

**AGREEMENT BY AND BETWEEN
THE WISCONSIN DEPARTMENT OF TRANSPORTATION
AND THE City OF La Crosse
FOR TEMPORARY PARKLET INSTALLATIONS
ON STATE TRUNK AND/OR CONNECTING HIGHWAYS**

This agreement is made and entered into, by and between, the City of La Crosse, hereinafter called the “Municipality,” and the State of Wisconsin, Department of Transportation, hereinafter called the “State” each a party, together the parties.

WITNESSETH

WHEREAS, the COVID-19 pandemic has forced the temporary closure of many licensed food and beverage service establishments in Wisconsin; and

WHEREAS, the food and beverage industry in numerous states has requested that sidewalks and parking areas adjacent to individual businesses be temporarily available for use to reopen safely, accommodate social distancing and increase their diminished capacity; and

WHEREAS, the State has the authority to regulate the use of right-of-way on state trunk highways and connecting highways under Wis. Stats. ch. 84, 85, and 86; and

WHEREAS, the State, under 23 CFR 1.23, purchases and maintain right-of-way sufficient for the construction, operation and maintenance of highway facilities, and the State must preserve such right-of-way free of all public and private installations, facilities or encroachments where such right -of-way was acquired with the use of Federal funds as required by the Federal Highway Administration; and

WHEREAS, the President of the United States through Executive Order 13924, “Regulatory Relief to Support Economic Recovery,” has directed Federal agencies to use their emergency authority that has been invoked in response to the COVID-19 outbreak to support the country’s economic recovery from the pandemic; and

WHEREAS, the Federal Highway Administration has notified the State that it will review and may grant, on a case-by-case basis, a limited-time fair market value exception for the non-highway right-of-way use of real property at the request of the State and after the State has verified that the right-of-way to be occupied was acquired with Federal aid funding assistance; and

WHEREAS, the Governor of the State of Wisconsin is committed to providing relief and recovery resources to businesses as they attempt to rebound from the COVID-19 pandemic; and

WHEREAS, the State’s policy is to not allow parklets, but may allow them for outdoor dining use in conjunction with the Governor’s aforementioned commitment; and

WHEREAS, Wis. Stat. s. 66.0301 authorizes municipalities and the State to enter into contracts for purposes of the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

NOW, THEREFORE, pursuant to the terms and conditions set forth herein the parties, in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, enter into this Agreement pursuant to and entered into pursuant to Wis. Stats. s. 84.01, 86.32, and 66.0301.

I. DEFINITIONS

- A. **State Trunk Highway (STH)** has the meaning given in Wis. Stat. s. 84.02 (11).
- B. **Connecting Highway (CH)** has the meaning given in Wis. Stat. s. 84.02 (11) including jurisdiction as described in Wis. Stat. s. 86.32.
- C. **Right-of-Way (ROW)** means the entire area of land that contains the highway, shoulders, curbs, gutters, drainage components, terraces, sidewalks, foreslopes, backslopes, etc. as depicted on official plats.
- D. **State** means the State of Wisconsin, Department of Transportation.
- E. **Municipality** means a city, village or township authorized under this Agreement to issue a permit for use of STH or CH for the placement of Outdoor Dining Components necessary to conduct an outdoor food and beverage service.
- F. **Parklet** means an extension of a sidewalk or terrace adjacent to the travel lanes that provides additional space or amenities for businesses or the public. Parklets are typically installed in the parking lanes and may occupy several parking spaces using all or part of the width from the curb. They are typically constructed as temporary structures to enable easier removal, street/utility repairs or improvements, etc. Parklets may:
 - 1. Be open to the public or reserved for the adjacent business(es)
 - 2. Include an Outdoor Dining Component
 - 3. Be comprised of a pedestrian walkway enabling Outdoor Dining Components to utilize a sidewalk
- G. **Outdoor Dining Component** means any item placed on a STH or CH ROW by the Permitted Business, authorized through an Outdoor Dining Permit, to create an outdoor dining area in which to conduct outdoor food and beverage service, including tables, chairs, and refuse/recycling containers.
- H. **Outdoor Dining Permit** means a permit issued by a municipality to a Permitted Business for use of STH or CH ROW for the placement of Outdoor Dining Components and the service thereto and maintenance thereof.
- I. **Outdoor Dining Area** means a portion of a STH or CH ROW a Permitted Business is authorized to use through an Outdoor Dining Permit.
- J. **Permitted Business** means licensed food and beverage service establishment that is issued an Outdoor Dining Permit. All required permits to operate are the responsibility of the permitted business.

II. MUNICIPALITY PERMITTING REQUIREMENTS

The Municipality shall develop a Parklet permit process that includes the issuance of an Outdoor Dining Permit. The items listed in Section III shall be a part of each Outdoor Dining Permit. A copy of each Permit issued by the Municipality under this Agreement shall be sent to the appropriate Region Transportation office listed in Section XV.

- A. **Location Available for Outdoor Dining Permit.** Municipality may only issue an Outdoor Dining Permit to a Business for use of portions of the ROW contiguous to the primary physical location of the Business as identified in the map requirements of Section III. A. 1. Other locations may be approved by the State on a case-by-case basis.

- B. Special Provisions.** Failure by a Municipality to include the Special Provisions listed in Section III. in any Outdoor Dining Permit and/or failure to require and enforce compliance with the terms contained in the Special provisions may result in termination of this Agreement.
- C. Termination of Outdoor Dining Permits.** All Outdoor Dining Permits must terminate by October 15, 2020, or upon termination of the Agreement, whichever is earlier.
- D. Removal.** On or before October 15, 2020, at the Municipality's sole cost and expense, the Municipality will remove, or cause to be removed, all Outdoor Dining Components from the Outdoor Dining Area ROW and restore it to a condition satisfactory to the State.

If, without the State's written consent, Municipality or a Permitted Business continues to occupy all or a portion of the ROW after the Agreement expiration date or earlier termination, the State may remove all Outdoor Dining Components and restore the ROW to a condition satisfactory to the State. Municipality shall pay all costs incurred by State in the removal of the Outdoor Dining Components and ROW restoration. In the event Municipality does not pay such costs, the State may set off such costs against the Municipality's annual General Transportation Aids (GTA) payment from the State and/or withhold approval of future parklet agreements.

Notwithstanding anything herein to the contrary, in the event of an emergency as determined in the State's sole discretion, the State may order the Municipality to remove the Outdoor Dining Components, or the State may remove the Outdoor Dining Components at Municipality's expense, which may be recoverable from the municipalities annual GTA payment from State.

- E. Outdoor Dining Component Installation.** The installation and maintenance of all Outdoor Dining Components shall be at no cost or expense to the State. The installation and maintenance of the Outdoor Dining Components shall be compatible with the safe and efficient operation of the highway, as routinely monitored by State maintenance staff.
- F. Maintenance.** The Municipality shall provide all ROW maintenance at the Municipality's cost and expense for the Outdoor Dining Area. Except as otherwise permitted herein, no signs shall be placed on any State or other governmental agency sign post or on ROW. If the State determines that an Outdoor Dining Component is a safety concern, the Municipality shall immediately remove, or cause to be removed, the Outdoor Dining Component from the ROW. In the event Municipality fails to remove such items, the State may do so and may set off such costs against the Municipality's annual GTA payment from the State and/or withhold approval of future parklet agreements.
- G. Use.** The Municipality shall use, and shall only allow Permitted Businesses to use, the ROW for public purposes. Unless specifically authorized by the State, no permanent structures in any manner, form or size shall be allowed on the ROW. No commercial activities shall be allowed to operate upon the ROW except as expressly authorized by the terms of this Agreement.
- H. Traffic Control.** The Municipality will provide all necessary traffic control devices in accordance with the Wisconsin Manual on Uniform Traffic Control Devices (WMUTCD) and the State's Approved Product List. The municipality shall submit the traffic control plan to the State's transportation region office for approval along with the permit application.

