

LICENSE AGREEMENT NO. __SAMPLE 2014

1. PARTIES.

1.1 City of Phoenix, located at 251 W. Washington Street, Suite 300, Phoenix, AZ 85003 (hereinafter the “City”).

1.2 name of licensee (hereinafter the “Licensee”).

2. TERM.

2.1 January 1, 2014 through December 31, 2014 (hereinafter the “Term”).

3. LOCATION UNDER LICENSE; LICENSE AGREEMENT CERTIFICATE.

3.1 Site No. 1 (hereinafter the “Site”) as identified on Appendix A attached hereto and made a part hereof by this reference.

3.2 The City shall issue to Licensee a “License Agreement Certificate” that shall designate the Licensee, the Site, and the Term.

4. PURPOSE.

4.1 The purpose of this License Agreement (hereinafter the “Agreement”) is to grant to Licensee the exclusive right to sell or offer to sell food products at the Site during the Term of this Agreement in accordance with all of the terms and conditions of this Agreement.

5. LICENSE FEE.

5.1 Upon execution of this Agreement, Licensee shall pay to the City the sum of \$DOLLARS AND XX/100 CENTS (\$xx.xx) as a license fee.

6. SITE LIMITATION RULE.

6.1 Licensee may not have a license agreement for more than one primary site as identified on Appendix A.

6.2 Licensee may not have a license agreement for more than two sites within the combined categories of secondary and daily vending sites as identified on Appendix A.

6.3 Licensee may not have more than two license agreements, including sublicense agreements, for all sites as identified on Appendix A.

6.4 For purposes of this Section, the term “Licensee” shall include any individual, or any business entity or form of any description, that has any beneficial or legal interest, including as a creditor, in Licensee or Licensee’s business of sidewalk vending within the City of Phoenix.

6.5 No Licensee who has a license agreement for the maximum number of sites pursuant to this Section may work or provide services at another site in any capacity, including as an employee or independent contractor.

6.6 No Licensee who has one license agreement may work or provide services at more than one other site in any capacity, including as an employee or an independent contractor.

7. NOTICES; DESIGNEE.

7.1 All formal notices, demands and communications required by this Agreement shall be mailed to the following addresses:

7.1.1 For the City:

Ms. Vicki Rios
Deputy Finance Director
City of Phoenix
251 W. Washington Street, Suite 300
Phoenix, AZ 85003

7.1.2 For Licensee:

7.2 Any change in the address or, in the case of the City, the name of the addressee, specified in this Section shall be provided to the other party within ten (10) calendar days of the change.

7.3 Service by mail shall be deemed completed five (5) calendar days after mailing.

7.4 All formal notices, demands and communications required by this Agreement may alternatively be hand-delivered to Licensee or to the City’s representative as named in this Section on behalf of the City. Hand-delivery on any vendor to whom an identification card has been lawfully issued by the City for the Site shall constitute hand-delivery on Licensee.

7.5 The term “Deputy Finance Director” shall mean the Deputy Finance Director or his designee throughout this Agreement.

8. RESTRICTIONS ON USE.

8.1 Licensee shall comply with all of the restrictions on the use of the Site contained in this Section.

8.2 Licensee shall at all times conduct himself or herself in a professional, dignified and courteous manner. Licensee shall be responsible for ensuring that all individuals authorized to perform any service on the Site on behalf of Licensee, whether that individual is denominated, or treated as, an employee, an independent contractor or otherwise also conducts himself or herself in a professional, dignified and courteous manner at all times.

8.3 Licensee shall be responsible for the conduct of any assignee, and that assignee’s employees, independent contractors, agents and assignees, who may be authorized to operate at the Site pursuant to the provisions of Section 14, “Assignment.”

8.4 Licensee shall not peddle, vend, display, sell or offer to sell, raffle, give away, or otherwise offer non-food products. For purposes of this Agreement, “food” means articles sold for human consumption, the sale of which is not prohibited by law.

8.5 Licensee shall not peddle, vend, display, sell or offer to sell any item of tangible personal property, or anything of value, including food, outside of the Site under this Agreement.

