

Sample Agreement

This **AGREEMENT** is made and entered into this X day of X, 201X, by and between the CITY OF EUREKA, a municipal corporation of the State of California (“**CITY**”) and **Business Owner(s)** individually and doing business as **Business Name**, (“**BUSINESS OWNER**”).

RECITALS

WHEREAS, BUSINESS OWNER wishes to place a Parklet, which will allow tables, chairs and planters to be placed within the City right-of way at (*description of Business Location*), known as (*Business Name*), located at (*Business Location*) (Assessor’s Parcel Number XXX-XXX-XXX) in the City of Eureka for use by customers during business hours; and

WHEREAS, BUSINESS OWNERS are required pursuant to the Eureka Municipal Code to obtain an Encroachment Permit to allow the installation of tables and chairs in front of their business on the sidewalk or in the City right of way; and

WHEREAS, CITY recognizes the potential value that **BUSINESS OWNERS** bring to the Old Town Business District by providing additional dining space for customers and the public in general, **CITY** is willing to permit the placement of the Parklet and other items connected with the business in front of (*Business Name*) upon the following agreed upon terms and conditions.

AGREEMENT

1. Term

This **AGREEMENT** shall be in effect beginning (X) and shall terminate upon:

- A. The day of closure or date of the official transfer of ownership of (*Business Name*) by **BUSINESS OWNERS**;
- B. The date of the violation of the terms of this **AGREEMENT** by **BUSINESS OWNERS**; or,
- C. The giving of thirty (30) days’ notice to **BUSINESS OWNERS** by **CITY**. Such notice of termination may be without cause.

2. Location

BUSINESS OWNERS agree that the Parklet and other items connected with the business shall be located at (*Business Address*) in front of. (*Business Name*). The location of the Parklet shall be permitted in the section identified on Assessor’s Parcel Map No. (X) attached and incorporated herein as EXHIBIT “A”.

3. Covenants and Conditions

A. **BUSINESS OWNERS** shall at all times maintain safe access through the public sidewalk and comply with the following:

1. All tables and chairs and any other property of (*Business Name*) shall be removed from the Parklet within 30 minutes of closing time.

2. All tables and chairs and any other property of (*Business Name*) shall not be placed in the designated Parklet any sooner than 30 minutes before opening for business.

3. **BUSINESS OWNERS** understand and agree that any service or consumption of alcoholic beverages is regulated by the California Department of Alcoholic Beverage Control and Eureka Municipal Code Title XI, Chapter 115, Section 115.05 (Outdoor Dining Areas) and Title XIII, Chapter 130, Section 130.01 (Drinking Intoxicating Beverages in Public).

B. **BUSINESS OWNERS** shall maintain a current business license with the **CITY** at all times.

C. **BUSINESS OWNERS** shall obtain and maintain a valid encroachment permit from the **CITY** for the placement of the table and chairs and any other item connected with their business that they wish to place within the designated area.

D. **BUSINESS OWNERS** shall permit inspections by the **CITY** from time to time to ensure compliance with this **AGREEMENT**, the encroachment permit, and any laws and regulations.

E. **BUSINESS OWNERS** shall comply with all laws and regulations at all times.

4. Tenant Improvements

BUSINESS OWNERS acknowledge and agree that **CITY** shall not be responsible for any of the costs of the improvements installed by **BUSINESS OWNERS** as set forth in this **AGREEMENT**. **BUSINESS OWNERS** further acknowledge and agree that **CITY** shall not be responsible for the business success or failure of (*Business Name*) Parklet.

5. Warranties

A. **BUSINESS OWNERS** warrant and guarantee that all property placed or installed pursuant to this **AGREEMENT** shall be free from defects and the encroachments shall be monitored at all times so as to comply with any and all requirements by **CITY** and all laws and regulations whether local, state or federal.

B. **BUSINESS OWNERS** warrant and guarantee that they are currently in compliance

with all laws and regulations with regard to the business known as *(Business Name)*.

