

SIDEWALK CAFÉ / STREET PATIO / PARKLET MAINTENANCE AGREEMENT

THE STATE OF TEXAS

KNOWS ALL BY THESE PRESENTS

COUNTY OF WEBB

TABC Permit No: _____

The City of Laredo, a home-rule municipal corporation located in Webb County, State of Texas, ("City") acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement is the Director Building Development Services, City of Laredo, ("the City"), and _____ d/b/a/ _____, ("Permit Holder"), enter into this Sidewalk Café / Street Patio / Parklet Permit and Maintenance Agreement ("Agreement") effective upon final signature under the terms and conditions set forth below.

WHEREAS, _____ d/b/a/ _____ desires to obtain a revocable and non-exclusive Permit from the City to use and occupy a portion of _____, (Description of physical location: _____) to Permit a side walk or parking space encroachment, referred to as a "Sidewalk Café / Street Patio / Parklet", for the purpose of using the public right-of-way for the service of food and beverages.

WHEREAS, the Building Development Services has reviewed and approved _____ d/b/a/ _____'s Sidewalk Café / Street Patio / Parklet Application and is willing to grant a revocable Sidewalk Café / Street Patio / Parklet permit to _____ d/b/a/ _____, under the terms and condition of this Agreement.

NOW, THEREFORE, the City and Permit Holder agree as follows:

1. Premises. The City grants Permit Holder the right to use the "Right-of-Way", as shown on the attached and incorporated **Exhibit "A"** ("Sketch"), at ("Permitted Property or "Premises") located at _____.

The City makes this grant solely to the extent within right-of-way adjacent to and within the span of the facade of the permitted premises or property.

2. Term. This Sidewalk Café / Street Patio / Parklet Permit and Maintenance Agreement shall expire on _____, 20____. The city may terminate this Agreement at any time by providing written notice to the Permit Holder.

3. Purpose and Conduct of Use. The Premises may be occupied and used by Permit Holder

during the term of this Agreement for the sole purpose of installing, maintaining and repairing a temporary seating area for food and beverage service, consisting of removable fencing, tables, chairs and other necessary facilities as described and depicted in **Exhibit "A"**, attached hereto and incorporated herein by reference. In its use and occupancy of the Premises, Permit Holder shall strictly comply with the following requirements:

- a. The Permit Holder may operate within the Premises from Monday thru Sunday, per the regular business hours of the associated business.
- b. If alcohol will be consumed or sold within the Premises, Permit Holder will be required to supply documentation from TABC providing that the existing TABC license has been extended to include the Premises, as described in **Exhibit "A."**
- c. All requirements, as applicable, contained in the City of Laredo's Parklet Guidebook, attached hereto as **Exhibit "B"** and incorporated herein by reference.
- d. Furnishings shall not extend or overhang outside of the permitted area, constitute a danger to the health or safety of a patron or the public, violate any other ordinance that governs the use of public right-of-way, or interfere with or obstruct the public right-of-way.
- e. The permitted encroachment must maintain accessibility in accordance with the American with Disabilities Act (ADA) and Texas Accessibility Standards (TAS).
- f. The permitted area must abide by all noise ordinance requirements under the City of Laredo Ordinances, Chapter 21, Division 2 - Noise Restricted. All outdoor speakers must face inward towards the Permitted Premises.
- g. No utility connections shall be installed on the Premises.
- h. Permit Holder shall not place or permit any hazardous materials in or about the Premises.
- i. Permit Holder shall not rent or lease the Sidewalk Café / Street Patio / Parklet premises.
- j. Litter and recycle containers shall be provided, and the area shall be cleaned of all litter, debris, waste, and spills after each day's operation by the Permit Holder and at the Permit Holder's expense.
- k. The Sidewalk Café / Street Patio / Parklet will not significantly impact public health, safety, or convenience, or create traffic hazards, or congests, or otherwise interrupt or interfere with the normal conduct or uses and activities in the vicinity.
- l. The Sidewalk Café / Street Patio / Parklet will not be materially detrimental to the surrounding uses in terms of traffic, noise, and other external effects.

