

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 20-2021

**AUTHORIZING INTERIM USES FOR THE ACTIVATION OF THE FORMER
TRANSBAY TEMPORARY TERMINAL SITE ON TRANSBAY BLOCKS 2, 3, AND 4;
APPROVING ACTIVATION DESIGNS; AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE A REVOCABLE PERMIT TO ENTER WITH EAST CUT
LANDING PARTNERS, A DELAWARE STATUTORY PUBLIC BENEFIT LIMITED
LIABILITY COMPANY, TO DESIGN, IMPLEMENT AND MANAGE THE
AUTHORIZED INTERIM ACTIVATION USES; TRANSBAY REDEVELOPMENT
PROJECT AREA**

WHEREAS, The City and County of San Francisco (the “City”) approved the Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinances No. 124-05 (June 21, 2005) and No. 99-06 (May 9, 2006), as amended by Ordinance Nos. 84-15, (June 18, 2015) and 62-16, (April 28, 2016) (“Redevelopment Plan”). The Redevelopment Plan’s purpose is to redevelop approximately 40 acres of property, generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, into a vibrant new neighborhood and to generate funding for the Transbay Joint Powers Authority (“TJPA”) to construct the Transbay Transit Center (“TTC”); and

WHEREAS, To permit the demolition of the former Transbay Bus Terminal and the construction of the new TTC, the TJPA acquired the land and constructed a temporary bus terminal on Transbay Blocks 2, 3, and 4, an approximately 3.5 acres site, (“Site”) for bus service during the construction period. The Site is bordered by Howard, Main, Folsom, and Beale Streets in the City and County of San Francisco. The Site is approximately 151,340 square feet and consists of former State-Owned Parcels known as portions of Blocks 2 and 3, and all of Block 4 (Assessor Parcel Block 3739, Lot 008) and other land within Blocks 2 and 3 (Assessor Parcel Block 3739, Lots 002, 004, 006, and 007) which was purchased by the TJPA from private owners in 2008; and,

WHEREAS, The construction of the TTC started in 2010 and was completed in 2019. Following the completion of the TTC, the TJPA closed the Temporary Terminal Site, which became available for the development of uses as intended under the Redevelopment Plan and Implementation Agreement; and,

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 completing the enforceable obligations of the Redevelopment Agency of the City and County of San Francisco

(the “Former Agency”) in the Transbay Redevelopment Project Area (the “Project Area”) under the authority of the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq., as amended by the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq.; and,

WHEREAS, OCII is complying with the Transbay Redevelopment Project Implementation Agreement between the Redevelopment Agency of the City and County of San Francisco the TJPA, dated January 20, 2005 (“Implementation Agreement”), which incorporates the state statutory requirement (Cal. Public Resources Code § 5027.1) that 35 % of the residential units developed in the Project Area shall be available to low and moderate income households. The Implementation Plan also establishes, among other things, OCII’s obligation to implement the Redevelopment Plan, including its zoning of portions of the Site as public open space. 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, Under the Redevelopment Plan, the Site will ultimately be developed into affordable housing (“Block 2”), a public park (“Block 3”), and mixed-use development (“Block 4”). OCII acquired, by Resolution No. 23-2020 (Aug. 18, 2020), the Site from TJPA and is in negotiations with a developer for a mixed-income residential project on Block 4, is working with the City’s Public Works and Recreation and Parks Departments on the design of Transbay Park at Block 3, and has entered into an exclusive negotiations agreement with affordable housing co-developers for the development of two residential projects on Block 2. Construction of these permanent uses is anticipated to begin in early 2023; and,

WHEREAS, The Redevelopment Plan authorizes certain, permitted land uses at the Site, including community serving retail and personal services, arts activities, physical fitness facilities, recreation facilities, community serving offices, outdoor activity areas, and public, semi-public, institutional and nonprofit uses. In addition, the Redevelopment Plan authorizes OCII to permit the temporary use of any land in the Project Area for interim uses not in conformity with the uses permitted in the Redevelopment Plan pending the development of land by developers and participants; and,

WHEREAS, At the request of the community, OCII seeks to activate the Site, on a temporary basis and at no cost to OCII, with active, pedestrian-oriented, community-serving uses; and,

WHEREAS, On December 3, 2020, the Successor Agency, in consultation with TJPA, issued a Request for Proposals (the “RFP”) seeking a team to implement, manage and operate interim uses on the Site. The RFP sought uses such as an outdoor food or beverage court, including food trucks; outdoor farmer’s market; outdoor retail; outdoor recreational uses; sports programming (soccer field, tennis court, etc.); and outdoor movies that cater to, and create vitalized spaces for, those who live, work and visit the East Cut Neighborhood of San Francisco, and other nearby communities; and,

- WHEREAS, The RFP provided that that the proposed use of the Site must be cost neutral to OCII and that the interim user would be required to cover OCII's carrying costs for the Site, including property management fees, utilities, staff costs, and site maintenance or repair costs ("Site Fees"); and,
- WHEREAS, An evaluation panel comprised of representatives from TJPA, the Office of Economic and Workforce Development, the Transbay Citizen's Advisory Committee ("CAC"), and OCII recommended the proposal from East Cut Landing Partners ("ECLP"). The ECLP proposal included, among other things, small soccer fields, local food trucks, food and retail stalls for local businesses, a family-friendly beer garden, fitness space, an outdoor cinema and a children's play area, pickleball courts, public art, a dog run, and flex space for community events and classes, events, and other community-serving uses (the "Interim Uses"); and,
- WHEREAS, OCII and East Cut Landing Partners, a Delaware Statutory Public Benefit limited liability company (the "Permittee") have negotiated and agreed to terms in a Permit to Enter (the "Permit") (see Exhibit A). The Permit and attachments authorize Interim Uses and impose obligations relating to property management (including maintenance, access, security, landscaping), hours of operation, staffing, local small business outreach, Site design, liability and insurance, compliance with laws and permitting (including COVID-19 safety), and financing; and,
- WHEREAS, The Interim Uses of the Site are permissible under Sections 3.4.3, 3.4.4 and other applicable provisions of the Redevelopment Plan, and are generally consistent with other permitted uses within the Transbay Downtown Residential District (Zone 1) of the Redevelopment Plan, are complementary and consistent with surrounding development, and would not be detrimental to the health and welfare of the surrounding community; and,
- WHEREAS, The design plans for the Site submitted by the Permittee are complementary and consistent with surrounding development, subject to the conditions of approval in this Resolution; and,
- WHEREAS, The Permit is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the Permit Area for uses consistent with the terms and conditions of the Permit ("Permitted Uses") that will terminate sixty (60) days after written notice to Permittee of OCII's intent to transfer the Site or to commence construction of permanent improvements on the Site (or as to portions of the Site), which is anticipated to occur in 2023. The Permit also provides for earlier termination upon certain events of default. Permittee intends to authorize sub-permits with various vendors, business operators, concessionaires and others who will directly provide goods and services to the public. Consideration for use of the Site is the Permittee's payment of Site Fees; and,
- WHEREAS, Authorizing the Interim Uses for the activation of the Site; approving the activation designs; and, authorizing the Executive Director to execute the Permit to design, implement and manage the Interim Uses are categorically exempt from the California Environmental Quality Act ("CEQA"), in accordance with Section 15304 (e) of the CEQA Guidelines, because these actions would allow minor alterations to

land that consist of minor temporary uses of land having no permanent effects on the environment; now therefore be it,

RESOLVED, That the Commission approves the Interim Uses of the Site and authorizes the Executive Director to review and approve other uses of the Site that may be proposed in the future by the Permittee and that conform to the Redevelopment Plan; and, be it further

RESOLVED, That the Commission approves the design plans for the Interim Use, subject to the remaining design issues being resolved to the satisfaction of the Executive Director and any changes included in subsequent design stages as follows:

1. *Materials and Colors.* Permittee should continue to refine the interim use program materials, including fencing, retail stalls, landscaping, ground treatment and accent materials in coordination with OCII staff. The materials palette must demonstrate durability, quality, color, variety, and visual interest. Sustainable and recycled materials are highly encouraged.
2. *Fencing and Gates.* Fence heights, materials and extents shall be consistent with the fence plan as indicated in the Interim Urban Activation Plan fence drawing included in Attachment 3, Design Plans to the Commission memorandum; and be it further

RESOLVED, That the Commission authorizes the Executive Director to: (i) execute the Permit, substantially in the form of the Permit attached to this Resolution as Exhibit A; and (ii) to enter into any and all ancillary documents or to take any additional actions, including updating insurance requirements, necessary to implement the Permit.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of June 1, 2021.

