

**GLOBAL MASTER ENCROACHMENT PERMIT
AND MAINTENANCE AGREEMENT (POTRERO HOPE SF)**

1. PARTIES AND BACKGROUND

1.1 Parties. The City and County of San Francisco Department of Public Works (the “**Department**” or “**Public Works**”) enters into this Encroachment and Maintenance Agreement (“**Agreement**”) with Bridge-Potrero Community Associates LLC, a California limited liability company (the “**Permittee**”), on this date, _____, 2025 for reference purposes only (“**Reference Date**”). The Global Master Encroachment Permit or Permit collectively refers to the Department approved plan(s), street improvement permit(s), and other authorizations, and this Agreement, including its Attachments, Addenda, and accompanying documents (the “**Permit**” or “**GMEP**”). In this Agreement, “the **City**” refers to the City and County of San Francisco and all affiliated City agencies including, but not limited to, the Department, the San Francisco Public Utilities Commission (“**SFPUC**”), the San Francisco Fire Department (“**SFFD**”), the San Francisco Municipal Transportation Agency (“**SFMTA**”). Permittee and City are collectively, the “**Parties**”.

1.2 Background.

1.2A This Global Master Encroachment Permit is issued to the master developer (“**Master Developer**”) of the Potrero HOPE SF Project, as Permittee, to facilitate its redevelopment of the Potrero Terrace and Annex public housing site, owned by the Housing Authority of the City and County of San Francisco (“**Authority**”).

1.2B The City and Master Developer entered into a Development Agreement dated as of March 3, 2017 recorded in the Official Records of the City and County of San Francisco (the “**Official Records**”) on March 3, 2017 as Document No. K416603-00 (the “**DA**”), and pursuant to that certain Master Developer Agreement dated as of March 3, 2017, and recorded in the Official Records on March 3, 2017 as Document No. K416601-00 (the “**MDA**”). Together, the DA and MDA approve and describe the comprehensive redevelopment of the above referenced site, including but not limited to the construction of new public housing, new market rate housing, and new public and private infrastructure to support the redevelopment of the site over multiple phases (the “**Project**”).

1.2C Master Developer the Authority also entered into a Master Lease, a memorandum of which is dated February 1, 2021 and was recorded in the Official Records as Document No. 2021023599 (the “**Memorandum of Master Lease**”) to facilitate the Project.

1.2D Each of these agreements related to the development of the Potrero HOPE SF site, which area is also subject to the Potrero HOPE SF Special Use District (SF Planning Code Section 249.76) (the “**SUD**”). Pursuant to the DA, Master Developer will construct throughout the SUD, roadways, utility and traffic facilities, and other appurtenances, which are intended to be accepted by the City.

1.2E The purpose of this Agreement is to authorize the construction, placement, maintenance, and repair of the certain project-specific improvements that will be located within the public right-of-way from time to time and the assignment of sidewalk maintenance responsibility under Public Works Code Section 706. This Agreement delegates to the Director of the Department of Public Works (“**Director**”) the authority to amend this Agreement from time to time as necessary to cover future project-specific improvements or sidewalks constructed pursuant to the DA.

1.2F On April 9, 2025, the San Francisco Planning Department issued a letter determining that issuance of this Permit, among other actions, was covered by the Final Environmental Impact Report for the Potrero HOPE SF Master Plan Project (Planning Department Records 2010.0515E, GPA, PCT, PCM, DEV, GEN, SHD). All applicable provisions of the Mitigation Monitoring and Reporting Program (“**MMRP**”) adopted as part of the project approvals apply to Permittee’s activities pursuant to this Permit.

2. PERMIT INFORMATION

2.1 Global Master Encroachment Permit (“GMEP”) Approval: Board of Supervisors Resolution No. _____ on file with the Clerk of the Board in File No. _____.

2.2 Description/Location of Property (See Attachment 1): The Potrero HOPE SF project area is shown in Attachment 1. The Potrero HOPE SF project site is roughly bounded by 22nd Street to the north, Texas Street to the east, 26th Street to the south, and Wisconsin Street and Missouri Street to the west (in the southern and northern portions of Project, respectively).

2.3 Description/Location of Full Project Area Subject to Permit (See Attachment 2, Global Diagram): Those portions of Texas and Missouri Streets between 22nd and 25th Streets; Connecticut, Arkansas, and Wisconsin Streets between 23rd and 26th Streets; 23rd, 24th, 24 1/2th, and 25th Streets between Wisconsin and Texas Streets; and 26th Street between Wisconsin and Connecticut Streets, within the boundaries described in Section 2.2, above.

2.4 Description of Proposed Improvements (See Attachment 2):

The term “**Improvements**” shall mean those private improvements in the public right-of-way as described in this Section 2.4, the attachments listed in Section 2.8, the Master Infrastructure Plan (DA Exhibit P), and, once issued, the street improvement permit or other permits for encroachments for each phase (“**SIP**”), as those attachments and SIPs are amended and supplemented from time to time, including as Permit Area is annexed and as updated with “as-built” plans. The proposed Improvements are generally described as follows:

- (a) Cobblestones and pavers
- (b) Benches
- (c) Cobblestones at tree wells
- (d) Landscape areas including plantings, irrigation systems and related elements
- (e) Drainage facilities including laterals, inlets, through-curb drains, grates and related elements
- (f) Temporary walkways, stairwells, railings and related elements for access to existing buildings
- (g) Retaining walls including wood walls and other retaining structures
- (h) Community gardens

2.5 Description of Sidewalks:

The “**Sidewalks**” shall mean the sidewalks and sidewalk area, including any parking strip, parkway, automobile runway, and curb (as described in Public Works Code Section 706), exclusive of the Improvements subject to this Permit, that are within the area described in Section 2.3 and **Attachment 2**, Global Diagram.

2.6 Permittee/Developer:

Bridge-Potrero Community Associates LLC
600 California Street, Suite 900
San Francisco, California 94105
Re: Potrero HOPE SF

2.7 Contact Information. The Permittee shall provide to Public Works, Bureau of Street Use and Mapping (“**BSM**”), SFMTA, 311 Service Division, and SFPUC the information for a minimum of two (2) contact persons with direct relation to or association with, or is in charge of or responsible for, the Permit. Permittee shall notify both Public Works’ BSM and SFMTA within thirty (30) calendar days of any changes in the Permittee’s personnel structure, and submit the required contact information of the current and responsible contacts. If and when the City’s 311 Service Division (or successor public complaint system program) allows direct communications with the contact person(s) for the Permit, the Permittee shall participate in this program.

Contact Person Number 1

Last Name, First Name: Seshadri, Smitha
Title/Relationship to Owner: Authorized Representative of Lessee
Phone Numbers: 415-989-1111 direct
Email Addresses: sseshadri@bridgehousing.com
Mailing Address: 600 California Street, Suite 900, San Francisco, CA 94108
Office Address: same as mailing

Contact Person Number 2

Last Name, First Name: _____
Title/Relationship to Owner: _____
Phone Numbers: _____
Email Addresses: _____
Mailing Address: _____
Office Address: _____

2.8 List of Attachments. The documents listed below are attached to or accompany this Permit, which will be amended or further supplemented with the documents identified in this Section 2.8 and Section 6 following annexations of Permit Areas into the Permit.

Attachment 1: Property Information. Map identifying the property.

Attachment 2: Global Area and Permit Area Documentation.

The “**Global Area**” refers to the full, project-wide area that will include Improvements subject to this Permit. The “**Global Area Documentation**” shall consist of the following:

- (a) Diagram showing the Global Area and generally describing the type and location of Improvements subject to this Permit for all phases of the project (“**Global Diagram**”).
- (b) A general description of the Improvements.

The “**Permit Area**” refers to areas that include constructed or installed Improvements subject to Permittee’s maintenance responsibility. The Permit Area shall refer to areas for which a Notice of Annexation has been approved by the Director which may include Improvements subject to maintenance responsibilities that have been assigned to a Community Association, Home Owners’ Association, or Master Owners’ Association (“**Owners’ Association**”). As described in Section 6, Notices of Annexation shall establish specific Permit Areas and, if required, identify the fronting properties associated with the Permit Areas. The “**Permit Area Documentation**” shall consist of the following:

- (a) Written description of the area where the encroachment(s) exist and the boundaries.
- (b) A detailed description of the Improvements.
- (c) Diagram showing the Permit Area and identifying all Improvements in the Permit Area (“**Precise Diagram**”). The Precise Diagram shall be a separate document from the SIPs.

Attachment 3: Maintenance Plan

The Maintenance Plan shall include a table listing all Improvements in the Global Area and identifying the maintenance responsibility for them (“**Maintenance Matrix**”). The table shall include all physical treatments, facilities, and elements, whether standard or custom, to clarify responsibility. The Maintenance Plan shall also include a description of the means and methods to maintain the Improvements. For the Global Area, the description may be general. For the Permit Area, the description must be detailed. The Maintenance Plan shall identify the daily, weekly, monthly, and annual routine maintenance, repair, and replacement tasks, as applicable (“**Permitted Activities**”), and any specialized equipment (in the event that the Improvements incorporate such specialized equipment) necessary for continued operation of the Improvements. For each category of the Permitted Activities, Permittee shall provide the regular (e.g. daily, weekly, etc.) estimated expenses, including labor hours, cost per hour, and materials needed for maintenance. In addition, Permittee shall provide a total estimated annual operating expense and include: regular maintenance expenses, replacement costs, costs for any specialized equipment (in the event that the Improvements incorporate such specialized equipment) necessary for continued operation of the Improvements, and the expected lifespan of any custom materials subject to regular use. The Maintenance Plan also may identify whether a Community

Benefit District, Business Improvement District, Community Facilities District or similar Special Tax-Based Entity (a “**Special Tax Entity**”) will expend monetary or staff resources on the Permit Area for maintenance or other activities, and documentation, to the Director’s satisfaction, that the monetary and/or staff resources are available and committed to perform the maintenance obligation.

Attachment 4: Operations Manual List. Permittee shall submit a document or manual describing how to operate any specialized equipment necessary for continued operation of the Improvements along with manufacturer’s instructions for operation and maintenance (“**O&M Manuals**”) and other pertinent information about the equipment. These documents are for Public Works file purposes and not attached to this Agreement; a list of the O&M Manuals will be attached to this Agreement. At the City Engineer’s discretion, the City Engineer may allow the Permittee to defer submission of the Operations Manuals and the list until completion of the Improvements in accordance with the SIP.

Attachment 5: Form of Notice of Assignment. See Section 16.

The City Engineer shall review and certify the description of the **Global Area** and **Permit Area** (Attachment 2), **Maintenance Matrix** and **Maintenance Plan** (Attachment 3), and **O&M Manuals** (Attachment 4), and any necessary updates submitted with a Notice of Annexation. The Department shall not issue the permit until the City Engineer has completed the review and certified the required attachments.

3. EFFECTIVE DATE; REVOCABLE, NON-EXCLUSIVE PERMIT; RECORDATION

3.1 Following Board of Supervisors approval and confirmation the Department has received all required permit documents and fees, the Department shall issue the approved Permit and provide written notice of issuance of the Permit. The date this Maintenance Agreement is finally executed shall be the “**Effective Date**.”

3.2 The privilege given to Permittee under this Agreement is revocable in accordance with this Agreement, personal, non-exclusive, non-possessory, and effective only insofar as the rights of City in the public right-of-way (“**PROW**”) are concerned. This Permit does not grant any rights to construct or install Improvements in the Permit Area; construction and installation of the Improvements will be authorized under a separate street improvement permit or street excavation permit issued by the Public Works for such work.

3.3 Commencing on the Effective Date, Permittee shall be authorized to enter upon and use the PROW for the limited purpose of maintaining, repairing, and replacing the Improvements within the Permit Area(s) subject to the terms, conditions, and restrictions set forth herein.

3.4 Upon Board of Supervisors’ approval of this Permit, Permittee shall record this Permit against Parcels A and B as shown on Final Map No. 9610 for Phase 2 of the Project and

against the parcel adjacent to Phase 1 of the Project and located at 1101 Connecticut Street (APN 4287-076). Director or Permittee shall record the Notice of Annexation for a specific Permit Area as specified in the Notice of Annexation.

3.5 The Board also delegated to the Director of Public Works the ability to divide this Permit into separate master permits or individual major encroachment permits, and to approve contiguous and non-contiguous annexation of new areas of the project site into the Permit.

4. MONITORING AND MAINTENANCE RESPONSIBILITIES FOR IMPROVEMENTS; SIDEWALK MAINTENANCE

4.1 The Permittee's maintenance responsibility generally shall be limited to the Improvements in the Permit Area, and its immediate vicinity, including any sidewalk damage directly related to the Improvements or Permitted Activities. Permittee acknowledges its responsibility to maintain and monitor the Permit Area and its Improvements according to a "**Maintenance Monitoring and Reporting Program**," document performance of the maintenance activities as described herein, and retain documentary evidence of the maintenance activities (the "**Maintenance Report**") for a minimum of three (3) years. Within ten (10) days from the date of the Director's written request for maintenance information, the Permittee shall provide proof that the maintenance activities have been performed.

