through the Director, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 303 thereof.

18. PROHIBITION OF TOBACCO SALES AND ADVERTISING

Permittee acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the PROW. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to (a) communicate the health hazards of cigarettes and tobacco products, or (b) encourage people not to smoke or to stop smoking.

19. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the PROW. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing

alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to (a) communicate the health hazards of alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

20. CONFLICTS OF INTEREST

Through its execution of this Agreement, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Permittee becomes aware of any such fact during the term of this Agreement, Permittee shall immediately notify the City.

21. FOOD SERVICE WASTE REDUCTION

If there is a City permit or authorization for the Permit Area that will allow food service, Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules, as may be amended. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein and the Permittee will be treated as a lessee for purposes of compliance with Chapter 16. This provision is a material term of this Agreement. By entering into this Agreement, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather as mutually agreed upon monetary damages sustained by City because of Permittee's failure to comply with this provision.

22. GENERAL PROVISIONS

Unless this Agreement provides otherwise: (a) This Agreement may be amended or modified only in writing and signed by both the Director and Permittee; provided that the Director shall have the right to terminate or revoke the Permit in accordance with this Agreement. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required, or permitted hereunder may be made in the sole and absolute discretion of the Director or other authorized City official. (d) This Agreement (including its Attachments and associated documents hereto), the Permit, the Board of Supervisors legislation approving the Permit, and any authorization to proceed, discussions, understandings, and agreements are merged herein. (e) The

section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Director shall have the sole discretion to interpret and make decisions regarding any and all discrepancies, conflicting statements, and omissions found in the Permit, Agreement, the Agreement's Attachments and associated documents, and Construction Plans, if applicable. (f) Time is of the essence in each and every provision hereof. (g) This Agreement shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience, notwithstanding the City's use of its own attorneys. (i) If Permittee consists of more than one person, then the obligations of each person shall be joint and several. (j) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. (k) City is the sole beneficiary of Permittee's obligations under this Agreement. Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, nor shall it give rights to the parties expressly set forth above. Without limiting the foregoing, nothing herein creates a private right of action by any person or entity other than the City. (l) This Agreement does not create a partnership or joint venture between the City and Permittee as to any activity conducted by Permittee in its performance of its obligations under this Agreement. Permittee shall not be deemed a state actor with respect to any activity conducted by Permittee on, in, around, or under the Improvements pursuant to this Agreement.

23. INDEMNIFICATION

Permittee, on behalf of itself and its successors and assigns ("Indemnitors"), shall, subject to the terms of the Development Agreement, indemnify, defend, and hold harmless ("Indemnify") the City including, but not limited to, all of its boards, commissions, departments, agencies, and other subdivisions, including, without limitation, the Department, and all of the heirs, legal representatives, successors, and assigns (individually and collectively, the "Indemnified Parties"), and each of them, for any damages the Indemnified Parties may be required to pay as satisfaction of any judgment or settlement of any claim (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Permit Area arising from the Permitted Activities, with the exception of Claims arising from the City's failure to maintain one or more Improvements after agreeing to perform such maintenance and accepting funding from Permittee for that purpose; (b) any default by such Indemnitors in the observation or performance of any of the terms, covenants, or conditions of this Permit to be observed or performed on such Indemnitors' part; and (c) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Indemnitors in, under, on, or about the Permit Area arising from the Permitted Activities. Permittee on behalf of the Indemnitors specifically acknowledges and agrees that the Indemnitors have an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to such Indemnitors by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work. It is expressly understood and agreed that

the applicable Indemnitor shall only be responsible for claims arising or accruing during its period of ownership of the Fronting Property.

24. SEVERABILITY

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

25. FORCE MAJEURE

If Permittee is delayed, interrupted, or prevented from performing any of its obligations under this Agreement, excluding all obligations that may be satisfied by the payment of money or provision of materials within the control of Permittee, and such delay, interruption, or prevention is due to fire, natural disaster, act of God, civil insurrection, federal or state governmental act or failure to act, labor dispute, unavailability of materials, or any cause outside such Party's reasonable control, then, provided written notice of such event and the effect on the Party's performance is given to the other Party within thirty (30) days of the occurrence of the event, the time for performance of the affected obligations of that Party shall be extended for a period equivalent to the period of such delay, interruption, or prevention.

[Signature Page to Follow]

In witness whereof the undersigned Permittee(s) have executed this agreement this _____ day of _____, 2021.

PERMITTEE:

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS, a
municipal corporation

Fronting Property Owner or Official
authorized to bind Permittee

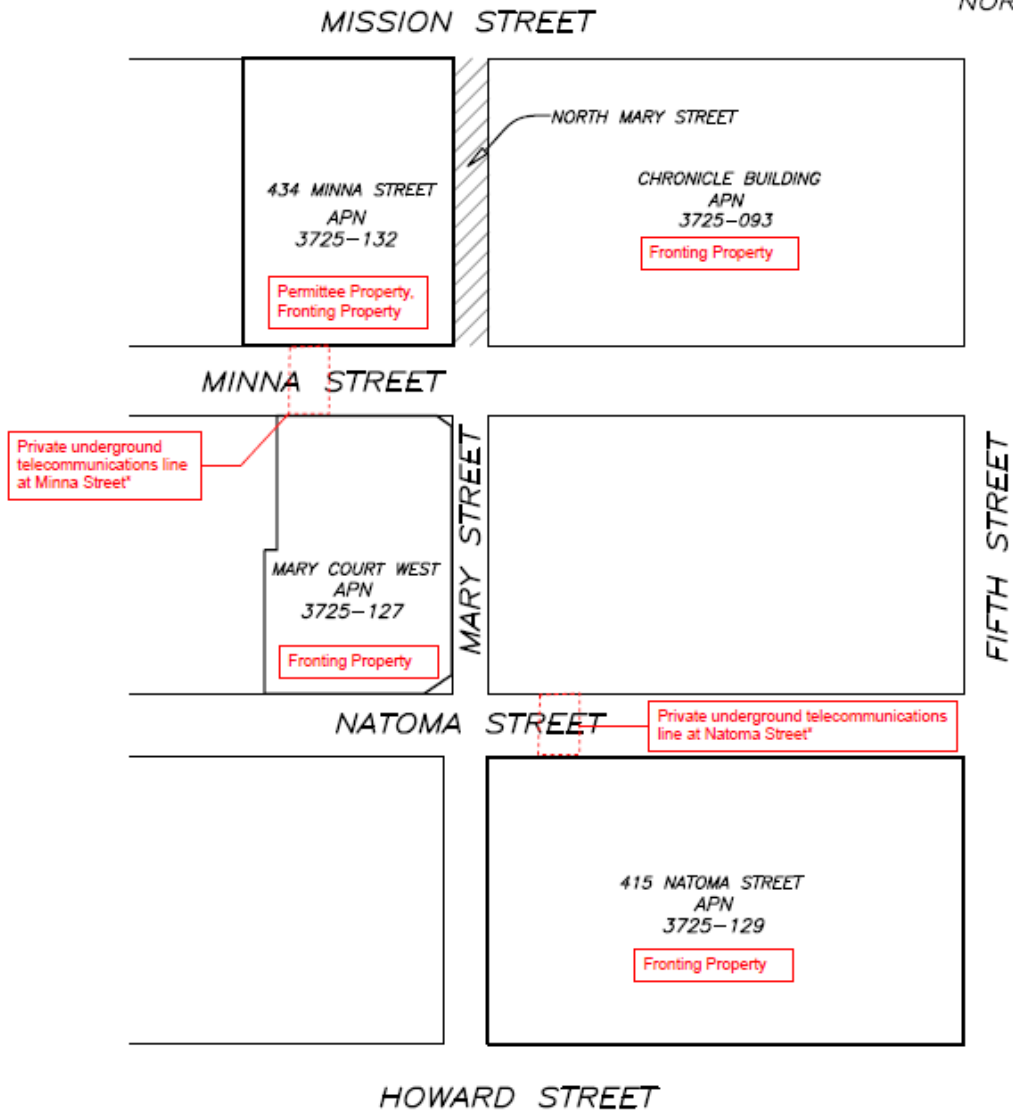
City Engineer

Secondary Official authorized to bind
Permittee

Acting Director of Public Works

ATTACHMENT 1
DESCRIPTION/LOCATION OF PERMITTEE'S PROPERTY

ATTACHMENT 1



*Approximate location of private underground telecommunications line encroachment. See Attachment 2 for detailed locations.

ATTACHMENT 2

DESCRIPTION/LOCATION OF PERMIT AREA AND THE IMPROVEMENTS

The Right-Of-Way Improvements for the paseo will be located on the northern reach of Mary Street between Mission Street and Minna Street. The streetscape improvements consist of approximately 3,680 SF of a curb-less pedestrian-only paseo for the full width of Mary Street, consisting of stone and precast concrete unit pavement, bollards, private street light fixtures (on 16' tall poles), non-standard drainage system (slot, trench and area drains), as well as City standard concrete pavement and driveways.(Figure 1)

Storm drainage improvements at North Mary include a City standard 24" storm drain and 2 segments of non-standard slot drain with total length of 143 linear feet, (Figure 1).

