



Office of the City Manager

CONSENT CALENDAR
July 23, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: License Agreement: Masaba LLC., DBA Roaming Bean Coffee Vendor at the Waterfront

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a license agreement with Roaming Bean Coffee to operate at the Berkeley Waterfront for a three-year term, ending July 31, 2027.

FISCAL IMPACTS OF THE RECOMMENDATION

The annual license fee for this agreement is \$3,720 with an additional one-year option with a 3% escalator, generating a total of \$7,552. Funds will be deposited into Marina Fund Budget Code 825-5903-363-80-00.

CURRENT SITUATION AND ITS EFFECTS

Roaming Bean Coffee (Masaba LLC) is currently in a month-to-month status under a Park Permit. Roaming Bean Coffee at the South Cove area has provided reliable customer service to the public at the Berkeley Waterfront in the form of bespoke coffee drinks, waters, and small prepackaged snacks, and is an appropriate public amenity at the Waterfront. Staff recommends Council approval of the new license agreement with Masaba LLC., DBA Roaming Bean Coffee Vendor at the Waterfront.

BACKGROUND

Roaming Bean Coffee has been operating at the Waterfront under a Park Permit since July, 2023 with good success. Waterfront visitors have shared with staff that Roaming Bean Coffee has enhanced their enjoyment of their visits. The Coffee Cart has also attracted new users to the Waterfront. Jasraj Sangha, owner of the Roaming Bean Coffee, has provided service at numerous PRW events, including the Waterfront Scavenger Hunt, the Berkeley Bay Festival, and the Ribbon Cutting event at the Waterfront in December.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed license contains a requirement that tenants shall follow all environmental rules and regulations as they apply to City agencies. Specifically, licensee is required to

minimize waste, recycle, and compost, as per Recycling and Composting Guidelines for City Buildings.

RATIONALE FOR RECOMMENDATION

Under a short-term permit, the Roaming Bean Coffee Cart at the Berkeley Waterfront has provided reliable customer service to the public in the form of coffee and other hot beverages, waters, and prepackaged snacks. A license agreement will allow the vendor to provide more service to the public.

CONTACT PERSON

Ali Endress, Waterfront Manager, (510) 981-6737

Attachments:

1: Resolution

Exhibit A: License Agreement

RESOLUTION NO. -N.S.

LICENSE AGREEMENT: MASABA, LLC. DBA ROAMING BEAN COFFEE TO OPERATE A COFFEE SERVICE AT THE BERKELEY WATERFRONT FOR A THREE YEAR TERM

WHEREAS, Masaba, LLC., DBA Roaming Bean Coffee has been operating at the Waterfront under a Park Permit since July, 2023, and remains in a month-to-month status until a license can be executed; and

WHEREAS, the Roaming Bean Coffee Cart at the Berkeley Waterfront has provided reliable customer service to the public in the form of coffee and other hot beverages, waters, and prepackaged snacks; and

WHEREAS, the annual license fee for this agreement is \$3,720 with an additional one-year option with a 3% escalator, generating a total of \$7,552. Funds will be deposited into Marina Fund Budget Code 825-5903-363-80-00.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a license agreement and any amendments with Masaba, LLC, DBA Roaming Bean Coffee, at the Berkeley Waterfront for one year with an additional one-year option. A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk (Exhibit A).

Exhibit A: License Agreement

LICENSE AGREEMENT

This LICENSE AGREEMENT (“**Agreement**”) dated for reference purposes as of the last signature date, below, (“**Effective Date**”), is entered into by and between the CITY OF BERKELEY, a charter city organized and existing under the laws of the State of California (“**City**”) and Masaba, LLC., a California limited liability company doing business as Roaming Bean Coffee, at 124 University Avenue, in Berkeley, California, with a Business mailing address of 1099 Regatta Point, Hercules, CA, 94547 (“**Licensee**”).

1. LICENSE

a. City hereby grants a non-exclusive license (“**License**”) to Licensee, subject to all the terms and conditions herein, for the Licensee’s use of the City’s property located at the Premises at the South Cove Concrete Pad at 124 University Avenue, Berkeley, California, (the “**License Area**”), as more particularly described in and shown on the map attached hereto as Exhibit A and made a part hereof. City hereby reserves the right to use or allow third parties to use the License Area for Waterfront related activities and public restroom use, if deemed necessary by the City Manager or their designee.

b. Licensee may use the License Area solely for the operation of a small, non-permanent coffee stand to enhance the public space through the provision of for-sale coffee, cocoa and non-alcoholic beverages with pre-prepared food items and ancillary merchandise as more particularly described in Exhibit B, attached hereto and made a part hereof, and for no other purpose. If Licensee fails to use the License Area for such purposes or uses the License Area for unauthorized purposes, City may, in its sole discretion, immediately terminate this Agreement.

c. Licensee acknowledges that this Agreement grants Licensee the personal privilege to occupy and use the License Area for the purposes stated herein, but does not convey an estate in land or a leasehold interest in the License Area, nor does it create a landlord/tenant relationship.

d. Licensee agrees that neither City nor anyone acting on City’s behalf has made any representation or warranty of any kind or nature whatsoever respecting the physical condition of the License Area, its suitability for Licensee’s use, or any other matter relating to the License Area (including, but not limited to, the environmental condition of the License Area) or this Agreement, and Licensee accepts the License Area in its “AS-IS CONDITION AND WITH ALL FAULTS.”

