



San Francisco Public Works
General – Director’s Office
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San Francisco, CA 94103
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Public Works Order No: 207142

Recommending the formal acceptance of irrevocable offers of public improvements associated with the 5M Project Block H1 (Phase 1) and 5M Project Block M2 (Phase 2), including improvements located within portions of Mary, Natoma, Minna, 5th, Mission, and Howard streets for public use; acceptance of the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes, subject to specified limitations; establishing official street grades; and amending Ordinance No. 1061 entitled “Regulating the Width of Sidewalks” to establish official sidewalk width on the abovementioned street areas.

WHEREAS, FC 5M H1 EXCHANGE, LLC, a Delaware limited liability company (“FC 5M H1”) has irrevocably offered the Public Infrastructure associated with 5M Project Block H1 (“Phase 1”) to the City and County of San Francisco (“City”), as set forth in the 5M Project - Phase 1 Irrevocable Offer of Improvements, dated May 6, 2019; and

WHEREAS, FC 5M M2 EXCHANGE, LLC, a Delaware limited liability company (“FC 5M M2”) has irrevocably offered the Public Infrastructure associated with the 5M Project Block M2 (“Phase 2”), as set forth in the 5M Project - Phase 2 Irrevocable Offer of Improvements, dated November 13, 2019; and

WHEREAS, FC 5M H1 has irrevocably offered real property to the City, as set forth in the Offer of Dedication – Lot A, dated May 6, 2019, and Grant Deed – Lot A, dated May 6, 2019; and

WHEREAS, FC 5M M2 has irrevocably offered real property to the City, as set forth in the Offer of Dedication – Lot B, dated May 6, 2019, and Grant Deed – Lot B, dated May 6, 2019; and

WHEREAS, FC 5M M2 has irrevocably offered real property to the City, as set forth in the Offer of Dedication – Lot C, dated May 6, 2019 and Grant Deed – Lot C, dated May 6, 2019; and

WHEREAS, Pursuant to the Phase 1 Public Improvement Agreement, dated June 4, 2019, and the Phase 2 Public Improvement Agreement, dated December 20, 2019, (together, the “PIAs”), Public Works will issue a Notice of Completion for the Public Infrastructure prior to recommending that the Public Infrastructure be accepted and publicly dedicated by the Board of Supervisors; and

WHEREAS, Public Works inspected the Phase 1 Public Infrastructure, and the City Engineer, by issuance of a conditional Notice of Completion dated May 31, 2022, determined the Phase 1 Public Infrastructure to be complete in accordance with the Improvement Plans and Specifications (Street Improvement Permit No. 18IE-0725) prepared by BKF Engineers, entitled 5M - Phase 1 - 415 Natoma Street (H1 building - Office & 110 5th Street (Mary Court East Open Space), dated May 10, 2019, and all City codes, regulations, and standards governing the Phase 1 Public Infrastructure, and ready for its intended use; and

WHEREAS, Public Works inspected the Phase 2 Public Infrastructure, and the City Engineer, by issuance of a conditional Notice of Completion dated September 23, 2022, determined the Phase 2 Public Infrastructure to be complete in accordance with the Improvement Plans and Specifications (Street Improvement Permit No. 18IE-0726) prepared by BKF Engineers, entitled 5M Project 434 Minna Street (M2 Building) and 44 Mary Street (Mary Court West), dated May 10, 2019, and all City codes, regulations, and standards governing the Phase 2 Public Infrastructure, and ready for its intended use; and

WHEREAS, The Public Works Director ("Director") recommends and the City Engineer certifies to the Board of Supervisors that the Phase 1 and Phase 2 Public Infrastructure as shown in Street Improvement Permit Nos. 18IE-0725 (Phase 1) and 18IE-0726 (Phase 2), as modified by Instructional Bulletins #1 and #2, be accepted for public use. Public Works recommends that the Board of Supervisors accept the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes in accordance with Streets and Highways Code Sections 1806 and San Francisco Administrative Code 1.51 *et seq.* and subject to the exceptions specified herein; and

WHEREAS, The official public right-of-way widths for the applicable portions of Mary, Natoma, 5th, and Howard Streets and sidewalk widths established as shown on Drawing **Q-20-1141** and described in Public Works Order No. 204457 do not obviate, amend, alter, or in any other way affect the maintenance obligations of the adjacent property owners as set forth in the Public Works Code; and

WHEREAS, The Director recommends that the Board of Supervisors approve the legislation to amend Board of Supervisors Ordinance No. 1061, entitled "Regulating the Width of Sidewalks," a copy of which is in the Clerk of the Board of Supervisors Book of General Ordinances, in effect May 11, 1910, by adding thereto a new section to read as follows:

Section [1640]. The sidewalk widths on Howard, 5th, Mary, Minna, and Natoma Streets shall be modified as shown on the Public Works Drawing No. Q-20-1141.

