The San Francisco Bay Area Rapid Transit District (herein called "District") hereby grants __________, (hereinafter called "Permittee") and Permittee's employees’ permission to enter upon and use the space at the District’s 24th Street BART Station Northeast/Southwest Plaza (herein called "Site"), as shown on Exhibit A, for the purpose of selling select merchandise or prepackaged food (herein called "Permitted Use") upon the following covenants and conditions.

Permittee acknowledges and agrees that nothing in this Permit is intended to create or shall create a landlord-tenant relationship between the District and Permittee or to grant Permittee any right with respect to the Premises except the right to use it under the terms and conditions set forth herein, subject to the District’s exclusive right to possession and control.

ARTICLE 1. TERM AND FEES

1.1 Term

The term of this Permit shall commence September ____, 2022, and end December 31, 2022, unless earlier terminated by District or Permittee as hereinafter provided. If requested by Permittee, a month to month extension may be permitted with written approval of District at its sole discretion and for an additional fee.

Permittee acknowledges and agrees that issuance of this Permit does not create any entitlement to a future Permit upon expiration or termination.

1.2 Fees

Fees for the period from September ____ , 2022 to December 31, 2022, shall be $300. There shall be no fee for September 2022.

Effective January 1, 2023, the monthly fee is $100.00.

Permittee will pay to District all fees as specified in Permit Guidelines, without deduction or offset.

ARTICLE 2. USE

2.1 Specified Use
Permittee has specified its vending to be limited to the following items:

Permittee shall not sell items other than those listed in this permit without written permission from District. Under no circumstances will District allow the sale of alcoholic beverages, tobacco or nicotine products or related paraphernalia, cannabis or THC products or related paraphernalia, gum, popcorn, peanuts, sunflower seeds, pistachio nuts, any other kind of food contained within a shell, canned sodas or beverages without a resealable top. Additionally, District will not permit the sale or resale of household goods, such as appliances or cleaning supplies, that have been packaged for retail sale. Items marked with inventory control labels, price tags, or loss prevention security tags from other stores or commercial vendors may not be offered for sale or re-sale. Sale of any of the aforementioned items shall be cause for this permit to be immediately revoked.

District reserves the right to prohibit the sale of any product or Permittee activity that would interfere with District’s rules, regulations, policies, station, transit operations and/or parking lot operation or patron flow or safety.

Permittee shall be in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of federal, state, and local governmental authorities and agencies; and, prior to the commencement of the term hereof, Permittee will secure or have secured all necessary vehicle licenses and other permits required by such governmental authorities and agencies, including a City of San Francisco Business License, a copy of which is included as Exhibit B.

Permittee will be given one copy of this permit, which will provide evidence of authority to occupy the Premises. The Temporary Vendor Permit Certificate shown as Exhibit C of this Permit must be displayed at all times, along with applicable City and County licenses.

2.1.1 Food and Beverages

Any prospective vendor wishing to sell any food product on BART’s property must provide to BART, in advance of the issuance of permit, a valid and applicable license from the City and County of San Francisco which is attached hereto as Exhibit D of this Permit.

Permittee is required to provide District with an updated license prior to the expiration date or the Permittee’s right to sell food on District property is revoked.

2.2 Condition of Premises
Permittee, by execution of this Permit, represents that Permittee has inspected the Premises to be provided by District for Permittee’s use herein, and accepts the conditions to be encountered therein.

2.3 Compliance with Law

Permittee shall comply with all applicable laws, statutes, zoning restrictions and ordinances.

In addition, Permittee shall comply with all rules and regulations adopted by the District for the operation of its parking lots and passenger stations, including but not limited to safety and sanitation regulations.

Prior to the commencement of the term hereof, Permittee shall secure or have secured all necessary licenses required by governmental authorities. Permittee shall pay all license and permit fees necessary or required by law for the conduct of its operations.

2.4 Utilities

District will not furnish any utilities for Permittee’s operation, nor will Permittee be provided access to the BART Employee restroom. Permittee may not run electrical cables, water lines, or any other such devices on the Premises or operate a generator or any type of gas or propane fueled devices.

2.5 Removal of Waste

Permittee shall, at Permittee’s own expense, be responsible for the daily removal of all waste, water, trash, rubbish, and food and beverage spills resulting from the operation of or sales from Permittee, within a radius of fifty feet, and shall not use District refuse containers.

2.6 Signs

Permittee shall not place, or permit to be placed on the Premises, any signs, advertisements or notices, without District’s prior written consent.

2.7 Hours and Days of Operation

Permittee’s days and hours of operation shall be seven days a week, limited to 7:00 a.m. to sunset. District may require Permittee to vacate the Plaza no more than three
times during the permit period for other external uses, or at any time for BART emergency operations. Failure to comply with this requirement may result in a citation from BART Police and/or revocation of this Permit. Permittee shall be required to remove all materials, signs, and equipment from District premises outside of Permittee’s hours of operation.