The **Permittee** shall: 1) on a regular quarterly basis, document the general condition of the entire Permit Area and all elements with date stamped digital images in JPEG format, or other video or picture imaging acceptable to the Director, and 2) maintain a written and image log of all maintenance issues, including, but not limited to: defects, damages, defacing, complaints, and repairs performed on Permit elements and the Permit Area. The regular monitoring images and/or video shall be taken from all angles necessary to show the entirety of the Permit Area and all Improvements. The images for the logged maintenance issues and repairs shall clearly show the location and detail of any damaged or defaced elements or areas, including areas for which it has received complaints, and (2) its repair and restoration. Permittee shall maintain all files and provide them in a format and media consistent with current standards for data retention and transfer, such as a USB flash drive with connective capability to a commonly available personal computer.

The Maintenance Report, at a minimum, shall include the following information: date and time of maintenance; description and type of encroachment element requiring repair, resolution, or restoration and method used to repair, resolve, or restore it; time and duration to repair, resolve, or restore such element; company (and contact information for the company) that performed the repair, resolution, or restoration.

4.2 Sidewalk Maintenance.

4.2A. Permittee acknowledges that, pursuant to Public Works Code Section 706, as amended from time to time ("**Section 706**"), the owner of property fronting the

sidewalks in the PROW (each a “**Fronting Property Owner**”) shall be responsible for Sidewalk maintenance.

4.2B. In accordance with Public Works Code Section 786, pursuant to Board of Supervisors Resolution No. _____ approving this Permit, the Board of Supervisors authorized the Director of Public Works to assign some or all of a Fronting Property Owner’s obligations under Section 706 to the Permittee or an agent or assignee of the Permittee, such as an Owners’ Association.

4.2C. Sidewalk maintenance responsibility within the Permit Area is assigned to the Permittee pursuant to this Permit.

4.2D. The subject Sidewalks may be removed from this Permit by amendment and/or by assignment of responsibility for the subject Sidewalks to a new Fronting Property Owner (due to a transfer of the property in fee to a new Fronting Property Owner) or to a new Permittee pursuant to Section 16.2, subject to approval by the Director.

4.2E. Where the Sidewalks were removed from the Permit pursuant to Section 4.2D, the Permittee or new Fronting Property Owner may, at a later time, request Director approval to annex the subject Sidewalk area back into this Permit.

4.2F. If it is unclear whether sidewalk maintenance is the responsibility of Permittee or the responsibility of a Fronting Property Owner, agent, assignee, or Owners’ Association who is not the Permittee under Public Works Code Section 706 or 786, the Department shall determine which party or parties are responsible. If the situation so warrants, the Department may assign responsibility for sidewalk maintenance to one or more parties.

4.2G. Unless otherwise provided herein, the Public Works Code, including Sections 706 - 708.2, applies to the rights and obligations of Fronting Property Owners with respect to the Sidewalks.

5. CONDITIONS OF ENTRY AND USE

By entering into this Agreement, Permittee acknowledges its responsibility to comply with all requirements for maintenance of the Improvements as specified in this Agreement, Public Works Code Section 786 et seq., Article 2.4 of the Public Works Code (“**Excavation in the Public Right-of-Way**”), the sidewalk maintenance requirements specified in Public Works Code Section 706, and as directed by the Director. Permittee shall comply and cause its agents to comply, with each of the following requirements in its performance of the Permitted Activities.

5.1 Permits, Permissions, and Approvals

5.1A Requirement to Obtain all Regulatory Permits and Approvals.

Permittee shall obtain all permits, licenses, and approvals of applicable regulatory agencies (“**Regulatory Permits**”) required to commence and complete construction of the Improvements

in the PROW and performance of the Permitted Activities. Permittee shall deliver copies of such Regulatory Permits to the Department. Permittee recognizes and agrees that City's approval of the Permit and this Agreement for purposes of performance of the Permitted Activities shall not be deemed to constitute the grant of any or all other Regulatory Permits needed for the Permitted Activities, and nothing herein shall limit Permittee's obligation to obtain all such Regulatory Permits, at Permittee's sole cost.

Permittee shall obtain from other parties any further permission necessary to perform its activities under the Permit and this Agreement arising due to any other existing rights affecting the PROW.

5.1B Subsequent Excavation within Permit Area. When maintenance of the Improvements requires excavation as described in Article 2.4 of the Public Works Code, or prevents public access through the Permit Area, or obstructs the movement of vehicles or bicycles where allowed by law, Permittee shall apply for applicable permits from the Department and any other affected City agencies. Permittee or agent of Permittee shall comply with all excavation permit bonding and security requirements that the Department deems necessary when performing or causing to be performed any excavations or occupancies within the Permit Area.

5.1C Additional Approvals. Further permission from the Department may be required prior to Permittee's performance of work within the Permit Area including, but not limited to, the restoration of a temporarily restored trench, removal and replacement of a tree or other landscaping, or repair of damaged or uplifted sidewalk or other paving material. This Agreement does not limit, prevent, or restrict the Department from approving and issuing permits for the Permit Area including, but not limited to, occupancy, encroachment, and excavation permits. The Department shall include as a condition in all subsequent permits issued in the Permit Area that any subsequent permittee notify and coordinate with the Permittee prior to occupying, encroaching, or excavating within the Permit Area.

5.2 Exercise of Due Care

During any entry on the Permit Area to perform any of the Permitted Activities, Permittee shall, at all times and at its sole cost, perform the Permitted Activities in a manner that maintains the Permit Area in a good, clean, safe, secure, sanitary, and attractive condition. Permittee shall use due care at all times to avoid any damage or harm to the Permit Area or any Improvements or property located thereon or adjacent to, and to take such soil and resource conservation and protection measures within the Permit Area as are required by applicable laws and as City may reasonably request in writing. Permittee shall not perform any excavation work without City's prior written approval. Under no circumstances shall Permittee knowingly or intentionally damage, harm, or take any rare, threatened, or endangered species on or about the Permit Area. While on the Permit Area to perform the Permitted Activities, Permittee shall use commercially reasonable efforts to prevent and suppress fires on and adjacent to the Permit Area attributable to such entry.

5.3 Cooperation with City Personnel and Agencies, and Fronting Property Owners

Permittee shall work closely with City personnel to avoid unreasonable disruption (even if temporary) of access to the Improvements and property in, under, on or about the Permit Area and City and public uses of the Permit Area. Permittee shall perform work in accordance with the Permit and this Agreement. Permittee also shall perform work pursuant to one or more Street Improvement Permits or General Excavation Permits and in accordance with Public Improvement Agreements associated with each phase of development if either or both are applicable.

Permittee shall provide advance notice and work closely with each Fronting Property Owner of property fronting the applicable portion of the Permit Area on which Permitted Activities are occurring.

5.4 Permittee's Maintenance and Liability Responsibilities

5.4A Permittee's Maintenance and Liability.

(a) Permittee acknowledges its maintenance and liability responsibility for the Improvements (including, but not limited to, materials, elements, fixtures, etc.) in accordance with the Permit and this Agreement, including all Attachments and Addenda, and all applicable City permits, ordinary wear and tear excepted. Permittee agrees to maintain said Improvements as constructed pursuant to the SIPs, as determined by the Director, and in accordance with any other applicable City permits or authorizations. Permittee shall reimburse the Department for any work performed by the Department as a result of the Permittee's failure to comply with the maintenance and restoration terms as specified in this Agreement under Section 9. Permittee is wholly responsible for any Improvements installed in the Permit Area that are subject to this Permit's terms and for the quality of the work performed in the Permit Area under this Agreement. Permittee is liable for all claims related to the Improvements and any condition caused by Permittee's performed work. Neither the issuance of any permit nor the inspection, nor the repair, nor the suggestion, nor the approval, nor the acquiescence of any person affiliated with the City shall excuse the Permittee from such responsibility or liability.

(b) The City acknowledges that while the Permittee retains the primary responsibility for all construction, installation, maintenance and repair activities, certain limited or supplemental maintenance and repair activities may be performed or financed by a Community Benefit District, Business Improvement District, Community Facilities District or similar Special Tax-Based Entity (the "**Special Tax Entity**") rather than the Permittee. Special Tax Entity activities, if any, shall be set forth in an Attachment and added to this Agreement. Notwithstanding the foregoing, the Department shall hold the Permittee responsible for compliance with all provisions of the Permit and this Agreement without regard to whether the violation occurred through an act, omission, negligence, or willful misconduct of the Permittee or the Special Tax Entity. Only if Permittee can demonstrate to the satisfaction of the Director that the Special Tax Entity is solely responsible for the act, omission, negligence, or willful misconduct and the Director makes a written finding to this effect, shall the Director act directly against only the Special Tax Entity. Under such circumstances, the Permittee shall not be responsible and liable hereunder for the act, omission, negligence, or willful misconduct that the Director identifies in writing, and no Uncured Default (as hereinafter defined) shall be deemed by Public Works to have occurred by the Permittee, as a result of the Special Tax Entity's acts, omissions, negligence or willful misconduct. In the event that the Special Tax Entity should cease to exist or that the Special Tax Entity's maintenance and

repair responsibilities are changed, then Permittee shall be responsible or assume responsibility for all activities that are no longer the responsibility of or being performed by the Special Tax Entity.

(c) In the event that the Director agrees to maintain one or more of the Improvements pursuant to Section 5.9B of this Agreement, Permittee shall not be responsible for the quality of maintenance or restoration work performed, nor liable for the resulting consequences of City work.

5.4B Abatement of Unsafe, Hazardous, Damaged, or Blighted Conditions.

Permittee acknowledges its maintenance responsibility to abate any unsafe, hazardous, damaged, or blighted conditions in the Permit Area. Following receipt of a notice by the Department of an unsafe, damaged, or blighted condition, Permittee shall immediately respond to the notice and restore the site to the condition specified on the SIP within thirty (30) calendar days, unless the Department specifies a shorter or longer compliance period based on the nature of the condition or the problems associated with it; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period or other period specified by the Department, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such restoration. In addition, Permittee acknowledges its responsibility to abate any hazardous conditions as a direct or indirect result of the Improvement (e.g., slip, trip, and fall hazards), promptly upon receipt of notice from the Department. For unsafe or hazardous conditions, the Permittee shall immediately place or cause to be placed temporary measures to protect the public. Failure to promptly respond to an unsafe or hazardous condition or to restore the site within the time specified in the Department's notice may result in the Department's performing the temporary repair or restoration in order to protect the public health, safety, and welfare. Permittee shall reimburse the Department for any such temporary repair or restoration. Failure to abate the problem also may result in the Department's issuance of a Correction Notice, Notice of Violation, and/or request for reimbursement fees to the Department for departmental and other City services necessary to abate the condition in accordance with Section 9. Any temporary repair or restoration does not relieve Permittee of its obligation to maintain and restore the Improvements to the standards described in Section 5.4A.

5.4C Permittee Contact Information, Signage. Upon the Department's determination that the Permittee has completed the Improvements in accordance with the SIP, Permittee shall post a sign(s) within the Permit Area, in conformity with any applicable signage program for the Permittee's property and in a location approved by the Department, that provides a telephone number and other Permittee contact information so that members of the public can contact the Permittee to report maintenance issues, problems, or any other complaints about the Permit.

5.4D Approved Alternative Elements. The Permittee has elected to install materials, facilities, fixtures, or features that do not meet the City's criteria for standard construction, operation, maintenance, and repair ("**Alternative Elements**") and the City has approved such Alternative Elements. The Permittee: (i) acknowledges its responsibility for the operation, maintenance, repair, and replacement of the Alternative Elements as constructed per the SIP, (ii) shall separately meter any service utility required to operate the Alternative Elements, and (iii) shall be responsible for providing such utility service at Permittee's own cost. As an

exception, if the Alternative Elements are facilities such as street lights and they are installed in locations identified by the City as standard streetlight locations, the City may elect to power the streetlights and not require a separate meter. Permittee shall indemnify and hold City harmless against any claims related to Permittee's operation, maintenance, repair, and replacement of Alternative Elements.

5.5 Mitigation Monitoring and Reporting Program

Permittee shall comply with all applicable provisions of the MMRP adopted as part of the Project approvals.

5.6 Annual Certification of Insurance

Upon receipt of a written request by the Department, but no more than annually, Permittee shall submit written evidence to the Department indicating that the requirements of Section 8 (Insurance) and Section 10 (Maintenance Fund) have been satisfied.

5.7 Damage to and Cleanliness and Restoration of Permit Area and City Owned or Controlled Property

Permittee, at all times, shall maintain the Improvements within the Permit Area in a clean and orderly manner to the satisfaction of the Director. Following any construction activities or other activities on the Permit Area, Permittee shall remove all debris and any excess dirt from the Permit Area and Improvements

If any portion of the Permit Area, any City-owned or controlled property located adjacent to the Permit Area, including other PROW or private property in the vicinity of the Permit Area, is damaged by any of the activities conducted by Permittee hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or affected property to its previous condition to the satisfaction of the Director.