I. Environmental. For any Outdoor Dining Area, the Municipality shall not, and shall not allow a Permitted Business to:

1. Deposit, dispose or discharge any materials regulated or prohibited by any governmental or regulatory agency onto the ground surface, or through discharge that could enter into any body of water, or into any container on the ROW. This prohibition includes but is not limited to acts that would violate Wisconsin's Spill Law related to hazardous substances, s. 292.11, Stats., laws regulating management and disposal of solid or hazardous waste under chs. 289 and 291, Wis. Stats. In the event of any deposit, disposal or discharge of materials prohibited above, the Municipality shall as soon as practicable notify the State and if needed the Wisconsin Department of Natural Resources in writing and shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable Federal, state and local laws and regulations, at the sole expense of the Municipality. The State may set off such costs against the Municipality's annual GTA payment from the State and/or withhold approval of future parklet agreements.
2. Disturb the pavement, sub-grade, curb, or sidewalk without prior approval by the State. If approval is requested, in-ground disturbance shall be limited to the existing pavement and subgrade and may not exceed the existing pavement and subgrade depth. If anchoring of Outdoor Dining Components is needed, the municipality may use non-invasive anchoring.
3. Disturb the ground, including removing, cutting or clearing vegetation, without prior approval by the State.
4. Impact wetlands including ditches/swales.

A programmatic categorical exclusion serves as the environmental documentation for the State's Parklet program. However, if Agreement criteria are not met in their entirety for Outdoor Dining Area(s), the Municipality is required to develop a separate environmental document and complete individual parklet-level coordination with the appropriate agencies.

J. Safety. In order to maintain public safety, the State shall retain the right to limit and/or restrict activity on ROW.

K. Construction Liens. The Municipality (for itself, its permittees, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no construction, laborers', mechanics', or materialmen's liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any permittee, subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against State property, for or on account of any labor, services, materials, plans, or specifications where performed, furnished, or procured, or contracted for by it or any of them under any agreement or any amendment or supplement thereto related to the purpose of this Agreement. The Municipality shall upon demand pay to the state the amount necessary to satisfy any lien filed against the work and/or State property for labor, services, materials, or specifications performed, furnished, or procured, or contracted for, which money the State shall use to satisfy the lien.

III. PERMITTED BUSINESS SPECIAL PROVISIONS

Municipalities shall require Permitted Business to comply with the following specifications, requirements, guidelines, and standards (special provisions) that shall comprise each Outdoor Dining Permit:

- A. Collaborate with Municipality to develop a detailed map, for attachment to and incorporation into which shall be Exhibit A. The map shall identify all of the following:
 - 1. Boundaries of the Outdoor Dining Area covered by the Outdoor Dining Permit as the same relates to the ROW
 - 2. Proposed closures of bike lanes, parking lanes, shoulder, traffic lanes, or roads
 - 3. Detour routes for closed bike lanes and/or roads
 - 4. Traffic Control Plans during installation, operation, and removal of the Outdoor Dining Area as proposed by Municipality (description of proposed traffic control)
 - 5. If appropriate, an alternate route for oversize/overweight or agricultural vehicles.
- B. Comply with all Federal, state, and local laws and regulations, including the Wisconsin Food Code and all public health and safety guidelines provided by the Wisconsin Department of Health Services and Center for Disease Control regarding all Outdoor Dining Area elements.
- C. Maintain a copy of all food and liquor licenses and the Outdoor Dining Permit onsite.
- D. Remove all Outdoor Dining Components by October 15, 2020 and collaborate with Municipality to restore highway ROW to its pre-Outdoor Dining Permit condition to the satisfaction of the State.
- E. Maintain the Outdoor Dining Area in a clean and sanitary condition and maintain all Outdoor Dining Components in good working condition.
- F. **Outdoor Dining Area design components.** The State shall review and approve all Parklet designs for Outdoor Dining Areas prior to installation on a STH or CH. The following design components shall be detailed in each Outdoor Dining Permit:
 - 1. All map components as identified in section III.A.
 - 2. Maintain sightlines for motor vehicle movements, traffic control devices, and pedestrian crossings. All Outdoor Dining Components shall remain at least 20 feet from a marked or unmarked crosswalk.
 - 3. Ensure compliance with all laws, regulations, and ordinances regarding obstructing driveways, alleyways, pedestrian ramps, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, or utility access areas.
 - 4. Coordinate impacts to bus stops with appropriate transit agency.
 - 5. The Permitted Business will coordinate with Municipality to install and maintain all traffic control per the WMUTCD and will maintain traffic control devices in accord with the approved traffic control plan. Traffic control devices the State determines to be deficient shall be replaced within 24 hours.
 - 6. When permitted to use a parking lane or travel lane for an Outdoor Dining Permit, use appropriate nighttime traffic control devices pursuant to the WMUTCD (i.e., reflectorized delineators, tall cones, barrels, curb stops, temporary barrier wall, etc.) to direct traffic and to separate vehicle traffic from Outdoor Dining Areas.

7. Use of parking lanes or travel lanes for Outdoor Dining Areas will not be permitted adjacent to travel lanes with a speed posted speed limit over 30 mph. The State may require closing of a travel lane on multiple lane roadways to increase the distance to the nearest travel lane. Roads with a current posted speed limit of 30 mph must be reduced to 25 mph under a temporary declaration while an Outdoor Dining Permit is in effect.
8. When using parking lanes, closing a travel lane, or otherwise operating an Outdoor Dining Area on ROW adjacent to travel lanes, stay at least six feet from the outside edge of the Outdoor Dining Area to the nearest travel lane unless temporary concrete barrier meeting the minimum requirements in Exhibit C will be installed.
9. The State may consider closing a complete street block if a detour can be established that does not adversely impact the safety, maintenance and operation of the through route while accommodating transport of oversize/overweight vehicles (if closed block did the same). If a closure is requested, the State shall use its established process for reviewing, signing and permitting event closures. All requirements including public involvement will be completed. If approved, the State shall recommend that the center 20 feet of the street remain unobstructed to allow emergency vehicle access.
10. Do not install any planters, portable heaters or other items that may become projectiles if hit by an errant vehicle.
11. Do not dig or drill into any hard surfaces (pavements, sub-grade, curbs, sidewalks) without prior written approval from State.
12. Do not block drainage structures or impede drainage.
13. Comply with all Title II Americans with Disabilities Act (ADA) requirements, including but not limited to clear zones and reach, width and height requirements for accessibility. The Americans with Disabilities Act Accessibility Guidelines, 2010 Standard ([ADAAG](#)) shall be used as a reference.
 - a) An ADA pedestrian access route (PAR) of four feet for no more than 200 feet is allowed. If the PAR is reduced to four feet for 200 feet or more a 5-foot by 5-foot turnaround/passing space shall be provided.
 - b) Maximum vertical surface discontinuity shall be a ¼ inch (or ½ inch if beveled at 1:2).
 - c) The cross-slope of the PAR shall be 2% whenever possible and cannot exceed 3% at any point.
14. To increase safety of Business patrons and comply with ADA requirements, use of the sidewalk is strongly recommended for the Outdoor Dining Area while providing a pedestrian walkway in the closed off portion of the street. The detoured walkway shall be at least six feet wide.
15. Comply with Wis. Stat. s. 86.19.
16. Install white temporary pavement marking edge line tape along the outside edge of the travel lane for the entire length of the Outdoor Dining Area per traffic control plans example Exhibit C.

IV. RIGHT-OF-WAY RENTAL FEE & OTHER FEDERAL REQUIREMENTS

For purposes of this Agreement, with requests submitted by the State for a fair market value (FMV) exception associated with the limited time non-highway use of right-of-way acquired with federal aid funding assistance, Federal Highway Administration (FHWA) will review and may grant the FMV exception so long as safety measures for individuals and drivers in the ROW have been implemented and it does not impede the safe, free flow of traffic. For purposes of this Agreement, a waiver of the ROW rental fee as required under 23 C.F.R. Part 710 is incorporated.