2.8 Location and Size

Permittee has non-exclusive permission to operate its Permitted Use within ten feet by ten feet area located at the Northeast/Southwest Plaza at the intersection of Mission Street and 24th Street. The area of operation is limited to the designated areas shown in Exhibit A. Permittee’s Permitted Use must be in a consecutive area no larger than ten feet wide and ten feet deep and must be delineated by use of a pop up canopy with no sides and vertical supports that are secured to withstand wind. The specific locations in the area shown in Exhibit A is available on a “first come, first serve” basis., daily. The Permittee is not guaranteed the same vending location each day and is subject to change at any time by BART staff.

Permittee is not authorized to impede on another Permittee’s allocated space, including fully blocking access of the general public to another Permittee. Permittees are expected to peacefully coordinate to create an orderly space for their Permitted Uses and for circulation of the general public. Failure to do so is cause for revocation of any and all permits.

2.9 Conduct of Permitted Use

Permittee shall be responsible for any and all customer complaints and/or refunds due its customers and shall promptly and courteously handle such complaints and/or refunds upon receipt or upon referral by District.

2.10 Success of Permitted Use

Permittee assumes full responsibility for the success of its Permitted Use on the Site and understands that District makes no representation regarding the potential volume or prospective profitability of Permittee’s Permitted Use operation on the Site. District shall not be responsible for or liable for any loss of profits or business, or for any receivership, assignment for the benefit of creditors, insolvency or bankruptcy of Permittee due to the temporary or permanent cessation, in whole or in part, of District revenue service, or due to any cause whatsoever, whether or not attributable to District directly or indirectly, in whole or in part.

2.11 Termination
This Permit can be terminated immediately for any violation of the law including but not limited to disturbing the peace, drinking in public, littering, etc., selling items not listed in the Permit, failure to cooperate with BART officials during inventory inspections, conducting business outside of the BART authorized hours of operation (from 7 a.m. to sunset) and violation of any term or condition of the Permit.

ARTICLE 3. IMPROVEMENTS

Permittee shall not make any improvements or alterations to the premises.

ARTICLE 4. MAINTENANCE AND REPAIRS

Permittee shall at its sole cost maintain Site in a neat, clean and orderly condition at all times and shall, at the completion of Permitted Use each day as indicated by closure of pop-up canopy, return the Site to a neat, clean and orderly condition equal to or better than existed at the commencement of the Permitted use that day.

ARTICLE 5. INDEMNIFICATION

Permittee shall defend, indemnify and hold the District, its directors, officers, agents and employees harmless from all claims, demands, suits, loss, damages, injury and liability (direct or indirect, including any and all costs and expenses in connection therewith) arising out of this Permit.

Permittee shall assume responsibility for any and all injury or damage to persons or property of any nature whatsoever caused by or resulting from or in connection with this Permit, or any act, or failure to act, on the part of Permittee or any of its employees, contractors, or agents, in connection with this Permit. Permittee agrees to defend, indemnify and hold harmless the District, its directors, officers, agents and employees from and against any and all claims, loss damage, charge or expense of any nature whatsoever arising out of or in connection with this Permit, and to pay and satisfy any resulting judgments.

District shall not be responsible for the loss of or damage to any property of Permittee on District Premises under this Permit.

ARTICLE 6. INSURANCE

At all times during the life of this Permit, or as may further be required by this Permit, Permittee at its own cost and expense, shall provide the insurance specified as follows:
A. Evidence Required

At or before execution of this Permit, Permittee shall provide District with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Permittee’s insurance complies with this Article. “Permit number __________, 24th Street BART Station” shall be included on all insurance submittals.

B. Notice of Cancellation, Renewal, Reduction or Material Change in Coverage.

All policies shall be endorsed to provide District with thirty (30) days prior written notice of any cancellation, reduction or material change in coverage. Notices shall be sent to the Director of Risk & Insurance, San Francisco Bay Area Rapid Transit District, P. O. Box 12688, Oakland, California 94604-2688. The Permittee shall annually submit to the District’s Department Manager, Insurance, certifications confirming that the insurance required has been renewed and continues in place (if required).

C. Qualifying Insurers

All policies shall be issued by California admitted companies which hold a current policy holders alphabetic and financial size category rating of not less than A-:VII according to Best’s Insurance Reports.

D. Insurance Required

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than Five Hundred Thousand Dollars ($500,000) per occurrence and Five Hundred Thousand Dollars ($500,000) annual aggregate as applicable.

A. Coverage shall include:

1) Premises and Operations;
2) Products/Completed Operations;
3) Broad Form Property Damage;
4) Contractual Liability Coverage;
5) Personal Injury Liability;
6) Cross-Liability and Severability of Interests; and

B. Such insurance shall include the following endorsements:
Permit No. ____
24th Street BART Station

a) Inclusion of District, its directors, officers, representatives, agents and employees as additional insured as respects to Permittee’s ongoing and completed operations in connection with this Permit;

b) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of District will be called upon to contribute to a loss.

