

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 04 -2020

AUTHORIZING THE EXECUTION OF A REVOCABLE PERMIT TO ENTER WITH THE EAST CUT COMMUNITY BENEFITS DISTRICT TO DEVELOP AND MANAGE A TEMPORARY COMMUNITY GARDEN AT TRANSBAY BLOCK 11B OR 29 ESSEX STREET FOR A TERM NOT TO EXCEED THREE YEARS; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the Office of Community Investment and Infrastructure) (the “Successor Agency” or “OCII”) is complying with the Transbay Redevelopment Project Implementation Agreement between the Redevelopment Agency of the City and County of San Francisco and that Transbay Joint Powers Authority, dated January 20, 2005 (“Implementation Agreement”), which requires, among other things, that OCII undertake activities to develop certain public open space in the Transbay Redevelopment Project Area. The California Department of Finance has finally and conclusively determined that the Implementation Agreement is an enforceable obligation under the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq; and,

WHEREAS, OCII currently holds fee title to an approximately 10,619 square-foot area of vacant land at Block 3749, Lot 504 (herein, the "**Parcel**"). The Parcel is part of Transbay Block 11B which is adjacent to and south of 25 Essex Street, west of Guy Place, east of Essex Street, and north of Lansing Street. The Parcel is currently comprised of a small vacant paved area and hillside areas with natural landscaping; and,

WHEREAS, Pursuant to the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan, an implementing document of the Transbay Redevelopment Plan, the Parcel has been designated for future park use. Final development of the Parcel, however, is delayed pending review by the Metropolitan Transportation Commission of the Parcel as a possible Bay Bridge bicycle off-ramp landing site. Timing of approvals and funding of the off-ramp are uncertain at this time; and,

WHEREAS, The East Cut Community Benefits District (“ECCBD”) has approached OCII with a request to activate the small vacant paved area of the Parcel as a temporary community garden (the “Project”) where community members of the East Cut neighborhood, which encompasses the Transbay Redevelopment Project Area, and greater San Francisco can grow their own produce and plants; and,

WHEREAS, Through its Interim Executive Director, OCII now intends to execute a Permit to Enter (the “Permit”) with the ECCBD (“Permittee”) enabling the Permittee to access the small vacant paved area of the Parcel (the “Permit Area”) to develop and manage the Project. The Agreement will grant the Permittee the right to access the Project Site at all times of day seven days per week. Since the Permittee is

solely responsible for financing the Project's development and operations, the Permit also states that the ECCBD shall not pay compensation to OCII for its access to and use of the Project Site. The term of the Permit is not to exceed 3 years; and,

WHEREAS, Classifying the Project as "temporary" is necessary because if the Bay Bridge bicycle off-ramp landing project eventually moves forward, the proposed community garden site would be needed. In addition, OCII will transfer the Parcel to the City and County of San Francisco (the "City") in accordance with the Property Management Plan approved by the California Department of Finance ("DOF"), and when that occurs the City, as owner of the Parcel, will determine whether it desires to allow the ECCBD to continue operating the Project; and,

WHEREAS, The Project will feature a total of 20 wood garden plots comprised of 17 individual plots and 3 shared community plots. Other improvements include a tool shed, hose bibs for water access, potting and work tables, a new citrus tree, catenary lighting, and a café table and chairs. The existing fence and gates currently securing the Project Site will remain and the Permittee's roving security staff will monitor the garden at night. The design of the Project, and in particular the spacing of the rows of garden plots, ensures that all members of the public, including differently-abled individuals, can access and enjoy use of the community garden; and,

WHEREAS, As manager of the Project, the Permittee is responsible for assigning plots initially through a lottery and subsequently by maintaining a waitlist. The ECCBD will also open and close the community garden each day, pay all utilities related to the Project, will maintain it such that it always in a clean and safe condition for gardeners. Finally, once the community garden plots are fully allocated and the operation is stabilized, the Permittee intends to engage with schools, neighborhood organizations, service providers, or other non-profit organizations to offer increased access to the garden, enrich programming opportunities and increase resources for maintenance; and,

WHEREAS, Authorization of the Permit is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301(h), because it authorizes the continued operation, maintenance, or minor alteration of existing community facilities or topographical features and will not independently result in a significant physical effect on the environment; now therefore, be it,

RESOLVED, That the Commission authorizes the Executive Director to execute the Essex Community Garden Permit to Enter, substantially in the form on file with the Secretary of this Commission.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of February 2, 2021.

Commission Secretary

Exhibit A: Essex Community Garden Permit to Enter

Essex Community Garden

PERMIT TO ENTER

Effective as of _____, 2021 (the “**Effective Date**”) the **SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**, a public body organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure (“**OCII**” or the “**Successor Agency**”) grants to **THE EAST CUT COMMUNITY BENEFIT DISTRICT**, a California 501(c)(3) non-profit corporation (“**Permittee**”), a non-exclusive permit to enter upon certain OCII-owned or -leased real property (hereinafter referred to as the “**Permit Area**”), located at **Transbay Block 11b or 29 Essex St., San Francisco, California**, upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter (“**Permit**”).

RECITALS

A. OCII is complying with the Transbay Redevelopment Project Implementation Agreement between the Redevelopment Agency of the City and County of San Francisco and that Transbay Joint Powers Authority, dated January 20, 2005 (“**Implementation Agreement**”), which requires, among other things, that OCII undertake activities to develop certain public open space in the Transbay Redevelopment Project Area. The California Department of Finance has finally and conclusively determined that the Implementation Agreement is an enforceable obligation under the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq.

B. OCII currently holds fee title to an approximately 10,619 square-foot area of vacant land Block 3749, Lot 504 (herein, the “**Parcel**”). The Parcel is located adjacent and to the south of 25 Essex Street, west of Guy Place, east of Essex Street, and north of Lansing Street. The Parcel is currently comprised of a small vacant paved area and hillside areas with natural landscaping.

C. Pursuant to the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan, an implementing document of the Transbay Redevelopment Plan, the Parcel has been designated for future park use. Final development of the Parcel, however, is delayed pending review by the Metropolitan Transportation Commission of the Parcel as a possible Bay Bridge bicycle off-ramp landing site. Timing of approvals and funding of the off-ramp are uncertain at this time and the project is anticipated to be completed sometime within the next decade.

