

## Part One

### **Sidewalk Café Extension Program**

#### **Terms of Reference**

##### **Permitted Use and Areas to be Designated**

Use is limited to businesses engaged in food and beverage service anywhere within the city boundaries. A permit will only be issued where the permit area is in front of the establishment to which it is operationally tied, and may only occupy a space as wide as the establishment frontage unless approvals to the contrary are granted in writing by affected adjoining tenants or their agents. This provision also applies to food and beverage businesses located above street level (see **Food and Beverage Businesses Located Above Street Level** below).

A permit shall only be issued to occupy a portion of roadway to a maximum depth of 2.5 metres from the face of the curb in areas of on-street parallel parking or to a maximum depth of 4.0 metres from the face of the curb in areas of on-street angle parking.

In all cases the occupancy of the permit area must conform to the sight lines established in Section 2.2 of the City of Kelowna Traffic Bylaw.

##### **Decommissioning of Parking Stalls**

A permit may be issued to occupy a minimum of 1 and a maximum of 2 parallel parking stalls or a minimum of 2 and a maximum of 3 angle parking stalls.

The maximum number of stalls that may be occupied by all permit holders in a block, that contains 10 or more parallel parking stalls, or 20 or more angle parking stalls, on both sides of the street from intersection to intersection, is 20% of the total number of parking stalls, excluding handicapped parking stalls and loading zone stalls.

##### **Permit Period**

Permits can be issued for up to one year and expire on December 31<sup>st</sup> each year.

An outdoor seating area will be allowed to continue indefinitely provided the existing permit is in good standing, and a completed application for the same permit area, on the same terms and conditions, is received by the City of Kelowna by December 1<sup>st</sup> of the current permit period.

Where an application would result in more than 20% of parking spaces on a block being taken out of use, i.e., where existing outdoor seating areas have used up the available parking spaces, staff will review the parking demand for the block in question. A permit will be allowed where the addition of another seating area is not deemed to significantly impact the availability of short-term parking and/or where the anticipated benefit of an additional seating area is deemed to outweigh any loss of on-street parking.

Where a permit is denied, the applicant has the option of making an appeal to the Parking Committee.

## **Application Requirements**

### 1) Application Fee

Applicants shall submit a non-refundable \$50.00 application fee.

An application fee is not required in subsequent years where a seating facility has been in continuous operation and where the layout and/or design of the facility, in the estimation of staff, has not been significantly altered.

### 2) Drawings

Applicants shall submit:

(a) a plan at 1:100 scale of the proposed facility, including entrances to all buildings, any landscaping, parking zones and bus stop locations, and any existing street furniture and/or appurtenances within a distance measured from 3 meters on either side of the business frontage;

(b) elevations of the permit area including any ramps, fences, and overhead structures; and

(c) a section through any proposed ramps (see Part 2 of Terms of Reference)

### 3) Security Deposit

Prior to the issuance of a permit, the applicant shall place with the City, a cash deposit or unconditional irrevocable letter of credit issued by a Canadian chartered bank or credit union in the amount of \$500.00 as security that the obligations imposed by the permit are fulfilled and to reimburse the City for the cost of any damage to the sidewalk, walkway, roadway, or other City facilities as a result of occupancy.

### 4) Certificate of Insurance

The City's standard Certificate of Insurance is included in the permit package, and must be completed by the applicant with the signed original being returned to the City as part of the application package.

The applicant shall, without limiting its obligations or liabilities under this permit, procure and maintain, at its own expense and cost, insurance in the amount of \$5,000,000.00 not including the automobile liability insurance requirement under Section 2 of the City of Kelowna Traffic Bylaw.

The insurance policy(ies) shall be maintained continuously as long as a permit is in effect.

Merchants adjacent to proposed outdoor seating areas will be notified by the City that an application has been received. This notification is intended to give such businesses the option of communicating any concerns to the City related to a proposed seating area, so that these concerns might be considered in the siting and design of the proposed seating facility.

### **Hold Harmless/Indemnification.**

The permit holder will be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with

the performance, purported performance, or non-performance of this permit, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

The permit holder will defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this permit, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.

