



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

**STREET ENCROACHMENT AND MAINTENANCE  
AGREEMENT**

**This Street Encroachment and Maintenance Agreement** (the "Agreement") is entered into and agreed upon as of the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ (the "Effective Date") by and between San Francisco Municipal Transportation Agency (SFMTA) (the "Permittee"), and the CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS (the "Department").

The term "Permittee" as used herein refers to the project sponsor or responsible party issued, and in care of, the Revocable Major Encroachment Permit (the "Permit"), which refers to encroachments of various types within the public right-of-way, as hereinafter defined.

The term "the City" refers to the City and County of San Francisco and all affiliated City agencies including but not limited to the San Francisco Public Utilities Commission (SFPUC), the San Francisco Municipal Transportation Agency (SFMTA), and the San Francisco Fire Department (SFFD).

In consideration of the adoption by the Board of Supervisors of the City and County of San Francisco of Resolution No. \_\_\_\_\_ at its meeting on \_\_\_\_\_, a true copy of which is attached hereto marked Exhibit A, the Permittee hereby agrees to all the terms, conditions, and restrictions specified: in the conditions of the Permit, in this Agreement, and in the incorporated document herein referred to as Exhibit A.

**INFORMATION**

Major Encroachment Permit No.: 15ME-0018

Location Description: Various Locations. Refer to Approved Plans and or Exhibit A

Permit Description/Type: Major Encroachment

Date of approved plans: April 5, 2016

Developer/Builder of the Associated Property: SFMTA

The Associated Property/Project and Developer/Builder are named for reference and historical purposes in connection to the construction or cause for construction of the encroachments and the Permit. The Associated Developer/Builder may or may not have any affiliation with the Permittee.

## DEFINITIONS

The definitions provided hereunder shall be used to provide a basis of understanding of the listed terms. These definitions shall not limit the Department's understanding of the terms nor limit the requirements associated with these terms.

- **Encroachments:** Including but not limited to any and all standard or non-standard materials or elements occupying the public right-of-way for public or private use or benefit not accepted by the City for liability and/or maintenance.
- **Occupancy:** Including but not limited to the temporary or permanent installation or placement of materials, elements, or fixtures within the public right-of-way not owned by the City.
- **Maintenance:**
  - Cleaning. Including but not limited to: sweeping, removing graffiti, repair of scuffed or scratched materials or elements or fixtures
  - Restoration. Including but not limited to: removal of patching or temporary materials, and installation of standard or non-standard materials per City Standards and/or the approved plan
  - General Upkeep. Including but not limited to: cutting tree limbs, bushes, and grass, replacing light bulbs, cleaning drains and gutters, securing fixtures as needed, and keeping fountain water, and all other elements, sanitary and clean.
- **Inspection:** Including but not limited to ensuring materials, elements, and fixtures have been constructed or installed per the approved plans and City Standards through visual observation and sampling and testing, or other methods as deemed necessary by the City and the Department.
- **Major Encroachment Permit (the "Permit):** the revocable permit issued by the Department to the Permittee to maintain and claim liability for the occupancy of the public right-of-way with encroachments specified herein and on the plans approved by the Department.

## TERMS, CONDITIONS, AND RESTRICTIONS

1. In consideration of the Major Encroachment Permit being issued to the Permittee for occupancy, maintenance, and liability of various encroachments in the public right-of-way and for work being done as described in Exhibit A, permit 15ME-0018, and the approved plans, the Permittee on its behalf and that of any successor or assignee, and on behalf of any lessee, promises and agrees to perform or cause to be performed all terms of this Agreement and to comply with all applicable laws, ordinances and regulations.