6. Insurance

BUSINESS OWNERS shall maintain, during the life of the **AGREEMENT**, Public Liability and Property Damage Insurance and also Worker's Compensation Insurance for all **BUSINESS OWNERS'** employees and shall insure **CITY**, its officers, officials, employees and volunteers, who may be performing activities covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from **BUSINESS OWNERS'** or employee's operations hereunder, or by anyone directly or indirectly employed by **BUSINESS OWNERS**, and the amounts of insurance shall be as follows:

- A. **General Liability** in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

Said policy shall be endorsed to name **CITY** as an additional insured and shall be endorsed to provide this insurance as primary insurance as to **CITY**, its officials, officers, employees, and volunteers, so that any other policies held by **CITY** shall not contribute to any loss under said insurance. Said policy shall provide for thirty (30) days prior written notice by certified mail return receipt requested has been given to the **CITY**.

- B. **Worker's Compensation Insurance** as required by the State of California and Employer's Liability Insurance of \$2,000,000 per accident for bodily injury or disease.

The insurance company agrees to waive all rights of subrogation against the City of Eureka, its officers, officials, employees, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured.

C. Other Insurance Requirements.

CITY or its authorized representatives or agents shall have the right to require additional insurance, or higher limits of insurance, at any time during this **AGREEMENT** should it be deemed necessary.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

- (1) **CITY**, its officers, officials, employees and volunteers are to be covered as additional insured's with respect to liability arising out of ownership, maintenance or use of that part of the area in use by **BUSINESS OWNERS** pursuant to this **AGREEMENT**.

- (2) **BUSINESS OWNERS'** insurance coverage shall be primary insurance 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 **BUSINESS OWNERS'** insurance and shall not contribute with it.

- (3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the **CITY**.

BUSINESS OWNERS shall furnish **CITY** concurrently with the execution hereof, with satisfactory evidence of the insurance required above.

7. Hold Harmless Agreement

BUSINESS OWNERS shall indemnify, defend, and hold harmless **CITY** and its officers, officials, employees and volunteers without limitation from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of any activities covered by this **AGREEMENT**.

8. Termination

Upon the termination of this **AGREEMENT**, **BUSINESS OWNERS** agree to remove all property installed within the designated area within twenty-four (24) hours at their sole cost and expense. **BUSINESS OWNERS** further agree to repair any damage caused by the removal of the property within seventy-two (72) hours at their sole cost and expense.

9. Entire Agreement.

This **AGREEMENT** contains the entire agreement of the parties hereto and no obligation other than those set forth herein will be recognized. This **AGREEMENT** cannot be modified or amended in writing without additional consideration and the mutual consent of the parties.

10. Notices

Any notices required or permitted by this **AGREEMENT** shall be effective when personally delivered or when mailed to the other party addressed as follows:

If to **BUSINESS OWNERS**:

Name
Address
Eureka, CA 95501

If to **CITY**:

City of Eureka
531 K Street
Eureka, CA 95501
Attn: Greg Sparks, City Manager

11. Applicable Law

This **AGREEMENT** shall be construed and interpreted in accordance with the laws of the State of California.

12. Authority to Execute

Each individual executing this **AGREEMENT**, on behalf of the respective party, warrants that he/she is authorized to do so and that this **AGREEMENT** constitutes the legally

binding obligation of the entity which he/she represents.

13. Attorneys Fees

In the event of a suit to enforce any of the provisions of this **AGREEMENT** becomes necessary, **BUSINESS OWNERS** agree to pay all costs and expenses sustained by **CITY** on account of such suit, including but not limited to attorneys’ fees and all other costs and expenses, such as courts costs and expert witness fees.

The parties hereto have executed this **AGREEMENT** on the day and year written above.

CITY OF EUREKA

BUSINESS OWNER

Greg Sparks, City Manager

APPROVED AS TO FORM:

BUSINESS OWNER

Cyndy Day-Wilson, City Attorney

BUSINESS OWNER

**EXHIBIT “A”
ASSESSOR’S PARCEL MAP**