5.8 Excavation or Temporary Encroachment within the Permit Area

Permittee acknowledges its maintenance responsibility following any excavation or temporary encroachment of any portion or portions of the Permit Area as described below.

5.8A Excavation by City or UCP Holders. After providing public notice according to Article 2.4 of the Public Works Code, any City Agency or Public Utility may excavate within the PROW, which may include portions of the Permit Area. A "City Agency" shall include, but not be limited to, the SFPUC, SFMTA, and any City authorized contractor or agent, or their sub-contractor. "Public Utility" shall include any company or entity currently holding a valid Utility Conditions Permit ("UCP") or a valid franchise with the City or the California Public Utilities Commission. Permittee acknowledges that it will provide and not obstruct access to any utilities and facilities owned and operated by any City Agency or a Public Utility at any time within the Permit Area for maintenance, repair, and/or replacement.

Emergency work. In the case of an emergency, a City Agency or Public Utility need not notify the Permittee of emergency work until after the emergency situation has been abated, at which point the Department will strive to cooperate with affected City departments to provide written notice to the Permittee concerning the emergency work.

In the performance of any excavation in the Permit Area by a City Agency or Public Utility, it shall be the responsibility of the Permittee to coordinate with the City Agency or Public Utility and restore the site to the condition specified on the SIPs, provided, however, the excavator shall implement commercially reasonable precautions to protect the Permit Area and any Improvements located within the Permit Area from injury or damage during the excavation or future work. Following excavation by a City Agency or a Public Utility, (a) in the case where there are Alternative Elements, the excavator shall only be obligated to backfill and patch the site to a safe condition, unless Permittee requests the City Agency or Public Utility undertaking the excavation to restore the site to the City standard elected by Permittee, in which case, where feasible, the City Agency or Public Utility undertaking the excavation will restore the site to the City standard elected by Permittee; (b) in the case where there are only City standard materials, the excavator shall be obligated to backfill the site to a safe condition, and restore the site to City standards. The City Agency or Public Utility shall not replace Alternative Elements or Improvements that the City Agency or Public Utility may remove or damage in connection with such excavation or site access. Permittee shall be responsible and bear all costs for the restoration of all disturbed Alternative Elements and the other Improvements that are not restored by a City Agency or Public Utility to the condition as specified on the SIPs.

In the case where the excavated portion of the Permit Area consists of only City standard materials, the City Agency or Public Utility shall complete its restoration work as prescribed in the Public Works Code Article 2.4 and supplemental Director's Orders, following the completion of the excavation or temporary encroachment.

In the case where the excavated portion of the Permit Area consists partially or fully of custom materials, the Permittee shall restore or cause to be restored the Improvements in the excavated portions of the Permit Area to the condition specified on the design for the Improvements within the duration of the permit, after the issuance of any permits required by the City; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within the permit duration, then the permittee shall submit a permit extension request as required under the Public Works Code, the Department shall extend such period provided that the Permittee has commenced and is diligently pursuing such restoration.

The Permittee shall not seek or pursue compensation from a City Agency or a Public Utility for Permittee's coordination of work or the inability to use the Permit Area for the duration of excavation or occupancy.

5.8B Excavation by Private Parties. Following any excavation of any portion or portions of the Permit Area by a private party (e.g., contractor, property owner, or resident), it shall be the responsibility of the private party and the Permittee to coordinate the restoration of the site and the private party shall bear all the cost of restoration; provided, however, that in all events the private party shall be required to restore the excavated portion or portions of the Permit Area

to the condition specified on the SIPs within the duration of the excavation permit, after completion of the excavation or temporary encroachment, provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within the excavation permit duration, then the permittee shall submit a permit extension request as required under the Public Works Code, Department shall extend such period provided that the private party has commenced and is diligently pursuing such restoration. If the private party fails to perform such restoration, then the Permittee should notify the Department of such failure in writing and allow any Departmental corrective procedures to conclude prior to pursuing any and all claims against such private party related thereto should the Permittee have such third-party rights. The City, through its separate permit process with that private party, shall require that private party to bear all the costs of restoration and cooperate with the Permittee on how the restoration is performed and how any costs that the Permittee assumes for work performed (time and materials) are reimbursed. The Permittee shall only seek or pursue compensation from the private party for work performed (time and materials) and shall not seek or request compensation for coordination or the inability to use the Permit Area for the duration of excavation or occupancy, provided that Permittee is provided with access to Permittee's property. Nothing in this Section 5.8B modifies the obligations set forth in Section 5.4A.

5.8C Temporary Encroachments for Entities Other Than Permittee.

In the case of temporary encroachments, which may include the temporary occupancy of portions of the Permit Area or the temporary relocation of Improvements (elements or fixtures) from the Permit Area, Permittee shall work collaboratively with the entity that will be temporarily encroaching the Permit Area ("**Temporary Encroacher**") to coordinate the temporary removal and storage of the Improvements from the affected portion of the Permit Area, when necessary. It shall be the responsibility of the Temporary Encroacher to protect in-place any undisturbed portion of the Permit Area.

Where the Temporary Encroacher is a private party, the private party shall be responsible for any costs for removal, storage, and maintenance of the Improvements, and restoration associated with restoration of the Permit Areas. The obligation to coordinate and restore under this section shall be a condition of the City permit issued to the Temporary Encroacher. If the Temporary Encroacher fails to coordinate with Permittee and compensate the Permittee or restore the Permit Area, then the Permittee should notify the Department of such failure in writing.

The Permittee may only seek or pursue compensation from the Temporary Encroacher for costs incurred (time and materials) to temporarily relocate and replace Improvements, and shall not seek or request compensation for coordination or the inability to use the Permit Area for the duration of the Temporary Encroacher's occupancy.

Where the Temporary Encroacher is a City Agency or a Public Utility, Permittee shall be responsible for any costs for removal, storage, maintenance, and restoration associated with the Improvements and any associated areas within the Permit Area, and the City Agency or Public Utility, as applicable, shall be responsible for restoration of any standard City features or Improvements. The City Agency or the Public Utility or its contractors shall not be responsible for Permittee's temporary removal and storage costs.

The Permittee shall be responsible for ensuring the Permit Area has been restored within thirty (30) calendar days following the completion of the temporary encroachment; provided, however, to the extent that such restoration cannot be completed using commercially reasonable efforts within such thirty (30) calendar day period, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such restoration.

5.8D Additional Time to Complete Site Restoration Where Future Work Is Anticipated

Prior to the Permittee's undertaking of any restoration of the applicable portion of the Permit Area to the conditions specified in the Improvement Plans, the Permittee and the City shall confer as to whether any party (e.g., any City Agency, Public Utility, or private party) intends to perform any future work (e.g., any excavation or temporary encroachment) that would be likely to damage, disrupt, disturb or interfere with any restoration of the Permit Area. If such future work is anticipated within six (6) months following completion of any then proposed excavation or temporary encroachment, then the Permittee's deadline for restoring the site shall be automatically extended. The Permittee may submit to the Department a written request for an extension to the restoration deadline if future work is anticipated to commence more than six (6) months from the completion of the prior excavation and temporary encroachment. Department may condition approval of such request on Permittee's temporary repair to an adequate interim condition. If the restoration deadline is extended as set forth above, then the Permittee shall be obligated to complete the restoration within the timeframes specified in this Agreement.

5.9 Permit Revocation; Termination; Modification of Agreement

5.9A Permit Revocation or Termination

Permittee acknowledges and agrees that the obligations of the Permittee or Permittee's successor(s) in interest to perform the Permitted Activities shall continue for the term of the Permit. The City reserves the right to revoke the Permit under the procedures set forth in the Public Works Code Sections 786 et seq. and, if applicable, as specified in the Board of Supervisors' or the Director's approval of the Permit.

A termination or revocation of the Permit under the procedures set forth in Public Works Code Sections 786 et seq. shall result in an automatic termination of this Agreement as to the affected portion of the Permit Area, and all of Permittee's responsibilities and obligations hereunder shall terminate, unless otherwise provided for in this Agreement. The City may partially terminate or revoke the Permit as to those portions of the Permit Area subject to default and the City may elect to allow the Permit to remain effective as to all portions of the Permit Area that are not subject to default.

If the Permit is terminated by Permittee or revoked or terminated by City (each a "**GMEP Termination Event**") with respect to a portion or portions of the Permit Area, Permittee shall convert the Improvements therein to a condition specified by City for a standard PROW or as the Director deems appropriate under the circumstances at Permittee's sole cost (the "**Right-of-Way Conversion**") by (i) applying for, and providing the materials necessary to

obtain, a street improvement permit or other authorization from City for the performance of such conversion work; (ii) performing such conversion work pursuant to the terms and conditions of such street improvement permit or other City authorization; and (iii) warranting that the conversion work will meet the standards required by a Public Works street improvement permit for a duration not less than one (1) year from the date Public Works confirms that the work is complete, subject to any extension that the Director may grant in the Director's discretion.

The obligation of Permittee or Permittee's successor in interest to remove the Improvements and restore the PROW to a condition satisfactory to the Director shall survive the revocation, expiration, or termination of this Permit. Upon completion of the Right-of-Way Conversion, and subject to Section 5.9B, Permittee shall have no further obligations under the Permit for the portion of the Permit Area subject to the completed Right-of-Way Conversion and to the extent the Director has agreed to terminate the Permittee's obligations in regard to all or a portion of the Right-of-Way Conversion, except as to any applicable warranty.

The City and any and all City subdivisions or agencies shall be released from any responsibility to maintain the existence of Improvements and shall not be required to preserve or maintain the Improvements in any capacity following the termination or revocation of the Permit unless the Department, in its discretion and in accordance with this Agreement, agrees to an alternative procedure.

5.9B Modification or Termination of the Agreement

(a) Following the approval of the Notice of Annexation, this Agreement shall continue and remain in full force and effect at all times in perpetuity except if the City elects to terminate Permittee's maintenance obligations pursuant to this Section 5.9 and provides written notice to the address provided in Section 2.7. Under such circumstances, this Agreement shall terminate at the time specified in such written notice with exception to those terms as specified in this Agreement that apply to any remaining Permit obligations. If this Permit or the Notice of Annexation was recorded, City shall record evidence of any such termination in the Official Records.

(b) At any time during the term of the Permit, Permittee may request to amend the scope of such Permitted Activities or, subject to compliance with Section 5.9A, to decrease the Permit Area or scope of Improvements subject to the Permit, through a written amendment to this Agreement. The Director, in the Director's sole discretion, may approve, approve with conditions, or deny the requested amendment. If the Director approves an amendment, both Parties shall execute the approved amendment and arrange for its recordation, if it amends a recorded Permit or Notice of Annexation. Further, Permittee and Director may, but are not required to, execute a written modification of this Agreement to provide for the Department's maintenance of a portion or all of the Improvements as described in the Permit Area Documentation. In the event of such modification of this Agreement, the Department may require Permittee to pay the Department for the cost of maintaining specified Improvements as described in the Maintenance Plan (defined in Section 2.8). The Director's written modification shall, among other relevant terms, identify the specific portion of the Improvements that the Department shall maintain and the terms of Permittee's payments.

(c) In addition, Permittee and City may mutually elect to modify Permittee's obligation to perform the Right-of-Way Conversion described in Section 5.9.A including any modification necessary to address any Improvements that cannot be modified or replaced with a PROW improvement built according to the City's standard specifications. Any such modification may include, but not be limited to, Permittee's agreement to convert, at its sole cost, specified Improvements to a PROW improvement built according to the City's standard specifications while leaving other specified Improvements in their as-is condition, with Permittee assuming a continuing obligation to pay for City's costs to maintain and replace such remaining Improvements. In addition, any such modification may address any applicable City requirements for maintenance security payment obligations and City's acquisition of specialized equipment needed to perform the maintenance work, however, no such specialized equipment shall be required for Improvements built to City standards. If City and the Permittee mutually agree to any modification to the Right-of-Way Conversion that results in Permittee assuming such a maintenance payment obligation, Permittee shall execute and acknowledge, and City shall have the right to approve and to record in the Official Records an amendment to this Agreement, that details such payment obligation.

5.10 Green Maintenance Requirements

In performing any Permitted Activities that require cleaning materials or tools, Permittee, to the extent commercially reasonable, shall use cleaning materials or tools selected from the Approved Alternatives List created by City under San Francisco Environmental Code, Chapter 2, or any other material or tool approved by the Director. Permittee shall properly dispose of such cleaning materials or tools.

