

**From:** Brooke Ray Rivera <brookeray@sfparksalliance.org>

**Sent:** Wednesday, September 11, 2019 4:22 PM

**To:** Abad, Robin (CPC) <robin.abad@sfgov.org>

**Cc:** Lou Vasquez <lou@bldsf.com>; Snyder, Mathew (CPC) <mathew.snyder@sfgov.org>; Mark Bonsignore <mark@sfparksalliance.org>; Lex Montiel <lex@sf-eagle.com>; Keith Goldstein <keithgg@me.com>; Irma Lewis (i.lewis@sbcglobal.net) <i.lewis@sbcglobal.net>; Sara Bahat <sbahat@cca.edu>

**Subject:** Re: In-Kind project updates to Community Advisory Committees (CACs)

Hi all,

I will not be able to attend on Monday evening but here are some responses as I probably have the most institutional memory on the plaza itself at this point. See inline below in green. While we are of course delighted to share updates and any information we have with the ENCAC, my understanding is that the 16th is an informational update, rather than an approval or requisite progress-report type meeting. Is this incorrect?

I hope the below is helpful.

Best,

Brooke Ray

On Tue, Sep 10, 2019 at 1:30 PM Abad, Robin (CPC) <[robin.abad@sfgov.org](mailto:robin.abad@sfgov.org)> wrote:  
Hello Lou and Brooke Ray,

The EN CAC has developed the following questions about the Dogpatch Arts Plaza. In your presentation to the EN CAC this upcoming Monday 9/16, please be prepared to address the following points.

- It appears that the Dogpatch Arts Plaza is no longer activated. Since the installation of the “horse” sculpture there have been no other art installations There have been no performances. Explain the issues [why the rotating art and performance activations have not materialized] and how the plaza can be activated for its intended use.

The plaza is passively activated by the neighborhood and the adjacent cafe, NOON All Day. In 2017-2018 Place Lab secured sponsors for and hosted multiple live music events, and further informal gatherings have taken place there since its opening in October 2017. Moving forward, we at Parks Alliance have experienced that there has been little to no interest from the neighborhood in stepping forward to help steward the plaza or guide its activation. Our efforts as Place Lab / SF Parks Alliance to help create a Friends of Dogpatch Arts Plaza have yielded little enthusiasm, and there is no budget currently. The plaza was only officially 'approved' via DPW's Major Encroachment Permit in Feb 2019, so even though it's been open since Oct 2017 it has

not been a fully permitted/complete public space until recently, which stymied activation efforts. There absolutely could and should be more activation and rotating art in the space, but it needs to be driven by neighborhood interest and direction in our professional experience and recommendation.

- Cresco is using a considerable portion of the plaza (about  $\frac{1}{3}$ ) for parking. Wasn't the agreement that they would have access to bring vehicles into their warehouse, not to park all day?

Yes Cresco's use of the southern portion of the plaza was always allowed as part of the plan, though it's technically labeled as a loading zone. It is their driveway to their building and vehicular access is allowed. Cresco's team have always been accommodating of events, and their cars are not present on weekends or after business hours. For events during business hours they've moved their cars. Our understanding is their lease is up soon and general understanding is it may likely be redeveloped.

- The [in-kind] agreement referenced a program manager for the Plaza. Yet the Arts Plaza website is out of date and has no guidance on how to access this public resource. Please provide a schedule of outreach performed by Build Public in years 1 and 2.
  - Organization / Person contacted
  - Planned event
  - Planned date
  - Outcome- attendance, feedback, and any other metrics a professional org would have.

Build Public has been doing extensive community outreach since 2013 for DAP. We have meeting agendas and dates, but we have not been made aware of any requirement that we keep public meeting minutes, outcomes, etc. Build Public's efforts have largely been pro bono since Oct 2017, save for a \$250/mo stipend from NOON All Day which has not even approached the cost we at Build Public /Place Lab/SF Parks Alliance have incurred in securing DPW's approval and closeout of the IKA. I am happy to share our pro bono invoice on this if you think it's important for you to see. It shows that we have been incurring significant unreimbursed costs on this project, and with limited resources and staffing and myriad clients and community partner obligations throughout the city we have prioritized contractual partnerships.

- There is no signage indicating the Arts Plaza is a public benefit space. [Please offer ideas for how to address better external messaging, through signage program or other methods, to convey that the plaza is a public space]

Has this been a requirement? If so we were not aware. Happy to learn more and see what's needed.

--

**Brooke Ray Rivera**

**Director of Place Lab**

E: [brookeray@sfparksalliance.org](mailto:brookeray@sfparksalliance.org)

1074 Folsom Street

San Francisco, CA 94103

**660-90 INDIANA STREET IN-KIND AGREEMENT  
(PER PLANNING CODE SECTION 423.3)**

**THIS IN-KIND AGREEMENT** (the “Agreement”) is entered into as of August 1, 2014, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “City”) and 650 Indiana Investment, LLC (“Project Sponsor”), with respect to the project approved for 660-90 Indiana Street, San Francisco, California 94107 (the “Project”).

**RECITALS**

A. On December 19, 2008, the San Francisco Board of Supervisors enacted Ordinance No. 298-08 (File No. 081153) (the “Ordinance”), adding Section 327 to the San Francisco Planning Code (now Sections 423-423.5). Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code, and all references to Sections 423-423.5 shall mean Sections 423-423.5 of the San Francisco Planning Code.

B. In order to mitigate the impacts from the new mixed residential and commercial development permitted under the Eastern Neighborhoods Plan, the Ordinance imposed an Impact Fee on new residential and commercial development (the “Fee”). Under Section 423.3(e), the Fee is required to be paid to the City before issuance of the First Construction Document for a development project. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the project sponsor agrees to provide specified community improvements. In order for the project sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an “In-Kind Agreement” described in Section 423.3(d).

C. The property described in Exhibit A attached hereto (the “Land”) and generally known as 660-90 Indiana Street (Lot 009 in Assessor’s Block 4041) is owned by Project Sponsor. 650 Indiana Investment LLC, the Project Sponsor, submitted an application for the development of a mixed residential and commercial development on the Land, and the Planning Commission approved the Project on May 1, 2014 (Motion No. 19136).

D. The Central Waterfront Area Plan contains objectives and policies for the Central Waterfront Area, bounded by Interstate 280 to the west, Mariposa Street to the north, the San Francisco Bay to the east, and the Islais Creek Channel to the south.

E. The Project Sponsor has requested that the City enter into an In-Kind Agreement associated with development of Dogpatch Arts Plaza in order to reduce its Fee obligation per the terms of the Ordinance, provided the owner of the land upon which such improvements would be constructed timely and irrevocably consents to the construction and maintenance of such improvements. The In-Kind Improvements consist of the conversion of the dead-end portion of 19th Street (west of Indiana Street) into a 13,800 square foot arts-focused public pedestrian plaza, as more particularly described in Exhibit C (“In-Kind Improvements”).

F. The In-Kind Improvements meet an identified community need as analyzed in the Central Waterfront Area Plan and are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code.

G. On February 10, 2014, in Motion 2014-02-02, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution supporting the proposed improvements for the 650 Indiana Street In-Kind Agreement in the amount of \$565,100. On June 16, 2014, in Motion 2014-05-02, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution

supporting an additional fee waiver of \$284,900, bringing the total value of the in-kind improvements to \$850,000.

H. On May 15, 2014, the Planning Commission adopted Motion No. 19150 authorizing the Planning Director to execute this In-Kind Agreement for an impact fee waiver of \$850,000.

I. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings.

“**Agreement**” shall mean this Agreement.

“**City**” shall have the meaning set forth in the preamble to this Agreement.

“**Date of Satisfaction**” shall have the meaning set forth in Section 4.9 below.

“**DBI**” shall mean the Department of Building Inspection.

“**DPW**” shall mean the Department of Public Works.

“**Effective Date**” shall have the meaning set forth in Section 5.1 below.

“**Final Inspection Notice**” shall have the meaning set forth in Section 4.7 below.

“**First Construction Document**” shall have the meaning set forth in Section 401 of the Planning Code.

“**Impact Fee**” or “**Fee**” shall mean the fee charged to all residential and commercial development projects in the Eastern Neighborhoods Plan Areas under Section 423.3 of the Ordinance.

“**In-Kind Improvements**” shall have the meaning set forth in Recital E.

“**In-Kind Value**” shall have the meaning set forth in Section 3.2 below.

“**Inspection Notice**” shall have the meaning set forth in Section 4.7 below.

“**Land**” shall have the meaning set forth in Recital C.

“**Memorandum of Agreement**” shall have the meaning set forth in Article 8 below.

“**Operations Plan**” shall have the meaning set forth in Section 4.2 below.

“**Ordinance**” shall have the meaning designated in Recital A.

“**Payment Analysis**” shall have the meaning set forth in Section 5.2 below.

“**Payment Documentation**” shall have the meaning set forth in Section 4.8 below.

“**Plans**” shall have the meaning set forth in Section 4.3 below.

“**Project**” shall have the meaning set forth in the preamble to this Agreement.

“**Project Sponsor**” shall have the meaning set forth in the preamble to this Agreement.

“**Project Sponsor Fee**” shall mean the Project Sponsor’s share of the Fee, as calculated pursuant to Section 3.1 hereof.

“**Remainder Amount**” shall have the meaning set forth in Section 3.3 below.

## **ARTICLE 2 PROJECT SPONSOR REPRESENTATIONS AND COVENANTS**

The Project Sponsor hereby represents, warrants, agrees and covenants to the City as follows:

2.1 The above recitals relating to the Project are true and correct.

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of California, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated to be conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) is the fee owner of the real property on which the Project is located.