2. TERM

This Agreement shall take effect only upon approval by the City Manager (the “**Effective Date**”) and execution by both City and Licensee, subject to the following:

a. The term of the License shall expire at midnight on September 30, 2025 (“**Termination Date**”). Each one-month period that ends on the last day of the calendar month shall be considered a “**License Month**” and the First License Month shall be the period from the Effective Date until August 31, 2024. For purposes of determining the fee under Section 3 below, any partial month shall be pro-rated based on the number of days in the month.

b. Either party may terminate this Agreement for any reason or for no reason with ninety (90) days’ prior written notice to the other party.

c. In addition, the City has the right to terminate this Agreement by written notice to Licensee in the event of Licensee’s failure to comply with any of the terms and conditions herein set forth or if, in the City Manager’s exercise of reasonable discretion, revocation is necessary in the interest of public health or safety.

d. Option to Extend Term. Tenant has an option to extend this license agreement for one (1) year. During option period, rent will increase by three percent (3%), to (\$319.30/month).

e. If, after expiration of the term, Licensee continues in possession and the City does not object, all provisions of the Agreement shall continue in effect, subject to the following: (1) the Agreement and License shall be on a month-to-month basis, with a 3% escalation per year, and shall be terminable by either party upon thirty (30) days prior written notice..

3. FEE

In consideration for the rights conveyed by this Agreement, Licensee shall pay to City a fee of Three Hundred and Ten Dollars (\$310) per month, payable in advance on the first day of each month of each License Year. Licensee shall make payments to City as provided in Exhibit C, attached hereto.

4. SECURITY DEPOSIT

A security deposit in the amount of one month’s Fee is required.

5. NOTICES

A written notice shall be deemed served upon (i) personal delivery or delivery by a nationally recognized overnight courier; or (ii) three days after mailing said notice to the other

party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this Agreement, all notices to the City shall be addressed to:

City of Berkeley
Real Property Administrator
1947 Center Street, 4th Floor, Suite 400
Berkeley, CA 94704

with a copy sent to:

Waterfront Manager
Parks Recreation and Waterfront Department
Marina Office
201 University Avenue
Berkeley, CA 94710

For purposes of this Agreement, all notices to Licensee shall be addressed to the address below. Licensee shall promptly notify City of any change of address.

Masaba, LLC.
Attn: Kanwar Jasraj Sangha
1099 Regatta Point
Hercules, CA, 94547

6. MAINTENANCE AND ALTERATIONS

a. Licensee shall, to the City's satisfaction, maintain the License Area, and any improvements thereto, in good order, condition and repair and reasonably free and clear of all debris, trash and rubbish.

b. Except as set forth in this Section, Licensee shall not construct any facilities or improvements, install any equipment, or make any alterations to the License Area without the City's prior written consent. Licensee, at its expense, may install the following improvements on the timetable indicated and will obtain all necessary approvals and permits, subject to compliance with applicable environmental laws, including the California Environmental Quality Act:

- Over the term of this License, Licensee may conduct the following non-permanent "placements" in the License Area, subject to the specifications in Exhibit E.
 - i. Concession Stand:
 - 1. Placement of a 10-foot long by 8.5-foot-deep by 9-foot tall non-permanent "Concession Stand" in the location described in Exhibit A.

2. Placement of an integrated closure of the gap between the Concession Stand and the walls of the adjacent structure.
 3. A City-Approved power cord, painted to match the adjacent building or container color, and placed along the approved path for electrical, shown in Exhibit A.
 4. Placement and plug-in of the power cord from the exterior of the adjacent building to the equipment within the Concession Stand.
 5. Provision of a replacement vent panel for the adjacent structure, cut to include a 2x2 inch space for the power cord, and provided to the City to install. Licensee shall coordinate with the city to identify a vent substantially the same to existing.
- ii. Coffee Cart:
1. Placement of a rolling “Roaming Bean Coffee Cart” under a 10x10 foot metal and fabric canopy is permitted in place of the “concession stand” described above.
- iii. Solar Powered Vending Station:
1. Placement of a non-permanent solar powered vending station may be considered in place of the Container or Coffee Cart described above, if detailed plans and drawings are submitted to the City, and if the City issues subsequent authorization in writing. Approval shall be at the sole discretion of the City.
- iv. All improvements shall be non-permanent and shall not leave any lasting impacts or changes on the premises. The Coffee Cart may exist within the Container or the Solar Powered Vending Station, but no two non-permanent structures serving the purpose of this Agreement may exist outside of the footprint of one another. This shall not preclude the Coffee Cart from operating under a special event permit elsewhere at the Waterfront at the same time as the coffee vendor use is operating out of the Container at South Cove.

Licensee shall be solely responsible for, and shall pay costs of, all approved “placements” at existing facilities used by Licensee. Upon termination or expiration of this Agreement, City may require Licensee to remove some or all approved “placements” upon the License Area by Licensee. If Licensee fails to remove such “placements” within 10 days following City’s demand therefor, City may arrange to have such alterations and improvements removed and may recover costs of such removal from Licensee. Any and all improvements to the License Area which City does not require to be removed shall remain in place and become the property of the City.

7. **CITY ACCESS AND ENTRY TO THE LICENSE AREA**

City, its agents, employees, and representatives, shall have the right to enter the License Area at any time, provided such entry does not cause unreasonable interference with Licensee's activities.

