

**CITY OF OAKLAND**

Department of Transportation  
Right-of-Way Management – Engineering Services  
250 Frank H. Ogawa Plaza - 4th Floor  
Oakland, CA 94612  
Attention: Ishrat Jahan

**CITY OF OAKLAND  
SIDEWALK CAFE MAINTENANCE AGREEMENT**

**RECITALS**

This Sidewalk Café Maintenance Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Oakland (“City”) and \_\_\_\_\_ (“Permittee”).

**WHEREAS**, the City Council adopted Ordinance no. 13682 C.M.S., which amended Chapter 8.62, Section 5.51.150, Section 12.08.250, and Section 17.07.060(c) of the Oakland Municipal Code (OMC) to: (1) create a permanent program for restaurant, retail, café, parklet, and mobile food vending uses of outdoor private spaces and public rights-of-way (Oakland Flex Streets Program) for the purposes of continuing to encourage healthy outdoor use and enjoyment of business; (2) direct City Administrator to return with an Ordinance amending the Master Fee Schedule with a Flex Streets application and annual permit fee to take effect by July 1, 2023 for each component of the program, including an equity fee waiver program for Flex Streets program applicants who meet certain equity criteria; and (3) which adopted appropriate California Environmental Quality Act (CEQA) findings; and

**WHEREAS**, the City Council adopted Ordinance no. 13763 C.M.S., which amended Section 17.103.090 of the OMC to assign the Department of Transportation as the agency responsible for administering Sidewalk Café permitting requirements; and

**WHEREAS**, the Oakland Department of Transportation has created a new Sidewalk Café Permit program to accommodate a sidewalk dining, retail or café area (“Sidewalk Café”) in the public right-of-way, with fees adopted in the Master Fee Schedule, effective July 1, 2023; and

**WHEREAS**, the Permittee is the owner of a business or community-based organization known as \_\_\_\_\_, is the owner of real property, or has gotten permission from the owner of real property to install a Sidewalk Café located at \_\_\_\_\_ (the “Sidewalk Cafe”); and

**WHEREAS**, the Permittee has obtained a Sidewalk Café Permit (\_\_\_\_\_) for installing a Sidewalk Café in the public right-of-way; and

**WHEREAS**, the Oakland Department of Transportation is the public agency with jurisdiction over the Sidewalk Café; and

**WHEREAS**, the permit is for a permissive use only and the issuing of the permit shall not operate to create or vest any property rights in the permittee; and

**THEREFORE**, in consideration of the foregoing and also the benefit received by the Permittee as a result of the City’s approval of the Sidewalk Café, all of which are hereby acknowledged, the Permittee hereby covenants and agrees with the City as follows:

## **SECTION 1: INSTALLATION OF THE SIDEWALK CAFÉ**

The Sidewalk Café shall be installed, operated, and maintained by the Permittee in accordance with Oakland Municipal Code Chapter 8.62 and Section 12.08.100 and any other requirements thereto which have been approved by the City in conformance with appropriate City ordinances, guidelines, criteria and other written direction.

## **SECTION 2: OPERATION & MAINTENANCE RESPONSIBILITY**

This Agreement shall serve as the signed statement by the Permittee accepting responsibility for installation, removal, operation, and maintenance of the Sidewalk Café as set forth in this Agreement until the responsibility is legally transferred to another entity.

## **SECTION 3: CONDITIONS OF USE OF THE SIDEWALK CAFÉ**

- 1) The width of the Sidewalk Café shall not exceed the width of the frontage of the restaurant's property.
- 2) Permittees shall not obstruct a clear pedestrian path of at least six (6) feet at any time; provided, however, in areas of higher pedestrian traffic or activity, or in conditions that suggest the need for additional clearance, the Transportation Director may require a clear pedestrian path greater than six (6) feet. Any such clearance area must be free of all obstructions such as trees, parking meters, utility poles, fire hydrants, and similar encroachments in order to allow for adequate pedestrian movement. All services and patron activity provided within the designated public right-of-way shall occur within the designated area and shall not encroach within the minimum clearances for pedestrian passage at any time.
- 3) The Sidewalk Café shall be removed at the close of each business day and the sidewalk restored outside of operating hours.
- 4) Permittee shall be responsible for keeping the Sidewalk Café clean and free of debris, grime, pests and vectors. The Permittee shall continually bus tables and provide a final cleanup at the end of the business day that will include litter pickup one hundred (100) feet in each direction from the site.
- 5) The Sidewalk Café shall not interfere with any utilities or other facilities such as utility poles, fire hydrants, signs, parking meters, mailboxes, manhole covers, utility covers, curb ramps, pedestrian push button and/or benches within the sidewalk or within the public right-of-way.
- 6) The improvements shall not interfere with or obstruct any required clearance for maneuvering around any building, driveway, or other entrances or exits.
- 7) The improvements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.
- 8) The Sidewalk Café must be accessible to individuals with disabilities per the Americans with Disabilities Act (ADA) Standards for Accessible Design. People with physical disability who use mobility aids such as wheelchairs, canes, etc. must be able to use the Sidewalk Café and access all the primary features of the Sidewalk Café. Sidewalk Cafés shall not interfere with the use of designated accessible parking zones; passenger loading zones; curb ramps; AC Transit bus stops or other access features of the public right-of-way.
- 9) The Sidewalk Café shall not interfere with or obstruct required ingress and/or egress for adjacent buildings set forth in the building code or otherwise.