2.3 The execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (1) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (2) have not violated and will not violate any provision of any agreement or instrument to which the Project Sponsor is bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

2.4 No document furnished or to be furnished by the Project Sponsor to the City in connection with this Agreement contains or will contain any untrue statement of material fact, or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

2.5 Neither the Project Sponsor, nor any of its principals or members, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency during the past five (5) years.

2.6 Pursuant to Section 423.3(d)(5), the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

### ARTICLE 3 CALCULATION OF FEE AND IN-KIND CREDIT

3.1 The Project Sponsor Fee shall be calculated in accordance with Section 423.3(c) of the Ordinance. Based on the project entitled by the Planning Commission, the Fee is estimated at \$1,038,446.40 (for the fee calculations, see Exhibit B). The final Fee shall be calculated based on the project entitled by its First Construction Document.

3.2 Based on two estimates provided by independent sources, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$850,000 (the "In-Kind Value"); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated third-party eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit C (the "Cost Documentation").

3.3 The Project Sponsor shall pay to the Development Fee Collection Unit at DBI \$188,446.40 (the "Remainder Amount"), which is an amount equal to the Project Sponsor Fee (see Exhibit B) minus the In-Kind Value (see Exhibit C), prior to issuance of the Project's First Construction Document, pursuant to Section 423.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code. On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Sponsor Fee in the amount of the In-Kind Value, subject to Section 5.2 below.

### ARTICLE 4 IN-KIND IMPROVEMENTS

4.1 The Project Sponsor agrees to take all steps necessary to construct and provide, at the Project Sponsor's sole cost, the In-Kind Improvements for the benefit of the City and the public, and the City shall accept the In-Kind Improvements in lieu of a portion of the Project Sponsor Fee under this Agreement if this Agreement is still in effect and each of the following conditions are met:

4.2 **Operations Plan.** The non-profit organization designated the "Plaza Steward" for Dogpatch Arts Plaza pursuant to Administrative Code Chapter 94 shall prepare an Operations Plan to provide maintenance services for the life of Dogpatch Arts Plaza, including, but not limited to, gardening, and maintenance for Dogpatch Arts Plaza ("Operations Plan") prior to issuance of the first temporary certificate of occupancy for the Project. The Operations Plan shall ensure that Dogpatch Arts Plaza functions as a public open space including equal access for all members of the public with operating hours similar to similar publicly owned and operated open spaces, other rules of operation similar to other publicly owned and operated public open spaces, including allowable activities.

4.3 **Plans and Permits.** The Project Sponsor shall cause its landscape architect to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review and approval by DPW and DBI in the ordinary course of the process of obtaining a building permit for the Project (upon such approval, the "Plans"). Such review and approval of the plans and specifications of the In-Kind Improvements

by DPW and DBI shall not be unreasonably withheld, delayed or conditioned. The Project Sponsor shall be responsible, at no cost to the City, for completing the In-Kind Improvements strictly in accordance with the approved Plans and shall not make any material change to the approved Plans during the course of construction without first obtaining the Director of Planning's written approval. Upon completion of the In-Kind Improvements, the Project Sponsor shall furnish the City with a copy of the final approved plans and specifications for the In-Kind Improvements and documentation of any material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

**4.4 Construction.** All construction with respect to the In-Kind Improvements shall be accomplished prior to the First Certificate of Occupancy for the Project, including a temporary Certificate of Occupancy. The improvements shall be accomplished and in accordance with good construction and engineering practices and applicable laws. The Project Sponsor, while performing any construction relating to the In-Kind Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to the surrounding property, and the risk of injury to members of the public, caused by or resulting from the performance of such construction. All construction relating to the In-Kind Improvements shall be performed by licensed, insured and bonded contractors, and pursuant to a contract that includes a release and indemnification for the benefit of the City.

**4.5** If the Final Inspection Notice has not been completed prior to issuance of the First Certificate of Occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Cost Documentation applicable to the uncompleted In-Kind Improvements (the "Security") to be held by the City until issuance of the Final Inspection Notice, at which date it shall be returned to the Project Sponsor.

**4.6 Inspections.** The Project Sponsor shall request the customary inspections of work by DBI during construction using applicable City procedures in accordance with the City's Building Code and other applicable law. Upon final completion of the work and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify DPW that the In-Kind Improvements have been completed. DPW shall inspect the site to confirm compliance with DPW standards for streets, gutters and sidewalks. This condition will not be satisfied until the City Engineer certifies the improvements are complete and ready for their intended use. If the Final Inspection Notice has not been completed prior to issuance of the First Certificate of Occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Cost Documentation (the "Security") to be held by the City until issuance of the Final Inspection Notice, at which date it shall be returned to the Project Sponsor.

**4.7 Completion of In-Kind Improvements.** Upon final completion of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed. The Director of Planning, or his or her agent, shall inspect the site to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been completed in accordance with the requirements of this Agreement, or, if there are any problems or deficiencies, shall notify the Project Sponsor of any such problems or deficiencies (the "Inspection Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Inspection Notice and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be

unreasonably withheld. This condition will not be satisfied until the Director of Planning delivers an Inspection Notice that certifies that the In-Kind Improvements are ready for use by the public, as determined by the Director of Planning based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder (the "Final Inspection Notice"). The City may, in its sole discretion, waive the requirements of this Section 4.7.

**4.8 Evidence of Payment.** The Project Sponsor shall provide the Planning Department with documentation substantiating payment by the Project Sponsor of the cost of providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the "Payment Documentation"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same square feet of public open space, based on current value of recently completed projects.

**4.9 Satisfaction of Obligations.** The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Final Inspection Notice is delivered, the Memorandum of Agreement is recorded and the City receives any additional payments as may be required under Article 5 below, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the "Date of Satisfaction"). The Project Sponsor assumes all risk of loss during construction, and shall not receive final credit for the In-Kind Improvements until the Date of Satisfaction. Notwithstanding the foregoing, on and after the Effective Date defined in Section 5.1 below, for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement the City shall not withhold the issuance of any additional building or other permits necessary for the Project due to the Project Sponsor's payment of less than the full Project Sponsor Fee amount in anticipation of the In Kind Improvements ultimately being accepted and credited against the Project Sponsor Fee under the terms and conditions set forth in this Agreement.

## **ARTICLE 5 PAYMENT AND SECURITY**

**5.1** This Agreement shall not be effective until this Agreement is signed by both the Project Sponsor and the City, is approved as to form by the City Attorney, and is approved by the Planning Commission. The date upon which the foregoing requirements have been satisfied shall be the "Effective Date".

**5.2** The City shall provide the Project Sponsor with a written report of its review of the Payment Documentation ("Payment Analysis") within ten (10) business days of its receipt thereof, which review shall be conducted for the exclusive purpose of determining whether the Payment Documentation substantially and reasonably document that the cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same type of public open space, with comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the In-Kind Value, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City in an amount equal to the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the improvements in an amount equal to or greater than the In-Kind Value, the Project Sponsor shall not be entitled to a refund of such

overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

5.3 The City and Project Sponsor shall endeavor to agree upon the Payment Analysis. If they are unable to so agree within thirty (30) days after receipt by Project Sponsor of the City's Payment Analysis, Project Sponsor and the City shall mutually select a third-party engineer/cost consultant. The City shall submit its Payment Analysis and Project Sponsor shall submit the Payment Documentation to such engineer/cost consultant, at such time or times and in such manner as the City and Project Sponsor shall agree (or as directed by the engineer/cost consultant if the City and Project Sponsor do not promptly agree). The engineer/cost consultant shall select either the City's Payment Analysis or Project Sponsor's determination pursuant to the Payment Documentation, and such determination shall be binding on the City and Project Sponsor.

5.4 Notwithstanding anything in this Agreement to the contrary:

5.4.1 The City shall not issue or renew any further certificates of occupancy to the Project Sponsor until the City receives payment of the full Project Sponsor Fee (in some combination of the payment of the Initial Amount, the acceptance of In-Kind Improvements having the value described under this Agreement and other cash payments received by the City directly from Project Sponsor) before issuance of the First Certificate of Occupancy for the Project.

5.4.2 The City's issuance of a certificate of final completion or any other permit or approval for the Project shall not release the Project Sponsor of its obligation to pay the full Project Sponsor Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

5.4.3 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required, and after demand by the City the Project Sponsor fails to pay such amount, such amount shall accrue interest from the date of such demand at the rate of one-half percent per month, or fraction thereof, compounded monthly, until the date of payment. If such nonpayment continues for a period of six (6) months, the City's Treasurer shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the Project Sponsor Fee, including interest, a lien against all parcels used for the housing in the Project and shall send all notices required by that Article.

5.5 The Project Sponsor understands and agrees and any payments to be credited against the Project Sponsor Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails

to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

## **ARTICLE 6 MAINTENANCE AND LIABILITY**

6.1 Project Sponsor, or its successor or assignee, shall assume full maintenance and liability responsibility in perpetuity for the In-Kind Improvements contemplated in this Agreement and acknowledges that the City shall bear no maintenance responsibility or liability for the construction, maintenance, or public use of such In-Kind Improvements. Project Sponsor shall obtain all permits and approvals from other affected departments that are necessary to implement this proposal, including a major street encroachment permit from DPW if applicable, and shall abide by any conditions associated with such permits including the posting and maintenance of insurance and security. The City would not be willing to enter into this Agreement without this provision and the Project Sponsor's acceptance of all maintenance and liability responsibility in accordance with this Article is a condition of the Planning Commission's approval of the terms of this Agreement. The City and the Planning Commission acknowledge that the Project Sponsor's obligation to maintain and accept liability for the In-Kind Improvements may be assigned to a future Project tenant, tenants and/or owners, assessment districts, or other entities with the financial capacity to fulfill these obligations. Any such assignment is subject to the review and consent of the City departments with primary jurisdiction over the Improvements in consultation with the Planning Director. Such City review shall be timely and consent to the assignment not unreasonably withheld; provided, however, that the City may condition such assignment in a manner that it deems reasonable. Pursuant to Administrative Code Chapter 94, in the event a non-profit Plaza Steward is selected for Dogpatch Arts Plaza and become the licensee from DPW for use of the 19<sup>th</sup> Street right-of-way containing Dogpatch Arts Plaza, then all of the obligations and liabilities set forth in this Article 6 shall become the obligation and liabilities of the Plaza Steward and the Project Sponsor shall have no further obligations and liabilities pursuant to this Article 6.

