

**TEMPORARY RIGHT OF ENTRY LICENSE AGREEMENT**

AGREEMENT NUMBER: \_\_\_\_\_ LICENSEE: \_\_\_\_\_

This Temporary Right of Entry License Agreement (as used herein, "Agreement") is made by and between the City of Chula Vista, a Municipal Corporation ("City") and the business owner/operator at the real property ("Licensee") located at:

\_\_\_\_\_  
(PROPERTY ADDRESS)

As more particularly depicted and described on Exhibit A, in the City of Chula Vista, County of San Diego, State of California.

IN CONSIDERATION of the mutual promises herein contained, City and Licensee agree as follows:

1. Right of Entry. City hereby grants to Licensee, its, employees, and agents (each a "Licensee Party"), a temporary license for right of entry over, under, or across the Public Right-of-Way, as more particularly identified on Attachments A and B (the "PROW"), solely for the uses described in this Agreement.
2. Use of PROW. Licensee, its employees, and agents shall be permitted to use the PROW solely for the following uses:
  - a. Licensee shall access and use the PROW solely for dining, drinking, and circulation, and shall operate only in conjunction with an adjacent eating and/ or drinking establishment.
  - b. Ingress and egress for the purposes stated in Paragraph 2(a) above.

While this Agreement is in effect, the Licensee shall use the PROW only for the purposes identified herein and under the terms and conditions set forth in this Agreement.

3. Maintenance. At all times under this Agreement, Licensee shall maintain the PROW in a safe and sanitary condition at its sole cost, risk, and responsibility.
4. Assumption of Risk. Licensee assumes all responsibility and risk for any damage and/or consequence resulting from Licensee's activities, including without limitation access and use of the PROW and all costs associated therewith. Licensee shall repair any damage to facilities or improvements within the PROW, including without limitation, any damage to the improvements or facilities of the City, arising out of or resulting from Licensee's acts or omissions related to this Agreement, including without limitation, access or use of the PROW.
5. Indemnity, Defense, and Hold Harmless. Licensee shall defend, indemnify, and hold harmless the City and its respective officers, employees, and agents (collectively, the "Indemnitees") for any and all causes of action, liability, claims, judgments, or demands, plus expenses in connection therewith, arising out of or as the result of: (i) this Agreement; (ii) any accident or occurrence related to or in connection with the operation, use, condition, or possession of the PROW; (iii) any Licensee Party's act or omission in or within the PROW; (iv) any Licensee Party's use of the PROW; (v) any Licensee Party's access to the PROW, or (vi) any Licensee Party's presence within the PROW.

Also covered by this Section 7 is liability arising from, related to, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the Indemnitees, or any of them, that may be in combination with active or passive negligent acts or omissions of the Licensee, its employees, agents, or officers, or any third party. The Licensee's duty to defend, indemnify, protect, and hold harmless shall not include claims or liabilities arising from the sole active negligence or sole willful misconduct of the Indemnitees. Licensee further agrees to pay any and all costs the City incurs to enforce the indemnity and defense provision above.

6. Insurance. The Licensee shall maintain a policy of liability insurance in an amount not less than \$1,000,000 for the use and access of the PROW, with the City of Chula Vista and its respective elected officials, officers, employees, agents, and representatives named as additional insureds in a form acceptable to the City Attorney, which will

## Attachment 1

protect the City from any potential claims which may arise from access to the PROW, use of the PROW, or this Agreement.

