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**TEMPORARARY OUTDOOR BUSINESS EXPANSION ENCROACHMENT AGREEMENT**

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**Address:**

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This temporary outdoor business expansion encroachment agreement is made by and between the City of San Diego, a Municipal Corporation [City] and the duly authorized representative of

In consideration of the grant of permission by the City of San Diego to install and maintain the following temporary outdoor business expansion in the public right-of-way:

Check box  Sidewalk Café on Sidewalk

Check box  Pedestrian Plaza in Parking Space

The temporary outdoor business expansion is further described in Exhibit A, incorporated by reference and attached hereto, over and across the public right of way (“ROW”). Applicant covenants and agrees with the City of San Diego as follows:

- (a) The temporary outdoor business expansion shall be installed and maintained in a safe and sanitary condition at the sole cost, risk, and responsibility of the Applicant.
- (b) The temporary outdoor business expansion shall not be placed in any manner that blocks or hinders access to a storm water drainage structure. The applicant shall keep the temporary outdoor business expansion free of debris and grime to prevent pollutants/contaminants from entering the adjacent storm drain system. The applicant shall control any non-storm water discharges from the facilities in accordance with Chapter 4, Article 3, Division 3 of the San Diego Municipal Code.
- (c) With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, damages, expenses or payments that the City may sustain or incur in any manner for damages or injuries, including those to any person (including disability, dismemberment, illness damages, or death) or property, arising from, related to, or resulting from the construction, maintenance, state of use, repair, or presence of the temporary outdoor business expansion, the Applicant agree to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against any and all liability.
- (d) The Applicant’s duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole or active negligence or willful misconduct of the City, its agents, officers, or employees. The indemnity coverage extended herein shall apply to the City only if its actions are deemed secondary and passive and the City was in no way actively negligent. Nothing contained in this section shall be construed to alter, modify or otherwise waive or affect the rights, remedies, contractual provisions, clauses, covenants or duties not expressly stated herein, all of which are reserved to the parties. Applicant further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

- (e) If City requires relocation or removal of all or part of Enhanced Improvements, City shall give the Applicant ten (10) calendar days' written notice. The Applicant shall thereafter remove the temporary outdoor expansion. The Applicant shall restore the discrete area where the expansion was located within the ROW to its conditions as they existed on the date of execution of this Agreement, subject to normal wear and tear. The Applicant agrees to pay any and all costs to relocate or remove all or part of the Enhanced Improvement. The removal of all Enhanced Improvements shall cause termination of Agreement by the City.
- (f) After social distancing is no longer required, as determined by the City, the City shall give the ten (10) calendar days' written notice to remove the temporary outdoor business expansion. Applicant shall thereafter remove the temporary outdoor business expansion. If the Applicant fails to begin removal of all or part of the temporary outdoor business expansion, the City may cause the work to be done, and the costs thereof shall be the responsibility of the Applicant. The City's request to remove the expansion shall not be arbitrary or without reason.
- (g) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the temporary outdoor business expansion.
- (h) The Applicant shall maintain a policy of \$ 1 million liability insurance, with the City of San Diego and its respective elected officials, officers, employees, agents, and representatives named as additional insureds, in an amount approved by the City, that will protect the City from any potential claims which may arise from the temporary outdoor business expansion.
- (i) The Applicant obligations under this Agreement shall also apply to their successors-in-interest.
- (j) In the event the City is required to place, replace or maintain a public improvement where the Applicant has constructed the temporary outdoor business expansion, the Applicant shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the temporary outdoor business expansion.
- (k) Applicant shall, at Applicant's sole cost and expense and to the City's satisfaction, maintain the temporary outdoor business expansion in good order and repair and in a safe, healthy, and sanitary condition at all times that this Agreement is in effect. City shall at no time during the term of this Agreement be required to make any improvements or repairs to the temporary outdoor business expansion. Applicant shall keep the expansion area free and clear of rubbish, debris and litter at all times.
- (l) Applicant shall bear all risks and liability arising out of, or in any manner directly or indirectly connected with Applicant's occupancy, use, development, maintenance, and restoration of the temporary outdoor business expansion and any damages to the expansion resulting directly or indirectly thereby.
- (m) By entering into this Agreement, the City is not obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to Applicant's occupancy, use, development, maintenance, or restoration of the temporary outdoor business expansion. Discretionary actions include without limitation, rezoning, variances, environmental clearances, and all other required governmental approvals.
- (n) Applicant shall not assign any rights granted by this Agreement or any interest in this Agreement without City's prior written consent, which not may be unreasonably withheld or delayed.
- (o) Applicant shall, at its sole cost and expense, comply with all applicable rules, regulations, ordinances, laws and direction of all City, county, state and federal governing authorities.

- (p) Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between City and Applicant or between City and any other entity or party, or cause City to be responsible in any way for the debts or obligations of Applicant or any other party or entity.
- (q) This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement and Applicant's occupancy, use, development, maintenance, and restoration of the temporary outdoor business expansion.
- (r) Applicant agrees to remove any temporary outdoor business expansion encroachment at their sole cost and expense due to the construction of any previously permitted work in the right-of-way. Permission to reinstall any temporary outdoor business expansion encroachment is permitted after construction is completed
- (s) Any notice required to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid and addressed as follows:

THE CITY OF SAN DIEGO  
 Deputy City Engineer – Engineering Division  
 Development Services Department  
 1222 1<sup>st</sup> Ave, MS 501  
 San Diego, CA 92101

(t) Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

\_\_\_\_\_  
 (Applicant Signature)

\_\_\_\_\_  
 (Print Name & Title)

\_\_\_\_\_  
 (Company/Organization Name)

\_\_\_\_\_  
 (Date)

Permit No.: \_\_\_\_\_

CITY OF SAN DIEGO APPROVED:

\_\_\_\_\_  
 (Engineer Signature)

\_\_\_\_\_  
 (Print Name)

\_\_\_\_\_  
 (Date)