Commission Secretary

Exhibit A: Interim Activation Permit to Enter

PERMIT TO ENTER AND AGREEMENT TO ACTIVATE AND MANAGE

(Transbay Blocks 2, 3 & 4 Former Transbay Temporary Terminal Site)

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 (“**Successor Agency**”) grants to **EAST CUT LANDING PARTNERS**, a Delaware Statutory Public Benefit limited liability company (“**Permittee**”) a temporary non-exclusive permit to enter upon certain Successor Agency-owned real property located on Assessor’s Block 3739, Lots 002, 004, 006, 007, and 008 (200 and 250 Main Street and 200 Folsom Street, San Francisco, California) also known as Transbay Blocks 2, 3 and 4 (hereinafter referred to as the “**Permit Area**”), upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter and Agreement to Activate and Manage (“**Permit**”).

1. Permit/License. In consideration of the stated conditions and agreements herein, the Successor Agency hereby grants to Permittee a revocable, personal, non-assignable, and non-possessory privilege to enter upon and activate, manage and maintain the Permit Area for the enjoyment of public visitors, guests and customers (“**Invitees**”) in accordance with this Permit and Successor Agency Commission Resolution No. XXX-21 approved [date]. The Permit is non-exclusive and is subject to the rights of ingress and egress by the Successor Agency and others who are authorized to access portions of the Permit Area. The Permittee intends to activate the Permit Area by authorizing various agents, employees, vendors, operators, concessionaires, contractors, subcontractors and other persons (“**Sub-Permittees**”) to engage in Permitted Uses (as defined in Section 3 below), whose rights shall arise through the Permittee under this Permit.

2. Permit Area: The Permit Area is more particularly depicted on Attachment 1, Permit Area, attached hereto and made a part hereof.

3. Permitted Uses:

a. **Generally.** The Permittee may enter and use, at its sole cost and expense, the Permit Area solely for food/beverage service including food trucks, recreation and fitness, outdoor cinema, farmers market, retail stalls, kid's play area, small dog run, and, within the "Greyhound Building", office use for the East Cut Community Benefit District, youth/community services space and event space for community (non-commercial) groups, all as generally identified on Attachment 2, Proposed Permit Area Activation, as well as to perform its property management obligations specified in Section 4 below. (the “**Permitted Uses**”). No other uses are permitted unless approved in advance by the Successor Agency, and Permittee shall provide advanced notice of any material changes to the proposed activation shown on Attachment 2. Permittee acknowledges that all Permitted Uses are subject to Permittee's compliance with all laws, as provided herein, including without limitation all public health orders related to the COVID-19 pandemic.

b. **Private Events.** The Permittee acknowledges the Permit Area is primarily intended to be activated and used for the enjoyment of the public. Certain private events may be allowed in accordance with the following:

i. Entire Permit Area. Subject to prior notice to and reasonable approval by Successor Agency, Permittee may offer the entire Permit Area for private events lasting no longer than six days (including closure necessary for setup and take down periods) for a cumulative duration of sixteen (16) days within a 365-day period. Permittee shall be responsible for assessing and implementing necessary additional security, maintenance and other services (e.g., bathrooms, valet parking) for such events and shall be responsible for ensuring that such needs are fully met. Permittee shall repair or cause to be repaired any damage caused by such events. Permittee shall ensure that its policies of insurance cover liabilities associated with such events or provide, for Successor Agency's prior review and approval, evidence of the event sponsor's adequate insurance coverage.

ii. Portions of Permit Area. Subject to prior notice to and reasonable approval by Successor Agency, Permittee or its Sub-permittees may offer discrete portions of the Permit Area for a reasonable number of private events (i) consistent with those uses specified in Section 3(a) and otherwise consistent with this Permit, (ii) provided that such events constitute no more than 20% of the total daily hours the specified portion of the Permit Area is typically operated, and (iii) provided that public access is otherwise maintained through the Permit Area and to as many areas within the Permit Area as possible. The following uses are excluded from the foregoing limitation, in order to allow for reservation for exclusive use by members of the public:

1. Reservable areas of the beer garden as shown on Attachment 1, which may be subject to advanced reservation through an online reservation system, provided that Permittee shall ensure that four prime periods of use, consisting of one Thursday and one Friday per month from 5 pm to 9 pm, and one Saturday and one Sunday per month from 10am to 2 pm (or other comparable time periods approved by Successor Agency), shall be available to public use/blacked-out in the reservation system as "not reservable" (subject to review and reduction of black-out periods by the Successor Agency at the request of ECLP or its Sub-Permittee);

2. Community/youth programming, and fee-based advanced and day-of public sign-up leagues, provided that ECLP or its Sub-Permittee sets aside and provides and advertises frequent opportunities for no-reservation, no-cost "pick-up" use by members of the public.

iii. Successor Agency reserves the right to adjust, in its sole discretion, the number or duration of private events within the Permit Area.

c. **Flex Spaces.** Permittee and Successor Agency acknowledge that those areas identified as "Flex Space" on Attachment 2 are to be used for those Permitted Uses identified thereon, but that the Flex Spaces may in the future be used for other Permitted Uses as the Permittee's activation of the Permit Area becomes established. Permittee shall provide the

Successor Agency with advanced notice of its intent to change or expand the uses of one or more Flex Spaces within the Permit Area.

4. Covenants for Use:

a. Activation. Permittee shall, in accordance with this Permit, design, implement and operate a temporary program of activation on the Permit Area that includes a combination of Permitted Uses as identified on Attachment 2, which may be modified from time to time with the reasonable consent of the Successor Agency.

b. Property Management. Permittee shall, at all times from and after its first entry onto the Permit Area under this Permit, and at its sole cost and expense, perform property management of the Permit Area, including maintenance, janitorial, repairs, security, and landscape maintenance as further specified in **Attachment 3, Property Management Services**, except that Successor Agency will continue its existing property management contractor to provide its scope of work for the first three weeks of the Term (as defined in Section 5 below). In performing this obligation, Permittee shall maintain the Permit Area and all improvements, alterations, fixtures and personal property thereon in good and working order, condition and repair. Among other things, Permittee shall repair or replace broken furniture, equipment and fixtures used in the Permit Area as required to maintain such in accordance with Section 7(d). Permittee shall be responsible for keeping the Permit Area free from graffiti and trash. In the event that Permittee, its Sub-Permittees or Invitees cause any damage (excepting ordinary wear and tear) to the Permit Area or any other Successor Agency property, Permittee shall be responsible to repair the same, and Successor Agency may, in its sole and absolute discretion, elect to repair the same itself or require Permittee to repair the same, all at Permittee's sole cost and expense if Permittee does not remedy or initiate repairs within three (3) days of receiving notice from Successor Agency. Upon receipt of any invoice from Successor Agency for costs incurred by Successor Agency related to any repair performed by Successor Agency in accordance with this Section, Permittee shall immediately reimburse Successor Agency for its costs to perform said repairs. This provision shall survive the expiration or earlier termination of this Permit. Successor Agency shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Permit Area or to any improvements or alterations now or hereafter located thereon. Failure to perform the obligations set forth in Section 4.a and 4.b shall be a material breach of this Permit.

c. Neighborhood Outreach/Partnerships. The Permittee shall engage with schools, neighborhood organizations, service providers, or other non-profit organizations within the surrounding community to provide information on the potential usage of the Permit Area and/or partnerships with the Permittee for programming the Permit Area.