2. The Permit shall constitute a revocable license that shall be personal to Permittee, whether separate or together with any interest of Permittee, or to the tenant or lessee of the Associated Property.
3. The Permittee acknowledges its responsibility to comply with all occupancy, maintenance, and liability requirements of the Permit as specified in Public Works Code Section 786 and with the sidewalk maintenance requirements specified in Public Works Code Section 706.
4. The Permittee acknowledges its inspection responsibility to verify, confirm, and accept all Permit encroachments (materials, elements, and fixtures, et al) that have been constructed and installed per the approved plans and as specified herein.
5. The Permittee acknowledges its maintenance responsibility for all Permit encroachments (materials, elements, and fixtures, et al) per the approved plans and as specified herein. The Permittee agrees to construct and maintain said encroachments as described in the Agreement and Exhibit A and in accordance with the approved plans.
6. The Permittee acknowledges the Permit does not grant the Permittee exclusive rights to occupy, encroach, and excavate/construct within the permitted area as described in the Permit and associated plans and documents, and does not limit, prevent, or restrict the Department from approving and issuing permits including but not limited to occupancy, encroachments, and excavations.
7. The Permittee acknowledges its maintenance responsibility following any excavation or temporary encroachment of any portion or portions of the Permit by any City or public utility agency, and any company or entity currently holding a valid Utility Conditions Permit (UCP) (or franchise agreement) with the City. It shall be the responsibility of the Permittee to coordinate with the agency or UCP holder and restore the site to the condition specified on the approved plan within ten (10) calendar days following the completion of the excavation or temporary encroachment by the agency.

In the case of excavations, the agency would be required to backfill and temporarily restore the site to safe conditions to the satisfaction of the City Inspector. The Permittee shall then restore or cause to be restored the excavated portion or portions of the Permit within ten (10) calendar days.

In the case of temporary encroachments, an agency may occupy a portion or portions of the Permit, which may require the temporary relocation of a portion of the Permit (elements or fixtures). It shall be the responsibility of the agency to protect any un-disturbed areas of the Permit in-place. Where a portion of the Permit requires temporary removal or relocation, it shall be the responsibility of both the agency and Permittee to coordinate the temporary removal and storage of the portion of the Permit. The Permittee shall be responsible for ensuring the Permit has been restored within thirty (30) calendar days following the completion of the temporary encroachment. The Permittee shall be responsible for any maintenance associated with restoration of the Permit.



8. The Permittee acknowledges its maintenance responsibility following any excavation or temporary encroachment of any portion or portions of the Permit by a private party (i.e. contractor or property owner or resident). It shall be the responsibility of the private party and the Permittee to coordinate the restoration of the site.
9. The Permittee acknowledges its maintenance responsibility following receipt of a notice by the Department of an unsafe, damaged, or blighted condition of the Permit. It shall be the responsibility of the Permittee to immediately respond to the notice and restore the site to the condition specified on the approved plan within ten (10) calendar days.

For unsafe or hazardous conditions, temporary measures shall be placed or caused to be placed immediately by the Permittee.

Failure to immediately respond to an unsafe or hazardous condition or to not restore the site within the specified time may result in the Department performing the temporary repair or restoration, which may result in a Notice of Violation citation and/or reimbursement fees to the Department.

10. The Permittee acknowledges its responsibility to reimburse the Department for any work performed by the Department as a result of the Permittee's failure to comply with the maintenance and restoration terms as specified in Sections 4 through 7
11. The Permittee acknowledges its responsibility to obtain all required permits from the Department or other City agencies to perform work or cause work to be performed within the public right-of-way in the City & County of San Francisco. Work may include, but is not limited to, the restoration of a temporarily restored trench, removal and replacement of a tree, repair of damaged or uplifted sidewalk, etc. The Major Encroachment Permit, only permits occupancy and maintenance requirements within the public right-of-way, but does not permit construction or excavation.
12. Liability. Permittee is wholly responsible for the quality of the work performed in the public right-of-way, and the Permittee 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 Permittee from such responsibility or liability.
13. The Permittee shall submit the first and last names, phone numbers, email addresses, and mailing address of a minimum of two (2) contact persons with direct relation or association or in responsible charge of the Permittee to the Department of Public Works Bureau of Street Use and Mapping (BSM).
14. The Permittee shall submit evidence to the Department that the requirements of section 15, 16, and 17 above have been satisfied, and the Permittee shall be



required to submit evidence annually thereafter to ensure the requirements of the said sections remain satisfied.

