

File No. 091391

Committee Item No. _____

Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 01/12/10

Cmte Board

- | | | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER

(Use back side if additional space is needed)

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <u>Minor Sidewalk Encroachment Appeal for 24-34 Ellis Street</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <u>(Other materials were distributed to each member of the Board upon receipt by the</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <u>Clerk's Office, and available in File No. 091391)</u> |

Completed by: Joy Lamug

Date 1/07/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

55

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BOS; AC; RC; JL

Harvey Hacker
Architects
528 Bryant Street
San Francisco 94107
415 957-0579 Phone
415 957-5851 FAX

30 November 2009
0959

RECEIVED
CITY OF SAN FRANCISCO
2009 NOV 31 AM 11:05
PC

City and County of San Francisco Board of Supervisors
Attn: Ms Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr Carlton B Goodlett Place
San Francisco CA 94102

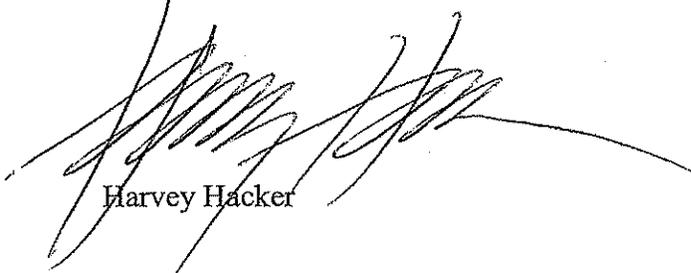
Subject: 24-34 Ellis Street, Block 327/Lot 008
Minor Sidewalk Encroachment Permit 03MSE-157

Dear Ms Calvillo

In my capacity as the property owner's authorized agent, I am appealing revocation of Minor Sidewalk Encroachment Permit Number 03MSE-157. Please refer to enclosed letter to Edward Reiskin dated 30 November 2009, detailing the reasons for this appeal.

Please let me know if any further action is required to pursue this appeal.

Sincerely



Harvey Hacker

encl
cc

Edward Reiskin, Director, DPW
David Greenaway, SFMTA
Roger Hayes
Don Bowman



Harvey Hacker
Architects
528 Bryant Street
San Francisco 94107
415 957-0579-Phone
415 957-5851 FAX

30 November 2009
0959

Edward Reiskin, Director
Department of Public Works
City Hall Room 348
1 Dr Carlton B Goodlett Place
San Francisco CA 94102

Subject: 24-34 Ellis Street, Block 327/Lot 008
Minor Sidewalk Encroachment Permit 03MSE-157

Dear Mr Reiskin

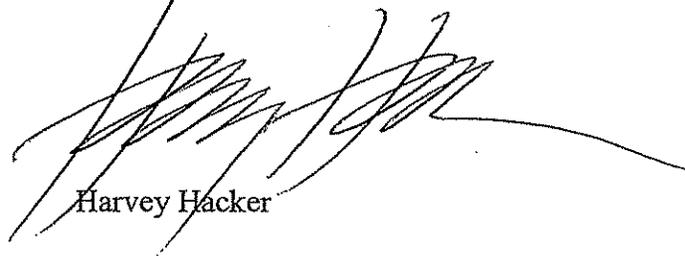
Regarding your letter to R Enterprises, Inc dated 16 November 2009, in my capacity as the property owner's authorized agent, I am appealing revocation of Permit Number 03MSE-157.

On 19 November 2009 I spoke to David Greenaway of the SFMTA and confirmed the following:

- SFMTA has no intention of taking over the sub-sidewalk basement space at 24-34 Ellis Street, it only intends to modify a sewer line and install some electrical conduits and temporary water lines near the ceiling level of that space, as shown on SFMTA Contract Number M544.22 Drawings JT-306 Revision OB and EXJT-25 Revision OA, both of which were previously issued to the property owner.
- In any case, the cited Permit Number 03MSE-157 refers only to "Level landing and non-standard cross slope," which occur on the surface of the sidewalk, have nothing to do with the sub-sidewalk basement, and must remain unchanged in order to provide disabled access to the property's primary entrance.