4. Street Sidewalk Café / Street Patio / Parklet Improvements. Permit Holder shall have the right to install on the Premises, improvements consisting of removable fencing, tables, chairs and other necessary facilities as described and depicted in **Exhibit "A"** (attached design plan), attached hereto and incorporated herein by reference. Except as specifically allowed by this Agreement, Permit Holder shall not place, build, expand or add to any structure or other items on the Premises, accept for the semi-permanent structures laid out in the Parklet Guidebook for Parklets only. Permit Holder shall be responsible, at its sole expense, for the construction, installation, operation, maintenance, repair and removal of any improvements to the Premises. Permit Holder acknowledges that the area covered by this Permit constitutes a portion of a public right-of-way and agrees that use herein permitted shall be done in compliance with all

laws, codes, ordinances and regulations.

5. Conditions.

- a. **Repair or Relocate Existing Facilities.** Permit Holder must pay all costs required to repair any damage to, or relocate existing Facilities, which are damaged or destroyed or need to be relocated as a result of activities under this Agreement by, or on behalf of Permit Holder.
- b. **Remove or Modify Improvements.** Permit Holder agrees to pay all costs required to remove or modify any Improvements now existing or to be replaced if the City determines that the Improvements need to be removed or modified. At the termination of this Maintenance Agreement, Permit Holder, at its sole expense, will remove all Improvements made to the Premises and restore the public right-of-way to its original condition.
- c. **Maintenance.** Permit Holder shall maintain the Permitted Property by keeping the area free of debris, litter, and waste on an ongoing basis. Further, Permit Holder must properly maintain all Improvements. After any installation or repair of utilities, traffic control devices, or streetlights is complete, Permit Holder must repair or replace any damaged Improvements such that pedestrian safety and accessibility within the right-of-way is reestablished within 48 hours. Permit Holder also agrees that upon termination of this Agreement, that Permit Holder will remove all fixtures from the public right-of-way and return it to its previous condition at Permit Holder's own expense. Permit Holder further agrees that this permit shall not be transferable.

6. Right of Entry. Notwithstanding any other provision of this Agreement to the contrary, the City shall, at all times, have the right to enter the Premises to inspect, improve, maintain, alter or utilize the Premises in any manner City deems necessary. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the City shall not be required to repair or replace any such disturbance. In the exercise of its rights pursuant to this Agreement, Permit Holder shall avoid any damage or interference with any City installations, structures, utilities or improvements on, under, or adjacent to the Premises.

7. Compliance. If Permit Holder fails to comply with its obligation under this Agreement, the City may, at its sole discretion, terminate this Agreement as provided herein or take measures as City determines necessary to bring the Premises into compliance with the terms hereof, and the cost of any such measures shall be paid by Permit Holder.

8. Insurance. Permit Holder shall hold harmless the City and its officials, agents, and employees against any expense or liability for personal injury, death, or damage to any property wherever situated, arising from Permit Holder's use of any portion of the above described right-of-way.

Permit Holder shall procure, prior to use of any portion of the right-of-way under this Maintenance Agreement, and maintain throughout the term of this Agreement:

Proof of liability insurance of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for General Liability, including premises, contractual, personal and advertising injury, product, completed operations and \$5,000 per person medical payments.

If alcohol is sold on the Premises, proof of an additional \$2,000,000 in Liquor Liability Insurance is required.

If operations are within City premises such as a park, auto liability and workers' compensation may be required, if applicable.

The policies shall name the applicant business as an insured party and the City of Laredo shall be added as an additional insured with a waiver of subrogation in favor of the City, in all applicable policies.

Certificate of insurance shall include the certificate holder as follows:

City of Laredo
1102 Bob Bullock Loop
Laredo, TX 78043

The City reserves the right to review insurance requirements of this section during the term of this Agreement and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or the Permit Holder, or any other reasonable basis.

The City shall be entitled, upon request and without expense, to review certified copies of policies, guidelines, and all endorsements thereto and to make any reasonable requests for deletion or revision or modification of particular policy terms, guideline terms, conditions, limitations or exclusions, except where policy or guideline provisions are established by law or regulation binding upon either the parties hereto or the underwriter of any such policies.