D. The East Cut Community Benefit District (“**ECCBD**”) has approached OCII with a request to activate the vacant paved area of the Parcel as a temporary community garden (the “**Project**”) where community members of the East Cut neighborhood, which encompasses the Transbay Redevelopment Project Area, and greater San Francisco can grow their own produce and plants.

E. Classifying the Project as “temporary” is necessary because if the Bay Bridge bicycle off-ramp landing project eventually moves forward, the proposed community garden site would be needed. In addition, OCII will transfer the Parcel to the City and County of San Francisco (the “City”) in accordance with the Property Management Plan approved by the California Department of Finance (“DOF”), and when that occurs the City, as owner of the Parcel, will determine whether it desires to allow the ECCBD to continue operating the Project.

NOW, THEREFORE, OCII and the Permittee agree as follows:

1. **Permit Area:** The Permit Area is more particularly shown on **Attachment 1** hereto and made a part hereof. The Permit is non-exclusive and is subject to the rights of ingress and egress by OCII and others, who are authorized to access portions of the Permit Area. Permittee acknowledges that the exact property line boundaries along the northeastern edge of the Permit Area are not clearly known, and therefore the Permittee will not install any permanent fixtures or landscaping within 15 feet of the adjacent building (88 Guy Place).

2. **Interim Use:** The Permittee shall use the Permit Area to develop and manage a temporary community garden where community members of the East Cut neighborhood and greater San Francisco can grow their own produce and plants, in accordance with the specific activities and operations plan further described in **Attachment 2: Essex Community Garden Operations Plan (“Interim Use”)**. No uses other than those specifically stated herein are authorized hereby. As part of the Interim Use, Permittee will authorize a limited number of gardeners (“**Subpermittees**”) to access the Permit Area. Permittee shall require each Subpermittee to execute the “**Community Garden Plot Agreement**,” substantially in the form as set forth in Exhibit 3 of the Essex Community Garden Operations Plan.

3. **Term:** The term of this Permit shall begin on the Effective Date and end 36 months following the Effective Date, on 12/1/23, unless earlier terminated by OCII’s Executive Director under Section 12 hereof or earlier terminated by Permittee by cessation of activities/operations.

4. **Time of Entry:** Once the Permit is fully executed and throughout its full term, entry into the Permit Area shall be for 24 hours per day 7 days per week.

5. **Compensation to Agency:** Permittee shall pay compensation to OCII:

YES ☐

NO ☒

If yes is checked, Permittee shall pay OCII:

☐ One cent (\$ 0.01) per square foot per day for duration of the permit to enter or

☐ \$ _____ per day pursuant to Section 9 *Reduction or Waiver of Use Fee* of OCII’s Permit to Enter Policy.

(Executive Director’s initials authorizing fee reduction/waiver). _____
Initials

6. Indemnification:

a. General Indemnification: To the fullest extent allowable by law, Permittee shall hold harmless, defend at its own expense, reimburse, and indemnify OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees against any and all liabilities, claims, losses, damages, injuries, penalties or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of Permittee or its officers, agents or employees in rendering services under this Permit; excluding, however, such liability, claims, losses, damages or expenses arising from OCII's gross negligence or willful acts and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Permittee, its officers, agents or employees. In addition to Permittee's obligation to indemnify OCII, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend OCII from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by OCII and continues at all times thereafter. This section does not apply to Toxics or Hazardous Materials pursuant to section 7(c), below.

b. No Mechanics' Liens: Permittee shall not permit any mechanics' or other liens to be levied against the Permit Area for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to Permittee's agents or contractors in connection with the Interim Use and Permittee shall hold OCII free and harmless from any and all cost or expense connected with or arising from the Interim Use.

7. Hazardous Material Acknowledgement and Indemnification:

a. Hazardous Material Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Interim Use under this Permit, its employees, invitees, Subpermittees and subcontractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that OCII is relying on the Permittee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, Subpermittees and subcontractors. Permittee agrees that it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, Subpermittees and subcontractors and making the decision on how (and whether) to enter upon the Permit Area and carry out the Interim Use, with due regard to such risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials: Permittee assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Permittee's entry and/or Interim Use of the Permit Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of hazardous substances to the extent required in connection with the Permittee's activities hereunder.

c. Toxics Indemnification: Permittee shall defend, hold harmless and indemnify OCII, the City and County of San Francisco, and their respective commissioners, members, officers, agents and employees from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees of every kind, nature and description, resulting from any release or threatened release of a hazardous substance, pollutant, or contaminant, or any condition of pollution, contamination, or nuisance in the vicinity of the Permit Area or in ground or surface waters associated with or in the vicinity of the Permit Area to the extent that such release or threatened release, or condition is directly created or aggravated by the Interim Use undertaken by Permittee pursuant to this Permit or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Permit to be performed or observed by the Permittee, including but not limited to any violation of any Environmental Law (as defined in Section 7e below); provided, however, that Permittee shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any claim, action, loss, cost, liability, expense or damage resulting from the discovery or disclosure of any pre-existing condition on or in the vicinity of the Permit Area; and provided further that Permittee shall be held to a standard of care no higher than the standard of care applicable to environmental and geotechnical professionals in San Francisco.

d. Hazardous Substances: For purposes of this Permit, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs" or "PCB"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

e. Environmental Laws: For purposes of this Permit, the term "Environmental Laws" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the Interim Use.

f. Release: For purposes of this Permit, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. Soils Investigation: If the Interim Use under Section 2 of this Permit includes any soils investigations, then Permittee warrants as follows:

(1) If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall

during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) OCII has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. Permittee has the sole responsibility to locate the same and to protect the same from damage. Permittee shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities. Prior to the start of the Interim Use, the Permittee is advised to contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert shall be brought to the attention of OCII's Engineer immediately.

(3) All soils test data and reports prepared based thereon, obtained from these activities shall be provided to OCII upon request and OCII may use said data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and Agency use shall be without any charge to OCII.

(4) Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Permit Area.

