

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

(THIS SPACE FOR RECORDER'S USE ONLY)



Streetary Encroachment, Maintenance, and Removal Agreement

PRJ Number

PMT Number

Agreement Number

In accordance with the provisions of [Section 129.0715 of the San Diego Municipal Code](#) [SDMC], this Encroachment, Maintenance, and Removal Agreement [EMRA] is made by and between the City of San Diego, a Municipal Corporation [City] and the owner [Property Owner] of real property [Property], located at:

and more particularly described as

in the City of San Diego, County of San Diego, State of California.

In consideration of the grant of permission by the City of San Diego to construct and operate a streetary, in the Public Right of way for the use and benefit of the Property as shown on the plans on file with the City of San Diego and referenced by the Exhibit listed below, Property Owner covenants and agrees with the City of San Diego as follows:

1. The streetary shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Property Owner and their successors in interest.
2. With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or any utility providers whose facilities located within the public right-of-way 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 streetary, the Property Owner agrees to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.
Also covered by this Section is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees that may be in combination with active or passive negligent acts or omissions of the Property Owner, its employees, agents or officers, or any third party. The Property Owner's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. Property Owner further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.
3. The Property Owner shall remove, relocate, or restore the streetary as directed by the City Engineer within thirty (30) calendar days of written notice from the City. In the case of an emergency, as determined by the City, the City may request that the removal, relocation, or restoration be done immediately. If the Property Owner

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fails to remove, relocate or restore or otherwise comply with the direction of the City Engineer regarding the streetary, the City may cause the removal, relocation, or restoration to be done, and the City's costs shall become a lien against the streetary's associated property. The City's request to remove, relocate, or restore the streetary shall not be arbitrary or without reason.

4. Failure to comply with any of the terms of this EMRA will be grounds for revocation of this EMRA by the City.
5. Whatever previous rights and obligations were acquired by the City prior to entering into this EMRA with respect to the subject public 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 streetary or this EMRA. This means that the City may interfere with the Property Owner's use of the streetary to fulfill the City's rights and obligations.
6. Commercial general liability insurance, umbrella insurance, and workers' compensation insurance shall be maintained for the use of the streetary as follows:
 - A. Commercial general liability insurance shall be on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence and a \$2,000,000 aggregate. The policy must be primary and the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds, which will protect the City from any potential claims which may arise from the streetary.
 - B. The umbrella insurance policy shall provide coverage in excess of the primary general liability, employer's liability and automobile liability policies in an amount not less than \$4,000,000 per occurrence. The City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds, which will protect the City from any potential claims which may arise from the streetary.
 - C. Workers' compensation insurance as required by the State of California, with statutory limits, and employer's liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease shall be provided
7. Prior to installation of any furniture or improvements in the public right of way and prior to operation of a streetary:
 - A. This EMRA shall be recorded in the Office of the San Diego County Recorder.
 - B. The Owner/Permittee shall obtain a Public Right of way Permit in accordance with [SDMC §129.0702](#).
8. Prior to occupancy of a streetary, a City inspection is required in accordance with [SDMC §129.0760](#).
9. While this EMRA is in effect, the streetary shall be used only for the purposes and under the terms and conditions set forth in this EMRA, the SDMC, and any related permits.
10. The use of this EMRA shall be subject to the regulations of the City and any other applicable governmental agency.
11. The streetary shall not impede the flow of curbside drainage. The drainage area between the curb and the platform shall remain clear of debris and ensure proper drainage occurs at all times.
12. The Property Owner must keep the streetary free of debris, pollution, and contaminants and prevent debris, pollution and contaminants from entering the adjacent stormwater conveyance system. This includes
 - A. Keeping the surface of the streetary clean.
 - B. Preventing any non-stormwater discharges from the streetary in accordance in accordance with SDMC Chapter 4, Article 3, Division 3.
 - C. Sweeping out debris from under the streetary to keep it clear of all debris at all times.