5. Term; Activation Start Date; Revocability:

a. Term. The term of this Permit shall begin on the Effective Date with full access to the Permit Area and will terminate as to all or certain portions of the Permit Area sixty (60) days after written notice to Permittee from Successor Agency of intent to transfer or commence construction on the affected portion of the Permit Area, unless earlier terminated by the Successor Agency pursuant to the terms hereof ("**Term**"). If Permittee wishes to enter the

Permit Area and access utility service prior to fully complying with the requirements of Section 12 concerning Permittee's arrangement of utility service, Permittee may request to enter the Permit Area and access utilities upon its written agreement to reimburse Successor Agency for cost of utilities owing from the date of Permittee's entrance.

b. Activation Start Date. Permittee shall install and open the Permit Area to the public for Permitted Uses as shown on Attachment 2 no later than sixty (60) days after the commencement of the Term of this Permit, with the exception of the dog run and play equipment within the kid's play area (which shall be available to the public within 100 days after commencement of the Term), and art installations in the Permit Area (which shall be installed on a rolling basis with final installations made no later than 16 weeks from the commencement of the Term), all subject to unavoidable delays. At least five (5) days before commencing any work on the Permit Area, Permittee will notify the Successor Agency day-to-day contact (see Section 36) of the date such work will commence and the intended schedule. **"Unavoidable delays"** means any delays by reason of acts of nature, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of Permittee.

c. Expiration of Term. Any continued use of the Permit Area after the expiration of the Term without the Successor Agency's consent shall constitute a default by Permittee and entitle Successor Agency to exercise any or all of its remedies as provided in this Permit and at law or in equity. All rights of Successor Agency under this Permit, including all indemnifications, shall remain in place during any such unauthorized holdover. Successor Agency shall retain all rights at law or in equity to cause Permittee to vacate the Permit Area.

d. Revocability. Permittee acknowledges that the installation of any facilities in the Permit Area will not in any way limit Successor Agency's right to revoke this Permit or limit any of Permittee's other rights under this Permit.

6. **Time of Entry:** Once the Permit is fully executed and throughout its Term, entry into the Permit Area shall be for 24 hours per day 7 days per week, for use in accordance with this Permit. For the avoidance of doubt, Permittee shall make the Permit Area open and accessible to the public seven (7) days per week from 7:00am to 10:00pm during the week and 11pm on weekends, with the exception of the outdoor cinema (which may be open to 12am on weekends utilizing individual headphones for Invitees), and fitness classes (which may have a starting time of 6am during the week utilizing individual headphones for Invitees) (collectively the "**Operating Hours**"). Successor Agency reserves the right to adjust the Operating Hours in its sole discretion. Permittee shall also be present on the Permit Area outside of Operating Hours to perform obligations under Section 4.b, above, provided that such activities are not, in the reasonable discretion of the Successor Agency, disruptive to surrounding residents.

7. **Installation of Improvements:** Permittee may install on the Permit Area, at its sole cost and expense, (i) improvements including without limitation connection to water service and electrical lines, improvements to internal areas of existing structures, addition of temporary features such as sales stalls/shelters, seating areas with tables and chairs, kid's play and recreational equipment and other temporary fixtures and improvements (such as fencing or other barriers) all

as identified on Attachment 2 or other design plans approved by the Successor Agency, and, (ii) with the prior written consent of the Successor Agency, other improvements to implement its activation and property management obligations under this Permit (the "**Improvements**"), only on Permittee's and its Subpermittees' initial and continued satisfaction of the following conditions, which are for the sole benefit of the Successor Agency:

a. Baseline. Permittee shall survey the Permit Area prior to installing Improvements to ensure that hazardous or potentially hazardous conditions are addressed prior to opening the Permit Area (or portions thereof) to the public. Permittee will provide the results of this survey to Successor Agency.

b. Approval of Plans and Specifications. All Improvements shall be installed in accordance with Attachment 2, and any other plans required or approved by the Successor Agency for uses or Improvements not identified Attachment 2.

c. Permits and Approvals. Before beginning any work to install the Improvements, Permittee shall obtain, or shall ensure the applicable Sub-Permittee has obtained, all Regulatory Approvals of any Regulatory Agencies, as defined in Section 13, required to commence and complete the Improvements. Promptly after receipt of the Regulatory Approvals, Permittee will deliver copies to the Successor Agency. Permittee acknowledges that no approval by the Successor Agency under this Permit for purposes of the Improvements will be deemed to constitute the approval of any other Regulatory Agency, and nothing in this Permit will limit Permittee's obligation to obtain all Regulatory Approvals, at Permittee's sole cost.

d. First-Class Condition. Permittee acknowledges that the Permit Area is in a highly visible part of the South of Market/East Cut community, and accordingly, Permittee shall, for itself and its Sub-Permittees, ensure that the Improvements (including all furniture, equipment, and fixtures used at the Permit Area) are of good quality and attractive, and otherwise maintain and complement the immediate surroundings. Permittee shall ensure sufficient bathroom facilities are provided throughout the Permit Area to serve expected number of users in the Permit Area. The location and number of bathroom facilities, including portable restrooms, shall be subject to Successor Agency staff approval.

e. Safe Ingress, Egress and Circulation. Permittee shall ensure that the Permit Area is configured to maintain sufficient area for pedestrian ingress and egress to and from, and circulation within, the Permit Area.

f. Construction Requirements. All construction shall be undertaken using commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Permit Area and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its work. Commercially reasonable measures shall be undertaken to minimize damage, disruption or inconvenience caused by the work and make adequate provision for the safety and convenience of all persons affected by the work. Dust, noise and other effects of the work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Appropriate construction barricades shall be erected substantially enclosing the area of such

construction and maintain them until the work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

g. Safe Operation of Improvements. All fixtures and equipment installed in the Permit Area shall be operated in accordance with all required health and safety permits and comply with all operating instructions and safety warnings published by the manufacturer or supplier of said fixtures or equipment.

h. Adjustment of Improvements. After installation, Permittee and/or its Sub-Permittees shall make adjustments to Improvements based on reasonable input from Successor Agency if such adjustments are necessary to maintain the Permit Area in the condition required in Sections 7.d to 7.e.

i. Installation of Above-Ground Markers. Permittee shall install above-ground markers identifying the location of any underground Improvements installed at the Permit Area. Successor Agency must approve in writing before installation the location, type, and installation of markers and identifying information.

j. Removal of Improvements. Without limiting any of the Successor Agency's other rights under this Permit or otherwise, Permittee shall promptly at Successor Agency's request, alter or remove at no cost to Successor Agency all Improvements or other property installed or placed in, on, under, or about the Permit Area by or for Permittee, as may be necessary to avoid any actual or potential interference with any public utilities now or later installed in, on, under, or about the Permit Area. In the event of an emergency Successor Agency may, at its sole option and without notice, alter, remove, or protect at Permittee's sole expense, any and all Improvements or other property installed or placed in, on, under, or about the Permit Area by Permittee.

k. Permittee's failure to comply, or failure to ensure compliance on the part of its Sub-Permittees, with the conditions of this Section shall constitute a material default under this Permit.

8. Operations; Security: Permittee shall operate its uses on the Permit Area, and shall ensure that its Sub-Permittees operate uses on the Permit Area, in a first-class manner at all times, including maintaining compliance with Sections 7.d through 7.e above, for the comfort, benefit and safety of the general public users of the Permit Area. Permittee is solely responsible for securing the Permit Area and shall ensure that the Permit Area is secured at all times. Permittee shall ensure that all maintenance and security personnel brought onto the Permit Area by Permittee or its Sub-Permittees are appropriately qualified and trained for their designated functions. Permittee assumes all liability, for itself and its Sub-Permittees, arising out of hiring or otherwise using undertrained or underqualified staff on the Permit Area.

a. Fencing. Permittee shall install and operate fencing and other security measures, and maintain security personnel in and around Permit Area, to prevent the unauthorized entry of persons or vehicles both within and outside of Operating Hours (including the entry of persons or vehicles to back-of-house areas closed to the public for safety reasons). Permittee acknowledges that Successor Agency maintains a rented temporary fence surrounding the Permit

Area, and Permittee shall assume said rental contract upon initial entrance to the Permit Area or shall, in its discretion, terminate the rental fencing contract and install its own fencing securing the Permit Area.

b. Fire Safety. Permittee acknowledges that Successor Agency contracts for the maintenance of a fire safety system serving the former Greyhound Building in the Permit Area, and Permittee shall assume said contract upon initial entrance to the Permit Area or shall, in its discretion, terminate the contract and enter into its own contract for fire safety in this building.

