

STREET TREE MAINTENANCE AGREEMENT

This Street Tree Maintenance Agreement (this “Agreement”) is made this **XXX** day of **MONTH YEAR** between THE CITY AND COUNTY OF SAN FRANCISCO (“City”), a municipal corporation by and through SAN FRANCISCO PUBLIC WORKS (“Public Works”), and **NAME**, owner of **ADDRESS** (“Owner”).

RECITALS

A. Effective July 1, 2017, the City has the duty to maintain all street trees, including sidewalk repairs related to a street tree’s growth or root system, to ensure public safety and promote tree health. Section 805 of the Urban Forestry Ordinance, Article 16 of the San Francisco Public Works Code, outlines the ability to opt out of the City’s street tree maintenance program, known as StreetTreeSF. Upon agreement to the terms outlined below, the City will allow the Owner to assume the maintenance responsibility specified below on the condition that qualified professionals are hired to conduct the work in accordance with the terms of this Agreement.

B. Street trees provide many benefits to the City and its residents. They clean the air, trapping fine particulate matter. They sequester carbon and help combat global climate change. Street trees create safer and more appealing walking environments for pedestrians. Street trees beautify neighborhoods, and raise property values. Street trees help manage stormwater and reduce the likelihood of overloading the combined sewer system. Street trees help calm traffic. Street trees bring business to neighborhood commercial districts, and street trees can provide habitat.

C. Street trees by definition are located in the public right-of-way, usually adjacent to roads and sidewalks. Street trees need maintenance to ensure clearance over the roadway to allow the safe flow of traffic, and prevent vehicles and equipment from hitting and damaging tree branches. Street trees also need clearance over the sidewalk to allow for safe passage of pedestrians. Street trees also sometimes require pruning to gain clearance from streetlights, and/or traffic signs and signals.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, and subject to the terms, covenants, agreements and conditions hereinafter set forth, the City and the Owner hereby agree as follows:

1. DEFINITIONS

The following definitions apply to this Agreement:

“**Maintenance**” shall mean those actions necessary to promote the life, growth, health, or beauty of a tree and adjacent sidewalks. Maintenance includes both Major Maintenance, Routine Maintenance, **[if applicable: and Sidewalk Maintenance]**.

“**Major Maintenance**” shall include structural pruning as necessary to maintain public safety and to sustain the health, safety, and natural growth habit of the tree; pest and disease-

management procedures as needed and in a manner consistent with public health and ecological diversity; replacement of dead or damaged trees. Pruning practices shall be in compliance with International Society of Arboriculture Best Management Practices and ANSI Pruning Standards, whichever is more protective of tree preservation, or any equivalent standard or standards selected by the Director.

“**Routine Maintenance**” shall include adequate watering to ensure the tree’s growth and sustainability; weed control; removal of tree-well trash; staking; fertilizing; routine adjustment and timely removal of stakes, ties, tree guards, and tree grates; bracing; and sidewalk repairs related to the tree’s growth or root system.

[Keep if Section 4.2.2 is included] “**Sidewalk Maintenance**” shall mean the repair of damaged areas of sidewalk where there is vertical displacement of ½” or more, or voids, cracks, chips, holes or gaps of ½” or repair. Repairs to the sidewalk may be made by replacing concrete with new concrete consistent with City specifications, or temporary repair methods as outlined in Public Works Order 177, 526, such as grinding or patching.

“**Street Tree**” shall mean any Tree growing within the public right-of-way, including unimproved public streets and sidewalks. “Street Tree” does not include any other forms of landscaping.

“**Tree**” shall mean any perennial, woody or fibrous plant species of cultivar, which reaches a height exceeding 10 feet at maturity, and which supports a branched or un-branched leaf canopy.

2. TERM

The term of this Agreement shall commence on **MONTH DAY YEAR** (the “Commencement Date”) and shall terminate on the date that is ONE (1) year after the Commencement Date (the “Expiration Date”), unless sooner terminated in accordance with the terms hereof. On the Expiration Date, if Owner seeks to extend the term of this Agreement, Owner may contact Public Works. But this Agreement may not be extended except by written instrument executed and approved in the same manner as this Agreement.

3. STREET TREE MAINTENANCE AREA

The area to be maintained by Owner under this Agreement shall be the “Street Tree Maintenance Area,” consisting of the Street Tree and adjacent sidewalk area located at **[street address / tree number]**. [If applicable: The Street Maintenance Area is also identified on the attached Exhibit A, as marked.]

