

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (herein "MOU") dated hereof for reference purposes only as of _____, 2014, is entered into by and between the San Francisco Municipal Transportation Agency (the "SFMTA"), an agency of the City and County of San Francisco (the "City") and the City's Recreation and Park Commission (the "Commission"). SFMTA and the Commission shall each be referred to from time to time in this MOU as a "Party" and together as the "Parties".

RECITALS

A. In 2004, SFMTA and the City's Recreation and Park Department (the "Department") reached an agreement for SFMTA to transfer jurisdiction over the Geneva Avenue Office Building and Powerhouse (the "Building"), along with the property surrounding the Building as delineated in Exhibit A (collectively, the Building and surrounding property are hereinafter referred to as the "Property"), to the Commission for recreational use as a new space for youth and teen arts and related uses consistent with the Department's mission. By Resolution 193-04, City's Board of Supervisors transferred jurisdiction of the Property from SFMTA to the Commission, subject to the condition subsequent that if the Commission finds that the Property no longer serves a recreational purpose jurisdiction it will revert to SFMTA.

B. The Property is located adjacent to the SFMTA's Geneva Rail Yard and Carhouse (collectively, the "Yard"), sometimes referred to by SFMTA as the Cameron Beach Yard. A high-tension electrical wire benefitting the Yard is presently mounted to eastern wall of the Building and an alarm system serving the Yard is located, in part, within the Building.

C. The Building, which is comprised of two adjoining structures, a two-story office building and a single-story car shed, known as the Powerhouse, had been severely damaged in the 1989 Loma Prieta Earthquake and had fallen into general disrepair.

D. Around the time of the jurisdictional transfer in 2004, the Department, SFMTA, and Caltrans collectively funded and cooperated on a project to stabilize the Building in a manner designed to make the Building less likely to collapse in an earthquake. The stabilization work did not include the work required to make the Building seismically safe for occupancy, or the necessary electrical, mechanical or plumbing upgrades or other refurbishment or renovations required for the use and occupancy of the Building for recreational purposes, and the electrical wire and the components of the alarm system serving the Yard were not removed from the Building at the time of the work.

E. In connection with the jurisdictional transfer and the stabilization work, SFMTA and the Department entered into a Memorandum of Understanding (the "2004 MOU") providing for the funding and performance of the stabilization work, and granting SFMTA limited access to the Property and the Department limited access to the Yard, on terms and conditions specified in the 2004 MOU.

F. The Department has entered into, or anticipates entering into, a Lease Disposition and Development Agreement ("LDDA") with Friends of the Geneva Office Building and Powerhouse (the "Friends"), an independent nonprofit organization. The LDDA provides for the

rehabilitation and improvement of the Building, including a complete seismic upgrade of both building structures, new electrical, mechanical and plumbing systems, new interior finishes and refurbishing of historically significant building elements (the "Project"), and the eventual lease ("Lease") of the Property to Friends, on terms and conditions specified in the LDDA. Among the LDDA conditions to the lease of the Property to Friends are (i) the removal of the high-tension electrical wire and alarm system serving the Yard, and (ii) a more comprehensive license or other right of access in favor of the Department and Friends for purposes of ingress and egress to the freight elevator and loading dock to be located on the eastern wall of the Building during the term of the Lease (the "Long-Term License"), including the right to record the Long-Term License or a memorandum thereof against title to the Yard upon the close of escrow under the LDDA. The LDDA also anticipates that the Department will cooperate in the Friends' efforts to obtain from SFMTA a more comprehensive temporary construction license or other right of access in favor of the Department and Friends for purposes of ingress, egress, and staging during construction of the improvements contemplated under the LDDA and the proposed Lease (the "Temporary Construction License"), once Friends is able to identify the areas required for construction access and staging and to propose a construction staging plan.

G. SFMTA desires to ensure the integrity of the systems serving the Yard, and accordingly has agreed to remove the high-tension electrical wire from the Building and to deactivate the alarm system in the Building. Further, if the Department and Friends enter into the LDDA, SFMTA is agreeable to entering into a Long-Term License and to consider in the future a Temporary Construction License, both of which are consistent with the access rights granted to the Department by SFMTA under the 2004 MOU.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Term.** This MOU shall become effective upon the later of the date that is the later of approval by the Board of SFMTA or approval by the Commission (such date, the "Effective Date"). This MOU shall continue from the Effective Date until terminated in writing by both Parties.
3. **Termination of 2004 MOU.** Effective as of the Effective Date, the terms and conditions of the 2004 MOU shall be of no further force and effect.
4. **SFMTA Work; Right of Entry.**
 - a. **SFMTA Equipment Removal and Alarm Deactivation.** If the Department and Friends enter into the LDDA, SFMTA, at SFMTA's sole cost and expense, shall remove the high-tension electrical wire benefitting the Yard that is presently mounted to eastern wall of the Building, together with all associated installations and equipment thereto on the Property (collectively, the "SFMTA Electrical Equipment"), and shall deactivate those portions of SFMTA's alarm system located on the Property (the "SFMTA Alarm System"). SFMTA agrees

that in order to avoid interference with the work to be performed by the Department or Friends under the LDDA, SFMTA shall use good faith efforts to complete the removal and deactivation work (collectively, the "Removal and Deactivation Work") before December 31, 2014. SFMTA shall have no obligation to remove any components of the SFMTA Alarm System. If SFMTA elects to abandon such components in place, such abandoned components shall be automatically be deemed the property of the Department on SFMTA's completion of the Removal and Deactivation Work. SFMTA warrants that no third party has any lien on or interest in or to the SFMTA Alarm System.

b. Access; Performance of Work; Repairs. The Department hereby grants to SFMTA and its employees, agents, consultants, contractors and authorized representatives (collectively, "Agents") the right to enter upon and use the Property as reasonably necessary for the Removal and Deactivation Work. SFMTA shall cause the Removal and Deactivation Work to be performed (i) by City staff or duly licensed and bonded contractors or mechanics approved by the Department, (ii) in a good and professional manner that avoids excessive and unnecessary damage or harm to the Building or the Property, and (iii) in strict compliance with all laws, regulations and requirements of Federal, state, county and municipal authorities, now in force or which may hereafter be in force, and all laws relating to hazardous materials, which impose any duty upon SFMTA with respect to the Removal and Deactivation Work. SFMTA shall be responsible, at its sole cost and expense, for obtaining all applicable approvals ("Approvals") of any regulatory agencies required for the performance of the Removal and Deactivation Work by or for SFMTA. The Department shall cooperate in good faith with SFMTA to submit any necessary consents or other documents reasonably required to enable SFMTA or SFMTA's Agents to apply for and obtain such Approvals; provided, however, that SFMTA shall obtain the Department's written consent, which shall not be unreasonably withheld, delayed or conditioned, to any Approvals that would place any restriction or obligations that encumber the Property and survive the completion of the Removal and Deactivation Work. If any portion of the Building or the Property is damaged by the performance of the Removal and Deactivation Work, SFMTA shall repair such damage (except to the extent Department staff reasonably determines that such repair is not required due to the nature and scope of the work on the Project to be performed pursuant to the LDDA).

c. Third Party Insurance and Indemnity. SFMTA shall require each contractor and subcontractor performing any Removal and Deactivation Work on the Property to obtain and maintain insurance as is recommended by the City Risk Manager and reasonably approved by the Department. If necessary to protect the interests of the Department, the Department shall be included as an additional insured in any such insurance. SFMTA shall include the Department as an indemnified party in any indemnification provision between SFMTA and any Agent it hires in connection with the Removal and Deactivation Work, to the extent the indemnification in such contract is not broad enough to cover the Department as a department of the City and County of San Francisco.

d. Schedule; Cooperation. At least thirty (30) days prior to the date SFMTA proposes for the commencement of any Removal and Deactivation Work on the Property, SFMTA shall notify the day-to-day contact person for the Department identified below of the date SFMTA proposes such work shall commence and the intended schedule. SFMTA shall obtain the Department's prior written approval of such schedule, which approval shall not be

unreasonably withheld or delayed. If the Removal and Deactivation Work is not complete before the Department or Friends commences work on the Project, SFMTA and the Department will each cause their respective Agents to coordinate with the Agents of the other Party to accommodate, to the extent reasonably practicable, the other Party's work, and each Party shall take reasonable precautionary measures to protect the other's work from damage due to such own Party's work.

5. Long-Term License. That portion of the Yard shown outlined on the attached Exhibit B is referred to herein as the "Yard License Area." SFMTA acknowledges and agrees that the Department and its tenants, subtenants, and Agents will require access to the Yard License Area from time to time during the life of the Building for purposes of ingress and egress to the freight elevator, loading dock and trash receptacles to be located on the Geneva Avenue side of the Building and the loading dock to be located adjacent to the Powerhouse portion of the Building, as well as reasonably necessary for Building repairs, maintenance and operations and any future construction projects. The use of the Yard License Area for such purposes shall be governed by the provisions of the Long-Term License, which shall be substantially the form attached hereto as Exhibit C and will be executed by SFMTA if Friends and the Department enter into the LDDA and SFMTA receives a written request for its execution of the Long-Term License from the Department. The Commission acknowledges and agrees that the Yard is a working rail yard that the SFMTA, its Agents, and its invitees will need to use the Yard License Area at all times for ingress and egress to the remainder of the Yard. Among other restrictions set forth in the Long-Term License, the use of the Yard License Area by the Department and its Agents pursuant to this MOU must not interfere with such access to the Yard, including, but not limited to, the access of SFMTA's railcars or other transportation vehicles. The Commission further acknowledges that the Yard and associated maintenance and operating facilities are in the SFMTA's Real Estate and Facilities Vision for the 21st Century Report, which will require significant capital improvements to upgrade the Yard and facilities to accommodate an expanding fleet. The proposed Long-Term License shall not affect any future SFMTA capital projects requiring the demolition, relocation, rebuilding and or redevelopment of the Yard, including the eventual expansion and reconfiguration of storage tracks to accommodate future growth.