8.6 Licensee shall not place any vehicle, cart, stand, or temporary contrivance, or any part of any vehicle, cart, stand or temporary contrivance, outside of the perimeters of the Site, provided that a shade umbrella may extend beyond the Site provided that it does not impede or obstruct pedestrian or vehicular traffic, rise to a height more than ten (10) feet above the level of the sidewalk, or extend over any portion of the ground or sidewalk that is within two feet of a street.

8.7 At all times that vending is occurring at the Site pursuant to this Agreement, Licensee shall prominently display the “License Agreement Certificate” issued by the City pursuant to subsection 3.2 in such a manner that it is clearly visible to customers, law enforcement officials, and City regulatory license inspections officials.

8.8 Licensee shall provide a receptacle for waste generated by the vending operation that is no smaller than fifteen gallons in volume and is equipped with a plastic liner.

8.9 Licensee shall maintain the Site free of debris at all times that the Site is occupied by Licensee.

8.10 At the close of business each day, Licensee shall remove all debris, sweep all dirt, and otherwise clean all stains, deposits and spills from the Site.

8.11 At the close of business each day, Licensee shall remove all debris, sweep all dirt, and otherwise clean all stains, deposits and spills from the area surrounding the Site, to the extent that the debris, dirt, stains, deposits and spills, were caused by, or resulted from, the vending operation.

8.12 Licensee shall not leave any personal property at the Site after termination of the vending operation for the day.

8.13 Licensee shall not use a public trash receptacle for the disposal of trash, dirt or other debris generated by the vending operation.

8.14 Licensee shall not leave any vehicle, cart, stand or other temporary contrivance unattended at the Site at any time.

8.15 Licensee shall not vend between the hours of 1:00 a.m. and 7:00 a.m. - Arizona standard time.

8.16 Regardless of whether Licensee has received a specific request to vacate the Site pursuant to Section 10, "Compliance with Requests to Vacate the Premises," Licensee shall not occupy the Site if the Site is being directly affected by construction, or construction related, activity.

8.17 Licensee shall not vend to any person located in or upon a motor vehicle.

8.18 Licensee shall not use at the Site any machine, instrument or other device of any description to amplify sound.

8.19 Licensee shall not damage the Site or the surrounding sidewalk or curb.

8.20 Licensee shall not place a sign or shade umbrella at the Site that advertises food or a product or service that is not sold or offered for sale at the Site. Licensee shall not place any sign or any part of a sign outside of the Site, except a shade umbrella that is installed in compliance with subsection 8.6 and that bears an advertisement, if any be present, that is painted on or otherwise applied to the shade umbrella as an integral part of the umbrella. Licensee shall not place or install any sign or any part of a sign that extends above the shade umbrella. For purposes of this Agreement, "sign" means any sign, poster, placard, banner, pennant, balloon, flag or other device bearing an advertisement.

8.21 Licensee shall not park any vehicle, motor vehicle, cart, stand or other contrivance that is used in connection with the vending operation that is the subject of this Agreement, in violation of any parking law of this city or state.

9. IDENTIFICATION CARDS; ISSUANCE, DISPLAY, SUSPENSION AND CANCELLATION.

9.1 The City shall issue an identification card to each person who is either authorized to vend or be present at the Site, including Licensee. The City will charge a nonrefundable fee of \$25.00 to process each application for an identification card.

9.2 Licensee shall require each person that it has either authorized to vend or be present at the Site, including Licensee, to wear, while present at the Site, the identification card issued pursuant to this Section in such a manner that it is at all times clearly visible to customers, law enforcement officials, and City regulatory license inspections officials.

9.3 No identification card will be issued to any person who has been convicted of a crime of moral turpitude within the previous five years.

9.4 The identification card of any person who has been convicted of a crime of moral turpitude during the license Term shall be cancelled and returned to the City upon Notice and demand.

9.5 The identification card of any person who has made a material misrepresentation of fact on the application for an identification card shall be cancelled and returned to the City upon Notice and demand.

9.6 The identification card of any person who has knowingly failed to comply with any provision of this Agreement shall be suspended or cancelled in the discretion of the Deputy Finance Director by Notice. Any identification card finally determined to be suspended or cancelled pursuant to this Section shall be returned to the City upon demand.