15. The Permittee shall submit to the Department an Operations and Maintenance Plan or Manual (O&M) with a detailed description of means and methods to maintain any and all elements of the Permit. The Permittee shall maintain and update the O&M as necessary and shall submit the O&M to the Department every five (5) years. The Department, at its discretion, shall determine whether each O&M submitted is satisfactory and may require additional information.
16. The Permittee shall notify both BSM and within ten (10) calendar days of any changes in the Permittees personnel structure, and submit the required contact information, in accordance with section 15 above, of the current and responsible contacts.
17. The Permittee may cause the Permit to be assigned or transferred to a successor, new owner or owners, to whom shall be bound by the terms of the Permit and this Agreement. The transfer shall be completed as described herein.
18. Subsequent successor, owners, and assignees shall be subject to the revocation and termination provisions set forth in this permit.
19. The Permittee or successor, owners, and assignees recognize the recordation of this permit.
20. The Permittee or successor, owners, and assignees 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.
21. Succession Plan. If the Permittee is a private party or entity (e.g. Community Benefit District, neighborhood organization, etc), not the fronting property owner, it shall submit to the Department a detailed succession plan five (5) years prior the disassembly or expiration of term.
22. The Permittee, and any subsequent successors ("Assignees"), acknowledge that the Department, at its discretion, may alter or modify the Permit requirements and Agreement based on the succession plan and other information submitted to the Department.
23. Revocation. The Permittee acknowledges the Department may at anytime, without or without reason, revoke the Permittees possession of the Permit. Upon revocation, the Permittee, subsequent owners, or their heirs and assignees shall within thirty (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 the City, and shall complete full restoration of the subject area to a condition satisfactory to the department and to the City.
24. The Permittee acknowledges and agrees that the Director of Public Works shall have the discretion to interpret and make decisions regarding any and all

discrepancies, conflicting statements, and omissions found in the Permit, Agreement, Exhibit A, and Approved Plans.

## **PENALTIES**

25. Notices of Violation (NOVs). The Department shall issue NOVs to the Permittee for failure to comply with the term and conditions specified in the Agreement. The Permittee shall pay the fees associated with the NOVs or if the Permittee wishes to dispute a NOV, it may submit a written explanation to the Director of Public Works. The Permittee agrees to comply with any written decision made by the Director with regards to a dispute.
26. NOV Fees. The Permittee's failure to comply with the maintenance and restoration terms as specified in in this agreement shall result in citation fees in accordance with the applicable Codes and Orders adopted by the City and in effect at the time of the NOV.
27. Upon revocation or failure by the Permittee to notify the Department of the transfer of the Permit, the Permittee shall within thirty (30) calendar days remove or cause to be removed the encroachments and all materials, elements, and fixtures used in connections with its construction, and shall restore the area to a condition satisfactory to the Director of Public Works without expense to the City.

## **TRANSFER AND ACCPETANCE PROCEEDURES**

28. Permittee may transfer all or a portion of the Permit to a new owner(s) or successor,

Transfer of the Permit as a whole: the Assignee must submit to BSM a binding agreement by and between both the Permittee and the Assignee stating the Assignee will be assuming full and complete responsibility for the maintenance and liability of the Major Encroachment Permit. The Permittee shall also submit a Succession Plan. The succession plan shall identify the proposed new owner or successor, detailing the Assignee's organizational structure, contact information, and other information required by the Department. The succession plan shall detail the transfer timeline of the Permit. The Department, at its discretion, shall determine whether the Succession Plan submitted and whether the proposed Assignee are satisfactory and acceptable. The Department may require additional information and shall have the discretion to deny a proposed Assignee based on the information and material submitted. If determined satisfactory by the Department, The Assignee will sign a new agreement with the Department as a supplement to this Agreement to acknowledge the responsibilities as the new permit holder.

Transfer of a portion of the Permit: Permittee must submit to BSM a binding agreement by and between both the Permittee and the Assignee stating the portion of the Permit the Assignee will be assuming full and complete responsibility for. The Assignee must submit to the Department all required Major Encroachment documents including the Certificate of Insurance, the required executed bonds, and all documents as required by the Department and the City. The Permittee and the Assignee shall submit the required documents, information, and other material in accordance with the Agreement o the Department. The Department, at its discretion,

shall determine whether each item submitted is satisfactory and may require additional information.

All of the provisions of this agreement shall be deemed provisions of said resolution, Exhibit A. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2016.

PERMITTEE:



SFMTA Director of Transportation

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS, a  
municipal corporation



for City Engineer of San Francisco



Director of San Francisco Department of  
Public Works



