



This **Streetary Encroachment Permit ("Permit")** is granted by the City of San Rafael, a municipal corporation ("City"), to the Permittee identified herein, subject to the terms and conditions described herein.

Permittee:

Food Service Establishment Name:

Streetary Premises:

Term

See Exhibit 1 Premises map.

[start date] through [end date]

Permittee's Representative:

Name:

Address:

Email:

Phone Number:

Fees:

Annual Encroachment Lease Fee:

Deposit:

1. **Grant to use right-of-way for Streetary.** This permit grants Permittee permission to use that portion of City's parking space(s) within the public right-of-way described in **Exhibit 1** (the "Premises") to operate an outdoor eating area ("Streetary") in connection with the named Food Service Establishment identified above, and to erect, construct, place and maintain an encroachment upon the Premises for the Streetary, in accordance with the plans attached hereto as Exhibit A. Permittee shall use the Premises to operate the Streetary for the named Food Service Establishment identified herein and for no other purpose or food service establishment whatsoever.
2. **Permit personal; joint and several liability.** The permit herein granted is personal to Permittee. Permittee shall not assign, sublet or otherwise transfer this permit or the rights herein granted, in whole or in part. If Permittee is more than one person or entity, each shall be jointly and severally liable for the obligations of Permittee. Permittee acknowledges that joint and several liability shall apply in cases where more than one named Food Service Establishment may be operating within the Streetary (otherwise known as a "shared" Streetary).
3. **Compliance with Streetary regulations and standards.** Permittee shall at all times comply with all applicable law, regulations, and policies governing City's public right-of-way and Streetaries, including the regulations set forth in San Rafael Municipal Code Chapters 11.04 and 11.70, and City's [Streetary Program Guidelines and Design and Development Standards \("Standards"\)](#), which may be amended by City from time to time in its sole and absolute discretion. This permit is conditioned on the continued existence of City's Streetary program and confers no vested right. City, in its sole and absolute discretion, may amend or discontinue the Streetary program, in which case City shall have a right to amend or terminate this permit.
4. **Term.** This permit shall be valid for the term ("Term") specified above, unless terminated early pursuant to Section 9. Permittee must apply to City for a new permit for a new term commencing on January 1 of each year.



5. **Fees.** This permit is subject to Permittee's advance payment of a permit application fee, and the Annual Encroachment Lease Fee and one-time Deposit identified above. Refund of the Deposit is subject to the terms of Section 11.
6. **Construction requirements.** Permittee shall comply with all requirements set forth in **Exhibit 2** for all construction work related to the Streetary and this permit, including without limitation, build, rehabilitation, renovation, destruction, and removal of the Streetary, and site restoration. Construction requirements include all design and development standards set forth in the Standards [Standards](#).
7. **Operation and maintenance; damage.** Permittee shall operate and maintain the Streetary in compliance with the [Standards](#) and keep it free of litter, refuse and debris. Permittee shall provide for access to any city or public utility company that may have underground conduits within or beneath the Premises. Access to utilities may require that Permittee temporarily remove all or a portion of the constructed Streetary. Permittee shall be solely responsible for the cost of removing and re-installing the Streetary. Permittee shall be solely responsible for the cost of restoring any damage caused to the Streetary.
8. **Inspections.** The City retains the right to inspect the Premises or Streetary at any time to ensure compliance with the terms of this permit, the Standards [Standards](#), or the San Rafael Municipal Code.
9. **Termination; suspension.**
 - a. *Termination or suspension by City.* City may terminate or suspend this permit at any time for any reason permitted by law, including without limitation, where a violation of a term of this permit, the Standards, or City of San Rafael Municipal Code has occurred; to protect the public interest, health, safety and/or welfare of the community; for access to city or public utilities; or a proposed public highway right-of-way improvement. City shall provide notice of termination or suspension in accordance with Section 11.70.120 of the City of San Rafael Municipal Code. In no event shall City be liable to permittee for any costs, liabilities, or loss of revenues related to or arising from City's termination or suspension of this permit.
 - b. *Termination by Permittee.* Permittee may terminate this permit at any time for any reason by providing written notice to City. Such termination shall be effective when Permittee surrenders and restores the Premises in accordance with Section 11.
 - c. *No refund.* In the case of a for cause termination or suspension, Permittee shall not be entitled to a refund or partial refund of any fees in connection this permit, except for return of the Deposit in accordance with Section 11. If the termination or suspension is not for cause, Permittee shall be entitled to a prorated refund of the Annual Encroachment Lease Fee. For purposes of this paragraph, "for cause" shall mean an act or failure to act by Permittee or its agents, such as a violation of a term of this permit, the [Standards](#), or City of San Rafael Municipal Code.
10. **Insurance requirements.** Permittee shall maintain or cause to maintain throughout the Term of this permit the insurance policies at the coverage limits and pursuant to the requirements set forth in **Exhibit 3**.
11. **Surrender; restoration; refund of Deposit.** Upon expiration or early termination of this permit, Permittee shall, at its sole cost and expense, remove all improvements placed on the Premises, remove any personal property therefrom, restore the Premises to its original condition, and cease any further use of the Premises as provided herein. Should Permittee fail or neglect to restore the Premises to a condition satisfactory to City, City may perform such work or have such work performed on behalf of Permittee. City may deduct from Permittee's Deposit City's direct and indirect costs for the work, including the reasonable value of City staff time. If Permittee's Deposit is insufficient to cover City's costs, City shall provide an accounting to Permittee, and Permittee shall upon receipt immediately reimburse City for all of its costs. City shall refund to Permittee any unapplied portion of the Deposit, together with an accounting of any deductions, within 30 days after the Premises is restored to a condition satisfactory to City.