6. ANNEXATION OF PROPERTY INTO SCOPE OF PERMIT

6.1 Annexation of Property and Improvements into Permit

The Permit Area may be expanded or new permit areas may be established according to this Section 6. New area containing Improvements or Sidewalks (each area shall be referred to as an "**Annexation Area**") may be annexed into the Permit or, as delegated by the Board of Supervisors, may constitute separate master encroachment permits or discrete street encroachment permits (each shall be identified as a "**Sub-Permit Area**"), as further described below, upon: i) approval by the Director according to the procedures set forth in this Section 6, and ii) the Department's issuance of a Notice of Completion or Certificate of Conformity (or equivalent determination establishing that improvements are eligible for acceptance or have been completed according to the approved SIPs) for Improvements completed within the proposed Annexation Area.

(a) **Annexation Application Approval Process.** For each Annexation Area or Sub-Permit Area Permittee proposes for annexation into the Permit ("**Annexation Application**"), Permittee shall provide to the Department the materials described below concurrent with City's approval of 100% Improvement Plans for the Permit Area. To be eligible for annexation into the Permit, the Annexation Area or Sub-Permit Area (including street segments and/or encroachment areas) must have been generally shown in the approved Global Diagram initially approved with this Permit.

(1) Annexation Application. Permittee must submit a complete Encroachment Permit application requesting the Director's approval of the annexation of the Annexation Area into the Permit or approval of a master encroachment permit or street encroachment permit comprised of the Annexation Area as part of this Permit. The Annexation Application shall reference this Permit and include a plat illustrating the Permit Area and identifying the location of the Improvements or Sidewalks to be annexed into the Permit or the Permit Area for which Permittee seeks a discrete master encroachment permit or street encroachment permit. The Annexation Application shall identify and describe any modifications to any Permit Area compared to the real property, Improvements, or Sidewalks shown in the approved Global Diagram. The Annexation Application shall identify the Permittee proposed to be responsible for the Annexation Area.

(2) Updated Global Diagram. Permittee must update the Global Diagram previously submitted to the Department to depict the Permit Area at the time of the submittal of the Annexation Application, including all administratively approved Annexation Areas and/or discrete master encroachment permits or street encroachment permits. Permittee must refine the Global Diagram, as needed, to include the type of Improvements or Sidewalks and their approximate location within the Annexation Area. The updated Global Diagram shall also identify the Permittee for any previously approved Annexation Area.

(3) Updated Permit Area Documentation. Permittee shall submit updated or supplemental Permit Area Documentation showing all Improvements or Sidewalks in the Annexation Area that is the subject of the Annexation Application ("**Precise Diagram**").

(4) Phasing Plan. Permittee shall submit a diagram that shows all Improvements in the Annexation Area, and generally shows Improvements that are located adjacent to the Permit Area.

(5) Updated Maintenance Plan (if applicable). Permittee shall submit to the Department a Maintenance Plan with each Annexation Application which shall contain a detailed description of means and methods to maintain the Improvements within the Permit Area that is the subject of the Annexation Application. If the Director approved any changes to the Maintenance Plan subsequent to the issuance of the Permit, Permittee shall include the updated Maintenance Matrix or other mutually acceptable document reflecting such change.

(6) Engineering and Improvement Plans and diagrams for the Permit Area.

(7) An estimate of annual maintenance cost for the Improvements associated with the Permit Area in the Annexation Application.

(8) O&M Manuals for the Improvements in the Annexation Area unless such materials were previously submitted in a full set of O&M Manuals that has been approved by the Department.

(9) Updated Maintenance Monitoring and Reporting Program (if applicable). If the Permittee proposes any changes to the Maintenance Monitoring and Reporting Program or if there are specific maintenance monitoring and reporting obligations exclusive to the

Annexation Area, Permittee shall include the updated or specific Maintenance Monitoring and Reporting Program for Public Works to determine compliance with this Permit.

(10) If desired by the Permittee, a request may be included for a separate master encroachment permit or discrete encroachment permit (a “**Sub-Permit**”) relating to a specific improvement or group of improvements associated with a fronting property, including but not limited to fronting property that is owned or leased by the Authority, the Mayor’s Office of Housing and Community Development, or another public entity (“**Publicly Owned Lot**”) and Improvements that serve multiple fronting properties (“**Shared Infrastructure**”). In addition to the items described in Sections 6.1(a)(1) - (9), a request for a Sub-Permit shall include a Precise Diagram (as defined above) depicting the Improvements and proposed Annexation Area and associated fronting properties to be included within the Sub-Permit, as applicable.

(b) **Review of Annexation Application.** The Department shall review the Annexation Application according to the procedures and requirements of Public Works Code Sections 786 et seq., as provided herein. The Department shall provide the Permittee written notice indicating whether: (a) the Annexation Application is approved; (b) additional information is required to complete the application; and/or (c) in the Director’s reasonable discretion, the Annexation Application proposes one or more entirely new or significantly modified encroachments (each a “**New Encroachment**”) that were not included as part of the Board of Supervisors approval of the Permit. In the event an Annexation Application involves a New Encroachment, the Annexation Application shall be deemed an application for a new master or major encroachment permit requiring approval by the Board of Supervisors pursuant to Public Works Code Section 786(b).

(c) **Approval and Recordation of Notice of Annexation.** Upon the Director’s approval of an Annexation Application and prior to or concurrently with the Board of Supervisor’s acceptance of the public improvements located within the Permit Area that is the subject of the Annexation Application, the Permittee shall obtain written approval of a “**Notice of Annexation**” by the Director and record the Notice of Annexation. The Notice of Annexation shall describe the area and Improvements or Sidewalks annexed into the Permit and identify the party(ies) responsible for the completed Improvements or Sidewalks in the Permit Area. The Notice of Annexation shall include and shall be recorded with, the following documents: (1) Updated Global Diagram showing all the phases of work that have been annexed into the Permit, including the Permit Area; (2) a Precise Diagram; (3) a table identifying the party responsible for maintaining each category of assigned Improvement or Sidewalk in the Permit Area, such as the Permittee, Fronting Property Owner, or Owners’ Association, as applicable; and (4) a copy of the fully-executed Agreement with updated addenda and attachments, including the most current, updated versions of the documents set forth in Section 6.1(a). Permittee shall record the Notice of Annexation with all required and updated documents, as described herein, against each Fronting Property for the Permit Area identified in the Notice of Annexation or other such properties as may be agreed upon between Director and Permittee. Recordation of the Notice of Annexation shall not require the consent of any owner of property already subject to the Permit pursuant to a previously-recorded Notice of Annexation.

Upon approval and recordation of the Notice of Annexation, the real property and Improvements identified therein shall become subject to the Permit, and the Permittee identified in the Notice of Annexation shall be subject to all terms and provisions set forth in this Agreement.

7. USE RESTRICTIONS

Permittee agrees that the following uses of the PROW by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below. The list of prohibited uses includes, but is not limited to, the following uses.

7.1 Proposed Alterations

Other than the approved Improvements, Permittee shall not make, construct, or place any temporary or permanent alterations, installations, additions, or improvements on the PROW, structural or otherwise, nor alter any existing structures or improvements on the PROW (each, a **“Proposed Alteration”**), without the Director’s prior written consent in each instance. The in-kind replacement or repair of existing Improvements shall not be deemed a Proposed Alteration.

Permittee may request approval of a Proposed Alteration. The Director shall have a period of thirty (30) days from receipt of request for approval of a Proposed Alteration to review and approve or deny such request for approval. Should the Director fail to respond to such request within said thirty (30) day period, Permittee’s Proposed Alteration shall be deemed disapproved; provided that Permittee may re-submit its request for approval until it is approved by the Director. In requesting the Director’s approval of a Proposed Alteration, Permittee acknowledges that the Director’s approval of such Proposed Alteration may be conditioned on Permittee’s compliance with specific installation requirements and Permittee’s performance of specific on-going maintenance thereof or of other affected PROW. If Permittee does not agree with the Director’s installation or maintenance requirements for any Proposed Alteration, Permittee shall not perform the Proposed Alteration. If Permittee agrees with the Director’s installation or maintenance requirements for any Proposed Alteration, prior to Permittee’s commencement of such Proposed Alteration, Permittee and the Director shall enter into a written amendment to this Agreement that modifies the Permitted Activities to include such requirements. Prior approval from the Director shall not be required for any repairs made pursuant to and in accordance with the Permitted Activities.

If Permittee performs any City-approved Proposed Alteration, Permittee shall comply with all of the applicable terms and conditions of this Agreement, including, but not limited to, any and all conditions of approval of the Proposed Alteration(s).

Permittee shall obtain all necessary permits and authorizations from the Department and other regulatory agencies prior to commencing work for the Proposed Alteration. The Director’s decision regarding a Proposed Alteration shall be final and not appealable.

7.2 Dumping

Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under, or about the PROW.

7.3 Hazardous Material

Permittee shall not cause, nor shall Permittee allow any of its agents to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the PROW, or transported to or from the PROW, except in connection with (i) remediation of the Project site, and (ii) construction of the Project or maintenance of the Improvements in the normal course, and in all cases pursuant to applicable law, including all applicable permits. Permittee shall immediately notify City if Permittee learns or has reason to believe that a release of Hazardous Material has occurred in, on, or about the PROW. In the event Permittee or its agents cause a release of Hazardous Material in, on, or about the PROW, Permittee shall, without cost to City and in accordance with all laws and regulations, (i) comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination, and (ii) return the PROW to a condition which complies with applicable law. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the PROW or are naturally occurring substances in the PROW, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the PROW.

Notwithstanding anything herein to the contrary, if the Director determines that neither Permittee nor its agents caused the release or threatened release of the Hazardous Material, Permittee shall have no liability whatsoever (including, without limitation, the costs of any investigation, any required or necessary repair, replacement, remediation, cleanup or detoxification, or preparation and implementation of any closure, monitoring, or other required plans) with respect to any release or threatened release of any Hazardous Material on, in, under, or about the PROW. If the Director finds that neither Permittee nor its agents were the source of and did not cause the release of the Hazardous Material, Permittee shall not be listed or identified as the generator or responsible party of any waste required to be removed from the PROW, and will not sign any manifests or similar environmental documentation, with respect to any Environmental Condition (as hereinafter defined). "Environmental Condition" shall mean any adverse condition relating to the release or discharge of any Hazardous Materials on, in, under, or about the PROW by any party other than Permittee or its agents.

7.4 Nuisances

Permittee shall not conduct any activities on or about the PROW that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or to the public. The Parties hereby acknowledge that customary use of landscaping and similar equipment (such as lawn mowers, clippers, hedge trimmers, leaf blowers, etc.) that would typically be used to perform the Permitted Activities shall not be considered a nuisance under this Section 7.4 if such equipment is used in compliance with all applicable laws.

7.5 Damage

Permittee shall use due care at all times to avoid causing damage to any of the PROW or any of City's property, fixtures, or encroachments thereon. If any of the Permitted Activities or Permittee's other activities at the PROW causes such damage, Permittee shall notify City, and, if directed by City, restore such damaged property or PROW to the condition it was in prior to the commencement of such Permittee activity to the Director's satisfaction; or, if the City chooses to restore the damaged property, Permittee shall reimburse City for its costs of restoration.

8. INSURANCE

8.1 As described below, Permittee shall procure and keep insurance in effect at all times during the term of this Agreement, at Permittee's own expense, and cause its contractors and subcontractors to maintain insurance at all times, during Permittee's or its contractors performance of any of the Permitted Activities on the PROW. If Permittee fails to maintain the insurance in active status, such failure shall be a Permit default subject to the Department's enforcement remedies. The insurance policy shall be maintained and updated annually to comply with the Department's applicable requirements. The following Sections represent the minimum insurance standard as of the Effective Date of this Permit.

8.1A An insurance policy or insurance policies issued by insurers with ratings comparable to A-VIII, or higher that are authorized to do business in the State of California, and that are satisfactory to the City. Approval of the insurance by City shall not relieve or decrease Permittee's liability hereunder;

8.1B Commercial General Liability Insurance written on an Insurance Services Office (ISO) Coverage form CG 00 01 or another form providing equivalent coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage, including coverages for contractual liability, personal injury, products and completed operations, independent permittees, and broad form property damage;

8.1C Commercial Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property

damage, including coverages for owned, non-owned, and hired automobiles, as applicable for any vehicles brought onto PROW; and

8.1D Workers' Compensation Insurance, in statutory amounts, with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

8.2 All liability policies required hereunder shall provide for the following: (i) name as additional insured the City and County of San Francisco, its officers, directors, commissioners, agents, and employees, jointly and severally; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement; and (iii) stipulate that no other insurance policy of the City and County of San Francisco will be called on to contribute to a loss covered hereunder by Permittee's insurance.

8.3 Limits may be provided through a combination of primary and excess insurance policies. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

8.4 All insurance policies shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal or material reduction in coverage, or depletion of insurance limits, except for ten (10) days' notice for cancellation due to non-payment of premium, to Permittee and City. Permittee shall provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to Department within one business day of Permittee's receipt. Permittee also shall take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced or depleted coverage, or obtain the full coverage required by this Section from a different insurer meeting the qualifications of this Section. Notices shall be sent to the Department of Public Works, Bureau of Street Use and Mapping, 49 South Van Ness Avenue, San Francisco, CA, 94103, or any future address for the BSM. The permission granted by the Permit shall be suspended upon the termination of such insurance. Upon such suspension, the Department and Permittee shall meet and confer to determine the most appropriate way to address the Permit. If the Department and Permittee cannot resolve the matter, the Permittee shall restore the PROW to a condition acceptable to the Department without expense to the Department. As used in this Section, "Personal Injuries" shall include wrongful death.