Private telecommunications systems (Two-4" ducts & associated pull boxes) will be located below Minna Street connecting the M2 building to Mary Court West and below Natoma Street, connecting the H1 building to Mary Court East. The continuation of the telecom line between M2/MCW and H1/MCE will cross Mary Street (between Minna and Natoma Streets). (Figures 2 and 3).

Private underground non-potable water lines connecting to 434 Minna Street and 415 Natoma Street will be installed below portions of Minna Street and Natoma Street.

Figure 1. Curbless pedestrian paseo on Mary Street between Mission and Minna Streets, with storm drainage improvements (see shaded area)

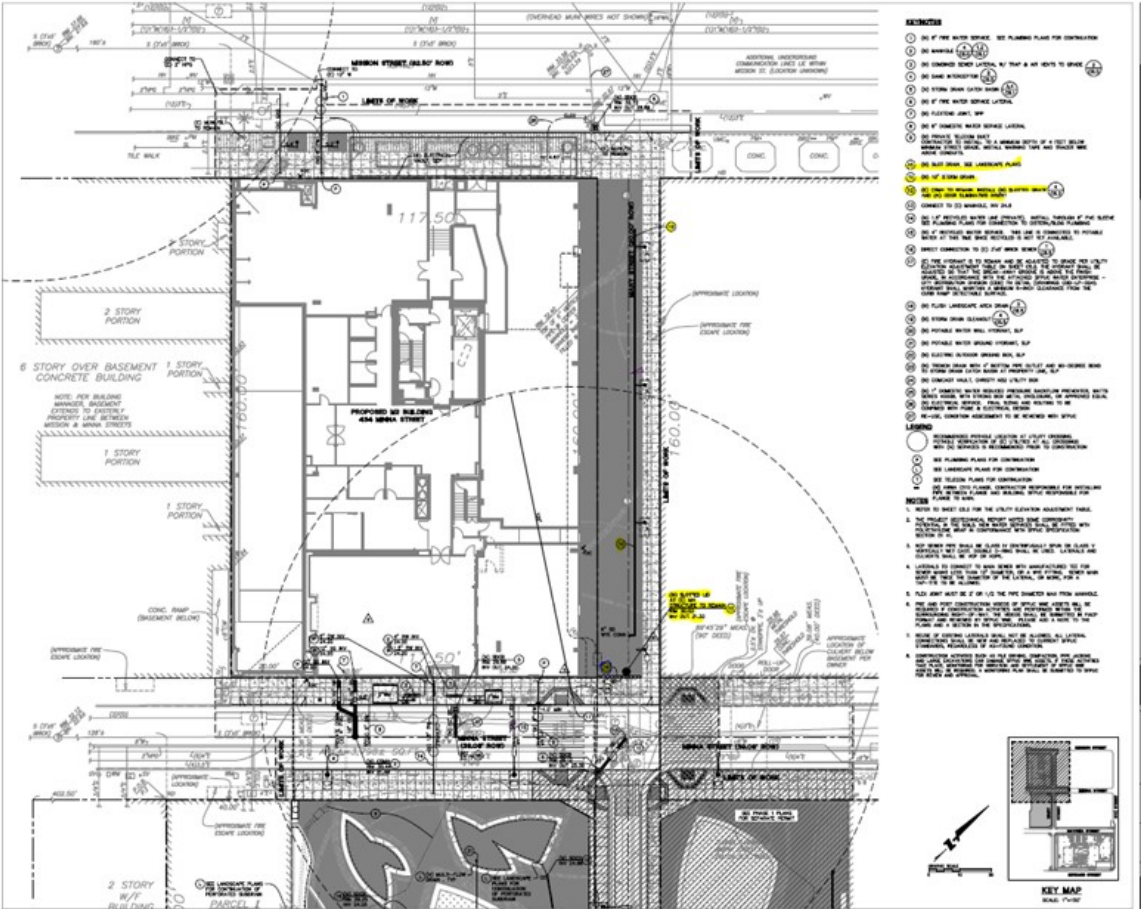


Figure 2. Private underground telecommunications line at Natoma Street. Permit area limited to underground area.

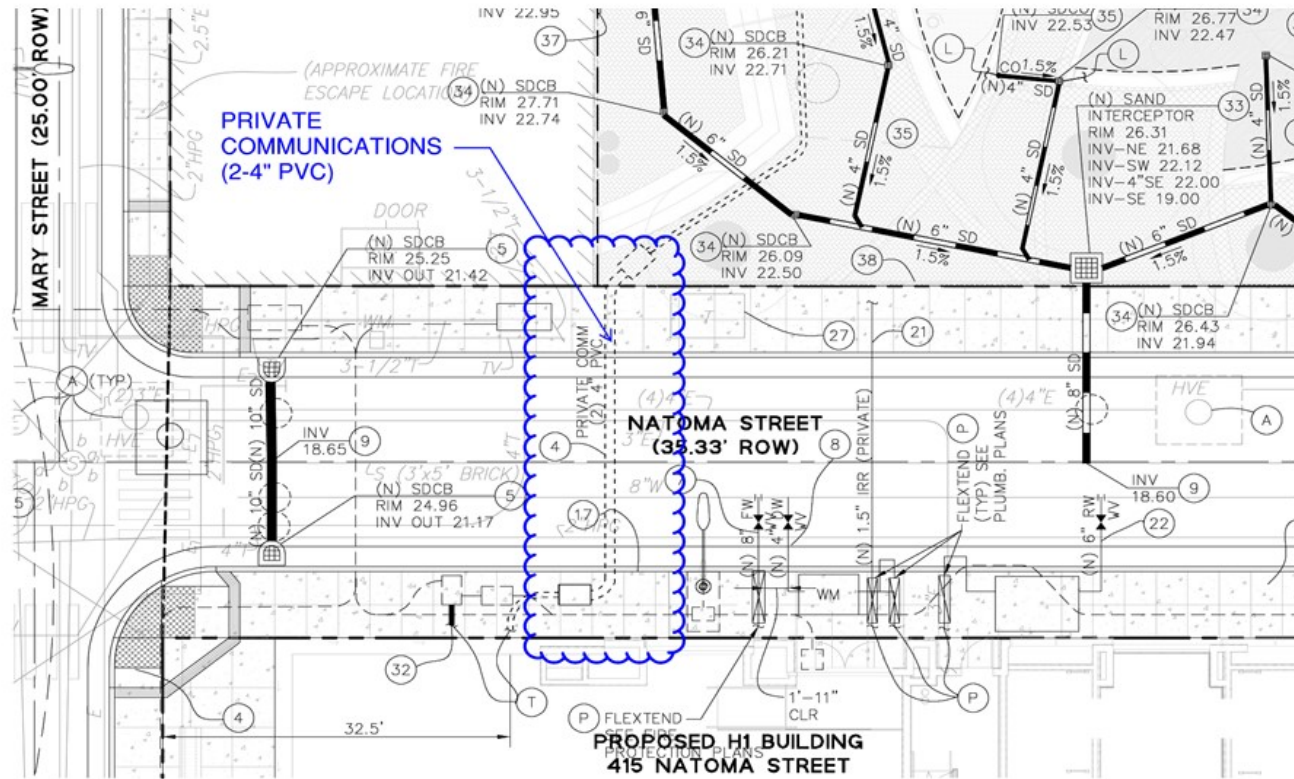


Figure 3. Private underground telecommunications line at Minna and Mary Streets. Permit area limited to underground area.