9.7 The procedure for issuing a Notice and appealing a Notice shall be as set forth in Section 11, "Termination for Cause."

10. COMPLIANCE WITH REQUESTS TO VACATE THE PREMISES.

10.1 Licensee understands and agrees that the City, or a law enforcement official from another jurisdiction, may, from time to time, require Licensee to vacate the Site in order to ensure the safety of Licensee, Licensee's customers, and others in proximity to the Site.

10.2 While this Section may be invoked in the event of events such as natural disaster, accident, utility-line breaks, and street construction or repair, the parties recognize that the full range of circumstances that may require Licensee's vacation of the Site pursuant to this Section are impossible to set forth in an exhaustive list.

10.3 Licensee agrees to comply with all written and verbal orders, as provided in this Section, to vacate the Site, including the removal of all personnel, vending-related equipment and all other personal property.

10.4 Qualifying written and verbal orders pursuant to this Section include those from the Deputy Finance Director, the Chief Engineer Technician, the designee of either, and any law enforcement official.

10.5 The City will provide advance notice of the need to vacate the Site as is practicable under the circumstances and shall make a reasonable effort to exclude Licensee from the Site only for the period of time necessary to ensure the safety of Licensee and others in proximity to the Site.

10.6 Upon the issuance of an order pursuant to this Section that does not contain a specific date and time of expiration, Licensee agrees to contact the Deputy Finance Director for information in connection with the date and time at which return to the Site is permissible.

11. SUSPENSION OR TERMINATION FOR CAUSE.

11.1 The City may either terminate or suspend this Agreement for cause pursuant to this Section.

11.1.1 The termination or suspension of this Agreement shall not affect a license agreement for any other sites that may be held by the Licensee.

11.2 If the City should find that Licensee is in violation of any provision of this Agreement, the Deputy Finance Director shall issue a written Notice to Licensee of the violation, terminating the Agreement or, in the discretion of the Deputy Finance Director, imposing a suspension of up to thirty (30) calendar days of the right to sell or offer to sell food products at the Site pursuant to this Agreement.

11.2.1 Licensee may appeal the Notice issued pursuant to this Section to the License Appeal Board within ten (10) calendar days after service of the Notice. The filing of an appeal of a Notice shall stay the imposition of any suspension or termination.

11.2.2 If Licensee fails to file a timely appeal, the Deputy Finance Director shall issue a final Notice of suspension or termination as applicable.

11.2.3 The License Appeal Board shall conduct the hearing informally and the technical rules of evidence shall not apply, provided that the decision shall be based on substantial and reliable evidence. The City and Licensee shall have the right to be represented by counsel and to present evidence and testimony in support of their position. The burden of proof shall be on the City.

11.2.4 The License Appeal Board is authorized to sustain or overturn any suspension or termination ordered, to reduce the number of days of any suspension, or to reduce a termination to a suspension not to exceed thirty (30) calendar days.

11.2.5 The City and Licensee may stipulate to the resolution of any contested matter through consent agreement at any time.

11.3 The violation of any order of suspension shall result in the termination of this Agreement and shall be noticed to Licensee by the City in writing. There is no administrative appeal from a termination ordered pursuant to this subsection.

11.4 In the event of termination or suspension of the Agreement pursuant to this Section, no refund will be made of the license fee, or any part thereof.

12. VOLUNTARY TERMINATION.

12.1 Licensee may voluntarily terminate this Agreement at any time by providing written notice to the City.

12.2 In the event of termination pursuant to this Section, no refund shall be made of the license fee, or any part thereof.

13. TERMINATION FOR CONVENIENCE.

13.1 The City may terminate this Agreement without cause effective upon thirty (30) days written notice.

13.2 Upon the effective date of the termination of this Agreement pursuant to this Section, the license fee paid pursuant to this Agreement shall be refunded to Licensee based upon a daily proration.

14. ASSIGNMENT.

14.1 The rights granted by this Agreement shall not be assigned, either in whole or in part, except in accordance with this Section.