8. Insurance: Permittee shall procure and maintain coverage for the duration of the Permit, including any extensions, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of Interim Use by the Permittee, its agents, representatives, employees, Subpermittees, or subcontractors. The cost of such insurance shall be borne by the Permittee.

a. Minimum Scope of Insurance: Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

(2) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.

b. Minimum Limits of Insurance: Permittee shall maintain limits no less than:

(1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (\$4,000,000).

(2) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of

\$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.

c. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and their respective Commissioners, officers, agents and employees; or the Permittee shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions:

(1) The commercial general liability policy is to contain, or be endorsed to contain, the following provisions:

(i) OCII, the City and County of San Francisco and their respective Commissioners, officers, agents and employees are to be covered as insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Permittee; and liability arising out of the Interim Use performed by or on behalf of the Permittee.

(ii) For any claims related to this Permit, the Permittee's insurance coverage shall be primary insurance as respects to OCII, the City and County of San Francisco and their respective Commissioners, officers, agents and employees. Any insurance or self-insurance maintained by OCII, the City and their respective Commissioners, officers, agents and employees shall be excess of the Permittee's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective Commissioners, officers, agents or employees.

(2) Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against OCII, the City and their respective Commissioners, officers, agents and employees for losses arising from the Interim Use performed by the Permittee or for OCII.

(3) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to OCII.

e. Acceptability of Insurers: Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager in writing.

f. Verification of Coverage: Permittee shall furnish OCII with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized

by that Insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by OCII. All certificates and endorsements are to be received and approved by OCII before the Interim Use commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

9. “As Is,” Maintenance, Restoration, Vacating: The Permit Area is accepted “AS IS” and entry upon the Permit Area by Permittee is an acknowledgment by Permittee that all dangerous places and defects in said Permit Area are known to it and are to be made secure and kept in such secure condition by Permittee. Permittee shall maintain the Permit Area so that it will not be unsafe, unsightly or unsanitary. Should the Permittee install new Permit Area utility connections or service, or establish new utility accounts, the Permittee shall assume full responsibility for maintenance of those utilities or accounts and any related costs. Upon termination of the Permit, Permittee shall vacate the Permit Area and remove any and all personal property located thereon, cancel all utility connections, services, or accounts, and restore the Permit Area to its condition at the time of entry. OCII shall have the right without notice to dispose of any property left by Permittee after it has vacated the Permit Area. OCII makes no representations or warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or Release or threatened Release of the Hazardous Substance in or from the Permit Area.

10. Compliance With Laws:

a. Compliance with all Laws: All activities and operations of the Permittee and/or its agents, contractors or employees or authorized entries under this Permit shall be in full compliance with all applicable laws and regulations of the federal, state and local governments, including but not limited to mitigation measures, if any, which are attached hereto and made a part hereof as if set forth in full.

b. Nondiscrimination: The Permittee herein covenants for himself or herself and for all persons claiming in or through him or her that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in the use, occupancy or enjoyment of the Permit Area. The Permittee agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of OCII’s Nondiscrimination in Contracts Policy (“Policy”), adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time.

c. Compliance with Small Business Enterprise Policy: OCII implements a Small Business Enterprises (“SBE”) Program that was adopted by OCII Resolution No. 43-2015 and that requires consideration in awarding contracts in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an OCII Project Area), and 3) All other SBEs.

Pursuant to the SBE Program, if the Permittee intends to award any contracts or subcontracts, it shall consult with OCII and make good faith efforts to achieve, or attempt to achieve, the OCII overall SBE participation goal of 50% for professional, personal services, and construction contracts; provided, however, that this goal may vary depending on the extent of subcontracting opportunities and the availability of SBE subcontractors capable of providing goods or services required by the contract; and provided further, that OCII has the sole discretion to modify the 50% SBE participation goal consistent with the SBE Program.

d. Compliance with Minimum Compensation Policy and Health Care Accountability Policy: Contractor agrees, as of the date of this Contract and during the term of this Contract, to comply with the provisions of OCII's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time (See Attachment E "Minimum Compensation Policy" and Attachment F "Health Care Accountability Policy"). Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

Copies of the aforementioned Policies, including Nondiscrimination and SBE are available at <https://sfocii.org/policies-and-procedures>.

11. Security of Permit Area: There is an existing fence with gates around the Permit Area: Yes ☒ No ☐

If "Yes" is checked above, Permittee shall maintain said fence in good condition and repair any damage caused by Permittee or as a result of the Interim Use. Permittee may relocate the fence as needed, provided that the fence is restored to its original condition upon termination of the permit. During the term of the permit, the Permittee shall keep the Permit Area secure at all times.

Permittee is solely responsible for securing the Permit Area. Permittee shall have the right to block entrances to, to install and operate security devices, and to maintain security personnel in and around Permit Area to prevent the entry of persons or vehicles during the time periods when public access to Community Garden or any portion thereof is restricted or not permitted.

12. Early Termination: This Permit may be terminated by OCII in its sole discretion upon 24 hours' notice. Posting at the Permit Area shall be sufficient notice.

13. Entry under Permittee Authority: The Permit granted Permittee for the Permitted Activities/Operations as defined in Section 2 shall mean and include agents and employees of the Permittee, and access by Subpermittees as described herein and in the Community Garden Plot Agreement. All Interim Use performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of the Permittee.

14. Governing Law: This Permit shall be governed by and interpreted under the laws of the State of California.

15. Attorneys' Fees: In any action or proceeding arising out of this Permit, the prevailing party shall be entitled to reasonable attorneys' fees and costs. For purposes of this Permit, the reasonable fees of attorneys of either party shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the attorney's services for either party were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the San Francisco City Attorney's Office.