9. Prohibited Uses: Permittee shall use the Permit Area and shall ensure the Permit Area is used solely for Permitted Uses and for no other purpose. Any other use in, on or around the Permit Area or surrounding or adjacent Successor Agency property shall be strictly prohibited, including but not limited to waste, nuisance or unreasonable annoyance to the owners or occupants of adjacent properties, interference with Successor Agency's use of its property, or obstruction of traffic. Permittee acknowledges that the following uses of the Permit Area by Permittee or its Sub-Permittees (as defined herein) are inconsistent with the limited purpose of this Permit and are strictly prohibited:

a. Dumping. Permittee may not dump or dispose of refuse or other unsightly materials on, in, under, or about the Permit Area.

b. Hazardous Substances. Permittee will not cause, and Permittee will not allow any of its Sub-Permittees or Invitees to cause, any Hazardous Substances (as defined below) to be brought on, kept, used, stored, generated, or disposed of in, on, or about the Permit Area, or transported to or from the Permit Area. Permittee will immediately notify Successor Agency when Permittee learns of or has reason to believe that a release (as defined in Section 15.f) of Hazardous Substance has occurred in, on, or about the Permit Area. Permittee will comply with all laws requiring notice of releases or threatened releases to governmental agencies and will take all action necessary to mitigate the release or minimize the spread of contamination.

c. Nuisances. Permittee will not conduct any activities on or about the Permit Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or glare) to Successor Agency, the owners or occupants of neighboring property or to the public. Lighting and activity in the Permit Area occurring beyond the designated Operating Hours shall be considered a nuisance.

d. Smoking. Permittee acknowledges and agrees that smoking of any kind is not permitted within the Permit Area.

e. Damage. Permittee will not do anything about the Permit Area that will cause damage to any of Successor Agency's property or City property adjacent to the Permit Area.

The prohibited uses listed above are not exclusive and this Section does not limit the Successor Agency's authority to specify additional restrictions on the use of the Permit Area, in Successor Agency's sole discretion.

10. Consideration to Agency: Unless otherwise required to satisfy restrictions existing on the Permit Area, Permittee's consideration to Successor Agency shall be in the form of

fulfilling its activation and maintenance obligations under this Permit at no cost to Successor Agency, which the parties acknowledge is a benefit to the community and to Successor Agency not otherwise provided.

11. “As Is;” Waiver of Claims; Waiver of Consequential and Incidental Damages:

a. The Successor Agency 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 any Hazardous Substance in or from the Permit Area. 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.

b. Neither Successor Agency nor any of its Agents (as defined in Section 14) will be liable for any damage to the property of Permittee, its Sub-Permittees, their employees or Invitees, or for any bodily injury or death to any persons, resulting or arising from the condition of the Permit Area or its use by Permittee.

c. Permittee acknowledges that this Permit is freely revocable by Successor Agency and in view of that fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if the expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Successor Agency, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, if Successor Agency exercises its right to revoke or terminate this Permit.

d. Permittee acknowledges that, upon termination or revocation of this Permit, the Permittee and its Sub-Permittees will not be displaced persons and will not be entitled to relocation benefits under the California Relocation Act (Government Code Sec. 7260 et seq.) or other applicable law and that Sub-Permittees will be informed, in writing, of the unavailability of these relocation benefits. Permittee fully WAIVES, RELEASES AND DISCHARGES any and all claims, demands, rights, and causes of action against Successor Agency, its Agents, and all persons acting by, through or under each of them, under any present or future federal and state relocation assistance laws to the extent allowed under applicable law.

e. In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Initials _____

Permittee acknowledges that the releases contained in this Permit includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee acknowledges that it has agreed to this Permit with full knowledge of this waiver and the effect of this waiver, and, being fully aware of the consequences, Permittee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this Permit will survive any termination of this Permit.

f. Under California Civil Code Section 1938, to the extent applicable to this Permit, Permittee is advised that the Permit Area has not undergone inspection by a Certified Access Specialist (“CASp”) to determine whether it meets all applicable construction-related accessibility requirements. A CASp can inspect the Permit Area and determine if it complies with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Permit Area, Successor Agency may not prohibit Permittee from obtaining a CASp inspection of the Permit Area for the occupancy or potential occupancy of Permittee if requested by Permittee, which, if so requested, will be performed at Permittee's sole cost at a mutually agreed-upon time and manner, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Permit Area.

12. Utilities: Successor Agency has no responsibility or liability of any kind for any utilities that may be on, in, or under the Permit Area. Permittee has the sole responsibility to locate all utilities and protect them from damage. Permittee will arrange and pay for any necessary temporary relocation of public utility company facilities that it requires to carry out its permitted uses, subject to the prior written approval by Successor Agency and any utility companies for any relocation. Permittee will be solely responsible for arranging in its own name and paying directly for any utilities or services necessary for its activities. 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. No electrical generators will be allowed within the Permit Area except with Successor Agency prior approval. Any mechanical uses not identified in Attachment 2 shall be subject to prior review and approval by Successor Agency.

13. Compliance with Laws; Nondiscrimination; Disability Access:

a. Compliance with all Laws: Permittee will, at its expense, conduct and cause to be conducted all activities on the Permit Area 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, noise ordinances, the Americans with Disabilities Act, life safety laws and regulations applicable to uses of the existing buildings, and any other disability

access laws and any orders related to COVID-19 or other health emergencies), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties.

b. Regulatory Approvals: Permittee understands that Permittee's activity on the Permit Area may require authorization, approval, license, registration, or permit (“**Regulatory Approvals**”) from a local, state or federal government agency (“**Regulatory Agencies**”), and that there is no guarantee, or presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency. Permittee shall be solely responsible for obtaining any such Regulatory Approvals, and Permittee shall not seek any Regulatory Approval without first obtaining the prior written approval of the Successor Agency which shall not be unreasonably withheld, conditioned or delayed. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Permittee. Permittee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Permittee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency, if the Successor Agency is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Successor Agency or would create obligations on the part of the Successor Agency (whether on or off of the Permit Area) to perform or observe, unless in each instance the Successor Agency has previously approved such conditions in writing, in Successor Agency’s sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Permittee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Permittee, and the Successor Agency shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Permittee agrees to indemnify Successor Agency and its Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which the Successor Agency may incur as a result of Permittee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

c. Nondiscrimination: The Permittee herein covenants for itself and for its Sub-Permittees and Invitees 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, ancestry, or other protected class 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 The Successor Agency’s Nondiscrimination in Contracts Policy, adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time. Permittee will include in all contracts relating to the Permit Area a non-discrimination clause obligating the contracting party in substantially the form of the foregoing. Permittee’s failure to comply with the obligations in this Subsection will constitute a material breach of this Permit.

d. Compliance with Small Business Enterprise Policy: The Successor Agency implements a Small Business Enterprises (“**SBE**”) Program that was adopted by Successor Agency Commission Resolution No. 43-2015 and that requires consideration in awarding contracts and

operations agreements in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside a Redevelopment Project Area), and 3) All other SBEs. Pursuant to the SBE Program, if the Permittee intends to award any contracts, subcontracts or any other rights to perform activation within the Permit Area, it shall consult with the Successor Agency and make good faith efforts to achieve, or attempt to achieve, the Successor Agency 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 the Successor Agency has the sole discretion to modify the 50% SBE participation goal consistent with the SBE Program. Permittee shall provide Successor Agency with a weekly summary of its Sub-Permittee's compliance with this provision (i.e., proposed entities to be engaged, outreach efforts made) until Permittee opens the Permit Area to the public under Section 5(b), and bi-weekly thereafter. Permittee SBE outreach efforts shall include outreach to businesses in Transbay by foot; question and answer webinars; marketing via the East Cut Community Business District's mailing list, Successor Agency's website, and other online publications; and the development of an East Cut Landing website that will highlight opportunities for SBEs and provide an intake form for interested parties.

e. Prevailing Wages: Permittee shall comply with all applicable prevailing wage requirements, including the Successor Agency's Prevailing Wage Policy, which includes payment of prevailing wages determined by the California Department of Industrial Relations for installation of applicable improvements.

f. Compliance with Minimum Compensation Policy and Health Care Accountability Policy: Permittee agrees, and shall require its Sub-Permittees to agree in the form of the Declarations included in Attachments 5 and 6, as of the date of this Permit and during the Term, to comply with the provisions of the Successor Agency'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 5, "Minimum Compensation Policy" and Attachment 6, "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>.