**Applicants are cautioned that applications will not be considered complete without the required information under parts 1), 2), 3), and 4) above.**

### **Risk**

Each proposed seating area will be reviewed by staff to assess the risk due to proximity to moving vehicles. Where a proposed seating area is deemed to have an elevated risk, the City may require modifications to the design of the proposed structure. Additionally, the City may require modifications within the public right-of-way in the vicinity of the proposed seating area. The cost of any modifications could be the responsibility of the applicant.

Additionally, a permit application could be denied where it is deemed that it is not possible through any cost-effective means to mitigate the risk and to otherwise bring it within a range of acceptance.

### **Permit Fee**

The permit fee is \$8.00 per square metre per month of the area utilized by the permit holder. The area excludes walkways as described in Part Two of the Terms of Reference.

The permit fee, at minimum, must equal the amount of any revenue foregone as a result of parking spaces de-commissioned in conjunction with construction of any seating facility.

The permit fee will be invoiced by the City. Billable use of an outdoor seating area will begin on the date a permit is granted. The permit fee for permit areas that commence operation after the first day of a calendar month will be pro-rated, based on the total days remaining in the month.

Where an invoiced fee has not been paid within 30 days of the invoice date, interest will be charged to the permit holder on the outstanding balance. Accounts that remain unpaid after 60 days from the invoice date will potentially have their outdoor seating permit revoked according to the provisions set out herein.

### **Changes to Permit Area**

Any permit holder proposing physical changes to an existing outdoor seating area must re-apply to the City. The application must include plans and any elevations describing the proposed changes. A \$50.00 application fee must also be submitted. An updated Certificate of Insurance may be required as deemed necessary by City staff. The existing deposit of \$500.00 held by the City as part of the initial application will continue to apply.

Additionally, a new risk assessment of the facility may be carried out if deemed necessary by staff.

### **Enforcement**

With the exception of a breach of the terms related to insurance coverage (see below), where a permit holder is in breach of the Terms of Reference of the program, the permit holder will be notified in writing and given ten business days from the date of postmark, to comply with the terms of the program.

If compliance is not forthcoming within this time, cancellation of the permit will be effective immediately, and the business will be notified in writing and given three business days from the date of postmark, to remove tables and chairs and any associated structures.

If the facility is still in place at the end of the specified time period, the business's damage deposit will be forfeited and the City will remove chairs, tables, and any other items within the confines of the seating area belonging to the business, as well as remove any structures assembled in conjunction with the seating area. These items will be stored at the owner's expense and the City will follow its standard procedure for dealing with seized goods and business owners will be billed for any amount that the costs of seizure, teardown, removal and storage exceed the value of the damage deposit. Where the costs of seizure do not exceed the value of the damage deposit, there will be no refund of the balance.

It is critical that sufficient insurance be provided at all times by permit holders and the City will require proof of insurance upon permit approval and upon renewal of a permit, and reserves the right to request proof of coverage from time to time.

Upon becoming aware that insurance on an outdoor seating area has lapsed or that the insurance provided does not meet the terms of the program, the subject business will be notified in writing that it has ten working days from the postmarked date to provide proof of adequate insurance. It will be allowed to leave any structure in place until such proof is provided. However, tables and chairs must be taken out of use. Failure to adhere to this requirement could trigger the enforcement procedure outlined above.

If proof of adequate insurance is not forthcoming within the specified time, the business in question will be notified in writing that cancellation of its permit is effective immediately, and that it has three business days from the date of postmark to remove tables and chairs. If the outdoor seating facility is still in place at the end of three business days, the business's damage deposit will be forfeited and the City will remove chairs, tables, and any other items within the confines of the seating area belonging to the business, as well as remove any structures assembled in conjunction with the seating area. The City will follow its standard procedure for dealing with seized goods and business owners will be billed for any amount that the costs of seizure, teardown, removal and storage exceed the value of the damage deposit. Where the costs of seizure do not exceed the value of the damage deposit, there will be no refund of the balance.

A business losing its permit will not be allowed to re-apply for an outdoor seating permit for a period of one year starting from the date the permit is revoked. This restriction will apply to any subsequent application by the subject business owner, at any location within Kelowna. Any subsequent application will require the mandatory application fee and damage deposit.