## **ARTICLE 7 NOTICES**

7.1 Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:

CITY:

Director of Planning  
City and County of San Francisco  
1660 Mission St.  
San Francisco, CA 94103

with a copy to:

Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Kate Herrmann Stacy

PROJECT SPONSOR:

Attn: Lou Vasquez  
650 Indiana Investment LLC  
315 Linden Street  
San Francisco, CA 94102

with a copy to:

Farella Braun + Martel LLP  
235 Montgomery Street  
San Francisco, CA 94104  
Attn: Steven L. Vettel, Esq.

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

**ARTICLE 8  
RUN WITH THE LAND**

8.1 The parties understand and agree that this Agreement shall run with the Project Sponsor's land, and shall burden and benefit every successor owner of the Land. The City would not be willing to enter into this Agreement without this provision, and the parties agree to record a Memorandum of Agreement in the form attached hereto as Exhibit D (the "Memorandum of Agreement"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 9.4, this Agreement shall terminate and the City shall execute and deliver to the Project Sponsor a release of the Memorandum of Agreement, which the Project Sponsor may record.

**ARTICLE 9  
ADDITIONAL TERMS**

9.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under the Ordinance and is not intended to be a public works contract; provided, however, the Project Sponsor agrees to pay prevailing wages as set forth in Section 10.1 and otherwise comply with the requirements of applicable State law as to the In-Kind Improvements work only. By entering this Agreement, the Project Sponsor is not obligated to pay prevailing wages for the construction of the Project.

9.2 The City shall have the right, during normal business hours and upon reasonable notice, to review all books and records of the Project Sponsor pertaining to the costs and expenses of providing the In-Kind Improvements.

9.3 This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and

agreements are merged herein. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9.4 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Project's first construction document, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement and the City would have no obligation to issue the First Construction Document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under the Ordinance are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

9.5 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by the Project Sponsor, the City shall have all rights and remedies available at law or in equity.

9.6 This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of California.

9.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.

9.8 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect to any activity conducted by the Project Sponsor hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Project Sponsor. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

9.9 Notwithstanding anything to the contrary contained in this Agreement, the Project Sponsor acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Planning Commission adopts a resolution approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by City Attorney.

9.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or

damage to property occurring in, on or about Dogpatch Arts Plaza, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents in or about Dogpatch Arts Plaza. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigation. The Project Sponsor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Project Sponsor by City and continues at all times thereafter. The Project Sponsor's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

**ARTICLE 10  
CITY CONTRACTING PROVISIONS**

10.1 The Project Sponsor agrees that any person performing labor in the construction of the In-Kind Improvements shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. The Project Sponsor shall include, in any contract for construction of such In-Kind Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. The Project Sponsor shall require any contractor to provide, and shall deliver to the City upon request, certified payroll reports with respect to all persons performing labor in the construction of the In-Kind Improvements. The Project Sponsor shall not be obligated to pay prevailing rates of wage to any person performing labor in the construction of the Project.

10.2 The Project Sponsor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Project Sponsor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

10.3 In the performance of this Agreement, the Project Sponsor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Project Sponsor, in any of the Project Sponsor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Project Sponsor.

10.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with the provisions of Section 15.103 of the City's 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 constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term, the Project Sponsor shall immediately notify the City.

10.5 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

10.6 The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Project Sponsor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

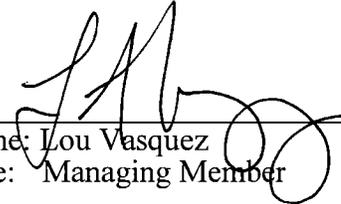
10.7 The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Planning Commission

650 INDIANA INVESTMENT, LLC, a California limited liability company

By:   
Director of Planning

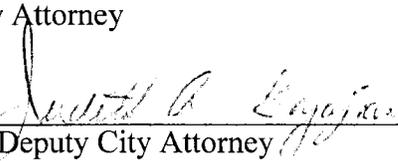
By:   
Name: Lou Vasquez  
Title: Managing Member

APPROVED:

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

FARELLA BRAUN & MARTEL, LLP

By:   
Deputy City Attorney

By:   
Steven L. Vettel

## **Exhibit A**

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Assessor's Block and Lot #: Block #4041, Lot #009.

The proposed residential development is located at block 4041, lot 009. The proposed address of the development is 660-90 Indiana Street.

The proposed improvement, Dogpatch Arts Plaza, is proposed to be located on dead-end portion of 19<sup>th</sup> Street, west of Indiana Street, on 8,000 SF of public right-of-way. UP Urban is also working with Cal Trans to provide an additional 5,800 SF of landscape improvements and potential art exhibition space on the I-280 embankment located directly west of the Plaza.

**Exhibit B**

**Calculation of Impact Fees**

**DEVELOPMENT IMPACT FEE SUMMARY**

<b>Eastern Neighborhoods Infrastructure Impact Fee</b>		
Replacement or Change of Use	\$61,482.00	
New Construction	\$976,964.40	
Total		\$1,038,446.40

## Exhibit C

### In-Kind Improvements Plans

The proposed Dogpatch Arts Plaza would convert the dead-end portion of 19th Street (west of Indiana Street) into a 13,800 square foot arts-focused public pedestrian plaza. Inspired by the popular Decompression Festival held on Indiana Street each year, the plaza would combine Burning Man's artistic spirit with the Dogpatch's industrial heritage to create an "outdoor gallery" for large-scale and industrial art.

The design of the plaza has been guided by the idea that this space should serve as the neighborhood's public living room. A bulb-out would invite pedestrian access from nearby Esprit Park and provide a buffer from Indiana Street traffic. Outside café seating and tables would fill the northern edge of the plaza, and benches would be sprinkled along its perimeter. Unique amphitheater-style seating on the west side of the plaza would create an iconic space for public events and performances and provide striking views down 19th Street. The southeast corner of the plaza would be home to a series of rotating public art pieces.

The adjacent proposed residential project at 650 Indiana includes a retail space that has been reserved for a future "art café," carefully designed to invite interaction between the new plaza and the development, bridging public and private space. UP Urban, an independent non-profit managing the development of the plaza, is working with CalTrans to provide 5,800 SF of landscape improvements and a location for additional rotating art installations on the I-280 embankment located directly to the west of the plaza.

The estimated development cost of DAP is \$1,496,919. Plant Construction Company and Nibbi Brothers General Contractors each provided professional estimates for the construction costs, based on the schematic design from CMG Landscape Architecture. UP Urban developed the full cost, adding in design, permitting, project management, contingency, and Year-1 operations costs as shown below. Note that the Year-1 Plaza Operations expenses *are not* included in the In-Kind Agreement request.

Construction costs (plaza)	\$940,932
Construction costs (CalTrans embankment)	\$247,100*
Design fees (10%) ( <i>Landscape architecture, civil engineering, etc.</i> )	\$118,803
City Fees (1%) ( <i>DPW Street Use and Major Encroachment Permits, etc.</i> )	\$11,880
Contingency (10%)	\$118,803
Project management (5%)	\$59,401
<b>Total Development Cost</b>	<b>\$1,496,919</b>
Year-1 Plaza Operations Estimated Expense	\$91,270**
<b>Total Costs</b>	<b>\$1,588,189</b>

\* *in-kind fee waiver is applied towards the plaza, not the Caltrans embankment*

\*\**not part of In-Kind Agreement request*

650 Indiana Investment LLC will contribute to the plaza the estimated \$270,000 that it would have otherwise used to design and construct the required Better Streets improvements along 19th Street, leaving a funding gap of \$1,221,919. UP and 650 Indiana Investment LLC came before the ENCAC in February 2014 to request that between 50%-99% of the residential project's EN infrastructure impact fees be converted into an in-kind donation towards the development of this plaza. At the conclusion of this meeting, the ENCAC voted to convert \$565,100 of the Project Sponsor's impact fees into an in-kind agreement, pending UP Urban's success in filling the remaining funding gap through a mix of foundation grants and crowd-sourced donations.

Further, in June 2014, the ENCAC passed a resolution supporting an additional fee waiver of \$284,900, bringing the total value of the in-kind improvements to \$850,000.

## Exhibit D

### Memorandum of Agreement

#### **RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**

**City and County of San Francisco  
Department of Planning  
1660 Mission St.  
San Francisco, CA 94103  
Attn: Director**

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(Free Recording Requested Pursuant to  
Government Code Section 27383)

#### **Memorandum of In-Kind Agreement**

This Memorandum of In-Kind Agreement (this “Memorandum”), is dated as of August 1, 2014, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the “City”), and 650 Indiana Investment LLC (the “Project Sponsor”).

1. The property described in Exhibit A attached hereto (the “Land”) and generally known as 660-90 Indiana Street, San Francisco, California 94107 is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 423.3 (“Section 423.3”), the Project Sponsor must pay to the City an Impact Fee (the “Fee”) on or before the issuance of the first construction document for the Land; provided, however, the City can reduce such payment under Section 423.3(d) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 423.3(d), the City and the Project Sponsor have entered into an in-kind agreement (the “In-Kind Agreement”), which permits the Project Sponsor to receive construction documents with the satisfaction of certain conditions in return for the Project Sponsor’s agreement to provide certain in-kind improvements under the terms and conditions set forth therein.
4. Upon the Project Sponsor’s satisfaction of the terms of the In-Kind Agreement, the In-Kind Agreement shall terminate and the City will execute and deliver to the Project Sponsor a termination of this Memorandum in recordable form.
5. The Project Sponsor and the City have executed and recorded this Memorandum to give notice of the In-Kind Agreement, and all of the terms and conditions of the In-Kind Agreement are incorporated herein by reference as if they were fully set forth herein. Reference is made to the In-Kind Agreement itself for a complete and definitive statement of the rights and obligations of the Project Sponsor and the City thereunder.