To remove any uncertainty the property owner is experiencing about this situation, I would appreciate confirmation you agree that revocation of the subject permit should be rescinded, per the enclosed appeal addressed to the Board of Supervisors.

Sincerely



Harvey Hacker

encl

cc

Angela Calvillo, Clerk of the Board of Supervisors
David Greenaway, SFMTA
Roger Hayes
Don Bowman



City and County of San Francisco



Gavin Newsom, Mayor
Edward D. Reiskin., Director



Phone: (415) 554-6920
Fax: (415) 554-6944
TDD: (415) 554-6900
<http://www.sfdpw.org>

Department of Public Works
Office of the Director
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4645

November 16, 2009

R. Enterprises, Inc.
% Roger Hayes, President
P.O. Box 965
Palos Verdes Estates, CA 90274

Subject : Minor Sidewalk Encroachment Permit 03MSE-157
Property Block No. 327 lot 008
24-34 Ellis Street
San Francisco, CA 94108

Dear Mr. Hayes:

The San Francisco Municipal Transportation Agency (SFMTA) is currently developing plans for the Central Subway Project. The project will include construction of a subway station on Stockton Street and Ellis Street. In order to construct this station, SFMTA will require permanent use of the area occupied by the subsidewalk encroachments below the public right-of-way along the alignment of the Central Subway Project.

The SFMTA has advised that the encroachment covered by your Minor Sidewalk Encroachment Permit Number 03MSE-157, issued on June 7, 2006, impedes or otherwise impacts the Central Subway Project. The purpose of this letter is to advise you that the Minor Sidewalk Encroachment Permit issued for your property located at 24-34 Ellis Street (Block No. 327 lot 008) is hereby revoked. Pursuant to Public Works Code Section 723.2, you have the right to appeal this revocation decision. Such appeal must be filed within 15 days from the date of this letter. You may appeal this decision by filing a notice to:

City and County of San Francisco Board of Supervisors
Attn: Ms. Angela Calvillo, Clerk of the Board
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689.

Exhibit A of your Minor Sidewalk Encroachment Permit sets forth the conditions applicable to your permit. Pursuant to paragraph 8 of Exhibit A, upon notification of the revocation of your Minor Sidewalk Encroachment Permit, you must remove, or cause to be removed, the encroachment and all the materials in connection with its construction and restore the encroachment area to a condition satisfactory to the Department of Public Works. The purpose

"IMPROVING THE QUALITY OF LIFE IN SAN FRANCISCO" We are dedicated individuals committed to teamwork, customer service and continuous improvement in partnership with the community.

Customer Service

Teamwork

Continuous Improvement

of this letter is to advise that the encroachment must be restored to a condition satisfactory to the Department of Public Works, without expense to the City and County of San Francisco, by February 1, 2010.

If you are unable to restore the encroachment by February 1, 2010, you may petition the Department of Public Works for an extension. Please submit a written extension request along with abandonment plans and a detailed completion schedule to the Department of Public Works for approval no later than December 7, 2009. In the event that you have already applied for a building permit for the above referenced work, submission of an abandonment plan will not be required. Instead, please submit such application, plans and detailed completion schedule to the Department of Public Works by December 7, 2009.

If the encroachments associated with the permit are not removed and the site is not restored by February 1, 2010, or such other date approved in writing by the Department of Public Works, any improvements present in the encroachments may be considered a public nuisance and may be abated pursuant to Section 723.3 of the San Francisco Public Works Code as recently amended by Board of Supervisors Ordinance No. 210-09. A Copy of the Ordinance is attached.

Should you have any questions concerning this matter, please contact David Greenaway of the SFMTA. Mr. Greenaway can be reached at (415) 701-4237.

Sincerely,



Edward D. Reiskin
Director of Public Works

Attachments

GUTTENBERG, RAPSON & COLVIN LLP

ATTORNEYS AT LAW
101 LUCAS VALLEY ROAD
SAN RAFAEL, CA 94903
TELEPHONE: (415) 507-4525
FACSIMILE: (415) 507-4526
E-mail: aguttenberg@grclaw.com

FACSIMILE COVER SHEET

(If there are any problems during transmission, please call fax operator at (415) 507-4525).

