**CITY OF BURLINGTON**

**MAKING SPACE FOR RESTAURANT AND RETAIL RECOVERY PROGRAM**

**PERMIT TERMS & CONDITIONS**

To obtain and maintain a permit for the requested use of the public right-of way under the City of Burlington Making Way for Restaurant and Retail Recovery Program (“Program”) the following terms and conditions must be followed. If an applicant or permit-holder does not comply with any of these terms or conditions, an application may be denied or a permit may be revoked.

1. **Background.** The City owns the sidewalk, greenbelt, and parking spaces and right-of-way properties that are sought to be occupied as described in the application. Applicant/Permit Holder is either a restaurant or retail business-owner with a pre-existing physical location in proximate distance to City-owned sidewalk, greenbelt, and parking spaces and right-of-way properties. Applicant/Permit Holder has submitted a program application seeking to occupy said space and/or erect and maintain the outdoor seating area or retail goods. “Party” means the City or Applicant/Permit Holder, and “Parties” means both the City and Applicant/Permit Holder. “Program” means the City of Burlington’s Making Way for Restaurant and Retail Recovery Program.
2. **Permit Effective Date.** Any permit issued by the City for this Program shall not be valid or enforceable until the Effective Date. “Effective Date” means the date on which this application is approved and signed by the City as shown on the signature page.
3. **Term of Permit.** Any permit issued by the City for this Program shall commence on the Effective Date and expire as designated by program guidelines.
4. **Termination.** Any permit issued by the City for this Program shall may be terminated as set forth herein. Upon termination, Applicant/Permit Holder shall remove—at its own expense—all objects, materials, and other obstructions placed on the City property. If Applicant/Permit Holder refuses to promptly remove such obstructions, the City may remove all such obstructions and the Applicant/Permit Holder shall be liable for all expenses of such removal.
5. **Public Health & Safety Violations.** The City shall have the exclusive right to immediately terminate any permit issued by the City for this Program should Applicant/Permit Holder or a subsequent permit holder fail to comply with any local, state, federal orders, directives, regulations, guidance, or advisories relating to a public health emergency, the COVID-19 epidemic, or other public health and safety concerns. This includes complying with requests of City personnel.
6. **Discontinued Use.** The City shall have the exclusive right to immediately terminate any permit issued by the City for this Program should Applicant/Permit Holder or a subsequent permit holder discontinue use of the City property.
7. **Breach.** The City shall have the exclusive right to terminate this any permit issued by the City for this Program if Applicant/Permit Holder is in breach of these terms and conditions. The City shall provide 7 days written notice in advance of the termination date.
8. **Accuracy of Application**. Applicants warrants that all information submitted or hereafter supplied by or on behalf of Applicant/Permit Holder with respect to the application for this Program is and will be accurate and complete in all material respects. Failure to provide accurate and complete information may result in termination of the permit.
9. **Maintenance.** Applicant/Permit Holder shall maintain the outdoor space, and any affiliated structure or seats, to the satisfaction of the City, which includes maintaining it in a safe, proper, and working condition. Applicant/Permit Holder shall be solely responsible for all costs associated with maintenance, upkeep, and repair of the used right-of-way area and/or outdoor seating or retail good amenities.
10. **Costs**. Any costs incurred by the Applicant/Permit Holder are the sole responsibility of that person or entity. The City will not reimburse any person or entity for any costs incurred.
11. **Placement.** The placement of any goods, structures, or seats, or other items associated with the operation of the Applicant’s/Permit Holder’s business shall be placed and maintained in accordance with all conditions set by the Department of Public Works and shall not impede the City’s or any other private or public utilities ability to maintain the road, sidewalk, parking meters, greenbelt, utility infrastructure or any other City property. The amenity shall not cause an obstruction or inconvenience to members of the public accessing the road, sidewalk, parking meters, greenbelt or any other City or private property, unless so permitted by approval of this application, as is or with modification.
12. **Appearance.** Applicant/Permit Holder shall pick up and sweep debris created by its use of the public right-of-way and dispose of it appropriately.
13. **Insurance**
    1. **Requirement.** Applicant/Permit Holder shall maintain in effect throughout the term of any permit issued by the City for this Program, and any subsequent renewals, comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to any permit issued by the City for this Program in an amount not less than $1,000,000 each occurrence. The City shall be named as an additional insured on such insurance policy.
    2. **Evidence.** Prior to the issuance any permit issued by the City for this Program, Applicant/Permit Holder shall furnish the City with a certificate of insurance and endorsement that shall include the provision that the City is named as an additional insured. Applicant/Permit Holder shall also furnish the City with an endorsement indicating that Applicant/Permit Holder shall be given 15 days’ written notification prior to cancellation of such insurance for nonpayment of premium and 45 days’ written notice for any other reason. Applicant/Permit Holder shall take all reasonable efforts to acquire an endorsement providing the City with 10 days’ written notification prior to cancellation of such insurance for nonpayment of premium and 30 days’ written notification for any other reason. If such endorsement is not reasonably available then Applicant/Permit Holder shall provide the City with notification of any impending cancellations within three days after receipt of such notice from its insurance carrier.
    3. **Continuing Obligation.** Applicant/Permit Holder shall provide the City with an updated certificate of insurance and applicable endorsements annually on or before the certificate’s stated expiration. It is the responsibility of Applicant/Permit Holder to ensure that a current certificate of insurance is on file with the City at all times.
14. **Indemnification.** Applicant/Permit Holder shall indemnify, defend, and hold the City harmless and free from liability arising out of Applicant/Permit Holder’s use of the City’s right-of-way. Applicant/Permit Holder shall not initiate or make any claim against the City or any of its officers, employees, agents, or representatives for any loss or damage caused by the City’s use or maintenance of its right-of-way.
15. **Compliance with Laws.** Applicant/Permit Holder shall comply with all applicable laws, statutes, ordinances, rules, regulations, and/or requirements of federal, state, and local governments and agencies thereof.
16. **Public Records**. The Contractor understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City.
17. **Additional Permits.** Applicant/Permit Holder shall be responsible for obtaining all necessary City and/or State permits prior to use of City property, and the placement, repair, or reconstruction of City property.
18. **Nuisances Prohibited.** Applicant/Permit Holder shall not—during the term of any permit issued by the City for this Program—on or in the Premises, maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling law, regulation, or condition imposed whether existing at the time of commencement of any permit issued by the City for this Program or enacted, amended, or otherwise put into effect during the term of any permit issued by the City for this Program.
19. **Limitation of Rights.** Applicant/Permit Holder acknowledges that no property or other right is created other than that specifically defined and limited by any permit issued by the City for this Program.
20. **Assignment of Rights**. If Applicant/Permit Holder sells their business, Applicant/Permit Holder may temporarily assign the rights granted herein to the new owner of the business for a period of 30 days after transfer. Any subsequent owner of the business shall submit a new application to the City within the 30 day period and provide proof of insurance to the City prior to the issuance of a permit. Failure to do so shall constitute a discontinued use.
21. **Third Party Beneficiaries.** Any permit issued by the City for this Program does not confer any rights or remedies upon any person or entity other the Parties. Enforcement of these terms and conditions and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of these terms and conditions are incidental to these terms and conditions and do not create any right for such third parties.
22. **Modification.** Modifications to any permit issued by the City for this Program or change in application materials shall only be valid if agreed to in writing by the City.
23. **Waiver.** The City’s failure or delay in exercising any right, power, or privilege under these terms and conditions, whether explicit or by lack of enforcement, shall not operate as a waiver. Waiver by the City may only occur through an expressed written waiver signed by the Director of Public Works or his or her designee. No waiver of a breach of any of the covenants, agreements, or provisions contained herein shall be construed to be a waiver of any subsequent breach of the same or of any other provision contained herein.
24. **Entirety of Terms and Conditions.** These terms and conditions and information included in the application contain the entire understanding of the Parties with respect to the subject matter of any permit issued by the City for this Program. All prior representations and understandings related to Applicant/Permit Holder’s use of the City’s right-of-way, oral or written, are merged into these terms and conditions. Prior or contemporaneous additions, deletions, or other changes to these terms and conditions or information included in the application shall not have any force or effect whatsoever, unless embodied herein.
25. **Order of Precedent.** These terms and conditions shall control the relationship of the Parties over any conflicting information or provision included in the Application or other materials provided by the Applicant/Permit Holder.