14. Indemnification:

a. General Indemnification: To the fullest extent allowable by law, Permittee shall hold harmless, defend at its own expense, reimburse, and indemnify Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, contractors, subcontractors and employees (collectively, "**Agents**") 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, its officers, agents,

employees, or Sub-Permittees, in rendering services under this Permit; excluding, however, such liability, claims, losses, damages or expenses arising from the Successor Agency'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, employees or Sub-Permittees. In addition to Permittee's obligation to indemnify the Successor Agency, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Successor Agency 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 the Successor Agency and continues at all times thereafter. This Section does not limit the indemnification provided pursuant to Section 15(c), below.

b. No Mechanics' Liens: Permittee shall not, and shall not allow its Sub-Permittees, to 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 its Sub-Permittees or contractors in connection with the Permitted Uses and Permittee shall hold the Successor Agency free and harmless from any and all cost or expense connected with or arising from the Permitted Uses.

15. Hazardous Material Acknowledgement and Indemnification:

a. Hazardous Material Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Permitted Uses under this Permit, Permittee and its Sub-Permittees and Invitees may be working with or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that the Successor Agency 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 and contractors. 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 and contractors, and making the decision on how (and whether) to enter upon the Permit Area and carry out the Permitted Uses, with due regard to such risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials: Notwithstanding the prohibition contained in Section 9.b above, should Permittee or its Sub-Permittees bring Hazardous Materials onto the Permit Area, Permittee assumes sole responsibility for managing, removing and properly disposing of said waste, 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 the Successor Agency, the City, and their respective Agents and Invitees 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 Permitted Uses 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 15.e 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 Permitted Uses.

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: Permittee shall not undertake any soils investigations without prior written permission of Successor Agency and subject to requirements imposed in Successor Agency's sole discretion.

16. Insurance; Waiver:

a. Insurance. Subject to approval by Successor Agency's Risk Manager of the insurers and policy forms, Permittee must obtain and maintain, or cause to be obtained and maintained, insurance as set forth in **Attachment 4, Insurance Requirements**, throughout the term of this Agreement at no expense to Successor Agency.

b. Waiver. Permittee shall require participants in sports activities to execute a waiver of liability, in a form approved by Successor Agency, prior to participating in any sporting events in the Permit Area.

17. Default by Permittee; Remedies:

a. The occurrence of any one or more of the following events shall constitute a default by Permittee:

1. Failure to fulfill its activation and maintenance obligations at no cost to Successor Agency, and such failure continues for a period of three (3) days following written notice from Successor Agency; or

2. Failure to use the Permit Area solely for the Permitted Uses, as determined by Successor Agency in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Successor Agency; provided, however, that notwithstanding the foregoing, failure to use the Permit Area solely for the Permitted Uses shall, at Successor Agency's sole and absolute discretion, be deemed an incurable breach of this Permit, allowing Successor Agency to immediately terminate this Permit without notice or demand to Permittee; or

3. Failure to perform any other provisions of this Permit, if the failure to perform is not cured within fifteen (15) days after written notice by Successor Agency, provided that if such default is not capable of cure within such fifteen (15) day period, Permittee shall have a reasonable period to complete such cure if Permittee promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Successor Agency; or

4. An assignment, or attempted assignment, of this Permit by Permittee; or

5. Failure to provide evidence of insurance coverage complying with the provisions of Attachment 4, failure to maintain any insurance required to be maintained by Permittee pursuant to this Permit, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Permit and Permittee's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Successor Agency; or

6. Failure by Permittee to comply with the provisions prohibiting Hazardous Substances to be brought on, kept, used, stored, generated, or disposed of in, or about the Permit Area and Permittee's failure to cure the foregoing default within twenty-four (24) hours following written notice from Successor Agency. If such default cannot reasonably be cured within such twenty-four (24) hour period, Permittee shall not be in default of this Permit if Permittee commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Permittee have more than thirty (30) days to cure such default; or

7. Failure by Permittee to discharge any lien or encumbrance placed on the Permit Area or any part thereof in violation of this Permit within ten (10) days after the date such lien or encumbrance is filed or recorded against the Permit Area or any part thereof, or if

Permittee has no knowledge of such lien, then Permittee shall discharge such lien or encumbrance within fifteen (15) days following Permittee's knowledge of such lien or encumbrance; or

8. Permittee shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Permittee any action or proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Permittee is not discharged from the same within sixty (60) days thereafter; or

9. A receiver is appointed for a substantial part of the assets of Permittee and such receiver is not discharged within sixty (60) days; or

10. This Permit or any estate of Permittee under this Permit shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days.

b. Force Majeure. Failure to meet an obligation or satisfaction of a condition under this Permit due to acts of nature, accidents, breakage, repairs, strikes, lockouts or other labor disputes, inability to obtain labor or materials, enemy action, civil commotion, protests, riots, demonstrations, federal, state or local governmental restrictions, or by any other reason beyond the reasonable control of Permittee and/or its Sub-Permittees shall not be a default provided that the Permittee and/or its Sub-Permittee continues to diligently pursue compliance with the delayed obligation or condition.

18. Successor Agency Remedies. Upon default by Permittee, Successor Agency shall, without further notice or demand of any kind to Permittee or to any other person, and in addition to any other remedy Successor Agency may have under this Permit and at law or in equity, have the ability to immediately terminate this Permit and Permittee's right to use the Permit Area. Upon notice of any such termination, Permittee shall immediately vacate and discontinue its use of the Permit Area and Successor Agency may take any and all action to enforce Permittee's obligations.

19. Right to Cure Defaults: If Permittee fails to perform any of its obligations under this Permit, including without limitation, its failure to maintain or secure the Permit Area as required herein, then Successor Agency may, at its sole option, remedy the failure on Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written notice of Successor Agency's intention to cure the default (except that no prior notice will be required in an emergency as determined by Successor Agency). No actions taken by Successor Agency will be construed as a waiver of any rights or remedies of Successor Agency under this Permit or otherwise, and nothing in this Permit will imply any duty of Successor Agency to do any act that Permittee is obligated to perform. Permittee will pay to Successor Agency on demand, all costs, damages, expenses, or liabilities incurred by Successor Agency, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy the default. Permittee's obligations under this Section will survive the termination of this Permit.