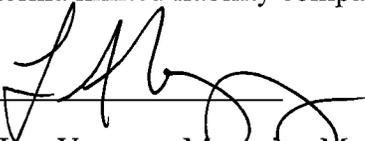
6. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the In-Kind Agreement. In the event any conflict exists between the terms of the In-Kind Agreement and this Memorandum, the terms of the In-Kind Agreement shall govern.

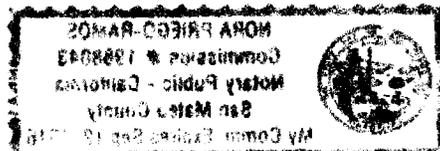
IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through its Planning Commission

By:   
Director of Planning

650 INDIANA INVESTMENT LLC, a California limited liability company

By:   
Lou Vasquez, Managing Member



CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of San Francisco

On July 22, 2014 before me,  
Nora Priego-Ramos, Notary Public  
(here insert name and title of the officer)  
personally appeared

John Rahaim

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature of Notary Public

(Notary Seal)



CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of San Francisco

On July 8, 2014 before me,  
L. Stoxen, Notary Public

(here insert name and title of the officer)

personally appeared Lou Vasquez

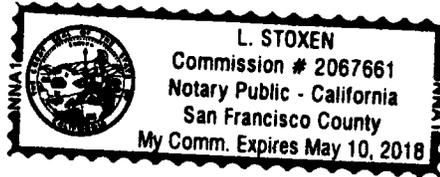
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L. Stoxen  
Signature of Notary Public

(Notary Seal)





CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,

\_\_\_\_\_  
(here insert name and title of the officer)  
personally appeared

\_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)





**Edwin M. Lee, Mayor**  
**Mohammed Nuru, Director**



**Jerry Sanguinetti, Bureau Manager**

**DPW Order No: 184286**

APPROVAL OF MAJOR ENCROACHMENT PERMIT NO. 14ME-0023 FOR BUILD, INC TO OCCUPY AND MAINTAIN A PORTION OF THE PUBLIC RIGHT-OF-WAY WITH A PUBLIC PLAZA FRONTING 660-680 INDIANA STREET ON 19<sup>TH</sup> STREET BETWEEN INDIANA STREET AND HIGHWAY 280

**APPLICANT:** Build Group, Inc.  
Attn: Katie O'Brian  
315 Linden Street  
San Francisco, CA 94102

**PROPERTY IDENTIFICATION:** 660-680 Indiana Street  
(19<sup>th</sup> Street frontage)  
San Francisco, CA 94107

**DESCRIPTION OF REQUEST:** Major Encroachment Permit 14ME-0023

**BACKGROUND:**

1. On December 3, 2014, the applicant filed a request with Public Works to consider approval of a Major Encroachment Permit to construct and maintain a new public plaza on 19<sup>th</sup> Street, west of Indiana Street in the Dogpatch neighborhood.
2. The Planning Commission Motion No. 19150, dated May 15, 2014, determined that the subject encroachment is in conformity with the General Plan.
3. The Transportation Advisory Staff Committee (TASC) had no objections from the meeting on August 27, 2015.
4. Upon reviewing and receiving positive recommendation from other City Departments, San Francisco Public Works scheduled a public hearing on November 4, 2015 to consider the proposed encroachment.
5. On October 22, 2015 a copy of the Notice of Public Hearing was mailed to all property owners within a 300-foot radius of the subject property.
6. No objections or queries were received by the Department.
7. On November 4, 2015, Hearing Officer Rinaldi Wibowo conducted a hearing to consider the proposed encroachment.
8. No public testimony was presented at the public hearing in favor of or in opposition to the proposed encroachment.



9. Upon hearing the above testimony and reviewing the application, reports, plans, and other documents contained in the Public Works files, the Hearing Officer informed the attendees that he will make his recommendation to the Department following the hearing.

**RECOMMENDATION:** CONDITIONAL APPROVAL of the request for the Major Encroachment Permit with transmittal to the Board of Supervisors for approval based on the following conditions and findings:

**CONDITION OF APPROVAL:** The Applicant shall fulfill all permit requirements of the Major Encroachment Permit.

**FINDING 1.** The Planning Department determined that the subject encroachment is in conformity with the General Plan

**FINDING 2.** All required City Agencies provided review and no further comment to the overall encroachment

12/10/2015

X



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Sanguinetti, Jerry  
Bureau Manager  
Signed by: Sanguinetti, Jerry

12/11/2015

X



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Sweiss, Fuad  
Deputy Director and City Engineer

12/11/2015

X

Mohammed Nuru

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Nuru, Mohammed  
Director, DPW  
Signed by: Nuru, Mohammed





# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 19566

*Date:* February 11, 2016  
*Case No.:* 2013.1390IKA  
*Project Address:* **1532 Harrison Street**  
*Plan Area:* Western Soma Area Plan  
*Project Sponsor:* Michael Yarne, Build, Inc.  
Brooke Ray Smith  
Build Public  
315 Linden Street  
San Francisco, CA 94102

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Staff Contact:* Mat Snyder (415) 575-6891  
*Mathew.snyder@sfgov.org*

**APPROVING AN IMPACT FEE WAIVER FOR 1532 HARRISON STREET IN THE AMOUNT OF \$1,505,878 TO PROVIDE STREETScape, PEDESTRIAN SAFETY, AND PUBLIC SPACE IMPROVEMENTS ON HARRISON STREET BASED ON THE COMPLETION OF AN IN-KIND AGREEMENT BETWEEN THE PROJECT SPONSOR AND THE CITY; AND RECOMMENDING THAT THE BOARD OF SUPERVISOR ADOPT AN ORDINANCE THAT WOULD ACCEPT ANY ADDITIONAL VALUE OF THE IN-KIND IMPROVEMENTS ABOVE THE FEE WAIVER AMOUNT AND OVERRIDE THE PLANNING CODE'S RESTRICTION OF AN IN-KIND IMPROVEMENT HAVING A VALUE GREATER THAN THE FEE WAIVER AMOUNT .**

### **PREAMBLE**

On January 19, 2009 the Eastern Neighborhoods Plan became effective, including now Section 423.3 of the San Francisco Planning Code, the Eastern Neighborhoods Infrastructure Impact Fee applicable to all projects in the plan area, including the subject property. The Planning Code also enabled project sponsors to seek a waiver from the impact fees when providing public improvements through an In-Kind Agreement with the Planning Department.

On October 1, 2015, the Planning Commission granted approval to the project proposed for 1532 Harrison Street. The project consists of a new seven-story 65-foot tall, mixed-use building with 136 dwelling units and about 1,600 square feet of ground floor commercial space for a total of about 128,000 gsf.

On January 21, 2015, the Project Sponsor, Build, Inc., filed an application with the City for approval of an In-Kind Agreement for provision of streetscape, pedestrian safety, and public space improvements on 12th Street between Harrison and Bernice (Project). The space is proposed to be called "Eagle Plaza", which is named after the Eagle Tavern, which is immediately adjacent to it across from the development site. The proposal included restricting vehicular circulation to prioritize the space for pedestrians.

On September 16, 2015, in Motion 2015-09-03, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution supporting the proposed improvements for the Eagle Plaza In-Kind Agreement. The EN CAC's motion is attached. .

**MOVED**, that the Commission hereby authorizes the Eastern Neighborhoods Community Impact Fee Waiver 1532 Harrison Street in the amount of \$1,505,878.

**FURTHER MOVED**, that the Commission hereby recommends to the Board of Supervisors that they adopt an Ordinance that would accept the additional value of the in-kind improvements as a gift and would override the Planning Code's restriction of an in-kind improvement having a value greater than the fee waiver amount.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. The proposed In-Kind Agreement is consistent with the Planning Code Section 423.3.
3. **In-Kind Agreement Approval Criteria.** The proposed improvements would present a suitable priority for an In-Kind Agreement to satisfy portions of the Area Plan infrastructure impact fees as they meet the following criteria established in the Planning Commission approved "Procedures of In-Kind Agreements".
  - Improvement Fulfills the Purpose of Community Improvements: Per Planning Code section 423.3(d) (which describes in-kind improvements under the EN Impact Fee Fund) open space, such as plazas, are eligible for funding.
  - The Infrastructure Type is Identified in the Fee Ordinance: The plaza project falls under the "Open Space and Recreation" category of improvements in the Eastern Neighborhoods Impact Fee Fund, and therefore is eligible.
  - The Expenditure Category for Infrastructure Type is Not Exhausted: The "Open Space and Recreation" category of funds have not been exhausted.
4. **Priority Improvements.** The proposed improvements are a priority for the Plan Area as they meet the following criteria:
  - Improvement is identified in the Five Year Capital Plan; Improvement does not Compete with a CAC and IPIC Endorsed Improvement:

*This project had not been specifically listed in the IPIC Report; however, funds allocated here would not be removed from any specifically identified project, including general funds.*
  - CAC Supports the Proposed Improvement:

*The Eastern Neighborhoods CAC approved a resolution in September 2015 supporting the improvements in an amount of \$1,505,878.*

- Efficiencies are Gained Through Coordination with Development Project:

*Project sponsors can utilize the construction tools and labor already working onsite for the 1532 Harrison Street to deliver the improvements in a more timely and efficient manner. The project would be timed with the development of the adjacent development and delivered no later than when the development is ready for occupancy. The project could be built in conjunction with the development project, resulting in less disruption from construction than if the project were independently built at another time.*

5. **Other City Agency Review.** The Project is recommended by the Planning Department and has been reviewed by other public agencies, including the Department of Public Works and SFMTA. The Street Design Advisory Team, a multi-agency multi-disciplinary review team chaired by Planning, reviewed the project twice and is supportive of the concept design.
6. **Other Required City Actions.** The creation of the plaza will require additional actions from other City Agencies, including but not necessarily limited approval of a Major Encroachment Permit, Street Improvement Permit, removal of on-street parking, the relocation of mapped curb lines, and possibly the vacation of the right-of-way. These approvals are required in addition to this approval and the finalization of an In-Kind Agreement between the City and Project Sponsor.
7. **Additional Value of Improvements to be Gifted to the City.** The subject improvements are anticipated to cost \$2,027,933, which is \$522,055 over the fee waiver value. Of this amount, \$122,055 would have otherwise been required through the Planning Code Section 138.1 ("The Better Streets Requirement") leaving about \$400,000 that would need to be gifted to the City. The in-kind value above the fee waiver amount will need to be officially accepted as a gift by the Board of Supervisors. Because the Planning Code generally does not allow the value of the improvements to be greater than the value of the fee waiver, the Board of Supervisors Ordinance accepting the gift would also have to officially override the Planning Code for this case. Eagle Plaza is a broad community effort that has several funding sources, of which this in-kind agreement and fee waiver is one. Limiting the scope of the improvements to match the value of the in-kind would inadvertently limit the full potential of the project and the aspirations of community members who have planned, raised money, and advocated for it.
8. The Project Sponsor has indicated that it is their intention to create a Mello Roos District and non-profit governing entity thereto as a means of funding and performing ongoing maintenance. The Project Sponsor acknowledges that the City department with jurisdiction over Eagle Plaza and the Board of Supervisors will need to approve such approach in their sole and respective discretion and may impose additional conditions and obligations on the project or its design under such circumstances. A Declaration of Maintenance Covenant and an attached scope of work, similar to the one related to Daggett Street open space (Case No. 2003.0527U), could be recorded against the property of 1532 Harrison Street at the election of the Department of Public Works or any future City department with jurisdiction over Eagle Plaza to assure its ongoing maintenance. As part of subsequent City department processing of this project, the City department with jurisdictional authority over Eagle Plaza may elect to proceed with a similar document and incorporate it into the encroachment agreements or other required City approvals from the Department of Public Works or

any future City department with jurisdiction over Eagle Plaza. Nothing in this motion is intended to bind any City department or the Board of Supervisors from taking any action that it deems appropriate and is within the discretion of that City department or Board in regard to the design of and proposal for Eagle Plaza.

9. **General Plan Compliance.** The Proposed Project is, on balance, consistent with the following Objectives and Policies of the General Plan. All required City approval actions where General Plan findings are required, including but not limited to a major encroachment permit and curb relocation legislation, may rely on findings below:

The proposed In-Kind improvements support the General Plan by implementing the below policies and objectives.

**WESTERN SOMA AREA PLAN**

**OBJECTIVE 4.4** ENSURE A MINIMUM LEVEL OF SAFETY ON NEIGHBORHOOD-SERVING STREETS.

Policy 4.2.2 Introduce traffic calming measures that promote pedestrian and bicycle transportation and safety.

**OBJECTIVE 4.5** DESIGN NEIGHBORHOOD-SERVING STREETS ACCORDING TO LOCAL NEEDS AND DESIRES.

*The Eagle Plaza proposal will meet the above objectives and policies in that the project sponsor has worked closely with the local community in proposing and designing the plaza in making sure that local needs are reflected in its design and programming.*

**OBJECTIVE 6.6** PROVIDE PUBLIC INFORMATION AND EDUCATION ABOUT HISTORIC AND SOCIAL HERITAGE RESOURCES.

Policy 6.6.5 Explore new strategies, including the use of public art, for integrating social history into traditional historic preservation.

*The proposed plaza will be anchored by Eagle Tavern, which is considered an important business establishment for the LGBT community. The Project Sponsor has indicated that they will continue to work with the local community in finding ways to celebrate and curate the LGBT's history within the South of Market neighborhood.*

**OBJECTIVE 7.3** IMPROVE THE NEIGHBORHOOD'S PUBLIC REALM CONDITIONS.

Policy 7.3.2 Redesign underutilized portions of streets and public open spaces, including widened sidewalks and medians, curb bulb-outs, "living streets", or green connector streets.

Policy 7.3.4            Require new development to improve adjacent street frontages, employing established street design standards.

*The proposed Eagle Plaza will clearly improve the immediate area with an increased space dedicated to pedestrian and open space, so that the public right-of-way is not only a space to move through but to dwell within. The proposal is to provide flexible space that can be programmed in different ways for different needs and for different events. The Project Sponsor is required to improve the immediate sidewalk space to Better Streets standards pursuant to the Planning Code. The cost of such improvements has been deducted from the value of the in-kind so that value of the required improvements are incorporated in the value of the fee waiver.*

**URBAN DESIGN ELEMENT**

OBJECTIVE 4            IMPROVE OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT PRIVDE AND OPPORTUNITY.

Policy 4.11            Make use of street space and other unused public areas for recreation, particularly in dense neighborhoods, such as those close to downtown, where land for traditional open spaces is more difficult to assemble.

**RECREATION AND OPEN SPACE ELEMENT**

OBJECTIVE 3            IMPROVE ACCESS AND CONNECTIVITY TO OPEN SPACE

Policy 3.1            Creatively develop existing publicly-owned right-of-ways and streets into open space.

*The proposed Eagle Plaza would repurpose underutilized public right-of-way to open space thereby implementing the above Urban Design and Recreation and Open Space objectives and policies.*

OBJECTIVE 6            SECURE LONG-TERM RESOURCES AND MANAGEMENT FOR OPEN SPACE ACQUISITION, AND RENOVATION, OPERATIONS, AND MAINTENANCE OF RECREATIONAL FACILITIES AND OPEN SPACE.

Policy 6.1            Pursue and develop innovative long-term funding mechanisms for maintenance, operation, renovation and acquisition of open space and recreation.

*The Project Sponsor has indicated its plan to establish a Mello Roos District to fund and operate the plaza. Approvals for the plaza will be required by Public Works and/or other agencies having jurisdiction over the plaza. Through these approvals, ongoing maintenance plans and funding plans for said maintenance will be required. Furthermore, the Project Sponsor acknowledges that the City could require that it participate in the City's Plaza Program whereby the programming of the plaza is turned over to a third party to assure that it is sufficiently maintained and is managed as a public resource.*

10. **Planning Code Sections 101.1 Findings.** The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed project will have no adverse effects on neighborhood-serving retail uses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed project will protect and enhance the existing neighborhood character by creating a public plaza and improving the public life in the neighborhood.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed project will have no adverse effects on the City's supply of affordable housing.*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed project would not impede MUNI transit service.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed project would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The proposed project would not affect the preparedness against injury and loss of life in an earthquake is unaffected.*

- G) That landmark and historic buildings will be preserved:

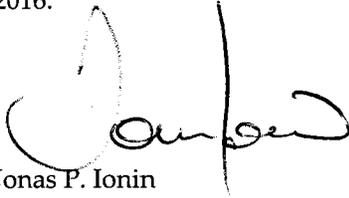
*The proposed project would not adversely affect landmark and historic buildings.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed project will not affect access to sunlight and vistas in parks and open spaces.*



I hereby certify that the foregoing Motion was adopted by the Planning Commission on February 11, 2016.



Jonas P. Ionin  
Commission Secretary

AYES: Fong, Antonini, Hillis, Moore, Richards

NAYS: None

ABSENT: Wu, Johnson

ADOPTED: February 11, 2016

EXHIBIT A  
CONDITIONS OF APPROVAL

1. This fee waiver is to enable the construction of "Eagle Plaza", which will be located in front of the 1532 Harrison Street development site within the 12<sup>th</sup> Street right-of-way between Bernice and Harrison Street. The Plaza shall be constructed in general conformity with the Plans labeled "Exhibit B" to this Motion. However, it is acknowledged that final approval for design of the plaza rests with the Department of Public Works and any other agencies having jurisdiction over the proposed plaza space. Should these subsequent approvals result in a material change to the design or costs and fee waivers associated with this project, staff will seek Planning Commission approval of an amended in-kind agreement. Currently the proposal is to maintain 12<sup>th</sup> Street as a right-of-way, but the Project Sponsor could seek to vacate the right-of-way and create a City-owned parcel on which the plaza would be located. In such a case, the vacation process would be subject to approvals from the Department of Public Works, and the Board of Supervisors, among other possible Agencies. This fee waiver approval would remain valid in such case as long as the plaza includes typical access provisions as other City parks and plazas.
2. The Project Sponsor acknowledges that the City may seek to include the Eagle Plaza in the San Francisco Plaza Program established under Administrative Code Chapter 94, whereby the City will assign responsibility for Eagle Plaza's ongoing programming to plaza steward through an RFP process or a Plaza Encroachment Permit holder selected under Public Works Code Section 792. Among other things, this is to assure sufficient plaza activation and that the plaza is programmed as a public space.