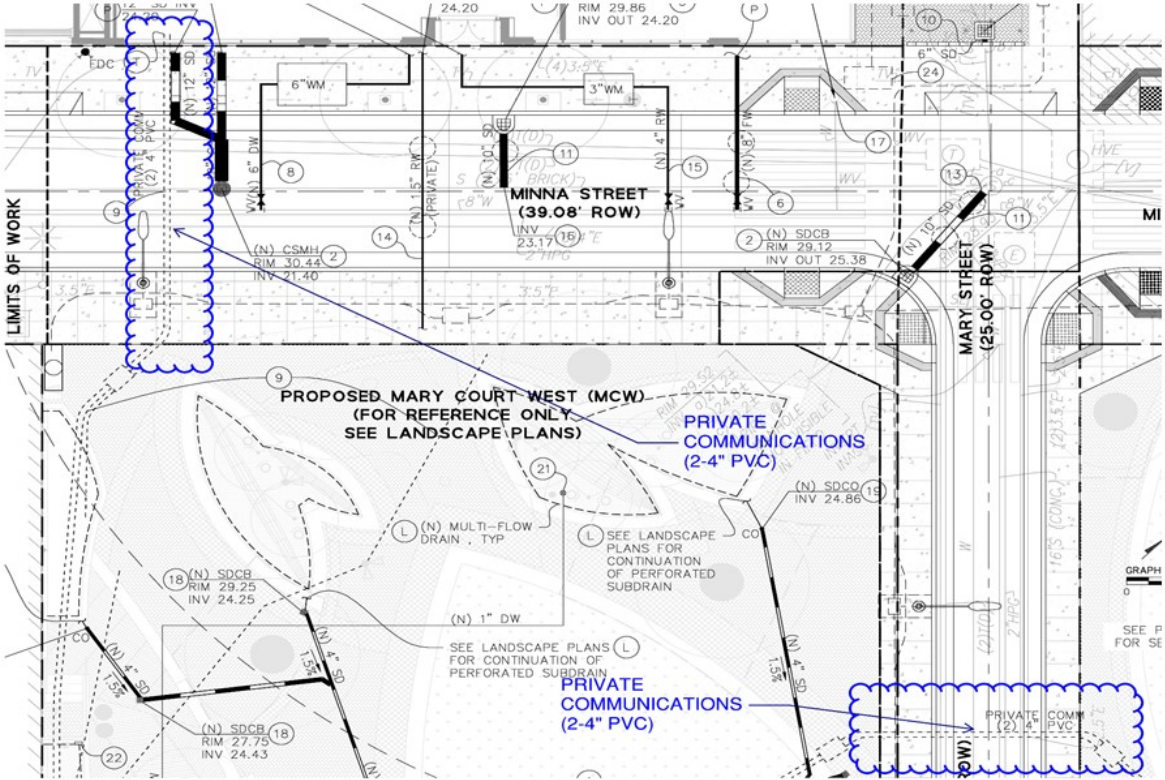
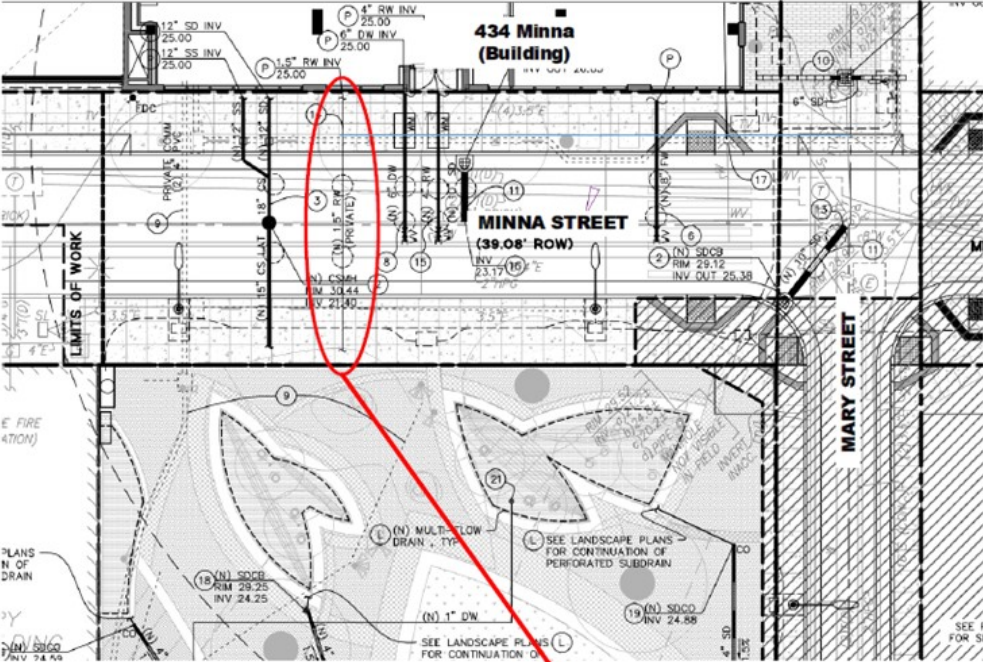


Figure 5. Private non-potable water line at Minna and Mary Streets. Permit area limited to underground area.



2-inch Copper Recycled Water Line (inside 6 inch PVC shell) between 434 Minna & Mary Court West park. Approx. 60 ft from Mary Street centerline



**ATTACHMENT 3
MAINTENANCE PLAN
(LIST OF TASKS/SERVICES AND COSTS)**

The following scope of work is intended to define, describe, state, and outline the Permittee's maintenance, repair, and replacement obligations within the Permit Area and the Public Right-of-Way.

Scope of work for Janitorial, Landscaping and Engineering. This scope of work is applied only to the area of the encroachment permit

MARY STREET CURBLESS PEDESTRIAN PASEO:

1. **DAILY SERVICES.** The Encroachment Permit area and its perimeter is to be kept clean and neat, free from trash, debris, fallen leaves and waste.
 - a. General Maintenance /Janitorial: One Janitor at 1.5 hour per day at a rate of \$48.00 per hour
 - i. Wipe and clean all FF&E in the encroachment area, including any benches, street fixtures, bollards, signage or lamp poles.
 - ii. Sweep or blow clean all walkways, curbs, and gutters within and around Public Right-of-Way.
 - iii. Inspect for graffiti daily and remove graffiti within forty-eight hours.
 - iv. Inspect for light vandalism, and repair if possible.
 - v. Keep trash bin areas clean and swept and maintain adequate bins for trash.
 - vi. Empty trash, causing deposited items to be thrown away as appropriate and re-line bins.
 - b. Engineering: One engineer at 0.25 hours daily at a rate of \$55.75 per hour (five days per week)
 - i. Paving/Pavers: inspect for cracks or lifting.
 - ii. Lighting: inspect daily for bulb replacement.
 - iii. Site Furniture: inspect daily, including benches, bike racks, light poles and utility boxes.
 - iv. Plumbing/Drains: inspect daily.
2. **WEEKLY SERVICES**
 - a. General Maintenance/Janitorial: One Janitor at 2.25 hours per week at a rate of \$48.00 per hour
 - i. Power wash all sidewalks and paved areas twice a month, and as needed during any rainy season.
 - ii. Wash trash bins weekly.
 - iii. Clean, wipe and polish all lamps (high to low areas) and signs.
 - iv. Drain covers to be checked and debris cleared away as needed.
 - b. Engineering: One Engineer at 0.5 hours per week at a rate of \$57.75 per hour

- i. Inspect pavers and other services for cracks, chips or needed repair, including resetting pavers.
- ii. Furniture, Fixtures and Equipment: repair as needed.
- iii. Lighting: routine maintenance, inspect lighting fixtures for functioning, replace bulbs and lamps as needed.
- iv. Telecommunications Pull Boxes: inspect to ensure that security closures are in-place, replace any materially damaged covers.

3. YEARLY

- a. Engineering: One Stationery Engineer at 28 hours per year at a rate of \$57.75 per hour
 - i. Apply anti-graffiti coating to all surfaces in the design (every other year-hours reflect average yearly total).
 - ii. Apply concrete reveal (every third year – hours reflect average yearly total).
 - iii. Paving: preventative maintenance four times per year.
 - iv. Plumbing: clear pipes/drains/lines two times per year.
 - v. Lighting: clean fixtures four times a year.

PRIVATE TELECOMMUNICATIONS LINE:

1. WEEKLY SERVICES

- a. General Maintenance/Janitorial: One Janitor at 0.17 hours per week at a rate of \$48.00 per hour
 - i. Telecommunications Pull Boxes to be checked and debris cleared away as needed.
- b. Engineering: One Engineer at 0.17 hours per week at a rate of \$57.75 per hour
 - i. Telecommunications Pull Boxes: inspect to ensure that security closures are in-place, replace any materially damaged covers.

PRIVATE NON-POTABLE WATER LINES:

1. WEEKLY SERVICES

- a. Engineering: One Engineer at 0.17 hours per week at a rate of \$57.75 per hour
 - i. Irrigation systems to be checked for leaks, clogs and pressure

2. ANNUAL SERVICES

- a. Engineering: One Engineer at 8 hours at a rate of \$57.75 per hour
 - i. Annual irrigation audit and maintenance

GENERAL NOTES

All repairs and replacements made by Owner or its employees, contractors, subcontractors, agents or representatives within the Public Right-of-Way as part of the Maintenance Work shall be performed: (a) at no cost to the City; (b) with materials and techniques that are equal or better in

quality, value and utility to the original material or installation, if related to repair or replacement of existing improvements; (c) in a manner and using equipment and materials that will not unreasonably interfere with or impair the operations, use or occupation of the Public Right-of-Way; and (d) in accordance with all applicable laws, rules and regulations.

If any Maintenance Work performed by or for Owner at the Public Right-of-Way does not meet the quality standards set forth herein, as determined by the Director of Public Works or the Director of the City’s Department of the Environment, such work shall be re-done by Owner at its sole cost.