8.5 Prior to the Effective Date, Permittee shall deliver to the Department certificates of insurance and additional insured policy endorsements from insurers in a form reasonably satisfactory to Department, evidencing the coverages required hereunder. Permittee shall furnish complete copies of the policies upon written request from City's Risk Manager. In the event Permittee shall fail to procure such insurance, or to deliver such certificates or policies (following written request), Department shall provide notice to Permittee of such failure and if Permittee has not procured such insurance or delivered such certificates within five (5) days following such

notice, City may initiate proceedings to revoke the permit and require restoration of the PROW to a condition that the Director deems appropriate.

8.6 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

8.7 Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should any occurrences during the term of this Agreement give rise to claims made after expiration of this Agreement, such claims shall be covered by such claims-made policies.

8.8 Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the PROW, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

8.9 Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Agreement or any of Permittee's other obligations hereunder. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

9. VIOLATIONS; CITY ENFORCEMENT OF PERMIT AND AGREEMENT; SECURITY DEPOSIT

Permittee acknowledges that the Department may pursue the remedies described in this Section in order to address a default by Permittee of any obligation under this Permit with respect to any Permit Area for which Permittee is responsible, including pursuant to the relevant Notice of Assignment, if applicable. In addition to the procedures below and as set forth in Section 5.4B, if Permittee fails to promptly respond to an unsafe or hazardous condition or to restore the site within the time the Department specifies, the Department may perform the temporary repair or restoration in order to protect the public health, safety, and welfare. Permittee shall reimburse the Department for any such temporary repair or restoration.

(a) **Correction Notice (CN).** The Department may issue a written notice informing Permittee that there is an unsafe, hazardous, damaged, or blighted condition within the Permit Area, or stating that the Permittee has otherwise failed to maintain the Permit Area as required by this Permit or stating that the Permittee has otherwise failed to comply with a term or terms of this Agreement ("**Correction Notice**"). The Correction Notice shall identify the issue, deficiency, or maintenance obligation that is the subject of the notice with reasonable particularity and specify the time for correction, which shall be no less than thirty (30) days; provided, however, to the extent that such correction cannot be completed using reasonable efforts within the initially

specified timeframe, then such period shall be extended provided that the Permittee has commenced and is diligently pursuing such correction. In the event of an emergency or other situation presenting a threat to public health, safety, or welfare, the Director may require correction in less than thirty (30) days.

(b) Notice of Violation.

(i) The Department may issue a written notice of violation (“**Notice of Violation**” or “**NOV**”), to the Permittee for failure to maintain the Permit Area and creating an unsafe, hazardous, damaged, or blighted condition within the Permit Area, failure to comply with the terms of this Agreement, or failure to respond to the Correction Notice by abating the identified condition(s) within the time specified therein. The NOV shall identify each violation and any fines imposed per applicable code(s) or Agreement sections and specify the timeframe in which to cure the violation and pay the referenced fines which shall be within thirty (30) days if not specified.

(ii) Permittee shall have ten (10) days to submit to the Department, addressed to the Director, via BSM Inspection Manager at 49 South Van Ness Avenue, San Francisco, CA 94103, or future BSM address, a written appeal to the NOV or a written request for administrative review of specific items in the NOV. If Permittee submits said appeal or request for review, the Director shall hold a public hearing on the dispute in front of an administrative hearing officer. The Director shall then issue a final written decision on the Director’s determination to approve, conditionally approve, modify, or deny the appeal based on the recommendation of the hearing officer and the information presented at the time of the hearing.

(c) Uncured Default. If the violation described in the NOV is not cured within ten (10) days after the latter of (1) the expiration of the NOV appeal period or (2) if an appeal is filed, the written decision by the Director following the hearing to uphold the NOV or sections thereof, said violation shall be deemed an “**Uncured Default.**” In the event of an Uncured Default, the Director may undertake either or both of the following:

(i) Cure the Uncured Default and issue a written demand to Permittee to pay the City’s actual reasonable costs to remedy said default in addition to any fines or penalties described in the NOV within ten (10) days (each such notice shall be referred to as a “**Payment Demand**”).

(ii) Notify Permittee that it must submit a Security Deposit (as defined in Section 9(d)) for the maintenance obligation that is the subject of the Notice of Violation. Alternatively, the Director may initiate the procedures under Public Works Code Section 786 to revoke the Permit with respect to the particular portion of the Permit Area that is the subject of the Notice of Violation and require a Right-of-Way Conversion (as defined in Section 5.9A) with respect to that area, in the Director’s discretion.

(d) Security Deposit Required for Uncured Default

If there is an Uncured Default as defined in Section 9(c) of this Agreement, then within thirty (30) business days of the Director’s request, Permittee shall deposit with the Department via

the Permit Manager of the BSM (or successor) the sum of no less than twice the annual cost of maintenance as set forth in the Maintenance Plan on file with the Director (the “**Security Deposit**”) with respect to the maintenance obligation that is the subject of the Uncured Default, to secure Permittee’s faithful performance of all terms and conditions of this Agreement, including, without limitation, its obligation to maintain the PROW in the condition that the Director deems acceptable. When Permittee delivers the Security Deposit to the Department pursuant to the foregoing sentence, the Department shall have the right to require Permittee to proportionately increase the amount of the Security Deposit by an amount that reflects the increase in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics (“Index”) published most immediately preceding the date the amount of the Security Deposit was established and the Index published most immediately preceding the date the Department delivers written notice of the increase in the Security Deposit. The amount of the Security Deposit shall not limit Permittee’s obligations under this Agreement.

Permittee agrees that the Department may, but shall not be required to, apply the Security Deposit in whole or in part to remedy any damage to the PROW caused by Permittee, its agents, or the general public using the Permit Area to the extent that the Director required Permittee to perform such remediation under this Agreement and Permittee failed to do so, or Permittee failed to perform any other terms, covenants, or conditions contained herein (including, but not limited to, the payment of any sum due to the Department hereunder either before or after a default). Notwithstanding the preceding, the Department does not waive any of the Department’s other rights and remedies hereunder or at law or in equity against the Permittee should the Department use all or a portion of the Security Deposit. Upon termination of the Permitted Activities after a GMEP Termination Event as described herein, the Department shall return any unapplied portion of the Security Deposit to Permittee, less any administrative processing cost.

Should the Department use any portion of the Security Deposit to cure any Uncured Default, Permittee shall replenish the Security Deposit to the original amount within ten (10) business days of the date of a written demand from the Department for reimbursement of the Security Deposit. Subject to the following sentence, the Permittee’s obligation to replenish the Security Deposit shall continue for two (2) years from the date of the initial payment of the Security Deposit unless the Director, in the Director’s sole discretion, agrees to a shorter period; provided, however, that if the Director does not issue a new Notice of Violation related to the issues triggering a GMEP Termination Event for a period of one year from the date of the initial payment of the Security Deposit, then, upon Permittee’s written request, the Director shall submit a check request to City’s Controller’s Office to have any remaining Security Deposit, less any administrative processing cost, delivered to Permittee. The Department’s obligations with respect to the Security Deposit are solely that of debtor and not trustee. The Department shall not be required to keep the Security Deposit separate from its general funds, and Permittee shall not be entitled to interest on the Security Deposit. The amount of the Security Deposit shall in no way limit the liabilities of Permittee under any provision of the Permit or this Agreement. Upon termination of the Permitted Activities after a GMEP Termination Event, the Department shall return any unapplied portion of the Security Deposit to Permittee, less any administrative processing cost.

(e) **Demand for Uncured Default Costs.** Where the Permittee has failed to timely (i) remit the funds described in a Payment Demand, (ii) remit the Security Deposit or (iii) pay the City's costs associated with the City's performance of a Right-of-Way Conversion (collectively, "**Uncured Default Costs**"), the Director may initiate lien proceedings against the owner for the property against which this Permit is recorded, the Fronting Property Owner where Fronting Property Owner is the Permittee for the subject Improvements, or the Owners' Association's members property(ies) where the Owners' Association is the Permittee for the subject Improvements for the amount of the Uncured Default Costs pursuant to Public Works Code Sections 706.4 through 706.7, Public Works Code Section 706.9, Administrative Code Section 80.8(d), or any other remedy in equity or at law.

10. MAINTENANCE FUND

The Director may require Permittee to establish and fund a maintenance fund as a condition of this Permit, to be held by the Department and maintained in an interest bearing account. Alternatively, the Director may require an equivalent reserve account to be held by the Owners' Association, or such other financial provision for assuring adequate maintenance as may be approved by the Director in the Director's sole discretion. (Hereinafter, such maintenance fund and/or reserve account referred to as "**Maintenance Fund**"). The Director may require, following the approval of a Notice of Annexation for such Improvements, a Maintenance Fund in an amount of no less than twice the annual cost of maintenance as set forth in the Maintenance Plan for such Improvements. The Maintenance Fund shall not be used for ongoing maintenance obligations. If Permittee fails to respond to a Correction Notice or Notice of Violation described above, the City may draw down or require the draw down upon the Maintenance Fund in the same manner that it would use a Security Deposit for an Uncured Default associated with Improvements on Privately Owned Lots. Department shall have the right to require Permittee to increase the amount of the Maintenance Fund by an amount that reflects the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("**CPI**").

11. COMPLIANCE WITH LAWS

Permittee shall, at its expense, conduct and cause to be conducted all activities under its control on the PROW allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the Parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the PROW any and all business and other licenses or approvals necessary to conduct the Permitted Activities. Nothing herein shall limit in any way Permittee's obligation to obtain any required regulatory approvals from City departments, boards, or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers. At the Director's written request, Permittee shall deliver written evidence of any such regulatory approvals Permittee is required to obtain for any of the Permitted Activities.

12. SIGNS

Permittee shall not place, erect, or maintain any sign, advertisement, banner, or similar object on or about the PROW without the Director's written prior consent, which the Director may give or withhold in the Director's sole discretion; provided, however, that Permittee may install any temporary sign that is reasonably necessary to protect public health or safety during the performance of a Permitted Activity. This Section shall not be applicable to any signs approved by the City under the master signage plan or master streetscape plan for the Project

13. UTILITIES

The Permittee shall be responsible for locating and protecting in place all above and below grade utilities from damage, when Permittee, or its authorized agent, elects to perform any work in, on, or adjacent to the Permit Area. If necessary prior to or during the Permittee's execution of any work, including Permitted Activities, a utility requires temporary or permanent relocation of the utility, the Permittee shall obtain written approval from the utility owner and shall arrange and pay for all costs for relocation. If Permittee damages any utility during execution of its work, the Permittee shall notify the utility owner and arrange and pay for all costs for repair. Permittee shall be solely responsible for arranging and paying directly to the City or utility company for any utilities or services necessary for its activities hereunder.

Permittee shall be responsible for installing, maintaining, and paying for utility services necessary to support any Improvements, such as light fixtures, water fountains, storm drains, etc. in the Permit Area that are included in the Permit.

14. NO COSTS TO CITY; NO LIENS

Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the PROW pursuant to this Agreement, and shall keep the PROW free and clear of any liens or claims of lien arising out of or in any way connected with its use of the PROW pursuant to this Agreement.

15. "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION OF PROW; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS

Permittee acknowledges and agrees that Permittee, or its agents, has installed or shall install the Improvements contemplated in the permit application for the Improvements and has full knowledge of the condition of the Improvements and the physical condition of the PROW. Permittee agrees to use the PROW in its "AS IS, WHERE IS, WITH ALL FAULTS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, including, without limitation, the suitability, safety, or duration of availability of the PROW or any facilities on the PROW for Permittee's performance of the Permitted Activities. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules, and ordinances governing the use of the PROW, and to any and all covenants, conditions, restrictions, encroachments, occupancy, permits, and other matters affecting the PROW, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the PROW

and all matters relating to its use of the PROW hereunder, including, without limitation, the suitability of the PROW for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the PROW in the manner contemplated hereby.

Under California Civil Code Section 1938, to the extent applicable to this Agreement, Permittee is hereby advised that the PROW has not undergone inspection by a Certified Access Specialist (“CAS”) to determine whether it meets all applicable construction-related accessibility requirements.

16. ASSIGNMENT OF MAINTENANCE OBLIGATIONS; ASSIGNMENT OF AGREEMENT; PERMIT BINDING UPON SUCCESSORS AND ASSIGNEES; NOTICE OF ASSIGNMENT

This Agreement shall be the obligation of Permittee, and may not be assigned, conveyed, or otherwise transferred, in whole or in part, to any other party, except as provided for in this Section 16.

16.1 Assignment of Maintenance Obligations; Notice of Assignment

Permittee may, from time to time, assign the maintenance obligations with respect to all or any portion of the Permit Area or Improvements or Sidewalks therein, subject to the written approval of the Director and any conditions the Director deems appropriate, in the Director’s sole discretion. To request assignment to an Owners’ Association, or a management entity created for purposes of managing public realm improvements, including, without limitation, Sidewalks, within the Global Area (each, a “**Maintenance Assignee**”), Permittee shall submit a “**Notice of Assignment**” to the Department. Prior to approval of the Notice of Assignment, a copy of the Assignee’s recorded conditions, covenants, and restrictions (“**CC&Rs**”) shall be submitted to the Department, if there are such CC&Rs, evidencing (A) the Owners’ Association’s obligation to accept maintenance responsibility for the subject Improvements or Sidewalks consistent with this Agreement upon assignment; (B) City’s right to enforce the assigned and assumed maintenance obligations under this Permit as a third-party beneficiary under such CC&Rs and the San Francisco Municipal Code; and (C) City’s right to record this Permit and the Notice of Assignment against the Owners’ Association’s members’ property. Assignments of this Permit to an entity other than a permitted Maintenance Assignee shall be subject to Section 16.2 of this Agreement. Upon submittal of a Notice of Assignment in substantial conformance with **Attachment 5** attached hereto to Public Works and the Director’s written approval, the Permit rights and obligations may be performed by the Maintenance Assignee with respect to the Permit Area described therein. Following such assignment to a Maintenance Assignee, Permittee and Maintenance Assignee shall be jointly and severally liable for the obligations of this Permit arising from the period of the maintenance assignment.

The **Notice of Assignment** shall include:

- (1) identification of the Assignee and Assignee’s acknowledgment that it accepts the assignment;

(2) the contact person for the Assignee and the contact information as required under Section 2.7;

(3) a description of the Permit Area and Improvements located therein, by reference to the previously-approved Notice of Annexation that is being assigned;

(4) a statement of whether Public Works Code § 706 obligations are assigned;

(5) a statement of whether Community Facilities District or other Special Tax District funds will be used to fund maintenance obligations;

(6) a confirmation by the Assignee that it will fund the Maintenance Fund, if required pursuant to Section 10 above;

(7) evidence of insurance meeting the requirements Section 8 above;

(8) a confirmation by the assignee that it will indemnify City consistent with the requirements of Section 25 below;

(9) a confirmation by the Assignee that it will comply with any conditions imposed by the Director in approving the assignment; and

(10) acknowledgment that Maintenance Assignee and Permittee are jointly and severally liable for the obligations under this Permit.

16.2 ASSIGNMENT OF AGREEMENT

The obligations of Permittee may be assigned, in whole or in part, subject to the written approval of the Director and any conditions the Director deems appropriate, in the Director's sole discretion.

This Agreement shall bind Permittee, its successors, and assignees, with each successor or assignee being deemed to have assumed the obligations under this Agreement at the time of such acquisition of ownership interest or assignment (the earlier of the two dates, where there is both an acquisition and assignment).

It is intended that this Agreement binds the Permittee and, with respect to Sidewalk maintenance assigned pursuant to Section 4.2D, all future fee owners of all or any of the subject Fronting Property only during their respective successive periods of ownership; and therefore, the rights and obligations of any Permittee or its respective successors and assignees under this Agreement shall terminate upon transfer, expiration, or termination of its interest in the Improvements or the Fronting Property, except that its liability for any violations of the requirements or restrictions of this Agreement, or any acts or omissions during such ownership, shall survive any transfer, expiration, or termination of its interest in the Improvements or the Fronting Property.

To request assignment of this permit, Permittee shall submit a **Notice of Assignment** to the Department. Upon submittal of a Notice of Assignment and the Director's written approval, the Permit rights and obligations may be assigned to, and performed by, the Assignee with respect to the Permit Area described therein. The **Notice of Assignment** shall include the information identified in Section 16.1 (1) through (9) above. Prior to approval of the Notice of Assignment, a copy of the Assignee's recorded CC&Rs shall be submitted to the Department, if there are such CC&Rs, evidencing (A) the Owners' Association's obligation to accept maintenance responsibility for the subject Improvements or Sidewalks consistent with this Agreement upon assignment; (B) City's right to enforce the assigned and assumed maintenance obligations under this Permit as a third-party beneficiary under such CC&Rs and the San Francisco Municipal Code; and (C) City's right to record this Permit and the Notice of Assignment against the Owners' Association's members' property.

Following such assignment, the obligations of the assigning Permittee shall be deemed released to the extent of the assignment, and the assigning Permittee shall have no obligations under this Agreement as to the assigned portion of the Agreement.

Recording. If the Permittee is an Owners' Association, the Director may record the Permit and the Notice of Assignment against the Owners' Association's members' property. If the Permittee is a Fronting Property Owner, the Director may record the Permit and the Notice of Assignment against the Fronting Property Owner's property. For all other Permittees, the Director may record the Permit and the Notice of Assignment against the Permittee's real property interest, if any, in the Project area or outside of the Project area pursuant to the agreement of the Parties, or require a Maintenance Fund in accordance with Section 10.

17. TRANSFER AND ACCEPTANCE PROCEDURES

If this Permit is assigned in accordance with the provisions of Section 16.2 to one or more Fronting Property Owners, the assigned portions of this Permit and the accompanying benefits and obligations are automatically transferred to any successor Fronting Property Owner(s). If the applicable Permittee Fronting Property Owner is selling the property, the successor owner(s) shall submit contact information to the Department immediately upon closing on the property sale along with an acknowledgement that the successor owner(s) shall accept and assume all assigned Permit responsibilities. The Department may require that such a transfer be evidenced by a new written Agreement with the Director and require evidence of the requisite insurance to be submitted within a specified period of time.

18. POSSESSORY INTEREST TAXES

Permittee recognizes and understands that this Agreement may create a possessory interest subject to property taxation with respect to privately-owned or occupied property in the PROW, and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee agrees to pay taxes of any kind, including any possessory interest tax, if any, that may be lawfully assessed on Permittee's interest under this Agreement or use of the PROW pursuant hereto and to pay any other taxes, excises, licenses, permit charges, or assessments based on Permittee's usage of the PROW that may be imposed upon Permittee by applicable law (collectively, a "Possessory Interest Tax"). Permittee shall pay all of such charges

when they become due and payable and before delinquency. The Parties hereto hereby acknowledge that the PROW will be a public open space during the term of this Agreement and Permittee's use of the PROW pursuant to this Agreement is intended to be non-exclusive and non-possessory.

19. PESTICIDE PROHIBITION

Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (a) prohibit the use of certain pesticides on PROW, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (c) require Permittee to submit to the Director an integrated pest management ("IPM") plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the PROW during the term of this Agreement, (ii) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Permittee, through the Director, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 303 thereof.

20. PROHIBITION OF TOBACCO SALES AND ADVERTISING

Permittee acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the PROW. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Permittee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the PROW and such prohibition must be included in all subleases or other agreements allowing use of the PROW. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

21. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the PROW. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to (a) communicate the health hazards of alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

22. CONFLICTS OF INTEREST

Through its execution of this Agreement, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts related to this Agreement which would constitute a violation of said provisions, and agrees that if Permittee becomes aware of any such fact during the term of this Agreement, Permittee shall immediately notify the City.

23. FOOD SERVICE WASTE REDUCTION

If there is a City permit or authorization for the Permit Area that will allow food service, Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein and the Permittee will be treated as a lessee for purposes of compliance with Chapter 16. This provision is a material term of this Agreement. By entering into this Agreement, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather as mutually agreed upon monetary damages sustained by City because of Permittee's failure to comply with this provision.

24. GENERAL PROVISIONS

Unless this Agreement provides otherwise: (a) This Agreement may be amended or modified only in writing and signed by both the Director and Permittee; provided that the Director shall have the right to terminate or revoke the Permit in accordance with this Agreement. (b) No waiver by any Party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required, or permitted hereunder may be made in the sole and absolute discretion of the Director or other authorized City official. (d) This Agreement (including its Attachments and associated documents hereto), the Permit, the Board of Supervisors legislation approving the Permit, and any authorization to proceed, discussions, understandings, and agreements are merged herein. (e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. The Director shall have the sole discretion to interpret and make decisions regarding any and all discrepancies, conflicting statements, and omissions found in the Permit, Agreement, the Agreement's Attachments and associated

documents, and Improvement Plans, if applicable. (f) Time is of the essence. (g) This Agreement shall be governed by California law and the City's Charter. (h) If either Party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience, notwithstanding the City's use of its own attorneys. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns. (k) City is the sole beneficiary of Permittee's obligations under this Agreement. Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, nor shall it give rights to the Parties expressly set forth above. Without limiting the foregoing, nothing herein creates a private right of action by any person or entity other than the City. (l) This Agreement does not create a partnership or joint venture between the City and Permittee as to any activity conducted by Permittee in its performance of its obligations under this Agreement. Permittee shall not be deemed a state actor with respect to any activity conducted by Permittee on, in, around, or under the Improvements pursuant to this Agreement.

25. INDEMNIFICATION

Pursuant to and except as otherwise limited by the DA, Permittee, on behalf of itself and its successors and assigns ("**Indemnitors**"), shall indemnify, defend, and hold harmless ("**Indemnify**") the City including, but not limited to, all of its boards, commissions, departments, agencies, and other subdivisions, including, without limitation, the Department, and all of the heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, for any damages the Indemnified Parties may be required to pay as satisfaction of any judgment or settlement of any claim or legal or administrative action (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, or loss of or damage to property, or any negligent act or omission of the Indemnitor in or about the Permit Area arising from the Permitted Activities, and except to the extent they arise exclusively from the City's active negligence, willful misconduct, or failure to maintain one or more Improvements after agreeing to perform such maintenance and accepting funding from Permittee for that purpose; (b) any default by such Indemnitors in the observation or performance of any of the terms, covenants, or conditions of this Permit to be observed or performed on such Indemnitors' part; and (c) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Indemnitors in, under, on, or about the Permit Area arising from the Permitted Activities. Permittee on behalf of the Indemnitors specifically acknowledges and agrees that the Indemnitors have an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such Claim is tendered to such Indemnitors by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work and expiration or termination of the DA. It is expressly understood and agreed that the applicable Indemnitor shall only be responsible for Claims arising or accruing during its period as Permittee under this Permit.

26. SEVERABILITY

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

27. FORCE MAJEURE

If Permittee is delayed, interrupted, or prevented from performing any of its obligations under this Agreement, excluding all obligations that may be satisfied by the payment of money or provision of materials within the control of Permittee, and such delay, interruption, or prevention is due to fire, natural disaster, act of God, war, terrorism, riot, civil insurrection, federal or state governmental act or failure to act, labor dispute, unavailability of materials, epidemics, pandemics, and related governmental orders and requirements (and private sector responses to comply with those orders and requirements) or any cause outside such Party's reasonable control, then, provided written notice of such event and the effect on the Party's performance is given to the other Party within thirty (30) days of the occurrence of the event, the time for performance of the affected obligations of that Party shall be extended for a period equivalent to the period of such delay, interruption, or prevention.

[Signature Page to Follow]

In witness whereof the undersigned have executed this agreement on the dates set forth below.

<p>PERMITTEE:</p> <p>Bridge-Potrero Community Associates LLC, a California limited liability company</p> <p>By: _____ Name: _____ Its: _____</p>	<p>_____</p> <p>Date</p>
<p>CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through its DEPARTMENT OF PUBLIC WORKS</p> <p>_____ Albert Ko City Engineer of San Francisco</p> <p>_____ Carla Short Director</p>	<p>_____</p> <p>Date</p> <p>_____</p> <p>Date</p>

Attachment 1: Property Information

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows (see Attachment 1A for graphical depiction of permit areas):

Initial Permit Area

Portion of 25th Street between Connecticut Street and Texas Street; Portion of Missouri Street south of 25th Street and east of Lot 87 of Assessor's Block number 4287; Block 4285B, Lots 3, 4, and 5, along with the portions of Wisconsin Street, Arkansas Street, Connecticut Street, 25th Street, and 26th Street fronting those parcels.