12. Indemnification.

- a. Permittee on behalf of itself and its permitted successors and assigns shall, to the maximum extent permitted by law, indemnify, defend and hold harmless the City of San Rafael, its officials, employees, agents, and volunteers ("Indemnitees") against any and all liabilities, losses, claims, actions, causes of action or demands whatsoever ("Claims") against any of them, including any injury to or death of any person or damage to property or other liability of any nature, including but not limited to attorney's and expert fees and court costs, arising out of or connected with this permit or the installation, operation and maintenance of any facilities in, the alteration of the right-of-way, or the use of any public right-of-way by, Permittee or Permittee's employees, officers, officials, agents, transferees, contractors or subcontractors pursuant to this permit; provided, that the obligation to indemnify City hereunder shall not apply to any liabilities, losses, claims, actions, causes of action or demands arising from City's sole negligence, willful misconduct or criminal acts.
- b. The forgoing indemnification, defense and hold harmless obligations shall apply to any Claim brought against any of the Indemnitees, the purpose of which is to attack, set aside, void or annul the approval of a permit or revocable license agreement issued pursuant to Title 11 of the San Rafael Municipal Code, or the adoption of any environmental document which accompanies such permit or agreement.
- c. In the event that any Claim is brought as described in subsection (1) or (2) of this section, City will promptly notify Permittee of any such Claim, and City will cooperate with Permittee in the defense of such Claim. In the event Permittee is required to defend City in connection with any said Claim, City shall retain the right to approve any and all settlements affecting the validity or interpretation of a City ordinance or regulation, which approval shall not be unreasonably withheld. Nothing herein shall prohibit City from participating in the defense of any Claim, provided that if City chooses to have counsel of its own to defend any Claim where Permittee already has retained counsel to defend City in such matters, the fees and the expenses of the counsel selected by City shall be paid by City.

13. Business license. Permittee shall procure and maintain a valid City of San Rafael business license to operate the named Food Service Establishment herein throughout the Term of this permit, and pay all fees to City for such license.

14. Compliance with laws. Permittee shall observe and comply with all applicable federal, state, City, or other governmental statutes, ordinances, and regulations now in force or which hereafter may be in force, including the regulations and licensing of the State Alcoholic Beverage Control and the County of Marin Department of Health and Human Services.

15. Penalties and fines; enforcement. Violation of this permit shall be subject to enforcement as provided in San Rafael Municipal Code sections 11.70.120 and 11.04.030.140. If City commences a legal action or proceeding to enforce the terms of this permit, City in the proceeding shall receive, in addition to court costs, reasonable attorneys' fees, including the reasonable value of services rendered by the City Attorney's Office.