8. **USE OF PUBLIC PROPERTY; RISK OF LOSS**

a. Licensee shall keep any public and/or common areas adjacent to the License Area free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee's operations or use of the License Area. Any line-queuing by customers shall be kept off the adjacent San Francisco Bay Trail.

b. Except as otherwise expressly provided in this Agreement, Licensee agrees that it is not a covenant or condition of this Agreement or of any other agreement between City and Licensee that City undertake or cause to be undertaken any development or redevelopment of the License Area or surrounding areas or any improvement thereto, and City shall incur no liability whatsoever to Licensee for failure to undertake such development or redevelopment.

c. City at all times shall have the right and privilege of making such changes in and to the License Area and to the public and/or common areas adjacent to the License Area which City deems to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle City to unreasonably effect changes that would materially and adversely affect access to or visibility of the License Area, except temporarily during periods of construction. City shall have the right to establish, promulgate and enforce such reasonable rules and regulations concerning the License Area and adjacent areas as it may deem necessary or advisable for the proper, safe and efficient management, operation, maintenance and use thereof, and Licensee shall comply with the same.

d. City at all times shall have the right to lease, license or permit the use of space within the License Area and adjacent areas to persons for water-related uses if deemed necessary for the management and operation of the Berkeley Waterfront.

e. Nothing contained herein shall be deemed to create any liability to City for any personal or bodily injury or death, or any damage to motor vehicles, vessels, or other property of Licensee's principals, partners, shareholders, members, employees, contractors or representatives, unless solely caused by the sole active negligence or willful misconduct of City, its agents, servants or employees. Licensee is solely responsible for the security of the License Area, and for the safety of those using the License Area. Licensee acknowledges that if City provides security or police

patrols for the License Area or any portion thereof, City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses, injury or death caused by the acts of third parties and does not assume responsibility for any such acts. To induce City to provide such security, if any, as City in its sole discretion deems reasonable, appropriate and economically feasible, Licensee hereby waives any present or future claims Licensee may have against City, whether known or unknown, for bodily injury, death or property damage or loss arising from the performance of such security or policing activities. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Licensee or any other person or entity.

f. Licensee acknowledges that City holds the License Area property and the Marina in trust pursuant to Chapter 347 of the California Statutes of 1913, as amended (the “Grant”) subject to the conditions, restrictions, limitations, right, powers, duties, reversionary rights and other rights created or reserved in the Grant. Licensee agrees that, notwithstanding anything in this Agreement to the contrary, Licensee shall use the License Area consistently with, and in a manner that will not result in a violation of the Grant or of the provisions of the Berkeley City Charter, California law and/or the California Constitution.

g. City reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the License Area in locations that will not unreasonably interfere with Licensee’s access to or use of the License Area. Licensee shall be given reasonable notice before commencement of any utility work on the License Area.

h. Licensee agrees that it shall not interfere with the free and unobstructed access by the people to the waters of the San Francisco Bay and the Waterfront of such waters; provided, however, that Licensee shall be obligated to permit such access only as required for consistency with applicable laws of the State of California, Alameda County, the City of Berkeley, the Grant, and/or City of Berkeley’s and/or City’s plans adopted from time to time. Nothing in this Agreement is intended to, and shall not be construed to, confer any third-party beneficiary rights or other right of action in favor of any third party.

9. TAXES, ASSESSMENTS, AND OTHER CHARGES

Licensee acknowledges this Agreement may give rise to a possessory interest subject to property taxation, and to the extent that any such possessory interest tax is assessed against such interest, Licensee shall be solely responsible for the payment thereof, this notice having been given pursuant to Section 107.6 of the Revenue and Taxation Code. Licensee shall pay all applicable personal property taxes lawfully levied on account of Licensee’s personal property located on the License Area, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee’s use or occupancy of the License Area. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

10. UTILITIES AND SERVICE FEES

Licensee shall have access to the power and water inside the adjacent structure, paid for by the City. Licensee shall have access to dispose between 6-gallons and 20-gallons of water per operational day at the fish-cleaning station on Spinnaker Way, which empties into the City's sewer system. Licensee shall haul off all business refuse and recyclable materials created during the ordinary course of business and shall maintain separate refuse and recycling bins for use at the site. Licensee shall make all arrangements for and pay for any additional utilities and services furnished to or used on the License Area, including without limitation, telephone, internet, and refuse needs.

11. ASSIGNMENT AND SUBLICENSING PROHIBITED

The License is personal to Licensee. Licensee may not assign or sublicense the License or this Agreement in whole or in part, and any attempt to assign or sublicense the License or this Agreement shall be void ab initio.

12. INDEMNIFICATION

Licensee, for itself and its successors and assigns, agrees to release, defend, indemnify and hold harmless City, its elected officials, officers, agents, volunteers, contractors and employees (collectively, "City Parties") from and against any and all claims, demands, liability, damages, lawsuits or other actions (including attorneys' fees and costs), including without limitation actions for bodily injury or death or property damage arising out of or caused by the use of the License Area by Licensee or Licensee's officers, agents, representatives, employees, contractors, subcontractors, guests, invited visitors, and customers (collectively, "Licensee Parties"), Licensee's or Licensee Parties' operations under this Agreement, Licensee's or Licensee Parties' failure to comply with Laws in connection with the use of or any activities conducted on the License Area, or the performance of this Agreement by Licensee.

Except to the extent caused by City's sole or active negligence or willful misconduct, Licensee shall protect, indemnify, defend and hold City and City Parties harmless from and against any and all demands, liability, claims, actions, damages, costs and expenses, including attorneys' fees, consultants' fees, litigation costs, and investigation, removal, remediation, cleanup and monitoring costs, asserted against or incurred at any time and from time-to-time by reason of or arising out of (a) the use, generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Materials at, from or near the License Area by or for Licensee, Licensee Parties or anyone under Licensee's control, or (b) the violation of any Hazardous Materials law by Licensee or any of Licensee Parties or by anyone under Licensee's control. Such indemnity obligation shall include any demands, liability, claims or actions for tangible or intangible property

damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Licensee's indemnity obligations under this Section 12 shall survive the termination or expiration of this Agreement.