Additionally, where an unpaid amount is outstanding with respect to the seizure and storage of seats, tables, or structure, a new permit will not be granted to the former permit holder until the outstanding balance has been paid.

#### **Reduced Fee for New Facilities on Lawrence and Leon Avenues**

The permit fee will be reduced by 50% for all seating areas located on Lawrence and Leon Avenues. The reduced fee will apply only in the first year of operation.

#### **Food and Beverage Businesses Located Above Street Level**

Food and beverage businesses located above street level must have the consent of any business(es) located at street level in the same building, whose street frontage coincides with the proposed outdoor seating area. This provision applies regardless of whether the proposed facility would be located immediately adjacent to the building or within the parking area located next to the sidewalk. Written agreement from such businesses must be submitted to the City as a condition of approval for a permit.

#### **Permits for outdoor seating areas within alleys**

Permits for outdoor seating areas within alleys may be allowed if in evaluation by staff, use of the alley for such purposes does not restrict access by pedestrians or restrict or compromise access by delivery or emergency services vehicles. In the event that an alley is closed to vehicles, a minimum two-meter wide access route must be maintained for pedestrians.

#### **Design and Construction Guidelines**

Structures within a permit area must be free standing. Anchorage to the sidewalk or roadway is not permitted.

Construction must conform to the provisions of the B.C. Building Code.

Additionally, the following requirements are intended to assure the safety of patrons and the public, encourage accessibility for all individuals, and provide a facility that enhances the visual qualities of the Downtown:

- a) The seating area can be comprised of more than one level with the top of deck not more than .3 metres above the top of the adjoining sidewalk. The seating area must provide a non-slip, all-weather surface; use of carpeting is prohibited. Where wood planking is used, applicants are cautioned to ensure that cupping and flexing of wood members under the weight of pedestrian traffic does not create a tripping hazard. Planking must conform, at minimum, to the provisions of the B.C. Building Code.
- b) A fence must separate the seating area from the roadway and any adjoining parking stalls.
- c) Concrete planters shall be placed in a manner that protects patrons from vehicular traffic on the road right-of-way, including vehicles entering and exiting adjacent parking or loading stalls.

The City will supply a limited number of planters on a first-come, first-served basis. The City will also remove any planters provided by the City, upon termination of the permit. Planting material must be supplied and maintained by the applicant. Concrete planters

provided by the applicant must be approved by the City and planter dimensions must be included as part of the permit application.

The proposed facility will also be assessed on the degree to which it meets the following criteria:

- 1) Quality of materials and degree of visual amenities, including the extent of landscaping.

The applicant is encouraged to strive for a facility consistent with the goals of the Downtown Plan. Consideration should be given to all angles from which the facility will be viewed at ground level.

- 2) Ability to maintain a clean appearance and sanitary environment including the prevention of the accumulation of debris around and under the structure.

- 3) Provision for access by individuals with physical disabilities.

Applicants are strongly encouraged to make seating areas accessible and traversable by all members of the public.

- 4) Provision for the uninterrupted flow of storm water run-off.

- 5) Extent and quality of signage.

Advertising and identification signage should be limited to the name of the business and/ or a discrete menu board and must comply with the provisions of the *City of Kelowna Zoning, Sign, Heritage, and Procedures Bylaw No. 8235*. Proposed signage should be submitted as part of the application package. All subsequent additions and changes in signage after issuance of a permit, must be approved by the City.

Outdoor seating areas should not appear to be additions to buildings, but rather maintain their character as additions or enhancements to the streetscape.

In this regard, it is recommended that such structures remain open to the street and to the sky. That is, any construction that restricts views in and out of the seating area in any direction, are not allowed.

The City may ask for revisions to the design of a proposed facility where it is deemed by the City to not conform to the above criteria. Furthermore, the City may deny a permit where those changes are not made, or may dismantle any facility, at the owner's expense, not built to the design standard indicated in the application, or to any terms and conditions pertaining to design, set out by the City as a condition of approval.