COSTS						
	Unit	# of Hours	Rate	Daily Total	Weekly Total	Yearly Total
Daily Tasks						
Janitorial	Hour	1.5	\$48.00	\$72.00		\$26,280
Engineering	Hour	.25	\$57.75	\$14.44		\$3753.75
Weekly Tasks						
Janitorial	Hour	2.25	\$48.00		\$108.00	\$5616.00
Engineering	Hour	.5	\$57.75		\$28.88	\$1501.50
Yearly Tasks						
Engineering	Hour	28	\$57.75			\$1617.00
					Yearly Total	38768.25

Note: Janitorial Rate to be verified. SEIU Bargaining Agreement expires June 30, 2020



San Francisco Public Works
General – Director’s Office
49 South Van Ness Ave., Suite 1600
San Francisco, CA 94103
(628) 271-3160 www.SFPublicWorks.org

Public Works Order No: 204906

DIRECTOR'S DECISION FOR MAJOR (STREET) ENCROACHMENT PERMIT 19ME-00021 TO INSTALL AND MAINTAIN IMPROVEMENTS WITHIN THE NORTHERN PORTION OF MARY STREET BETWEEN MISSION STREET AND MINNA STREET FOR A PEDESTRIAN-ONLY ALLEYWAY/PASEO, AND TO INSTALL A PRIVATE TELECOMMUNICATION LINE CONNECTING THE 434 MINNA AND 415 NATOMA BUILDINGS, TO BE LOCATED IN PORTIONS OF MINNA STREET, NATOMA STREET AND MARY STREET, AND TO INSTALL, OPERATE, MAINTAIN AND BE LIABLE FOR THE INSTALLATION OF A NON-PORTABLE WATER SYSTEM THAT INTERCONNECTS THE PROJECT ON MINNA AND NATOMA STREETS ALL AS PART OF THE DEVELOPMENT OF THE 5M PROJECT, LOCATED BETWEEN HOWARD STREET AND MISSION STREETS AND SOUTH OF 5TH STREET.

APPLICANT: FC M2 Exchange, LLC, a Delaware limited liability company

PROPERTY IDENTIFICATION: (i) Northern reach of Mary Street between Mission Street and Minna Street; and (ii) portions of Minna Street, Natoma Street and Mary Street (for private telecommunication line)

DESCRIPTION OF REQUEST: Major Encroachment Permit

BACKGROUND:

1. On July 13, 2015, BKF Engineers, A.R. Sanchez-Corea, agents for, FC M2 Exchange, LLC filed a request with Public Works (PW) to consider approval of a Major (Street) Encroachment Permit to install and maintain improvements on the northern reach of Mary Street between Mission Street and Minna Street, and to install a private telecommunication conduit line, in portions of Minna Street, Natoma Street and Mary Street, to connect the 434 Minna Street and 415 Natoma Street buildings.
2. The encroachments comprising the Major Encroachment Permit include the following: a curb-less pedestrian-only alley/paseo on North Mary Street with special and City-standard paving and City-standard streetlights; a separate private telecommunications conduit connecting the 434 Minna Street and 415 Natoma Street buildings; and a separate private underground non-potable water lines connecting to the 434 Minna Street and 415 Natoma Street buildings
3. The Planning Department, by letter dated February 10, 2020, that the encroachments are in conformity with the General Plan.
4. The Planning Department, in a letter dated August 27, 2020, determined that the actions contemplated in this resolution comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) and adopted findings that there is no new information of

substantial importance that would result in new or more severe significant impacts than were addressed in the certified environmental impact report and no subsequent environmental review is required.

5. The proposed encroachments identified under this Major Encroachment Permit have either been described in or are consistent with the project described in the Development Agreement for the 5M Project, dated as of December 17, 2015, recorded January 4, 2016, as Document No. 2016K183795, as subsequently amended by the Memorandum of Minor Modification of Development Agreement, dated as of February 21, 2020, recorded February 27, 2020, as Document No. 2020K909409.

6. On May 4, 2020, Public Works provided Notice for Public Hearing to all property owners within a 300-foot radius of the subject encroachments as well as posting said hearing within City Hall.

7. Public Works held a public hearing on the Major Encroachment Permit on May 18, 2020 in accordance with Public Works Code Sections 786 et seq..

8. On May 27, 2020, the Hearing Officer made a recommendation after hearing receiving or hearing any comments and reviewing the application, reports, plans, and other documents contained in the Public Works files.

9. The Director concurs with said recommendation, and is forwarding this Major Encroachment Application via legislation to the full Board of Supervisors for evaluation.

10. On June 1, 2021, the Municipal Transportation Agency Board unanimously adopted Resolution No. _____, closing the North Mary Street pedestrian-only alleyway portion of the encroachment permit to vehicular traffic.

RECOMMENDATION:

CONDITIONAL APPROVAL of the request for the Major Encroachment Permit, including the Street Encroachment Agreement, with transmittal to the Board of Supervisors for approval based on the following conditions and findings.

CONDITIONS OF APPROVAL:

1. The applicant shall submit a minimum \$2,000,000 General Liability Insurance naming the City and County of San Francisco as additionally insured.
2. The Permittee shall pay to Public Works an annual public right-of-way occupancy assessment fee of \$375.00 (calculated at \$5 per linear foot, times 75 feet total crossing of conduit) and as adjusted annually per Section 2.1.2 of the Public Works Code for the private telecommunications conduit connecting the 434 Minna Street and 415 Natoma Street buildings.

3. The Permit for the Encroachments shall not become effective until: (a) The Permittee executes and acknowledges the Permit and delivers said Permit and all required documents and fees to Public Works, and (b) Public Works records the Permit in the County Recorder's Office ensuring constructive notice of the maintenance of the Encroachments.


4. The Permittee, at its sole expense and as is necessary as a result of this permit, shall make the following arrangements: (a) To provide for the support and protection of facilities under the jurisdiction of Public Works, the San Francisco Public Utilities Commission, the San Francisco Fire Department, other City Departments, and public utility companies; (b) To provide access to such facilities to allow said entities to construct, reconstruct, maintain, operate, or repair such facilities as set forth in the Permit; (c) To remove or relocate such facilities if installation of Encroachments requires said removal or relocation and to make all necessary arrangements with the owners of such facilities, including payment for all their costs, should said removal or relocation be required; and (d) The Permittee shall assume all costs for the maintenance and repair of the Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to Public Works by reason of this permission granted.

5. No structures shall be erected or constructed within the public right-of-way except as specifically authorized under the Permit.

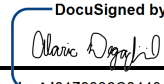
ADDITIONAL FINDINGS:

Public Works Director determines under Public Works Code Section 786.7(f)(3) that the public right-of-way occupancy assessment fee for the North Mary Street pedestrian improvements is waived because said portion of the Encroachments are a condition of a City-approved development agreement for the 5M Project Development.

All required City Agencies provided review and have no further comment to the overall encroachments.

X DocuSigned by:


Ko, Albert J - C0A758C115B741C...
City Engineer

X DocuSigned by:


Degrafinried, Alan - A18178336C84404A5...
Acting Director

DIRECTOR'S DECISION FOR MAJOR (STREET) ENCROACHMENT PERMIT 19ME-00021 TO INSTALL AND MAINTAIN IMPROVEMENTS WITHIN THE NORTHERN PORTION OF MARY STREET BETWEEN MISSION STREET AND MINNA STREET FOR A PEDESTRIAN-ONLY ALLEYWAY/PASEO, AND TO INSTALL A PRIVATE TELECOMMUNICATION LINE CONNECTING THE 434 MINNA AND 415 NATOMA BUILDINGS, TO BE LOCATED IN PORTIONS OF MINNA STREET, NATOMA STREET AND MARY STREET, AND TO INSTALL, OPERATE, MAINTAIN AND BE LIABLE FOR THE INSTALLATION OF A NON-PORTABLE WATER SYSTEM THAT INTERCONNECTS THE PROJECT ON MINNA AND NATOMA STREETS ALL AS PART OF THE DEVELOPMENT OF THE 5M PROJECT, LOCATED BETWEEN HOWARD STREET AND MISSION STREETS AND SOUTH OF 5TH STREET.

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3. The Planning Department, by letter dated February 10, 2020, that the encroachments are in conformity with the General Plan.

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5. The proposed encroachments identified under this Major Encroachment Permit have either been described in or are consistent with the project described in the Development Agreement for the 5M Project, dated as of December 17, 2015, recorded January 4, 2016, as Document No. 2016K183795, as subsequently amended by the Memorandum of Minor Modification of Development Agreement, dated as of February 21, 2020, recorded February 27, 2020, as Document No. 2020K909409.

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7. Public Works held a public hearing on the Major Encroachment Permit on May 18, 2020 in accordance with Public Works Code Sections 786 et seq..

8. On May 27, 2020, the Hearing Officer made a recommendation after hearing receiving or hearing any comments and reviewing the application, reports, plans, and other documents contained in the Public Works files.

9. The Director concurs with said recommendation, and is forwarding this Major Encroachment Application via legislation to the full Board of Supervisors for evaluation.

10. On June 1, 2021, the Municipal Transportation Agency Board unanimously adopted Resolution No. _____, closing the North Mary Street pedestrian-only alleyway portion of the encroachment permit to vehicular traffic.

RECOMMENDATION:

CONDITIONAL APPROVAL of the request for the Major Encroachment Permit, including the Street Encroachment Agreement, with transmittal to the Board of Supervisors for approval based on the following conditions and findings.