- 10) No vending machines, carts, or objects for the sale of goods shall be permitted within the Sidewalk Café.
- 11) Advertising is prohibited in the sidewalk café.
- 12) The Permittee shall not allow any amplified music, whether live or recorded, and speakers, microphones, televisions or other audio or video devices within the right-of-way and/or the Sidewalk Café.
- 13) The Permittee shall provide the City free and complete access to the right-of-way in which the Sidewalk Café has been permitted for maintenance and repair of the right-of-way, and the Permittee shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the right-of-way.
- 14) The Permittee shall maintain the right-of-way area in a good and safe condition as long as the Sidewalk Café Permit remains in effect. Permittee understands and acknowledges that, should the Permittee, its agents, employees, vendors, or patrons, damage and/or disturb the right-of-way and/or the Sidewalk Café area, the Permittee shall be solely responsible for repairing the destroyed/disturbed right-of-way to the City's satisfaction.

#### **SECTION 4: FAILURE TO MEET THE SIDEWALK CAFÉ CONDITIONS OF USE**

In the event the Permittee fails to install, operate, maintain, and/or repair the Sidewalk Café in good working order acceptable to the City and in accordance with this Agreement, the City, and/or its authorized agents, employees, or contractors shall provide written notice of a violation to the Permittee. Permittee shall have 72 hours from the date of the City's notice to cure, correct, abate or remedy the violation, unless an emergency in which case the Permittee will act immediately to cure, correct, abate or remedy the violation. If such violation is not corrected within the required time set forth above or such a reasonable time as may be required to remedy the violation the City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary including without limitation, termination of this Agreement. In order to specifically enforce the obligations of the Permittee growing out of the terms of this Agreement, the City may require any such other relief as the City may deem appropriate, in its sole discretion. Notwithstanding the above, if an emergency situation exists, the City may take whatever actions are reasonably necessary in the circumstances to abate the imminent threat. Any and all costs to cure, correct, abate or remedy the default shall be incurred by Permittee in its sole expense and shall be subject to the provisions of Section 5 of this Agreement.

It is expressly understood and agreed that the City is under no obligation to install, operate, maintain, remove, and/or repair the Sidewalk Café and in no event shall this Agreement be construed to impose any such obligation on the City.

In the event the City, and/or its authorized agents, employees, or contractors, pursuant to this Agreement, elects to perform work of any nature, both direct or indirect, including any inspections or any actions it deems necessary or appropriate to remove the Sidewalk Café, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Permittee shall reimburse the City, and/or its authorized agents, employees, or contractors, or shall forfeit any required bond or security deposit, upon demand within thirty (30) days of receipt thereof for the costs incurred by the City, and/or its authorized agents, employees, or contractors, hereunder.

The actions described in this section are in addition to and not in lieu of any and all legal remedies as provided by law available to the City as a result of the Permittee's failure to install, operate, maintain, remove,

and/or repair the Sidewalk Café.

#### **SECTION 5: INDEMNIFICATION**

The Permittee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City, City Council, and its authorized agents, officers, officials, employees, and contractors (hereinafter collectively referred to as "City") from and against any and all actions, causes of actions, claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims, and payments (including without limitation reasonable fees for attorneys, consultants, experts, and related costs, and City's cost of investigating) (hereinafter collectively referred to as "Lawsuit"), arising from, related to, or connected with the construction, presence, existence, operation, maintenance, repair, replacement, or lack thereof of the Sidewalk Café by the Permittee or the City. In the event of a Lawsuit against City, City shall promptly notify the Permittee. City may elect to participate in the Lawsuit at its sole discretion.

The Permittee acknowledges that it has an immediate and independent obligation to defend City from any and all Lawsuits which potentially falls within this section, which obligation shall arise at the time such Lawsuit is tendered to the Permittee by City and continues at all times thereafter. All of the Permittee's obligations under this section are intended to apply to the fullest extent of the law but shall not apply to any Lawsuits which arise due solely to the gross negligence or willful misconduct of City.

