

1 [Development Agreement - 5M Project, LLC - Fifth and Mission Project]

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3 **Ordinance approving a Development Agreement between the City and County of San**
4 **Francisco and 5M Project, LLC, a Delaware limited liability company, for the Fifth and**
5 **Mission Project at the approximately 4-acre site located at Fifth Street between Mission**
6 **and Howard Streets, with various public benefits including a minimum percentage of**
7 **affordable housing; making findings under the California Environmental Quality Act,**
8 **findings of conformity with the General Plan, and with the eight priority policies of**
9 **Planning Code, Section 101.1(b); approving the use of Impact Fees and Exactions for**
10 **affordable housing and other community benefits, as set forth in the Development**
11 **Agreement, and waiving any conflicting provision in Planning Code, Article 4, or**
12 **Administrative Code, Article 10; authorizing the acquisition of real property at**
13 **967 Mission Street for affordable housing; and confirming compliance with or waiving**
14 **certain provisions of Administrative Code, Chapters 14B and 56, and ratifying certain**
15 **actions taken in connection therewith.**

16 NOTE: Additions are *single-underline italics Times New Roman*;
17 deletions are *strike-through italics Times New Roman*.
18 Board amendment additions are double-underlined;
19 Board amendment deletions are ~~strike-through normal~~.

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

21 Section 1. Project Findings. The Board of Supervisors makes the following findings:

22 (a) California Government Code Section 65864 et seq. authorizes any city, county,
23 or city and county to enter into an agreement for the development of real property within the
24 jurisdiction of the city, county, or city and county.

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1 (b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth
2 certain procedures for the processing and approval of development agreements in the City
3 and County of San Francisco (the "City").

4 (c) 5M Project, LLC, a Delaware limited liability company ("Developer") owns and
5 operates the nearly 4-acre area generally between Mission, Fifth and Howard Streets
6 composed of 8 buildings and 7 surface parking lots on 22 parcels, containing approximately
7 317,700 gross square feet of existing office and commercial uses and approximately 219
8 parking spaces, including the historic Dempster Printing Building and Chronicle Building (the
9 "Project Site").

10 (d) Developer filed an application with the City's Planning Department for approval
11 of a development agreement relating to the Project Site (the "Development Agreement")
12 under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the
13 Board in File No. 150788. Developer also filed applications with the Department for certain
14 activities described in Exhibit B to the Development Agreement (together with the
15 Development Agreement, the "Project").

16 (e) The Project is a mixed use development that recognizes the transit-rich location
17 for housing and employment on the Project Site, including office, residential, retail, cultural,
18 educational, open space, parking and related uses. Specifically, the Project includes up to
19 807,600 gross square feet of office uses (including ground floor uses), up to 821,300 gross
20 square feet of residential uses (including both rental and ownership units), approximately
21 68,700 gross square feet of other active ground floor uses, and collectively up to 1,697,600
22 gross square feet of new construction and renovated existing building space, with
23 approximately 331 ~~463~~ associated vehicle parking spaces in three subterranean levels,
24 approximately 429 Class 1 bicycle parking spaces, approximately 66 Class 2 bicycle parking
25

1 spaces, and approximately 59,500 square feet of public and private open space, all as more
2 particularly described in the Development Agreement.

3 (f) Concurrently with this Ordinance, the Board is taking a number of actions in
4 furtherance of the Project, as generally described in the Development Agreement, including
5 Exhibit I to the Development Agreement.

6 (g) The Project is anticipated to generate an annual average of approximately 1,200
7 construction jobs and, upon completion, approximately 3,150 net new permanent jobs and an
8 approximately \$12,100,000 annual increase in general fund revenues to the City. In addition
9 to the significant housing, jobs, urban revitalization, and economic benefits to the City from the
10 Project, the City has determined that development of the Project under the Development
11 Agreement will provide additional benefits to the public that could not be obtained through
12 application of existing City ordinances, regulations, and policies. Additional public benefits to
13 the City from the Project include: the creation of affordable housing units anticipated to equal
14 ~~to thirty three~~ forty percent (~~40~~33%) of the total market rate housing units for the Project; a
15 workforce program; community benefits fees; the rehabilitation of the Chronicle and Dempster
16 Printing Buildings; and the retention of the Camelline Building, all as further described in the
17 Development Agreement. The Development Agreement will eliminate uncertainty in the City's
18 land use planning for the Project and secure orderly development of the Project Sites.

19 Section 2. CEQA Findings.

20 On September 17, 2015, by Motion No. 19458, the Planning Commission certified as
21 adequate, accurate and complete the Final Environmental Impact Report ("FEIR") for the
22 Project pursuant to the California Environmental Quality Act (California Public Resources
23 Code Section 21000 et seq.) ("CEQA"). A copy of Planning Commission Motion No. 19458 is
24 on file with the Clerk of the Board of Supervisors in File No. 150788. Also on September 17,
25 2015, by Motion No. 19459, the Planning Commission adopted findings, including a statement

1 of overriding considerations (the “CEQA Findings”) and a Mitigation Monitoring and Reporting
2 Program (“MMRP”). Said Motion is on file with the Clerk of the Board of Supervisors in File
3 No. 150788. On November 17, 2015, the Board of Supervisors, in Motion No. _____
4 affirmed the decisions of the Planning Commission to certify the FEIR and rejected the appeal
5 of the FEIR certification. Copies of the Planning Commission Motion No. 19458 and Board of
6 Supervisors Motion No. _____ are on file with the Clerk of the Board of Supervisors in File
7 Nos. 150788 and _____. In accordance with the actions contemplated herein, this Board
8 has reviewed the FEIR and related documents, and adopts and incorporates by reference as
9 though fully set forth herein the CEQA Findings, including the statement of overriding
10 considerations, and the MMRP.