16. Possessory interest; taxes. Permittee acknowledges and understands that this permit may create a possessory interest subject to property taxes, and that Permittee may be subject to the payment of property taxes levied upon such interest.

17. Risk of loss. Permittee shall assume all risk of loss, damage, or injury to Permittee or its property arising out of or connected to its use or occupation of the Premises pursuant to this permit.



18. **Notices.** All notices and other communications required or permitted to be given under this permit, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the following parties.:

To **CITY:**

City of San Rafael
Director of Public Works
111 Morpew Street
San Rafael, CA 94901

To **PERMITTEE:**

Permittee's representative at the
address first listed above

For questions regarding this permit or the Streetary, Permittee should contact:

Public Works Streetary Team
Office: (415) 485-3355, Option 2
Email: dpwpermits@cityofsanrafael.org

[Signatures are on the following page.]



By Permittee's signature on this Permit, Permittee hereby acknowledges that it has read and agrees to comply with all terms and conditions of this Permit.

This Permit shall become valid upon signature of the City's Public Works Director or designee.

PERMITTEE:

CITY:

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

Permittee hereby represents that the person(s) signing on behalf of Permittee have the authority to sign and accept this Permit on behalf of Permittee.

Exhibits:

- 1 Streetary Premises Map and Plans
- 2 Construction Requirements
- 3 Insurance Requirements



Exhibit 1. STREETARY PREMISES MAP AND PLANS

[INSERT APPROVED MAP & PLANS]



Exhibit 2. CONSTRUCTION REQUIREMENTS

The following terms apply to all construction in connection with the permit, including without limitation, build, rehabilitation, renovation, destruction, and removal of the Streetary, and site restoration.

1. Streetary Design and Development Standards

- a. The [Streetary Program Guidelines and Design and Development Standards](#), as they may be amended from time to time by City, are hereby incorporated into and made a part of these construction requirements.

2. Construction Notification

- a. The Department of Public Works must be notified at least **2 business days** prior to the start of any and all construction. Notifications must be sent to dpwpermits@cityofsanrafael.org <mailto:encroachmentpermits@cityofsanrafael.org> and include the following:
 - i. Encroachment permit number
 - ii. Start date and expected duration
 - iii. List of emergency contact numbers for this work, including a 24-hour, 7 days a week contact.
- b. Public notice signage must be placed at the project site, or written notice must be provided to all properties within 300' of the work site at least five (5) days prior to start of work if the scope of work will last more than one (1) day. The notice shall identify the nature of the project, the project limits and the date, duration of the project, contain the name, and phone number of the project manager for anyone who may have questions regarding the project. Department of Public Works must be provided a copy of the notice.
- c. For projects that include puncturing the ground, the Permittee shall contact Underground Service Alert (USA) 811 or (800) 227-2600 for utility locations prior to commencing, and as appropriate during, any permitted work.
- d. Actions required when work necessitates a **road closure**:
 - i. The permittee's contractor shall submit a detour map and notification letter to affected residents & businesses and the Department of Public Works. The notice shall identify the nature of the project, the project limits and the date, and duration of the project. The letter shall contain the name and phone number of the project manager for anyone who may have questions regarding the project. Notification letters must be distributed a minimum of **10-days** prior to commencement of work
 - ii. The City San Rafael Police Department and City of San Rafael Fire Department shall be notified of street closures a minimum of **3 business days** prior to commencement of work.
 1. Fire Department: (415) 485-3304
 - Police Department: (415) 485- 3000
- e. Actions required for all work downtown (see attached map):
 - i. Must notify the Downtown San Rafael Business Improvement District at director@downtownsanrafael.org.



- ii. Provide written notice to all property owners 300' from project area.
- iii. Proof of notices must be provided to public works prior to start of work.

3. Inspection Requirements

- a. Inspection requests must be submitted via email to dpwpermits@cityofsanrafael.org.
- b. Schedule a progress inspection before the following:
 - i. Pouring of concrete
 - ii. Backfill of trench
 - iii. Pavement restoration
 - iv. Any work in the public right of way associated with the project
- c. For all storage containers and/or debris boxes:
 - i. Photo submission of the structure's drop off location must be submitted
- d. Schedule a **Final Inspection** prior to permit expiration date.