Future Permit Area

Assessor's Block number 4167, lots 004 and 004A; Block 4220A, lot 001; Block 4222A, Lot 1; Block 4223, Lot 1, along with the portions of Wisconsin Street, Arkansas Street, Connecticut Street, Dakota Street, Missouri Street, Texas Street, 23rd Street, 25th Street, and 26th Street fronting those parcels

[AutoCAD file name: 0901380-EXH-MASTER ENCUM-1A.dwg] [Xref files: 0901380-BNDY-PH2]
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1" = 200'

ATTACHMENT 1A
MASTER ENCROACHMENT PERMIT AREA

POTRERO HOPE SF

SAN FRANCISCO, CALIFORNIA

October 20, 2023

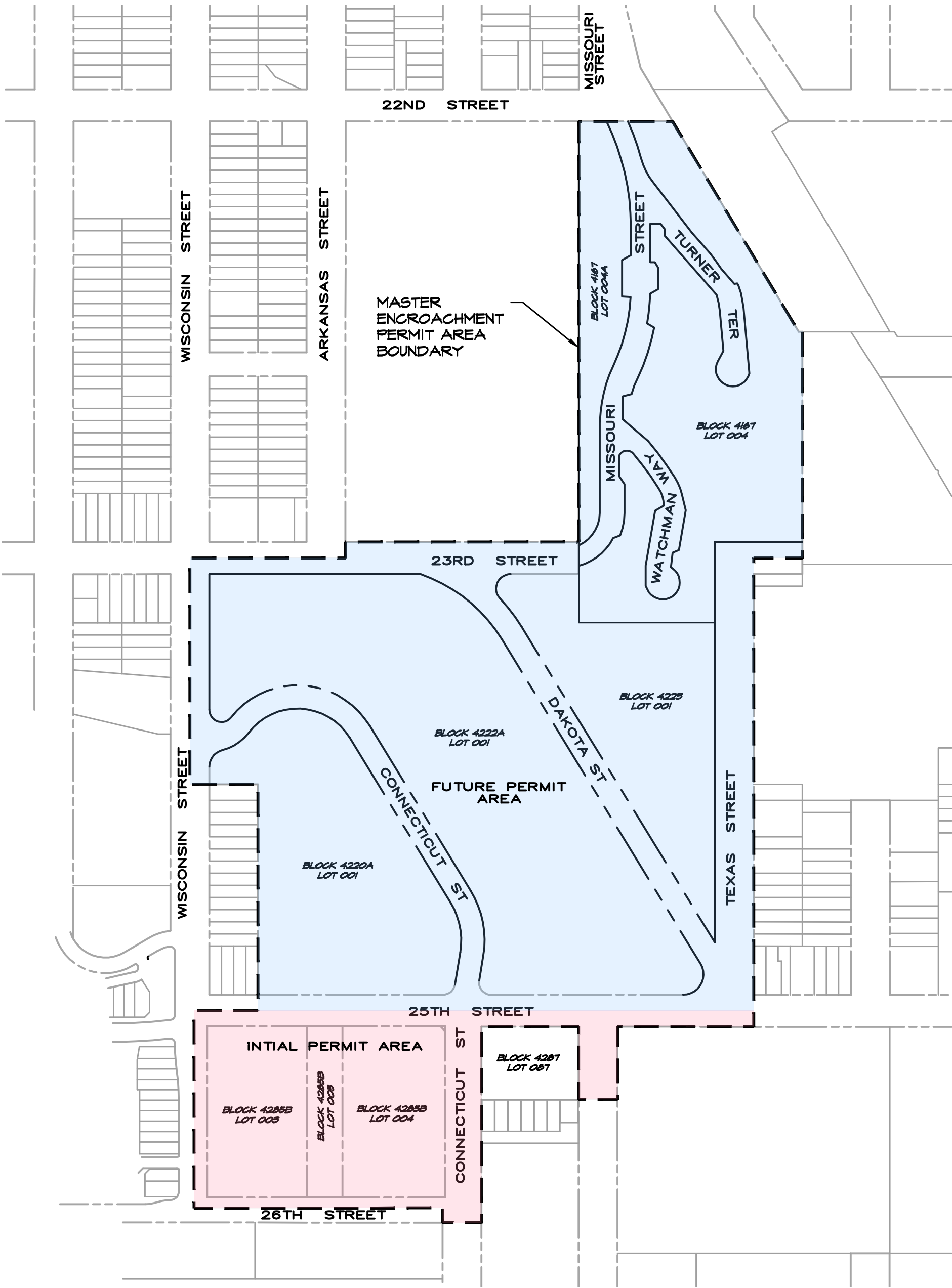
CARLILE • MACY

CIVIL ENGINEERS • URBAN PLANNERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

15 THIRD STREET, SANTA ROSA, CA 95401
TEL (707) 542-6451 FAX (707) 542-5212

PROJECT No. 2009013.B0

SHEET 1 OF 1



Attachment 2: Global Area and Permit Area Documentation

The Permit Area consists of all future public rights of way that will be constructed and dedicated to the City in the described property pursuant to the Development Agreement for the Potrero HOPE SF project and as illustrated on attachment 2A. The types of encroachments that are proposed at various locations throughout the Permit Area include the following:

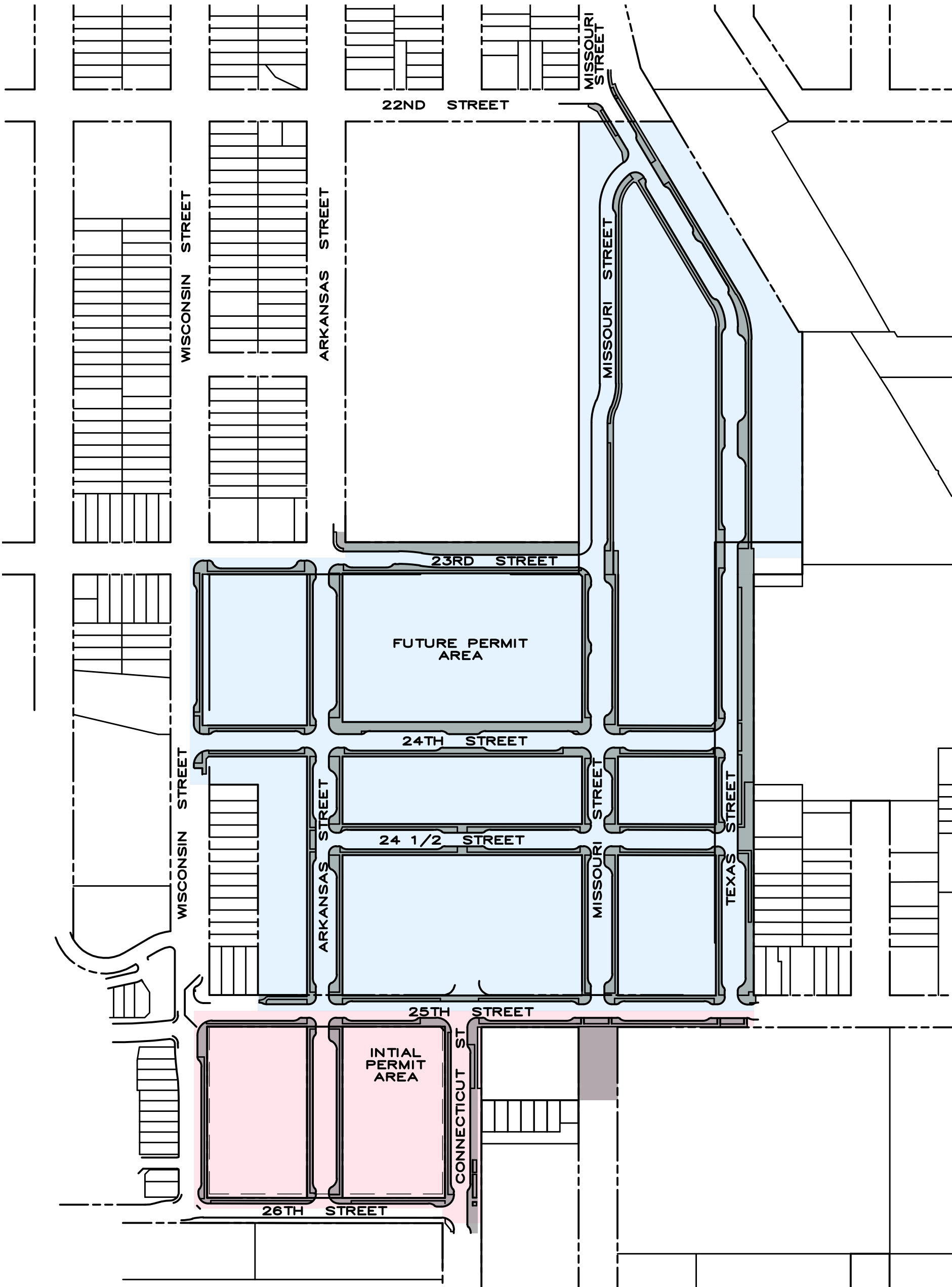
1. Cobblestones and pavers
2. Benches
3. Cobblestones at tree wells
4. Landscape areas including plantings, irrigation systems and related elements
5. Drainage facilities including laterals, inlets, through-curb drains, grates and related elements
6. Temporary walkways, stairwells, railings and related elements for access to existing buildings
7. Retaining walls including wood walls and other retaining structures
8. Community gardens

[AutoCAD file names: 0901390-EXH-MASTER ENCUM-2A.dwg] [Xref files: 09013-BAG; 0901390-BNDY-PH2]

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1" = 200'



ATTACHMENT 2A
MASTER ENCROACHMENT PERMIT WORK AREAS

POTRERO HOPE SF

SAN FRANCISCO, CALIFORNIA

October 20, 2023



CIVIL ENGINEERS • URBAN PLANNERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

15 THIRD STREET, SANTA ROSA, CA 95401
TEL (707) 542-6451 FAX (707) 542-5212

PROJECT No. 2009013.B0

LEGEND

 MASTER ENCROACHMENT
AREA ZONE

Attachment 3 Maintenance Plan

This Maintenance Plan includes preliminary information for the anticipated phases. As design details are finalized for each phase, the Permittee (or applicable Phase Infrastructure Developer) will submit an updated Maintenance Plan in connection with a Notice of Annexation for such phase.

Maintenance Plan for Future Phases

Major Encroachment	Routine maintenance tasks	Estimated annual cost and funding source
Cobblestones and pavers	Replace damaged pavers, reset pavers that settle. Replace missing cobblestones, reset cobblestones that settle	Annual cost: \$600/block Source: Subdivider/Infrastructure developer for the building
Benches	Routine cleaning to keep free of graffiti.	Annual cost: \$200/block Source: Subdivider/Infrastructure developer for the building
Cobblestones at tree wells	Clean displaced stone mulch. Replace damaged cobbles, reset cobbles that settle.	Annual maintenance cost: \$500/block Source: Subdivider/Infrastructure developer for the building
Landscape areas including plantings, irrigation systems and related elements	Maintain/replace plants, clean debris Repair/replace irrigation heads. Lines are underground	Annual maintenance cost: \$1100/block Source: Subdivider/Infrastructure developer for the building
Drainage facilities including laterals, inlets, through-curb drains, grates and related elements	Remove debris from private storm drain inlets as needed. If pipe clogs, use appropriate measures to clear blockage.	Annual cost: \$300/block Source: Subdivider/Infrastructure developer for the building

Major Encroachment	Routine maintenance tasks	Estimated annual cost and funding source
Temporary walkways, stairwells, railings and related elements for access to existing buildings	Routine cleaning of galvanized steel handrails to keep free of graffiti. If rusting occurs, refinish/paint to protect steel.	Annual cost: \$200/block Source: Subdivider/Infrastructure developer for the building
Retaining walls including wood walls and other retaining structures	Make repairs to walls, cleaning to keep free of graffiti. Walls may be removed as future phases develop	Annual cost: \$500/block Source: Subdivider/Infrastructure developer for the building
Community Gardens		Annual cost: \$500/block Source: Subdivider/Infrastructure developer for the building
Total Maintenance Cost		Approx. \$3000-\$4300/year, varies depending on items included for respective blocks

Attachment 4

Operations Manual

There is no specialized equipment for continued operation of the Improvements included within Phases One and Two (initial Permit Area). Thus, operations manuals are not required.

Need for Operations Manuals will be evaluated for future Permit Areas and included as revised Attachment 4 as needed.

Attachment 5

Form of Notice of Assignment

Recording Requested By:

[]

When Recorded Mail Document To:

SFPW-BSM

49 S. Van Ness Ave, 3rd Floor

San Francisco, CA 94103

Attn: Permit Division

APN: []
Address: []

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**NOTICE OF ASSIGNMENT OF GLOBAL MASTER ENCROACHMENT PERMIT
AND MAINTENANCE AGREEMENT (POTRERO HOPE SF)
[and/or DECLARATION OF RESTRICTIONS AND OBLIGATIONS
PURSUANT TO MASTER ENCROACHMENT PERMIT]**

[], the owner [or lessee or assignee] of the real property (together with all subsequent successors and assigns, “**Owners**”) commonly known as [], San Francisco, California acknowledges the restrictions and obligations set forth in the following documents, which shall be binding upon all current and future Owners:

- **Exhibit A. Notice of Assignment**

The City and County of San Francisco has granted Owners a revocable master encroachment permit (“**Permit**”), which authorizes Owners to [maintain the private encroachments/sidewalks depicted in the preceding] on public right-of-way under the jurisdiction of the City and County of San Francisco and comply with all applicable requirements of the San Francisco Municipal Code, including but not limited to the Public Works Code requirements. Failure to comply with the applicable requirements may lead to the revocation of the portion of the master encroachment permit assigned to Owners.