14.2 No assignment of the rights granted pursuant to this Agreement shall be assigned until the City has had an opportunity to perform a background check on the prospective assignee.

14.3 Licensee or assignor shall submit the name of the prospective assignee at least thirty (30) calendar days prior to the anticipated date of assignment.

14.4 The failure of the prospective assignee to fully cooperate with the City for purposes of verifying the background of the prospective assignee shall be grounds for denial of the assignment.

14.5 The City may deny the assignment if the prospective assignee has been convicted of a crime of moral turpitude within the previous five years.

14.6 The City may deny the assignment if the prospective assignee is not current in the reporting and payment of all privilege license (sales) tax obligations owed to the City.

14.7 No assignment may be made to any person who has not first received an identification card issued by the City indicating that the recipient is authorized to sell or offer to sell food products at the Site.

14.8 No assignment may be made that would result in a violation of Section 6, "Site Limitation Rule."

14.9 Any assignee approved pursuant to this Section must sign a license agreement in substantially the same form as this Agreement.

14.10 Any assignment authorized pursuant to this Section may be cancelled by the City if it should be determined that the assignee provided any material, false or misleading information to the City during the review of the assignee's background. There shall be no administrative appeal from a decision to cancel the assignment pursuant to this subsection.

15. RISK OF LOSS FROM CHANGED CIRCUMSTANCES; EXCEPTIONS.

15.1 Except as specifically provided in this Section, Licensee bears all risk of loss from any change in circumstances during the entire Term of this Agreement, including but not limited to:

15.1.1 Interruptions or disruptions in business due to work performed by public utilities, including the City; and

15.1.2 Any change in direction of, or diversion of, pedestrian or vehicular traffic to, around, or in proximity to the Site, including the reengineering of streets for any reason; and

15.1.3 Development, construction or demolition work in proximity to the Site; and

15.1.4 Natural or man-made disasters and incidents, including fire, lightning, earthquake, flood, tornado, hurricane, riot, insurrection, civil disturbance, strike, waterline breakages, power outages, acts of terrorism, and traffic accidents.

15.2 The City shall refund the license fee to Licensee according to a daily proration in the event of, and as of the date of, the following:

15.2.1 In the sole discretion of the City, reasonably exercised, occupation of the Site is determined to be impossible for the remainder of the Term due to the initiation of construction at the Site.

15.2.2 Occupation of the Site is rendered impossible due to the exercise of the power of eminent domain.

15.3 The City shall refund the license fee to Licensee according to a daily proration if all of the following are true:

15.3.1 For any reason, or combination of reasons, entirely outside of the control of Licensee, Licensee has been prohibited from vending at the Site for a period of seven (7) consecutive calendar days (measured as 168 consecutive hours) or more.

15.3.2. For each period of time qualifying pursuant to subsection 15.3.1, Licensee has prepared a written, itemized statement listing the exact dates believed to qualify pursuant to subsection 15.3.1, together with a brief description of the reason or reasons for the prohibition on vending at the Site for each date listed.

15.3.3 Licensee has submitted the statement specified by subsection 15.3.1 to the Deputy Finance Director during the thirty (30) calendar day period following the Term, or during the thirty (30) calendar day period following the expiration of the termination of the Agreement, if earlier.

15.4 The City will, within sixty (60) calendar days after receipt of Licensee's statement submitted pursuant to subsection 15.3, review the statement for compliance with this Section and issue a refund to Licensee in the amount determined by the Deputy Finance Director to be properly refundable pursuant to this Section.

15.4.1 If the Deputy Finance Director's award should differ from the award request, the Deputy Finance Director will provide Licensee with a written explanation of the difference.

15.4.2 No interest will be paid on any sum refunded.

15.5 If Licensee disagrees with the refund as calculated and paid by the Deputy Finance Director, if any, Licensee may make a written request for a hearing with the City Auditor within ten (10) calendar days after receipt of the refund or receipt of notification that no refund will be paid.

15.5.1 The City Auditor will conduct the hearing as described in Section 11, "Termination for Cause," provided that Licensee shall have the burden of proof.