4. STREET TREE MAINTENANCE REQUIREMENTS

4.1 **General.** Owner is responsible for all Maintenance in the Street Tree Maintenance Area necessary to promote the life, growth, health, or beauty of any Street Trees, including any Major Maintenance, Routine Maintenance, [if applicable: and Sidewalk Maintenance], and for ensuring that any adjacent public rights-of-way are free of any obstruction

and safe for pedestrians and vehicles. Notwithstanding Owner's responsibilities for all Maintenance, Public Works reserves the right to perform any emergency Maintenance in the Street Tree Maintenance Area to protect public safety without notifying Owner, such as Maintenance necessary to address broken or hanging tree limbs, or trees that have collapsed or prone to collapse.

4.2 Staff

4.2.1. Maintenance of Street Trees. [If applicable] Owner shall hire certified arborists or trained tree care specialists to perform Maintenance on Street Trees in the Street Tree Maintenance Area. Owner must provide Public Works with the name and contact information for the certified arborist(s) or trained tree care specialist(s) performing Maintenance in the Street Tree Maintenance Area. Public Works staff may require a meeting with the certified arborist(s) or trained tree care specialist(s) prior to any Maintenance. [Or, if applicable] Owner shall perform Maintenance on Street Trees in the Street Tree Maintenance Area. Owner shall not hire or authorize any other person to perform such Maintenance.

4.2.2. [If applicable] Sidewalk Maintenance. Owner, or any person working at Owner's direction, shall obtain a sidewalk improvement permit from Public Works before performing such Maintenance, consistent with Section 4.6, and satisfy any licensing or insurance requirements set forth in such permit.

4.3 Pruning. Certified arborists or trained tree care specialists hired by Owner shall follow American National Standards Institute (ANSI) A300 and International Society of Arboriculture (ISA) guidelines for pruning cuts, including always pruning to a lateral branch, pruning to the branch bark collar, leaving no branch stubs, and not allowing bark to rip past the pruning cut. Arborists or trained tree care specialists hired by Owner shall also follow by the City's June 27, 2006 Pruning Standards for Trees, attached as Exhibit A to this Agreement. Public Works will also notify Owner of any pruning needs in the Street Tree Maintenance Area that it has identified and provide Owner with a reasonable time to cure those needs; but if Owner fails to address those pruning needs, Public Works reserves the right to perform the required pruning.

4.4 Topping. Owner, or anyone working at Owner's direction, may not "top" any Street Trees. Topping is the cutting of tree branches to stubs, or to lateral branches that are smaller than 1/3 the size of the branch being cut.

4.5 Debris. Owner is responsible for removing any Maintenance-related debris from the Street Tree Maintenance Area and dispose of it properly.

4.6 Permits. Owner, or anyone working at Owner's direction, shall obtain any and all permits from City agencies and departments, including any sidewalk improvement permits, necessary to perform its Maintenance obligations under this Agreement.

4.7 Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Owner shall not use or apply or allow the use or application of any pesticides on the Street Tree Maintenance Area or contract with any party to provide pest abatement or control services to the Street Tree Maintenance Area without first receiving Public Works' written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that

Owner may need to apply to the Street Tree Maintenance Area during the term of this Agreement, (ii) describes the steps Owner will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Owner's primary IPM contact person with Public Works. Owner shall comply, and shall require all of Owner's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Owner were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Owner to keep certain records and to report to City all pesticide use at the Street Tree Maintenance Area by Owner or Owner's staff or contractors.

5. SECURITY

[If applicable] Public Works has determined that Owner must post \$X,XXX as security to ensure that any Maintenance will be carried out in the event of the City's termination of this Agreement. Upon termination of this Agreement, and subject to Section 6.3 herein, Public Works shall return any unused portion of this security to Owner. [If removed: Public Works has determined that Owner is not required to post a security under this Agreement.]

6. TERMINATION; REMEDIES

6.1 Notice of Termination by Owner. Owner may terminate this Agreement, provided that Owner must give Public Works XX (##) days written notice of termination. Upon receipt of such notice of termination, Public Works shall proceed as set forth in Section 6.3 herein.