16. Supplementary Provisions:

a. Is additional insurance required? Yes ☐ No ☒

Additional Insurance: If "Yes" is checked above, Permittee shall obtain additional insurance consisting of insurance protecting against loss or damage to real and personal property caused by fire, water, theft, vandalism, malicious mischief or windstorm, and any other causes contained in standard policies of insurance. Permittee shall supply such insurance in an amount of not less than the replacement value of the buildings and improvements on the Permit Area, evidenced by a policy of insurance and/or certificate attached hereto in the form and on the terms specified above and with OCII and the City as additional insured.

b. Is a fence and gate required? Yes ☐ No ☒

Fence and Gate: If "Yes" is checked above, the Permittee shall, at its expense, erect a fence (with gate) securing the Permit Area before entry on the Permit Area and shall maintain said fence and gate in good condition and repair during the Time of Entry as defined in Section 3. Said fence and gate erected by Permittee shall constitute the personal property of Permittee.

c. Is security personnel required? Yes ☒ No ☐

Security Personnel: If "Yes" is checked above, Permittee shall provide necessary security personnel at its own expense to prevent unauthorized entry into Permit Area during:

Daytime: Yes ☒ No ☐ Nighttime: Yes ☒ No ☐

d. Will Subpermittees use the Permit Area? Yes ☒ No ☐

Permittee shall require each Subpermittee to execute the Community Garden Plot Agreement, substantially in the form of Attachment 2, Exhibit 3 hereto, by which execution each such Subpermittee agrees to all of the terms, covenants and conditions therein. As additional Subpermittees are identified for various aspects of the Interim Use hereunder, they shall also execute the Community Garden Plot Agreement, before entering the Permit Area or commencing operations therein. Permittee will carry insurance as described in Section 8, including coverage for OCII and Permittee regarding claims raised by Subpermittees.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in triplicate as of the _____ day of _____, 2020.

PERMITTEE

East Cut Community Benefit District,
a California 501(c)(3) non-profit corporation

By: _____
Andrew Robinson
Executive Director

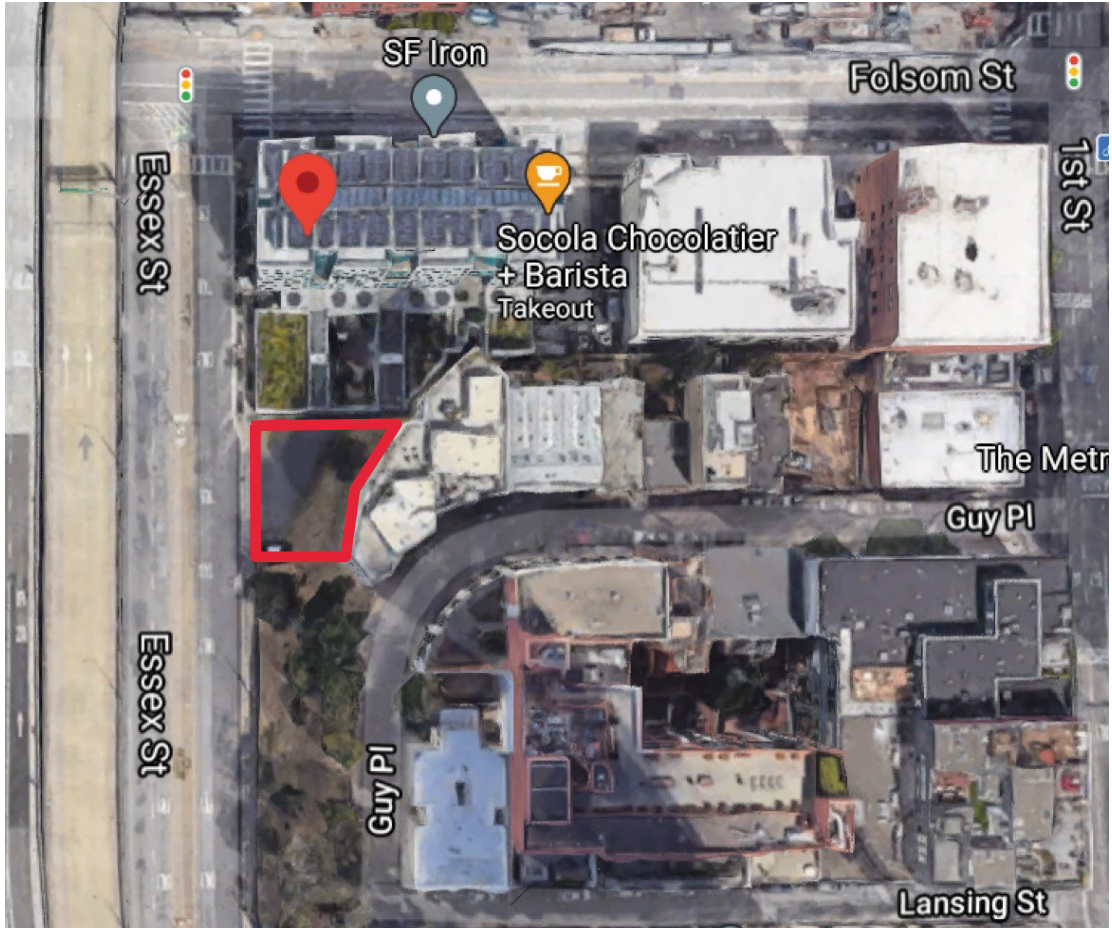
**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,**
a public body, organized and existing under the
laws of the State of California

APPROVED AS TO FORM:

By: _____
Sally Oerth
Interim Executive Director

By: _____
James B. Morales
Agency General Counsel

Attachment 1: Permit Area



Attachment 2: Essex Community Garden Operations Plan

Community Garden Operations Plan

This Community Garden Operations Plan ("**Operations Plan**") describes the use, maintenance and operation of the community garden, a publicly owned but privately accessible parcel located at 29 Essex Street (the "**Site**").

Transbay Block 11b at 29 Essex Street is situated on the east side of Essex Street, just south of Folsom Street. Transbay Block 11a, just north of 11b, was developed in 2013 as the Rene Cazenave Apartment complex. Block 11b does not currently include a timeline for development, however, it has been included in plans for future park and open space development. During the interim, the Manager proposes implementing a community garden on the parcel as a temporary activation for the community.

The **EAST CUT COMMUNITY BENEFIT DISTRICT**, a California 501(c)(3) non-profit corporation ("**Manager**") is also the Permittee under that certain Permit to Enter (the "**PTE**") with the Office of Community Investment and Infrastructure ("**OCII**" or "**Licenser**") dated _____, 2021, which provides the Manager with access rights to the Site but also transfers all management responsibility for and maintenance of the Site to the Manager at no cost to OCII or its assignee. The Manager cannot assign its rights under this Operations Plan without obtaining OCII's written consent, in its sole and absolute discretion. In the case of any conflict between the terms of this Operations Plan and the PTE, the PTE shall govern.