V. STATE PROPERTY RIGHTS

This Agreement is not a lease and does not convey or transfer any ownership or rights of ownership, or any interest whatsoever, in ROW to the Municipality or a Permitted Business. This Agreement is not a permit or license, but only an Agreement between the State and the Municipality to allow a Permitted Business to temporarily occupy ROW for activities as set forth herein. The State retains all of its rights of property ownership, and only the State can grant an invasion of said ownership rights.

- A. This Agreement is non-exclusive and is granted subject to the rights of others that may occupy the ROW. Any use authorized by this Agreement or authorized by an Outdoor Dining Permit issued under this Agreement shall remain subordinate to the State’s right to use the ROW and subordinate to rights granted to any third party by law or by and through an agreement between the State and that party. The State retains authority for issuing a permit to allow utilities the right to construct, operate, and maintain their facilities over, across, upon and within ROW. This Agreement is subject to any existing permits.
- B. The State retains full and final authority regarding the sale or disposal of the ROW or any portions thereof.
- C. The State retains the right to close all or any portion of the ROW at any time if it needs the ROW for future highway improvements or other maintenance or operational needs, without compensating the Municipality or the Permitted Business.
- D. This Agreement does not establish any rights to relocation benefits. The State shall not compensate a Permitted Business to relocate, temporarily relocate, partially relocate, or adjust its Outdoor Dining Components as a result of a State highway improvement, maintenance or emergency project. If a Permitted Business does not relocate its Outdoor Dining Components per State request upon termination of the Outdoor Dining Permit, then the State may remove the Outdoor Dining Components and bill the Municipality for all associated costs. If the Municipality does not pay the costs, the State may offset a Municipality’s General Transportation Aids payment to recover State costs and/or withhold approval of future parklet agreements.
- E. This Agreement does not create any right or future right to use the STH or CH ROW or any other ROW, for the same or different purposes.

VI. STATE WORK ON HIGHWAY RIGHT-OF-WAY PERMIT

The State shall require a separate work on highway right-of-way (WHROW) permit when the Outdoor Dining Facility is being installed, relocated or removed on a STH. The WHROW permit shall be issued to the Municipality, who shall be responsible for any work performed by a Permitted Business or the Municipality itself in conjunction with the Permitted Business. A single WHROW permit may be issued for both installation and removal of the Permitted Business if the Municipality agrees to provide the State with 10-day advanced written notice prior to removal. The WHROW permit may also include a provision that the Municipality provide sufficient advance notice for Wisconsin’s Lane Closure System. The WHROW shall govern in preference to the Agreement with respect to issues specifically dealt with under that permit.

VII. GENERAL INSURANCE REQUIREMENTS – MINIMUM COVERAGE REQUIREMENTS

Prior to the execution of any Outdoor Dining Permit, the Municipality shall ensure that the following insurance requirements are met:

- A. Commercial General Liability Insurance including contractual coverage.** The limits of this insurance for bodily injury and property damage combined shall be at least:

 - 1. Each Occurrence Limit \$1,000,000
 - 2. General Aggregate Limit \$2,000,000
 - 3. Products-Completed Operations Limit \$2,000,000
 - 4. Personal and Advertising injury Limit \$1,000,000

- B. Business Automobile Liability Insurance.** Should the performance of this permit involve the use of automobiles, the Municipality shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. The Municipality shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

- C. Workers’ Compensation Insurance.** Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

- D. Employers Liability Insurance.** Such insurance shall provide limits of not less than \$500,000 policy limit.

- E. Excess/Umbrella Liability Insurance.** Such insurance shall provide additional limits of not less than \$2,000,000 per occurrence in excess of the limits stated in Section VII. A. above.

- F. Additional Insurance Requirements**

 - 1. The Municipality shall require the same minimum insurance requirements, as listed above, of the Permitted Business(es), including all of its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements that follow.

 - 2. The insurance specified in Section VII. A., VII. B. and VII. E. above shall:
 - a) Name the State including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and
 - b) Provide that such insurance is primary coverage with respect to all insureds and additional insureds.

 - 3. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. The State may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable permit.

 - 4. Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against the State, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

5. The Municipality shall provide a "Certificate of Liability Insurance" (CLI) evidencing the coverages, limits and provisions specified above on or before Agreement approval and thereafter upon any policy renewal. After approval, the Municipality shall require all insurers to provide the State with 30-day advanced written notice of any carrier change, cancellation, nonrenewal, or material change (e.g., exposure, exclusions coverage amounts, etc.) in any policy maintained in accordance with the Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

When an insurance change occurs, a new CLI shall be sent to the State documenting the information and referencing the current Agreement. In addition, the State may require a CLI be resubmitted annually as proof that the required insurance coverage is being maintained. The CLI may be submitted via regular mail or email attachment.

6. If the Municipality is self-insured, a Certification of Self-Insurance must be attached to this Agreement.
7. The Municipality's policy(ies) shall be the primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of the Municipality's or a Permitted Business's performance under this Agreement.
8. The Municipality is responsible for payment of Agreement-related insurance premiums and deductibles.
9. The Municipality's policy(ies) shall include legal defense fees in addition to the liability policy limits.
10. The Municipality shall carry and maintain insurance for its own property

VIII. Liability/Indemnification

The Municipality and/or permitted business(es), including all of its contractors and subcontractors, shall save and hold the State harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever that arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of the Municipality, or their agents, servants, contractors, subcontractors, officers or employees, or that arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Municipality is performing maintenance, or work, or (2) during the period of this Agreement between the State and the Municipality is in effect, or (3) while any of the Municipality's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of maintenance: including, without limiting the generality of the foregoing, all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to the State, its officers, employees, agents, subcontractors or frequenters, or to any other persons, whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of the State) under Federal or State statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the generality of the foregoing, attorneys fees, costs, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever.

IX. INTERPRETATION

The following items are hereby incorporated into this Agreement:

- A. Severability.** If any covenant or provision, or part thereof, of this Agreement, shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement. No controversy concerning any covenant or provision shall delay their performance of any other provisions except as herein allowed.
- B. Forbearance by Parties not a Waiver.** Any forbearance by the parties in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy at any other time or in any other circumstance unless such waiver is provided in writing to the non-waving party.
- C. Changed Conditions Affecting Performance.** Each party hereby agrees to immediately notify in writing the other of any change in conditions of law, or any other event, which may significantly affect the Municipality's ability to issue an Outdoor Dining Permit to a Business in accordance with the provisions of this Agreement. It shall be the Municipality's responsibility to monitor change in applicable Federal and State laws, ordinances and regulations, and the Permitted Business shall be deemed to be aware of such changes within thirty (30) days of the enactment of any such change. Ignorance of a change in law shall not be an excuse for performance/compliance under this Agreement. Failure to follow applicable law shall be deemed a breach of this Agreement subject to immediate termination by State.
- D. No State Obligation to Permitted Business.** No permit between a Municipality and a Permitted Business shall create any obligation or liability of the State regarding this Agreement without the State's specific written consent to such obligation or liability and notwithstanding its concurrence in, or approval of, the award of any permit or the solicitation thereof.
- E. Entirety.** The Agreement together with any documents referenced herein contain the entire Agreement of the parties and supersedes any and all prior Agreements and draft Agreements, or oral understandings between the parties regarding maintenance activities. Except for those which are set forth in this Agreement, no representations, warranties, or agreements have been made by the State or Municipality to one another with respect to this Agreement.
- F. Changes.** No term or provision of this Agreement, or any of its attachments, may be changed, discharged, or terminated except by written agreement signed by the parties to this Agreement.
- G. Article Headings.** All Article headings, when used, are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- H. Sovereign Immunity.** Nothing in this Agreement shall be deemed as a waiver of the State's sovereign immunity consistent with Wisconsin State law.
- I. Applicable laws.** This Agreement does not release the Municipality from any liability or obligation imposed by federal law, Wisconsin Statutes, local ordinances, or other agency regulations relating thereto and Municipality shall be subject to and responsible for compliance with any applicable law, code or regulation.