11 Section 3. General Plan and Planning Code Section 101.1(b) Findings.

12 (a) The Board of Supervisors finds that the Development Agreement will serve the
13 public necessity, convenience and general welfare for the reasons set forth in Planning
14 Commission Resolution No. 19466 and incorporates those reasons herein by reference.

15 (b) The Board of Supervisors finds that the Development Agreement is in conformity
16 with the General Plan, as proposed to be amended and when effective, and the eight priority
17 policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission
18 Resolution No. 19460. The Board hereby adopts the findings set forth in Planning
19 Commission Resolution No. 19460 and incorporates those findings herein by reference.

20 Section 4. Development Agreement.

21 (a) The Board of Supervisors approves all of the terms and conditions of the
22 Development Agreement, in substantially the form on file with the Clerk of the Board of
23 Supervisors in File No. 150788.

24 (b) The Board of Supervisors approves and authorizes the execution, delivery and
25 performance by the City of the Development Agreement as follows: (i) the Director of

1 Planning and (other City officials listed thereon) are authorized to execute and deliver the
2 Development Agreement and consents thereto, and (ii) the Director of Planning and other
3 applicable City officials are authorized to take all actions reasonably necessary or prudent to
4 perform the City's obligations under the Development Agreement in accordance with the
5 terms of the Development Agreement. Without limiting the foregoing, the Director of the
6 Mayor's Office of Housing and Community Development is authorized to execute and perform
7 all City obligations under the Transfer Agreement attached to the Development Agreement for
8 the potential acquisition of certain real property located at 967 Mission Street, or, in the
9 alternative, to accept funds to be used for affordable housing as set forth in the Transfer
10 Agreement. The Director of Planning, at his or her discretion and in consultation with the City
11 Attorney, is authorized to enter into any additions, amendments or other modifications to the
12 Development Agreement that the Director of Planning determines are in the best interests of
13 the City and that do not materially increase the obligations or liabilities of the City or materially
14 decrease the benefits to the City as provided in the Development Agreement.

15 Section 5. Board Authorization and Appropriation.

16 By approving the Development Agreement, including its Exhibits, the Board of
17 Supervisors authorizes the Controller and City Departments to accept the funds paid by
18 Developer as set forth therein, to maintain separate accounts or subaccounts as
19 contemplated therein, and to appropriate and use the funds for the purposes described
20 therein. The Board expressly approves the use of the Impact Fees and Exactions for
21 affordable housing, art and other community benefits, as set forth in Exhibits D and H to the
22 Development Agreement, and waives or overrides any provision in Article 4 of the City
23 Planning Code and Article 10 of the City Administrative Code that would conflict with the uses
24 of these funds as described in the Development Agreement, including without limitation City
25 Planning Code Sections 411.6, 413.10, 415-5, 429.3, 429.5 and City Administrative Code

1 Section 10.100-29. The Board further authorizes the acquisition of the real property at 967
2 Mission Street in accordance with the Transfer Agreement.

3 Section 6. City Administrative Code Conformity.

4 The Development Agreement shall prevail in the event of any conflict between the
5 Development Agreement and City Administrative Code Chapters 14B and 56, and without
6 limiting the generality of the foregoing clause, for purposes of the Development Agreement
7 only, the provisions of City Administrative Code Chapters 14B and 56 are waived or its
8 provisions deemed satisfied as follows:

9 (a) The Project comprises nearly four acres and is the type of large multi-phase and/or
10 mixed-use development contemplated by the City Administrative Code and therefore is
11 hereby deemed to satisfy the provisions of Chapter 56, Section 56.3(g).

12 (b) The provisions of Development Agreement Section 4.4 and the Workforce
13 Agreement attached to the Development Agreement as Exhibit F shall apply in lieu of the
14 provisions of City Administrative Code Chapter 14B, Section 14B.20 and Chapter 56,
15 Section 56.7(c).

16 (c) The provisions of the Development Agreement regarding any amendment or
17 termination, including those relating to "Material Change," shall apply in lieu of the provisions
18 of Chapter 56, Section 56.15.

19 (e) The provisions of Chapter 56, Section 56.20 have been satisfied by the
20 Memorandum of Understanding between Developer and the Mayor's Office of Economic and
21 Workforce Development for the reimbursement of City costs, a copy of which is on file with the
22 Clerk of the Board of Supervisors in File No. 150788.

23 Section 7. Chapter 56 Waiver; Ratification.

24 (a) In connection with the Development Agreement, the Board of Supervisors finds
25 that the requirements of Chapter 56, as modified hereby, have been substantially complied

1 with and waives any procedural or other requirements of Chapter 56 if and to the extent that
2 they have not been strictly complied with.

3 (b) All actions taken by City officials in preparing and submitting the Development
4 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
5 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
6 by City officials consistent with this Ordinance.

7 Section 8. Effective and Operative Date.

8 This ordinance shall become effective 30 days from the date of passage. This
9 Ordinance shall become operative only on (and no rights or duties are affected until) the later
10 of (a) 30 days from the date of its passage, or (b) the date that Ordinance _____,
11 Ordinance _____, and Ordinance _____ have become effective. Copies of said
12 Ordinances are on file with the Clerk of the Board of Supervisors in File Nos. 150787 and
13 150932.

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15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

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18 By: _____
19 Charles Sullivan
20 Deputy City Attorney
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