6. Temporary Construction License.

a. Use of Yard Construction Area During Construction of Project; Future Construction Access and Staging License. The Department anticipates that the Department or its Agents (which term shall include Friends and the contractors, subcontractors and agents of Friends) will require a right to enter upon and use portions of the Yard as reasonably necessary for access to the Building during the performance of the Project contemplated by the LDDA and for construction staging in connection with the Project. SFMTA acknowledges that it is anticipated that construction of the Project will take approximately two (2) years, and that access to the Building through the Yard and use of portions of the Yard for construction staging will be required from time to time throughout the construction period. If construction of the Project takes longer than two (2) years, SFMTA agrees to reasonably extend the term of the Temporary Construction License until the earlier to occur of the substantial completion of construction of the Project and the three (3) year anniversary of the date this MOU is fully executed. If Friends and the Department enter into the LDDA, SFMTA agrees that SFMTA will enter into the

Temporary Construction License with Friends or other Agents of Friends or the Department, which shall be in substantially the form attached as Exhibit D, at the time that Friends is ready to commence construction of the Project, provided that SFMTA approves the proposed uses, location, construction staging plan, and construction schedule proposed for the execution version of the Temporary Construction License, which approval shall not be unreasonably withheld. The Department and Friends acknowledge and agree that the location of such construction access and staging area shall remain within the portion of the Yard depicted as the “Outer Construction Staging Area” on the attached Exhibit B. The final dimensions of the construction access and staging area within the Outer Construction Staging Area (the “Yard Construction Area”) shall be attached as Exhibit ___ to the Temporary Construction License. The Department and Friends further acknowledge and agree that it shall be reasonable for SFMTA to withhold its approval to any proposed use, location, plan, or schedule that would, in SFMTA’s sole determination, interfere with access over, or the use of, the Yard (other than the Outer Construction Staging Area) by SFMTA or its employees, contractors, or agents or poses a health or safety risk.

b. Request for License and Required Information. At least thirty (30) days prior to the date the Department proposes for the commencement of use of the Yard for construction access and staging pursuant to the Temporary Construction License, the Department shall provide the day-to-day contact person for SFMTA identified below with the intended work plan and schedule for use of the Yard for the Project, including access, parking and staging, and shall request that SFMTA enter into a license with Friends or its Agents for the requested use. The Department shall obtain SFMTA’s prior written approval of such schedule, which approval shall not be unreasonably withheld or delayed. The request for the construction access and staging license and day-to-day communications to SFMTA regarding use of the Yard under this Paragraph 6 should be directed to the SFMTA person designated in Section ____ of the Temporary Construction License, or to such other person as SFMTA may designate from time to time by written notice to the Department. The Department acknowledges that it shall be reasonable for SFMTA to withhold its approval to any proposed schedule that would, in SFMTA’s sole determination, interfere with access over, or the use of, the Yard (other than the Outer Construction Staging Area) by SFMTA or its employees, contractors, or agents or pose a health or safety risk.

c. Contract Requirements. The Commission agrees that the Department shall require each of its Agents using the Yard Construction Area to obtain and maintain insurance as is recommended by the City Risk Manager and approved by SFMTA. If necessary to protect the interests of SFMTA, SFMTA shall be included as an additional insured in any such insurance. Further, the Commission agrees that the Department shall include SFMTA as an indemnified party in any indemnification provision between the Department and Friends regarding the Project, and between the Department or Friends and any agent, contractor or subcontractor either of them hires in connection with its use of the Yard Construction Area and the Yard License Area, to the extent the indemnification in such contract is not broad enough to cover SFMTA as a department of the City and County of San Francisco. The Department shall require its Agents to use due care at all times to avoid any damage or harm to the Yard and SFMTA’s property. The Department shall cause the construction contractors on the Project to coordinate with SFMTA staff prior to commencement of construction and installation activities and to provide SFMTA

staff the ongoing opportunity to monitor construction activities within the Yard Construction Area.

7. Limitations on Use. SFMTA shall not use, or permit its Agents to use, the Property, or any part thereof, for any purposes or in any manner other than the purposes and manner set forth in Paragraph 4 of this MOU. The Friends or Department shall not use or permit the Yard, or any part thereof, to be used for any purposes or in any manner other than the purposes and manner set forth in Paragraphs 5 and 6 of this MOU.

8. Indemnification. It is the understanding of the Parties that each Party is responsible for all costs associated with all claims, damages, liabilities or losses which arise as a result of such Party's uses permitted hereunder.

9. Notices. All notices, demand, consents or approvals which are or may be required to be given by either Party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of the Department and the SFMTA as shall from time to time be designated by the Parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed,

if to SFMTA to:

Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager, Real Estate

and if to the Department to:

Recreation and Park Department
Philip Ginsburg, General Manager
McLaren Lodge
San Francisco, CA 94117

or such other address with respect to either Party as that Party may from time to time designate by notice to the other given pursuant to the provisions of this Paragraph.

10. Cooperation. Subject to the terms and conditions of this MOU, the Parties agree to use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to both Parties.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the date first written above.

<p>SAN FRANCISCO RECREATION AND PARK COMMISSION</p> <p>By: _____ PHILIP GINSBURG General Manager</p> <p>Date: _____</p>	<p>SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY</p> <p>By: _____ Edward D. Reiskin Director of Transportation</p> <p>Date: _____</p>
<p>APPROVED BY:</p> <p>RECREATION AND PARK COMMISSION PURSUANT TO RESOLUTION NO. _____ DATED: _____</p> <p>_____ Margaret McArthur, Commission Liaison</p>	<p>APPROVED BY:</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No: _____ Adopted: _____ Attest: _____</p> <p>_____ Secretary, SFMTA Board of Directors</p>

EXHIBIT C
Form of Long-Term License

ACCESS LICENSE AGREEMENT

THIS ACCESS LICENSE AGREEMENT (this "**Agreement**"), dated for reference purposes only as of _____, 201__, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and FRIENDS OF THE GENEVA OFFICE BUILDING AND POWERHOUSE, a California non-profit corporation ("**Licensee**").

RECITALS

A. City owns certain real property located at the intersection of San Jose Avenue and Geneva Avenue in the City and County of San Francisco, as further described in the attached Exhibit A (the "**City Property**"), with the buildings on the City Property known as the "Geneva Car Barn" and the "Geneva Powerhouse" (together, the "**Buildings**") under the jurisdiction of City's Recreation and Park Commission and the remainder of the City Property (the "**Yard**") under the jurisdiction of SFMTA.

B. Licensee and City, acting by and through its Recreation and Park Department ("**RPD**"), are parties to a Lease Disposition and Development Agreement dated as of _____, 2014 ("**LDDA**"), which provided for Licensee's rehabilitation and improvement of the Buildings (the "**Project**"), and are parties to a lease for the Buildings dated as of _____, 2014 ("**Ground Lease**").

C. Licensee has completed the rehabilitation and improvement work described in Section ___ of the LDDA and wishes to acquire a long term license to use the portion of the Yard depicted as the "Access Area" on the attached Exhibit A (the "**Access Area**") for the Access Activities (as defined in Section 3.1) during the term of the Ground Lease.

D. City, acting by and through SFMTA, consents to such access on the terms and conditions of this Agreement.

City and Licensee agree as follows:

AGREEMENT

1. License; Access Area. The "**Effective Date**" shall be the date that the following requirements are met: (a) this Agreement, the LDDA, and the Ground Lease have been fully executed, (b) the Project has been substantially completed and a temporary certificate of occupancy has been issued for the Buildings by City acting in its regulatory capacity, and (c) Licensee shall have delivered to City the insurance certificates described in Section 10. As of the Effective Date, City confers to Licensee a revocable, personal, unassignable, non-exclusive and non-possessory privilege for Licensee and its affiliates and their respective officers, agents, employees, contractors, subcontractors (collectively, the "**Licensee Agents**") to enter upon and use the Access Area for the Permitted Activities (as defined in Section 3.1).

This Agreement gives Licensee a license only and, notwithstanding anything to the contrary herein, this Agreement does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Access Area, or any portion thereof. The privilege given to Licensee under this Agreement is effective only

insofar as the rights of City in the Access Area are concerned, and Licensee shall obtain any further permission necessary because of any other existing rights affecting the Access Area.

2. Term. The privilege given to Licensee pursuant to this Agreement is temporary only and shall be in effect during the period of time ("**Term**") that commences on the Effective Date and expires on the earlier date (the "**Termination Date**") to occur of the expiration of the Ground Lease and any earlier termination of this Agreement pursuant to the terms hereof.

3. Uses.

3.1 Permitted Activities. Licensee and the Licensee Agents may use the Access Area to perform the following activities (collectively, the "**Permitted Activities**"): (a) to perform Licensee's obligations under this Agreement (the "**Performance Activities**"), and (b) for purposes of ingress and egress to the freight elevator and loading dock located on, and the trash receptacles located along, the eastern wall of the Building and the loading dock located adjacent to the Powerhouse portion of the Building, as well as reasonably necessary for repairs and maintenance of such freight elevator and loading docks.

3.2 Restrictions on Permitted Activities. Without limiting any of its rights hereunder, if City determines that any of the Permitted Activities poses a material risk to public health or safety or that City needs to use any portion of the Access Area for emergency purposes, and such emergency use requires changes to the Permitted Activities, City shall deliver written notice of such determination to Licensee (the "**Revision Notice**"). This Agreement shall be automatically amended to incorporate the changed Permitted Activities or changed Access Area described in the Revision Notice within five (5) business days of Licensee's receipt of the Revision Notice.

Notwithstanding anything to the contrary in the foregoing paragraph, if City determines that any of the Permitted Activities poses an immediate risk to public health or safety or that City needs to immediately use all or any portion of the Access Area for emergency purposes (an "**Emergency Situation**"), City shall have the right to temporarily restrict such Permitted Activities or use the Access Area without first delivering a Revision Notice to Licensee. If reasonably possible, City shall give Licensee verbal notification of an Emergency Situation before restricting any of the Permitted Activities or commencing its use of the Access Area. City shall deliver written notice of such action to Licensee as soon as reasonably possible. If City needs to continue its restriction on any of the Permitted Activities or its use of the Access Area in response to an Emergency Situation for more than five (5) consecutive business days and City determines it will need to continue such activities, City shall deliver a Revision Notice describing the restriction for Permitted Activities or the City's use of the Access Area, as applicable, prior to the end of such fifth (5th) business day.

