

**CITY OF BURLINGTON, VERMONT
CART VENDOR AGREEMENT TEMPLATE**

This Agreement (“Agreement”) is made this [DAY] day of [YEAR] by and between the City of Burlington, Vermont (“the City”), through its CHURCH STREET MARKETPLACE DEPARTMENT, and [VENDOR NAME] (“Vendor”), collectively “the Parties”.

The Vendor has applied for and received a certificate to peddle in the Church Street Marketplace District for the term of May 1, 2023 – April 30, 2024.

WHEREAS the Vendor is ready, willing, and able to comply with the required terms and conditions.

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is agreed by the parties hereto as follows:

1. SCOPE OF AGREEMENT

Vendor shall be permitted to vend in the Church Street Marketplace District at its assigned location in accordance with issued *Marketplace Peddling Vendor’s Certificate* upon acceptance into the program for the applicable Term as described in §2 and in compliance with *Terms and Conditions of Marketplace Peddling* and in consideration of the fees described within.

2. TERM AND TERMINATION

- a. Term. This Agreement shall commence upon Vendor’s acceptance of the Agreement and shall continue in effect for the duration of the period noted on the *Marketplace Peddling Vendor’s Certificate* and shall in no event continue beyond April 30, 2024 (the “Term”).
- b. Termination
 - i. If there is a violation of terms and conditions, licensee will be provided with a verbal and written warning, and asked to correct the violation within 2 business days. The Church Street Marketplace Commission or Executive Director may suspend a license for not more than 60 days if a cart vendor violates any of the provisions of the rules and regulations.
 - ii. No license may be revoked unless the Church Street Marketplace Commission holds a public hearing concerning that revocation, written notice of which has been given to the cart vendor not less than 7 days prior to said public hearing. Such notice shall set forth the facts constituting the basis for the proposed revocation. After revocation of a license, the cart vendor may apply for a new license in one year from the date of revocation.

3. LOCATION

- a. Location. Vendor shall only be permitted to vend at their assigned location as determined by the certificate and as depicted on the Church Street Marketplace Vending map provided to them by Marketplace staff upon acceptance into the program. Vendor may not deviate from their assigned location unless in case of emergency and only to preserve the safety of property or persons and may only deviate so long as the emergency persists or until such time as Vendor can receive permission from Marketplace staff for such deviation.

- b. Shared Location. Vendor may express interest in sharing a location with a separate vendor for a reduced annual fee (split evenly between the two parties). For example, Vendor A may agree to operate their cart only during the day time hours (11am - 5pm) and share the same location with Vendor B who agrees to only operate during the evening and night time hours (6pm - 3am) for the duration of the license period. Daytime vending requirements will be waived for Vendor B but they still must be present on the Marketplace at least one weekday and one weekend day per week.

Note: The City does not guarantee a space sharing agreement will be made for interested Vendors. Opportunity to do so will be based on level of interest from other Vendors gathered in the application process.

- c. Change of Location after Notice. No property rights are created by the maintenance of the vending facility, and that the permitted location may be changed by the Marketplace Commission after not less than five days written notice to the Vendor.
- d. Temporary Location. City may designate an alternate temporary location due to parades, events, construction or other circumstances that require use of a vendor location. Such notice may be made orally. In case of an emergency, the vendor will move immediately upon oral notice from any City of Burlington representative.

4. FEES FOR MARKETPLACE PEDDLING

Vendor shall pay peddling fees per the schedule outlined in *Terms and Conditions of Marketplace Peddling* based on type of certificate granted per Vendor's application.

Fees will be due in four equal payments: June, July, August and September and will be payable upon Vendor's receipt of City invoice. Non-payment of fees within 30 days of issuance of invoice will result in loss of seniority and thus a loss of present cart location. Payment shall be remitted to:

City of Burlington
Clerk/Treasurer's Office
Attn: Church Street Marketplace Peddling
149 Church St, Burlington, VT 05401

5. SUBLEASE

Vendor may sub-lease their cart location for up to thirty days in a license period to another duly qualified vendor who has applied to and been granted a certificate by the Church Street Marketplace Commission, subject to approval of the Church Street Marketplace Staff and Marketplace Commission. Determination of sub-lease by staff and/or commission shall be final and not subject to appeal.