1 [Street Encroachment Permit - Eagle Plaza on a Portion of 12th Street at Harrison Street]

2  
3 **Resolution granting revocable permission to 1532 Harrison Owner, LLC, the property**  
4 **owner of 1532 Harrison Street (Assessor's Parcel Block No. 3521, Lot No. 055-056), to**  
5 **install, occupy, and maintain a portion of the 12th Street public right-of-way, between**  
6 **Harrison Street and Bernice Street, with a LGBTQ leather-focused public pedestrian**  
7 **plaza space and a two-lane roadway; conditionally accepting an offer of public**  
8 **improvements and dedicating the improvements to public use; adopting environmental**  
9 **findings under the California Environmental Quality Act; and making findings of**  
10 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
11 **Section 101.1.**

12  
13 WHEREAS, Pursuant to Public Works Code, Sections 786 et seq., 1532 Harrison  
14 Owner, LLC, (hereafter referred to as "Permittee") requested permission to occupy an  
15 approximately 12,500 square foot portion of the public right-of-way to install and maintain  
16 along 12th Street between Harrison and Bernice Streets a LGBTQ leather-focused public  
17 pedestrian plaza space on a two-lane roadway with landscaping, sidewalk widening, and bulb-  
18 outs (hereafter referred to as "Eagle Plaza") fronting 1532 Harrison Street (Assessor's Parcel  
19 Block No. 3521, Lot No. 055-056); and

20 WHEREAS, The more detailed improvements at Eagle Plaza include, but are not  
21 limited to, the following: widened sidewalks; sidewalk landscaping; trees; irrigation; 12th Street  
22 roadway realignment from three lanes with parking on each side to two lanes with no parking;  
23 special roadway paving; colored crosswalks; removable bollards in the roadway along the  
24 crosswalks at Harrison and Bernice Streets; mid-block ADA crossing at the south side of 12th  
25

1 Street with detectable warning surface and bollards; flag pole; street lights; electrical outlets;  
2 and temporary seating (collectively referred to as the “Encroachments”); and

3 WHEREAS, The Permittee will construct Eagle Plaza under a separate Public Works  
4 street improvement permit in conjunction with the adjacent residential development, which  
5 consists of three seven-story residential buildings at 1532 Harrison Street; and

6 WHEREAS, The Permittee has agreed to maintain the Encroachments for the life of  
7 the Major Encroachment Permit; and

8 WHEREAS, The Planning Commission, on October 8, 2015, in Motion No. 19488,  
9 determined that the actions contemplated in this resolution comply with the California  
10 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) and  
11 adopted findings in regard to the Encroachments (“Environmental Findings”); and

12 WHEREAS, The Planning Commission, on February 11, 2016, in Motion No. 19566,  
13 authorized an In-Kind Agreement for Eagle Plaza; and

14 WHEREAS, The Planning Department, in a letter dated July 16, 2018, (“Planning  
15 Department Letter”), found that the Encroachments are in conformity with the General Plan,  
16 and are consistent with the eight priority policies of Planning Code, Section 101.1; and

17 WHEREAS, The Permittee has submitted an irrevocable offer of improvements for the  
18 subject Permit dated January 29, 2019 in accordance with the terms of an In-Kind Agreement  
19 that the Planning Director approved on February 8, 2018; and

20 WHEREAS, Copies of Planning Commission Motion Nos. 19488 (adopting  
21 Environmental Findings) and 19566 (approving the In-Kind Agreement), the In-Kind  
22 Agreement dated February 8, 2018, and the irrevocable offer are on file with the Clerk of the  
23 Board of Supervisors in File No. 190053 and incorporated herein by reference; and

24 WHEREAS, The Transportation Advisory Staff Committee, at its meeting of July 26,  
25 2018, recommended approval of the Encroachments; and,

1           WHEREAS, The Permittee has designed San Francisco Public Utilities Commission  
2 (“SFPUC”) facilities in conformance with the San Francisco Stormwater Design Guidelines  
3 and SFPUC policies; and

4           WHEREAS, After a public hearing on August 8, 2018, Public Works (“PW”) issued PW  
5 Order No. 188111, dated August 8, 2018, recommending Board of Supervisors (“Board”) approval of the Encroachments; and

6           WHEREAS, In PW Order No. 200452, dated January 4, 2019, PW recommended to  
7 the Board that it approve both the Encroachments and a Major Encroachment Permit  
8 Maintenance Agreement for the maintenance of the Encroachments (collectively, the  
9 “Permit”); and

10           WHEREAS, In PW Order No. 200452, the Director determined under Public Works  
11 Code Section 786.7(f)(4) that the public right-of-way occupancy assessment fee shall be  
12 waived because the Encroachments are associated with a Planning Commission In-Kind  
13 Agreement; and

14           WHEREAS, In PW Order No. 200452, the Director also determined and City Engineer  
15 certified that the annual maintenance cost for the Permit is \$42,548.00; and

16           WHEREAS, Copies of PW Order Nos. 188111 and 200452 and the Permit are on file  
17 with the Clerk of the Board of Supervisors in File No. 190053 and incorporated herein by  
18 reference; and

19           WHEREAS, The final approved Permit shall be in substantially the same form as that in  
20 the Clerk of the Board of Supervisor’s file; and

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

22           (1) The Permittee executes and acknowledges the Permit and delivers said  
23 Permit and all required documents and fees to Public Works, and  
24  
25

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

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

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

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

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

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

17 WHEREAS, No structures shall be erected or constructed within the public right-of-way  
18 except as specifically permitted herein; now, therefore, be it

19 RESOLVED, The Board adopts the Environmental Findings in Planning Commission  
20 Motion No. 19488 as its own; and be it

21 FURTHER RESOLVED, That the Board finds that the Permit is consistent with the  
22 General Plan, and the eight priority policies of Planning Code, Section 101.1 for the reasons  
23 set forth in the July 16, 2018, Planning Department Letter; and, be it

24 FURTHER RESOLVED, Pursuant to Public Works Code, Sections 786 et seq., the  
25 Board hereby grants revocable, personal, non-exclusive, and non-possessory permission to

1 the Permittee, 1532 Harrison Owner, LLC, to occupy the public right-of-way with the  
2 Encroachments and install and maintain said Encroachments under the terms of the Permit;  
3 and, be it

4 FURTHER RESOLVED, The Board accepts the recommendations of the PW Order  
5 Nos. 188111 and 200452 and approves the Permit with respect to the Encroachments; and,  
6 be it

7 FURTHER RESOLVED, The Board, under Public Works Code, Section 786.7(f)(4),  
8 acknowledges waiver of the public right-of-way occupancy assessment fee in accordance with  
9 the PW Director's determination; and, be it

10 FURTHER RESOLVED, The Board hereby conditionally accepts the irrevocable offer  
11 of improvements, dated January 29, 2019, related to this Permit subject to completion in  
12 accordance with all City permit requirements, and dedicates said improvements to public use  
13 subject to the Permittee's obligations and responsibilities under this Permit; and, be it

14 FURTHER RESOLVED, The Board also authorizes the PW Director to perform and  
15 exercise the City's rights and obligations with respect to the Encroachments under the Permit  
16 and to enter into any amendments or modifications to the Permit with respect to the  
17 Encroachments; and, be it

18 FURTHER RESOLVED, Such actions may include without limitation, those  
19 amendments or modifications that the PW Director, in consultation with the City Attorney,  
20 determines are in the best interest of the City, do not materially increase the obligations or  
21 liabilities of the City or materially decrease the obligations of the Permittee or its successors,  
22 are necessary or advisable to effectuate the purposes of the Permit or this resolution with  
23 respect to the Encroachments, and are in compliance with all applicable laws.

24  
25 n:\landuse\jmalamut\dpw\encroach\eagle plaza final reso.docx



City and County of San Francisco

Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 190053

Date Passed: February 12, 2019

Resolution granting revocable permission to 1532 Harrison Owner, LLC, the property owner of 1532 Harrison Street (Assessor's Parcel Block No. 3521, Lot No. 055-056), to install, occupy, and maintain a portion of the 12th Street public right-of-way, between Harrison Street and Bernice Street, with a LGBTQ leather-focused public pedestrian plaza space and a two-lane roadway; conditionally accepting an offer of public improvements and dedicating the improvements to public use; adopting environmental findings under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

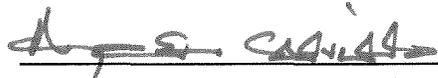
February 04, 2019 Land Use and Transportation Committee - RECOMMENDED

February 12, 2019 Board of Supervisors - ADOPTED

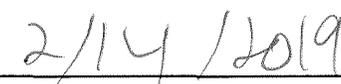
Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

File No. 190053

I hereby certify that the foregoing Resolution was ADOPTED on 2/12/2019 by the Board of Supervisors of the City and County of San Francisco.

  
Angela Calvillo  
Clerk of the Board

  
London N. Breed  
Mayor

  
Date Approved

**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 1532 Harrison Owner, LLC (the “**Permittee**”), on this date, JANUARY 14, 2019. 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”):** 17ME-0008 under Public Works Code Section 786(b).

Other Public Works Permit number(s) if Public Works allowed construction prior to Board of Supervisors approval of the Encroachment Permit: Street Improvement Permit 17IE-1063.

**2.2 Description/Location of Fronting Property (See Attachment 1):** 1532 Harrison Street, Assessor’s Block/Lot: 3521/055-056

**2.3 Description/Location of Permit Area (See Attachment 2):** Approximately 12,500 square feet on the 12<sup>th</sup> Street right of way between Harrison and Bernice Streets

**2.4 General Description of Proposed Improvements (See Attachment 2):** Eagle Plaza’s site improvements consist of sidewalk and roadway paving, landscaping, irrigation, flag pole, bollards, lighting, electrical outlets, hose bibs and temporary seating.

*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 and Street Improvement Permit (Permit No. 17IE-1063) for Eagle Plaza.