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13. The Property Owner agrees to comply with the regulations of the [SDMC §141.0621](#) and the following conditions:
- A. The streetary shall be used only for dining, drinking, and circulation and shall operate only in conjunction with Property Owner's adjacent eating and drinking establishment.
 - B. Alcohol, food, or beverages shall not be served or allowed within the streetary before 7 a.m. and after 10 p.m. Sunday through Thursday, and before 7 a.m. and after 11 p.m. Friday through Saturday or the day prior to a City Holiday.
 - C. Streetaries located within 150 feet of an adjacent residential use shall not serve or allow alcohol, food, or beverages within the streetary before 7 a.m. and after 9 p.m. Sunday through Thursday, and before 7 a.m. and after 10 p.m. Friday through Saturday.
 - D. Streetaries shall comply with all State of California Department of Alcoholic Beverage Control regulations and license requirements, as applicable.
 - E. Smoking and vaping shall not be permitted within the streetary. For purposes of this Section, the terms smoke, smoking, vape, and vaping have the same meanings as set forth in [SDMC §43.1001](#).
 - F. Live entertainment is not permitted within a streetary unless a Conditional Use Permit is granted by the City in accordance with Process Three and the Conditional Use Permit is in accordance with the provisions of [SDMC Chapter 3, Article 3, Division 15](#).
 - G. Outdoor cooking and food preparation within the streetary is prohibited.
 - H. Noise levels within the streetary shall comply with the sound level limits of the adjacent use of the Property Owner's eating or drinking establishment in accordance with [SDMC Chapter 5, Article 9.5, Division 4](#).
 - I. The Property Owner shall be responsible for maintaining the streetary. Maintenance shall include posting of the name, phone number, and email address of the person responsible for the streetary in a location visible from the public right of way,
 - J. The portion of the public right of way used by the streetary shall remain open to the public during all non-operational hours.
 - K. Umbrellas with a minimum 84 inches clearance from the finished grade of the streetary may be used in conjunction with a streetary, but no permanent roof or shelter is permitted over the streetary. The canopy of the umbrella shall be contained within the streetary and shall not protrude into the adjoining sidewalk, parking spaces, streetaries, travel lanes, or bike lanes.
 - L. Solar-powered lights shall be permitted, but electrical lighting elements that contain wires that cross the sidewalk shall not be permitted.
 - M. The placement of the name and type of Property Owner's adjacent establishment on umbrellas within the streetary is allowed. Other signs shall not be permitted in a streetary.
 - N. Any plants placed in the streetary by Property Owner shall be kept in good health.
 - O. The streetary shall be maintained and operated so that unsafe conditions related to accessibility are not created for the people with disabilities and so that equivalent accessible facilities are provided. This shall include:
 - 1. A clear area of 60 inches in diameter located entirely within the streetary provided for wheelchair turning with a maximum overlap of 12 inches onto the adjacent curb or sidewalk.
 - 2. A clear floor area of 36 inches by 48 inches shall be provided for wheelchair resting space with a maximum overlap of 24 inches with the wheelchair turning space in any orientation.

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3. The wheelchair resting space shall provide shoulder-to-shoulder alignment adjacent to one side of a fixed seat to serve as wheelchair user companion seating.
4. Where tables, counters, or drink rails are provided, at least one of each feature shall be wheelchair accessible.
5. The top surface height of wheelchair-accessible tables, counters, or drink rails within a streetary shall be 28 inches to 34 inches above the streetary deck surface.
6. Wheelchair-accessible tables and counters shall be approachable from the front and provide an unobstructed knee clearance at least 27-inches high, 30-inches wide and 19-inches deep.
7. When movable tables are provided in lieu of fixed tables, at least one of the movable tables shall be accessible.
8. Where drink rails are provided, a 60-inch-long portion of a drink rail shall have 36 inch wide and level space adjacent to it for a side-approach by a wheelchair user.

Exhibit(s):

See Attached:

<p style="text-align: center;">THE CITY OF SAN DIEGO</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 _____ day of _____, _____</p> <p>By: _____</p> <p style="text-align: center;">Owner Signature</p>
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NOTE: ALL SIGNATURES MUST INCLUDE NOTARY ACKNOWLEDGEMENTS PER CIVIL CODE SEC. 1180 ET.SEQ