CONDITIONS OF APPROVAL:

1. The applicant shall submit a minimum \$2,000,000 General Liability Insurance naming the City and County of San Francisco as additionally insured.
2. The Permittee shall pay to Public Works an annual public right-of-way occupancy assessment fee of \$375.00 (calculated at \$5 per linear foot, times 75 feet total crossing of conduit) and as adjusted annually per Section 2.1.2 of the Public Works Code for the private telecommunications conduit connecting the 434 Minna Street and 415 Natoma Street buildings.
3. The Permit for the Encroachments shall not become effective until: (a) The Permittee executes and acknowledges the Permit and delivers said Permit and all required documents and

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4. The Permittee, at its sole expense and as is necessary as a result of this permit, shall make the following arrangements: (a) To provide for the support and protection of facilities under the jurisdiction of Public Works, the San Francisco Public Utilities Commission, the San Francisco Fire Department, other City Departments, and public utility companies; (b) To provide access to such facilities to allow said entities to construct, reconstruct, maintain, operate, or repair such facilities as set forth in the Permit; (c) To remove or relocate such facilities if installation of Encroachments requires said removal or relocation and to make all necessary arrangements with the owners of such facilities, including payment for all their costs, should said removal or relocation be required; and (d) The Permittee shall assume all costs for the maintenance and repair of the Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to Public Works by reason of this permission granted.

5. No structures shall be erected or constructed within the public right-of-way except as specifically authorized under the Permit.

ADDITIONAL FINDINGS:

Public Works Director determines under Public Works Code Section 786.7(f)(3) that the public right-of-way occupancy assessment fee for the North Mary Street pedestrian improvements is waived because said portion of the Encroachments are a condition of a City-approved development agreement for the 5M Project Development.

All required City Agencies provided review and have no further comment to the overall encroachments.

Certificate Of Completion

Envelope Id: 21C4D48BDF347E9AFD586C386FEAF00	Status: Completed
Subject: Order 204906 - 5M - Major Encroachment	
Source Envelope:	
Document Pages: 6	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	DPW DocuSign
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	49 S Van Ness Ave
	San Francisco, CA 94103
	dpw-docusign.service@sfdpw.org
	IP Address: 208.121.36.177

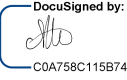
Record Tracking

Status: Original	Holder: DPW DocuSign	Location: DocuSign
6/8/2021 9:00:55 AM	dpw-docusign.service@sfdpw.org	

Signer Events

Nicolas Huff
 Nicolas.Huff@sfdpw.org
 Public Works
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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 Signature Adoption: Uploaded Signature Image
 Using IP Address: 208.121.33.161

Timestamp

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 Viewed: 6/8/2021 10:00:03 AM
 Signed: 6/8/2021 10:01:14 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Degrafinried, Alaric
 Alaric.Degrafinried@sfdpw.org
 Acting Director
 City and County of San Francisco
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Drawn on Device
 Using IP Address: 208.121.33.161

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Electronic Record and Signature Disclosure:
 Accepted: 2/3/2020 3:14:41 PM
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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	6/8/2021 9:00:56 AM
Certified Delivered	Security Checked	6/8/2021 12:46:13 PM
Signing Complete	Security Checked	6/8/2021 12:50:59 PM

Envelope Summary Events	Status	Timestamps
Completed	Security Checked	6/8/2021 12:50:59 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.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 210601-074

WHEREAS, The San Francisco Municipal Transportation Agency is committed to achieving Vision Zero Goals and implementing safety improvements on Mary Street; and,

WHEREAS, The project aims to improve traffic safety, improve pedestrian connectivity, and expand public open space; and,

WHEREAS, SFMTA staff have determined that Mary Street, between Minna and Mission streets, is no longer needed for vehicular traffic pursuant to California Vehicle Code section 21102.1, except for bicycles and emergency vehicles, because it is necessary for the safety, health and well-being of vulnerable pedestrians in the vicinity; and,

WHEREAS, As required by state law, signs giving notice of the restriction will be posted at every entrance to the alley; and,

WHEREAS, In order to ensure adequate ingress and egress for adjoining property owners, the alley closure will not go into effect until quit claims of abutter's rights is obtained by the City from these property owners; and,

WHEREAS, The San Francisco Municipal Transportation Agency has proposed traffic and parking modifications along Mary, Minna and 5th streets as follows:

- A. ESTABLISH – ROAD CLOSURE, EXCEPT PEDESTRIANS, BICYCLES, and EMERGENCY VEHICLES – Mary Street, from Minna Street to Mission Street
- B. ESTABLISH – LEFT TURN ONLY – Mary Street, northbound, at Minna Street
- C. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME
– 5th Street, west side, Natoma Street to 140 feet southerly (widening sidewalk to 16 feet, removes 4 metered parking spaces, 205-01500, 205-01520, 205-01600, 205-01620 and 6 motorcycle spaces); and,

WHEREAS, The 5M Project Final Environmental Impact Report (FEIR) evaluated the environmental impacts of the 5M development project; the San Francisco Planning Commission certified the FEIR for the 5M development project (Case No. 2011.0409E) on September 17, 2015, and in approving the project in Motion No. 19459, adopted CEQA findings, including a statement of overriding considerations, and adopted a Mitigation Monitoring and Reporting Program (MMRP); and,

WHEREAS, The North Mary Pedestrian Alley and parking and traffic modifications were analyzed in the FEIR; and,

WHEREAS, The 5M Project FEIR is on file with the SFMTA Board of Directors and may be found in the records of the Planning Department at <https://sfplanning.org/> and 49 South Van Ness Avenue, Suite 1400 in San Francisco, and is incorporated herein by reference; and,

WHEREAS, That the SFMTA Board of Directors, in Resolution No. 15-142, dated October 20, 2015, adopted the 5M Project Final Environmental Impact Report CEQA findings as its own, and to the extent the above actions are associated with any mitigation measures, the SFMTA Board of Directors reaffirms those measures as conditions of this approval; and,

WHEREAS, In a letter dated August 27, 2020, the Planning Department found that the actions contemplated herein, including the pedestrian encroachment designed of Mary Street North, were addressed in the 5M Project Final Environmental Impact Report, and said letter is incorporated herein by reference; and,

RESOLVED, That the SFMTA Board of Directors relies on the Planning Department's CEQA findings as its own; and,

RESOLVED, That the SFMTA Board of Directors finds that Mary Street, between Minna and Mission streets, is no longer needed for motor vehicle traffic pursuant to California Vehicle Code Section 21102.1, except for bicycles and emergency vehicles, because it is necessary for the safety, health and well-being of vulnerable pedestrians and to improve traffic in the vicinity; and, be it further

RESOLVED, That the SFMTA Board of Directors approves permanently closing Mary Street, between Minna and Mission streets, to motor vehicle traffic except for bicycles and emergency vehicles, and parking and traffic modifications, as set forth in Items A through C above, to improve safety, expand public open space, and create a vibrant pedestrian connector linking Mary Court to Mission Street and Mint Plaza.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 1, 2021.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



GENERAL PLAN REFERRAL

September 1, 2020

Case No.: 2018-012827GPR
Block/Lot No.: 3725/089-091
Project Sponsor: Brookfield Properties
Attn: Christie Donnelly
875 Howard Street, Suite 330
San Francisco, CA 94103
Applicant: Nick Elsner – (415) 333-8080
Nick.elsner@arscode.com
A.R. Sanchez-Corea & Assoc.
301 Junipero Serra Boulevard, #270
San Francisco, CA 94127
Staff Contact: Amnon Ben-Pazi – (628) 652-7428
amnon.ben-pazi@sfgov.org

Recommended By: Rich Hillis
Rich Hillis, Director of Planning

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

Project Description

The Project is the modification of the northernmost block of Mary Street, between Mission and Minna Streets, to form a curbside pedestrian-only street with access for emergency vehicles. The Project is a component of the Fifth and Mission (5M) project for which a Development Agreement 2011.0409DVA was approved in 2015. Modifications include special paving and bollards within the publicly owned right-of-way which would require a Major Encroachment permit; and abolishing the legislated sidewalk width from a portion of Mary Street. The submittal is for a General Plan Referral to recommend whether the Project is in conformity with the General Plan, pursuant to Section 4.105 of the Charter, and Section 2A.52 and 2A.53 of the Administrative Code.

Environmental Review

The project received CEQA clearance under the 5M Project EIR, certified by the Planning Commission on September 17, 2015, Motion No. 19458, Case No. 2011.0409E.

General Plan Compliance and Basis for Recommendation

The Project is the modification of the northernmost block of Mary Street, between Mission and Minna Streets, to form a curbside pedestrian-only street with access for emergency vehicles. The Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 as described in the body of this letter and is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan:

Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

DOWNTOWN AREA PLAN

OBJECTIVE 9

PROVIDE QUALITY OPEN SPACE IN SUFFICIENT QUANTITY AND VARIETY TO MEET THE NEEDS OF DOWNTOWN WORKERS, RESIDENTS, AND VISITORS.

Policy 9.5

Improve the usefulness of publicly owned rights-of-way as open space.

Recreation and open space use of publicly owned rights-of-way should be expanded and enhanced. The Market Street Beautification Project developed unneeded portions of street rights-of-way into plazas with sunny sitting areas. Similar opportunities exist elsewhere. For example, some lightly used streets and alleyways could be converted into lunchtime malls where outdoor dining could be moved into the street area. Where conditions permit, certain blocks might be converted into permanent plaza or park space. Figure 1 illustrates one example of how public rights-of-way might be combined with adjacent plazas to create a large open space.

The project would convert publicly owned right-of-way at the northernmost block of Mary Street into pedestrian-only open space with upgraded paving, forming a permanent plaza.