15.5.2 The City Auditor is authorized to adjust the award upward or downward according to the evidence, is not authorized to award interest, and shall issue a written order directing the Deputy Finance Director to pay Licensee a stated sum, if any.

16. TEMPORARY SITE RELOCATION.

16.1 In the event that the City should require Licensee to vacate the Site for any reason, the City and Licensee may agree to an alternative site at which Licensee may conduct business as otherwise provided in this Agreement.

16.1.1 The agreement to a temporary site relocation shall be in writing and shall be executed by both parties.

16.1.2 The agreement may contain an indefinite termination date.

16.1.3. The agreement may be terminated by the City upon notice as provided in this Agreement.

16.2 Notwithstanding any other provision of this Agreement, no refund of the licensee fee will be paid for any period of time during which Licensee is operating at an alternative site pursuant to this Section.

17. PRIVILEGE LICENSE (SALES) TAXES.

17.1 Licensee shall remain current on all privilege license (sales) tax obligations owed to the City, including businesses that may be operated by Licensee not covered by this Agreement.

17.2 Licensee shall report all receipts from the vending operation at the Site under the restaurant classification "Business Class 11" on the appropriate privilege license (sales) tax return.

17.3 Within ten (10) calendar days after demand, Licensee shall produce for inspection by the Tax Collector the records, books and accounts relating to this Agreement required to be maintained pursuant to Phoenix City Code (P.C.C.) § 14-350. This provision shall survive the termination of this Agreement for six (6) years.

17.4 Licensee shall retain the records, books and accounts relating to this Agreement required to be maintained pursuant to P.C.C. § 14-350 for six (6) years after the termination of this Agreement. This provision shall survive the termination of this Agreement for six (6) years.

18. WAIVER.

18.1 The failure of the City to exercise any right granted to it pursuant to this Agreement as soon as that right accrues shall not effect a waiver of the City's right to exercise that right at a later time.

19. NO CONTRACTOR/INDEPENDENT CONTRACTOR RELATIONSHIP.

19.1 Licensee specifically acknowledges that this Agreement does not create, constitute or authorize a contractor/independent contractor relationship between the City and Licensee.

20. COMPLIANCE WITH ALL LAWS AND REGULATIONS.

20.1 Licensee shall comply with all laws and applicable governmental regulations while occupying, or operating at, the Site.

20.2 Licensee shall comply with all laws and applicable governmental regulations while preparing to occupy the Site and while disposing of refuse and other material used or generated at the Site.

21. INDEMNIFICATION.

21.1 Each party agrees to indemnify, defend, save and hold harmless the other party from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees, (hereinafter collectively referred to as "claims") arising out of the bodily injury of any person (including death) or property damage but only to the extent that such claims are caused by the act, omission, negligence, misconduct, or other fault of the party, its officers, officials agents, employees or volunteers.

22. OPPORTUNITY FOR LEGAL REVIEW.

22.1 Licensee specifically acknowledges that this Agreement affects the legal rights and responsibilities of the parties and that Licensee has been given the opportunity to have this Agreement reviewed by an attorney.

23. AGREEMENT CANCELLATION.

23.1 All parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

24. LEGAL WORKER REQUIREMENTS.

24.1 The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, contractor agrees that:

24.1.1 Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

24.1.2 A breach of a warranty under paragraph 24.1.1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

24.1.3 The City retains the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that contractor or subcontractor is complying with the warranty under paragraph 24.1.1.

25. **LAWFUL PRESENCE REQUIREMENT.**

25.1 Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.

27. **SECTIONS AND SECTION HEADINGS.**

27.1 The sections of this Agreement all have section headings, which are for convenience only and are not intended to provide a complete description of the contents of each section.

28. **INCORPORATION.**

28.1 This License Agreement incorporates the entire agreement of the parties.

29. **SEVERABILITY.**

29.1 Should any provision of this Agreement be held to be invalid or unenforceable in a court of law, it is the intention of the parties that all other provisions of this Agreement remain valid and enforceable.

[date of execution]

_____, Licensee

By: _____
Its: _____

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, Acting City Manager

By: Vicki L. Rios
Its: Deputy Finance Director

ATTEST:

_____ City Clerk

This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of the agreement is altered.

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