



**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS**

STREET ENCROACHMENT AGREEMENT

WITNESSETH

In consideration of the adoption by the Board of Supervisors of the City and County of San Francisco of Resolution No. _____ at its meeting of _____, a true copy of which is attached hereto marked Exhibit A, and by this reference incorporated herein, and subject to all the terms, conditions and restrictions of this Agreement (the "Agreement"), also by reference incorporated herein, Permittee agrees that in accordance with this agreement and Exhibit A:

1. The permitted encroachment shall constitute a revocable license, shall be personal to Permittee and assignable or transferrable, whether separate from or together with any interest of Permittee, to the tenant or lessee of the subject property. Any such assignment or transfer shall be subject to the procedures of Section 5 of this Agreement.

Upon revocation the undersigned permittee, subsequent owners, or their heirs and assignees will within 30 days remove or cause to be removed the encroachment and all materials used in connections with its construction, without expense to the Department, and shall restore the area to a condition satisfactory to the Department.

2. The occupancy, construction and maintenance of the encroachment shall be in the location and as specified by the plans submitted, revises, approved and filed in the Department of Public Works. The permittee, by acceptance of this permit, acknowledges its responsibility to comply with all requirements of the occupancy, construction and maintenance of the encroachment as specified in Public Works Code Section 786 and with the sidewalk maintenance requirements specified in Public Works Code Section 706.
3. The permittee shall call Underground Service Alert (USA), at 811 to verify the locations of City and public service utility company facilities that may be affected by the work authorized by this permit and shall assume all responsibility for any damage to such facilities due to the work.
4. In consideration of this Permit being issued for the work described in the application, Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, promises and agrees to perform or cause to be performed all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.

5. Assignment. Prior to the Permittee's assignment of all or part of the permitted improvements to a party that is not a subdivision of the City (an "Assignee"), the Permittee shall incorporate the following provisions in a binding agreement between the Permittee and the Assignee:

(a) Liability. Assignee is wholly responsible for the quality of the work performed in the public right-of-way, and the Assignee is liable for all consequences of any condition of such work and any facilities installed in the public right-of-way. Neither the issuance of any Permit, inspection, repair, or suggestion, approval, or acquiescence of any person affiliated with the City shall excuse the Assignee from such responsibility or liability.

(b) Indemnification. Assignee shall agree on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, actions, claims, demands, injuries, damages, fines, penalties, suits, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Assignee or its subcontractors, or the offices, agents or employees of either, while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, improvements, facilities or structures authorized under this Permit, (ii) any accident, damage, death, or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) any accident, injuries or damages to any person(s) or accident, damage or injury to any real or personal property, good will, in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.

6. Insurance. Assignee will, at its own expense, maintain in full force and effect an insurance policy or policies issued by insurers with ratings comparable to A-VIII, or higher that are authorized to do business in the State of California, and that are satisfactory to the City. Approval of the insurance by City shall not relieve or decrease Permittee's liability hereunder.

Assignee must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages. Workers' Compensation, in statutory

amounts, with Employer's Liability limits not less than \$1,000,000 each accident, injury, or illness; and Commercial General Liability Insurance with Limits not less than \$1,000,000 each occurrence and \$2,000,00 in the aggregate for bodily injury and property damage, including contractual liability, personal injury, products and completed operations; and Commercial Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired auto coverage as applicable. Said policies shall include the City and County of San Francisco and its officers and employees jointly and severally as additional insured and shall apply as primary insurance and shall stipulate that no other insurance affected by the City and County of San Francisco will be called on to contribute to a loss covered hereunder.

All policies shall be endorsed to provide written notice to Department of cancellation, material reduction in coverage, nonrenewal or material depletion of insurance limits for any reason, including intent not to renew or to reduce coverage to both Assignee and City. Assignee shall provide a copy of any notice of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage to Department within one business day of Assignee's receipt. Assignee also shall take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced or depleted coverage, or obtain the full coverage required by this Section from a different insurer meeting the qualifications of this Section. Notices shall be sent to the Department of Public Works, Bureau of Street Use and Mapping, 1155 Market Street, 3rd Floor, San Francisco, CA, 94103. The permission granted by the permit shall be suspended upon the termination of such insurance. Upon such suspension, the Department and Permittee shall meet and confer to determine the most appropriate way to address the permit. If the Department and Permittee cannot resolve the matter, the Permittee shall restore the right-of-way to a condition acceptable to the Department without expense to the Department. As used in this Section, "Personal Injuries" shall include wrongful death.

The Permittee shall submit evidence to the Department that the requirements of Section 5 and 6 above have been satisfied.

7. The permittee shall obtain a building permit as the Central Permit Bureau, 1660 Mission Street for the construction or alteration of any building.
8. The permittee shall contact the DPW Street Inspection Section (415) 554-7149, at least 72 hours prior to starting work to arrange an inspection schedule.
9. The permittee's right to use City property, as set forth in this permit is appurtenant to the property described as: 4705 Third Street, San Francisco, California 94124. The provisions of the permit shall bind all subsequent purchases and owners of the described property.

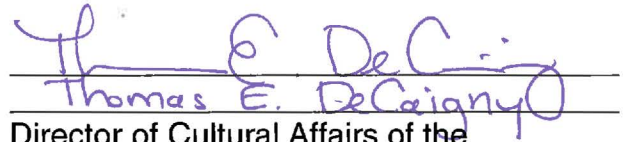
Subsequent purchasers and owners shall be subject to the revocation and termination provisions set forth in this permit.

10. The permittee or subsequent owners recognize and understand that this permit may create a possessory interest subject to property taxation and that the permittee or subsequent owner or owners may be subject to the payment of such taxes.
11. The permittee or subsequent owner or owners recognize the recordation of this permit.

All of the provisions of this agreement shall be deemed provisions of said resolution. All of the provisions of said resolution shall be deemed provisions of this agreement.

In witness whereof the undersigned Permittee(s) have executed this agreement this 30th day of March, 2015.

CITY: CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation,
acting by and through its San Francisco
Arts Commission



Thomas E. DeCaigny
Director of Cultural Affairs of the
San Francisco Arts Commission

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
) ss
County of San Francisco)

On March 30, 2015, before me, Lenore M. Elkarou, a notary public in and for said State, personally appeared Thomas E. De Caigny, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



EXHIBIT A
(see attached)