City shall have no obligation to pay any consideration to Licensee if City needs to restrict, in accordance with this Section, any of the Permitted Activities or to use the Access Area for emergency purposes or to protect public health or safety (including any Emergency Situation). Licensee acknowledges and agrees that neither Licensee's efforts to comply with the conditions of this Agreement (including any related costs incurred by Licensee) nor the commencement of the Permitted Activities shall in any way whatsoever limit City's right to restrict the Permitted Activities pursuant to this Section or as expressly set forth in this Agreement.

4. Performance of Work. Licensee shall conduct, and shall cause the Licensee Agents, to conduct the Permitted Activities in compliance with the terms of this Agreement, including the following conditions, which are for the sole benefit of City:

4.1 Permits and Approvals. Licensee shall obtain all permits, licenses and approvals (collectively, "**Approvals**") required of any regulatory agencies to perform the Permitted Activities. Licensee shall deliver copies of all Approvals to City on request. Licensee recognizes and agrees that no approval by City of any of the Permitted Activities pursuant to this Agreement shall be deemed to constitute the Approval required of any federal, state or local regulatory authority with jurisdiction, including any required of City acting in its regulatory capacity, and nothing herein shall limit Licensee's obligation to obtain all such Approvals at Licensee's sole cost.

4.2 Exercise of Due Care. Licensee shall use and cause the Licensee Agents to use due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Access Area (other than as reasonably necessary to perform any of the Permitted Activities). Licensee shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires and the release of Hazardous Materials (as defined in Section 9.1) on and adjacent to the Access Area attributable to the use of the Access Area by Licensee or the Licensee Agents pursuant to this Agreement.

4.3 Cooperation with City Personnel. Licensee and the Licensee Agents shall work closely with City personnel to avoid any disruption of City property in, under, on or about the Access Area, vehicular and pedestrian ingress and egress over the Access Area by City or any City employees, contractors, subcontractors, representatives, agents, or invitees, City's use of the remainder of the Yard, and the maintenance, operation, repair, replacement of City's utilities and improvements on the Yard.

4.4 Maintenance of Access Area; Repair of Damage. Licensee shall remove all debris and any excess dirt or debris in the Access Area caused by any of the Permitted Activities or the use of the Access Area by Licensee or any of the Licensee Agents. If any portion of the Access Area or any City property located on or about Yard is damaged at any time by any of the activities conducted by Licensee or any of the Licensee Agents hereunder, Licensee shall immediately, at its sole cost, repair any and all such damage and restore the Access Area or property to its previous condition. Licensee shall, at all times and at its sole cost, maintain the Access Area in a good, clean, safe, secure, sanitary and sightly condition so far as the Access Area may be affected by the Permitted Activities or any other actions in the Access Area by Licensee or the Licensee Agents.

4.5 Excavation Activities. Licensee shall prevent all materials (including soil) displaced by or resulting from the Performance Activities or the use of the Access Area by Licensee or any of the Licensee Agents from entering storm drains, sewers, or water ways and shall immediately notify the City, and all appropriate regulatory agencies required under applicable laws, if there is any accidental release of such materials.

4.6 Contractor Acknowledgement of Agreement. Licensee shall deliver a complete copy of this Agreement to all Licensee Agents performing any of the Performance Activities or otherwise entering the Access Area pursuant to this Agreement for any of the Performance Activities. Prior to the entry on the Access Area by any such party, Licensee shall deliver a notice to City signed by such party acknowledging its receipt of a copy of this Agreement and its agreement to be comply with and be bound by all of the provisions of this Agreement pertaining to its entry on the Access Area.

4.7 Wages and Working Conditions. With respect to the installation of any facilities or improvements or the performance of any work that is a "public work" under the State of California Labor Code, any employee performing services for Licensee or any Licensee Agent shall be paid not less than the highest prevailing rate of wages and that Licensee shall include, in any contract for construction of such improvement work or any alterations on the Access Area, a requirement that all persons performing labor under such

contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Licensee further agrees that, as to the construction of such improvement work or any alterations on the Access Area under this Agreement, Licensee shall comply, and cause all Licensee Agents to comply, with the provisions of Section 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Licensee shall require all Licensee Agents to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of the improvement work or any alterations on the Access Area for Licensee or any Licensee Agent.

5. Restrictions on Use; City's Uses. Licensee agrees that, by way of example only and without limitation, the following uses of the Access Area by Licensee or any other party claiming by or through Licensee are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:

5.1 Improvements. Licensee shall not construct or place any temporary or permanent structures or improvements or personal property on the Access Area, nor shall Licensee alter any existing structures or improvements on the Access Area, without the prior written consent of City. Licensee understands and agrees that City is entering into this Agreement in its capacity as a landowner with a proprietary interest in City's Property and not as a regulatory agency with certain police powers. Licensee understands and agrees that neither the City's execution of this Agreement nor any approvals by City of any work plan or otherwise given by City under this Agreement shall grant, or be deemed to imply, that Licensee will be able obtain, any required Approvals from departments, boards or commissions of the City and County of San Francisco that have jurisdiction over any of the Permitted Activities.

5.2 Dumping; Storing; Signs. Licensee shall not dump or dispose of refuse or other unsightly materials or store any materials on, in, under or about the Access Area.

5.3 Transit Operations. Licensee acknowledges that the Yard is used for railcar operations, the maintenance and storage of railcars and other transit vehicles, and employee parking, all of which includes temporary, but continuous, ingress and egress activities over the Access Area to and from San Jose Avenue (the "**SFMTA Access Activities**"). Licensee shall not use, nor permit any of the Licensee Agents to use, the Access Area in a manner that materially interferes with, or causes a safety risk for, the SFMTA Access Activities or other City activities on the remainder of the Yard without written prior approval for each proposed activity that would pose such an interference or safety risk or unless such activity is expressly permitted pursuant to, and performed in compliance with the terms of, this Agreement.

5.4 Nuisances; No Interference with City's Uses. Licensee shall not conduct any activities on or about the Access Area 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; provided, however, that City shall not, in its proprietary capacity as landowner under this Agreement, deem Licensee's performance of any of the Permitted Activities in compliance with the terms and conditions of this Agreement to be a nuisance or unreasonable annoyance. Licensee shall not materially interfere with or obstruct the SFMTA Access Activities, City's use of the Access Area, its conduct of normal business operations thereon, or the rights of any party with rights to occupy or use the Access Area.

5.5 Utilities. City has no responsibility or liability of any kind or character with respect to any utilities that may be on, in or under the Access Area. Licensee has the sole responsibility to locate such utilities and protect them from damage, and Licensee has sole responsibility for any damage to utilities or damages resulting from Licensee's activities at

the Access Area. Licensee shall arrange and pay for any necessary temporary relocation of City and public utility company facilities reasonably necessary to facilitate any of the Permitted Activities, subject to the prior written approval by City and any such utility companies of any such relocation. Licensee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

5.6 Damage. Licensee shall not do anything about the Access Area that will cause damage to any of City's property (including, but not limited to, the existing rail lines, railcars, transit and support vehicles and facilities, utilities, and light poles, employee parking areas, or any other improvements) or the property of any other party with rights to occupy or use the Access Area. City's approval of any work plan pursuant to this Agreement or of the proposed Permitted Activities shall not be deemed to constitute the waiver of any rights City may have under Applicable Laws for any damage to the City's real or personal property or the Yard resulting from the Permitted Activities.

6. Fees. Licensee shall pay to City a one-time non-refundable \$5,000 permit fee to cover City's processing, inspection and other administrative costs for this Agreement. Such fee is payable at such time as Licensee signs and delivers this Agreement to City, and shall be paid in cash or by good check payable to the City and County of San Francisco.

7. Surrender; Remaining Improvements. Upon the expiration of this Agreement or within five (5) days after any sooner revocation or other termination of this Agreement, Licensee shall surrender the Access Area in a broom clean, free from hazards, clear of all debris and restore the Access Area substantially to its condition immediately prior to the Effective Date, to the reasonable satisfaction of City; provided, however, that Licensee shall have no obligation to repair or restore any deficient condition at the Access Area that was disclosed, but not caused, by any of the Permitted Activities. At such time, Licensee shall remove all of its property from the Access Area and any signs permitted hereunder, and shall repair, at its cost, any damage to the Access Area caused by such removal. Licensee's obligations under this Section shall survive any termination of this Agreement.

Any equipment or any other property of Licensee remaining in the Access Area after completion of activities may be deemed abandoned by City in its sole discretion and City may store, remove, and dispose of such equipment or property at Licensee's sole cost and expense unless City has otherwise granted written permission to Licensee for such remaining equipment or property. Licensee waives all claims for any costs or damages resulting from City's retention, removal, and disposition of such property.

8. Compliance with Laws. Licensee shall, at its expense, conduct and cause to be conducted all Permitted Activities 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. Licensee shall, at its sole expense, maintain all Approvals in force at all times during its use of the Access Area. Licensee understands and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Access Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Licensee's obligation to obtain any required Approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

9. Hazardous Materials.

9.1 Definitions. For purposes of this Agreement, the following terms have the following meanings:

(a) **"Environmental Laws"** means any federal, state or local laws, ordinances, regulations or policies judicial and administrative directives, orders and decrees dealing with or relating to Hazardous Materials (including, without limitation, their use, handling, transportation, production, disposal, discharge, storage or reporting requirements) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Access Area or property, including, without limitation, soil, air, bay water and groundwater conditions or community right-to-know requirements, related to the work being performed under this Agreement.

(b) **"Handle"** or **"handling"** means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

(c) **"Hazardous Material"** means any substance or material which has been determined by any state, federal, or local government authority to be a hazardous or toxic substance or material, including without limitation, any hazardous substance as defined in Section 101(14) of CERCLA (42 USC Section 9601(14)) or Sections 25281(f) or 25316 of the California Health and Safety Code, any hazardous material as defined in Section 25501(k) of the California Health and Safety Code, and any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority.