Owners are encouraged to review the Public Works Code and consult with Owners’ legal counsel if they have any questions about the applicability of any fees, assessments, or other requirements. The Owners are responsible for complying with all restrictions, obligations, and requirements of the Permit regardless of whether the named permittee was an agent of the Owners or Owners rely on a management entity to address such restrictions, obligations, and requirements of the Permit.

Acknowledged and agreed:

[Owner/Agent of Owner]

By:
Title:

STATE OF CALIFORNIA)
COUNTY OF _____)

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

WITNESS my hand and official seal

Signature _____ (Seal)

NOTICE OF ASSIGNMENT OF OBLIGATIONS

This ASSIGNMENT OF MAINTENANCE OBLIGATIONS AGREEMENT (this “**Agreement**”), effective as of [_____, 20XX], (the “**Effective Date**”), is entered into by and between the Developer (“**Assignor**”), and [_____] (“**Assignee**”).

RECITALS:

A. The City and County of San Francisco Public Works Department (“**Public Works**”) and Developer entered into that certain Global Master Encroachment Permit entitled “Global Master Encroachment Permit and Maintenance Agreement” dated as of [_____, 2025 (as may be amended or assigned from time to time, “**GMEP**”), for maintenance specified improvements and sidewalks within portions of 22nd, 23rd, 24th, 24 1/2th, 25th, 26th, Arkansas, Connecticut, Missouri, Texas, and Wisconsin Streets within the Potrero HOPE SF Project Area, roughly bounded by 22nd Street to the north, Texas Street to the east, 26th Street to the south, and Wisconsin Street and Missouri Street to the west (in the southern and northern portions of Project, respectively), all situated in the City and County of San Francisco, California (collectively, the “**Project**”).

B. Pursuant to the GMEP, the maintenance obligations for the Improvements and the Sidewalks may be assigned, in whole or in part, subject to approval by the Director of Public works, among other requirements.

C. Assignor desires to assign its maintenance obligations for the Improvements and the Sidewalks (each as defined in the GMEP) to Assignee, and Assignee desires to assume all of Assignor’s maintenance obligations for the Improvements and the Sidewalks as set forth in the GMEP on the terms and conditions set forth in this Agreement.

AGREEMENT

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

1. Assignment by Assignor. Pursuant to Section [16.1 or 16.2] of the GMEP, Assignor hereby assigns the [maintenance] obligations listed below to Assignee as of the Effective Date.

1.1. Improvements and Sidewalks. Assignor assigns each and all of the [maintenance] obligations of Assignor under the GMEP for [insert scope of assignment, e.g., all of the Improvements and the Sidewalks, including Public Works Code Section 706 obligations], in the [Permit Area or other area] (which currently includes [only Phase 1 and 2], as defined in the GMEP) and as depicted on *Exhibit A* attached hereto.

2. Assumption by Assignee.

Assignment under Section 16.1 Pursuant to Section 16.1 of the GMEP, Assignee hereby assumes from Assignor as of the Effective Date each and all of the maintenance obligations of Assignor under the GMEP for the [insert scope of assignment, e.g., Improvements and the Sidewalks in the Permit Area/other area]. Assignee hereby acknowledges that Assignee has reviewed the GMEP and agrees to be bound by the GMEP and all conditions and restrictions to which the Maintenance Assignee (as defined in the GMEP) is subject under the GMEP and any additional conditions required herein. Assignee represents and warrants that it has all

requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the GMEP hereby assigned to it.

[Assignment under Section 16.2] Pursuant to Section 16.2 of the GMEP, Assignee hereby assumes from Assignor as of the Effective Date each and all of the obligations of Assignor under the GMEP for the [insert scope of assignment, e.g., Improvements and the Sidewalks in the Permit Area/other area]. Assignee hereby acknowledges that Assignee has reviewed the GMEP and agrees to be bound by the GMEP and all conditions and restrictions to which the Permittee (as defined in the GMEP) is subject under the GMEP, solely as to the [insert scope of assignment, e.g., the Improvements and Sidewalks assigned herein], and any additional conditions required herein. Assignee represents and warrants that it has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the GMEP hereby assigned to it.

3. Term.

[Revise as applicable.] This assignment shall be permanent/ shall remain in effect until terminated by mutual written agreement of Assignor and Assignee. Assignor shall provide notice of the termination to the Public Works Director on or before the effective date of the termination.

4. Additional Information Required Under GMEP.

4.1. Notice Address. Assignor's contact information, as required by Sections 2.7 (Contact Information) and 16 (Assignment) of the GMEP, is provided below.

Contact Person Number 1

Last Name, First Name:
Title/Relationship to Owner:
Phone Numbers:
Email Addresses:
Mailing Address:
Office Address:

Contact Person Number 2

Last Name, First Name:
Title/Relationship to Owner:
Phone Numbers:
Email Addresses:
Mailing Address:
Office Address:

4.2. **[Revise/delete as applicable] Community Facilities District Special Taxes.** Community Facilities District Services Special Taxes will be used to fund obligations under the GMEP upon the levy of such taxes in the district.

4.3. **[Add if Assignee is a homeowners' association or commercial owners' association] CC&Rs.** A copy of the recorded Covenants, Conditions and Restrictions affecting the [describe the relevant] Property (the "CC&Rs") has been provided to the Public Works Director. Assignee represents to Public Works that the CC&Rs include (a) the homeowners association's or commercial owners association's obligation to accept maintenance responsibility

for the subject Improvements consistent with the GMEP upon the Effective Date; (b) City's right to enforce maintenance obligations as a third-party beneficiary under the CC&Rs and the San Francisco Municipal Code; (c) City's right to record this Permit and the Notice of Assignment against the owners' association's members' property. Assignee acknowledges that the Public Works Director may cause the GMEP and this Notice of Assignment to be recorded against the [describe] Property.

4.4. Insurance

On or prior to the Effective Date, Assignee must provide to Public Works a copy of its general liability insurance that satisfies [**Exhibit** ___ attached hereto] **or** [the requirements of Section 8 of the GMEP].

4.5. Maintenance Fund. [For this assignment, based on the specific circumstances presented at the time of the assignment, it has been determined that Assignee will have no obligation to fund a maintenance fund or provide security to Public Works under Section 10 (Maintenance Fund).] **or** [On or prior to the Effective Date, Assignee must pay to Public Works the Maintenance Fund under Section 10 (Maintenance Fund).]

4.6. Indemnification. [In lieu of the provisions of Section 25 of the GMEP, Assignee shall indemnify Public Works in accordance with the provisions of **Exhibit** ___ attached hereto.] **or** [Assignee acknowledges that it will indemnify the City consistent with the requirements of Section 25 of the GMEP.]

4.7. Third-Party Beneficiary. Public Works is an intended third-party beneficiary of the Insurance and Indemnification provisions.

4.8. Additional Conditions. [The effectiveness of this Assignment is conditioned upon Assignee's satisfaction of and or compliance with the following conditions:

[Insert conditions required by Public Works Director.]

4.9. [For 16.1 assignment only**] Joint and Several Liability.** As between Assignor and Assignee on the one hand, and Public Works on the other, Assignor and Assignee acknowledge that they are jointly and severally liable for the obligations under the GMEP. [Notwithstanding the foregoing, as between Assignor and Assignee, the provisions of the [insert applicable agreement] shall govern.]

4.10. Permittee. Assignee [shall not (for 16.1 assignment)] or [shall (for 16.2 assignment)] be deemed a Permittee [and shall solely serve as a Maintenance Assignee under the GMEP (for 16.1 assignment)].

5. General Provisions.

5.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

5.2. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

5.3. Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

5.4. Amendment to Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto and written approval of the Public Works Director.

5.5. Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

5.6. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

5.7. Defined Terms. All capitalized terms not defined herein are set forth in the GMEP.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ASSIGNOR:

DEVELOPER

Bridge-Potrero Community Associates LLC, a
California limited liability company

By: _____
Name:
Title:

ASSIGNEE:

By: _____
Name:
Title:

APPROVAL OF ASSIGNMENT

Carla Short
Director of Public Works

DATE: _____

ADDENDUM 1
GMEP - POTRERO HOPE SF
NOTICE OF ANNEXATION FOR PHASES 1 AND 2

The Encroachment Permit and Maintenance Agreement is hereby amended to incorporate the information and terms provided in this Addendum 1, and in the Attachments described herein.

1. PARTIES AND BACKGROUND

1.1.1 Global Master Encroachment Permit

The Encroachment Permit and Maintenance Agreement is also referred to as the Global Master Encroachment Permit (“GMEP”) or Permit.

1.2.1 Phase 1 and 2 Parties

At the time of this annexation, the party responsible for the completed Improvements in the Annexation Area is Bridge-Potrero Community Associates LLC, a California limited liability company, as Permittee.

1.3.1 Phase 1 and 2 Background

This annexation is approved by the Public Works Director pursuant to Section 6 of the Permit. The Department of Public Works has issued a Notice of Completion for Improvements completed within the Annexation Area.

2. PERMIT INFORMATION

2.1.1 Approval of Annexation to GMEP: This Addendum documents the Public Works Director’s approval to annex the Phase 1 and 2 area and improvements into the GMEP approved Board of Supervisors Resolution No. _____ on file with the Clerk of the Board in File No. _____ (Permit No. _____).

2.2.1 Phase 1 and 2 Description/Location of Property: Phase 1 and 2 of the Potrero HOPE SF project is roughly bounded by 25th Street to the north, Texas Street to the east, 26th Street to the south, and Wisconsin Street to the west.

2.3.1 Phase 1 and 2 Description/Location of Permit Area: The Phase 1 and 2 Permit Area is shown on **Attachment 2A** and includes:

- 25th Street from Wisconsin Street to Texas Street
- 26th Street from Wisconsin Street to Connecticut Street
- Wisconsin, Arkansas, and Connecticut Streets from 25th to 2th Street

2.4.1 Phase 1 and 2 Description of Improvements (Attachment 2A):

- (a) Cobble stones and pavers
- (b) Benches
- (c) Landscaping, including plantings, irrigation, tree well pavers, landscape islands, and large granite blocks

- (d) Temporary walkways to existing buildings, including asphalt walkway, railing, and header
- (e) Retaining walls
- (f) Drainage facilities, including temporary drainage feature and storm drain lateral and trap maintenance
- (g) Community Gardens

2.8.1 Phase 1 and 2 List of Attachments. The documents listed below are attached to or accompany this Notice of Annexation, to reflect that the Phase 1 and 2 Permit Area is annexed into the Permit.

Attachment 2A: Permit Area Documentation - Phase 1 and 2

Attachment 3A: Maintenance Matrix - Phase 1 and 2 and Global Update

Attachment 3B: Maintenance Plan - Phase 1 and 2 and Global Update

Attachment 4A: Operations Manual List - Phase 1 and 2

Attachment 5A: Global Area Diagram - Updated for Phase 1 and 2. Updated Global Diagram showing all the phases of work included in or annexed into Permit, including the Phase 1 and Phase 2 Permit Area.

The City Engineer has reviewed and certified the description of the updated **Permit Area** (Attachment 2A), **Maintenance Plan** (Attachment 3A), **O&M Manuals** (Attachment 4A), and **Global Diagram** (Attachment 5A), and any updates submitted with the Notice of Annexation for Phase 2.

3. EFFECTIVE DATE; REVOCABLE, NON-EXCLUSIVE PERMIT; RECORDATION

3.4.1 Phase 1 and 2 Recording. Following Board of Supervisors' approval of the GMEP and the Director's approval of this Notice of Annexation, Permittee shall record this Notice of Annexation against Parcels A and B as shown on Final Map No. 9610 for Phase 2 of the Project and against the parcel adjacent to Phase 1 of the Project and located at 1101 Connecticut Street (APN 4287-076), also known as Block X.

10. MAINTENANCE FUND

10.1 Phase 1 and 2 Maintenance Fund. Permittee shall establish and fund a Maintenance Fund in an amount of no less than twice the annual cost of maintenance as set forth in the Maintenance Plan for such Improvements. The Director, in the Director's sole discretion, may delay implementation of or modify this Maintenance Fund requirement to allow an equivalent alternative Maintenance Fund, including but not limited to, allowing an Owners' Association, once established, to provide a reserve fund to address any required maintenance, replacement, and restoration of the PROW, subject to adjustments proportionate to CPI increases.

[Signature Page to Follow]

In witness whereof the undersigned Permittee(s) have executed this Addendum to Agreement and the Public Works Director has approved this annexation on the dates set forth below.

<p>PERMITTEE:</p> <p>Bridge-Potrero Community Associates LLC, a California limited liability company</p> <p>By: _____</p> <p>Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>Date</p>
<p>CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through its DEPARTMENT OF PUBLIC WORKS</p> <p>_____ Albert Ko City Engineer of San Francisco</p> <p>_____ Carla Short Public Works Director</p>	<p>_____</p> <p>Date</p> <p>_____</p> <p>Date</p>