



Downtown Sidewalk Dining Renewal Application

Section 1. Permittee - Business Owner Information

Business Owner(s) Name(s):

Business Name:

Business Address:

Mailing Address:

Primary Contact Name:

Email:

Phone:

24-Hour Emergency Phone:

Section 2: Property Owner Information and Permission to File

Property Owner(s) Name(s):

Phone:

Property Owner(s) Mailing Address:

Email:

The undersigned, as the legal owner or authorized agent of the owner of real property ("Owner") designated for use, as specified above, hereby consents to Permittee's use of the outdoor space adjacent to Owner's property at the specified location, in compliance with the Permit requirements and authorize the filing of parklet permit application with the City of Los Altos.

Property Owner Signature

Name

Date

Section 3: Business Information

Current Lease Expiration Date:

Business License Number:

Days and Hours of Operations:

Type of Business: ☐ Restaurant ☐ Bar, Winery, Brewery ☐ Other:

Section 4. Sidewalk Dining Operational Information

Will alcohol be served? ☐ Yes ☐ No If yes, what type? (check all that ☐ Beer ☐ Wine ☐ Hard Liquor apply)

The California Department of Alcoholic Beverage Control (ABC) regulates alcohol service on premises adjacent to a business. If your business serves alcohol, please attach a copy of your ABC Authorization.

CITY OF LOS ALTOS
CITY REMOVAL & MAINTENANCE AGREEMENT

This SIDEWALK DINING PROGRAM PERMIT AND AGREEMENT (this “Agreement”) is entered into as of _____, 202__ (the “Effective Date”), by and between the City of Los Altos (the “City”) and _____ (“Permittee”) with respect to the following facts:

- A. Permittee operates a dining facility within the City.
- B. To facilitate outdoor dining, Permittee desires to locate displays, furniture, and other property (“Outdoor Property”) in front of Permittee’s dining facility on sidewalks within the public right-of-way (the “ROW”).
- C. The City desires to grant Permittee the privilege of using the ROW on terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Permittee may locate outdoor dining furniture within the ROW subject to the requirements of the City’s Dining area Program Guide, which may be amended at any time by the City in its sole and absolute discretion with or without notice. The precise location and arrangement of such outdoor dining furniture shall be in accordance with the approved plans submitted by Permittee with its application for this Agreement, as shown for reference in **Exhibit A** hereto. City staff may, from time to time in their sole and absolute discretion, require changes to these approved plans as may be necessary or conducive to the health, safety, or convenience of the general public.
- 2. Permittee’s use of the ROW pursuant to this Agreement is conditioned as follows:
 - a. Permittee shall comply with all applicable laws in its operations under this Agreement, including, without limitation, the Americans with Disabilities Act and other applicable disability access laws.
 - b. Permittee shall hold harmless, indemnify, and defend (with counsel reasonably acceptable to the City) the City, its elected and appointed officers, agents, employees, and volunteers from all damages, costs, and expenses whatsoever in law or equity (including, without limitation, reasonable attorneys’ fees), arising from Permittee’s operations under this Agreement, unless caused by the City’s own gross negligence or willful misconduct. Without limiting the generality of the foregoing, Permittee’s indemnification and defense obligations extend to, (i) claims for any property damage or personal injury arising from an alleged dangerous condition of any public property used by Permittee in its operations under this Agreement; (ii) claims for any property damage or personal injury arising from any condition of public or private property created or maintained by Permittee in connection with its operations under this Agreement; and (iii) claims under the Americans with Disabilities Act or other applicable disability access laws that arise in connection with Permittee’s operations under this Agreement. The obligations under this Paragraph shall survive the termination of this Agreement.