20. Successor Agency Entry:

a. Generally. Successor Agency may enter the Permit Area (including all buildings and Improvements thereon) for the purposes of inspecting or auditing compliance with the requirements of this Permit, or any other reason that does not materially conflict with Permittee's Permitted Uses.

b. Predevelopment Activities. Permittee, for itself and its Sub-Permittees, acknowledges that: (i) the Permit Area is located within an active Redevelopment Project Area subject to future permanent development, and (ii) that Successor Agency shall have the right, with reasonable notice to Permittee, to enter the Permit Area or allow Successor Agency's Agents or permittees to enter the Permit Area, to perform predevelopment activities including without limitation geotechnical or soil borings ("**Predevelopment Activities**") that may require Permittee to close certain portions of the Permit Area to the public for safety purposes. For activities that may disturb or require temporary closure of the Permitted Uses of the Permit Area Successor, Agency shall provide no less than seven (7) days' prior written notice to Permittee of its intent to enter the Permit Area together with a request for specific closures. Permittee shall cooperate with Successor Agency's Predevelopment Activities to the greatest extent possible, including without limitation by making identified portions of the Permit Area accessible to the Successor Agency, its Agents or permittees, removal/relocation of furniture, fixtures or other Improvements, and by restricting public access to specified areas for specified durations. Successor Agency will, and will require its Agents and permittees, to take reasonable measures to minimize disruption of the Permitted Uses by the Predevelopment Activities.

21. Early Termination: This Permit may be terminated by the Successor Agency in its sole discretion upon 60-days' written notice to the Permittee at the address provided in Section 29 below. Permittee shall include a reference to the Successor Agency's rights to terminate the Permit in any sub-permit, contract, or other authorization the Permittee provides to Sub-Permittees for use of the Permit Area.

22. Surrender: Upon termination of the Permit, Permittee shall vacate the Permit Area and remove any and all Improvements, facilities and personal property located thereon, cancel all utility connections, services, or accounts, and restore the Permit Area to its condition at the time of entry, unless otherwise permitted by Successor Agency. The Permit Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Permit and any other encumbrances created by Successor Agency. The Successor Agency shall have the right, with seven (7) days prior notice to Permittee, dispose of any property left by Permittee or its Sub-Permittees after termination of this Permit.

Without any prior notice, Successor Agency may elect to retain or dispose of Permittee's personal property and any alterations and improvements that Permittee has installed with or without Successor Agency's consent that Permittee does not remove from the Permit Area prior upon termination of this Permit. These items shall be deemed abandoned. Successor Agency may retain, store, remove, and sell or otherwise dispose of abandoned property, and Permittee waives all Claims against Successor Agency for any damages resulting from Successor Agency's retention, removal and disposition of such property; provided, however, that Permittee shall be

liable to Successor Agency for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the Permit Area resulting from such removal. Permittee agrees that Successor Agency may elect to sell abandoned property and offset against the sales proceeds Successor Agency's storage, removal, and disposition costs without notice to Permittee. Permittee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Permittee fails to surrender the Permit Area as required by this Section, Permittee shall indemnify Successor Agency from all damages resulting from Permittee's failure to surrender the Permit Area, including but not limited to any costs of Successor Agency to enforce this Section and claims made by a Sub-Permittee resulting from Permittee's failure to surrender the Permit Area as required together with, in each instance, reasonable attorneys' fees and costs.

23. No Assignment: This Permit is personal to Permittee and may not be assigned, conveyed, or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey, or otherwise transfer this Permit will be null and void and cause the immediate termination of this Permit.

24. Closure; Cessation of Use: Permittee will not close the Permit Area or terminate its activities on the Permit Area without thirty (30) days' prior written notice to Successor Agency, except as necessary to protect public safety in the course of making required repairs (which shall be done pursuant to 24-hours prior notice to the Successor Agency), or in the event of emergency or as otherwise provided in this Permit.

25. No Joint Ventures or Partnership; No Authorization: This Permit does not create a partnership or joint venture between Successor Agency and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area.

26. Entry under Permittee Authority: The Permit granted to Permittee for the Permitted Uses shall mean and include Sub-Permittees and Invitees. All Permitted Uses 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. Permittee shall require its Sub-Permittees and Invitees to acknowledge and comply with the applicable requirements of this Permit, but such acknowledgement does not eliminate or absolve Permittee's obligations to comply with this Permit.

27. Signs: Permittee may place wayfinding signage within the Permit Area identifying, or otherwise directly related to, uses therein, and may place sponsorship signage in the programming areas so long as these signs face internally towards the programming areas and are placed no higher than sixty (60) inches off the ground. Subject to Successor Agency's review and approval, Permittee may place up to two signs (one at each main entrance to the Permit Area) may face be placed no higher of up than eighty-four (84) inches. Permittee will not place, erect, or maintain any other sign, advertisement, banner, or similar object on or about the Permit Area unless Permittee first obtains Successor Agency's written consent, which Successor Agency may give or withhold in its sole discretion.

Successor Agency acknowledges that Permittee may propose a commercial sponsorship program to generate revenue for investment in no-cost community programming for children and families of need, and offer new programming to continue to engage and interest the community. Any such program (including signage) shall be provided to the Successor Agency for its review and approval prior to Permittee engaging a potential sponsor or sponsors.

28. Property Taxes; Special Assessments; Possessory Interest Taxes: This Permit does not create a leasehold interest in the Permit Area. To the extent possessory interest taxes are lawfully assessed against the Permit Area, payment of such taxes shall be the responsibility of Permittee. Successor Agency shall be responsible for payment of any validly assessed special assessments or ad valorem property taxes on the fee interest of the Permit Area.

29. Notices: Except as otherwise expressly provided in this Permit, any notices given hereunder will be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, overnight courier, return receipt requested, with postage prepaid, addressed as follows:

Successor Agency: Successor Agency to the Redevelopment
Agency of the City and County of San Francisco
One South Van Ness Avenue, Suite 500
San Francisco, California 94103
Attn: Development Services Manager
email: aaron.foxworthy@sfgov.org

Permittee: East Cut Landing Partners
[to be added]

Notices under this Permit will be deemed given two (2) days after the date when it has been mailed if sent by first class, certified or overnight courier, or on the date personal delivery is made. For convenience of the parties, copies of notices may be sent by email, but no notice sent only by email will be deemed given and will not be binding on the parties.

30. Severability: If any provision of this Permit or the application of a provision of this Permit to any person, entity, or circumstance is invalid or unenforceable, the remainder of this Permit, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected, and each other provision of this Permit will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Permit.

31. Counterparts: This Permit may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

32. Cooperative Drafting: This Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Permit reviewed and revised by legal counsel. No party will be considered the drafter of this Permit, and no presumption or

rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Permit.

33. 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.

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

35. Generally Applicable Provisions: (a) This Permit may be amended or modified only by a writing signed by Successor Agency and Permittee. (b) No waiver by any party of any of the provisions of this Permit will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in the written waiver. (c) All approvals and determinations of Successor Agency requested, required, or permitted under this Permit may be made in the sole and absolute discretion of the Successor Agency Executive Director. (d) This instrument (including its attachments) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged into this Permit. (e) The section and other headings of this Permit are for convenience of reference only and will be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) If Permittee consists of more than one person then the obligations of each person will be joint and several. (h) Permittee may not record this Permit or any memorandum hereof. (i) Subject to the prohibition against assignments or other transfers by Permittee under this Permit, this Permit will be binding on and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. (j) If Successor Agency sells or otherwise conveys the property where the Permit Area is located, then this Permit will automatically be revoked. (k) All Attachments to this Permit are incorporated by reference.

36. Contact Persons of Parties: Contact person for day-to-day communications concerning this Permit shall be: for the Successor Agency, Paige Peltzer, (415) 749-2479, paige.peltzer@sfgov.org, and for the Permittee Kipp Kjeldgaard, (415) 596-5494, Kipp@realactiveus.com.

[Remainder of page left blank. Signatures begin on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of June ____ 2021.