“Hazardous Materials” means substances that now or in the future are defined or regulated by Environmental Laws as "contamination," "contaminants," "hazardous," "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "pollution," "toxic," "toxic substances," "toxins," or "ultra-hazardous" or are otherwise listed or regulated under any Environmental Laws. **“Environmental Laws”** means a) any and all federal, state, and local laws relating to protection of human health or the environment (including air, surface water, groundwater, land surface, or subsurface), whether currently in force, previously enforced, or subsequently enacted, including the following laws: 15 United States Code §§2601–2629 (the Toxic Substances Control Act of 1976, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (TSCA)); 33 United States Code §§1251–1388 (the Clean Water Act); 42 United States Code §§6901–6992k (the Resource Conservation and Recovery Act of 1976 (RCRA)); 42 United States Code §§7401–7671q (the Clean Air Act); 42 USC §§9601–9675 (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)); 49 United States Code §§5101–5128 (the Hazardous Materials Transportation Act); 33 United States Code §§2701–2762, 43 United States Code §1656 (the Oil Pollution Act of 1990); California Health and Safety Code §§25100–25259 (the Hazardous Waste Control Law); California Health and Safety Code §§25270–25270.13 (the Aboveground Petroleum Storage Act); California Health and Safety Code §§25300–25395.45 (the Carpenter-Presley-Tanner Hazardous Substance Account Act); California Health and Safety Code §§25404–25404.9 (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); California Health and Safety Code §§25500–25547.8 (Hazardous Materials Release Response Plans and Inventory); California Health and Safety Code §§25249.5–25249.14 (the California Safe Drinking Water and Toxic Enforcement Act of 1986, or Proposition 65); California Health and Safety Code §§25280–25299.8 (Underground Storage of Hazardous Substances); California Health and Safety Code §§18901–18949.31 (California Building Standards Law); California Water Code §§13000–16104 (which includes the Porter-Cologne Water Quality Control Act); and California Fish and Game Code §§5650–5656; (b) all regulations that have been adopted or promulgated under such statutes or that are adopted under such statutes after the Effective Date of this Agreement; and (c) all enforceable demands, directives, and orders of any court, administrative body, or government entity relating to Hazardous Materials, whether currently in force, previously enforced, or enacted after the Effective Date of this Agreement.

13. INSURANCE

Licensee at its expense shall obtain and maintain at all times during the term of this Agreement, insurance consistent with the insurance requirements set forth in Exhibit D attached hereto and incorporated herein.

14. COMPLIANCE WITH LAWS

a. Licensee, at its expense, shall observe and comply with all applicable laws, ordinances, rules, orders, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including without limitation the Occupational Safety and Health Act of 1979 as amended, and all California Occupational Safety and Health and Environmental Laws (collectively, “**Laws**”). All activities conducted by Licensee and Licensee Parties on the License Area must be in accordance with all such Laws. Licensee shall defend, indemnify and hold harmless City and City Parties from and against any and all damages, liability, fines, penalties and consequences arising from any actual or alleged noncompliance or violation of Laws by Licensee, or any of the Licensee Parties.

b. If a death, serious bodily injury or substantial property damage occurs in connection with the performance of this Agreement or use of the License Area, Licensee shall immediately notify the City’s Risk Manager. If any accident occurs in connection with this Agreement, Licensee shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Licensee’s liability insurance carrier; and 3) a detailed description of the accident, including whether any City’s equipment, tools or materials were involved.

c. If a release of Hazardous Materials occurs in connection with the performance of this Agreement or Licensee’s use of the License Area or if any Hazardous Materials come to be released or otherwise located in, on, under or about the License Area, other than as previously consented to by City, Licensee shall immediately notify the Berkeley Police Department and the City’s Toxics Management office, in addition to any other governmental agencies or persons as required by applicable Laws.

d. Licensee shall not store Hazardous Materials on the License Area without a proper permit and prior written consent from the City.

15. RELOCATION WAIVER

Licensee fully waives and releases and discharges City from any and all manner of rights, demands, liabilities, obligations, claims, or causes of action, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the License Area or the full or partial termination or expiration of Licensee's right to use the License Area as permitted under this Agreement, including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 United State Code Section 4601 et seq. and/or the California Relocation Assistance Law, as amended, Government Code Section 7260 et seq.

16. LIENS. Licensee shall not suffer or permit to be enforced against the License Area, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors liens or any claim for damage arising from the work of any construction, excavation, survey, tests, grading, repair, restoration, replacement or improvement, or any other work, performed by Licensee or any Licensee Parties, but Licensee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the License Area or any City property. Licensee expressly agrees to indemnify, defend and hold harmless City, all of the other City Parties, and the License Area free from all liability for any and all such liens, claims and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith. Notwithstanding anything to the contrary set forth above, if Licensee shall in good faith contest the validity of any such lien, claim or demand, then Licensee shall, at its expense, defend itself and the City and City Parties against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before any enforcement thereof against City or the License Area, but only upon the condition that if City shall so require, Licensee shall procure and record or furnish to City a surety bond or other acceptable security satisfactory to City in an amount at least equal to such contested lien, claim or demand indemnifying the City and City Parties against liability for the same, and holding the License Area and City owned property free from the effect of any such lien or claim. City reserves the right at any time and from time to time to post and maintain on said License Area, or any portion thereof or improvement thereon, such notices of non-responsibility or otherwise as may be necessary to protect the City and City Parties against liability for all such liens and claims.

17. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY

At the expiration or earlier termination of this Agreement, Licensee shall: 1) return and surrender the License Area, broom swept clean and in good order and condition, reasonable wear and tear and damage by casualty excepted; and 2) remove all personal property, material, equipment, supplies and any improvements or alterations that City requests Licensee to remove pursuant to Section 6.

18. REMEDIES

In no event shall Licensee be entitled to recover any actual, consequential, punitive, or other monetary damages against City for breach of this Agreement. City and Licensee agree that, in the event of a breach of this Agreement, each of the Parties hereto may pursue specific performance or suits for declaratory or injunctive relief. In addition to the foregoing remedies, City shall be entitled to recover monetary damages with respect to amounts payable by Licensee to City under this Agreement, but in no event may City seek to recover any consequential or punitive damages.