This Operations Plan shall govern the use, maintenance and operation of the community garden.

1. **Public Use.** Manager shall manage the community garden for all members assigned a plot, as well as authorized community members who volunteer to work in the garden, with operating hours and rules of operation similar to other publicly accessible allotment gardens.
2. **No Discrimination.** Manager shall not discriminate against, or segregate, any person, or group of persons, on account of race, color, religion, creed, national origin, gender, ancestry, sex, sexual orientation, age, disability, medical condition, marital status, acquired immune deficiency syndrome, acquired or perceived, or any other protected class under applicable law in the use, occupancy, maintenance, operations, tenure or enjoyment of the community garden.
3. **Garden Elements.**
 - a. **Garden Plots.** Plots will be relatively uniform and reasonable in size to optimize opportunities for participation. Plots will be a minimum of 32 square feet. Plots will be raised beds made of wood, rectangular in shape. Wheelchair accessible plots will be designed according to accessibility codes. Exhibit 1 provides the general location of the gardening plots.
 - b. **Irrigation.** Irrigation is the artificial means of supplying water to plants. Hose bibs will be located to permit a hose to reach all plots. Water service will be applied for by the Manager through the San Francisco Public Utilities Commission. Manager will provide water to the community garden at no cost to the gardeners.
 - c. **Tool Shed.** Manager will provide a lockable tool shed to store equipment shared by the garden members, with each member receiving a key to the shed. All tools and materials stored within the community garden shall be shared for use by all gardeners. Shared tools and materials for the community garden may not be taken out of the community garden. Garden members are responsible

for tool procurement either through dues or through donations. Storage of personal tools will not be allowed. Please see Exhibit 1 for the general location of the Tool Shed.

- d. Compost Bins. Manager will provide wood bins to allow gardeners to decompose organic garden waste generated at the site, which may be used for compost. Because the garden is small, there is no guarantee that compost will be available at all times. Members are not permitted to bring compost materials from their home for use in the garden. Please see Exhibit 1 for the general location of the Compost Bins.
- e. Rules Signage. Manager will provide and maintain a sign within the community garden which will include garden rules, contact information, and space for posting public announcements. Manager will remove any postings that are discriminatory or offensive in nature.
- f. Orchard. Unless otherwise specified, Manager will be responsible for harvesting and maintaining the orchard espaliers along the west fence.

- 4. Organizational Structure. Community gardens are evolving entities. Initially, the Manager will be the Garden Coordinator. At some point in the future, the Manager may choose to select a new Garden Coordinator, subject to OCII's review and approval and the Garden Coordinator's assumption of the Manager's obligations and duties under the PTE with OCII. The following are the typical Garden Coordinator's responsibilities:

- a. Assign plots, initially as outlined below in Section 7a and later on a first come, first serve basis.
- b. Maintain a waiting list of interested gardeners
- c. Re-assign plots to those on the waiting list
- d. Orient all new gardeners to the space, i.e. explain site access, tool shed access, water use, communal space use, workday expectations, etc.
- e. Post all documentation in a set location in the garden
- f. Collect signed Community Garden Plot Agreements from all gardeners and provide a copy to the gardener with the Garden Rules.
- g. Maintain a list of all active gardeners.
- h. If a plot appears inactive, notify the gardener with first a verbal warning and then a written 30-Day Notice.
- i. Coordinate garden workdays and/or public open houses to maintain the communal spaces or to work on special projects.
- j. Share the Community Garden Task List with the garden members.
- k. Call at least one garden-wide meeting per year for the purpose of discussing goals, sharing ideas, conducting workdays, etc. Any meeting that provides advance notification to all of its members is considered a "garden- wide meeting."
- l. Communicate with OCII or its assignee.

- 5. Maintenance. The community garden shall be exclusively maintained by Manager in a clean and safe condition in accordance with the anticipated and foreseeable use. OCII bears no responsibility for maintenance of the community garden. Day-to-day maintenance will be the responsibility of the community gardeners. General standards of maintenance by Manager are more fully described in Exhibit 2. General standards of maintenance and responsibilities for garden plots allocated to gardeners are more fully described in the Sample Community Garden Plot Agreement, Exhibit 3. Per Section 4.1.2 of the In-Kind

Agreement, the Manager or its successor will provide maintenance services in accordance with the approved operations plan and shall assume all liability with respect thereto.

6. Membership and Fees.

- a. Membership. Membership to this community garden and the opportunity to garden is first open to all residents within the boundaries of The East Cut Community Benefit District. If there is insufficient interest to fully allocate the garden plots to residents of The East Cut CBD, the remaining plots will be opened to all residents of San Francisco.
- b. Fees. Garden plots shall be made available at a monthly fee to be established by the Manager. The sliding scale fee will help to offset the costs of maintenance and security by the Manager, and will be set based on income. Seven (7) of the garden plots will be reserved for affordable housing residents and will be fee-free. Three (3) of the garden plots will be reserved for local youth organizations and will be subject to the monthly fee. Three (3) garden plots will be open to the community-at-large and will be subject to a fee proportional to the number of users.

7. Public Access.

- a. Allotment. To ensure that all interested gardeners receive an equal opportunity to be selected for a garden plot, the Manager will schedule lotteries for both Below-Market Rate residents and Market Rate residents to allocate Garden Plots within 60 days of construction completion. Manager will conduct outreach to ensure that local organizations and neighbors are aware of the lottery process, including but not limited to: posting on garden bulletin boards, informing local neighborhood organizations, and utilizing email lists and social media communications to inform people about garden plot availability. If there is insufficient interest to fully allocate the garden plots, the remaining plots will be allocated on a first-come first-served basis until the garden is fully allocated.
- b. Waiting List. Once the garden plots are fully allocated, the Manager will maintain waiting lists for both Below-Market Rate plots and Market Rate plots, and plots will be assigned on a first-come first-served basis.
- c. Hours of Operation. At a minimum, Community Garden shall be open and accessible to members of the public seven (7) days per week from Sunrise to Sunset, ("**Operating Hours**"), or unless reduced hours are reasonably imposed on a temporary basis by Manager, in its sole discretion, to address security or other concerns. Manager may expand Operating Hours on a case-by-case basis. No person shall enter, remain, stay or loiter in Community Garden when Community Garden is closed, except for authorized East Cut CBD and OCII and its agents or representatives, who shall be able to enter Community Garden at all times. Signs posted at the garden entrances will clearly indicate the hours when the public may access the garden.
- d. Prohibited Activities. For the enjoyment of all visitors, the following activities will not be allowed: smoking, defacing private property, feeding birds, camping or sleeping, littering, skating or skateboarding, bicycling, removal of flowers or plants inconsistent with Exhibit 3, Right #5, pets off leash. Alcohol consumption is not allowed except through events sponsored by Manager and approved by OCII.