Permit Holder must ensure that the Director of the Building Development Services receives written notice of any cancellation, non-renewal, reduction, restriction or other limitation of the insurance policy. This notice is requested to be provided 30 days before any of the above actions are taken on the insurance policy. A substitute certificate of insurance evidencing equivalent substitute insurance must be received by the Director of the Building Development Services prior to the date shown on the notice. All certificates must affirmatively show that the City of Laredo is named as an additional insured.

9. Termination by City. Subject to a thirty (30) day prior written notification to Permit Holder, this Agreement is revocable by the City if:

- a. The Improvements, or a portion of them, interfere with the City's rights in the right-of-way;
- b. Use of the right-of-way area becomes necessary for a public purpose, including but not

limited to instances where necessary to implement capital improvements, utility projects, address threats to public health or safety, or to mitigate adverse impacts to adjacent property owners and businesses caused by the improvements or use for which the permit is granted;

- c. The Improvements, or a portion of them, constitute a danger to the public, which the City deems not to be remediable by alteration or maintenance of such Improvements;
- d. Despite written notice to Permit Holder, maintenance or alteration to the Improvements of an identified issue has not been made;
- e. Permit Holder fails to provide Certificates of Insurance;
- f. Permit Holder fails to keep the permitted area clean of all litter, debris, waste, and spills after each day's operation;
- g. Permit Holder fails to properly and timely maintain the Improvements as set out in this Agreement;
- h. Permit Holder fails to provide documentation from TABC that the existing TABC license has been extended to include the premises as described in Exhibit "A";
- i. Permit Holder fails to repair or replace any damaged Improvements such that pedestrian safety and accessibility within the right-of-way is reestablished within 48 hours;
- j. Permit Holder fails to follow the protocols, practice, and guidelines, as applicable to their Permit; and/or
- k. Permit Holder fails to comply with the terms and conditions of this Agreement.

10. Assignment. Permit Holder shall not assign sublet or transfer its interest in this Agreement under any circumstances.

11. Notice. Notice may be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand delivered or on the third day after deposit if sent certified mail.

12. Indemnity and Release.

A. PERMIT HOLDER COVENANTS AND AGREES TO INDEMNIFY, AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, CONTRACTORS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, CAUSES OF ACTION OR SUITS FOR PROPERTY DAMAGE (INCLUDING DAMAGE TO IMPROVEMENTS) OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, INCLUDING ALL COSTS, ATTORNEYS' FEES, EXPERT FEES OR OTHER RELATED COSTS AND FEES TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF THE IMPROVEMENTS AND USES GRANTED HEREUNDER, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES OF THE PERMIT HOLDER; AND THE PERMIT HOLDER HEREBY ASSUMES ALL LIABILITY AND

RESPONSIBILITY FOR SUCH CLAIMS OR SUITS. PERMIT HOLDER SHALL LIKEWISE ASSUME ALL LIABILITY AND RESPONSIBILITY AND SHALL INDEMNIFY THE CITY FOR ANY AND ALL INJURY OR DAMAGE TO THE PERMIT HOLDER'S PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF PERMIT HOLDER, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR TRESPASSERS.

B. PERMIT HOLDER HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF THE CITY, ITS EMPLOYEES, AGENTS, CONTRACTORS, LESSEES OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CITY'S OWNERSHIP, USE OR MAINTENANCE OF THE SIDEWALK CAFÉ / STREET PATIO / PARKLET AREA AND THE PERFORMANCE OF ANY MAINTENANCE, CONSTRUCTION, RECONSTRUCTION, REPAIR, RELOCATION, EXPANSION, OR REMOVAL OF ANY OF THE CITY'S FACILITIES ON, ABOVE OR UNDER THE SIDEWALK CAFÉ / STREET PATIO / PARKLET AREA. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE PERMIT HOLDER, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY.

This agreement shall take effect upon the acceptance and satisfaction of the terms hereof by the named applicants for this agreement, as indicated by his/her signature hereon.

CITY OF LAREDO, TEXAS

PERMIT HOLDER:

Joseph Neeb
City Manager
City of Laredo

Date

Signature
Name: _____
d/b/a: _____
Title: _____

Date

ATTESTED:

Jose A. Valdez
City Secretary
City of Laredo

APPROVED AS TO FORM

Doanh "Zone" Nguyen
City Attorney
City of Laredo