4. Construction Standards

- a. All work shall be performed in accordance with the [Streetary Program Guidelines and Design and Development Standards](#), [City of San Rafael Municipal Code](#), and [Uniform Construction Standards and Specifications of the Cities of Marin](#), unless otherwise noted.
- b. Pavement and trench restoration shall be in accordance with the City of San Rafael Pavement Restoration Matrix (see Attachment A and B) and can also be found **online**.
- c. The contractor shall be responsible to conduct all operations in conformance with local, State, and Federal safety codes, permits, and regulations.

5. Re-striping and Pavement Markers Restoration

- a. All pavement marking and signage damaged or eliminated during construction activities associated with this encroachment permit shall be replaced in kind as soon as possible. The City reserves the right to complete the work and bill the Contractor for all the related cost for the restoration work if the Contractor fails to perform restoration within 30-days.
- b. All striping shall be placed in conformance with the current Caltrans Standard Specifications and installed in US units only.

6. Traffic and Pedestrian Control Plans

- a. When required, the contractor shall submit a detailed traffic and pedestrian control plan with their application submittal. Any detours or lane closures must be approved by the City Engineer, prior to their commencement. Pedestrian access shall be provided in accordance with ADA requirements for the duration of the project. Traffic Control plan shall be in accordance with the state of California Manual on Uniform Traffic Control Devices (MUTCD).
- b. "No Parking" signs and/ or meter bags can be obtained from Parking Services located at 1400 Fifth Ave, 1st Floor. They can be contacted at (415) 458-5333 or emailed at parking@cityofsanrafael.org. Signs must be placed three (3) days prior to start of work.



Once the signs have been posted you must inform San Rafael Police Department at (415) 485-3000.

- c. The Contractor shall maintain local access and provide emergency vehicle access at all times.

7. Work Hours/ Schedule

- a. The contractor shall comply with the work schedule submitted with this permit. No modifications to the schedule shall be allowed without the consent of the City of San Rafael, Department of Public Works.
- b. Noise ordinance conditions for construction apply only during approved work hours. Outside of work hours mixed-use limits shall apply.

8. Work Site Conditions & Stockpiling of Materials

- a. The permittee shall maintain all encroachments in a safe and clean manner.
- b. All materials and equipment staging, and construction shall have proper erosion and sediment control measures in place, and maintained, to control sedimentation discharge and contaminants to the storm drain system following [Marin County Stormwater Pollution Prevention Program \(MCSTOPPP\)](#) standards. Modifications to these measures may be required by the City at any time and the contractor shall implement said measures at no cost to the City, if requested.
- c. The contractor shall not be permitted to store or stockpile equipment or materials and debris within the right of way, without express written permission from the Department of Public Works. Trucks may not stop or cause backups on streets.
- d. All excavated material shall be removed from the site to a suitable depository site.
- e. The permittee shall promptly remove all graffiti on any encroachment.

9. Steel Plates/ Patching

- a. Trenches shall be hot patched or plated over during non-working hours. Cut back (cold patch) is not permitted.
- b. Should it become necessary to use steel plates on the roadway, there shall be a two foot wide A/C. taper along all four edges of the plate. If there is more than one plate used, all contiguous plates shall be welded.
- c. Plates shall not have an offset from the adjacent asphalt exceeding 1".
- d. Plates in the roadway that will remain in place longer than 2 days shall be ground and recessed.
- e. Unnecessary, long-term plating of a street shall not be allowed. Trench plates shall not be placed in the travel way for a period greater than two weeks without prior approval. Prior to excavating, a written plan that specifies the duration the plates will remain in the travelled way and the reasoning for the extended duration shall be submitted to the public works for approval. Trench plates installed on highly travelled streets may be required to be set flush with the existing asphalt concrete. Plates shall be skid resistant,



pinned and welded. Warning signage must be placed at least 100' away from the trench plates.