(d) **"Investigation"** means activities undertaken to determine the nature and extent of Hazardous Materials which may be located on or under real property, or which have been, are being, or threaten to be released to the environment.

(e) **"Remediation"** shall mean activities undertaken to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located on or under real property or which have been, are being or threaten to be released to the environment.

(f) **"Regulatory Agency"** means any federal, state or local governmental agency or political subdivision having jurisdiction over the Access Area and any of the Permitted Activities. The City shall be a "Regulatory Agency" to the extent that City is acting in its capacity as a regulatory authority, rather than in its proprietary capacity as a landowner.

(g) **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material or pollutant or contaminant).

9.2 Environmental Laws. Licensee shall handle all Hazardous Materials introduced or disturbed on the Access Area during the Term in compliance with all Environmental Laws. Licensee shall not be responsible for the safe handling of Hazardous Materials to the extent released on the Access Area by City or any City employee, agent, contractor, subcontractor, or invitee, or existing on the Access Area prior to the Effective Date, except to the extent any of the Permitted Activities exacerbates such Hazardous Materials. Licensee shall protect its employees and the general public in accordance with all Environmental Laws. City may from time to time request, and Licensee shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being handled in a manner which complies with all Environmental Laws.

9.3 Removal of Hazardous Materials. Prior to termination of this Agreement, Licensee, at its sole cost and expense, shall remove any and all Hazardous Materials to the

extent introduced or released in, on, under or about the Access Area by Licensee or the Licensee Agents during the Term and shall Remediate or dispose of any Hazardous Materials produced as a result of the Permitted Activities. All costs of storage, shipping and disposal of extracted soils and groundwater shall be the sole responsibility of Licensee including, without limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests. With respect to shipping papers and hazardous waste manifests, Licensee shall be the "generator" and in no case shall the City be named as the generator.

9.4 Notification. Licensee shall provide City with a copy of any permits issued for any Permitted Activity that involves the potential release or discharge of any Hazardous Materials in or from the Access Area, and the receipt of a hazardous waste generator identification number issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency to itself or any of the Licensee Agents. Licensee shall promptly notify City in writing of, and shall contemporaneously provide City with a copy of:

(a) Any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under applicable laws to be reported to a Regulatory Agency;

(b) Any written notice of release of Hazardous Materials in or on the Access Area that is provided by Licensee or any of the Licensee Agents to a Regulatory Agency including any City agency;

(c) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Licensee or any of the Licensee Agents from any Regulatory Agency;

(d) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a Regulatory Agency against Licensee or any of the Licensee Agents and that relates to the release or discharge of Hazardous Material on or from the Access Area;

(e) Any claim that is instituted or threatened by any third party against Licensee or any of the Licensee Agents and that relates to any release or discharge of Hazardous Materials on or from the Access Area; and

(f) Any notice of the termination, expiration or substantial amendment of any environmental operating permit needed by Licensee or any of the Licensee Agents.

9.5 Hazardous Material Disclosures. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Although this Agreement grants Licensee a license only, Licensee is hereby advised that Hazardous Materials may be present on the Access Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

10. Insurance.

10.1 Insurance Policies. Licensee shall procure and keep in effect at all times during the Term, at Licensee's expense, and cause its contractors and subcontractors to maintain at all times insurance as follows during the Term:

(a) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(b) 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, and sudden and accidental pollution; and

(c) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

10.2 Policy Requirements; Delivery of Certificates.

(a) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (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 that insurance applies separately to each insured against whom claim is made or suit is brought. 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. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Licensee's activities (and the activities of any Licensee Agents) under this Agreement (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(b) All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

(c) Licensee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers prior to the Effective Date and in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Licensee shall fail to procure such insurance, or to deliver such certificates, City may procure, at its option, the same for the account of Licensee, and the cost thereof shall be paid to City within ten (10) days after delivery to Licensee of bills therefor.

(d) All policies shall include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Licensee's waiver of claims against City, 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 other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose in whole or in part during the policy period.

(e) 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.

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

(f) Upon City's request, Licensee 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 Licensee for risks comparable to those associated with the Access Area, then City in its sole discretion may require Licensee to increase the amounts or coverage carried by Licensee hereunder to conform to such general commercial practice.

10.3 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Licensee hereby waives any right of recovery against City for any loss or damage sustained by Licensee with respect to the Access Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which is required to be purchased by Licensee under this Agreement or the Ground Lease or is actually covered by insurance obtained by Licensee. Licensee agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Access Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

10.4 No Limitation on Licensee Obligations. Licensee's compliance with the provisions of this Section shall in no way relieve or decrease Licensee's indemnification obligations under this Agreement or any of Licensee's other obligations hereunder. Notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate immediately, without notice to Licensee, upon the lapse of any required insurance coverage. Licensee shall be responsible, at its expense, for separately insuring Licensee's personal property.

11. Waiver of Claims; Waiver of Consequential and Incidental Damages.

(a) Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Licensee, the Licensee Agents, or their respective officers, agents, employees, contractors or subcontractors, or employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Access Area or its use by Licensee or the Licensee Agents, except to the extent that any such damage, injury or death is caused by the gross negligence or willful misconduct of City or any of its commissions, departments, boards, officers, agents, employees, or contractors (each, a "**City Agent**").

(b) Licensee acknowledges that the Access Area and the Permitted Activities can be modified by City pursuant to Section 3 and revoked by City pursuant to Section 2 and in view of such fact, Licensee expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations (including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of

eminent domain or otherwise at equity), in the event that City exercises its right to modify the Access Area or the Permitted Activities pursuant to Section 3.

(c) Licensee acknowledges that it will not be a displaced person at the time this Agreement is terminated or revoked or expires by its own terms, and Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations for displaced persons, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) Licensee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits, arising out of disruption to Licensee's uses hereunder. City would not be willing to give this Agreement in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits) and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Agreement or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Licensee pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence or willful misconduct of City or its Agents.

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

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Licensee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

12. Defaults by Licensee. If Licensee fails to perform any of its monetary obligations under this Agreement and fails to cure such monetary failure within five (5) business days following City's written notice of such monetary failure to Licensee, then City may, at its sole option, immediately terminate this Agreement by providing Licensee with written notice of such termination. If Licensee fails to perform any of its non-monetary obligations under this Agreement, then City may, at its sole option, remedy such failure for Licensee's account and at Licensee's expense or terminate this Agreement by providing Licensee with thirty (30) days' prior written notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City) or to terminate this Agreement. Such action by City shall not be construed as a waiver of any rights or remedies of City under this Agreement, and nothing herein shall imply any duty of

City to do any act that Licensee is obligated to perform. Licensee shall pay to City upon demand, all costs, damages, expenses or liabilities reasonably incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Licensee's obligations under this Section shall survive the termination of this Agreement.

13. No Costs to City; No Liens. Licensee shall bear all costs or expenses of any kind or nature in connection with its use of the Access Area and in complying with the conditions of this Agreement, and shall keep the Access Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Access Area.

14. Indemnity. Except solely to the extent of Losses resulting directly from the willful misconduct or gross negligence of City or of any City Agent or from any material breach of this Agreement by City or any City Agent, Licensee shall indemnify, defend and hold harmless each of City and the City Agents each from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "**Losses**"), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Access Area, or any part thereof, whether the person or property of Licensee, any Licensee Agent, and any of their respective officers, agents, employees, contractors, subcontractors, or third persons, relating in any manner to any of the Permitted Activities, **(b)** any failure by Licensee to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, including all applicable laws, or to cause the Licensee Agents, to comply with such terms, covenants or conditions, **(c)** the use of the Access Area or any activities conducted thereon by Licensee or any Licensee Agent, **(d)** any handling, release or threatened release, or discharge, or threatened discharge, of any Hazardous Material caused or allowed by Licensee or any Licensee Agent on, in, under or about the Access Area, any improvements permitted thereon, or into the environment; **(e)** any requirement of a Regulatory Agency for investigation or remediation of any release of Hazardous Materials at the Access Area in connection with use of the Access Area by Licensee or any Licensee Agent; and **(f)** any requirement of a Regulatory Agency for investigation or remediation of any Hazardous Materials arising out of or in connection with the activities of Licensee or any Licensee Agent at the Access Area, including, without limitation, requirements which would not have been imposed except for such party's use of the Access Area for an of the Permitted Activities. The foregoing indemnity shall not include any Losses incurred by City with respect to any Hazardous Materials at the Access Area discovered, but not released, by Licensee or any Licensee Agent. The indemnity in this Section shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Access Area and claims for damages or decreases in the value of adjoining property. Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Licensee by City and continues at all times thereafter. Licensee's obligations under this Section shall survive the expiration or other termination of this Agreement.

15. "As Is" Condition of Access Area; Disclaimer of Representations. Licensee accepts the Access Area in its "AS IS" 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 Access Area or any facilities on the Access Area for Licensee's use. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the Access Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Access Area, whether foreseen or unforeseen, and whether such

matters are of record or would be disclosed by an accurate inspection or survey. It is Licensee's sole obligation to conduct an independent investigation of the Access Area and all matters relating to its use of the Access Area hereunder, including, without limitation, the suitability of the Access Area for such uses. Licensee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Licensee to make use of the Access Area in the manner contemplated hereby. Under California Civil Code Section 1938, to the extent applicable to this Agreement, Licensee is hereby advised that the Access Area has not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements.

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

If to City: SFMTA
City and County of San Francisco
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager, Real Estate

If to Licensee:

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

17. No Joint Ventures or Partnership; No Authorization. This Agreement does not create a partnership or joint venture between City and Licensee as to any activity conducted by Licensee on, in or relating to the Access Area. Licensee is not a State actor with respect to any activity conducted by Licensee on, in, or under the Access Area. The giving of this Agreement by City does not constitute authorization or approval by City of any activity conducted by Licensee on, in or relating to the Access Area.