8. Neighborhood Involvement and Program Partnerships. Once the community garden plots are fully allocated and the operation is stabilized, the Manager or its designee

will engage with schools, neighborhood organizations, service providers, or other non-profit organizations to offer increased access to the garden, enrich programming opportunities and increase resources for maintenance.

9. Temporary Closure. Manager shall have the right, upon consent of OCII, to temporarily close any or all of the Community Garden to the public at any time and from time to time for one or more of the following reasons. In each instance, such temporary closure shall continue only for as long as Manager reasonably deems necessary or desirable.
 - a. Disturbance. In the event of an emergency or danger to the public health or safety created from whatever cause (including flood, storm, fire, earthquake, explosion, accident, pandemic, criminal activity, riot, civil disturbances, occupation, civil unrest or unlawful assembly), Manager may temporarily close Community Garden without notice and in any manner deemed necessary or desirable to promote public safety, security and the protection of persons and property, and may remove any members of the public therefrom; or,
 - b. Maintenance and Repairs. Manager may temporarily close Community Garden (or affected portions thereof), with 24 to 48 hours posted notice, in order to make any repairs or perform any maintenance as Manager, in its reasonable discretion, reasonably deems necessary or desirable to repair, maintain or operate Community Garden. Repairs shall be made in a timely manner. Closures shall be limited to the minimum duration and extent needed to perform necessary maintenance and repairs.
10. Arrest or Removal of Persons. Manager shall have the right (but not the obligation) to use lawful means to effect the arrest or removal of any individuals who create a public nuisance, who otherwise engage in Prohibited Activities, or who commit any crime including, without limitation, infractions or misdemeanors in or around Community Garden.
11. Security During Periods of Non-Access. Manager shall have the right to block entrances to, to install and operate security devices, and to maintain security personnel in and around Community Garden to prevent the entry of persons or vehicles during the time periods when public access to Community Garden or any portion thereof is restricted or not permitted pursuant to Section 9 of this Operations Plan.
12. Removal of Obstructions. Manager shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left in or deposited on Community Garden and deemed by Manager to be an obstruction, interference or restriction of use of Community Garden, including, but not limited to, personal belongings or equipment abandoned in Community Garden.
13. Insurance. Manager shall maintain insurance consistent with the terms of the Permit to Enter.
14. Ensuring Accountability. Manager shall host a meeting of The East Cut Neighborhood Parks & Greenspace Committee monthly and report on Community Garden activities. The Committee is comprised of neighborhood residents, business owners, and City and County of San Francisco (the “City”) representatives that have a stake in Community Garden success. At this meeting, members will be given the opportunity to provide any feedback/concerns they may have on the operations and accessibility of the garden.

OCII, in its sole and absolute discretion, shall have the right to modify the Community Garden Operations Plan in the future to address feedback and/or to address other unforeseen operational issues that may arise.

15. Transfer of Ownership. If, in the future, OCII transfers ownership of the Site to the City, rules and regulations of that the City department that oversees community gardens shall supersede all guidelines within this Operations Plan, including, but not limited to, plot fees, plot assignments, hours of operation, maintenance, and organizational structure.
16. Indemnity. The Permit to Enter addresses the indemnification obligation of the Manager as Permittee.

