

1 [Street Encroachment Permit - 12th Street Plaza - 90-12th Street]

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3 **Resolution granting revocable permission to Otis Property Owner, LLC, to occupy and**
4 **maintain the 12th Street Plaza on 12th Street at the corner of South Van Ness Avenue**
5 **fronting 90-12th Street (Assessor’s Parcel Block No. 3505, Lot No. 012); accepting the**
6 **irrevocable offer of improvements from Otis Property Owner, LLC in accordance with**
7 **the terms of a Planning Commission In-Kind Agreement and dedicating said**
8 **improvements to public use; adopting environmental findings under the California**
9 **Environmental Quality Act, and making findings of consistency with the General Plan,**
10 **and the eight priority policies of Planning Code, Section 101.1.**

11
12 WHEREAS, Pursuant to Public Works Code, Sections 786 et seq., Otis Property
13 Owner, LLC, (hereafter referred to as “Permittee”) requested permission to occupy a portion
14 of the public right-of-way to maintain the 12th Street Plaza along 12th Street at the corner of
15 South Van Ness Avenue fronting 90 12th Street (Assessor’s Parcel Block No. 3505, Lot No.
16 012); and

17 WHEREAS, The improvements include:

18 Expanding the existing 15-foot wide sidewalk and building a public plaza at the
19 northwest corner of the intersection of 12th Street, South Van Ness Avenue, and Otis Street.
20 The plaza has an approximate area of 7,200 square feet, and will include irrigation lines, a
21 warped sidewalk, concrete hardscape finishes, concrete sculptural features, and railing in
22 front of the adjacent property. Pedestrian throughway areas are provided along South Van
23 Ness Avenue and the adjacent building edge. Stairs and an accessible ramp are provided to
24 transition pedestrians from the plaza's two different elevations (collectively referred to as the
25 “Encroachments”); and

1 WHEREAS, The Permittee has constructed the Encroachments in conjunction with its
2 30 Otis Project, which included 416 residential units, 2,199 square feet of retail, 15,993
3 square feet of arts activities space, and a theater to be occupied by the City Ballet School,
4 and the Permittee has proposed to maintain the Encroachments for the life of the permit; and

5 WHEREAS, The Encroachments shall be constructed in substantial conformity with the
6 accompanying documents and plans, copies of which are on file in the office of the Clerk of
7 the Board of Supervisors in File No. 230419 and incorporated herein by reference; and

8 WHEREAS, The Planning Commission, on September 27, 2018, in Resolution No.
9 20293, determined that the actions contemplated in this Resolution comply with the California
10 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) and
11 adopted findings in regard to the Encroachments (“Environmental Findings”); and

12 WHEREAS, The Planning Commission determination and Environmental Findings are
13 on file with the Clerk of the Board of Supervisors in File No. 230419 and incorporated herein
14 by reference; and

15 WHEREAS, The Planning Department, in a letter dated July 16, 2019, found that the
16 Encroachments are in conformity with the General Plan and are consistent with the eight
17 priority policies of Planning Code, Section 101.1; and

18 WHEREAS, A copy of said letter is on file with the Clerk of the Board of Supervisors in
19 File No. 230419 and incorporated herein by reference; and

20 WHEREAS, The Permittee has submitted an irrevocable offer of improvements for the
21 subject Permit in accordance with the terms of a Planning Commission In-Kind Agreement,
22 dated January 21, 2021 (the “In-Kind Agreement”); and

23 WHEREAS, Copies of the Planning Commission Resolution approving the In-Kind
24 Agreement and the irrevocable offer are on file with the Clerk of the Board of Supervisors in
25 File No. 230419 and incorporated herein by reference; and

1 WHEREAS, The Transportation Advisory Staff Committee, at its meeting of August 27,
2 2020, recommended approval of the proposed encroachments; and,

3 WHEREAS, After a public hearing on November 23, 2022, Public Works recommended
4 to the Board of Supervisors (“Board”) approval of a street encroachment permit and
5 associated encroachment permit and maintenance agreement (collectively, “Permit”) for the
6 maintenance of the Encroachments; and

7 WHEREAS, This recommendation is contained in PW Order No. 207438, a copy of
8 which is on file with the Clerk of the Board of Supervisors in File No. 207438 and incorporated
9 herein by reference; and

10 WHEREAS, The Permit is on file with the Clerk of the Board of Supervisors in File No.
11 230419 and incorporated herein by reference; and

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

14 WHEREAS, In Public Works Order No. 207438, the Director determined under Public
15 Works Code, Section 786.7 that the public right-of-way occupancy assessment fee shall be
16 waived because the Encroachments provide a public benefit contemplated in the In-Kind
17 Agreement; and

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

19 (1) The Permittee executes and acknowledges the Permit and delivers said
20 Permit and all required documents and fees to Public Works, and

21 (2) Public Works records the Permit ensuring maintenance of the
22 Encroachments in the County Recorder’s Office; and

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

1 (1) To provide for the support and protection of facilities under the jurisdiction of
2 Public Works, the SFPUC, the San Francisco Fire Department, other City Departments, and
3 public utility companies;

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

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

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

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

15 RESOLVED, The Board adopts the Environmental Findings as its own; and be it

16 FURTHER RESOLVED, That this Board finds that there are no substantial changes in
17 the way the Encroachments would be implemented; no substantial changes in the
18 circumstances under which the Encroachments would be implemented; and no new
19 information of substantial importance showing that more significant impacts, or a substantial
20 increase in the severity of the significant impacts analyzed in the Environmental Findings,
21 would result from the Encroachments; and, be it

22 FURTHER RESOLVED, That the Board finds that the Permit is consistent with the
23 General Plan, for the reasons set forth in the July 16, 2019, determination of the Planning
24 Department; and, be it

1 FURTHER RESOLVED, Pursuant to Public Works Code, Sections 786 et seq., the
2 Board hereby grants revocable, personal, non-exclusive, and non-possessory permission to
3 the Permittee, Otis Property Owner, LLC, to occupy the public right-of-way with the
4 Encroachments and maintain said Encroachments under the terms of the Permit; and, be it

5 FURTHER RESOLVED, The Board accepts the recommendations of the PW Order
6 No. 207438 and approves the Permit with respect to the Encroachments; and, be it

7 FURTHER RESOLVED, The Board also authorizes the Director of Public Works to
8 perform and exercise the City's rights and obligations with respect to the Encroachments
9 under the Permit and to enter into any amendments or modifications to the Permit with
10 respect to the Encroachments; and, be it

11 FURTHER RESOLVED, Such actions may include without limitation, those
12 amendments or modifications that the Director of Public Works, in consultation with the City
13 Attorney, determines are in the best interest of the City, do not materially increase the
14 obligations or liabilities of the City or materially decrease the obligations of the Permittee or its
15 successors, are necessary or advisable to effectuate the purposes of the Permit or this
16 resolution with respect to the Encroachments, and are in compliance with all applicable laws;
17 and, be it

18 FURTHER RESOLVED, The Board, under Public Works Code, Section 786.7,
19 acknowledges waiver of the public right-of-way occupancy assessment fee in accordance with
20 the Public Works Director's determination; and, be it

21 FURTHER RESOLVED, The Board hereby accepts the irrevocable offer of
22 improvements related to this Permit in accordance with the terms of a Planning Commission
23 In-Kind Agreement, dated January 21, 2021, and dedicates said improvements to public use
24 subject to the Permittee's obligations and responsibilities under this Permit.

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