The Permittee's obligations under this section shall survive the expiration or termination of this Agreement.

#### **SECTION 6: NO ADDITIONAL LIABILITY/NO THIRD PARTY BENEFICIARY**

It is the intent of this Agreement to ensure the proper installation, operation, and maintenance of the Sidewalk Café by the Permittee; provided, however, that this Agreement shall not be deemed to create or effect any additional liability not otherwise provided by law of any party for damage alleged to result from or caused by stormwater runoff. This Agreement is not intended to, and does not, create any private rights of action to third parties; no third parties are the intended beneficiaries of this Agreement.

#### **SECTION 7: PERFORMANCE FINANCIAL ASSURANCE**

The Permittee shall maintain fully, in force and effect at all times that the Sidewalk Café occupies the public right-of-way good and sufficient public liability insurance in a face amount not less than \$1,000,000.00 for each occurrence, including contractual liability, naming the City of Oakland, its Councilmembers, officers, agents, employees, and volunteers against any and all claims arising out of the existence of the Sidewalk Café in the public right-of-way, as respects liabilities assume under this permit, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland, and that such certificate shall state that the insurance coverage shall not be canceled or be permitted to lapse without thirty calendar (30) days prior written notice to the City Engineer. Any proof of insurance or notices of cancellation or renewal shall include the Sidewalk Café permit number. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required of the Permittee annually and may require the Permittee to increase the amount of and/or change the type of insurance coverage required.

#### **SECTION 8: TRANSFER OF SIDEWALK CAFÉ**

This Agreement shall not run with the land. If a Permittee wishes to transfer responsibility for the Sidewalk Café, the transferee must apply for a new Sidewalk Café Permit and sign a new Agreement with the City.

#### **SECTION 9: SEVERABILITY**

If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally

found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

#### **SECTION 10: EFFECTIVE DATE AND MODIFICATION**

This Agreement is effective upon the date of execution as stated at the beginning of this Agreement. This Agreement shall not be modified except by written instrument executed by the City and the Permittee at the time of modification. Such modifications shall be effective upon the date of execution. In the event the Permittee elects to remove the Sidewalk Café prior to the date of Sidewalk Café Permit expiration, Permittee shall endeavor to provide a 30-day prior written notice to the City of Oakland.

#### **SECTION 11: MISCELLANEOUS PROVISIONS**

- A. **Governing Law.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action, cause of action, lawsuit, claim, or legal proceeding of any kind related to or arising under this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.
- B. **No Limitations on City's Police (or Authorized) Powers/Utility Companies.** Nothing herein is intended to, nor does, limit the City's police power, nor limit the ability of the City, the San Francisco Bay Regional Water Quality Control Board, the Alameda County Mosquito Abatement District, and/or their authorized agents, employees, and/or contractors from taking any and all actions authorized under Federal, State, or local law, which includes without limitation, the City requiring Permittee to terminate this Agreement, or remove, relocate or accommodate the Sidewalk Café for any City project or use requirements of the public right-of-way, or with respect to any installation, maintenance or relocation work or project of any utilities or other services by companies including, without limitation, Pacific Gas and Electric, East Bay Municipal Utilities District, and telephone, cable and internet services (whether City-related or City authorized, such utility companies shall be given full access, priority and permission to provide services in the Sidewalk Café area, or to any surrounding businesses or residences). Upon termination or expiration of the Sidewalk Café Permit, the Permittee must remove the Sidewalk Café.
- C. **No Waiver.** No failure by the City to insist on the strict performance of any obligation of Permittee under this Agreement or to exercise any right, power, or remedy arising out of a breach hereof, shall constitute a waiver of such breach or of the City's right to demand strict compliance with any terms of this Agreement. No acts or admissions by the City, or any agent(s) of the City, shall waive any or all of the City's rights under this agreement.
- D. **Complete Agreement.** This Agreement represents the complete understandings and agreement of the Parties and no prior oral or written understandings are in force and effect.
- E. **Headings.** The headings in this Agreement are for reference and convenience of the Parties and do not represent substantive provisions of this Agreement.
- F. **Notices.** If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile or email, and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City of Oakland

City of Oakland  
Department of Transportation  
Right-of-Way Management – Engineering Services  
250 Frank H. Ogawa Plaza – 4<sup>th</sup> Floor  
Oakland, CA 94612  
Attention: Transportation Manager

Permittee

Name:  
Address:  
Email:  
Phone No.:

Either party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

\_\_\_\_\_  
Reginald Bazile, OakDOT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Permittee Signature (notarization required)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Permittee Name