Date: December 30, 2009

TO: Angela Calvillo
FAX: (415) 554-5163
FROM: Alan Guttenberg
PHONE: (415) 507-4525
(Direct Number)

COMMENTS: File No. 091391 (Board of Supervisor Appeal Hearing Jan. 12, 2010/24-34 Ellis Street/Revocation of Minor Sidewalk Encroachment Permit No. 03MSE-157) – Please see attached, submitted by the Owner for consideration prior to and at the above hearing. Please advise if any more formal communication is required in order for the attached to be considered by the Board and other relevant governmental subdivisions. Please call if questions or comments. Thank you. Alan Guttenberg.

NUMBER OF PAGES (excluding this sheet):

ORIGINAL TO FOLLOW BY MAIL

ORIGINAL WILL NOT FOLLOW BY MAIL

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the US Postal Service. Thank you.

GUTTENBERG, RAPSON & COLVIN LLP

ATTORNEYS AT LAW
 101 LUCAS VALLEY ROAD, SUITE 216
 SAN RAFAEL, CALIFORNIA 94903
 TELEPHONE (415) 507-4525
 FACSIMILE (415) 507-4526

WRITER'S DIRECT DIAL NO.
 (415) 507-4525
 E-MAIL ADDRESS
 aguttenberg@grclaw.com

OAKLAND OFFICE:
 1970 BROADWAY, SUITE 1200
 OAKLAND, CALIFORNIA 94612
 TELEPHONE (510) 286-2060
 FACSIMILE (510) 286-2070

ALAN B. GUTTENBERG
 DAVID J. RAPSON
 ANDREW M. COLVIN

December 30, 2009

VIA FACSIMILE
(415) 554-5163

Angela Calvillo
 Clerk of the Board
 Room 244, City Hall
 1 Dr. Carlton Goodlett Place
 San Francisco, California 94102

Re: File No. 091391/Appeal of Revocation of Minor Sidewalk Encroachment Permit
 No. 03MSE-157/24-34 Ellis Street, SF, CA/Hearing Date: Jan. 12, 2010 (4 pm)

Dear Ms. Calvillo:

I am legal counsel for R. Enterprises, Inc. ("Owner"), owner of 24-34 Ellis Street, San Francisco, California ("Property"). This letter is submitted in support of the Owner's appeal ("Appeal") of the revocation by the Department of Public Works ("DPW") of the Minor Sidewalk Encroachment Permit No. 03MSE-157 for the Property issued on June 7, 2006 ("Permit"), currently set for hearing before the Board of Supervisors on January 12, 2010 at 4:00 p.m. ("Hearing").

The Owner and I believe there is a misunderstanding about the scope of the Permit, and we respectfully request that the DPW rescind its revocation pending further review of this matter, which would eliminate the need for the Hearing. Alternately, for the reasons hereafter described, the Owner requests that the Board: (1) rule in favor of the Owner at the Hearing on its appeal of the Permit revocation, and/or (2) rule that the Permit extends only to the level landing and non-standard cross slope of the Property sidewalk (and does not extend to the Property's sub-sidewalk basement), per the express terms of the Permit on which the Owner relied.

Per the duly executed and recorded Permit (copy enclosed), the Permit grants the Owner permission:

"...TO OCCUPY, CONSTRUCT AND MAINTAIN THE FOLLOWING ENCROACHMENT(S): Level landing and non-standard cross slope."

GUTTENBERG, RAPSON & COLVIN LLP

December 30, 2009

Page 2

The Permit was issued to enable the Owner to reconstruct the sidewalk area in front of the Property in a manner that complied with City requirements and federal Americans with Disabilities Act ("ADA") requirements. The only "work constructed" under the Permit is an ADA compliant sidewalk. The Owner and I cannot believe the DPW or City actually want the Owner to tear up a new, ADA-compliant sidewalk, and restore it to its damaged and non-ADA compliant condition which existed prior to the Permit work, as required by the DPW revocation letter dated November 16, 2009, which is the subject of this appeal. All this will do is bar access to the Property and adjacent properties for disabled persons, contrary to federal law and City policies and requirements.