18. MacBride Principles – Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Licensee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

19. Non-Discrimination.

19.1 Covenant Not to Discriminate. In the performance of this Agreement, Licensee agrees not to discriminate against any employee of, any City employee working with Licensee, or applicant for employment with Licensee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired

Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

19.2 Subcontracts. Licensee shall include in all subcontracts relating to the Access Area a non-discrimination clause applicable to such subcontractor in substantially the form of Section 19.1. In addition, Licensee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Licensee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Agreement.

19.3 Non-Discrimination in Benefits. Licensee does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

19.4 Condition to Agreement. As a condition to this Agreement, Licensee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Licensee hereby represents that prior to execution of this Agreement, (i) Licensee executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

19.5 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Licensee shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Licensee and/or deducted from any payments due Licensee.

20. Notification of Limitations on Contributions. Through its execution of this Agreement, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of

\$50,000 or more. Licensee further acknowledges that the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensee further agrees to provide to City the names of each person, entity or committee described above.

21. Pesticide Prohibition. Licensee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Licensee to submit to SFMTA an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the Access Area during the Term, (b) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. In addition, Licensee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

22. Conflicts of Interest. Through its execution of this Agreement, Licensee 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 which would constitute a violation of said provision, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the City.

23. No Assignment. This Agreement is personal to Licensee and shall not be assigned, conveyed or otherwise transferred by Licensee under any circumstances except by operation of law. Any attempt to assign, convey or otherwise transfer this Agreement shall be null and void and cause the immediate termination and revocation of this Agreement.

24. Sunshine Ordinance. Licensee understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), apply to this Agreement and any and all records, information, and materials submitted to the City in connection with this Agreement. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Licensee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Agreement.

25. Food Service Waste Reduction. Licensee agrees to comply fully with and be bound by all of the applicable 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. Accordingly, Licensee acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Agreement.

26. Prohibition of Tobacco Sales and Advertising. Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Access Area. 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. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

27. Prohibition of Alcoholic Beverage Advertising. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Access Area. 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 (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

28. Tropical Hardwoods and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Licensee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Licensee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Agreement.

29. Possessory Interest Taxes. Licensee recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest under applicable law. Licensee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Licensee's interest under this Agreement or use of the Access Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Licensee's usage of the Access Area that may be imposed upon Licensee by applicable law. Licensee shall pay all of such charges when they become due and payable and before delinquency.

30. Consideration of Criminal History in Hiring and Employment Decisions. Licensee agrees to comply fully with and be bound by all of the provisions of Chapter 12T of the San Francisco Administrative Code (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) ("**Chapter 12T**"), including the remedies and implementing regulations of Chapter 12T, as may be amended from time to time, in the hiring or employment any person with respect to the Permitted Activities. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. Such provisions include, but are not limited to, the requirements for solicitations or advertisements for employees made by Licensee if such employees would perform any of the Permitted Activities and the prohibition of certain inquiries when initially interviewing job candidates for such employment positions. The text of the Chapter 12T is available on the web at <http://sfgov.org>.

Licensee shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all its contractors to comply with such provisions. Licensee's failure to comply with the obligations in this Section shall constitute a material breach of this

Agreement. Licensee understands and agrees that if it fails to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

31. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the License reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

32. 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 be 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.

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

34. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Licensee. (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) Except as otherwise expressly set forth herein, all approvals and determinations of City requested, required or permitted pursuant to this Agreement may be made in the sole and absolute discretion of the SFMTA's Director of Transportation or other authorized City official. (d) This Agreement (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, 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. (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. (i) Licensee may not record this Agreement or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Licensee hereunder, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (i) If City sells or otherwise conveys any portion of the Access Area, the owner of such conveyed portion of the Access Area shall accept such portion subject to this Agreement and shall assume City's rights and obligations under this Agreement to the extent such rights and obligations affect such transferred portion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Licensee represents and warrants to City that it has read and understands the contents of this Agreement and agrees to comply with and be bound by all of its provisions.

LICENSEE:

FRIENDS OF THE GENEVA OFFICE BUILDING AND POWERHOUSE, a California non-profit corporation

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency

By: _____

Edward D. Reiskin
Director of Transportation

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carol Wong, Deputy City Attorney

EXHIBIT A

Depiction of City Property, Buildings, and Access Area

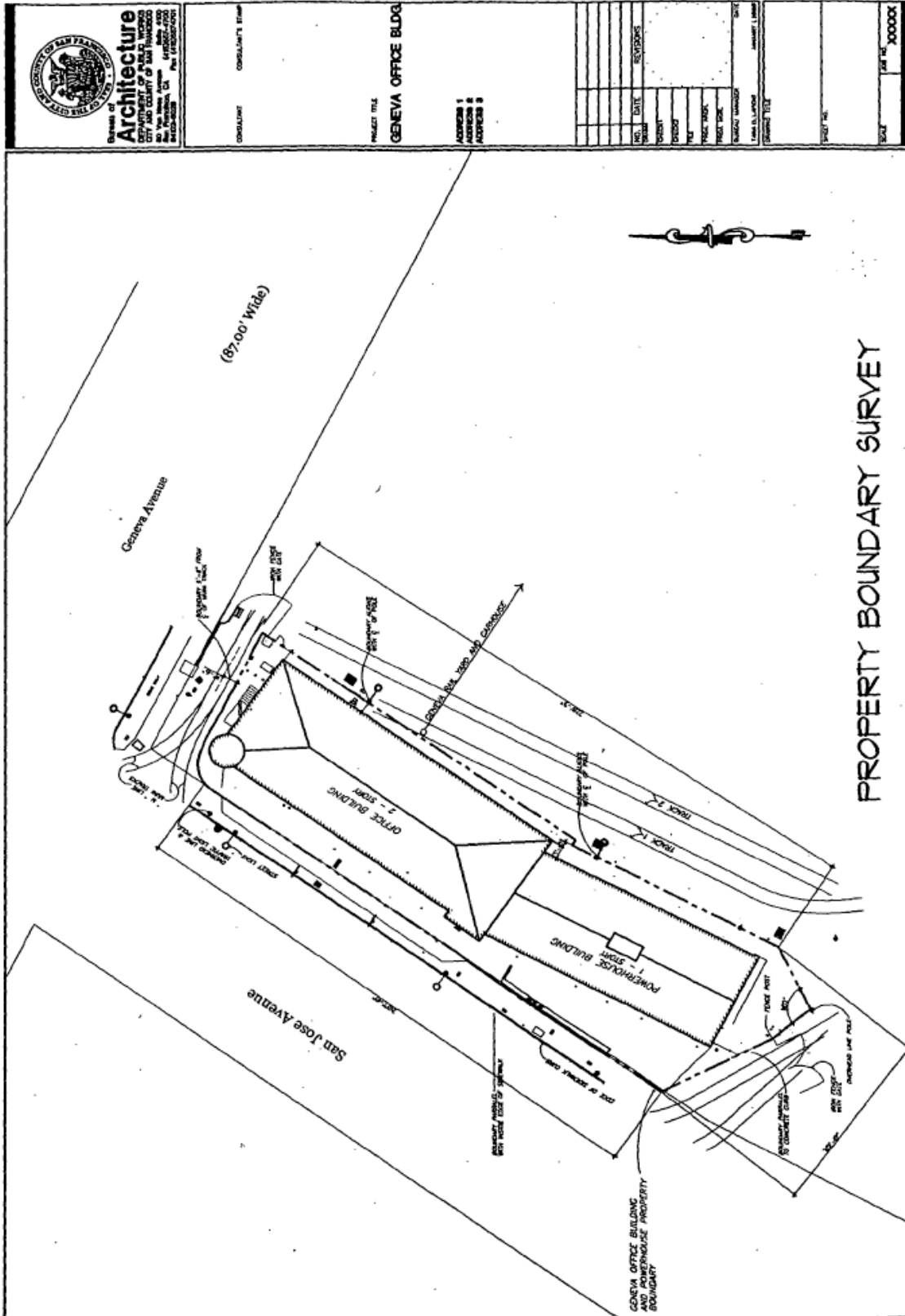


EXHIBIT D
Form of Temporary Construction License

PERMIT TO ENTER AND USE PROPERTY

THIS PERMIT TO ENTER AND USE PROPERTY (this "**Entry Permit**"), dated for reference purposes only as of _____, 201__, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and FRIENDS OF THE GENEVA OFFICE BUILDING AND POWERHOUSE, a California non-profit corporation ("**Permittee**").

RECITALS

A. City owns certain real property located at the intersection of San Jose Avenue and Geneva Avenue in the City and County of San Francisco, as further described in the attached Exhibit A (the "**City Property**"), with the buildings on the City Property known as the "Geneva Car Barn" and the "Geneva Powerhouse" (together, the "**Buildings**") under the jurisdiction of City's Recreation and Park Commission and the remainder of the City Property under the jurisdiction of SFMTA.

B. City, acting by and through its Recreation and Park Department ("**RPD**"), has entered into a Lease Disposition and Development Agreement with Permittee, dated as of _____, 2014 ("**LDDA**"), which provides for Permittee's rehabilitation and improvement of the Buildings (the "**Project**") pursuant to a lease that will be between City and LDDA and substantially in the form attached as Exhibit E to the LDDA (the ("**Ground Lease**").

C. If Permittee and City enter into the Ground Lease, Permittee wishes to acquire a temporary construction staging permit over the portion of the City Property depicted as the "Construction Area", as depicted on the attached Exhibit A (the "**Permit Area**"), for access and construction staging as necessary to complete the Project.

D. City, acting by and through SFMTA, consents to such access and construction staging on the terms and conditions of this Entry Permit.

City and Permittee agree as follows:

AGREEMENT

1. License; Permit Area. The "**Effective Date**" shall be the date that the following requirements are met: (a) this Entry Permit and the Ground Lease shall have been fully executed, (b) Permittee shall have met all conditions in the Ground Lease for the commencement of construction of the Project, and (c) Permittee shall have delivered to City the insurance certificates described in Section 10, evidence of the Approvals (as defined in Section 4.2), and the permit fee and first monthly staging fee payment described in Section 6. As of the Effective Date, City confers to Permittee a revocable, personal, unassignable, non-exclusive and non-possessory privilege for Permittee and its affiliates (including Project Developer) and their respective officers, agents, employees, contractors, subcontractors (collectively, the "**Permittee Agents**") to enter upon and use the Permit Area for the Permitted Activities (as defined in Section 3.5).