#### **Non-transferability of Permit**

A permit authorizes only the person named in the permit to occupy the area described in the permit and is not transferable.

#### **Cancellation of Permit by City of Kelowna**

Should the City require the use of the permit area for any reason, the City may cancel the permit. The City shall give the permit holder at least 24 hours written notice of such cancellation, except in the case of an emergency, when the City may order that the

outdoor seating facility be vacated, and if deemed necessary by the City, any structure(s) removed, until further notice.

### **Removal of Parking Meters**

The removal of parking meters is not mandatory. Meters can be fitted with hoods by the City for the duration of the permit period, at no charge to the permit holder. However, where the removal of meter heads, supporting stem to remain in place, or of the entire meter assembly complete with stems, is desired by the permit holder and approved by the City, or is required by the City for safety or operational reasons, the work will be carried out by the City. The cost of the work will be charged to the permit holder. This work will include the replacement of the meters or meter heads upon termination of the permit.

### **Obligation to Maintain Permit Area**

Permit holders are required to ensure that the permit area and immediate vicinity are kept tidy and free of all garbage.

Permit holders are required to keep all pedestrian surfaces associated with the permit area free of snow and ice, and must provide a secure footing in all weather conditions.

Permit holders are required to keep roadway areas, including parking stalls, adjacent to any outdoor seating structure free of snow and ice, where such areas cannot be accessed by City crews for the purpose of snow removal. Snow piled as a result of such action can not be piled in parking stalls and must not obstruct traffic movement.

### **Entertainment Within Outdoor Seating Areas.**

Outdoor entertainment must be non-amplified.

Entertainment within outdoor seating areas is allowed from 8:00 A.M. until 10:00 P.M. with the exception that it is allowed:

- 1) from 8 A.M. until 12:00 A.M. on Fridays and Saturdays, and
- 2) from 8:00 A.M. until 12:00 A.M. on Sundays followed by a statutory holiday.

### **Cooking Within Permit Areas**

Permit holders are allowed to cook<sup>1</sup> on or from appliances located within a patron seating area provided written agreement is obtained from adjacent businesses and submitted to the City as evidence of such agreement. Deep frying is not allowed.

Regardless of whether a food and beverage operator 1) indicates an intention to cook within an outdoor seating area concurrent with application for a permit for that seating facility, or 2) indicates an intention to cook within an outdoor seating area subsequent to obtaining a permit, a review will be required.

The request to cook must include specifications and the location of any proposed appliance(s), as well as information on the location of existing staff hand-washing

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<sup>1</sup> The term "cook" includes any food preparation process as well as maintaining food at a temperature appropriate for serving.

facilities within the premises. The information will be forwarded to the Interior Health Authority for review, and will be based generally on the following criteria:

- Distance from the outdoor seating facility to convenient hand washing facilities for staff,
- Type of appliance and ability to maintain appropriate temperature control of cooked and/or uncooked food, and
- Public safety as it relates to protection from operation of equipment and appliances.

Whether or not an applicant will be allowed to have a cooking operation will be based on the merits of each situation. No additional cost will be associated with review of a request to cook within a seating area. By granting a permit and/or performing any review, the City does not accept any responsibility or liability for the cook or operation of the permit holder. Cooking and operation of any appliance is entirely at the permit holder's risk.

### **Permits to Operate an Appliance**

Applicants/permit holders wishing to operate any appliance must ensure that all required permits are in place. Permits must be evidenced to the City upon request.

### **Additional Considerations**

- Planters placed on the roadway around the perimeter of a facility, whether supplied by the City or the permit holder, must be planted by the permit holder prior to use of the facility and must be maintained May to September inclusive.
- Electrical extensions, either at grade or overhead across the public sidewalk, will not be allowed.
- All lighting in conjunction with the outdoor seating facility shall be located and arranged so no rays of light are directed onto adjacent businesses or onto the road right-of-way that would impede the visibility of motorists or would in any way interfere with the effectiveness of any traffic control device.
- Permit holders shall not carry out, or allow any activity within the permit area which would constitute an annoyance or nuisance to others or obstruct or interfere with the free and unrestricted use of areas adjacent to the permit area.
- Permit recipients are advised they are not entitled to exclusive use of the space designated in the permit.
- Permit holders must remove any furniture in the off-season that is not being actively used by patrons on a regular basis.
- All aspects of any proposed facility must meet the provisions of the *Traffic Bylaw No. 8120*, and any other applicable bylaws. **Where there is a discrepancy between the Terms of Reference and any applicable Bylaws, the provisions set out in the Bylaws will apply.**



## Part Two

### **Additional Requirements For Walkways In Conjunction With the Sidewalk Café Extension Program**

The provisions set out below are in addition to those set out in Part One.