19. CITY NON-DISCRIMINATION ORDINANCE

Licensee shall comply with the provisions of the Berkeley Municipal Code (B.M.C.) Chapter 13.26 as amended from time to time. In the performance of this Agreement, Licensee agrees as follows:

a. Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Licensee shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this nondiscrimination provision. In addition, Licensee shall fill out in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

20. CITY NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

a. If Licensee provides any aid, service or benefit to others on the City's behalf, Licensee shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Licensee shall further observe and comply with all applicable Laws prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

b. If Licensee is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990 ("ADA"), Licensee shall observe and comply with all applicable provisions of the ADA and any amendments thereto, and all applicable federal, state,

municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Licensee. All Licensee's activities must be in accordance with such Laws and Licensee, at its expense, shall be solely responsible for complying therewith.

21. CONFLICT OF INTEREST PROHIBITED

a. In accordance with Government Code section 1090, Berkeley City Charter section 36, and B.M.C. Chapter 3.64, neither Licensee nor any employee, officer, director, partner or member of Licensee, or immediate family member of any of the preceding, shall have served with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Agreement.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

24. CITY BUSINESS LICENSE, PAYMENT TAXES, TAX I.D. NUMBER

Licensee has obtained a City business license as required by B.M.C. Chapter 9.04 and its license number is written below; or, Licensee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Licensee shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

25. BERKELEY LIVING WAGE ORDINANCE

a. Licensee agrees to comply with B.M.C. Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Licensee employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Licensee will be required to provide all eligible employees with the City of Berkeley mandated minimum compensation during the term

of this Agreement, as defined in B.M.C. Chapter 13.27, as well as comply with the terms as enumerated herein.

b. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the License Area. These records shall include the total number of hours worked, the number of hours spent providing service on the License Area, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the Agreement. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default of the Licensee.

c. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses Licensee enters with regard to the License Area. Sublicensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the License Area.

d. If Licensee fails to comply with the requirements of the LWO and this Agreement, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Section shall constitute default hereunder, upon which City may terminate this Agreement.

e. In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

26. BERKELEY EQUAL BENEFITS ORDINANCE

a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this Agreement, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

c. If Licensee fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law and equity. Licensee's failure to comply with this Section shall constitute default of the Agreement.

In addition, at City's sole discretion, Licensee shall be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Licensee's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

27. NUCLEAR FREE BERKELEY

Licensee agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

28. OPPRESSIVE STATES

a. In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this Agreement to forgo contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Agreement) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and V-Tsang shall be deemed Oppressive States.

c. Licensee's failure to comply with this Section shall constitute a default hereunder and City may terminate this Agreement. In the event that City terminates this Agreement due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this Agreement is terminated.

29. PESTICIDES

All use of pesticides on the License Area shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

30. SIGNS

Licensee shall not install or letter any signs on the License Area without the prior written consent of City. All signs on the License Area shall conform to the provisions of B.M.C. Chapter 20.04 and any other City design guidelines for signs.

31. SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other terms of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

32. WAIVER

No waiver by City of any breach or default of any provision of this Agreement shall be deemed a waiver of any other provision hereof or of any subsequent breach or default by Licensee of the same or any other provision.

33. GOVERNING LAW

The laws of the State of California shall govern this Agreement, without regard to its conflict of laws principles. The parties agree that in any dispute, venue shall be in Alameda County, California.

34. AMENDMENTS

The terms of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Licensee.

35. INTERPRETATION

The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both Parties.

36. AUTHORITY.

The individual executing this Agreement has full power and authority to execute and deliver the Agreement on behalf of Licensee.

37. EFFECT ON SUCCESSORS AND ASSIGNS

Without limiting the provisions of Section 11 above, all of the covenants, conditions and provisions of this Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

38. ENTIRE AGREEMENT

a. The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee.

b. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

39. ATTORNEYS' FEES

In the event either party to this Agreement institutes an action or proceeding to interpret or enforce any of the terms hereof, or to obtain money damages, the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as ordered by the court, its reasonable attorneys' fees, together with out-of-pocket expenses.

40. COUNTERPARTS; ELECTRONIC SIGNATURES

This Agreement may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument. The parties agree that electronic signatures on this Agreement, including those transmitted by electronic email or other electronic means, including, without limitation, via Adobe DocuSign, shall be sufficient to bind the parties].

[Signature Page Follows]

IN WITNESS WHEREOF, City and Licensee have executed this Agreement as of the date written below.

CITY:

CITY OF BERKELEY

LaTanya Bellows, Interim City Manager

Date: _____

Approved as to form:

Farimah Brown, City Attorney

By _____

Registered by:

Attest:

Jenny Wong, City Auditor

Mark Numainville, City Clerk

LICENSEE

By: _____

Name: Kanwar Jasraj Sangha

Title: Licensee/Owner of Masaba, Inc.
DBA Roaming Bean Coffee

LICENSEE INFORMATION

Tax Identification No.: 92-350-5094

Berkeley Business License No.: BL-018479

Incorporated: Yes No

Approved as to form: Yes No

Certified Woman Business Enterprise: Yes No

Certified Minority Business Enterprise: Yes No

Certified Disadvantaged Business Enterprise: Yes No

EXHIBIT A
LICENSE AREA

Exhibit A.1: Written Description

The license area is in the South Cove East Area of the Waterfront, between University Avenue and the South Cove East parking area to the north, and the San Francisco Bay Trail, to the South. The Licensee shall adhere to the dimensions and placement that are identical to those stated herein. Minor deviations may be permitted if necessary, with the prior written authorization from the Waterfront Manager.