X. DEFAULT

Conditions of default on the part of the Municipality shall be:

- A. Failure to enforce the terms of this Agreement on any Permitted Business.
- B. Violation of any term or condition of this Agreement.

XI. TERMINATION

This Agreement shall terminate on October 15, 2020. The State at its sole option may terminate this Agreement for any reason not prohibited by law, including for public convenience without penalty or remedy by Municipality.

XII. ASSIGNMENT

No assignment of this Agreement is allowed.

XIII. EXHIBITS

The following exhibits are attached hereto and incorporated herein:

- A. Exhibit A: Map identifying geographic boundaries of the Municipality, including side street names, along with areas of ROW the Municipality intends to open for use by permit holders.
- B. Exhibit B: Business Permits issued for Outdoor Dining Operations.
- C. [Exhibit C](#): Example Traffic Control Plans
- D. Exhibit D: Municipal Resolution Approving this Agreement, if required.

XIV. EFFECTIVE DATE

The Effective Date of this Agreement shall be the last date signed below.

XV. NOTICES

Any notice required to be made in writing or any filing required to be made with any party to this Agreement shall be sent to the following addresses:

For the State:

State Right-of-Way Permits Engineer
 Wisconsin Department of Transportation
 Hill Farms State Office Building
 Bureau of Highway Maintenance
 4822 Madison Yards Way, 5th Floor South
 Madison, WI 53705

Region Traffic Supervisor
 Wisconsin Department of Transportation

For the Municipality:

(1) _____
 (2) _____

Click to enter Municipality name
 Click to enter Department
 Click to enter address
 Click to enter City, WI Zip code.

XVI. AGREEMENT EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year the State signs it.

STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION:

By: _____ Date: _____
_____, Director
_____ Region

By: _____ Date: _____
Rebecca Burkel, Administrator
Division of Transportation System Development

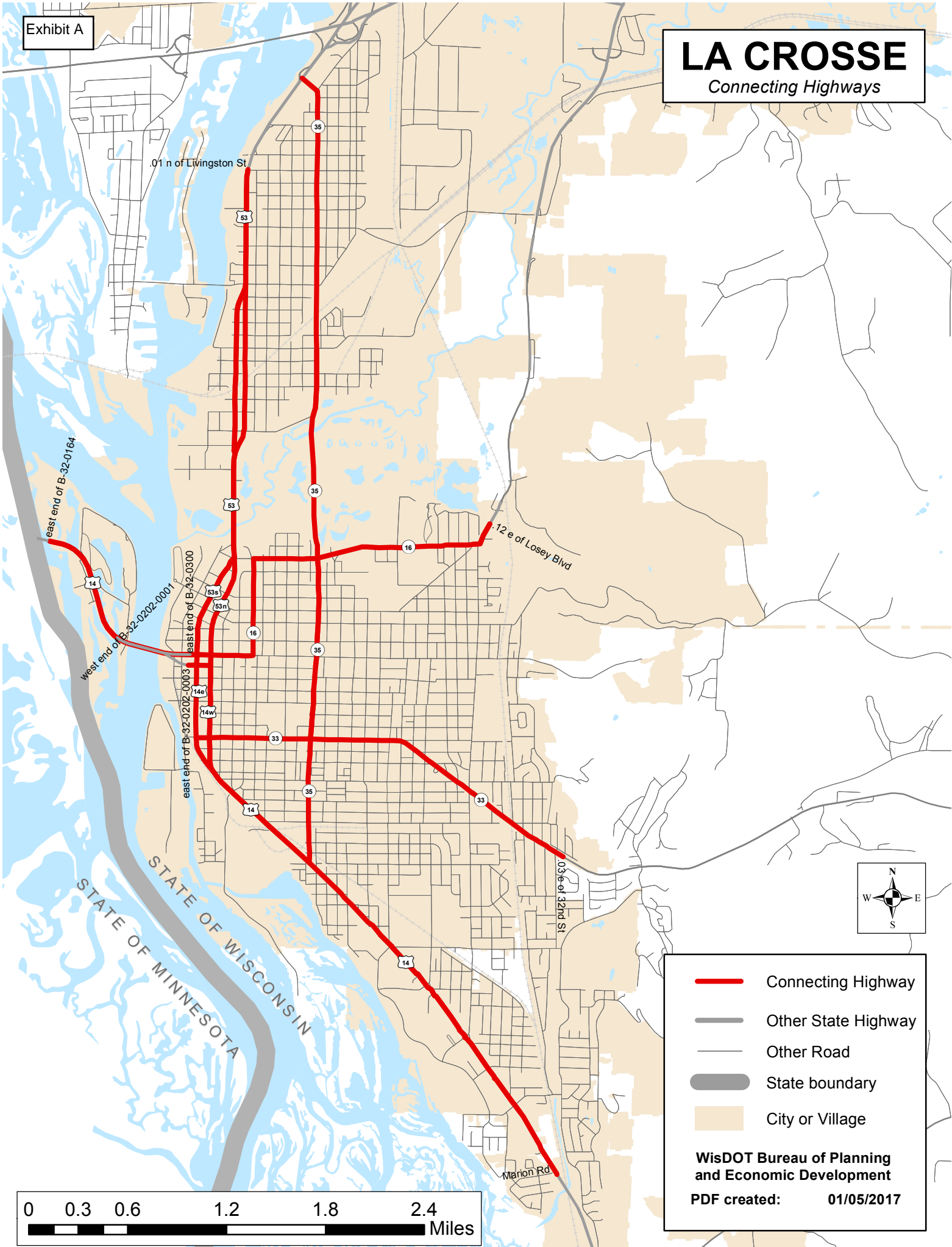
Click to enter Municipality name

By: _____ Date: _____
_____ Mayor Tim Kabat

By: _____ Date: _____
_____ Administrator

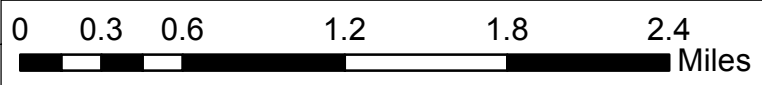
LA CROSSE

Connecting Highways



- Connecting Highway
- Other State Highway
- Other Road
- State boundary
- City or Village

WisDOT Bureau of Planning and Economic Development
 PDF created: 01/05/2017



City of La Crosse Outdoor Café Restaurant Recovery Program

Permit Application & Instructions

The City of La Crosse has created the following Outdoor Cafe program to temporarily allow restaurants, taverns, and tasting rooms to expand their business footprint onto adjacent: public rights-of-way or privately-owned parking facilities or outdoor space if approved by the City of La Crosse. For eligible restaurants, taverns, and tasting rooms this may also include expanded alcohol license premises. All additional fees will be waived for this program.

All administrative approvals are strictly temporary and expire on **November 13, 2020**. This program may be extended beyond this date upon approval by the Common Council. This program is subject to all local, State and Federal Health Orders, laws and guidelines.

Application Review Process

The Planning and Development Department will be administering the application process for this program. Depending on the type of Outdoor Café that is being applied for, or if a Liquor License Expansion is also being requested, additional approvals may be needed by the Board of Public Works, the City Clerk’s Department, and/or the Common Council.

Completed Applications and the required attachments may be submitted to the Planning and Development Department via electronically to:

Jack Zabrowski
zabrowskij@cityoflacrosse.org

or

Tim Acklin, AICP
acklint@cityoflacrosse.org

Completed Applications and the required attachments may also be mailed or drop off to the Planning and Development Department at 400 La Crosse St, La Crosse, WI 54601. If City Hall is closed to the public applications may be dropped off in the metal drop box located on the north side of City Hall.