PERMITTEE

East Cut Landing Partners,
a Delaware Statutory Public Benefit limited liability company

By: _____

Its

**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

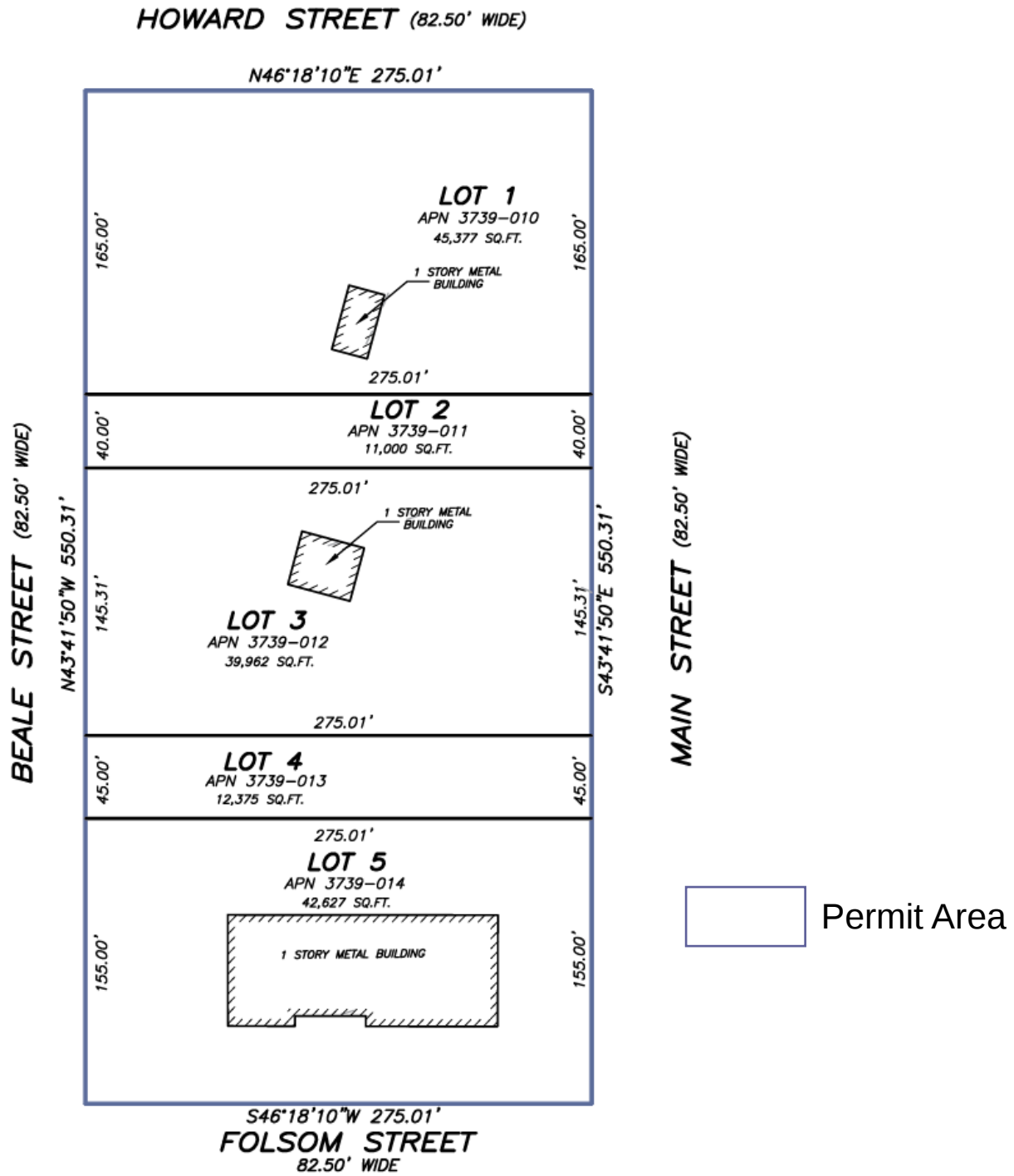
By: _____

James B. Morales
Agency General Counsel

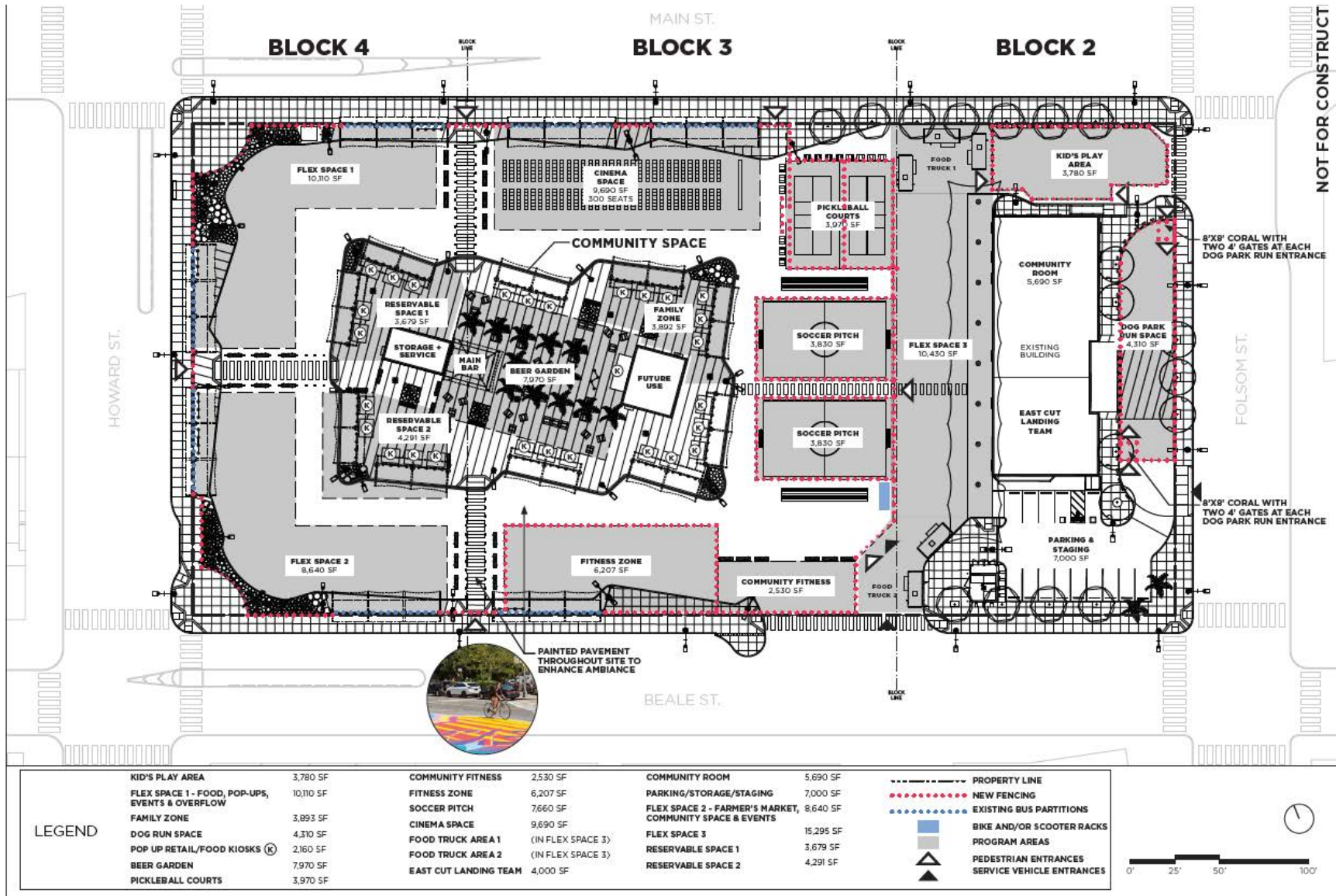
Attachments

Attachment 1: Permit Area
Attachment 2: Proposed Permit Area Activation
Attachment 3: Property Management Services
Attachment 4: Insurance Requirements
Attachment 5: Minimum Compensation Policy
Attachment 6: Health Care Accountability Policy

Attachment 1: Permit Area



Attachment 2: Proposed Activation



Attachment 3: Property Management Services

In addition, and complementary to the requirements specified in the body of the Permit, the Permittee is responsible for providing all services listed in Sections I through III below.