The License Area includes 3 components:

1. The Concession Stand Area
 - a. This is a 10-foot long by 8.5-foot deep by 9-foot high area adjacent to the southern wall of the structure in the southwest corner of the Southeast Parking Area at the Berkeley Waterfront.
 - b. The Booth Area shall be set back approximately 10-inches from the southern facing wall of the adjacent structure.
 - c. A Coffee Cart described in Exhibit E, under a 10-foot x 10-foot portable canopy, may be placed during operating hours while Licensee procures and finalizes the Concession Stand for placement.
2. The Concession Booth Awning Area
 - a. This is an 8-foot long by 3-foot deep awning that covers the window when closed, and extends overhead when open.
 - b. The Awning Area shall be set back 30 inches from the northern edge of the San Francisco Bay Trail.
 - c. The Awning Area shall be a minimum of 8 feet overhead when raised.
3. The Access for Power/Water Area
 - a. The path for power extends from the Utility Chase inside the building, and outside the building where the Licensee can connect power to the equipment inside the Concession Booth.
 - b. The water access is inside the 7x7 space. Licensee shall have access to dispose of approximately 6-20 gallons of used water inside the sink, per day. Licensee may also dispose of used water at the Fish Cleaning Station at the launch ramp.

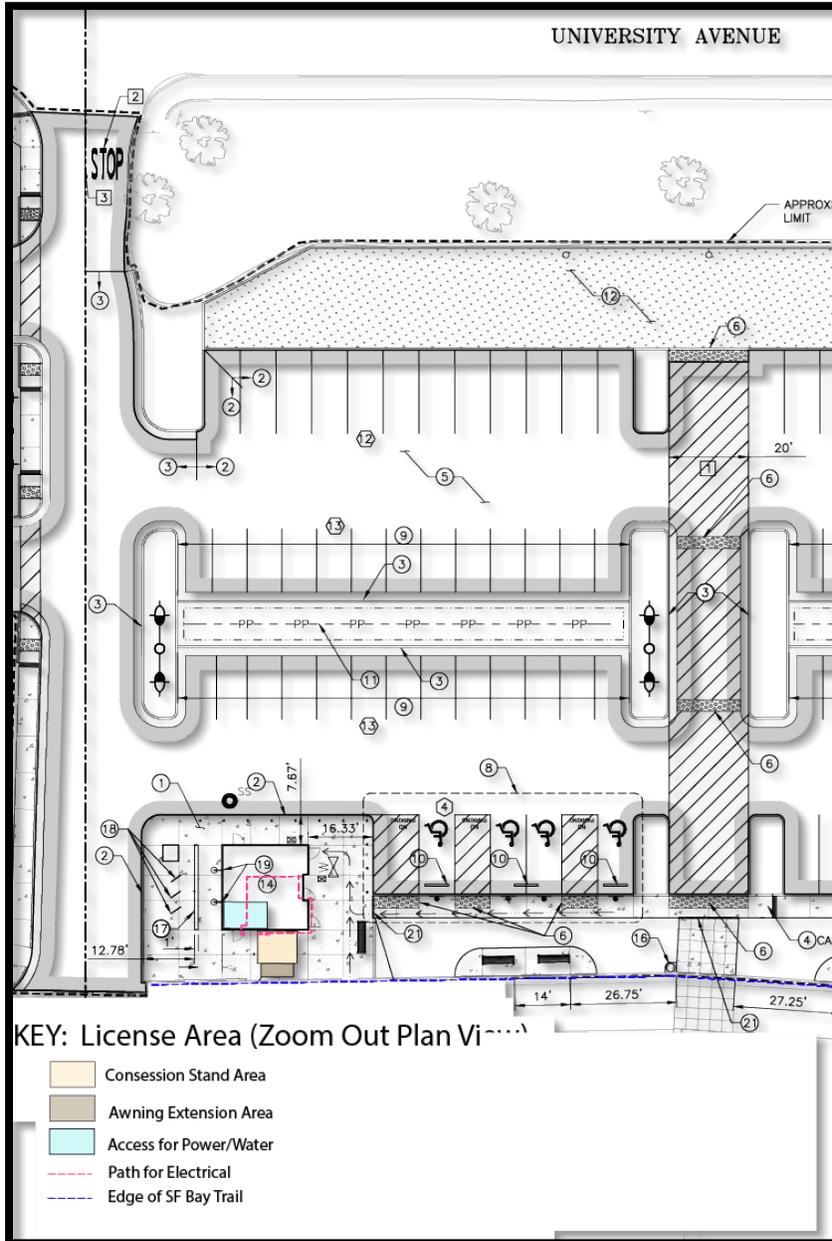
The License Area includes the following dimensions and placement for the Concession Stand:

<u>Dimensions</u>	<u>Inches</u>	<u>Feet</u>
Adjacent South Cove Building Wall to Edge of SF Bay Trail	178	14' 10"
Gap between Building Wall and Concession Booth	10	0' 10"
Length of Concession Booth	120	10' 0"
Depth of Concession Booth	102	8' 6"
Open ground space between Southern Edge of Concession Booth and Northern Edge of SF Bay Trail	66	5' 6"
Awning Extension	36	3' 0"
Space from open awning to edge of pad	30	2' 6"