This Entry Permit gives Permittee a license only and, notwithstanding anything to the contrary herein, this Entry Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or

any portion thereof. The privilege given to Permittee under this Entry Permit is effective only insofar as the rights of City in the Permit Area are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Area.

2. Term of Permit. The privilege given to Permittee pursuant to this Entry Permit is temporary only and shall commence on the Effective Date. Unless sooner terminated pursuant to the terms hereof, the term of this Entry Permit ("**Term**") shall commence on the Effective Date and expire on the earlier date (the "**Termination Date**") to occur of (i) the issuance of a temporary certificate of occupancy for the Buildings by City acting in its regulatory capacity (the "**Completion Date**"), and (ii) the second (2nd) anniversary of the Effective Date (the "**Outside Date**"). [If construction staging activities will be during separate phases that are spaced more than two months apart, this form will be modified so we have one entry permit for each phase.]

Without limiting any of its rights hereunder, City may at its sole option freely revoke this Entry Permit at any time prior to the Termination Date, without cause and without any obligation to pay any consideration to Permittee, by delivering no less than five (5) days' prior written notice of such termination to Permittee.

3. Uses.

3.1 Permitted Activities. Permittee and the Permittee Agents may use the Permit Area to perform the following activities (collectively, the "**Permitted Activities**"): (a) to perform Permittee's obligations under this Entry Permit, (b) to use the portion of the Permit Area depicted as the "Staging Area" on the attached Exhibit A (the "**Staging Area**") for construction staging related to the Project (the "**Staging Activities**"), which shall consist of _____, and (c) to use the portion of the Permit Area depicted as the "Access Area" on the attached Exhibit A (the "**Access Area**") for vehicular and pedestrian access between San Jose Avenue and the rear of the Buildings.

3.2 Subject to Public Right-of-Way. Permittee is aware that the License Area is adjacent to a public street and therefore any use of the curb or street area is subject to the existing public easement for travel, transportation and right-of-way purposes. Accordingly, Permittee recognizes and agrees that notwithstanding anything to the contrary in this Entry Permit, any and all of Permittee's rights to use the Permit Area hereunder shall be subject and subordinate at all times to such public easement and the uses related thereto, including, but not limited to, public use as a street, utility uses, and City's uses for other purposes.

3.3 Restrictions on Permitted Activities. Without limiting any of its rights hereunder, if City determines that any of the Permitted Activities poses a material risk to public health or safety or that City needs to use any portion of the Permit Area for emergency purposes, and such emergency use requires changes to the Permitted Activities, City shall deliver written notice of such determination to Permittee (the "**Revision Notice**"). This Entry Permit shall be automatically amended to incorporate the changed Permitted Activities or changed Permit Area described in the Revision Notice within five (5) business days of Permittee's receipt of the Revision Notice.

Notwithstanding anything to the contrary in the foregoing paragraph, if City determines that any of the Permitted Activities poses an immediate risk to public health or safety or that City needs to immediately use all or any portion of the Permit Area for emergency purposes (an "**Emergency Situation**"), City shall have the right to temporarily restrict such Permitted Activities or use the Permit Area without first delivering a Revision Notice to Permittee. If reasonably possible, City shall give Permittee verbal notification of an Emergency Situation before restricting any of the Permitted Activities or commencing

its use the Permit Area. City shall deliver written notice of such action to Permittee as soon as reasonably possible. If City needs to continue its restriction on any of the Permitted Activities or its use of the Permit Area in response to an Emergency Situation for more than five (5) consecutive business days and City determines it will need to continue such activities, City shall deliver a Revision Notice describing the restriction for Permitted Activities or the City's use of the Permit Area, as applicable, prior to the end of such fifth (5th) business day.

City shall have no obligation to pay any consideration to Permittee if City needs to restrict, in accordance with this Section, any of the Permitted Activities or to use the Permit Area for emergency purposes or to protect public health or safety (including any Emergency Situation). Permittee acknowledges and agrees that neither Permittee's efforts to comply with the conditions of this Entry Permit (including any related costs incurred by Permittee) nor the commencement of the Permitted Activities shall in any way whatsoever limit City's right to restrict the Permitted Activities pursuant to this Section or as expressly set forth in this Entry Permit.

4. Performance of Work. Permittee shall conduct, and shall cause the Permittee Agents, to conduct the Permitted Activities in compliance with the terms of this Entry Permit, including the following conditions, which are for the sole benefit of City:

4.1 Construction Work Plans. Permittee shall perform the Project in the _____ phases described on the attached Exhibit B. Prior to commencing the Permitted Activities to be performed in connection with each such phase, Permittee shall have prepared a work plan and schedule for the Permitted Activities to be performed for such phase that is approved in writing by City (each, a "**Construction Work Plan**"), which approval shall not be unreasonably withheld, conditioned or delayed. Permittee acknowledges and agrees that it shall be reasonable for City to withhold such approval if a submitted work plan materially conflicts with this Entry Permit, the Ground Lease or any regulatory agreements or permitted needed for the Permitted Activities or the Project (collectively, the "**Specification Documents**"), would materially affect City's use of the remainder of the City Property, including its railcar operations, or raise material health or safety concerns.

Each work plan submitted for City's approval shall include a schedule for such phase and plans and specifications for each temporary improvement to be installed or constructed in the Permit Area during such phase, together with the proposed schedule and hours of each activity during such phase and any requested modification to City's railcar operations at the City Property. SFMTA shall provide Permittee with written notice of its approval or disapproval of a draft work plan within ten (10) business days of receiving such draft. If City does not approve of a draft work plan, such notice shall further set forth City's reasons for such disapproval. A Construction Work Plan shall not be amended, modified or supplemented without City's prior written consent pursuant to this Entry Permit. [If construction staging activities will be during separate phases that are spaced more than two months apart, modify to have one entry permit for each phase, and one construction work plan and schedule per permit.]

4.2 Permits and Approvals; Compliance with Specification Documents. Before beginning any of the Permitted Activities, Permittee shall obtain all permits, licenses and approvals (collectively, "**Approvals**") required of any regulatory agencies to commence and complete the Project and the Permitted Activities, including, but not limited to, any permits from the San Francisco Department of Public Works and the San Francisco Department of Building Inspection. Permittee shall deliver copies of all Approvals to City prior to the Effective Date. Permittee recognizes and agrees that no approval by City of any of the Permitted Activities pursuant to this Entry Permit shall be deemed to constitute the Approval required of any federal, state or local regulatory authority with jurisdiction, including any required of City acting in its regulatory capacity, and nothing herein shall

limit Permittee's obligation to obtain all such Approvals at Permittee's sole cost. Permittee shall conduct, and shall cause the Permittee Agents, to conduct the Permitted Activities in compliance with the terms of the Specification Documents.

4.3 Licensed Contractors; Exercise of Due Care. The Permitted Activities shall only be performed by contractors that are licensed by the State of California and duly qualified to perform such work, to the extent required by the State of California, and any of the Permitted Activities that is not required to be performed under applicable laws by a contractor licensed by the State of California for such work shall be performed by persons duly qualified to perform such work. Permittee shall use and cause the Permittee Agents to use due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area (other than as reasonably necessary to perform any of the Permitted Activities). City shall have the right to have a representative present during any of the Permitted Activities. Permittee shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires and the release of Hazardous Materials (as defined in Section 9.1) on and adjacent to the Permit Area attributable to the use of the Permit Area by Permittee or the Permittee Agents pursuant to this Entry Permit.

4.4 Cooperation with City Personnel. Permittee and the Permittee Agents shall work closely with City personnel to avoid disruption of City property in, under, on or about the Permit Area, City's vehicular and pedestrian access through the Permit Area, City's use of the remainder of the City Property, and the maintenance, operation, repair, replacement of City's utilities and improvements on the City Property. Permittee shall provide City's designated representative with advance written notice of (a) the commencement of each phase of the Permitted Activities, (b) the substantial completion of each phase of the Permitted Activities, and (c) the substantial completion of all of the Permitted Activities. City shall have the right, at its sole cost, to have a designated representative observe, photograph and/or otherwise record all of Permittee's activities on the Permit Area.

4.5 Work and Use Schedule. Permittee and the Permittee Agents may only perform the Permitted Activities during the hours specified in the applicable Construction Work Plan (or between any shorter hours required under any applicable laws). Permittee will notify City if it terminates any phase of the Permitted Activities prior to the last day of such phase specified in the Construction Work Plan for such phase. Permittee will notify City if it terminates the Permitted Activities prior to the Termination Date.

4.6 Pre-Construction Baseline. Permittee shall document the condition of the Permit Area prior to the commencement of any Permitted Activities through the use of photographs, maps and any other appropriate documentation to provide a pre-construction baseline to monitor impacts. Appropriate documentation shall be determined in consultation with City. Permittee shall provide City with a copy of such documentation prior to the commencement of any Permitted Activities.

4.7 Maintenance of Permit Area; Repair of Damage. Permittee shall remove all debris and any excess dirt or debris in the Permit Area caused by any of the Permitted Activities or the use of the Permit Area by Permittee or any of the Permittee Agents. If any portion of the Permit Area or any City property located on or about the City Property is damaged at any time by any of the activities conducted by Permittee or any of the Permittee Agents hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition. Permittee shall, at all times and at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and slightly condition so far as the Permit Area may be affected by the Permitted Activities or any other actions in the Permit Area by Permittee or the Permittee Agents.

4.8 Excavation Activities. Permittee shall prevent all materials (including soil) displaced by or resulting from the Permitted Activities or the use of the Permit Area by Permittee or any of the Permittee Agents from entering storm drains, sewers, or water ways and shall immediately notify the City, and all appropriate regulatory agencies required under applicable laws, if there is any accidental release of such materials.

