

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of Improvements within a Public Right-of-Way
at _____, Lafayette, CA 94549

This Encroachment Agreement (“Agreement”) is entered into on _____, 2018,
between _____, (Collectively “Property Owner”) and the City of
Lafayette, a municipal corporation (“City”).

RECITALS

This Agreement is predicated upon the following facts:

A. Property Owner owns a fee simple interest in the residential property located at _____,
Lafayette, California, APN No. _____,
 (“Property”). The Property is more particularly described in Exhibit “A.”

B. Property Owner seeks an encroachment permit to construct _____,
 (“Improvements”), which will encroach into the public right-of-way
along Property frontage. In connection with this request for an encroachment permit, Property Owner
has submitted plans to the City for the construction and the placement of Improvements. Said plans
are attached hereto and incorporated by this reference as Exhibit “B.”

C. City is willing to grant Property Owner an encroachment permit in consideration of
Property Owner agreeing to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Improvements

Property Owner is permitted to place Improvements, which substantially conform to the plans
submitted to the City and attached hereto as Exhibit “B”, to encroach into the public right-of-way
along Property frontage, subject to obtaining any building permit which may otherwise be required by
the most recent edition of the Uniform Building Standards Code as adopted and amended by the City.

This encroachment permit is not a building permit and does not grant permission to construct
the Improvement depicted in the attached plans without a separate building permit, if required by the
City.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property
Owner, including damage to the Improvements specified herein, and all risk of other damage to the
City or a third party alleged to be caused or contributed to by the placement, permitting or

maintenance of Improvements within the right-of-way as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the Improvements installed in the right-of-way.

As part of this Agreement and to the fullest extent permitted by law, Property Owner and its, his and/or her successors, agents, representatives, contractors and assigns shall indemnify, defend (with legal counsel of City's choosing) and hold harmless, the City, its elected officials, officers, employees, agents, representatives, contractors and assigns (collectively, the "Indemnitees") from and against any and all claims, demands, liabilities, judgments, damages (including consequential damages), awards, interest, attorneys' fees, costs and expenses of whatever kind or nature, at any time arising out of or in any way connected with the City's review and/or approval of this Agreement and/or any actions pursuant to the Encroachment Permit and this Agreement taken by the Property Owner. Property Owner's obligation to indemnify, defend and hold harmless the Indemnitees under this Agreement shall apply regardless of fault, to any acts or omissions, or negligent conduct, whether active or passive, on the part of the Property Owner or the Indemnitees. The sole exception to Property Owner's obligation to indemnify shall be for the Indemnitees' gross negligence or willful misconduct. Property Owner's obligation to defend the Indemnitees under this Agreement shall be at Property Owner's sole expense.

3. Insurance.

Property Owner acknowledges that Property Owner maintains homeowners insurance and property damage insurance covering the Property including the encroachment area, in the amount of at least \$500,000 per occurrence insuring against liability for damage to property and \$1,000,000 for injury to or death of any person, or a single limit of \$1,000,000, as a result of the placement or condition of the Improvements. The policy shall name the City of Lafayette as an additional insured, and Property Owner hereby waives subrogation in favor of the City. Property Owner does hereby waive any right of recovery it may have against the City because of payments made by Property Owner or its insurer for damage to property or injury to or death of any person arising out of any act or omission of City. Property Owner shall require its contractors performing work to construct the Improvements to add the City as an additional insured on contractor's commercial general liability policy using ISO form CG 20 38 or exact equivalent. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policies required herein.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, Property Owner is the lawful owner in fee simple of the Property described in Exhibit "A."

5. Duty to Maintain

Property Owner is responsible for maintaining the Improvements described herein. Property Owner shall maintain the Improvements in a safe and attractive condition as an encroachment within the City's right-of-way area. The Improvements may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the Improvements, the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary corrections, unless the deficiency is deemed by the City to impair public health and safety,

in which case the correction shall be made immediately. If the correction is not made within the time allowed as determined by the City in its sole discretion, the City may elect to take the steps necessary to maintain the Improvements, or remove the Improvements and any other encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail to Property Owner's last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the Improvements. However, if the City deems the maintenance or removal of the Improvements or any other encroachment to be necessary in order to correct a public health and safety deficiency, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the Improvements or any other encroachment. The City may, in its sole discretion, act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the Improvements or any other encroachment including, without limitation, any attorneys' fees or administrative costs, after following the procedure set forth in paragraph 6, the City shall make written demand upon Property Owner for payment of all such costs. If Property Owner fails to pay the costs incurred by the City within 30 days of the date the written demand is placed in the mail, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid. The remedy described herein is in addition to and is not and shall not be construed as a limitation of any other remedies which may be available to the City.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth above bring legal action to collect the sums due to City under this Agreement. Property Owner agrees that if legal action by the City is necessary to collect any amount expended by the City, Property Owner is responsible for payment to the City of its attorneys' fees and court costs together with all other costs, including interest, accrued hereunder.

9. Expiration and Revocation.

City may also revoke this Agreement and the associated encroachment permit at any time by 1) giving Property Owner 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the Agreement and encroachment permit. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the Agreement and encroachment permit, Property Owner agrees to remove at his/her expense the Improvements and any other encroachments.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the addresses shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:

When the Property Owner ceases to be the owner, Property Owner shall file with the City a notice to that effect containing the name and address of the new owner, a copy of the deed transferring Property Owner's interest in the Property and a written assignment between the City, Property Owner and the new owner assigning Property Owner's rights and obligations under this Agreement to the new owner. Upon doing so, the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

- (a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.
- (b) Notice to Property Owner shall be considered to have been given when sent to the address above stated.
- (c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties. Each party acknowledges that no agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the party to sign this document. The parties agree that this Agreement shall not be amended or modified, except in writing signed by all parties, and shall not be construed against the City as drafter of the Agreement.
- (d) Property Owner appoints City its attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the Improvements and any other encroachments.
- (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
- (f) Should any of the parties initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
- (g) It is agreed that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective parties hereto
- (h) This Agreement is intended to be construed pursuant to the laws of the State of California. The parties agrees that the proper venue for any action arising out of the breach or the interpretation of this Agreement or other documents delivered pursuant to any provision thereof, shall be Contra Costa County.

- (i) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the Property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A." This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

PROPERTY OWNER(S)*

Steven B. Falk, City Manager

ATTEST:

Joanne Robbins, City Clerk

* Notarial Acknowledgment Required

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
IMPROVEMENT PLANS