Exhibit A.2. License Area and Placement Drawings

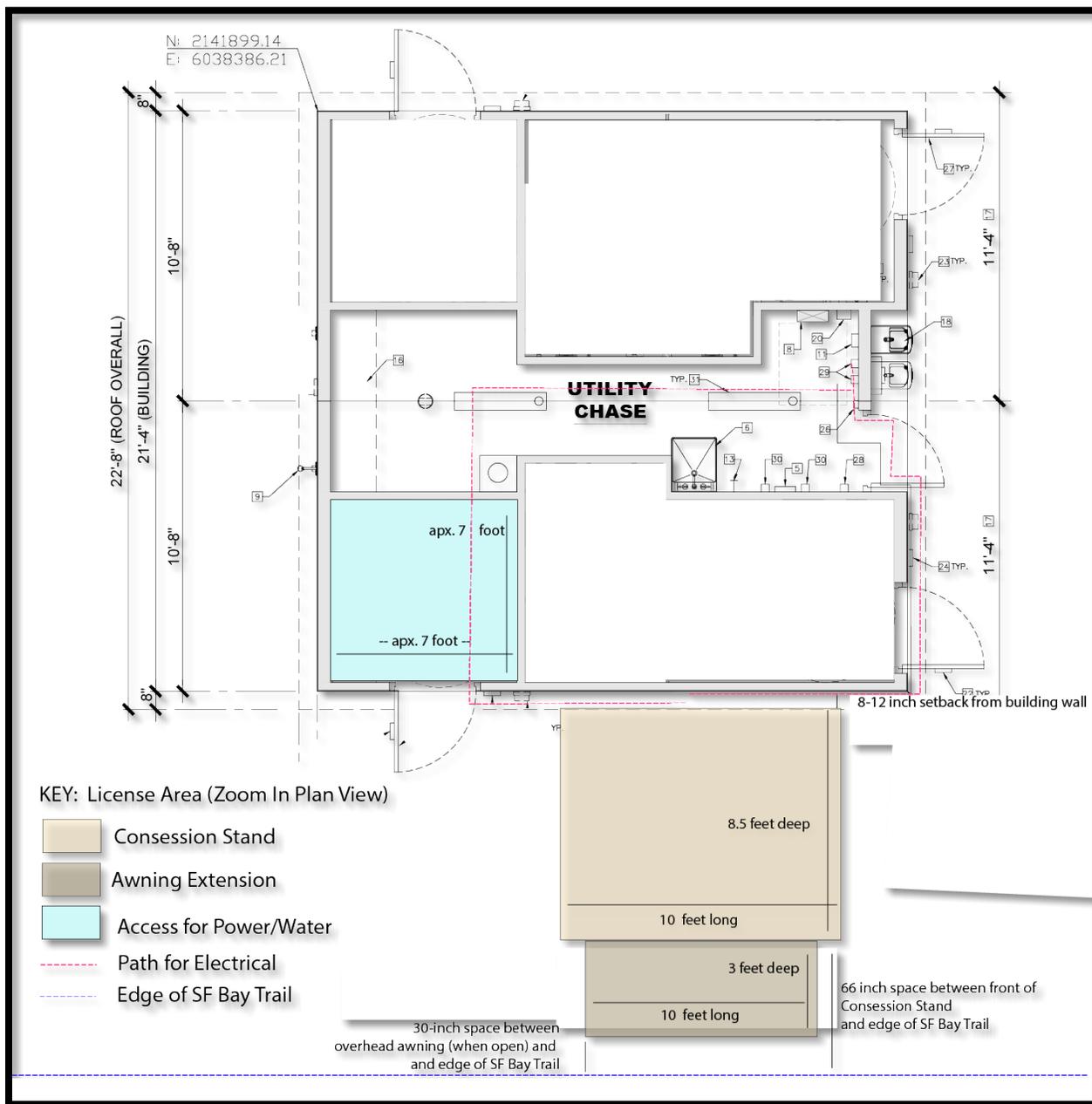
The license area and placement of components is shown in the drawings below. The Licensee shall adhere to the dimensions and placement that are identical to those stated herein. Minor deviations may be permitted if necessary, with the prior written authorization from the Waterfront Manager. Until the time the Concession Stand is placed, a 30-inch x 60-inch professionally designed Coffee Cart, described in Exhibit D, may operate out of the Concession Stand location, subject to all applicable requirements herein.