4.9 Contractor Acknowledgement of Agreement. Permittee shall deliver a complete copy of this Entry Permit to all Permittee Agents performing any of the Permitted Activities or otherwise entering the Permit Area pursuant to this Entry Permit. Prior to the entry on the Permit Area by any such party, Permittee shall deliver a notice to City signed by such party acknowledging its receipt of a copy of this Entry Permit and its agreement to be comply with and be bound by all of the provisions of this Entry Permit pertaining to its entry on the Permit Area.

4.10 Wages and Working Conditions. With respect to the installation of any facilities or improvements or the performance of any work that is a “public work” under the State of California Labor Code, any employee performing services for Permittee or any Permittee Agent shall be paid not less than the highest prevailing rate of wages and that Permittee shall include, in any contract for construction of such improvement work or any alterations on the Permit Area, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Permittee further agrees that, as to the construction of such improvement work or any alterations on the Permit Area under this Entry Permit, Permittee shall comply, and cause all Permittee Agents to comply, with the provisions of Section 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Permittee shall require all Permittee Agents to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of the improvement work or any alterations on the Permit Area for Permittee or any Permittee Agent.

5. Restrictions on Use; City's Uses. Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee or any other party claiming by or through Permittee are inconsistent with the limited purpose of this Entry Permit and are strictly prohibited as provided below:

5.1 Improvements. Except for any temporary structures or improvements described in a Construction Work Plan and the personal property reasonably needed to perform the Permitted Activities described in the applicable Construction Work Plan, Permittee shall not construct or place any temporary or permanent structures or improvements or personal property on the Permit Area, nor shall Permittee alter any existing structures or improvements on the Permit Area. Permittee understands and agrees that City is entering into this Entry Permit in its capacity as a landowner with a proprietary interest in City's Property and not as a regulatory agency with certain police powers. Permittee understands and agrees that neither the City's execution of this Entry Permit nor any approvals by City of any work plan or otherwise given by City under this Entry Permit shall grant, or be deemed to imply, that Permittee will be able obtain, any required Approvals from departments, boards or commissions of the City and County of San Francisco that have jurisdiction over any of the Permitted Activities.

5.2 Dumping; Storing; Signs. Permittee shall not dump or dispose of refuse or other unsightly materials or store any materials on, in, under or about the Permit Area; provided, however, that Permittee may conduct normal construction staging activities in the Staging Area. Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object on or about the Permit Area, except for any temporary sign that is necessary for any of the Permitted Uses and is approved by City in writing, which approval may be given or withheld in City's sole discretion.

5.3 Transit Operations. Permittee acknowledges that the City Property is used for railcar operations, the maintenance and storage of railcars and other transit vehicles, and employee parking, all of which includes temporary, but continuous, ingress and egress activities over the Permit Area to and from San Jose Avenue (the "**Access Activities**"). Permittee shall not use, nor permit any of the Permittee Agents to use, the Permit Area in a manner that materially interferes with, or causes a safety risk for, the Access Activities or other City activities on the remainder of the City Property without written prior approval for each proposed activity that would pose such an interference or safety risk or unless such activity is conducted pursuant to a Work Plan or is expressly permitted pursuant to, and performed in compliance with the terms of, this Entry Permit.

5.4 Nuisances; No Interference with City's Uses. Permittee shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public; provided, however, that City shall not, in its proprietary capacity as landowner under this Entry Permit, deem Permittee's performance of any of the Permitted Activities in compliance with the terms and conditions of this Entry Permit to be a nuisance or unreasonable annoyance. Except for any activities described in a Construction Work Plan, Permittee shall not materially interfere with or obstruct the Access Activities, City's use of the Permit Area, its conduct of normal business operations thereon, or the rights of any party with rights to occupy or use the Permit Area.

5.5 Utilities. City has no responsibility or liability of any kind or character with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and protect them from damage, and Permittee has sole responsibility for any damage to utilities or damages resulting from Permittee's activities at the Permit Area. Permittee shall arrange and pay for any necessary temporary relocation of City and public utility company facilities reasonably necessary to facilitate any of the Permitted Activities, subject to the prior written approval by City and any such utility companies of any such relocation. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

5.6 Damage. Permittee shall not do anything about the Permit Area that will cause damage to any of City's property (including, but not limited to, the existing rail lines, railcars, transit and support vehicles and facilities, utilities, and light poles, employee parking areas, or any other improvements) or the property of any other party with rights to occupy or use the Permit Area. City's approval of any work plan pursuant to this Entry Permit or of the proposed Permitted Activities shall not be deemed to constitute the waiver of any rights City may have under Applicable Laws for any damage to the City's real or personal property or the City Property resulting from the Permitted Activities.

6. Fees. (a) Permit Fee. Permittee shall pay to City a one-time non-refundable \$5,000 permit fee to cover City's processing, inspection and other administrative costs for this Entry Permit. Such fee is payable at such time as Permittee signs and delivers this Entry Permit to City, and shall be paid in cash or by good check payable to the City and County of San Francisco.

(b) Staging Fee. Permittee shall pay to City a staging fee (the "**Staging Fee**") in the amount of \$_____ for each month of the Term, which is based on a \$.75/sq.ft. basis using the square footage of the Staging Area. The Staging Fee payment for the first month of the Term shall be payable at such time as Permittee signs and delivers this Entry Permit to City and Permittee shall deliver a monthly Staging Fee payment to City on or before each monthly anniversary of the Effective Date. All payments of the monthly Staging Fee shall be paid in cash or by good check payable to the City and County of San Francisco.

7. Surrender; As-Built Plans; Remaining Improvements. Upon the expiration of this Entry Permit or within five (5) days after any sooner revocation or other termination of this Entry Permit, Permittee shall surrender the Permit Area in a broom clean, free from hazards, clear of all debris and restore the Permit Area substantially to its condition immediately prior to the Effective Date, to the reasonable satisfaction of City; provided, however, that Permittee shall have no obligation to repair or restore any deficient condition at the Permit Area that was disclosed, but not caused, by any of the Permitted Activities. At such time, Permittee shall remove all of its property from the Permit Area and any signs permitted hereunder, and shall repair, at its cost, any damage to the Permit Area caused by such removal. Permittee's obligations under this Section shall survive any termination of this Entry Permit.

Any equipment or any other property of Permittee remaining in the Permit Area after completion of activities may be deemed abandoned by City in its sole discretion and City may store, remove, and dispose of such equipment or property at Permittee's sole cost and expense unless City has otherwise granted written permission to Permittee for such remaining equipment or property. Permittee waives all claims for any costs or damages resulting from City's retention, removal, and disposition of such property.

8. Compliance with Laws. Permittee shall, at its expense, conduct and cause to be conducted all Permitted Activities 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, maintain all Approvals in force at all times during its use of the Permit Area. Permittee understands and agrees that City is entering into this Entry Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee's obligation to obtain any required Approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

9. Hazardous Materials.

9.1 Definitions. For purposes of this Entry Permit, the following terms have the following meanings:

(a) **"Environmental Laws"** means any federal, state or local laws, ordinances, regulations or policies judicial and administrative directives, orders and decrees dealing with or relating to Hazardous Materials (including, without limitation, their use, handling, transportation, production, disposal, discharge, storage or reporting requirements) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Permit Area or property, including, without limitation, soil, air, bay water and groundwater conditions or community right-to-know requirements, related to the work being performed under this Entry Permit.

(b) **"Handle"** or **"handling"** means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

(c) **"Hazardous Material"** means any substance or material which has been determined by any state, federal, or local government authority to be a hazardous or toxic substance or material, including without limitation, any hazardous substance as defined in Section 101(14) of CERCLA (42 USC Section 9601(14)) or Sections 25281(f) or 25316 of the California Health and Safety Code, any hazardous material as defined in Section 25501(k) of the California Health and Safety Code, and any additional substances or

materials which at such time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority.

(d) **"Investigation"** means activities undertaken to determine the nature and extent of Hazardous Materials which may be located on or under real property, or which have been, are being, or threaten to be released to the environment.

(e) **"Remediation"** shall mean activities undertaken to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located on or under real property or which have been, are being or threaten to be released to the environment.

(f) **"Regulatory Agency"** means any federal, state or local governmental agency or political subdivision having jurisdiction over the Permit Area and any of the Permitted Activities. The City shall be a "Regulatory Agency" to the extent that City is acting in its capacity as a regulatory authority, rather than in its proprietary capacity as a landowner.

(g) **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material or pollutant or contaminant).

9.2 Environmental Laws. Permittee shall handle all Hazardous Materials introduced or disturbed on the Permit Area during the Term in compliance with all Environmental Laws. Permittee shall not be responsible for the safe handling of Hazardous Materials to the extent released on the Permit Area by City or any City employee, agent, contractor, subcontractor, or invitee, or existing on the Permit Area prior to the Effective Date, except to the extent any of the Permitted Activities exacerbates such Hazardous Materials. Permittee shall protect its employees and the general public in accordance with all Environmental Laws. City may from time to time request, and Permittee shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being handled in a manner which complies with all Environmental Laws.

9.3 Removal of Hazardous Materials. Prior to termination of this Entry Permit, Permittee, at its sole cost and expense, shall remove any and all Hazardous Materials to the extent introduced or released in, on, under or about the Permit Area by Permittee or the Permittee Agents during the Term and shall Remediate or dispose of any Hazardous Materials produced as a result of the Permitted Activities. All costs of storage, shipping and disposal of extracted soils and groundwater shall be the sole responsibility of Permittee including, without limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests. With respect to shipping papers and hazardous waste manifests, Permittee shall be the "generator" and in no case shall the City be named as the generator.

9.4 Notification. Permittee shall provide City with a copy of any permits issued for any Permitted Activity that involves the potential release or discharge of any Hazardous Materials in or from the Permit Area, and the receipt of a hazardous waste generator identification number issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency to itself or any of the Permittee Agents. Permittee shall promptly notify City in writing of, and shall contemporaneously provide City with a copy of:

(a) Any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under applicable laws to be reported to a Regulatory Agency;

(b) Any written notice of release of Hazardous Materials in or on the Permit Area that is provided by Permittee or any of the Permittee Agents to a Regulatory Agency including any City agency;

(c) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Permittee or any of the Permittee Agents from any Regulatory Agency;

(d) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a Regulatory Agency against Permittee or any of the Permittee Agents and that relates to the release or discharge of Hazardous Material on or from the Permit Area;

(e) Any claim that is instituted or threatened by any third party against Permittee or any of the Permittee Agents and that relates to any release or discharge of Hazardous Materials on or from the Permit Area; and

(f) Any notice of the termination, expiration or substantial amendment of any environmental operating permit needed by Permittee or any of the Permittee Agents.

