

RECORDING REQUESTED BY  
THE CITY OF SAN DIEGO  
WHEN RECORDED, MAIL TO:

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(THIS SPACE FOR RECORDER'S USE ONLY)



## Public Improvement Maintenance Agreement

Approval Number: \_\_\_\_\_

PRJ Number: \_\_\_\_\_

PMT Number: \_\_\_\_\_

This agreement is made by and between the City of San Diego, a Municipal Corporation [City] and the duly authorized representative of \_\_\_\_\_ [Applicant], located at \_\_\_\_\_ in consideration of the grant of permission by the City of San Diego to install and maintain the following public improvements: \_\_\_\_\_

\_\_\_\_\_ incorporated by reference and attached hereto [Improvements] over, under, and across the public right of way ("ROW") incorporated by reference and attached hereto, Applicant covenants and agrees with the City of San Diego as follows:

- a) The Improvements shall be installed and maintained in a safe and sanitary condition at the sole cost, risk, and responsibility of the Applicant.
- b) With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismemberment, illness damages, or death) or property, arising from, related to, or resulting from the construction, maintenance, state of use, repair, or presence of the Improvements, the Applicant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against any and all liability.
- c) The Applicant's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the sole or active negligence or willful misconduct of the City, its agents, officers, or employees. The indemnity coverage extended herein shall apply to the City only if its actions are deemed secondary and passive and the City was in no way actively negligent. Nothing contained in this section shall be construed to alter, modify, or otherwise waive or affect the rights, remedies, contractual provisions, clauses, covenants, or duties not expressly stated herein, all of which are reserved to the parties. Applicant further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

- d) If City requires relocation or removal of all or part of Improvements, City shall give the Applicant thirty (30) calendar days written notice. The Applicant shall thereafter have one hundred fifty (150) calendar days to relocate or remove all or part of the Improvements. The City will provide express review times to the Applicant at no additional cost for permitting an alternate location. The Applicant shall restore the discrete area where the Improvement was located within the ROW to its conditions as they existed on the date of execution of this Agreement, subject to normal wear and tear, to the satisfaction of the City Engineer. The site restoration shall include any existing public improvements impacted by this agreement. The Applicant agrees to pay any and all costs to relocate or remove all or part of the Improvement. The removal of all Improvements shall cause termination of the Agreement by the City.
- e) If Applicant requires relocation or removal of all or part of the Improvements, the Applicant shall give the City thirty (30) calendar days written notice. The Applicant shall thereafter have one hundred fifty (150) calendar days to relocate or remove all or part of the Improvements. The Applicant agrees to pay any and all costs to relocate all or part of the Improvements. The Applicant shall restore the discrete area where the Improvement was located within the ROW pursuant to section (d) of this Agreement. The removal of all Improvements shall cause termination of this Agreement by the Applicant.
  - 1) In case of an emergency, as determined by the City, the City may request the work to be done immediately or may give the Applicant a specific number of calendar days in a written notice to remove all or part of the Improvements. Applicant shall thereafter comply with the City's notice to remove all or part of the Improvements. If the Applicant fails to begin removal of all or part of the Improvements, the City may cause the work to be done, and the costs thereof shall be the responsibility of the Applicant. The City's request to remove, relocate or restore the Improvements shall not be arbitrary or without reason.
- f) Whatever rights and obligations were acquired by the City with respect to the right of way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the Improvements.
- g) The Applicant shall maintain a policy of \$1 million liability insurance, with the City of San Diego and its respective elected officials, officers, employees, agents, and representatives named as additionally insureds, in an amount approved by the City, that will protect the City from any potential claims which may arise from the Improvements.
- h) The Applicant's obligations under this Agreement shall also apply to their successors-in-interest.
- i) In the event the City is required to place, replace or maintain a public improvement where the Applicant has constructed the Improvements, the Applicant shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction or existence of the Improvement.
- j) Applicant shall, at Applicant's sole cost and expense and to the City's satisfaction, maintain the Improvements in good order and repair and in a safe, healthy, and sanitary condition at all times that this Agreement is in effect. The City shall at no time during the term of this Agreement be

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required to make any improvements or repairs to the Improvements. The Applicant shall keep the Improvements free and clear of rubbish, debris, and litter at all times.

- k) The Applicant shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Applicant's occupancy, use, development, maintenance, and restoration of the Improvements and any damages to the Improvements resulting directly or indirectly thereby.
- l) By entering into this Agreement, the City is not obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to Applicant's occupancy, use, development, maintenance, or restoration of the Improvements. Discretionary actions include, without limitation, rezoning, variances, environmental clearances, and all other required governmental approvals.
- m) The Applicant shall not assign any rights granted by this Agreement or any interest in this Agreement without the City's prior written consent, which may not be unreasonably withheld or delayed.
- n) The Applicant shall, at its sole cost and expense, comply with all applicable rules, regulations, ordinances, laws and directions of all City, county, state, and federal governing authorities.
- o) Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between City and Applicant or between City and any other entity or party, or cause City to be responsible in any way for the debts or obligations of Applicant or any other party or entity.
- p) This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Agreement and Applicant's occupancy, use, development, maintenance, and restoration of the Improvements.
- q) Any notice required to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid and addressed as follows:

Deputy City Engineer  
 THE CITY OF SAN DIEGO  
 Development Services Department  
 1222 1st Ave, MS 501  
 San Diego, CA 92101

Applicant:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- r) Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City, that such authority is valid and that

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such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

See Attached Exhibit(s): \_\_\_\_\_

See Drawing Number(s): \_\_\_\_\_  
On file with the City of San Diego.

<p><b>THE CITY OF SAN DIEGO</b></p> <p>Approved by: _____ Date: _____</p> <p>Signature: _____</p> <p>Title: Deputy City Engineer</p>	<p>I HEREBY CERTIFY I am the record owner of the property and that I have read all of this Agreement, this</p> <p>_____ day of _____, _____</p> <p>By: _____</p> <p>Signature: _____</p>
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**NOTE: ALL SIGNATURES MUST INCLUDE NOTARY ACKNOWLEDGMENTS PER CIVIL CODE SEC.1180 ET.SEQ.**

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