I. Site Operations Manager. Permittee shall employ or otherwise identify a Site-Operations Manager ("**Site-Ops Manager**")¹ who will be on-site during Operating Hours and on-call at all times (24/7) and act as the point person to manage, coordinate and oversee performance of Permittee's and Sub-Permittee's obligations and responsibilities under the Permit, including coordination of and with Sub-Permittees' activities. Permittee shall make the contact information of the Site-Ops Manager available to the public via its website and sign postings throughout the Permit Area. The Site-Ops Manager will attend The East Cut CBD Economic Development Committee meetings and Transbay CAC meetings, composed of neighborhood residents, non-profit operators, and business owners, to receive feedback from the community on activations and solicit feedback. The Site-Ops Manager will also communicate with OCII on a bi-weekly basis to provide status updates on existing and forthcoming activations, outreach to local SBEs for involvement in the Permit Area, and outreach and programs for facilitating community involvement.

II. Permit Area Management

Provide overall property management of the Permit Area and all buildings existing and Improvements installed/to be installed thereon, including janitorial, maintenance and repairs, security, and landscape maintenance. This will include:

- A. Janitorial Services. At all times maintain the Permit Area in a neat, clean, orderly, and attractive condition free of used dishes, utensils, discarded food, debris, and spills, and provide landfill/recycling/compost receptacles serving the Permit Area, collect litter, empty landfill/recycling/compost receptacles, sweep paved areas, clean restrooms, inspect and clean site furnishings. Permittee's obligations shall extend to maintaining sidewalks surrounding the Permit Area in a clean condition free of clutter and refuse from activities on the Permit Area.
- B. Maintenance and Repair. Maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, in accordance with standards generally applicable to public open spaces within San Francisco and with all applicable laws and regulations for such uses ("**Maintenance Standard**"), and perform such repairs as are necessary to meet the Maintenance Standard. This shall include: (i) daily and weekly inspections of the Permit Area, as well as weekly check-ins with Sub-permittees, to identify any potentially unsafe conditions that require repair; and as-needed identification and performance of graffiti removal, tree maintenance, other periodic or non-periodic maintenance activities needed to maintain the Permit Area in accordance with the Maintenance Standard. Permittee has the right but is not required to make necessary structural repairs, or fix exterior deficiencies, to buildings or existing structures in the Permit Area (provided it meets the requirements of Section 13 of the Permit).

¹ The Site-Ops Manager role may be fulfilled by one or more individuals.

- C. Security. Secure the Permit Area both during Operating Hours and outside of Operating Hours to ensure the safety of the Permit Area for members of the public and prevention of unauthorized entry, property damage and related destructive behavior. In performing this obligation, Permittee shall (i) during Operating Hours, provide security meeting industry standards for the proposed uses (including without limitation for outdoor uses involving the distribution of alcohol); (ii) outside of Operating Hours, provide security for the Permit Area meeting industry standards, including performing a reasonable number of foot patrols as are necessary to prevent unauthorized entry and maintain the security of the Permit Area. Security personnel shall be ununiformed and unarmed unless otherwise approved in writing by Successor Agency. Permittee shall maintain fencing or other barriers identified on its Attachment 2 and other submittals to Successor Agency in good condition.
- D. Landscape Maintenance. Maintain Permit Area landscaping, provide gardening services, equipment and supplies, and remove debris daily in order to maintain the landscaping in a neat and orderly appearance. Permittee will also be responsible for tree maintenance, including pruning to maintain hazard-free branching structures, and maintaining/repairing the existing irrigation system.
- E. Deliveries and Vehicle Entry. Coordinate vehicle deliveries and access to the Permit Area of food trucks and other vehicles in a safe manner that limits deliveries to Operating Hours, minimizes noise, disruption to surrounding rights of way and building occupants, and protects public safety.
- F. Utilities and Services. Provide all Permit Area utilities services, including but not limited to, the utilities and fire alarm system listed below.
 - i. Electricity and gas
 - ii. Telecommunications
 - iii. Water and sewer
 - iv. Garbage and recycling
 - v. Fire alarm system – requires inspections, testing, and monitoring by a professional fire alarm company hired by the Permittee.
 - vi. Telecommunications to service the fire alarm system
 - vii. Pest control

III. Permit Area COVID-19 Protocols. The Permittee is responsible for implementing overall Permit Area COVID-19 safety protocols pursuant to local regulations and health department guidelines, and for ensuring its Sub-Permittees follow COVID-19 protocols.

Attachment 4: Insurance Requirements

Subject to approval by the Successor Agency Deputy Director for Finance and Administration of the insurers and policy forms, Permittee must obtain and maintain, or caused to be maintained, insurance as set forth in this Attachment 4 throughout the Term of this Permit, or in accordance with the timeframes stated herein, at no expense to Successor Agency.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Attachment 4 for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$2,000,000 per occurrence/ \$4,000,000 aggregate	Permittee (and subpermittees if Permittee policy not extended to cover)	Additional insured (see Section G)
Automobile Liability (see Section B.2)	\$2,000,000 per occurrence	Permittee (and subpermittees if Permittee policy not extended to cover)	Additional insured (see Section G)
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability	Permittee (and subpermittees if Permittee policy not extended to cover)	Waiver of subrogation

B. Minimum Scope and Limits of Insurance. Permittee (and subpermittees if Permittee's policy does not extend to subpermittees) must maintain insurance with limits no less than:

- 1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by Successor Agency, with additional insured endorsement (see Section G). Umbrella or Excess Liability Policy may be used to meet the terms of this section.
- 2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by Successor Agency, with additional insured endorsement (see Section G). If insured does not own any automobiles, insured must provide Successor Agency a written statement confirming that no automobiles are owned, and Successor Agency will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non-owned autos), with additional insured endorsement. One Million Dollars (\$2,000,000) per accident for bodily injury and property damage, combined single limit.

- 3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming Successor Agency is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars (\$1,000,000) for bodily injury each accident; and not less than One Million Dollars (\$1,000,000) per employee; and One Million Dollars (\$1,000,000) in the annual aggregate for bodily injury by disease. If the Permittee does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Permittee's partners who have employees in lieu of such coverage being provided by the Permittee. Additionally, the Permittee must provide a written statement confirming that the Permittee does not have employees.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by Successor Agency. At the option of Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Permittee shall provide a financial guarantee satisfactory to Successor Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Umbrella or Excess Liability Policies. An Umbrella and/or Excess Liability policy(ies) may be used to reach the Commercial General Liability, Workers' Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by Successor Agency's Risk Manager.
- F. General Requirements.
- 1) If the Permittee maintains additional coverages and/or higher limits than the minimums shown in this Attachment 4, Successor Agency requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Permittee.
 - 2) The policies required herein, with the exception of Workers Compensation, shall be primary insurance and non-contributory as respects to Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Permittee's insurance and shall not contribute with it.
 - 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or

reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to Successor Agency. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to Successor Agency shall be borne by the policyholder.

- 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- 5) Approval of Permittee's insurance by Successor Agency will not relieve or decrease the liability of Permittee under this Agreement.
- 6) Successor Agency and its officers, agents and employees will not be liable for any required premium under any policy maintained by Permittee.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after the Compliance Term for general liability insurance.

G. Verification of Coverage. Permittee must furnish Successor Agency with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by Successor Agency before work commences. Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time. Permittee shall require and verify that its contractors and consultants maintain the required policies as stated herein. Permittee must furnish Successor Agency with copies of certificates and endorsements upon request. All certificates shall include the following:

- 1) Identify the following as the certificate holder:

Successor Agency to the Redevelopment Agency of the City and
County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

- 2) Identify the name of the insurance policy holder (Permittee, Developer, or Contractor), the Project name, and the Project address.
- 3) For policies in which Successor Agency is required to be named as an additional insured, loss payee, dual obligee, or named on a waiver of subrogation, the policy shall name "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and

County of San Francisco and their respective commissioners, members, officers, agents and employees” on the certificate and on the attached endorsement or certificate.

- H. Review. Successor Agency reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with Successor Agency’s Risk Management Policy. The insurance coverage required under this Section shall be evaluated by Successor Agency for adequacy from time to time. Successor Agency may require Permittee to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

Attachment 5: Minimum Compensation Policy

Attachment 6: Health Care Accountability Policy