**2.6 Developer/Builder/Owner of the Fronting Property:** 1532 Harrison Owner, LLC, a limited liability company

**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: Vasquez, Lou \_\_\_\_\_  
 Title/Relationship to Owner: Owner \_\_\_\_\_  
 Phone Numbers: 415.551.7613 \_\_\_\_\_  
 Email Addresses: lou@bldsf.com \_\_\_\_\_  
 Mailing Address: 315 Linden Street, San Francisco CA, 94102 \_\_\_\_\_  
 Office Address: 315 Linden Street, San Francisco CA, 94102 \_\_\_\_\_

Contact Person Number 2

Last Name, First Name: Rivera, Brooke Ray \_\_\_\_\_  
 Title/Relationship to Owner: Director of Place Lab, San Francisco Parks Alliance \_\_\_\_\_  
 Phone Numbers: 415.906.6238 \_\_\_\_\_  
 Email Addresses: brookeray@sfparksalliance.org \_\_\_\_\_  
 Mailing Address: 1663 Mission Street, Suite 320, San Francisco CA, 94103 \_\_\_\_\_  
 Office Address: 1663 Mission Street, Suite 320, 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: Operations Manual. Permittee shall submit a document or manual describing how to operate any specialized equipment necessary for continued operation of the Improvements along with manufacturer’s instructions for operation and maintenance (“**O&M Manuals**”) and other pertinent information about the equipment. These documents are for Public Works file purposes and not attached to this Agreement. The City Engineer, in his or her discretion, may allow the Permittee to defer submission of the Operations Manual until completion of the Improvements in accordance with the Construction Plans.

The City Engineer shall review and certify the description of the Permit Area (Attachment 2), Maintenance Plan (Attachment 3), and O&M Manuals (Attachment 4). 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. Within 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 regular 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: 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 Director shall not require the maintenance monitoring set forth in this Section.

#### 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.

**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, and in accordance with any other applicable City permits. Permittee shall reimburse the Department for 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. Following receipt of a notice by the Department of an unsafe, damaged, or blighted condition of the Permit, Permittee shall promptly 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.

## **5.5 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 promptly, 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 shall only seek or pursue compensation for work performed (time and materials) and shall not seek or request compensation for coordination or the inability to use of 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 of 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, 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 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.

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. 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**

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 to 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, 1155 Market Street, 3rd Floor, 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. 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 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, 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:

- (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. 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 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 14th day of JANUARY, 2019.

PERMITTEE:

1532 Harrison Owner, LLC.

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

  
Fronting Property Owner or Official  
authorized to bind Permittee

\_\_\_\_\_  
John Thomas  
City Engineer of San Francisco

(Lou Vasquez, 1532 Harrison Owner LLC)

\_\_\_\_\_  
Secondary Official authorized to bind  
Permittee

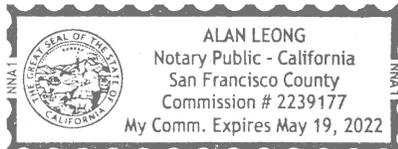
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Mohammed Nuru  
Director of Public Works

(Brooke Ray Rivera, San Francisco Parks  
Alliance)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California County of San Francisco )ss.  
On 1/14/19 before me, Alan Leong, Notary Public,  
personally appeared Louis Antonio Vasquez  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument. I certify under PENALTY OF  
PERJURY under the laws of the State of California that the foregoing paragraph is true  
and correct. WITNESS my hand and official seal.





In witness whereof the undersigned Permittee(s) have executed this agreement this 14th day of JANUARY, 2019.

PERMITTEE:

1532 Harrison Owner, LLC.

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

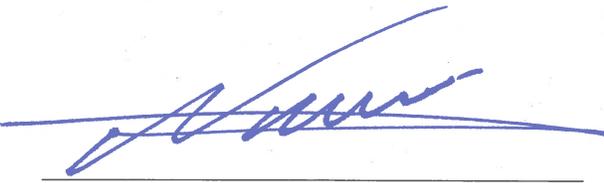
Fronting Property Owner or Official  
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(Lou Vasquez, 1532 Harrison Owner LLC)

  
\_\_\_\_\_  
John Thomas  
City Engineer of San Francisco

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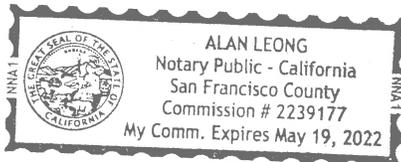
(Brooke Ray Rivera, San Francisco Parks  
Alliance)

  
\_\_\_\_\_  
Mohammed Nuru  
Director of Public Works

A notary public or other officer completing this certificate certifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California, County of San Francisco,  
On 1/14/19 before me, Alan Leong, Notary Public,  
personally appeared Brooke Ray Rivera  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument. I certify under PENALTY OF  
PERJURY under the laws of the State of California that the foregoing paragraph is true  
and correct. WITNESS my hand and official seal.







1234

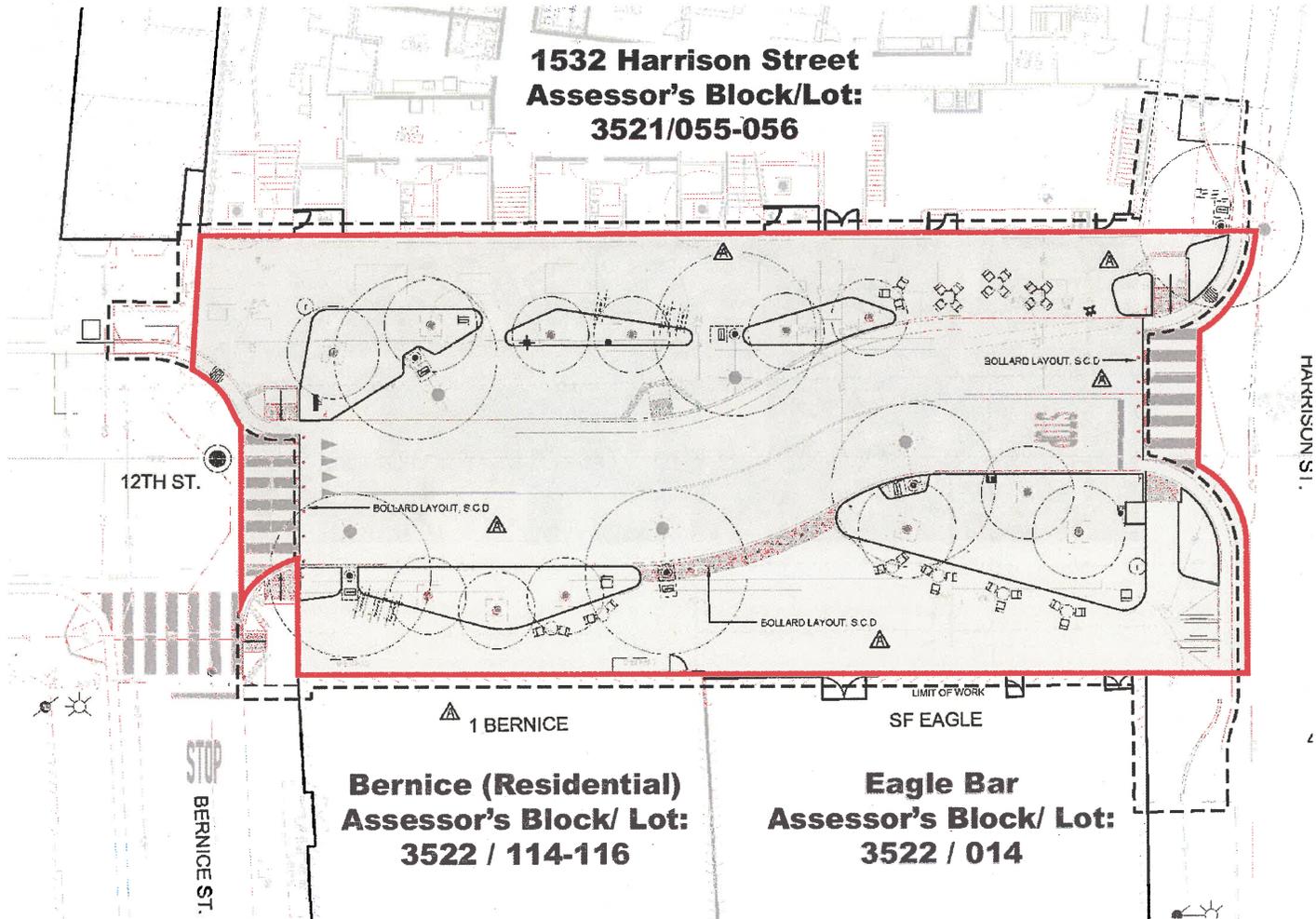
**ATTACHMENT 1**  
**DESCRIPTION/LOCATION OF PERMITTEE'S PROPERTY**

1532 Harrison Owner, LLC is the permittee and property owner of 1532 Harrison Street, Assessor's Block/Lot: 3521/055-056, fronting the Major Encroachment area.



## ATTACHMENT 2 DESCRIPTION/LOCATION OF PERMIT AREA AND THE IMPROVEMENTS

The permit area of Eagle Plaza is approximately 12,500 square feet, located on the full width of the 12<sup>th</sup> Street right of way between Harrison and Bernice Streets in San Francisco's Western SoMa neighborhood. The site improvements consist of sidewalk and roadway paving, landscaping, irrigation, flag pole, bollards, lighting, electrical outlets, hose bibs and temporary seating.



