

**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 subject to all the terms, conditions and restrictions of this Agreement, Permittee agrees that in accordance with this Agreement and Exhibit A:

1. Scope of Permit: The permitted encroachment is for the construction, installation, operation and maintenance of the pipes and other components of the Automated Waste Collection System ("AWCS"), to be built at a depth of up to 20 feet below grade in the areas shown in the plans submitted with the application. The components of the AWCS are owned by Permittee. The Permit shall constitute a revocable license and shall be assignable or transferable by Permittee only to subsequent owners of Permittee's business or transferees of Permittee's permit to haul garbage in San Francisco subject to the assignee or transferee satisfying all required permit terms. Any other assignment or transfer shall be subject to the written authorization of the DPW Director in his or her sole discretion and subject to any new terms or modifications to this permit that the DPW Director deems appropriate.

2. Abandon-in-place: In the event of a final administrative or judicial determination upholding the City's revocation, abandonment by Permittee, dissolution of Permittee or other circumstances under which the AWCS is no longer needed to provide solid waste disposal services to the Hunters Point or Candlestick Point communities, the pipes and other infrastructure constituting the AWCS shall be abandoned in place, without expense to the City and County of San Francisco, in a condition satisfactory to the Department of Public Works as follows.

Upon abandonment, the buried pipe for which Permittee is responsible for maintaining shall be backfilled with flowable fill materials. All above grade components will also be cut and capped to a depth that is satisfactory to the City. Upon completion of the backfill, the right-of-way shall be restored per Article 2.4 of the Public Works Code, DPW Order 178,940 (Regulations for Excavating and Restoring Streets In San Francisco) and any subsequent amendments.

3. Permittee Obligations: The occupancy, construction and maintenance of the encroachment shall be in the location and as specified by the plans submitted, revised, approved and filed with DPW. 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.

Installation of this encroachment will proceed in multiple major phases linked to the development of the Candlestick Point-Hunters Point Shipyard Project Area over a period of several years. The Permittee shall verify the locations of City and public service utility company facilities that may be affected by the work authorized by this permit during the period of

construction and installation and shall assume all responsibility for any damage to such facilities due to the work. The Permittee shall make satisfactory arrangements and payments for any necessary temporary or permanent relocation of City and/or public utility company facilities. No later than 120 days prior to a permit submittal to DPW for any phase of construction, permittee shall provide notice to City and public utility companies of proposed design and pending construction for the phase.

Permittee acknowledges that the location of the pipes constituting the encroachment are typically deeper than any known infrastructure, utilities or other below-grade components existing upon the date of approval of this Permit. It will use commercially reasonable efforts to protect that infrastructure during construction, installation and operation and operation of the AWCS.

4. Annual Occupancy Fees: Pursuant to Public Works Code Section 786.7(b) the Permittee shall pay the annual public right of way occupancy assessment fee, which is currently \$4.00 per square foot, but may be adjusted pursuant to Public Works Code Section 2.1.2.

5. Compliance with City Regulations. 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 all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.

Department of Public Works Article 2.4 of the Public Works Code, DPW Order 178,940 (Regulations for Excavating and Restoring Streets In San Francisco) and any subsequent amendments shall apply to the encroachment.

The Permittee shall contact the Municipal Transportation Agency/Department of Parking and Traffic at 1 South Van Ness Avenue for traffic requirements prior to beginning any phase of construction. The Permittee shall conduct its operations in accordance with San Francisco Transportation Code and the San Francisco Municipal Transportation Agency's "Regulations for Working in San Francisco Streets" (commonly known as the "Bluebook") and any successor Codes and regulations.

All work to construct and install the AWCS be done by a licensed contractor and in accordance with the requirements of the Standard Specifications of the edition of the Bureau of Engineering, Department of Public Works in effect at the time of construction, including sidewalk and pavement cutting and removal, lagging, excavation, backfill and sidewalk and pavement restoration. 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.

6. Repair and Maintenance Responsibilities.

(a) Repair and maintenance of the AWCS will be the sole responsibility of Permittee. The pipes constituting the AWCS will be pressure tested and spot checked as phased installation of the AWCS proceeds. For purposes of performing minor repairs and maintenance, Permittee will access the pipes from one of the manholes that will be located at approximately 100 foot intervals throughout the area subject to this Permit. In the event that excavation of the street is needed to perform maintenance and repairs, Permittee will obtain a permit and comply with all applicable City requirements and restore the right-of-way per Article 2.4 of the Public Works

Code, DPW Order 178,940 (Regulations for Excavating and Restoring Streets In San Francisco) and any subsequent amendments.

(b) Repair and maintenance of laterals to the buildings. Permittee will be responsible for installing and repairing and maintaining the portion of the laterals running from the street to the property line. Owners and/or vertical developers of the adjacent lots are responsible for providing connections from the improvements to the encroachments and maintaining the same.

7. Indemnification of City. Permittee agrees 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, claims, demands, injuries, damages, fines, penalties, 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, Permittee 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, facilities or structures authorized under this Permit, (ii) any accident 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) injuries or damages to real or personal property, good will, and persons 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.

8. Insurance. Permittee shall obtain and maintain through the terms of this Permit insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.

Permittee 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.

Permittee 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 or 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 thirty (30) days advance written notice to the City of reduction, nonrenewal or material changes in coverages or cancellation of coverages for any reason. 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 said resolution shall automatically terminate upon the termination of such insurance. Upon such termination, Permittee shall restore the right-of-way, without expense to the City pursuant to the terms and conditions set forth in Paragraph 2 of this Permit.

9. Security for Performance and Maintenance: The Permittee will obtain bonds as follows:

A. Construction Performance Bond: To ensure that the AWCS will be built in accordance with the plans approved by this Permit, Permittee shall obtain a Performance Bond in an amount of 100% of the construction cost estimate and a labor and materials bond the amount of 50% of the construction cost estimate for each phase of construction including any installation and removal of temporary facilities required as part of the construction phase to provide the City the necessary assurances that the planned encroachment will be built out as proposed. Because the installation of the AWCS must correspond to the construction of improvements on the private parcels adjacent to the Right of Way, any such bond must provide security in phases. Upon substantial completion of a phase or phases, the bond(s) for the phase(s) is release and a new bond is obtained for the next phase. For purposes of this paragraph,, "substantial completion of a phase or phases" occurs when DPW has closed a street improvement or other construction related permit under which Permittee or its agents were constructing a portion of the AWCS.

B. Maintenance and Repair Bond: To ensure that the Permittee's maintenance obligations under this Permit will be met and funded, upon substantial completion of the first phase of work, which shall occur when DPW has closed the street improvement or related construction permit for work under this Permit, Permittee shall obtain a Bond in an amount of \$25,000 to provide the City the necessary assurances that the planned encroachment will be maintained as required by this Permit. An additional security *in the form of a cash deposit* in the amount of \$25,000 shall be provided to the City. This additional security will be used solely by the City to pay for the repairs to the AWCS for costs including but not limited to materials, labor, inspections, and related hard and soft-cost expenditures should, after notification by City, the permittee fails to effect said repairs. Repairs shall occur upon discovery by Permittee or upon receipt of complaints or notice from DPW or members of the public of service interruptions or

other indicia of improper functioning of the encroachment. The additional security shall be replenished by the permittee to ensure that a minimum \$25,000 is maintain during the life of the permit.

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

11. Miscellaneous. 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.