IT IS HIGHLY RECOMMENDED THAT APPLICATIONS ARE SUBMITTED ELECTRONICALLY. THIS WILL ENSURE A QUICKER PROCESS OF REVIEW.

If your application requires review by the Board of Public Works for a Street Privilege Permit, applications must be submitted to the Planning & Development Department no later than 5pm on Wednesday to ensure review and action on your application by the following Monday meeting of the Board of Public Works.

Existing Liquor License Expansion requests will be reviewed by the City Clerk’s Department. If review is required by the Board of Public Works Department, and the application is approved, applications will then be forwarded to the Clerk’s Department for review. Provisional approval may be granted until final action is taken by the Common Council at their next meeting.

Signature _____ Date _____
Signature may be typed if completing electronically

Application Submittal Checklist

Each application will need the following in order to be considered a complete application and be processed and reviewed:

- 1) A completed and signed application. (EACH PAGE MUST BE SIGNED AND DATED)
- 2) If the applicant is not the owner of the building/property they must attach acknowledgment from the building/property owner that they are aware of this application being submitted to the City.
- 3) A detailed site plan (drawn by hand or drawn electronically) illustrating the following:
 - a. The location and dimensions of the proposed outdoor seating area in relationship to the building
 - b. The location of property lines and the outdoor seating area.
 - c. Parking lot and driveway locations as well as impact on parking spaces.
 - d. The number of tables/seats and the distances between them.
 - e. Location of fencing. Include description of type and materials.
- 4) Proof of insurance. (The applicant for a permit to encroach on the public right-of-way shall procure and maintain for the duration of the permit a minimum liability and contractual liability policy in the amount of \$100,000.00 each person, \$300,000.00 each accident for bodily injury and \$100,000.00 for property damage. A certificate of such insurance shall be filed with the City Attorney as part of the application. The insurance shall name the City, its officials, employees and agents as additional insureds. The Board of Public Works may require greater insurance protection on a case-by-case basis.)
- 5) Photos, attachments, and/or renderings or any other information that will help the City better understand, review and process your application.
- 6) (OPTIONAL) manufacturer's brochures showing types of tables and seating are helpful and recommended.

IMPORTANT PROGRAM INFORMATION:(Refer to the Program Guidelines for more information)

- 1) The applicant acknowledges that this is a **temporary approval** for outdoor seating and that it will expire/sunset on November 13, 2020, unless approved by the Common Council to extend the program.
- 2) The applicant acknowledges that **non-compliance** with the required standards, rules, requirements of the program and other existing City Ordinances **will result in immediate revocation of your Outdoor Café Permit.**
- 3) The applicant acknowledges that they have inspected the Right-of-Way at issue and determined it to be suitable for their needs and accept it "as is" and waive any claims against the City.
- 4) La Crosse Outdoor Café areas may be required to be fenced under this program. Please refer to the program guidelines. Fence or barrier height shall be a minimum of at least 32" in height.
- 5) Access to the La Crosse Outdoor Café area should, where possible, be made from the main entrance of the building (rather than accessible directly from outside).

Signature _____ Date _____

Signature may be typed if completing electronically

IMPORTANT PROGRAM INFORMATION CONTINUED:(Refer to the Program Guidelines for more information)

- 6) La Crosse Outdoor Café outdoor seating areas should have an emergency exit that meets applicable fire codes.
- 7) Per Section 2-292 of the Municipal Code those businesses wanting to participate in this program will not permitted to do so if any money or debt is owed to the City.
- 8) Under no circumstances is this program intended to promote gatherings or social spaces. It is intended to allow food & beverage patrons to be seated in accordance with physical distancing requirements to increase capacity. Tables shall be separated by at least 6' and should be set for groups no larger than six.
- 9) In no way can the overall capacity (inside + outside) exceed the establishment's overall permitted occupancy. No vertical drinking is allowed.
- 10) No vertical drinking or standing will be allowed in any version or part of this program, non-compliance will result in immediate revocation of your Outdoor Café Permit.
- 11) The applicant has inspected the right-of-way (ROW) at issue and determined it to be suitable for their needs and accept it "as is" and waive any claims against the City.
- 12) The Planning & Development Department or the Board of Public Works may suspend or revoke any permit issued hereunder and order the removal of any encroachment placed in the right-of-way upon ten days' notice. The permit holder shall have a reasonable time, not to exceed five days, in which to file a written request with the City Planning and Development Department to be heard in said manner, and show cause why the proposed actions should not be taken. However, an encroachment may be removed without prior notice or opportunity to be heard where it constitutes an immediate danger in the public health, safety or welfare, where it is not in conformance with representations made in the application, where the certificate of insurance has expired or where placed within any right-of-way without a permit or contrary to the provisions of the permit or this article. In such cases, an opportunity for a post-removal hearing shall be provided.
- 13) Applicant will be required to remove any snow from their approved outdoor dining area.
- 14) Hours of Operation for the Outdoor Café is only permitted between the hours of 7am-11pm.
- 15) Propane tanks are not allowed to be stored within the building or within 10ft of an entrance door to the Building. Must be installed per Fire Code.

Questions on this process may be directed to the Planning and Development Department

Tim Acklin, AICP
acklint@cityoflacrosse.org
608-789-7391

Jack Zabrowski
zabrowskij@cityoflacrosse.org
608-789-8676

Signature _____ Date _____
Signature may be typed if completing electronically

Application

ESTABLISHMENT AND OWNER INFORMATION

Business Name _____

Business Address _____

Name of Business Owner (LLC, Corp, etc) _____

Phone Number _____ Email _____

Name of Property Owner (if different than above) _____

Phone Number _____ Email _____

Does this business currently hold a City of La Crosse liquor license? _____

If yes, answer questions below. If no, skip to CHOOSE TYPE OF OUTDOOR CAFÉ.

If YES answered above, will you be requesting an expansion of premises to the current Liquor License?
(Requires provisional approval by the City Clerk and approval by the Common Council)

YES NO (If NO skip to CHOOSE TYPE OF OUTDOOR CAFÉ)

Please specify how you want to expand your current Liquor License.

Into adjacent Right-of-Way (public sidewalk, on-street parking spaces, street, public plazas)

Into existing business or adjacent off-street parking lot or open space.

CHOOSE TYPE OF OUTDOOR CAFÉ (see program guide for definitions)

Street Café (Requires Board of Public Works Approval of a Street Privilege Permit)

Sidewalk Café (Requires Board of Public Works Approval of a Street Privilege Permit)

Urban City Plaza (Requires Board of Public Works Approval of a Street Privilege Permit)

Café Zone (Requires Board of Public Works Approval of a Street Privilege Permit)

Outdoor Dining on Adjacent Private Parking Lot or Outdoor Space

SITE/PROJECT DESCRIPTION

Please describe the proposed outdoor seating area details below.

Number of tables in proposed outdoor seating area: _____

Number of seats in proposed outdoor seating area: _____

Existing inside seating capacity: _____

Your existing building capacity will apply across ALL seating areas through the use of this permit.

Number of bathroom fixtures: _____

Number of onsite, off-street parking spaces for your business currently: _____

PERMIT FEES

There are no fees for this application.

APPLICANT SIGNATURE

I hereby make an application for an Outdoor Café Permit as detailed above. I agree to abide by the requirements of all City ordinances and State laws. I understand that the approval of a La Crosse Outdoor Café Restaurant Recovery Area Permit is conditional and that the permit can be revoked or suspended at any time. I agree to apply for any and all building permits that may be needed in the construction of this La Crosse Outdoor Café Restaurant Recovery Area.