OBJECTIVE 10

ASSURE THAT OPEN SPACES ARE ACCESSIBLE AND USABLE.

Policy 10.2

Encourage the creation of new open spaces that become a part of an interconnected pedestrian network.

The individual parts of an open space system should be linked by an overall downtown pedestrian network. For example, the plazas and arcades of the 5 Fremont Building are natural extensions and components of a midblock pedestrian system connecting the Transbay Terminal to Market Street. Plazas and parks become pathways for trips as well as destinations for trips. Future sidewalk arcades, gallerias, and through-block pedestrian ways should also contribute to the pedestrian network.

The Project would create a pedestrian-only connection between the existing open space at Mint Plaza, north of the Project site, with a new 11,500 square foot open space (Mary Court East, a component of the 5M project) directly to the south of the Project site, forming a network of pedestrian open spaces.

Planning Code Section 101 Findings

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

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

No neighborhood-serving retail exists at the Project site. The 5M project, of which this Project is a component, includes approximately 30,000 Gross Square Feet of new retail space.

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

No housing exists at the Project site. The 5M project, of which this Project is a component, will provide up to 690 new residential units, including 58 affordable units onsite. The Project and the 5M project in general have been designed to be consistent with the diversity, density, and architectural character of the Downtown and SoMa districts.

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

No housing exists at the Project site. The 5M project, of which this Project is a component, will provide up to 690 new residential units, including 58 affordable units onsite.

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

The Project would remove private vehicles from Mary Street at the intersection with Mission Street, a transit priority street with several MUNI lines. The 5M project, of which this Project is a component, aims to reduce commuter traffic by offering mixed use land uses located near abundant transit. The 5M Project EIR determined that the 5M project would not result in significant impacts to transit service.

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

The Project would not affect the existing economic base in this area. The 5M project, of which this Project is a component, includes approximately 30,000 Gross Square Feet of new retail space suitable for service

sector employment.

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

The Project would preserve emergency vehicle access to Mary Street, and thus would not adversely affect achieving the greatest possible preparedness against injury and loss of life in an earthquake. It would improve the City's ability to respond to injuries caused by earthquakes and other emergencies.

7. That the landmarks and historic buildings be preserved;

The Project site does not include landmarks or historic buildings. The 5M project, of which this Project is a component, will preserve three historic buildings adjacent to the Project site.

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

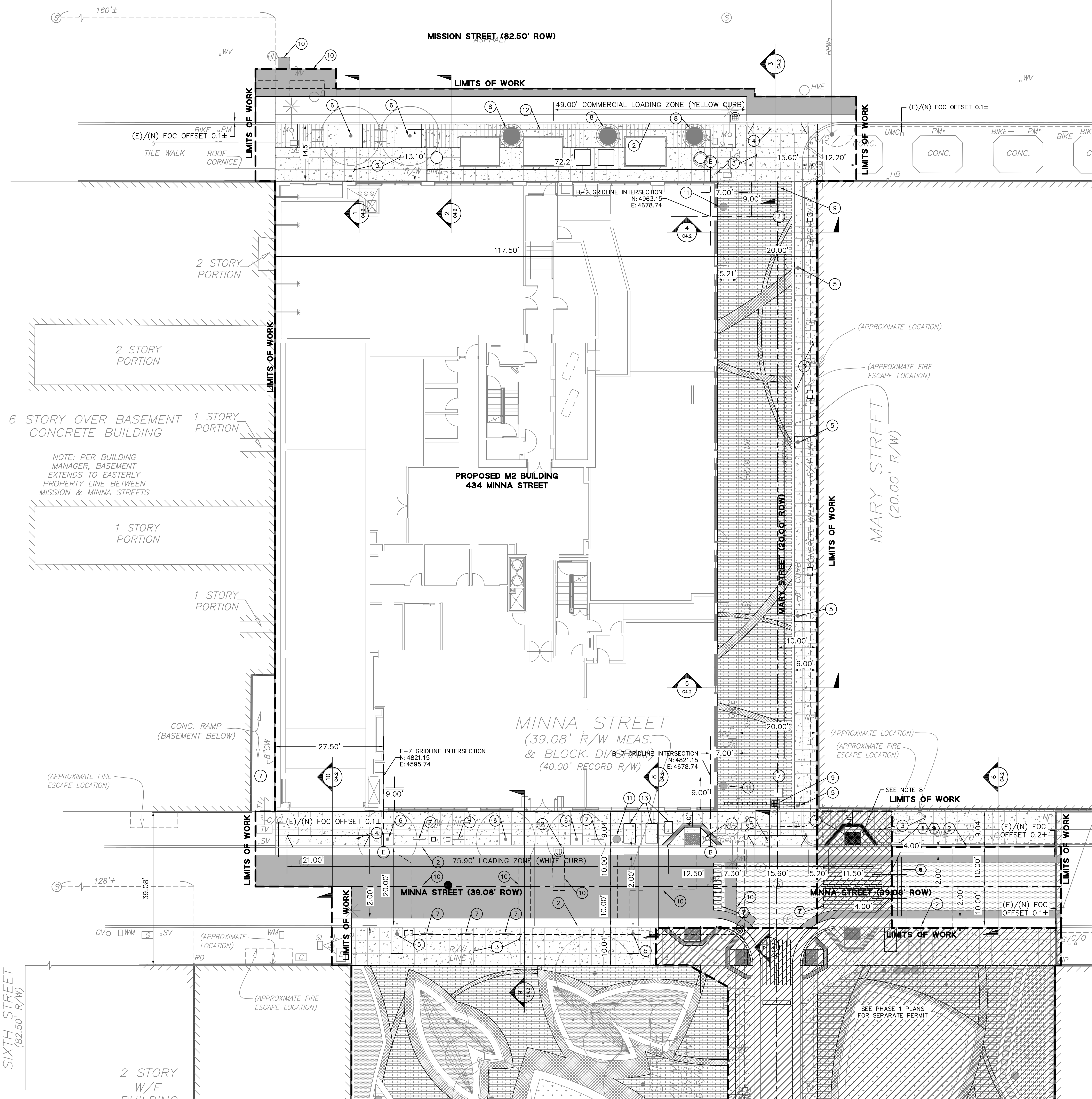
The Project would create new pedestrian-only open space on publicly owned right-of-way, and would not affect existing parks and open spaces. The 5M project, of which this Project is a component, includes a new 11,500 square foot open space (Mary Court East) directly south of the Project site. While the 5M project itself would result in some shadow impacts to existing open space, the 5M EIR determined that these shadow impacts would not adversely affect outdoor recreation or other public areas within the vicinity of the project.

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

Attachments:

Pages from 19_0510_5M_Phase2_SIP_Resubmittal.pdf
cc: Christy Alexander, Planning Department

MISSION STREET (82.50' R/W)
(OVERHEAD MUNI WIRES NOT SHOWN)



HORIZONTAL CONTROL NOTES:

1. CURB RETURN RADII AND CURB DATA ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
2. OBTAIN ENCROACHMENT/SIDEWALK PERMITS PRIOR TO ANY WORK IN PUBLIC RIGHT-OF-WAY.
3. THE CONTRACTOR SHALL EXERCISE EXTREME CARE TO CONFORM TO LINES, GRADES, SECTION, AND DIMENSION AS SET FORTH ON THESE PLANS.
4. REFER TO ARCHITECTURAL AND LANDSCAPE DRAWINGS FOR ONSITE HARDSCAPE IMPROVEMENTS.
5. REFER TO LANDSCAPE DRAWINGS FOR PAVING TYPE, LAYOUT, AND JOINT LOCATION.
6. REFER TO LANDSCAPE DRAWINGS FOR TREE GRATE, PLANTER, AND PEDESTRIAN LIGHTS.
7. NEIGHBORING CURB RAMPS CONNECTING TO PROJECT BOUNDARY SHALL BE UPGRADED PER SPDW ORDER 175,387, NO UPGRADE WILL BE REQUIRED WHERE A BASEMENT/STRUCTURAL SLAB EXISTS BELOW (TECHNICAL INFEASIBILITY).
8. DEFERRED IMPROVEMENT TO BE CONSTRUCTED IN CONJUNCTION WITH FUTURE BUILDING DEVELOPMENT.