 **Limit of Encroachment**

**MATERIALS AND MAINTENANCE SCHEDULE**

SYMBOL	DESCRIPTION	RESPONSIBLE PARTIES	MAINTENANCE RESPONSIBILITIES	QUANTITY
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**STREET TREES**

	STREET TREE	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO REMOVE FOREIGN MATTER FROM TREE CONTAINERS SURROUNDING TREES BEFORE 8:00 AM DAILY. TREE MAINTENANCE, AS NEEDED, WEEKLY. TRIM TREES ANNUALLY UNLESS NEEDED ON A MORE REGULAR BASIS OR AS REQUIRED ON A CASE-BY-CASE BASIS.	12
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**LANDSCAPING**

	PLANTING AREA	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO PRUNE BACK SHRUBS, WATER ALL PLANTS, COLLECT DEAD LEAVES, PRUNE GROUND COVER, REMOVE WEEDS & REPLACE MULCH OR ROCKS WHEN APPLICABLE. CHECK IRRIGATION SYSTEM, AND CHECK PLANTS FOR SIGNS OF DISEASE OR STRESS WEEKLY.	8
	STORM DRAINAGE SYSTEM: (including area drains & sand trap)	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO CLEAR DEBRIS FROM TREE WHEELS, CHECK DRAIN COVERS AND IRRIGATION SYSTEM WEEKLY. MAKING REPAIRS WHEN APPLICABLE.	
	IRRIGATION SYSTEM	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO CLEAR DEBRIS FROM TREE WHEELS, CHECK DRAIN COVERS AND IRRIGATION SYSTEM WEEKLY. MAKING REPAIRS WHEN APPLICABLE.	

**STREET FURNISHINGS**

	BIKE RACK (Plaza Area): SFMTA STANDARD	CITY	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	10
	STREET LIGHT (Plaza Area): SF CITY STANDARD (including conduits/cables)	CITY	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY.	5
	REMOVABLE CAFÉ TABLE (OSCI)	PERMITTEE	OWNER PROVIDED MANAGEMENT GROUP TO SET-UP & STORE MATERIALS WHEN APPLICABLE. GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	10
	REMOVABLE CHAIR (OSCI)	PERMITTEE	OWNER PROVIDED MANAGEMENT GROUP TO SET-UP & STORE MATERIALS WHEN APPLICABLE. GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	30
	REMOVABLE BOLLARDS (w/ keyed lock & reflective stripe)	PERMITTEE	OWNER PROVIDED MANAGEMENT GROUP TO SET-UP & STORE MATERIALS WHEN APPLICABLE. GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	19
	SIDEWALK TRASHCAN: SF CITY STANDARD	CITY	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. CLEAN TRASH BINS WEEKLY. EMPTY TRASH & RELINE BINS AS APPROPRIATE.	2

	MONUMENT SIGN	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	1
	FLAG POLE (OSCI)	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	1
	OUTDOOR GFCI POWER PEDESTAL (2 outlets): (including conduit and cable)	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	1
	HOSE BIB	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO INSEPECT FOR GRAFFITI, WIPE CLEAN ALL FIXED PLAZA ELEMENTS & SURFACES DAILY. APPLY ANTI-GRAFFITI COATING TO ALL SURFACES EVERY TWO YEARS.	1

PAVING

	PAVEMENT STRIPING	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO SWEEP OR BLOW CLEAN ALL WALKWAYS, CURBS & GUTTERS WITHIN AND AROUND PUBLIC RIGHT-OF-WAY DAILY. POWER WASH ALL SIDEWALKS AND PAVED AREAS (2) TIMES A WEEK AND AS NEEDED DURING ANY RAINY SEASON.	
	PEDESTRIAN SECTION CONCRETE PAVING W/ SAWCUT SCORE JOINTS: SF CITY STANDARD PAVEMENT SECTION	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO SWEEP OR BLOW CLEAN ALL WALKWAYS, CURBS & GUTTERS WITHIN AND AROUND PUBLIC RIGHT-OF-WAY DAILY. POWER WASH ALL SIDEWALKS AND PAVED AREAS (2) TIMES A WEEK AND AS NEEDED DURING ANY RAINY SEASON.	
	CONCRETE SIDEWALK: SF CITY STANDARD	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO SWEEP OR BLOW CLEAN ALL WALKWAYS, CURBS & GUTTERS WITHIN AND AROUND PUBLIC RIGHT-OF-WAY DAILY. POWER WASH ALL SIDEWALKS AND PAVED AREAS (2) TIMES A WEEK AND AS NEEDED DURING ANY RAINY SEASON.	
	VEHICULAR SECTION CONCRETE PAVING W/ SAWCUT SCORE JOINTS: SF CITY STANDARD PAVEMENT SECTION	PERMITTEE	OWNER PROVIDED GENERAL LABOR TO SWEEP OR BLOW CLEAN ALL WALKWAYS, CURBS & GUTTERS WITHIN AND AROUND PUBLIC RIGHT-OF-WAY DAILY. POWER WASH ALL SIDEWALKS AND PAVED AREAS (2) TIMES A WEEK AND AS NEEDED DURING ANY RAINY SEASON.	

CIVIL: SANDIS  
 LANDSCAPE: BIONIC  
 IRRIGATION: RUSSEL D. MITCHELL & ASSOCIATES  
 JOINT TRENCH: GIACALONE

1532 HARRISON  
 (EAGLE PLAZA)

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

**Maintenance Plan.**

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.

I. DAILY SERVICES. (General laborer at 0.5 hours per day, 7 days per week, at a rate of \$20 per hour)

The Encroachment Permit area and its perimeter is to be kept clean and neat, free from trash, debris, fallen leaves and waste. Each day Owner is expected to perform the following minimum cleaning operations:

A. General Maintenance

1. Wipe and clean all fixed plaza elements including seating, lighting, flag pole, signs and other surfaces.
2. Remove foreign matter from sidewalks and tree containers surrounding trees before 8:00 am.
3. Sweep or blow clean all walkways, curbs and gutters within and around Public Right-of-Way.
4. Inspect for graffiti daily and remove graffiti within the earlier to occur of the following: (1) forty-eight hours of discovery by Owner or (2) upon receiving any written City request for such removal; "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement on the Public Right-of-Way, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards or fencing, without the consent of the City or its authorized agent. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; (2) any mural or other painting authorized to be in the Public Right-of-Way, either permanent or temporary; or (3) any sign or banner that is authorized by the City's Director of Public Works.

B. Trash

1. Keep trash areas clean and swept and maintain adequate bins for trash, or as otherwise directed in writing by City's Director of Public Works.
2. Empty trash, causing deposited items to be thrown away as appropriate and re-line bins.

II. WEEKLY SERVICES (General laborer at 0.5 hours per day, 7 days per week, at a rate of \$20 per hour)

A. Landscaping

1. Tree maintenance, as needed.
2. Prune back shrubs.
3. Water all plants as necessary to keep green and in good condition.
4. Collect all dead leaves.
5. Prune all groundcover overhanging onto walkways and grass areas.
6. Remove litter and leaves from plants, planters and tree wells.
7. Remove any broken or fallen branches from trees; remove sucker growth from tree trunks.
8. Remove any weeds larger than 2 inches (5 cm) high or wide (at the designated time for performing the weekly services) from planters. Weeds 2 inches (5 cm) and larger must be removed, not just killed.
9. Replace bark mulch or rocks that have been knocked or washed out of planters or planting areas. Smooth mulch or rock layer if it has been disturbed.
10. Check plants for signs of stress or disease. Replace any plants that meet conditions for replacement (such as dying or dead plants).
11. Hand water any plants that are dry and stressed.
12. Treat for any signs of disease or pest infestation. Report to City any treatments for disease or pest control.
13. Check the irrigation system. Make emergency and routine repairs as needed.
14. Adjust the irrigation controllers for current water needs of plants.

B. Drain covers to be checked and debris cleared away as needed.

C. Power wash all sidewalks and paved areas two (2) times a week and as needed during any rainy season.

D. Wash trash bins weekly.

E. Clean, wipe and polish all lamps (high to low areas) and signs.

IV. YEARLY (Maintenance & Repairs at 60 hours per year at a rate of \$20 per hour).  
No artwork or additional annual maintenance activities

A. Trim trees annually unless needed on a more regular basis or as required on a case-by-case basis.

B. Every two years, apply anti-graffiti coating to all surfaces except for the City artwork, if any is included in the design.

C. Every three years apply concrete reveal.

V. GENERAL

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.

Eagle Plaza Maintenance Expenses	Annual	\$/Hour	Hrs/Wk	Notes
<b>Possible Services (by Staffing)</b>				
Janitorial  Trash + Litter Removal Sidewalk + Gutter Sweeping Graffiti Removal Spot Power Washing Sidewalk Steam Cleaning	\$ 6,240	\$ 20	6	1 full time porter for building & plaza, 45 min/day dedicated to plaza  Daily Daily Daily Weekly/Monthly Weekly/Monthly
Landscaping  Watering + Gardening Tree + Plant Care	\$ 6,240	\$ 20	6	Gardener service for building & plaza, 3hrs/wk dedicated to plaza  Weekly Weekly

Maintenance & Repairs	\$ 1,200		\$100/mo allocated, used as needed. Irrigation system under warranty
Irrigation Systems			Monthly as needed
Electrical			Monthly as needed
Street Furniture / Signage			Monthly as needed
Public Safety	\$ 2,000		3-5 nightly visits from private security patrol in marked vehicle, estimated at \$1,000/mo
<b>Total Staffing</b>	<b>\$ 25,680</b>		
<b>Total Materials &amp; Supplies</b>	<b>\$ 5,000</b>		Includes supplies for lighting, paving, plumbing, electrical, hardware and small tools
<b>Utilities</b>	<b>\$ -</b>		TBD
<b>General Liability Insurance</b>	<b>\$ 8,000</b>		Based on 2015 rates per square foot for Mint Plaza
<b>Capital Reserve (10%)</b>	<b>\$ 3,868</b>		10% of annual operating budget
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 42,548</b>		
<b>Per Sq Ft of Public Plaza Space</b>	<b>\$ 3.40</b>		Eagle Plaza is 12,500 sq.ft

## ATTACHMENT 4 OPERATION AND MAINTENANCE MANUALS (IF APPLICABLE)