- d. Permittee shall obtain and maintain insurance in amounts and on such terms and conditions as set forth in **Exhibit B** hereto.
 - e. Permittee shall not cause or allow its Outdoor Property to cause any public or private nuisance or otherwise to result in any adverse effect on nearby public or private property. Such Outdoor Property, including any railings or similar enclosures, shall be appropriately designed, executed, and maintained to be complementary to the appearance and operation of the surroundings. Outdoor Property shall be made generally from metal or wood, but not from plastic. Signs shall be limited to restaurant menu boards and shall not simply advertise a business address or phone number.
 - f. Permittee shall keep the ROW and Permittee's Outdoor Property in a neat, clean, safe, and sanitary condition, free from debris and food and drink stains.
3. Permittee expressly agrees and understands that the City has no duty to ensure that Permittee's operations will comply with applicable laws. If the City does or has done anything to ensure that Permittee's operations will comply with any applicable laws, including, without limitation, the Americans with Disabilities Act or other disability access laws, it is agreed and understood that the City has done so exclusively for its own benefit and for the benefit of the general public, and Permittee shall not rely thereon. Permittee is encouraged to have its operations under this Agreement inspected by a certified access specialist.
 4. This Agreement constitutes a nonexclusive license and may be revoked at any time by the City with or without cause and without prior notice. Permittee acknowledges that by entering into this Agreement and by making use of the ROW, Permittee is not acquiring any estate whatsoever in the ROW or any other public property.
 5. Unless terminated sooner by the City, this Agreement shall terminate on June 30, 202___. This Agreement shall also terminate automatically if Permittee ceases its restaurant operations at the subject location for a period of 30 days or more. Unless the City in its sole and absolute discretion agrees to enter into a subsequent permit and agreement with Permittee for use of the ROW, immediately upon the termination of this Agreement Permittee shall remove its Outdoor Property from the ROW and shall cease its use of the ROW for outdoor dining.
 6. A breach by Permittee of the terms and conditions of this Agreement shall constitute both a breach of contract that may be enjoined by a court of competent jurisdiction and a public nuisance that may be abated pursuant to Part 3 of Division 4 of the California Civil Code and Chapter 11.10 of the Los Altos Municipal Code. These remedies shall be cumulative of all other remedies available to the City at law or in equity. The City shall be entitled to recover from Permittee any attorneys' fees, legal costs, or other expenses incurred in enforcing this Agreement.
 7. PERMITTEE ACCEPTS THE USE OF THE ROW **AS-IS**. THE CITY MAKES NO REPRESENTATION WHATSOEVER ABOUT THE SUITABILITY OF THE ROW FOR THE USES ALLOWED UNDER THIS AGREEMENT. IN CONSIDERATION OF THE CITY'S WILLINGNESS TO ALLOW PERMITTEE TO USE THE ROW, PERMITTEE EXPRESSLY ASSUMES ALL RISK OF LOSS OF EVERY KIND AND NATURE ARISING FROM OR IN CONNECTION WITH SUCH USE.
 8. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be modified without the City's written consent. No waiver of this Agreement shall be valid unless in writing, and no waiver shall operate as a continuing

waiver. There are no third-party intended beneficiaries of this Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original. Electronic signatures may be used in place of original signatures.

9. It is agreed and understood that the paramount purpose of this Agreement is to protect the City and its taxpayers from liability in connection with Permittee's operations under this Agreement. Any ambiguity in this Agreement shall be construed in the manner that best achieves its purposes, and this Agreement shall not be construed against its drafter. This Agreement shall be of no further force or effect if any obligation of Permittee hereunder is found by a court of competent jurisdiction to be invalid or unenforceable. Notwithstanding the foregoing, and to the maximum extent allowed under applicable law, if any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, Permittee's indemnification, defense, and insurance obligations hereunder shall nonetheless be fully enforceable and shall survive the termination of this Agreement. It is further agreed and understood that this Agreement confers an encroachment permit on Permittee, and this Agreement shall be construed not only as a contract, but also as a regulatory permit. Any fees paid in connection with this Agreement have been paid to defray the cost of permit processing.
10. Permittee agrees and understands that it may be subject to payment of property taxes for use of the City's ROW and shall indemnify and hold harmless the City from any and all property taxes that may be imposed against the City arising from or relating to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PERMITTEE

CITY

By: _____

By: _____

EXHIBIT B INSURANCE PROVISIONS

Permittee shall provide its insurance broker(s)/agent(s) with a copy of this Agreement, including this Exhibit B, and shall request that certificates of insurance and required endorsements be provided to: **Sidewalk Dining Program Administrator, City of Los Altos, 1 N. San Antonio Road, Los Altos, CA 94022.** Coverage shall be at least as broad as follows:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, with limits no less than **\$1,000,000 or \$2,000,000 aggregate** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following:

- a. Bodily Injury and Property Damage
- b. Personal Injury/Advertising Injury
- c. Premises/Operations Liability
- d. Products/Completed Operations Liability
- e. Aggregate Limits that Apply per Project
- f. Explosion, Collapse and Underground (UCX) exclusion deleted
- g. Contractual Liability with respect to this Agreement
- h. Broad Form Property Damage
- i. Independent Consultants Coverage

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

2. **Umbrella or Excess Liability: Umbrella or Excess Insurance.** If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. CONSULTANT shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the CITY indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
3. The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the umbrella or excess policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. If CONSULTANT maintains broader coverage, umbrella or excess coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage, umbrella or excess coverage and/or the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and any other coverages shall be available to the CITY.

Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status. The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy, with endorsements under CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage, with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage. For any claims related to this contract, the APPLICANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the APPLICANT's insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the CITY.

Waiver of Subrogation. APPLICANT hereby grants to CITY a waiver of any right to subrogation which any insurer of said APPLICANT may acquire against the CITY by virtue of the payment of any loss under such insurance. APPLICANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the APPLICANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

Verification of Coverage. APPLICANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the APPLICANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances. CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.