9.5 Hazardous Material Disclosures. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Although this Entry Permit grants Permittee a license only, Permittee is hereby advised that Hazardous Materials may be present on the Permit Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as formaldehyde. By execution of this Entry Permit, Permittee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Permittee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

10. Insurance. [To be updated/reviewed by City's risk manager once SFMTA knows Permittee's proposed Permitted Activities]

10.1 Insurance Policies. Permittee shall procure and keep in effect at all times during the Term, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times insurance as follows during the Term:

(a) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(b) 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, and sudden and accidental pollution;

(c) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident; and

(d) Contractor's Pollution Legal Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000) each claim, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period, endorsed to include Non-Owned Disposal Site coverage.

10.2 Policy Requirements; Delivery of Certificates.

(a) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (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 Entry Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. 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. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Permittee's activities (and the activities of any Permittee Agents) under this Entry Permit (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(b) All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

(c) Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers prior to the Effective Date and in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within ten (10) days after delivery to Permittee of bills therefor.

(d) All policies shall include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City, 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 other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose in whole or in part during the policy period.

(e) 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.

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

(f) 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 Permit Area, 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.

10.3 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Permittee hereby waives any right of recovery against City for any loss or damage sustained by Permittee with respect to the Permit Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which is required to be purchased by Permittee under this Entry Permit or the Ground Lease or is actually covered by insurance obtained by Permittee. Permittee agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Permit Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

10.4 No Limitation on Permittee Obligations. Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Entry Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Entry Permit, this Entry Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

11. Waiver of Claims; Waiver of Consequential and Incidental Damages.

(a) Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, the Permittee Agents, or their respective officers, agents, employees, contractors or subcontractors, or employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by Permittee or the Permittee Agents, except to the extent that any such damage, injury or death is caused by the gross negligence or willful misconduct of City or any of its commissions, departments, boards, officers, agents, employees, or contractors (each, a "**City Agent**").

(b) Permittee acknowledges that the Permit Area and the Permitted Activities can be modified by City pursuant to Section 3 and revoked by City pursuant to Section 2 and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Entry Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Entry Permit and as a material part of the consideration for this Entry Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations (including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain or otherwise at equity), in the event that City exercises its right to modify the Permit Area or the Permitted Activities pursuant to Section 3 or to revoke this Entry Permit pursuant to Section 2.

(c) Permittee acknowledges that it will not be a displaced person at the time this Entry Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them,

under any present or future laws, statutes, or regulations for displaced persons, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits, arising out of disruption to Permittee's uses hereunder. City would not be willing to give this Entry Permit in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Entry Permit and as a material part of the consideration for this Entry Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits) and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Entry Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Entry Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence or willful misconduct of City or its Agents.

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

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Entry Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Entry Permit.

12. Defaults by Permittee. If Permittee fails to perform any of its monetary obligations under this Entry Permit and fails to cure such monetary failure within five (5) business days following City's written notice of such monetary failure to Permittee, then City may, at its sole option, immediately terminate this Entry Permit by providing Permittee with written notice of such termination. If Permittee fails to perform any of its non-monetary obligations under this Entry Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense or terminate this Entry Permit by providing Permittee with thirty (30) days' prior written notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City) or to terminate this Entry Permit. Such action by City shall not be construed as a waiver of any rights or remedies of City under this Entry Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities reasonably incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Entry Permit.

13. 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 Permit Area and in complying with the conditions

of this Entry Permit, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

14. Indemnity. Except solely to the extent of Losses resulting directly from the willful misconduct or gross negligence of City or of any City Agent or from any material breach of this Entry Permit by City or any City Agent, Permittee shall indemnify, defend and hold harmless each of City and the City Agents each from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "**Losses**"), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of Permittee, any Permittee Agent, and any of their respective officers, agents, employees, contractors, subcontractors, or third persons, relating in any manner to any of the Permitted Activities, **(b)** any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Entry Permit, including all applicable laws, or to cause the Permittee Agents, to comply with such terms, covenants or conditions, **(c)** the use of the Permit Area or any activities conducted thereon by Permittee or any Permittee Agent, **(d)** any handling, release or threatened release, or discharge, or threatened discharge, of any Hazardous Material caused or allowed by Permittee or any Permittee Agent on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment; **(e)** any requirement of a Regulatory Agency for investigation or remediation of any release of Hazardous Materials at the Permit Area in connection with use of the Permit Area by Permittee or any Permittee Agent; and **(f)** any requirement of a Regulatory Agency for investigation or remediation of any Hazardous Materials arising out of or in connection with the activities of Permittee or any Permittee Agent at the Permit Area, including, without limitation, requirements which would not have been imposed except for such party's use of the Permit Area for an of the Permitted Activities. The foregoing indemnity shall not include any Losses incurred by City with respect to any Hazardous Materials at the Permit Area discovered, but not released, by Permittee or any Permittee Agent. The indemnity in this Section shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Entry Permit.

15. "As Is" Condition of Permit Area; Disclaimer of Representations. Permittee accepts the Permit Area in its "AS IS" 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 Permit Area or any facilities on the Permit Area for Permittee's use. Without limiting the foregoing, this Entry Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Area, 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 Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area 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 Permit Area in the manner contemplated hereby. Under California Civil Code Section 1938, to the extent applicable to this Entry Permit, Permittee is hereby advised that the Permit Area has not undergone inspection by

a Certified Access Specialist (“CASp”) to determine whether it meets all applicable construction-related accessibility requirements.

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

If to City: SFMTA
City and County of San Francisco
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager, Real Estate

If to Permittee:

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

17. No Joint Ventures or Partnership; No Authorization. This Entry Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Area. The giving of this Entry Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in or relating to the Permit Area.

18. MacBride Principles – Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

19. Non-Discrimination.

19.1 Covenant Not to Discriminate. In the performance of this Entry Permit, Permittee agrees not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

19.2 Subcontracts. Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Section 19.1. In addition, Permittee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San

Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Entry Permit.

19.3 Non-Discrimination in Benefits. Permittee does not as of the date of this Entry Permit and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

19.4 Condition to Permit. As a condition to this Entry Permit, Permittee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Permittee hereby represents that prior to execution of this Entry Permit, (i) Permittee executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

19.5 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Entry Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Entry Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

20. Notification of Limitations on Contributions. Through its execution of this Entry Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each Permittee; each member of Permittee's board of directors, and Permittee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the

preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

21. Pesticide Prohibition. Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to SFMTA an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the Term, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) 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.

22. Conflicts of Interest. Through its execution of this Entry Permit, 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 which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the Term, Permittee shall immediately notify the City.

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

24. Sunshine Ordinance. Permittee understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), apply to this Entry Permit and any and all records, information, and materials submitted to the City in connection with this Entry Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Permittee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Entry Permit.

25. Food Service Waste Reduction. Permittee agrees to comply fully with and be bound by all of the applicable 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 Entry Permit as though fully set forth herein. Accordingly, Permittee acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Entry Permit.

26. Prohibition of Tobacco Sales and Advertising. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Permit Area. 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. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed

to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

27. Prohibition of Alcoholic Beverage Advertising. Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Area. 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 (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

28. Tropical Hardwoods and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Entry Permit.

29. Possessory Interest Taxes. Permittee recognizes and understands that this Entry Permit may create a possessory interest subject to property taxation 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 possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Entry Permit or use of the Permit Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

30. Consideration of Criminal History in Hiring and Employment Decisions. Permittee agrees to comply fully with and be bound by all of the provisions of Chapter 12T of the San Francisco Administrative Code (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) ("**Chapter 12T**"), including the remedies and implementing regulations of Chapter 12T, as may be amended from time to time, in the hiring or employment any person with respect to the Permitted Activities. The provisions of Chapter 12T are incorporated by reference and made a part of this Entry Permit as though fully set forth herein. Such provisions include, but are not limited to, the requirements for solicitations or advertisements for employees made by Permittee if such employees would perform any of the Permitted Activities and the prohibition of certain inquiries when initially interviewing job candidates for such employment positions. The text of the Chapter 12T is available on the web at <http://sfgov.org>.

Permittee shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all its contractors to comply with such provisions. Permittee's failure to comply with the obligations in this Section shall constitute a material breach of this Entry Permit. Permittee understands and agrees that if it fails to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Entry Permit.

31. Cooperative Drafting. This Entry Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the License reviewed and revised by legal counsel. No party shall be considered the drafter of this Entry Permit, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Entry Permit.

32. Severability. If any provision of this Entry Permit or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Entry Permit, 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 Entry Permit shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Entry Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Entry Permit.

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

34. General Provisions. (a) This Entry Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Entry Permit 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) Except as otherwise expressly set forth herein, all approvals and determinations of City requested, required or permitted pursuant to this Entry Permit may be made in the sole and absolute discretion of the SFMTA's Director of Transportation or other authorized City official. (d) This Entry Permit (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Entry Permit are for convenience of reference only and shall be disregarded in the interpretation of this Entry Permit. (f) Time is of the essence. (g) This Entry Permit 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 Entry Permit, 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. (i) Permittee may not record this Entry Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Entry Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (i) If City sells or otherwise conveys any portion of the Permit Area, the owner of such conveyed portion of the Permit Area shall accept such portion subject to this Entry Permit and shall assume City's rights and obligations under this Entry Permit to the extent such rights and obligations affect such transferred portion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Permittee represents and warrants to City that it has read and understands the contents of this Entry Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

FRIENDS OF THE GENEVA OFFICE BUILDING AND POWERHOUSE, a California non-profit corporation

By: _____
Its: _____

Date: _____

By: _____
Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency

By: _____
Edward D. Reiskin
Director of Transportation

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Carol Wong, Deputy City Attorney

EXHIBIT B

Project Phases

[to be modified as applicable]