10. Precautions

- a. The contractor shall make every effort to expedite the work and minimize disruptions in the right of way. The contractor shall schedule work to minimize inconvenience or disruption to residents and business owners during the course of the work and shall take all reasonable precautions to restrict their operations to the least area of work possible.
- b. Any private or public property (i.e., structures, landscaping vegetation, irrigation improvements, paved areas or any other property) which is disturbed by the work shall be repaired and restored to its original condition and to the satisfaction of the City of San Rafael. The cost of said repairs shall be paid by the permittee.
- c. Interruption to City electric services, water, telecommunications, gas and other utilities shall not be permitted without prior approval. If interruption is approved, permittee shall notify those affected and bear all cost associated with the interruption including temporary electrical generation for signal lights.
- d. An A or C-12 license is required for all paving. Other licenses may be required based on project scope.
 - i. Concrete work (C-8)
 - ii. Electrical (C-10)
 - iii. Pipeline (C-34)
 - iv. Well Drilling (C-57)
 - v. Hoisting
- e. Upon the request of any person who has contracted to perform work on a public right-of-way, the permittee shall provide accurate detailed information regarding the location of their existing and proposed structures in the public right-of-way.



ATTACHMENT A

<u>Pavement Condition Index (PCI)</u>	<u>Restoration Guidelines</u>
90+ ⁽¹⁾⁽⁴⁾	Moratorium Street. Emergency encroachment only. Subject to special conditions and pavement restoration along entire property frontage.
70-90 ⁽¹⁾⁽⁴⁾	For roads less than 24 ft wide: Up to full width restoration (when applicable). For roads over 24 ft wide: Restoration to centerline unless repair crosses the centerline then up to a full width restoration is required Restoration to extend up to 5 feet beyond each side of the trench excavation, including a structural pavement section extending 24 inches outside the limits of the trench ⁽⁵⁾ excavation per DWG No. 330 ⁽²⁾ and DWG No. 380 ⁽²⁾ .
55-70 ⁽⁴⁾	Restoration to extend up to 5 feet beyond each side of the trench excavation, including a structural pavement section extending 24 inches outside the limits of the trench ⁽⁵⁾ excavation per DWG No. 330, 360, 370, and 380 ⁽²⁾ .
0-55 ⁽⁴⁾	Restoration to extend minimum 2 feet beyond each side of the trench excavation, per DWG No. 330, 360, 370, and 380 ⁽²⁾ .

⁽¹⁾ ADA Curb Ramp upgrades on case by case basis

⁽²⁾ Drawing can be found in the Uniform Construction Standards for All Cities and County of Marin, adopted July 2018.

⁽³⁾ Compaction test results documenting the relative compaction of soil backfill will be required for projects involving significant excavation/trenching.

⁽⁴⁾ The City reserves the right to make adjustments to the restoration based on existing conditions.

⁽⁵⁾ Typical pavement restoration includes a 24-inch trench overcut to preserve the structural integrity of the roadway. This requirement can be reduced or eliminated if a Public Works representative inspects the trench during construction and provides written approval to modify the requirement.



Exhibit 3. INSURANCE REQUIREMENTS

Permittee shall maintain or cause to maintain for the Term of this permit the following insurance coverage.

- a. Insurance policies required of Permittee:
 - i. Commercial general liability insurance policy in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 aggregate. Said policy shall include a separate endorsement for use of the Premises (parking space area adjacent to the Food Service Establishment) with no exclusions to the coverage.
 - ii. If Permittee employs any person, workers' compensation insurance policy with limits of no less than \$1,000,000 per accident for bodily injury or disease, specifically endorsed to waive any right of subrogation against the City of San Rafael, its officers, agents, employees and volunteers.
 - iii. Except for workers' compensation policies, Permittee shall provide proof of the required insurance including a policy endorsement naming the City of San Rafael, its officers, employees, agents, and volunteers as additional insureds.
 - iv. The insurance provided to City, et al. as additional insureds shall apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by them.
 - v. Permittee grants to City a waiver of any right to subrogation which any insurer of Permittee may acquire against City by virtue of the payment of any loss under such insurance.
- b. Insurance policies required of Permittee's contractors and subcontractors of any tier:
 - i. Commercial general liability insurance policy in the minimum amount of \$1,000,000 per occurrence.
 - ii. Automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of \$1,000,000 per occurrence.
 - iii. If Permittee employs any person, workers' compensation insurance policy with limits of no less than \$1,000,000 per accident for bodily injury or disease.

The City reserves the right to modify these insurance requirements at any time, including amounts, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.