Any structure providing a route around an area used by a permit holder for the purpose of serving its patrons, herein termed a “walkway”, must have a minimum 2.0 meter width throughout its length. The width must not be reduced by the overhang of any vehicle in an adjacent parking stall, or by any element structural or otherwise, forming part of, or provided in conjunction with the adjoining seating area although the 2.0 metre dimension could be reduced by on-street elements such as light standards, fire hydrants, parking meters, etc. to a clearance of no less than 1.8 metres. Such exemptions will be at the discretion of City staff.

No angle along the horizontal plane of a walkway can be less than 90 degrees.

There can be no change in elevation between a walkway and the adjoining sidewalk surface.

The walkway surface must provide a non-slip surface. Consistent with the City of Kelowna Guidelines for Accessibility in Outdoor Areas, the surface should be as regular and even as possible. The number of joints or seams should be minimized. Use of carpeting is prohibited.

Where a walkway includes a ramp or ramps, such ramp or ramps must conform to the requirements of the BC Building Code, including any provision for handrails and the requirements for construction of such handrails.

Other requirements:

- 1) a fence must separate the walkway and the seating area.
- 2) a fence must separate the walkway from the roadway and any adjoining parking stalls.
- 3) fence structures must incorporate a continuous solid vertical plane rising at least 100 mm from the top of the walking surface to help white cane users maintain direction and orientation.
- 4) a high degree of visual contrast is encouraged to increase the visibility of all fences.
- 5) the entrance to the seating area must be clearly marked.
- 6) tables and chairs within the seating area should have a high degree of colour contrast to their surroundings.
- 7) where a walkway projects into an area occupied by angle parking stalls, 3 full parking stalls can be used for the purposes of constructing a walkway and outdoor seating area.

A portion of a fourth stall can further be used provided the fourth stall can still be safely used for small car parking or bicycle parking, assuming the total number of stalls doesn't exceed the maximum stalls per block set out in Part One of the Terms of Reference.

8) where a walkway occupies some portion of a fourth stall, and where it is deemed by the City that the stall can continue to be used for parking without compromising the safety of pedestrians or motorists, the stall will continue to be metered and used by vehicles.

Where the remaining depth of the stall would only allow occupancy by a small vehicle, the stall will be posted as a "small car only" stall. Where the remaining depth of the stall is deemed by staff to be more appropriate for bicycle parking, the stall will be posted as bicycle parking. If in the estimation of the City the stall is subsequently under-utilized because of the parking restriction, the City reserves the right to estimate the short-fall in revenue and to include the shortfall within the minimum amount that must be recovered by the permit fee.

However, if in the estimation of the City a "small car only" stall is persistently being used by over-size vehicles so as to create a safety hazard, the City reserves the right to remove the stall from use. In this instance, the City will estimate the short-fall in revenue and include the shortfall within the minimum amount that must be recovered by the permit fee commencing with the date that the stall is removed from service.

9) where a meter obstructs the use of a walkway, it will be relocated to an appropriate location, by the City, at the permit holders expense.

10) to preclude vehicle overhang in any adjacent parking stall, the City will provide appropriately-placed wheel stops in such stalls, as deemed necessary by the City.

11) the walkway must be completed according to the terms set out herein prior to the sidewalk being closed for construction of the seating area. Approval of the walkway construction must be granted by the City prior to closing of the sidewalk for construction of the seating area.

12) all permit applications will be reviewed by the City for compliance with the Terms of Reference. Where an issue arises that is not addressed by these guidelines, applicants are cautioned that comment could be solicited by the City, from the appropriate agency or agencies, prior to award of a permit.