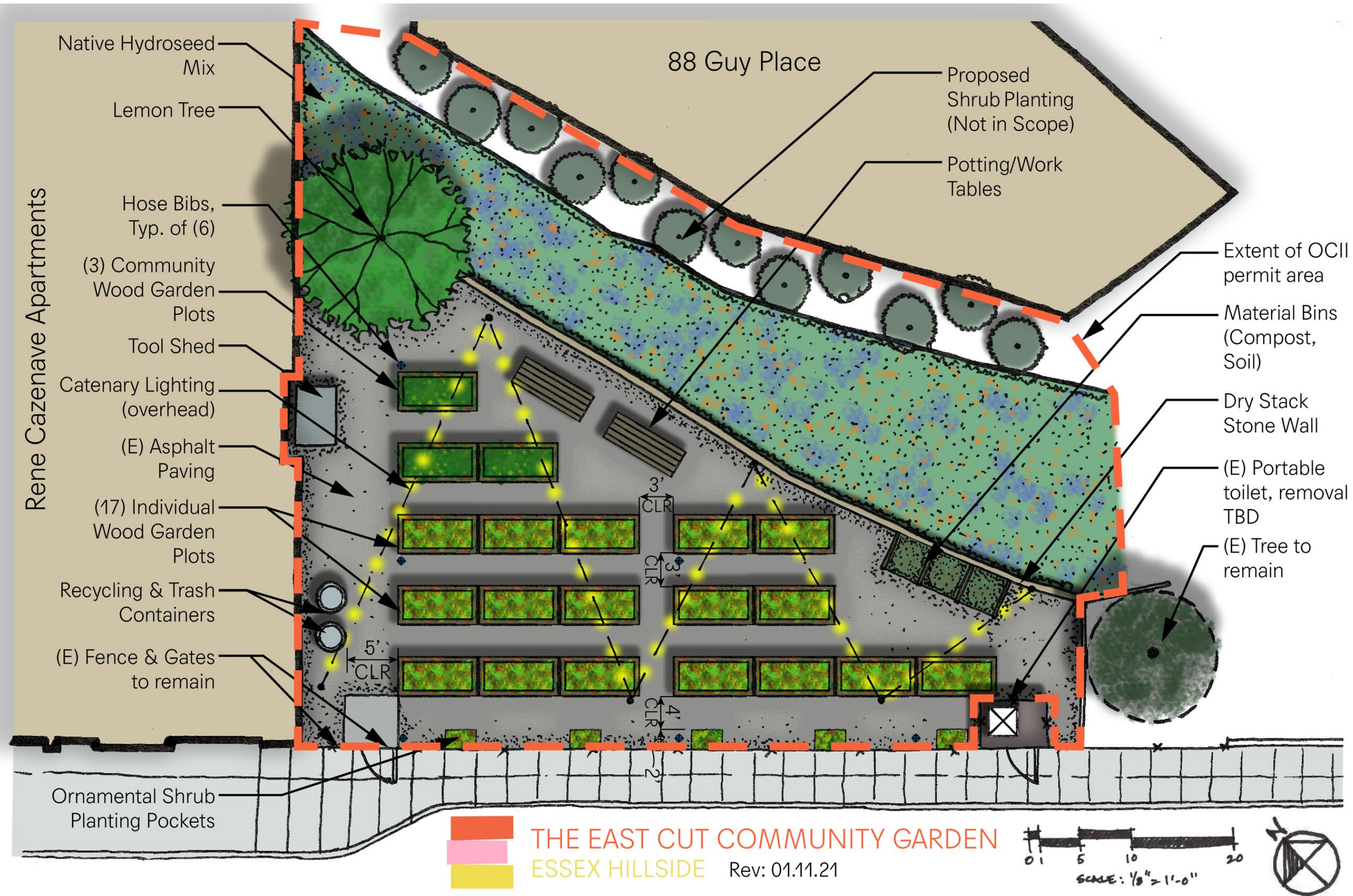


EXHIBIT 1

EXHIBIT 2 to Community Garden Operations Plan
General Standards of Maintenance by Manager or its Agents

1. Grounds:

- a) Litter shall be picked up at least once daily. Trash cans emptied at least once daily and washed as needed.
- b) Grounds shall be checked for hazards daily.
- c) Damaged or worn signs shall be replaced or repaired as needed.

2. Ornamental Gardens, Shrubs & Ground Covers:

- a) Any diseased or damaged growth will be pruned; pruning also will ensure that all ornamental garden plants, shrubs & ground cover have appropriate size and shape for their location.
- b) All shrubs shall be fertilized annually.
- c) Ground cover will be kept a minimum of 6 inches away from all buildings, patios, fences, and other structures within its boundaries unless otherwise directed.
- d) Replacement of dead shrubs as needed.

3. Trees:

- a) All trees shall be living trees.
- b) All broken limbs shall be cut and no hanging limbs greater than four (4) inches in diameter shall be allowed to impede passage to pedestrians.
- c) All fruiting trees will be fertilized every one to two months during fruit production in the spring and summer with dry, balanced fertilizer.
- d) All stakes and ties will be properly maintained. Regular inspections will be done. When a tree can stand alone, stakes and ties will be removed.
- e) Replacement of dead trees as needed.

4. Hardscaped Area:

- a) Litter & debris picked up daily.
- b) Area shall be kept free of graffiti.
- c) Paving shall have no cracks greater than 2" diameter or depth or shall be repaired by Manager. All weeds in sidewalks, curbs, driveways, walking paths, etc., will be removed by contractor manually.

5. Insect and disease control:

- a) When insect or disease problems are suspected they will first be properly identified and then remedied, if possible, by guidelines issued by SF Environment. All herbicides, insecticides and pesticides will be reviewed and approved by Chris Geiger prior to application.

EXHIBIT 3
SAMPLE MODEL COMMUNITY GARDEN PLOT AGREEMENT

Welcome! Thank you for your interest in The East Cut Community Garden!

This community garden is a publicly owned, privately accessible allotment garden.

You are a part of a growing trend in urban agriculture. This garden provides you the opportunity to create beauty, serenity, and abundance within the urban confines of San Francisco. Whether your interest lies in growing organic produce or creating beautiful landscapes, you are a steward of publicly owned, but privately accessible land. You are agreeing to share use of land, on which you will garden, with other San Franciscans. On it you may grow, for your non-commercial use, food, flowers, and herbs that may satisfy your hunger or delight your aesthetics or spirit. Community gardening implies self-sufficiency, including obtaining the materials you need and learning the skills essential to gardening.

With this consent, you are participating in a shared agreement with both rights and responsibilities. You may keep your plot for a duration no longer than 3-years, subject to early termination upon thirty days' notice as authorized under the East Cut CBD permit to enter ("PTE"), as long as you abide by this agreement. Should there be no applicants on the waiting list at the time your plot agreement expires, you may continue to maintain your plot on a year-to-year basis. Community garden members are welcome to use a plot and share care of the garden with the following understandings:

Your rights as a community gardener:

1. You have the right to garden for a maximum of 3-years, subject to early termination as authorized under the above-referenced PTE.
2. You have the right to basic amenities such as access, water, and hoses.
3. You have the right to equal opportunity and non-discrimination.
4. You have the right to a reasonably harmonious environment, and to appropriate conflict resolution measures when necessary.
5. You have the right to garden in this space, and to the non-commercial use of the bounty your labors provide.
6. You have a right to an orientation to your garden by the Garden Coordinator or other assigned garden office-holder.

From rights stem responsibilities. Because you and your fellow gardeners have these rights, you also share a collective responsibility. You agree that these responsibilities include things that are generally standard in most gardens and others that have specifically been decided by your community garden.