* *Signature Pages Follows* —

**SIGNATURE PAGES**

(Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.)

**The Applicant hereby affirms that he/she/they:**

1. *Understand the conditions of the program, as described in City of Burlington Restaurant and Making Way for Restaurant and Retail Recovery Program Permit Terms & Conditions, which, if violated, may result in the revocation of the permit.*
2. Have submitted all requisite materials requested by the City as part of this application, including, where appropriate (please check):

Name of business, and detailed contact information;

The specific proposed locations on sidewalks, greenbelts, or public parking spots;

The proposed use and how public health guidelines will be met by the use, including any health and safety plan developed by the business;

Site plans and photographs;

Maintenance and budget plans;

If sought, any plans to enhance barriers or pavement;

If table service will be provided as additional seating capacity beyond previously-permitted capacity, a Wastewater Service Permit application to the State of Vermont;

If platforms will be constructed, a Construction Self-Certification Checklist;

Whether a tent may be used, and if so, a description of the tent including its size;

Whether alcohol will be dispensed or consumed on public property; and

Proof of necessary licenses and insurance coverages required for the proposed.

**APPLICANT**

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

Name of Duly Authorized Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Business Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approval of this application and issuance of a permit under this program shall be evidenced by the signature of the Director of Public Works, below.

The City hereby grants to Applicant a permit under the Making Way for Restaurant and Retail Recovery Program to use and maintain an outdoor restaurant or retail area extending into the public right-of-way proximate to Applicant’s existing operational space, in conformity with information provided in the submitted application.

**CITY OF BURLINGTON**

**Department of Public Works**

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

Chapin Spencer

Director of Public Works

Duly Authorized

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_