Signature _____ Date _____

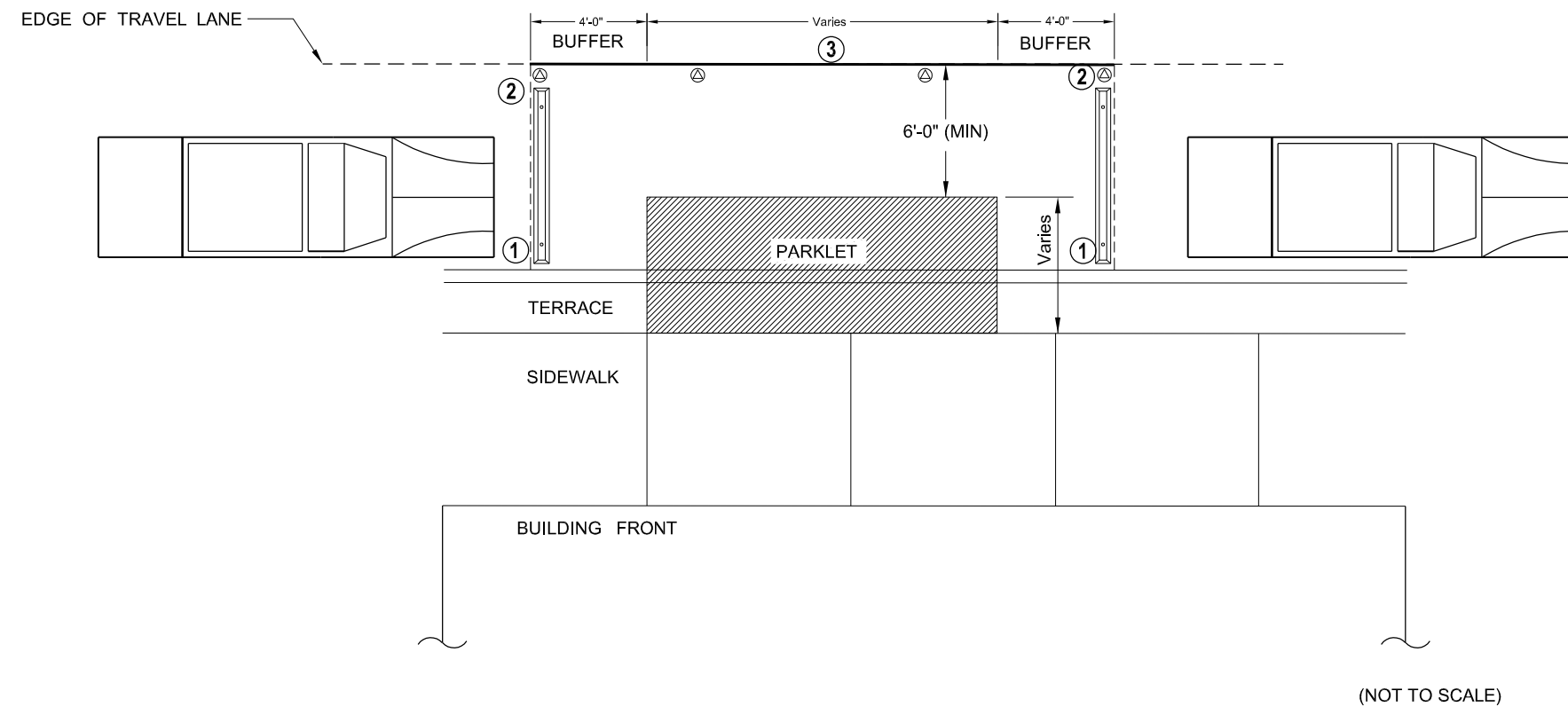
Signature may be typed if completing electronically

EXHIBIT C

GENERAL NOTES

When setting up or removing parklets in a parking lane use "Layout 6 - Work on Shoulder" detail shown on page 44 of the 2020 Wisconsin Work Zone Field Manual (found on the WisDOT web site). If the work requires additional traffic control measures, such as flagging, be sure to follow the appropriate layout found in the manual. Once the parklet has been installed or removed the temporary signing may be removed.

- ① Install wheel stops 1-foot from outside edge of gutter on both sides of the parklet.
- ② Install white flexible tubular markers at the outside corners of the parklet adjacent to the wheel stops and spaced every 12 to 15 feet parallel to the parklet. Refer to WisDOT's standard detail drawing, (SDD) 15C11 (Channelizing Devices Flexible Tubular Marker Post) for marker post details.
- ③ Install edge line of traffic lane if none exists with Temporary Pavement Marking 4 inch Removable Tape. (White on right and Yellow on left).



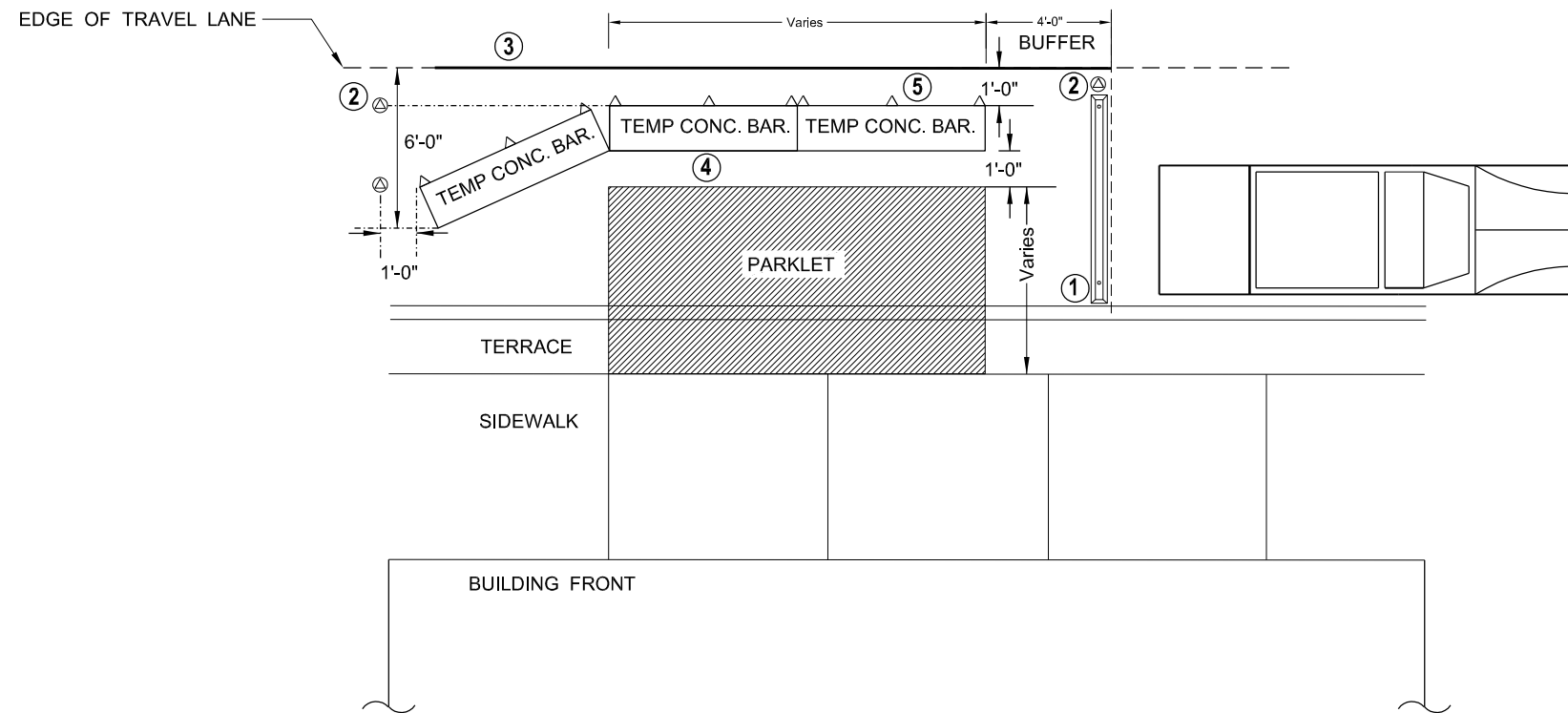
EXAMPLE PARKING LANE CLOSURE FOR OUTDOOR DINING AREA (PARKLET) (WITHOUT USE OF CONCRETE BARRIER)

EXHIBIT C

GENERAL NOTES

When setting up or removing parklets in a parking lane use "Layout 6 - Work on Shoulder" detail shown on page 44 of the 2020 Wisconsin Work Zone Field Manual (found on the WisDOT web site). If the work requires additional traffic control measures, such as flagging, be sure to follow the appropriate layout found in the manual. Once the parklet has been installed or removed the temporary signing may be removed.

