

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.**

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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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