2. If applicable to Permittee’s Permitted Use, Statutory Workers’ Compensation and Employer’s Liability Insurance for not less than One Million Dollars ($1,000,000) per accident to Employer’s Liability coverage for all employees engaged in services or operations under this Permit.

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Permittee, and any approval of said insurance by District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Permittee pursuant to this Permit, including but not limited to the provisions concerning indemnification.

2. District reserves the right to terminate or suspend the Permit in the event of non-compliance with the insurance requirements of this Article. In no event shall any suspension entitle Permittee to an extension of the term of the Permit specified in this Article.

ARTICLE 7 DEFAULT

The occurrence of any of the following shall constitute a material default and breach of this Permit by Permittee.

A. Any failure by Permittee to pay fees or any other monetary sums Required to be paid hereunder.

B. The abandonment or vacation of the Site by Permittee. Failure to occupy and operate the Site for fifteen (15) consecutive days shall be deemed an abandonment or vacation.

C. A failure by Permittee to observe and perform any other provision of this permit to be observed or performed by Permittee, where such failure continues after written or verbal notice from District to Permittee; provided, however, that if the nature of such default is such that it cannot be reasonably cured immediately, Permittee shall not be deemed to be in default if Permittee shall, within such
ARTICLE 8. TERMINATION

8.1 Immediate Termination for Default

In the event of any default by Permittee, District may at any time thereafter, without limiting District in the exercise of any right or remedy at law or in equity, which District may have by reason of such default, immediately terminate this Permit.

8.2 Termination or Modification for Convenience

The District, at its sole discretion, may terminate this Permit, in whole or in part, at any time upon immediate notice to Permittee. The terms and conditions of this Permit may be modified by District at any time and in any manner upon notice to Permittee. Permittee may also terminate this permit at any time upon written notice to District.

ARTICLE 9. ASSIGNMENT AND SUB-LICENSING

Permittee shall not sublease or transfer this Permit under any circumstances.

ARTICLE 10. SECURITY

Employee Identification and Security

Permittees are subject to the following identification requirement:

Provide a valid and current photo identification such as a California Driver’s License, California Identification Card, US Passport or documentation from the Immigration and Naturalization Service such as a Permit to Work or a Naturalization Card (Green Card).

Any person who has a prior felony conviction within the past 10 years will be disqualified from obtaining a Temporary Plaza Vendor Permit.

ARTICLE 11. ADDITIONAL PROVISIONS

11.1 Taxes and Assessments

Permittee shall pay all taxes and assessments of whatever character that may be levied or charged on the Permittee's Permitted Use, including a City of San
Francisco business license fee and any possessory interest taxes that may be applicable to its interest in or use of the Site.

11.2 Non-Discrimination

Permittee does hereby covenant and agree that (1) no person on the grounds of race, color, religion or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the premises and (2) that in the construction of any improvements on the premises or furnishing of services thereon, no person on the grounds of race, color, religion or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. In the event of breach of the above non-discrimination covenants, District shall have the right to terminate the Permit.

11.3 Inspection

District shall have the right to enter upon and inspect the Site to ensure compliance with the requirements of this Permit. Permittee shall be obligated to furnish Exhibit C and a photo identification when requested by a District employee.

11.4 Notices

All notices shall be given to the District in writing via email to permits@bart.gov. All notices given by District to Permittee shall be addressed as follows:

Name
Address
Email Address
Phone

11.5 Relocation Claims

It is agreed and understood that Permittee’s use of District’s Site as described in this Temporary Plaza Vendor Permit commenced after District’s original acquisition of the Site and Permittee agrees that Permittee’s use of said premises is of such nature and that no relocation benefits of any kind will be sought or provided in any form as a result of the use authorized by this Permit.

11.6 Independent Contractor

Permittee is an independent contractor and not an employee of or agent of District.

11.7 Entire Agreement
This Temporary Plaza Vendor Permit is the entire agreement of the parties. Permittee represents that in entering into this Permit it has not relied on any previous representations, inducements, or understandings of any kind or nature. No obligations other than those set forth herein will be recognized.

This agreement may be amended only in writing signed by the parties hereto.

11.8  **Cost of Suit**

If either party shall bring an action for any relief against the other, declaratory, or otherwise, arising out of this Permit, the losing party shall pay the successful party’s reasonable attorneys’ fees.

IN WITNESS WHEREOF, the parties have executed this Temporary Vendor Plaza Permit the day and year indicated below.

AGREEED AND ACCEPTED:  PERMITEE(S)

Joseph M. Basuino,
Group Manager,
Real Estate and
Property Management

Name & Title

Signature  Signature

Date  Date
Exhibits:

A: Site Map (from BART)
B: City/County of San Francisco Business License (From Permittee)
C: BART Permit Certificate for Display (from BART)
D: City/County of San Francisco Public Health Food Vending License (From Permittee)