Responsibilities:

1. To care for the land - active gardening requirement year-round. Gardeners are responsible for keeping their plot and the paths surrounding their plot clean and free of weeds. Gardeners shall at no time plant or weed in any other person's plot, except as directed by the Garden Coordinator on garden work days* or by prior agreement with that plot holder. (*Work days will be scheduled to occur monthly on a schedule agreed to by garden members.)
2. Keep pathways clear without plants encroaching into common areas or other plots. No plants may be higher than 4 feet over soil level in plots.
3. No altering of the dimensions of a plot or of the surrounding area.
4. Keep common areas clear.
5. Be civil and cooperative in regard to other gardeners, neighbors, and the public.
6. 'Organic Gardening' practiced here. Abide by City rules regarding best organic practices. No herbicides or pesticides may be used unless reviewed and approved by SF Environment. Please note that certain plants are not responsive to herbicides, such as poison oak and blackberry.
7. Be mindful of water usage. Gardens shall be managed for best practices in water conservation (e.g., time of watering). Minimize water waste. Ornamental plantings in the community garden common areas should be targeted to drought-resistant species.
8. Anyone you wish to garden with you in your plot, at the time you sign this agreement, must also sign this agreement. A signatory to this agreement must accompany all guests and minor children at all times.
9. Garden Coordinator/Garden approval is required for adding someone at a later date. If approved, the new gardener signs this agreement.
10. Plots cannot be given away by you to anyone else.
11. In case of illness, pregnancies, travel et al, inform your Garden Coordinator about your situation and work with existing garden members to garden your plot in your stead If you will be gone for more than three-months, your plot will be reassigned to a member on the waitlist.
12. Gardeners agree to respect the peace and quiet of the surrounding buildings and neighborhood. Children and guests should also be instructed to refrain from damaging or taking plants, or fruits thereof, that do not belong to them.
13. Follow security guidelines recommended by the Manager. Trust your instincts and know your gardening partners and neighbors.

14. Gardeners agree to exercise due care while on site, abide by all safety and security guidelines, and refrain from leaving personal property at the East Cut Community Garden. Gardeners must sign the Liability Waiver attached below releasing the East Cut Community Benefit District and the underlying landholder, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco/Office of Community Investment and Infrastructure (OCII), from all claims related to participation in the Community Garden.
15. REASSIGNMENT: The Garden Coordinator shall notify non-active gardeners with a verbal, telephone or email warning. If active gardening does not resume, or the gardener has not responded to messages from the Garden Coordinator, or the garden member is not reachable, then a written 30-day notice to resume activity shall be issued.

SIGNATURE: _____

Name (Print): Address: _____

Zip Code: _____

Email address: _____

Phone: _____

LIABILITY WAIVER

In consideration of the acceptance of my, my adult guest, or my minor child's participation in the East Cut Community Garden, I hereby waive, release, and discharge any and all claims for damages for death, personal injury, or property damage which I may have, or which may hereafter accrue to me or my child or my adult guest, as a result of participation. This release is intended to discharge in advance the East Cut Community Benefit District ("District"), OCII, the City and County of San Francisco and their respective agents, officers, and employees and volunteers from and against any and all liability arising out of or connected in any way with my application and/or participation in the East Cut Community Garden, even though that liability may arise out of negligence or carelessness on the part of the persons or entities mentioned above, including their passive or active negligence.

I hereby agree to indemnify and hold the District, OCII, the City and County of San Francisco (including their officers, employees, volunteers, and agents) free and harmless from any loss, liability, damage, cost, or expense which may arise out of or connected in any way with my, my minor child, or my guests participation in said activity.

I further understand that serious accidents occasionally occur in the East Cut Community Garden, that participation may occasionally result in mortal or serious personal injuries, and/or property damage or theft as consequence thereof, knowing the risks of said events, nevertheless, I hereby agree to assume those risks and to release and hold harmless all the persons or entities mentioned above who through passive or active negligence or carelessness might otherwise be liable to me or my minor child or adult guest for damages.

I further understand that the East Cut Community Benefit District by making available this garden plot to me is not warranting, guaranteeing, promising, or assuring that this program will in fact take place.

It is further understood and agreed that the waiver, release and assumption of risks is to be binding on me and my heirs and assigns.

CONSENT FOR PARTICIPATION OF MINOR

I hereby consent that my child, _____, participate in the above-referenced activity, and I hereby execute the above Agreement, Waiver, and Release on his/her behalf. I state that said minor is physically able to participate in said activity. I hereby agree to indemnify and hold the District (including its officers, employees, volunteers, and agents) free and harmless from any loss, liability, damage, cost, or expense which may arise out of or connected in any way with said minor's participation in said activity.

**ASSUMPTION OF THE RISK AND WAIVER OF LIABILITY RELATING TO
CORONAVIRUS/COVID19**

The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. **COVID-19 is extremely contagious** and is believed to spread mainly through person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people.

The East Cut Community Benefit District cannot guarantee that you or your child(ren) will not become infected with COVID-19. Further, **attending or participating in the Program could increase** your risk and your child(ren)'s risk of contracting COVID-19.

By signing this agreement, I acknowledge the contagious nature of COVID-19 and voluntarily assume the risk that my child(ren) and I may be exposed to or infected by COVID-19 by attending or participating in the above referenced program and that such exposure or infection may result in personal injury, illness, permanent disability, and/or death. I understand that the risk of becoming exposed to or infected by COVID-19 may result from the actions, omissions, or negligence of myself and others, including, but not limited to the East Cut Community Benefit District officers, agents, employees, volunteers, contractors, and other program participants and their families and guests.

I voluntarily agree to assume all of the foregoing risks and accept sole responsibility for any injury to my child(ren) or myself and my adult guests (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that I or my child(ren) or adult guests may experience or incur in connection with my participation in the above referenced programs ("Claims"). On my behalf, and on behalf of my child(ren) and adult guests, I hereby release, covenant not to sue, discharge, and hold harmless the East Cut Community Benefit District, OCII, the City and County of San Francisco and their respective officers, employees, agents, and representatives, volunteers, and contractors of and from the every and all Claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. I understand and agree that this release includes any Claims whether a COVID-19 infection occurs before, during, or after participation in any East Cut Community Benefit District program.

Signature of Parent/Guardian

Date

Print Name of Parent/Guardian

Name of Participant(s)

Each of the Parties understands and agrees that if any facts concerning claims released in this agreement should be found hereafter to be other than or different from the facts now believed to be true, they expressly accept and assume the risk of such possible difference in facts and agree that the releases in this Agreement will remain effective. Therefore, with respect to the claims released in this Agreement, each of the Parties knowingly and expressly waives any rights or benefits provided by Section 1542 of the Civil Code.