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- ③ Install edge line of traffic lane if none exists with Temporary Pavement Marking 4 inch Removable Tape. (White on right and Yellow on left).
- ④ Provide WisDOT Approved 12.5' Temporary Concrete Barrier. Barrier segments to be pinned together. One section before parklet pivoted toward curb line. Other sections to run parallel to travel lane to run entire length of parklet or longer.
- ⑤ Provide 3 white delineators on each Temporary Concrete Barrier section equally spaced (Refer to SDD 15A4).









(NOT TO SCALE)

EXAMPLE PARKING LANE CLOSURE FOR OUTDOOR DINING AREA (PARKLET) (WITH USE OF CONCRETE BARRIER)

EXHIBIT C

LEGEND

-  SIGN ON PERMANENT SUPPORT
-  FLEXIBLE TUBULAR MARKERS (WHITE)
-  TYPE III BARRICADE WITH ATTACHED SIGN
-  TYPE "A" WARNING LIGHT (FLASHING)
-  DIRECTION OF TRAFFIC
-  PARKLET

GENERAL NOTES

THIS DETAIL MAY BE USED FOR ROADWAYS WITH EITHER TWO OR THREE LANES IN EACH DIRECTION.

ALL SIGNS ARE 48"X48" UNLESS OTHERWISE NOTED. IF NECESSARY DUE TO SPACE CONSTRAINTS IN URBAN AREAS, 36"X 36" SIGNS MAY BE USED IF APPROVED BY REGIONAL TRAFFIC UNIT.

"WO" SIGN IS THE SAME AS "W" SIGN EXCEPT THE BACKGROUND IS ORANGE.

ANY SIGNS TEMPORARY OR EXISTING, WHICH CONFLICT WITH THE TRAFFIC CONTROL "IN USE" SHALL BE REMOVED OR COVERED AS NEEDED AND AS APPROVED BY THE ENGINEER. NO WARNING LIGHTS SHALL BE WORKING ON COVERED OR "DOWNED" SIGNS.

SIGNS THAT WILL BE IN PLACE LESS THAN 7 CONTINUOUS DAYS AND NIGHTS OR THAT WILL BE PLACED IN A CLOSED LANE MAY BE MOUNTED ON TEMPORARY SUPPORTS.

THE EXACT NUMBER, LOCATION, AND SPACING OF ALL SIGNS AND DEVICES SHALL BE ADJUSTED TO FIT

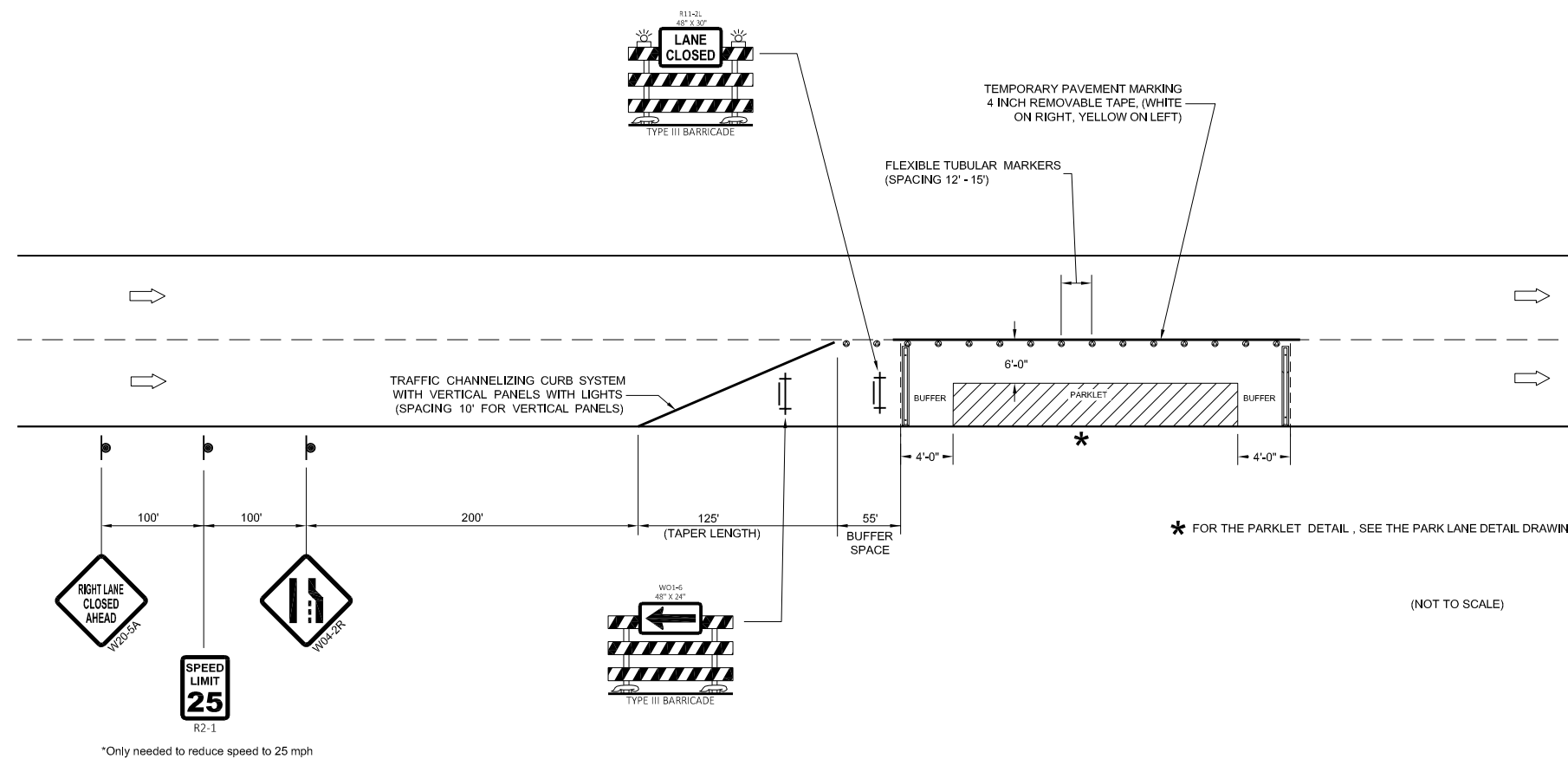
FIELD CONDITIONS AS APPROVED BY THE ENGINEER.

THE SPACING BETWEEN TRAFFIC CONTROL SIGNS SHOULD BE ADJUSTED TO NOT CONFLICT WITH AND TO PROVIDE A MINIMUM OF 200 FEET (500' DESIRABLE) DISTANCE TO EXISTING SIGNS THAT WILL REMAIN IN PLACE

W20-1A, G20-1 AND G20-2A SIGNS ARE NOT REQUIRED IF THE LANE CLOSURE IS WITHIN A LARGER WORK ZONE WHERE THESE SIGNS ARE ALREADY PRESENT.

REMOVE PAVEMENT MARKINGS AND PLACE TEMPORARY PAVEMENT MARKING, REMOVABLE TAPE IF LANE CLOSURE IS TO BE IN PLACE FOR 4 OR MORE CONTINUOUS DAYS AND NIGHTS.








