

Business Name:
Address:
Business Contact:
Business Contact Phone:
Business Contact Email:

IN-STREET OUTDOOR BUSINESS FACILITY LICENSE AGREEMENT
Ordinance No. 6055

Limitation Notice. This In-Street Outdoor Business Facility License Agreement (OBFLA) is for the limited, revocable license to use of City property subject to the terms and conditions hereof. This OBFLA does not create a property, possessory, easement, or leasehold interest in City property. This OBFLA is limited to the term of Ordinance No. 6055 or any successor ordinance governing outdoor business facilities.

Date of Issuance - Term. This OBFLA is issued as of _____. The initial term of this OBFLA is until December 31, 2023 unless the revoked or extended as provided herein.

Licensee. This OBFLA is issued to _____, the owner and operator of the business known as _____, located at _____.

Authorized Use Area. This OBFLA authorizes the use of the roadway area on State Street in front of the business at _____, in the location as shown on the site plan attached to this OBFLA as Exhibit A (“Site Plan”).

(Applicable if box checked)[] The use area includes frontage of adjacent businesses and Licensee has obtained the written approval from adjacent business owner(s) and property owner(s), copies of which are attached to this OBFLA.

License Fee. The monthly license fee for this OBFLA is _____. The license fee shall be paid to the City of Santa Barbara on the date of issuance and each monthly renewal of the date of issuance. The fee must be delivered to _____ on or before the due date.

Terms and Conditions. This OBFLA is subject to all the following terms and conditions:

1. Licensee shall use the Outdoor Business Facility in compliance with all applicable laws, including Ordinance No. 6055 and the design requirements of the *Requirements for Operating a Business on the Temporary State Street Promenade* as amended by City Council on September 20, 2022.
2. Licensee shall comply with applicable requirements of California law within the Outdoor Business Facility. The Outdoor Business Facility shall be maintained conformity with this OBFLA. Any modifications to the Outdoor Business Facility must be approved in advance by the City’s State Street Plaza and Parking Manager or his or her designee.
3. Licensee must comply with all accessibility requirements of state and federal law, including the Americans with Disability Act. Failure to do so will result in revocation

of the Outdoor Business Facility License Agreement. If the OBFLA is revoked the Outdoor Business Facility must be permanently removed within 48 hours at owner expense. Licensee is encourage to obtain an inspection by a Certified Access Specialist (CASp) and to implement any CASp recommendations for compliance with applicable accessibility laws.

4. Licensee may serve alcoholic beverages within the Outdoor Business Facility to the extent authorized by permit issued by the Alcoholic Beverage Control Board.
5. The Outdoor Business Facility authorized by this OBLFA are shown on the Site Plan. The Licensee shall obtain final inspection and approval of the City's State Street Plaza and Parking Manager or his or her designee before commencing use of the Outdoor Business Facility. The Outdoor Business Facility shall be maintained in a clean and safe manner at all times. Improvements shown on the Site Plan are temporary under Ordinance No. 6055 and may remain only until December 31, 2023. Licensee agrees to remove the Outdoor Business Facility and leave the licensed area in good and clean condition on or before December 31, 2023, unless otherwise authorized by an extension of this OBLFA.
6. A copy of the Outdoor Business Facility Agreement shall be kept on the premises at all times.
7. Termination: The City retains the right to revoke the Outdoor Business Facility License Agreement upon 24 hours written notice to Licensee, regardless of conformance with these provisions. Within 48 hours of the termination of the Outdoor Business Facility License Agreement, the license area will be returned to the condition existing prior to the placement of the outdoor business facility or other condition acceptable to the City Engineer.
8. Upon expiration or revocation of this OBFLA, Licensee shall cease all operations within the Outdoor Business Facility and will remove all improvements, furnishings, fixtures, and equipment from the Outdoor Business Facility and restore the surface to a condition that matches the adjacent right-of-way unless otherwise directed by the City Engineer in writing. The removal and restoration work must be completed and a request for inspection by the City Engineer made within 15 days of the date of expiration or revocation of the OBFLA.
9. If Licensee does not comply with the requirements of paragraph 8, above, then City is authorized, to take possession of and remove all improvements, furnishings, fixtures, and equipment from the Outdoor Business Facility and to restore the surface to a condition that matches the adjacent right-of-way. Licensee shall pay all costs incurred by the City under this paragraph 9. Licensee expressly waives any claim for liability or damage to Licensee's property resulting from the City's exercise of its rights under this paragraph 9.
10. Licensee shall deposit the amount equivalent to one month's license fee with the City to secure faithful performance of Licensee's obligations under paragraph 8.