The Permit was issued by DPW in 2006 because a new sidewalk was required in connection with an earthquake retrofit required by the City's UMB ordinance and other work at the Property. The Owner relied upon the express terms of the Permit in proceeding with that work. There was never any mention of the Permit extending to the sub-sidewalk basement at the Property until the November 16, 2009 revocation letter and discussions with SFMTA representatives thereafter. The DPW and City cannot unilaterally expand the scope of the validly issued, signed and recorded Permit (upon which the Owner has relied for years and expended substantial funds), to extend to the Property sub-sidewalk basement, which has existed at the Property with permission from the City for approximately 100 years.

I am informed that the Owner's architect and representative, Harvey Hacker, has had communications with SFMTA representatives where he was *advised that it is the position of SFMTA that the Permit extends to the Property's sub-sidewalk basement, and the revocation of the Permit is intended to address revocation of the Owner's right to use and possess the sub-sidewalk basement, not to revoke the Owner's right to maintain an ADA-compliant sidewalk at the Property (and require restoration of the sidewalk to a damaged and non-ADA compliant condition, thus creating a substantial obstacle for disabled persons to use that sidewalk, as the revocation appears to require)*. However, the plain language of the Permit on its face does not apply to or create any rights in the sub-sidewalk basement, and thus revocation of the Permit cannot and does not affect any Owner rights to use and maintain the Property sub-sidewalk basement.

I will be attending the Hearing on behalf the Owner, if the Hearing proceeds. I copy this letter to certain representatives of DPW and SFMTA and others, who I understand have participated in communications concerning the Property and/or Mr. Hacker, the Owner's architect and representative, regarding the revocation and the Permit.

It is the Owner's sincere hope to work cooperatively with the City, DPW and SFMTA to achieve mutually beneficial goals in this matter and address the parties' legitimate issues and

GUTTENBERG, RAPSON & COLVIN LLP

December 30, 2009

Page 3

needs in this matter, and we therefore respectfully request that the revocation be rescinded, or at least the Hearing further postponed, while the Owner and I continue discussions to hopefully resolve this matter with DPW and SMTA.

Respectfully submitted,

GUTTENBERG, RAPSON & COLVIN LLP

By


Alan B. Guttenberg

cc: Edward Reiskin, Director, Dept. Public Works (via fax: 415-554-6944)
Barbara L. Moy, Manager, Dept. Public Works (via fax: 415-554-6944)
Fuad Sweiss, City Engineer, Dept. Public Works (via fax: 415-554-6944)
David Greenaway, SFMTA (via fax: 415-701-5222)
Guy Hollins, SFMTA (via fax: 415-701-5222)
Cheryl Adams, Deputy City Attorney (415-554-4745)
Kate Stacy, Deputy City Attorney (415-554-4745)
Elaine Warren, Deputy City Attorney (415-554-4745)
John Malamut, Deputy City Attorney (415-554-4745)
Harvey Hacker (415-957-5851)
Roger and Roberta Hayes

Recording Requested by and
When Recorded Return To:

DON BOWMAN
235 MONTGOMERY ST.
SUITE 949
SAN FRANCISCO, CA. 94104

San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2006-1189434-00
Wednesday, JUN 07, 2006 13:43:12
Ttl Pd \$13.00 Nbr-000301632
REEL J156 IMAGE 0513
ced/ER/1-3

ENTITLED COPY

DECLARATION OF USE

I, *DON BOWMAN*, OWNER/AUTHORIZED AGENT OF THE
HEREIN DESCRIBED PROPERTY COMMONLY KNOWN AS:

24 - 34 ELLIS ST.

SAN FRANCISCO, ASSESSOR'S BLOCK 0327, LOT 008
HEREBY CONSENT TO THE WITHIN DESCRIBED CONDITIONS THAT APPEAR
ON EXHIBIT "A" ATTACHED:

Minor Sidewalk Encroachment Permit # 03MSR-157

(SIGNED) *[Signature]*
OWNER/AUTHORIZED AGENT *DON BOWMAN*
DATE OF EXECUTION: *6/7/06*
STATE OF CALIFORNIA)

) SS.
COUNTY OF SAN FRANCISCO)

On *JUNE 7, 2006* before me, _____ Notary Public in and
for said County and State, personally appeared *Don Bowman*
personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal

Signature _____

(Seal)



Department of Public Works



Bureau of Street-Use and Mapping
Division of Street-Use Permits

EXHIBIT "A"

VERTICAL COPY

PERMIT TYPE	Minor Sidewalk Encroachment
PERMIT NO.	03MSE-157
LOCATION	24 - 34 ELLIS ST
ZIP 94108	BLOCK NO. 0327 LOT 008

Pursuant to Article 15, Section 723.2 of the Public Works Code, permission revocable at the will of the Director of Public Works is granted to:

PROPERTY OWNER(S) OF RECORD-FULL NAME(S) AS RECORDED:

Name: R. Enterprises
Address: 2206 New York Avenue
Union City, NJ 08087
Phone:

APPLICANT, AGENT OF OWNER:

Name: Harvey Hacker Architects
Address: 528 Bryant Street
San Francisco, CA 94107
Phone: (415) 957-0579

TO OCCUPY, CONSTRUCT AND MAINTAIN THE FOLLOWING ENCROACHMENT(S):
Level landing and non-standard cross slope

CALL FOR INSPECTION 48 HOURS PRIOR TO STARTING WORK AND POURING CONCRETE: 554-7149

THE PERMITEE HEREBY AGREES TO COMPLY WITH ALL REQUIREMENTS NOTED ON THIS PERMIT

Signature of Owner(s) of Record or
Authorized Agent of Owner(s) or Record

6/6/06
Date

APPROVED:
Edwin M. Lee
Director of Public Works

DISTRIBUTION
Outside B.S.M.
Dept. of Parking Traffic - H. Quan
Inside B.S.M.
1660 Mission - Tania Troyan
Inspector - M.E. Casey

By:
Plan Checker BG

Date: 6/30/2003

(415) 554-5810 FAX (415) 554-6161

875 Stevenson St. Rm. 460

San Francisco 94103-0942

CERTIFIED COPY

EXHIBIT "A"

REVOCABLE PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. The permittee shall verify the locations of any City or public service utility company facilities and shall assume all responsibility for any damage to such facilities due to the work authorized under this permit.
2. The construction and maintenance shall be where and as shown on the plans submitted, revised and filed in the Department of Public Works.
3. The permittee shall obtain a building permit at the Department of Building Inspection, 1660 Mission Street for the construction or alteration of any building.
4. The permittee shall contact the Street Improvement Inspectors, 554-7149, at least 48 hours prior to starting work to arrange an inspection schedule.
5. The permittee shall submit to the Bureau of Street Use and Mapping a non-refundable fee of \$200 for investigation and inspection, made payable to the Department of Public Works. All Minor Sidewalk Encroachment Permits shall be notarized and recorded at 875 Stevenson Street, First Floor.
6. The permittee or subsequent owner or owners recognize and understand that this permit may create a possessory interest subject to property taxation and that the permittee or subsequent owner or owners may be subject to the payment of such taxes.
7. The permittee shall acknowledge his obligation to inform subsequent owners or owner of the responsibilities of this permit.
8. The permission granted by this order is merely a revocable license. The Director of Public Works may revoke said permission at will, and upon revocation thereof, the undersigned permittee, subsequent owners, or their heirs and assignees will within 30 days remove or cause to be removed the encroachment and all the materials used in connection with its construction, without expense to the City and County of San Francisco, and restore the area to a condition satisfactory to the Department of Public Works.
9. The permittee or subsequent owner or owners recognize the recordation of this permit.
10. In consideration of this Permit being issued for the work described in the application, Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, prorsities and agrees to perform all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.
11. Permittee agrees on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Permittee or its subcontractors, or the officers, agents, or employees of either, while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, facilities or structures authorized under this Permit, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of, either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) injuries or damages to real or personal property, good will, and persons in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and (iv) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Permittee in, under, on, or about the property subject to this Permit or into the environment. As used herein, "hazardous material" means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.
12. Permittee must hold harmless, indemnify and defend the City regardless of the alleged negligence of the City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises as the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.
13. Permittee shall obtain and maintain through the terms of this Permit general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.
14. The permittee and any permitted successor or assign recognize and understand that this permit may create a possessory interest.