City of Kelowna  
Sidewalk Cafe Extension Program  
**Permit Application**

Applicant's Name:

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Name of Business:

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Address at Which Seating Area Will be Located:

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I/we have read the Terms of Reference for the Sidewalk Café Extension Program and if granted a permit, agree to abide by the terms and conditions set out therein.

Applicant's Signature: \_\_\_\_\_

**Note:** If a permit is granted, payment is required at the first of each month.

Personal information on this form is collected under the authority of the Freedom of Information and Protection of Privacy Act R.S.B.C. 1996, c. 165 and is necessary for the administration and operation of this program. Questions about the collection of this information to be directed to the Director of Planning and Corporate Services City Hall 1435 Water Street Kelowna BC V1Y 1J4 (250) 862-3304.

**For Office Use:**

Application Number: \_\_\_\_\_

Application Fee

Security Deposit

Certificate of Insurance

Drawings

Post-dated cheques

# CERTIFICATE OF INSURANCE

**This Certificate is issued to:**

The City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1 J4

**Insured**

Name:	
Address:	

**Broker**

Name:	
Address:	

**Location and nature of operation or contract to which this Certificate applies:**

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Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
<b>Section 1</b> Commercial General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage  \$ 5,000,000 Inclusive \$ 5,000,000 Aggregate \$ 5000 Deductible
<b>Section 2</b> Automobile Liability				Bodily Injury and Property Damage  \$ <b><u>As required</u></b> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.**
2. **The City of Kelowna is named as an Additional Insured.**
3. **30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**

\_\_\_\_\_

**Print Name**

\_\_\_\_\_

**Authorized Signatory**

\_\_\_\_\_

**Date**

## Appendix A – Insurance Requirements, Sidewalk Café Extension Program

### **1. Permit Holder To Provide**

The Permit Holder shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items. The insurance policy or policies shall be maintained continuously from commencement of the Permit or such longer period as may be specified by the City.

### **2. Insurance**

As a minimum, the Permit Holder shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 Workers' Compensation Insurance covering all employees of Permit Holder engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
  - (i) providing for an inclusive limit of not less than \$5,000,000 for each occurrence or accident;
  - (ii) providing for all sums which the Permit Holder shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Permit or any operations carried on in connection with the Permit;
  - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Permit Holder's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
  - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of any work or operations or any part of the any work or operations related in any way to the Permit or the Outdoor Seating area and activities or operations related in any way to the area.
  - (v) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.
  - (vi) The deductible related to property damage and/or bodily injury shall not exceed \$5,000.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Permit Holder directly or indirectly in the performance of the use of the Permit. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

### **3. The City Named As Additional Insured**

The policies required by sections 2.2 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

### **4. Permit Holder's Agents or Contractors**

The Permit Holder shall require each of its agents or contractors that perform work or operations in connection with the Permit to provide comparable insurance to that set forth under section 2. Without limiting the liabilities of the Permit Holder or their agents or contractors, entertainers and performers may be excluded from this requirement.

### **5. Certificates of Insurance**

The Permit Holder agrees to submit Certificates of Insurance, in the form of Appendix A, attached hereto and made a part hereof, to the Risk Management Department of the City prior to commencing operations in relation to the Permit. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

### **6. Other Insurance**

After reviewing the Permit Holder's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Permit and will give notifications of such

requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Permit Holder's expense.

7. **Additional Insurance**

The Permit Holder may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

8. **Insurance Companies**

All insurance, which the Permit Holder is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

9. **Failure to Provide**

If the Permit Holder fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Permit Holder. The Permit Holder expressly authorizes the City to deduct from any monies owing the Permit Holder, any monies owing by the Permit Holder to the City.

10. **Nonpayment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Permit Holder or any agent of the Permit Holder shall not be held to waive or release the Permit Holder from any of the provisions of the Insurance Requirements or the Permit, with respect to the liability of the Permit Holder otherwise. Any insurance deductible maintained by the Permit Holder or any agent of the Permit Holder under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Permit Holder as stated in section 9.