City may use the deposit to offset City's costs under paragraph 9. City will return the deposit, without interest, within 15 days of verification by the City Engineer that Licensee has faithfully performed Licensee's obligations under paragraph 8.

11. Licensee shall defend, indemnify, and hold harmless, City and City's officers, employees, contractors, and agents from and against any loss, costs, damage, expense (including all costs of investigation, defense and attorneys' fees), claim or liability arising out of, or in connection with the issuance or exercise of this OBFLA or the installation, operation, maintenance, or use of any facilities of Licensee, except for those arising from the sole, active negligence of the City.
12. Insurance Requirements: Please See Exhibit B.
13. Portable Outdoor Business Facilities are those that can be removed with 24 hours' notice and must be removed without the use of mechanized equipment.
14. Licensees with Outdoor Business Facilities considered "portable" may be required from time to time to remove the entire facility from the right-of-way. Failure to remove the facility by requested date will result in loss of privileges to use public right-of-way for commercial purposes resulting in permanent removal of facility by licensee.
15. Licensee may assign this OBFLA to a successor owner/operator of the restaurant that is the subject of this OBFLA only upon execution by the assignee of a written assumption of all the terms hereof. The assignment will not be effective unless and until the written assumption and assignee's certificate of insurance as required by Exhibit B., is filed with the City Engineer. The City Engineer may require the assignee to sign a replacement OBFLA.

Licensee agrees to be bound by the terms and conditions of this OBFLA.

LICENSEE:

By _____
Business Owner

CITY OF SANTA BARBARA

By _____
State Street Plaza and Parking Manager

Dated: _____, 2023

EXHIBIT A

Ordinance No. 6055

Exhibit B

Insurance Requirements

Outdoor Business Facility License Agreement

As part of the consideration of this Outdoor Business Facility License Agreement, Licensee shall procure and maintain, for the duration of the license period, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the installation, possession, occupancy, operation, or use of, and/or obstruction by the Outdoor Business Facility by the Licensee, their guests, agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL)**: Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, property damage, bodily injury, and personal & advertising injury with limits no less than One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. **Workers' Compensation**: As required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

If the Licensee maintains higher coverage limits than the amounts shown above, then the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Liquor Liability

If Licensee will be supplying alcoholic beverages, the CGL policy shall include host liquor liability coverage. If Licensee is using a caterer or other vendor to supply alcohol that vendor must have liquor liability coverage. If Licensee intends to sell alcohol either the Licensee or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.

Self-Insured Retentions

Self-insured retentions (SIR) must be declared to and approved by the City. The City may require the Licensee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or City. Any and all deductibles and SIRs shall be the sole responsibility of

Licensee or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. The City may deduct from any amounts otherwise due Licensee to fund the SIR/deductible. Policies shall NOT contain any SIR provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements for verification.

OTHER INSURANCE PROVISIONS

Each insurance policy shall contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Santa Barbara, its officers, officials, employees, volunteers, and agents, shall be covered as additional insureds on the CGL policy with respect to liability arising out of the installation and ongoing operation of the Outdoor Business Facility performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. Additional Insured coverage shall be provided in the form of an endorsement to the Licensee's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later edition is used). A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.

Primary Coverage

For any claims related to this contract, the Licensee's insurance coverage shall be primary and non-contributory at least as broad as Insurance Services Office Form CG 20 01 04 13 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 Licensee's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be cancelled or subject to reduction without written notice provided to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.

Waiver of Subrogation

Licensee hereby grants to the City a waiver of any right to subrogation which any insurer of Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee 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.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Licensee, its employees, agents, and subcontractors.

Umbrella or Excess Policy

The Licensee may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying CGL insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Licensee's primary and excess liability policies are exhausted.

Verification of Coverage

Licensee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee'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. The 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.

Maintenance/Licensee Improvements

Licensee shall require and verify that all contractors hired by the Licensee maintain CGL with limits no less than One Million Dollars (\$1,000,000) per occurrence and comply with the insurance requirements stated herein for all installation, maintenance, repair, and Licensee improvements performed on the Outside Business Facility. Licensee shall ensure that the City is an additional insured on insurance required from hired contractors.

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.

Coverage Limits Specifications

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Licensee may be held responsible for payment of

damages resulting from Licensee's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

If, for any reason, Licensee fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Licensee resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Licensee, City may deduct from sums due to Licensee any premium costs advanced by City for such insurance.