Exhibit A.2.i: License Area - Zoom Out Plan View



Exh A

Exhibit A.2.ii. License Area - Zoom In Plan View



Exh A

Exhibit A.2.iii. License Area - Southern Elevation

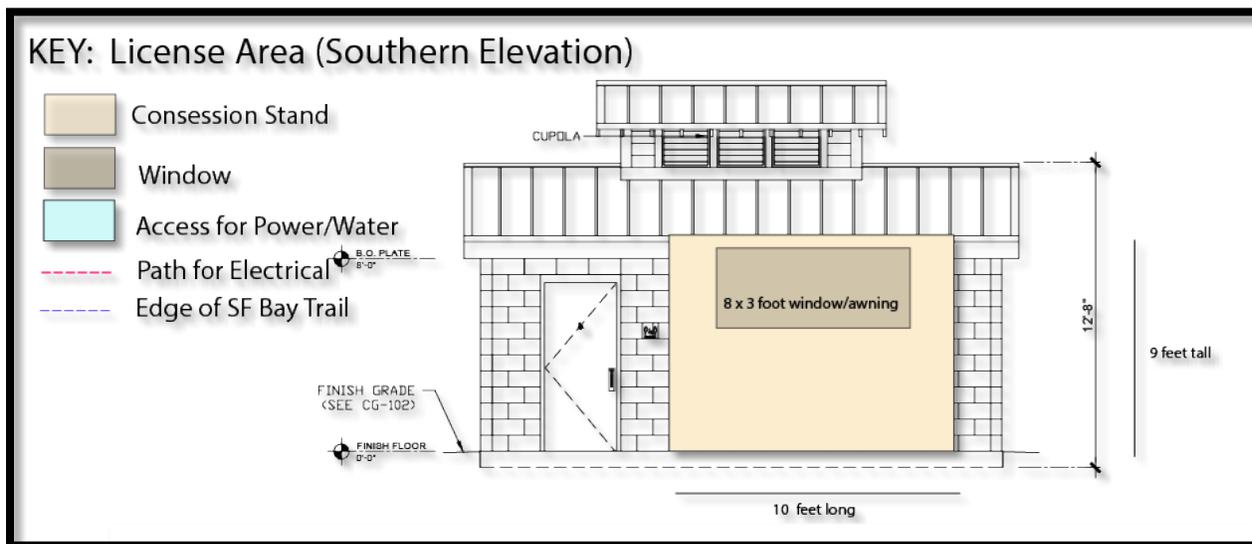


Exhibit A.3. License Area Photo Sketch



Exh A

EXHIBIT B
LICENSE AREA PERMITTED USES

Licensee shall only use the License Area described on Exhibit A as follows and for no other purpose:

1. Coffee and beverage vendor with ancillary pastries, pre-prepared food items; and ancillary merchandise.
2. Licensee may operate out of a Concession Stand described in Exhibit A and Exhibit E.
3. Licensee may not perform on site hot-cooking of food items. Hot coffee and beverages are permitted.
4. Licensee shall operate a minimum of 16 days per month, for a minimum of 5 hours per day.
5. Licensee may use the License Area in blue as access for power and water.
6. The Concession Stand may remain in the License Area with the window closed, and with all entrances properly locked, when not in use.
7. The power cord may remain in place on the exterior of the Adjacent Structure and the Concession Stand, so long as the points of connection within the Utility Chase and the Concession Stand remain locked to prevent tampering and theft of power; and
8. City may require an after-meter power gauge to track power usage.

-DRAFT ONLY

EXHIBIT C
PAYMENT

1. The License Fee described in Section 3.a and 3.c of the Agreement shall be paid in advance every month in equal monthly installments for each License Year, and pro-rated for any partial License Year. Payments must be received no later than fourteen (14) calendar days from the start of each month. Any payment received after this fourteen (14) day time period will be assessed a ten percent (10%) late penalty.
2. Payments shall be made payable to the “City of Berkeley” and paid in person or by mail to the

Finance Department
Customer Service Counter
1947 Center Street, 1st Floor
Berkeley, CA 94704
3. Failure of Licensee to make full payments on time is grounds for termination of this Agreement by the City.

EXHIBIT D
INSURANCE REQUIREMENTS

- a. Permittee, at its own expense, shall maintain at all times during the performance of this Permit a commercial general liability insurance policy with a combined single limit of not less than \$1,000,000 for injury or death to one or more persons in any one accident or occurrence to cover any claims arising out Permittee's use of the Premises and performance of services under this Permit. All such insurance shall insure performance by Permittee of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insured and shall provide primary coverage with respect to the City.
- b. If the insurance referred to above is written on a Claims Made Form, then following termination of this Permit, coverage shall survive for a period of not less than five years. Coverage shall also provide for retroactive date of placement coinciding with the effective date of this Permit.
- c. Permittee at its cost shall maintain on all its personal property, Permittee's improvements, and alterations, in on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Permittee for the replacement of personal property or the restoration of Permittee's improvements or alterations.
- d. If Permittee employees any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel; terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the City; provide for a waiver of any right of subrogation against City to the extent permitted by law; and be approved as to form and sufficiency by the City's Risk Manager.
- e. Permittee shall forward all insurance documents to:

Berkeley Marina
201 University Ave
Berkeley, CA 94710

EXHIBIT E
AESTHETIC STANDARDS

1. All publicly visible elements of the Concession Stand shall be reviewed and approved by the Waterfront Manager to ensure aesthetic quality that enhances the South Cove Area of the Waterfront. Minor deviations may be permitted if necessary, with the prior written authorization from the Waterfront Manager.

2. Concession Stand:
 - A The Concession Stand shall be colored dark grey or black, and shall include wood accents. The final quality and aesthetic shall be reviewed and approved by the Waterfront Manager prior to installation.
 - B The equipment/lock mechanisms shall be black or dark tones to recede from view, and shall be reviewed and approved by the Waterfront Manager prior to installation.
 - C If a gap is created between the Concession Stand and the adjacent building wall, Licensee must close the gap to ensure to make the gap impassable by vermin or animals. The closure shall be black or dark tones to recede from view, and shall be reviewed and approved by the Waterfront Manager prior to installation.
 - D The Concession Stand shall be substantially similar to the image below, and final design, including paint chips and materials samples, shall be reviewed and approved by the Waterfront Manager prior to installation.
 - E While Licensee procures and finalizes the Concession Stand, the coffee cart, below, underneath a 10x10 foot canopy is permitted while the business is open, and must be removed at the close of business.



Concession Stand



Coffee Cart (Under 10 x 10 canopy)

Exh F

EXHIBIT F
TERM SHEET

TENANT	Masaba, Inc. DBA Roaming Bean Coffee
LANDLORD	City of Berkeley
PREMISES	Concrete Pad in South Cove East at the Berkeley Waterfront, and adjacent areas, as shown in Exhibit A.
BASE RENT	\$310 per month in year one, escalating at a 3% annual increase thereafter if the Option is enacted.
INITIAL TERM	One (1) year, commencing as of August 1, 2024, or on the Effective Date , whichever is later, with an Option to extend for 1 year.
PERMITTED USE	Container or coffee cart offering coffee, prepared foods, blended drinks, and beverages. No on site hot-cooking of food, as described in Exhibit B.
RENT COMMENCEMENT DATE	August 1, 2024, or the Effective Date , whichever is later.
UTILITIES & SERVICES	City responsible for electrical and water.
SECURITY DEPOSIT	<u>\$310</u>

Exh F