6.2 Notice of Termination by City. Public Works may terminate this Agreement, provided it must give Owner XX (##) days written notice of termination. Public Works may terminate this Agreement for any public policy reason including, but not limited to, ensuring public safety, maintaining the health of City Street Trees, and protecting passage through public rights-of-way. Upon transmittal of such notice of termination, Public Works shall proceed as set forth in Section 6.3 herein.

6.3 Public Works Assessment; Opportunity to Cure. Public Works will perform an assessment of the Street Tree Maintenance Area within XX (##) days of receiving or sending the written notice of termination described in Section 6.1 or 6.2. With XX (##) days of performing the assessment, Public Works will notify Owner of any required Maintenance in the Street Tree Maintenance Area and provide Owner with XX (##) days to perform such Maintenance. If Owner does not perform the Maintenance specified by Public Works in the allotted time, Public Works will offset the City's costs to enforce this Agreement and perform such Maintenance against the Security required by Section 5 and return any remaining funds to Owner. If Public Works' assessment of the Street Tree Maintenance Area concludes that no Maintenance of the Street Tree Maintenance Area is required, it will notify Owner of this determination.

6.4 Additional Penalties. Owner agrees and understands that in the event Owner fails to cure any required Maintenance identified by Public Works in the allotted time and/or any security posted by Owner is insufficient to pay for Public Works to carry out such Maintenance, Owner shall be subject to the administrative penalties set forth in Public Works Code Section 811(c). Under Section 811(c), Public Works may require any person who removes, injures, or destroys a Street Tree to pay a sum of money equal to the Street Tree's replacement value or the diminishment of the Street Tree's value. Section 811(c) also provides that in no case shall any such administrative penalty be less than \$500 per violation.

7. ASSIGNMENT OF AGREEMENT; CHANGES IN OWNERSHIP

Neither this Agreement nor any duties or obligations hereunder may be assigned by Owner. Any purported assignment made in violation of this provision shall be null and void.

If there is any change in ownership to [address/APN], Owner shall immediately notify Public Works. Upon notification, Public Works will terminate this Agreement and proceed under Section 6.2 above.

8. NOTICES

All notices or approvals required under this Agreement shall be in writing and shall be deemed given when delivered personally, by e-mail, or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, to the following mailing addresses. The parties to this Agreement also provide the telephone numbers listed below as their respective emergency contact information.

If to the Owner: **NAME**
 ADDRESS 1
 ADDRESS 2
 Email address:
 Telephone number:

If to Public Works: **NAME/OFFICE**
 San Francisco Public Works, Bureau of Urban Forestry
 ADDRESS 1
 ADDRESS 2
 Email address:
 Telephone number:

Either party may, by like written notice, designate a new address and/or addresses to which such notices shall be directed.

9. MISCELLANEOUS PROVISIONS

9.1 Modification, Waiver, and Amendment. Any modification, waiver or amendment of any of the provisions of this Agreement must be in writing and signed by both the Owner and Public Works.

9.2 Entire Agreement. This Agreement represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between the Owner and Public Works affecting this Agreement not set forth herein. This Agreement supersedes all previous negotiations, arrangements, agreements, and understandings between the Owner and Public Works with respect to the subject matter hereof.

9.3 Severability. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision and all such other provisions shall remain in full force and effect.

9.4 Governing Law. This Agreement shall be governed by the laws of the State of California. It is the responsibility of the Owner to be informed of local, state and federal laws and requirements applicable to this Agreement, including laws related to disabled access, and to perform all work in compliance with those laws and requirements.

9.5 Headings. Titles of parts or sections of this Agreement are inserted for convenience only and shall be disregarded in construing or interpreting its provisions.

9.6 Mutual Drafting. The parties agree that this Agreement has been drafted by and is the product of both parties and that it is the intention of the parties that this Agreement shall not be construed against either party based on the assumption or premise that one party or the other was the drafter of the Agreement.

9.7 Authority to Execute Agreement. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement and to bind the Owner and Public Works respectively in accordance with its terms.

IN WITNESS WHEREOF, OWNER and PUBLIC WORKS execute this Agreement in San Francisco, California, as of the date set forth above.

OWNER:

PUBLIC WORKS:

THE CITY AND COUNTY OF
SAN FRANCISCO

By: _____

NAME
TITLE [if applicable]

By: _____

NAME
TITLE
San Francisco Public Works,
Bureau of Urban Forestry

APPROVED AS TO FORM

DENNIS J. HERRERA, City Attorney

By: _____

NAME
Deputy City Attorney