6. TRANSFER

City Ordinances provide that a Marketplace Vendor license may be transferred from one person to another for the duration of the license period. A person is defined as an individual, a married couple, a partnership with five or fewer partners, or a corporation with five or fewer shareholders.

When a Marketplace vendor sells a cart to another person, the vendor needs to notify the Marketplace Commission about the identity of the "new" vendor. In order to do this, the existing vendor and the new vendor will jointly complete a vendor application form, which will take the place of the form submitted previously; the new vendor must also sign *Terms and Conditions of Marketplace Peddling*.

The License Committee will consider acceptance of the transfer at its next regularly scheduled meeting; it will not unreasonably oppose any transfer. It will recommend that the Marketplace Commission likewise accept the transfer. The Marketplace Commission will consider acceptance of the transfer at its next regularly scheduled meeting; it will not unreasonably deny any transfer.

No substantial* changes may be made to the vendor cart or to the products sold during the remainder of the license period.

Existing Marketplace vendors have two weeks to apply for annual licenses prior to the official date on which applications are accepted. Where the transferee plans no substantial changes to the cart or to the product line, the transferee may apply within the advance period. If substantial changes are contemplated, the transferee may not apply until the date on which all applications are accepted.

*"Substantial" means any change that materially changes the appearance of the cart or its product line. For example, a sign change is not material. Adding baked apples to a dessert cart is not a material; changing from a food cart to a non-food cart IS material. The License Committee will decide what is and is not material; their decision may be appealed to the Marketplace Commission.

7. INDEMNIFICATION & LIABILITIES

To the extent permitted by law, Vendor shall indemnify, defend and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Vendor's acts and/or omissions in the performance of this Agreement. The City is responsible for its own actions. The Vendor is not obligated to indemnify the City or its officers, agents and employees for any liability of the City, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

In the event the City, its officers, agents or employees are notified of any claims asserted against it or them to which this Indemnification clause may apply, the City or its officers, agents and employees shall immediately thereafter notify the Vendor in writing that a claim to which the Indemnification Agreement may apply has been filed.

Vendor shall be responsible to the City for damages or losses attributable to third parties that Vendor contracts with pursuant to this Agreement to provide services to City.

8. COMPLIANCE WITH LAWS

The Vendor shall comply with all applicable Federal, State and local laws.

9. TAXES

By entering into this agreement, Vendor certifies that it is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the City of Burlington. Failure to remain in good standing will constitute default under this Agreement and provide grounds termination of this Agreement after City gives Vendor notice of such default and provides 30 days to cure.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Vermont as if made in and performed entirely within Vermont. All disputes, actions, claims or causes of action arising out of this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in Vermont, and you hereby consent to the jurisdiction of such courts.

11. INSURANCE

Vendor shall submit proof that they maintain auto liability (if applicable) and general liability for bodily injury and property damage in the amount of at least one million dollars (\$1,000,000.00) for bodily injury and property damage. Additional insured status applies in favor of the City of Burlington under both policies on a primary and non-contributory basis. (30) days' Notice of Cancellation in favor of the City of Burlington applies, other than for nonpayment of premium.

12. INSPECTION, ENFORCEMENT, & STOPPAGE OF WORK

The Vendor shall be responsible for ensuring that their cart and materials is in a stable, safe and maintainable condition. At any time, the Vendor shall permit the City or representative for the City the opportunity to inspect the cart or any materials at the Vendor's site. If Vendor fails to comply with applicable local, state, or federal laws, including health and safety laws, the City may notice Vendor verbally or in writing and may stop work under the Agreement until such failure is corrected. City shall have sole discretion in determining if Vendor has adequately corrected its failure to comply with the above. If Vendor's breach of Agreement has not been cured within 30 (thirty) days after commencement of such Work stoppage, then City shall be entitled to terminate this Agreement.

13. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

14. FORCE MAJEURE

If either party is unable to perform any of its obligations hereunder (other than payment obligations) due to any act of God, fire, casualty, flood, war, strike, shortage or any other cause beyond its reasonable control, and if such party uses reasonable efforts to avoid such occurrence and minimize its duration and gives prompt notice to the other party, then the affected party's performance shall be excused and the time for its performance shall be extended for the period of delay or inability to perform.

15. PUBLIC HEALTH EMERGENCY

- A. Compliance with Mandates and Guidance: The vendor is advised that public health emergencies—meaning public health emergencies, as declared by the City, the State of Vermont, or the Federal Government—may introduce significant uncertainty into the project. The Vendor must comply with all local, state, federal orders, directives, regulations, guidance, advisories during a public health emergency. Vendor shall adhere to the below provisions.
- B. Creation of Public Health Emergency Plan: Vendor shall create a public health emergency plan acceptable to the City. The vendor shall be responsible for following this plan and ensuring that the its location and equipment remains in a safe and maintainable condition.
- a. Public Health Emergency Plan: The Public Health Emergency Plan will contain:
 - i. Measures to manage risk and mitigate potential impacts to the health and safety of the public, the City and Vendor;
 - ii. Explicit reference to any health and safety performance standards and mandates provided by the City, the State of Vermont, the Federal government, or other relevant governmental entities;
 - iii. A schedule for possible updates to the plan as standards and mandates change; and
 - iv. Means to adjust the schedule and sequence of work should the emergency change in nature or duration.
 - b. Review and Acceptance of Plan:
 - i. Contractor must provide the plan to the City by the Effective Date of this Contract or by one (1) week prior to the commencement of on-site activities, whichever is later.
 - ii. The City shall have sole discretion to require changes to the plan.
 - iii. The City may revisit the plan at any time to verify compliance with obligations that arise under a state of emergency.
- C. Enforcement & Stoppage of Work: Vendor fails to comply with either 1) the approved public health emergency plan, or 2) any local, state, federal orders, directives, regulations, guidance, or advisories during a public health emergency, the City may stop the Vendor from continuing to vend under this Agreement until such failure is corrected. Such failure to comply shall constitute a breach of the Agreement.
- Upon stoppage of vending, the City may allow vending to resume, at a time determined by the City, under this Agreement if such failure to comply is adequately corrected. The City shall have sole discretion in determining if Vendor has adequately corrected its failure to comply with the above.
- If Contractor’s breach of Contract has not been cured within seven (7) days after notice to stop Work from the City, then City may terminate this Contract, at its discretion.
- D. City Liability Relating to Potential Delays: If a public health emergency is declared, the City will not be responsible for any delays related to the sequence of operations or any expenses or losses incurred as a result of any delays. Any delays related to a public health emergency will be excusable, but will not be compensable.

16. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement or the Agreement Documents shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect,

provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

18. AGREEMENT DOCUMENTS

The Agreement Documents are hereby adopted, incorporated by reference, and made part of this Agreement. The intention of the Agreement Documents is to establish the necessary terms, conditions, labor, materials, equipment, and other items necessary for the proper execution and completion of this Agreement ensure the intended results.

The following documents constitute the Agreement Documents:

- **Church Street Marketplace Cart Vendor Program Overview**
- **Terms and Conditions of Marketplace Peddling 2023-2024**
- **Marketplace Peddling Vendor’s Certificate**
- **Church Street Marketplace Vending Map**
- **Vendor’s Certificate of Insurance**
- **License from Vermont Department of Health (Food Vendor Only)**

19. SIGNATURE

[VENDOR NAME]

CITY OF BURLINGTON
CHURCH STREET MARKETPLACE

By:

By:

Print Name:

Print Name: Kara Alnasrawi

Title:

Title: Director

Date:

Date: