

LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference _____, 2022,
BETWEEN:

[The *City of Vernon*]

(the "Licensor")

OF THE FIRST PART

AND:

Company: _____

Address: _____

City: _____ Province: _____ Postal Code: _____

Telephone number: _____

(the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The Licensor is the registered owner of certain lands situated in Vernon, British Columbia, which are commonly known as public space/ which are used for sidewalk and or parking.
- B. The Licensee operates premises as a business adjacent to a portion of the City Parcel, which adjacent land is legally described as: *(insert full legal description of adjacent land)*

(the "Lands");

- C. The Licensee has requested permission from the Licensor to enter upon and use a portion of the City Parcel as a commercial space adjacent to its business and for the temporary placement of certain fixtures;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the payments, premises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

1. License

The Licensor hereby grants to the Licensee a license to occupy that portion of the City Parcel outlined in heavy black on the drawing attached as **Schedule "A"** (the "License Area"), which may be used for the Licensee's permitted encroachments.

2. Term

The term of this License shall be for a maximum period of eight months, commencing on _____, 2022 and terminating on October 31, 2022 (the "Term") unless terminated sooner or unless extended pursuant to the terms of this Agreement.

3. Renewal

There are no provisions for renewal of this temporary approval.

4. License Fee

There are no license fees associated with this license.

5. Use of License Area

- a) The Licensee shall use the Commercial Space for the sole purpose of temporarily extending the Licensee's existing business services on the Lands.
- b) The License Area shall not be used for the storage of any materials other than tables, chairs, and umbrellas. Whenever furniture is stored on the License Area, it shall be stored so as not to obstruct passage or be a safety hazard.
- c) The License Area shall not be used for cooking, barbecuing or preparation of food or refreshments or for the storage of food or refreshments without the express permission of the Licensor.
- d) The Licensee shall not do or permit to be done any act or thing, which in the opinion of the Licensor might interfere with, injure, impair the operating efficiency of, or obstruct access to or the use of the City Parcel.
- e) The Licensee shall clean the License Area and the surrounding part of the City Parcel each day, before and after closure of its business, and remove the refuse to a suitable container that belongs to the Licensee.

6. Licensor Access

The Licensor shall have the right at any time to enter upon the License Area for the purposes of inspecting the Works and reconstructing, maintaining, repairing, inspecting, testing or removing any works, utility or road existing at the date of this Agreement in the vicinity of or within the Works. The Licensor shall in undertaking such activities use reasonable efforts to cause its officers, directors, employees, agents and contractors to minimise any disruption or damage to the Works.

7. Removal of Fixtures and Chattels

If the Licensee fails to clear the License Area as required under this License, the Licensor and its agents may remove all fixtures, chattels, improvements, personal property and all other things on the License Area. The Licensor may apply the Deposit or part of it to the cost of such removal and any deficiency will become a debt due and owing to the Licensor by the Licensee upon receipt by the Licensee of the Licensor's invoice for the deficiency.

8. Emergency

The Licensee grants to the Licensor the right at any time, in the case of an emergency or apprehended emergency, without compensation to the Licensee and without notice, to remove, destroy or alter the Works. All necessary and reasonable costs incurred by the Licensor in respect of the Works in alleviating the emergency or apprehended emergency shall be borne entirely by the Licensee and may be recovered by the Licensor from the Deposit.

9. Default

Without restricting the generality of Section 15 of this Agreement, in the event the Licensee:

- a) fails to keep the temporary works or any temporary structure pertaining thereto in good and sufficient repair to the reasonable satisfaction of the Licensor;
- b) fails or refuses to remove the temporary structures to the satisfaction of the Licensor;
- c) fails to maintain the insurance required under this Agreement;
- d) cease to hold a valid license for the operation of the business on the Lands; or
- e) violates any other provision of this Agreement;
- f) The Licensor may deliver a written notice, in the manner provided herein, to the Licensee stating the actions required by the Licensee to remedy the default and if the default is not remedied within the time period specified in the notice, the Licensor may, at its option, do one or both of the following:
 - g) the Licensor may enter onto the License Area to remedy the default, whether by removing the temporary works or otherwise, and all costs of remedying the default shall be paid by the Licensee and the Licensor may apply the Deposit or part of it to the costs of remedying the default; and
 - h) the Licensor may notify the Licensee that the License hereby granted shall cease thirty (30) days after receipt by the Licensee of the notice, in which case the Licensee shall remove the Works and restore the License Area within the thirty (30) day time period.

10. Indemnification

The Licensee hereby indemnifies and saves harmless the Licensor and its members, directors, officers, employees and agents from and against any and all liability, actions, causes of action, claims, debts, suits, losses, costs (including actual costs of professional advisors), demands and harm, whether known or unknown, which the Licensor now has or may at any time suffer in relation to death, bodily injury, property loss, property damage or other loss or damage of any kind whatsoever, arising from or connected with:

- a) the license granted hereby;
- b) the exercise by the Licensee of any right or permission under this Agreement;
- c) the use of the License Area by any person;
- d) the construction, maintenance, existence, use or removal of the temporary works;
- e) the default or breach of the Licensee; or
- f) the wrongful act, omission or negligence of the Licensee, its members, directors, officers, employees, agents, contractors, subcontractors, invitees, customers and others for whom it is responsible.

No provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the Licensor, in favour of any third party, shall relieve the Licensee from liability to the Licensor, whether such liability arises under this Agreement or otherwise.

11. Insurance

The Licensee shall, throughout the Term, secure, maintain and pay for a general liability insurance policy, with a limit of not less than \$5,000,000.00 for use of an on-street parking space or \$2,000,000.00 for use of sidewalk / boulevard, inclusive per occurrence for bodily injury and property damage.

The policy shall include the following coverages, including the Lands, the License Area and related premises: contingent employer's liability, owner's protective liability, broad form property damage on an occurrence basis, including loss of use of property, contractual liability assumed under this Agreement, cross liability and host liquor liability.

The Licensor shall be added as an additional named insured.

The contract of insurance shall include a provision requiring the insurer to give the Licensor thirty (30) days prior written notice before making any material changes in the insurance, or termination or cancellation of it.

The policy shall be underwritten by a responsible insurance company licensed to do business in British Columbia and who meets the reasonable approval of the Licensor.

The Licensee shall furnish the Licensor with a certificate of insurance that the required coverage is in force, including evidence of insurance renewal. Every certificate shall include certification by the insurer that the certificate conforms to the provisions of this section.

Maintenance of such insurance shall not relieve the Licensee of liability under the indemnity provisions of this Agreement.

The foregoing provisions shall not limit the insurance required by law, nor relieve the Licensee from the obligation to determine what insurance it requires for its own purposes.

12. Release

The Licensee hereby releases and forever discharges the Licensor from all manner of claims of any nature whatsoever which may arise by reason of any act or omission, whether or not negligent, of the Licensor pursuant to this Agreement.

The release in this Section 21 and indemnity in Section 19 shall survive any termination of this Agreement.

13. Public Access

Nothing in this Agreement grants to the Licensee exclusive possession of the License Area. The Licensor may determine the rights and entitlement of persons, including members of the public, to come onto, use, pass, trespass and go over the License Area, and such determination shall include the right to set reasonable terms and conditions of use of the License Area as a portion of what is currently a City Parcel open to the public generally.

14. Remedies

Notwithstanding the other remedies provided herein, the Licensor shall retain the right to proceed with the enforcement of any security or indemnity provided in satisfaction of any claim, loss or expense of any kind whatsoever arising under this Agreement or from the License granted herein.

15. Compensation

Notwithstanding any provision of this Agreement, the Licensee shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the temporary works and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the temporary works or by reason of the termination of the License.

16. Interest in Land

This Agreement grants no interest in land in the License Area to the Licensee.

17. Further Assurances

The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

18. Consents

Any approval, permission or consent of the Licensor herein required shall be at the sole discretion of the Licensor.

19. Waiver

Waiver by the Licensor of any default by the Licensee shall not be deemed to be a waiver of any subsequent default.

20. Notice

All notices, demands and payments to be given hereunder shall be in writing and may be delivered by hand, sent by facsimile transmission, or may be forwarded by first-class prepaid registered mail to the addresses set forth on page 1. If notice is given by the Licensee to LICENSOR, it shall be to the attention of the [*e.g. City Corporate Officer*]. Any notice delivered by hand or sent by facsimile transmission shall be deemed to be given and received the day after it is sent. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of three (3) days after it is posted, addressed in accordance with the addresses on page 1, or to such other address or addresses as may from time to time be advised in writing by the parties, provided that if

there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective if actually delivered.

21. Interpretation

Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or feminine or the body politic or corporate as the context requires.

22. References

Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, contractors, officers, directors and invitees of such party, where the context so permits or requires.

23. Severance

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and decision that it is invalid shall not affect the validity of the remainder of this Agreement.

24. Enurement

This Agreement shall enure to the benefit of and be binding on the parties hereto notwithstanding any rule of law or equity to the contrary.

25. Assignment

- a) This License does not run with the Lands. The Licensee shall not be entitled to transfer or assign this Agreement, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the License Area, without the written consent of the Licensor, for which consent the Licensor will be entitled to receive \$500. Prior to transferring, assigning, giving or in any way disposing of the Lands or the business conducted on the Lands, the Licensee shall advise the prospective transferee of the existence of this Agreement and, as a condition of the transfer, cause the transferee to become a party to this Agreement in the place of the Licensee.
- b) This Agreement is assignable by the Licensor upon giving notice of such assignment to the Licensee.

26. Agreement in Effect

This Agreement shall remain in full force and effect until terminated in accordance with the provisions contained herein and the Works are removed from the License Area, at which time the parties shall no longer have any obligations to each other pursuant to this Agreement save the Licensee's obligations to indemnify and release the Licensor.

27. Previous Agreement

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

28. Time of Essence

Time is of the essence of this Agreement

29. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

30. Reference to Statutes

Any reference to a statute or bylaw refers to it as amended or replaced from time to time.

IN WITNESS WHEREOF the

parties have hereunto executed this Agreement on the date and year written below.

DATED the ____ day of _____ 20__

EXECUTED on behalf of *the City of Vernon*

by its authorized signatories :)

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Authorised Signatory

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c/s

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Authorised Signatory

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DATED the ____ day of _____ 20__

EXECUTED on behalf of

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by its authorized signatories:)

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Authorised Signatory

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c/s

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Authorised Signatory

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[The seal is not required to be affixed to the agreement.]

SCHEDULE A

License Area

[ATTACH SKETCH PLAN]