WHEREAS, Map No. A-17-221 shows the area offered for dedication, and acceptance for the applicable portions of Mary, Natoma, and Minna Streets, and

WHEREAS, In a letter dated September 15, 2022, the Department of City Planning affirmed that the 5M Project and acceptance of the Phase 1 and Phase 2 Public Infrastructure required as a condition of Project approval are, on balance, in conformity with the General Plan and Planning Code Section 101.1; and

WHEREAS, The proposed acceptance of the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability and other actions are within the scope of the Final Environmental Impact Report ("FEIR") for the 5M Project (the "Project") dated September 17, 2015, prepared pursuant to the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*) ("CEQA"). The Planning Commission certified the FEIR on September 17, 2015, by Motion No. 19458. The Planning Commission, in Motion No. 19459, adopted findings under CEQA, including findings rejecting alternatives as infeasible, a statement of overriding considerations for approval of the Project, and a mitigation, monitoring, and

reporting program. Planning Commission Motion Nos. 19458 and 19459 are collectively referred to as the “Planning Commission CEQA Findings”; and

WHEREAS, It is recommended that the Board of Supervisors find that pursuant to the CEQA Guidelines (California Code of Regulations Title 14, Sections 15000 *et seq.*), including Sections 15162, the actions contemplated herein are consistent with, and within the scope of, the Project analyzed in the FEIR, 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;

NOW THEREFORE BE IT ORDERED THAT,

The Director approves all of the following documents either attached hereto or referenced herein:

1. Offers of Improvements for the Phase 1 and Phase 2 Public Infrastructure.
2. Offers of Dedication including Grant Deeds for real property associated with for the Phase 1 and Phase 2 real property.
3. Form of Ordinance to accept the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes.
4. Official Street Dedication Map No. A-17-221.
5. Official Sidewalk Width Drawing No. Q-20-1141.

The Director recommends that the Board of Supervisors approve the legislation to accept the Offers of Improvements for the Phase 1 and Phase 2 Public Infrastructure and Offers of Dedication for Phase 1 and Phase 2 real property, and to execute the Grant Deeds for Phase 1 and Phase 2 real property. Hereinafter, the Director’s recommendation also includes the City Engineer’s certification of actions under the City Engineer’s authority.

The Director further recommends that the Board of Supervisors approve the legislation to dedicate the Phase 1 and Phase 2 Public Infrastructure to public use, designate it as open public

right-of-way for permit and roadway purposes, and accept it for City maintenance and liability purposes subject to the following:

1. The portions of streets being designated as open public right of way for street and roadway purposes are from back of sidewalk to back of sidewalk, unless specified otherwise or as shown on the Plans and Specifications for the Phase 1 or Phase 2 Public Infrastructure;
2. Acceptance of the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes is from back of curb to back of curb, unless specified otherwise, and sidewalk maintenance is the responsibility of the adjacent property owners in accordance with the Public Works Code;
3. Encroachments that are permitted, not permitted, or both, are excluded from acceptance;
4. The acceptance of the streets does not obviate, amend, alter, or in any way affect existing maintenance agreements between the City and parties to such agreements;
5. Conditional assignment by FC 5M H1 and FC 5M M2 of all warranties and guaranties to the City related to the construction of the Phase 1 and Phase 2 Public Infrastructure and its warranty obligations under Street Improvement Permit Nos. 18IE-0725 and 18IE-0726, as modified by Instructional Bulletins #1 and #2; and
6. The acceptance shall be expressly conditioned on the Project applicant obtaining an encroachment permit or other authorization from the City to maintain encroachments in the public right-of-way that are the applicant's responsibility as obtained through Board of Supervisor's Resolution 359-21 and Major Encroachment Permit No. 19ME-00021.

The Director further recommends that the Board of Supervisors approve the legislation to amend Board of Supervisors Ordinance No. 1061, entitled "Regulating the Width of Sidewalks," a copy of which is in the Clerk of the Board of Supervisors Book of General Ordinances, in effect May 11, 1910, by adding thereto a new section to read as follows:

Section [1640]. The width of sidewalks on portions of Howard, 5th, Mary, and Natoma Streets shall be modified as shown on the Public Works Drawing Q-20-1141, dated January 20, 2021.

The Director further recommends that the Board of Supervisors approve the legislation and direct Public Works to revise the Official Public Right-of-Way and Sidewalk Width maps in accordance with the legislation.

X

DocuSigned by:

Patrick Rivera

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Acting Bureau Manager, Project Management

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City Engineer

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Carla Short

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Short, Carla
Interim Director