7. Remove, Relocate, and Restore. The Licensee shall remove and relocate at its sole cost and expense any objects or items within the PROW, as directed by the City Engineer, within four (4) hour notice from the City Engineer or his designee. In the case of an emergency, as determined by the City Engineer, the City Engineer may request that the work be done immediately. Licensee shall restore the PROW to the same or better condition that existed prior to Licensee's access or use of the PROW. If the Licensee(s) fails to remove or relocate any objects or items with the PROW, or restore the PROW, or otherwise comply with the direction of the City Engineer regarding its access or use of the PROW, the City may cause the work to be done, and the costs thereof shall be a lien against Licensee's property.
8. No Additional Rights or Interests. City's execution of this Agreement does not: (i) confer any right or interest on Licensee other than those rights or interests expressly granted to Licensee in this Agreement, as such rights or interests are limited and qualified herein; or (ii) create or impose any obligation whatsoever on City.
9. Regulatory Agencies. This Agreement shall be subject to the regulations of this and any other applicable governmental agencies.
10. Termination. This Agreement may be terminated by the City Manager or designee as a matter of right and without cause or liability at any time upon providing twenty-four (24) hours written notice to Licensee of such termination.
11. Additional Regulations. The Licensee agrees to comply with the regulations as follows:
  - a. Licensee shall access and use the PROW solely for dining, drinking, and circulation, and shall operate only in conjunction with an adjacent eating and/ or drinking establishment.
  - b. Licensee is prohibited from outdoor cooking and preparation of food within the PROW.
  - c. Licensee shall not exceed existing approved capacity.
  - d. Licensee shall ensure social distancing protocols will be adhered to including 6 ft of space between every table and enough space for fluid movement.
  - e. Licensee shall ensure that the sidewalk within the PROW shall be clean and free of litter and debris at all times, that sidewalks remain unblocked, and that general pedestrian access is maintained.
  - f. Licensee shall ensure that trash or storage areas shall not be located on or adjacent to the PROW.
  - g. Licensee shall maintain and operate the PROW so that unsafe conditions are not created for the physically disabled, blind, or partially sighted. Licensee shall comply with the following:
    - i. At least one wheelchair seating space shall be provided for each 20 seats, or portion thereof.
    - ii. Accessible wheelchair spaces shall have a minimum unobstructed maneuverability dimension of 30 inches in width by 48 inches in depth.
    - iii. Access to designated wheelchair spaces shall be provided via an accessible path with not less than 36 inches of unobstructed width.
  - h. Licensee shall ensure that all customers waiting for tables must queue up and there will be temporary markings on the ground to show 6 feet distance. Licensees shall ensure that queues will not interfere with pedestrian access or with adjacent venues. Licensee will monitor that social distancing is maintained and queues markings are followed. If the number of customers waiting exceeds the queue markings, Licensee will advise customers to either come back after an estimated amount of time or take down cell phone numbers to contact them when it's time to return.
  - i. Licensee shall display signage advising customers to maintain social distancing and to advise that consumption of alcohol is limited to the dining establishment boundaries.
  - j. Licensee shall not allow portable restrooms.
  - k. Licensee shall not allow common seating areas or comingling of space.
  - l. Licensee shall not allow product demonstrations, food samplings, live music, entertainment or activities that encourage groups to gather or linger.
  - m. Licensee shall prohibit smoking within the PROW at all times.
  - n. Licensee shall ensure that all operations within the PROW comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.
  - o. Licensee shall ensure that all barriers, seating, and tables shall be removed from the PROW when the business is not open to the public.

## **Attachment 1**

- p. This Agreement is non-transferable.
- q. This Agreement is an insured contract between the City and the Licensee.
- r. Licensee shall not utilize PROW for commercial signage or advertising.
- s. Licensee shall comply, and shall ensure compliance by each Licensee Party, with all applicable federal, state, and local laws in the access, use, maintenance, repair, and operations in or within the PROW, including but not limited to compliance with the Americans with Disabilities Act (ADA).

SAMPLE

Attachments: A – Limits of PROW

**City of Chula Vista**

Approved: \_\_\_\_\_ Denied \_\_\_\_\_

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: City Engineer or designee \_\_\_\_\_

I HEREBY CERTIFY I am the record owner of the Property and that I have read all of this Agreement, this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_

BY: \_\_\_\_\_

Print Name/Title \_\_\_\_\_

\_\_\_\_\_

Licensee's Signature

ISSUE DATE \_\_\_\_\_

SAMPLE