CONSIDER GEOMETRICS WHEN LOCATING SIGNS SO THE APPROACHING DRIVER HAS A CLEAR VIEW OF THE LANE CLOSURE DRUMS FOR A MINIMUM 1500 FEET IN FRONT OF DRUMS.



**Example Traffic Control, Single Traffic Lane Closure for Outdoor Dining Area (Parklet)
(Utilizing Flexible Tubular Markers)**

EXHIBIT C

LEGEND

-  SIGN ON PERMANENT SUPPORT
-  TRAFFIC CONTROL DRUM
-  TRAFFIC CONTROL DRUM WITH TYPE "C" STEADY BURN LIGHT
-  TYPE III BARRICADE WITH ATTACHED SIGN
-  TYPE "A" WARNING LIGHT (FLASHING)
-  DIRECTION OF TRAFFIC
-  PARKLET

GENERAL NOTES

THIS DETAIL MAY BE USED FOR ROADWAYS WITH EITHER TWO OR THREE LANES IN EACH DIRECTION.

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"WO" SIGN IS THE SAME AS "W" SIGN EXCEPT THE BACKGROUND IS ORANGE.

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SIGNS THAT WILL BE IN PLACE LESS THAN 7 CONTINUOUS DAYS AND NIGHTS OR THAT WILL BE PLACED IN A CLOSED LANE MAY BE MOUNTED ON TEMPORARY SUPPORTS.

THE EXACT NUMBER, LOCATION, AND SPACING OF ALL SIGNS AND DEVICES SHALL BE ADJUSTED TO FIT

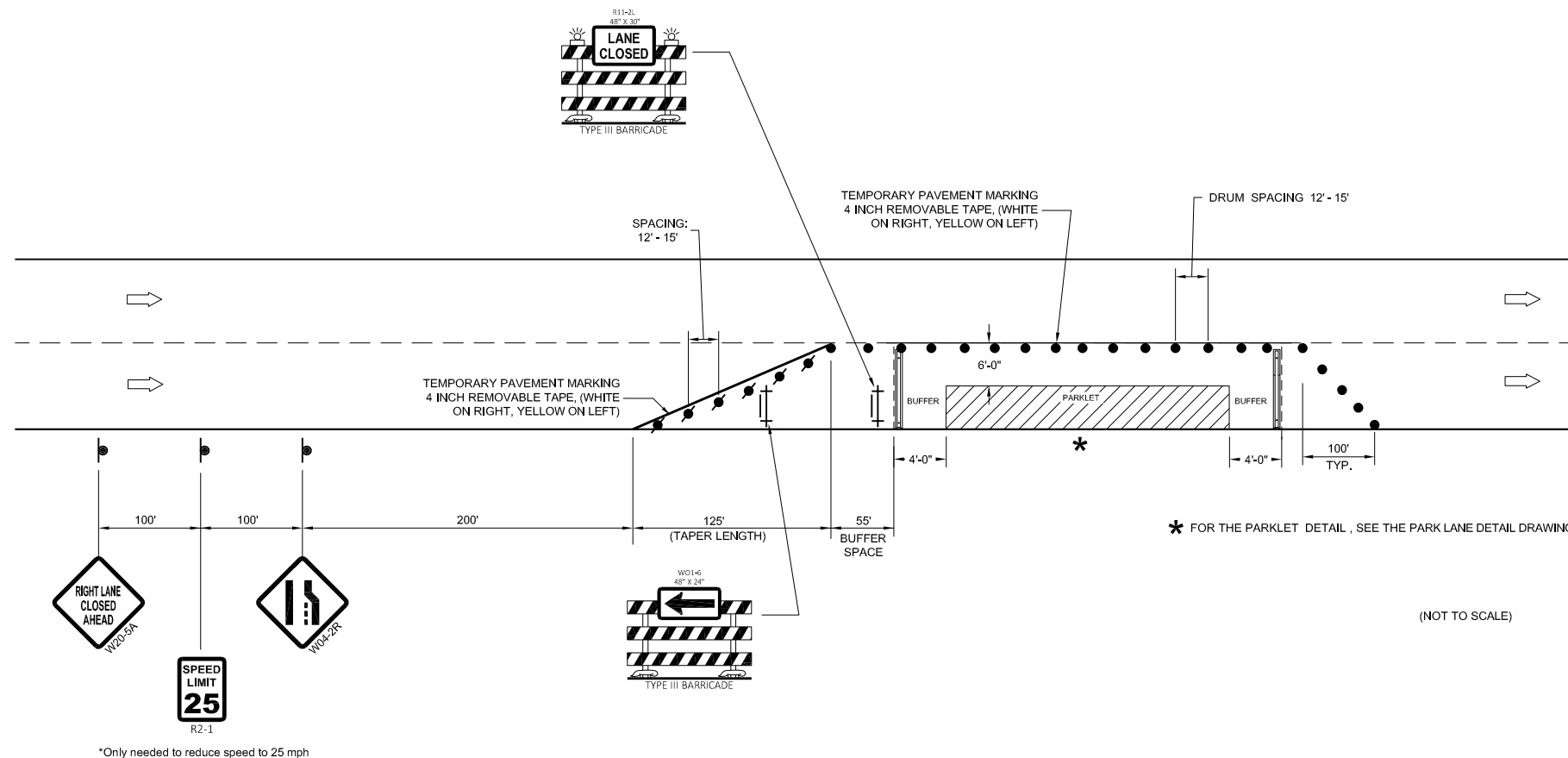
FIELD CONDITIONS AS APPROVED BY THE ENGINEER.

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CONSIDER GEOMETRICS WHEN LOCATING SIGNS SO THE APPROACHING DRIVER HAS A CLEAR VIEW OF THE LANE CLOSURE DRUMS FOR A MINIMUM 1500 FEET IN FRONT OF DRUMS.



**Example Traffic Control, Single Traffic Lane Closure for Outdoor Dining Area (Parklet)
(Utilizing Traffic Control Drums)**

Resolution establishing the Outdoor Café Program.

AMENDED RESOLUTION

WHEREAS, in response to the impact that the COVID-19 pandemic has had on restaurants in our community, the City of La Crosse is committed to assisting businesses; and

WHEREAS, temporarily allowing restaurants to expand their outdoor seating will aid in the recovery of the local economy while adhering to Public Health Orders from the La Crosse County Health Department; and

WHEREAS, some restaurants have previously approved sidewalk cafes or outdoor eating areas in which they will be able to resume serving customers while adhering to Public Health Orders from the La Crosse County Health Department; and

WHEREAS, these restaurants may wish to expand their existing sidewalk cafes or outdoor eating areas in order to serve more customers outside while adhering to Public Health Orders from the La Crosse County Health Department; and

WHEREAS, other restaurants ~~and taverns~~ without existing sidewalk cafes or outdoor eating areas may wish to establish or expand such spaces in private parking lots accessory to the establishment, or on the sidewalk, or in the public street, or on an adjacent property; and

WHEREAS, certain City ordinances related to sidewalk café licenses and outdoor eating areas, including street vending, zoning, alcohol licensing, and street occupancy either prohibit these activities or subject them to lengthy approval processes.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby establishes the Outdoor Café Program.

BE IT FURTHER RESOLVED that the Common Council of the City of La Crosse adopts the Outdoor Café Program Guidelines and application materials as amended, with the direction to staff to update the Guidelines to include bars, restaurants and tasting rooms as a part of the Outdoor Café Program.

BE IT FURTHER RESOLVED that the Outdoor Café Program sunsets on November 13, 2020. Any extension of this date or renewal of the program will have to be brought back before the Common Council for action.

BE IT FURTHER RESOLVED that the Planning & Development Department, the City Clerk, the Engineering & Public Works Department and the Fire Department Division of Community Risk Management are hereby authorized to take any and all steps necessary to effectuate this resolution.