HORIZONTAL CONTROL KEYNOTES:

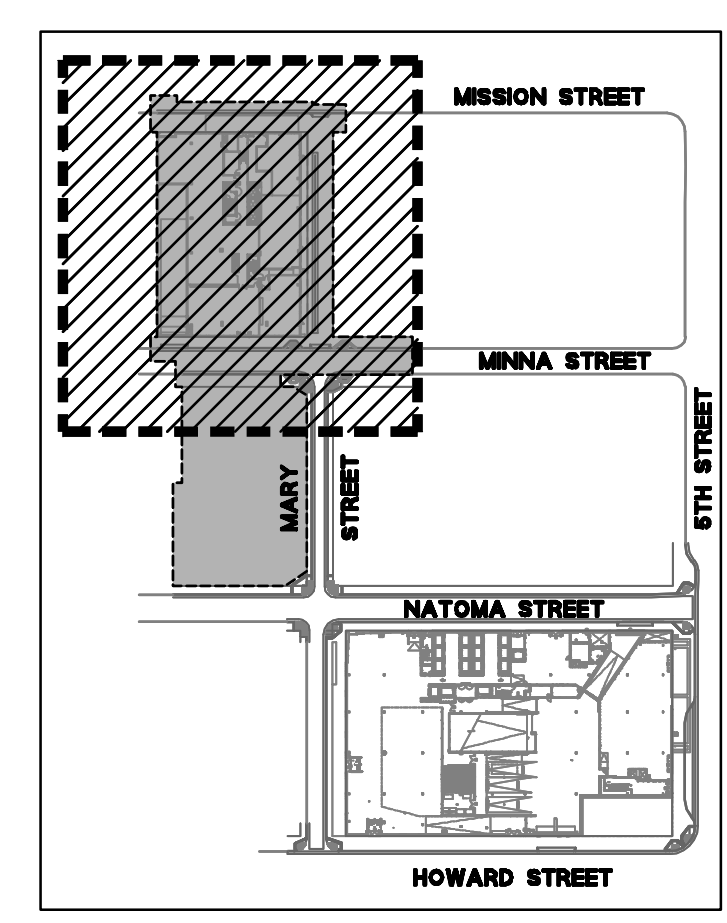
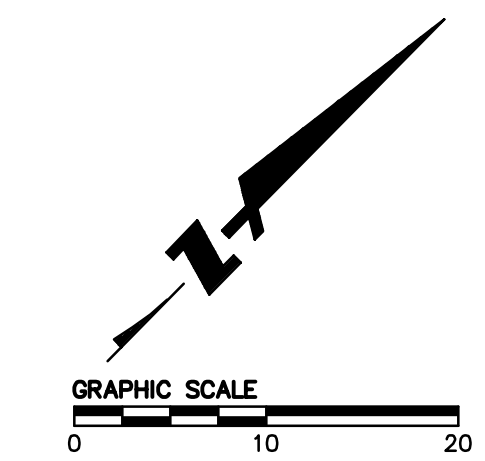
- 1 (N) CURB RAMP (1.2,3,4 / CB.3, CB.4)
- 2 (N) CURB & GUTTER, 2' WIDE (3 / CB.0)
- 3 (N) CONCRETE SIDEWALK (3,4 / CB.3)
- 4 (N) DRIVEWAY (1 / CB.2)
- 5 (N) STREETLIGHT, SLP
- 6 (N) TREE, SLP
- 7 (N) BIKE RACK, SLP
- 8 (N) PLANTER POTS, SLP
- 9 (N) COLLAPSIBLE BOLLARDS, SLP
- 10 (N) SAWCUT FOR UTILITY TRENCH
- 11 (N) TRASH/RECYCLING RECEPTACLES, SLP
- 12 (N) SUB-SIDEWALK TRANSFORMER VAULT
- 13 (N) 6" WIDE CONCRETE COLLAR @ (N) WM, (TYP)

SIGNAGE AND STRIPING KEYNOTES:

- 1 STOP SIGN, CALIFORNIA MUTCD 2014 REV 2, R1-1
- 2 LEFT TURN ONLY SIGN, CALIFORNIA MUTCD 2014 REV 2, R3-5L
- 3 STRAIGHT ONLY SIGN, CALIFORNIA MUTCD 2014 REV 2, R3-5A
- 4 ONE WAY (IN ARROW), CALIFORNIA MUTCD 2014 REV 2, R6-1L
- 5 ONE WAY (IN ARROW), CALIFORNIA MUTCD 2014 REV 2, R6-1R
- 6 1' WIDE STOP LINE
- 7 1' WIDE CONTINENTAL CROSSWALK

HORIZONTAL CONTROL LEGEND:

- (N) CONCRETE PAVING
- (N) 2" OVERLAY PAVING
- (N) ASPHALT FULL DEPTH PAVING, 2" ASPHALT OVER 8" CONCRETE BASE
- (N) PRECAST CONCRETE PAVERS, MORTAR SET, SLP
- (N) PAVERS, SLP



KEY MAP
SCALE: 1"=150'

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PORTLAND, OR 97209
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1505 5TH AVE, SUITE 300
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1014 HOWARD STREET
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T 415.252.7063
© ANKROM MOISAN ARCHITECTS, INC.

BKF ENGINEERS
CIVIL
255 SHORELINE DRIVE,
SUITE 200
REDWOOD CITY, CA 94065
T 650 482-6300

5M PROJECT - PHASE 2
M2 BUILDING (434 MINNA STREET, SAN FRANCISCO CA, 94103)
MARY COURT WEST (44 MARY STREET, SAN FRANCISCO CA, 94103)
FOREST CITY

REVISION	DATE	REASON FOR ISSUE
06/08/18	SIP SUBMITTAL	
11/12/18	SIP RESUBMITTAL	
1/18/19	SIP RESUBMITTAL	
5/10/19	SIP RESUBMITTAL	



HORIZONTAL CONTROL PLAN
CD PROGRESS SET

DATE 4/8/2019 PROJECT NUMBER 173860
SHEET NUMBER

C4.0



SAN FRANCISCO PLANNING DEPARTMENT

August 27, 2020

Subdivision and Mapping
Bureau of Street Use and Mapping
San Francisco Public Works
1155 Market Street
San Francisco, CA 94103

Record Number: 2020-006364SUB (DPW Project ID#10569)
Project Address: 434 Minna St (3725 /132)

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

BACKGROUND

On September 17, 2015, at a duly noticed public hearing, the Planning Commission adopted Motion No. 19459, approving CEQA findings and certified the FEIR under Motion No. 19458. At the same hearing, the Commission adopted General Plan findings under Resolution No. 19460 and recommend approval of General Plan, Zoning Map and Text Amendments under Resolution No. 19463. The Commission also approved the Fifth and Mission Special Use District Design for Development under Motion No. 19465 and adopted a recommendation for approval of the 5M Project Development Agreement under Resolution No. 19466.

On December 1, 2015, at a duly noticed public hearing, the San Francisco Board of Supervisors adopted Ordinance No. 206-15 approving a Development Agreement for the 5M project and authorizing the Planning Director to execute this agreement on behalf of the City. The following land use approvals relating to the Project were approved by the Board of Supervisors concurrently with the Development Agreement: the General Plan amendment (Board of Supervisors Ord. No. 207-15), the Planning Code Text amendment, and the Zoning Map amendments (Board of Supervisors Ord. No. 205-15).

ACTION

The Planning Department approves the proposed Tentative Subdivision Map # 10569 for 434 Minna St, Block 3725, Lot 132 as submitted.

FINDINGS

The Planning Department hereby finds that the proposed Tentative Subdivision Map complies with the applicable provisions of the Planning Code, to be consistent with the General Plan and the Priority Policies of Planning Code Section 101.1(b), and to be consistent with the Plan as defined in the Development Agreement.

August 27, 2020

5M

Pursuant to CEQA Guidelines § 15162, the Department finds that the Tentative Map is consistent with and within the scope of the Project analyzed in the FEIR under Planning Commission Motion No. 19459 and Motion No. 19463, and that (1) no substantial changes are proposed in the Project and no substantial changes have occurred with respect to the circumstances under which this Project will be undertaken that would require major revisions to the FEIR due to the involvement of any new significant environmental effects or a substantial increase in the severity of previously identified effects and (2) no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified as complete shows that the project will have any new significant effects not analyzed in the FEIR, or a substantial increase in the severity of any effect previously examined, or that new mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, or that mitigation measures or alternatives which are considerably different from those analyzed in the FEIR would substantially reduce one or more significant effects on the environment.

The Department has considered the entire record to determine, pursuant to Subdivision Map Act, Gov't Code § 66474(a)-(g), whether any of the criteria exist that would require denial of the Tentative Subdivision Map and finds that none of the criteria exist. The Department also determined pursuant to Gov't Code § 66412.3 and § 66473.1, that the proposed subdivision will facilitate the development of housing and provide for future natural heating or cooling opportunities to the extent feasible.

The San Francisco Planning Department makes the findings below pursuant to Subdivision Map Act, Gov't Code § 66474(a)-(g):

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

The Tentative Subdivision Map is consistent with the General Plan and the Downtown Plan Area for the reasons set forth in Planning Commission Resolution No. 19460.

- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The Tentative Subdivision Map, together with the provisions for its design and improvement, is consistent with the San Francisco General Plan and the Downtown Plan Area for the reasons set forth in Planning Commission Resolution No. 19460.

- (c) That the site is not physically suitable for the type of development.

The site is physically suitable for the type of development. The FEIR evaluated potential environmental impacts associated with the development, which development is consistent with the Fifth and Mission Special Use District (SUD). All required mitigation measures identified in the Mitigation Monitoring and Reporting Program will be applied to the Project.

- (d) That the site is not physically suitable for the proposed density of development.

The site is physically suitable for the density of development. The density of development including the 302 proposed residential condominium units and 8 commercial condominium units, 1 parcel includes 91 BMR units, 1 parcel includes remainder of building: 211 market rate units, retail space, parking garage and common areas is consistent with the SUD as evaluated in the FEIR.

- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Neither the design of the subdivision nor the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The FEIR incorporates a comprehensive evaluation of biological resources, including fish and wildlife and their habitat. All feasible and applicable mitigation measures identified in the MMRP will be applied to the Tentative Subdivision Map.

- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

Neither the design of the subdivision nor the type of improvements are likely to cause serious public health problems. Issues of public health, including, for example, geotechnical and soils stability, hazards and hazardous materials, and air quality impacts, were evaluated in the FEIR. All feasible and applicable mitigation measures identified in the MMRP will be applied to the Tentative Subdivision Map.

- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

Neither the design of the subdivision nor the type of improvements will conflict with easements acquired by the public at large for access through or use of, property within the proposed subdivision. No such public easements for use or public access would be adversely affected by the proposed subdivision, and the Subdivider will be required to provide new easements as a condition of approval of the map as necessary for public access and use.

August 27, 2020

5M

Pursuant to Subdivision Map Act, Gov't Code § 66412.3 and § 66473.1, the Department finds that the proposed subdivision with associated development complies with said criteria in that:

- (a) In carrying out the provisions of this division, each local agency shall consider the effect of ordinances and actions adopted pursuant to this division on the housing needs of the region in which the local jurisdiction is situated and balance these needs against the public service needs of its residents and available fiscal and environmental resources.

The Tentative Subdivision Map is associated with a project that proposes up to 302 residential units on an under-utilized land for needed housing, commercial space, and open space. The development will establish a new residential building on a previously vacant lot. Further, the development will balance housing with new and improved infrastructure, related public benefits and employment opportunities generated. The design of the proposed subdivision will complement the existing neighborhood character and the development of housing will not adversely impact the City's fiscal and environmental resources for its residents.

- (b) The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

The design of the proposed subdivision will provide, to the extent feasible, future passive or natural heating or cooling opportunities that are energy and resource efficient.

5M Project

North Mary Street Encroachment

Permit Resolution

Conversion of Mary Street between Mission and Minna into a pedestrian-only alley (paseo)

BOS File No. 210688

Board of Supervisors of the City and County of San Francisco
Land Use and Transportation Committee
Monday, July 12, 2021



71 AFFORDABLE UNITS
 A 5-MINUTE WALK FROM 5M
 AT EDDY ST & TAYLOR ST

MARKET ST

213,000 SQ. FT.
 CHRONICLE +
 EXAMINER

400 UNITS

N1

23,000 SQ. FT.
 OPEN SPACE

470'

395'

350'

M2

200'

91 AFFORDABLE UNITS
 211 MARKET RATE UNITS

11,500 SQ. FT.
 OPEN SPACE

640,000 SQ. FT.
 RENTABLE

H1

HOWARD ST

MISSION ST

AGE
 PERFORMANCE
 ART DANCE
 SOCIALIZE
 POP-UP PLAY
 PEOPLE WATCHING
 COMMUNITY

CRAFTS
 LUNCH BREAK
 YOUTH
 MOVIES

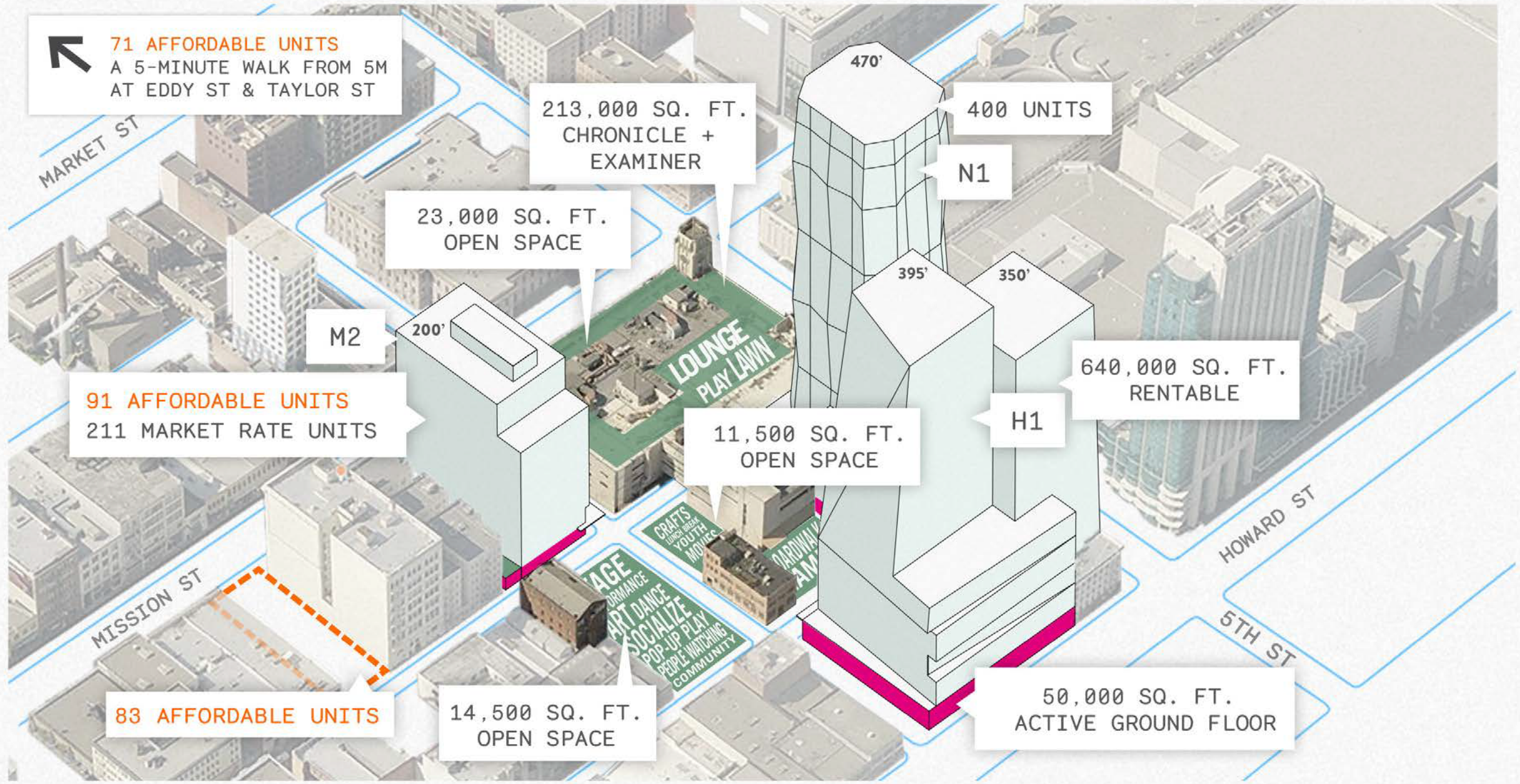
BARBQ
 AM

5TH ST

83 AFFORDABLE UNITS

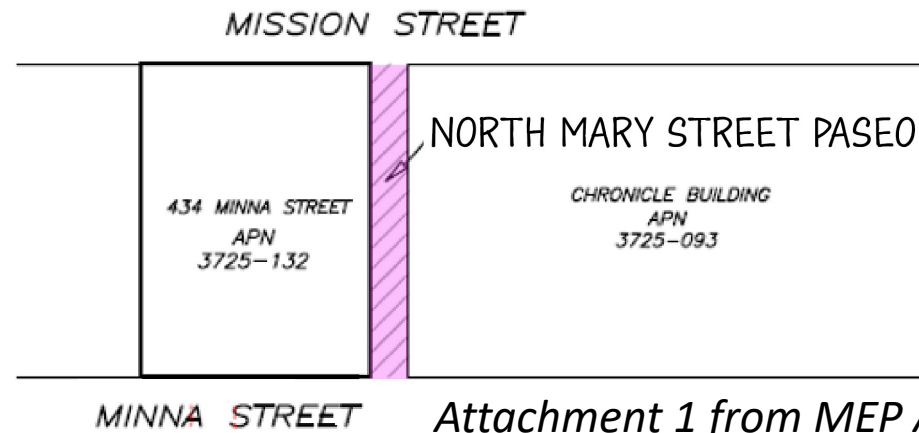
14,500 SQ. FT.
 OPEN SPACE

50,000 SQ. FT.
 ACTIVE GROUND FLOOR



Street Encroachment Permit

- Development Agreement (DA) Obligation
 - Convert Mary Street between Mission and Minna into a pedestrian-only alley (paseo)
- Resolution (*BOS File No. 210688*)
 - Fulfills a key DA obligation, allowing Public Works to enter into an *Encroachment Permit and Maintenance Agreement* with Permittee for ownership and maintenance of Mary Street improvements within public right-of-way
- SFMTA Board of Directors
 - Resolution 210601-074 *conditionally closed street to vehicular traffic*
 - Public Hearing on 06/01/21



Encroachment Permit & Maintenance Agreement

- Outlines Permittee ownership and maintenance responsibilities for improvements within public right-of-way, including:
 - Mary Street Pedestrian Paseo Public Improvements
 - Private Telecommunications Conduit
 - Private Non-potable Water Line (gray water)
- Obligates the Permittee to maintain improvements within this public right-of-way at an estimated annual cost of over \$38,000



Thank you - questions?