

After Recording Return to:

CITY OF SNOHOMISH
116 UNION
SNOHOMISH, WA 98290

**CITY OF SNOHOMISH
SIDEWALK USE PERMIT AND AGREEMENT**

Grantor: CITY OF SNOHOMISH

Grantee:

Legal Description of abutting parcel:

Add'l on P. _____

Tax Parcel:

WHEREAS, _____ (“APPLICANT”), is the owner of the above described real estate (the parcel) situated in the City of Snohomish, Snohomish County, Washington; and,

WHEREAS, APPLICANT is seeking a permit to utilize CITY right of way abutting the parcel located at _____, Snohomish, WA for the following purposes:

WHEREAS, the CITY and APPLICANT (PARTIES) wish to enter into a Sidewalk Right of Way Use Permit and Agreement to allow APPLICANT to use a portion of the abutting right-of-way on the terms and conditions herein and as described in any related permit or business license document issued by the CITY;

NOW, THEREFORE, APPLICANT and the CITY agree as follows:

- 1. PERMISSION TO UTILIZE RIGHT OF WAY.** On the terms and conditions stated herein, the CITY agrees to permit APPLICANT limited use of the public right-of-way. All costs associated with said use shall be the responsibility of APPLICANT. Said use shall be in accordance with Chapter 12.14 SMC entitled “SIDEWALK USE PERMIT” and the terms of this Sidewalk Use Permit. Said use shall only be made in accordance with plans and specifications for such limited use and facilities submitted to and approved by the CITY.

2. **SIDEWALK USE PERMIT.** The CITY hereby permits APPLICANT a temporary, non-exclusive use of the following CITY sidewalk/right of way pursuant to chapter 12.14 SMC:

Portion of the sidewalk immediately abutting: _____

- a) **Term of the Permit.** Unless specifically authorized by the City Planner, sidewalk use permits shall be valid for a period of one year (SMC 12.14.080) unless terminated as provided in Section 2 (e) below or unless extended in writing by agreement of the PARTIES, this permit shall be effective on _____, 20__ and terminate on _____, 20__.

i. **Modifications of Terms and Conditions.** The CITY and APPLICANT hereby reserve the right to extend, alter, amend or modify the terms and conditions of this Agreement and any permit issued thereunder upon written agreement by both parties to such alteration, amendment or modification.

ii. **Transferability.** The rights and privileges granted to APPLICANT as provided in this Agreement may only be assigned or transferred to another person or entity with the prior written approval of the City. Upon approval to transfer or assignment, all rights and obligations set out in this Agreement shall inure to and be the obligation of the transferee or assignee.

- b) **Use of the Permit.** The APPLICANT is permitted to use the Sidewalk right of way for _____
_____, and as further described in **Attachment A.**

All permits issued under SMC Chapter 12.14 shall be temporary and shall vest no permanent rights. Nothing contained herein shall be deemed to affect the CITY's authority to exercise its police powers.

If the City requires repairs to be made to the items in the Sidewalk Use Permit, Owner shall make such repairs in a timely manner at no cost to the City.

Owner may propose alternatives to such repairs and to make any arrangements it may deem appropriate to accomplish such repairs or such alternatives that may be approved by the City. In the event Owner fails to make such repairs in a timely manner the city may proceed with the repairs and reimbursement for said repairs as set forth in 2 (f) (ii) below.

- c) **Installation or Operational Details, if relevant.**
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Note: No permanent modifications may be made to the Sidewalk pursuant to this agreement. For permanent modifications the APPLICANT shall apply for the necessary construction and right-of-way use permits.

- d) **Permits.** APPLICANT shall apply for and obtain such construction permits and comply with any other provision of the Snohomish Municipal Code or other applicable law.
- e) **Termination.** All permits issued under SMC Chapter 12.14 shall be temporary and shall vest no permanent rights and may be terminated and or revoked under SMC Chapter 12.14.080
 - 1. **Without Cause.**
The CITY may revoke this Permit at its sole discretion, upon thirty (30) days written notice to the APPLICANT.
 - 2. **For Cause.**
 - i. The CITY may revoke this Permit without notice in the event that, after consultation with the City Engineer and the Chief of Police, the City Planner determines that a sidewalk use or activity has posed, or is likely to pose, a threat to the public's health, safety, or welfare.
 - ii. The CITY may revoke and declare terminated this Permit if upon 30 days written notice:
 - a. the APPLICANT fails to maintain insurance in accordance with SMC 12.14.090; or
 - b. fails to comply with the terms and/or conditions of the Permit; or
 - c. fails to comply with any provision of SMC Chapter 12.14; or
 - d. fails to pay any required use or other applicable fees; or
- f) **Upon Termination.**
 - i. Upon termination, APPLICANT or the then fee title holders of the parcel/benefited property shall be responsible for all costs associated with removal of any improvements made.
 - ii. In the event APPLICANT fails to make such restoration in a timely manner, CITY, after prior written notice to APPLICANT, may make the repairs, in which event APPLICANT shall reimburse CITY for all of CITY's costs and expenses incurred in making the repairs. The period for such notice shall be 30 days, or such lesser period as may be necessary in the event the condition to be remedied presents a hazard to the public. If APPLICANT fails to reimburse the CITY within 15 days after tender of an invoice for CITY's repair expenses, the invoice amount shall bear interest at the rate of 12% per annum from the invoice date. and shall constitute a lien against Owner's property described above, If litigation is required to collect the delinquent invoice amount, or to enforce a judgment for the delinquent amount or foreclose a judgment lien, the APPLICANT shall be liable for all costs, disbursements and reasonable attorney's fees incurred therein.

g) **NOTICE:**

Notices to the CITY shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF CITY PERSON]

Notices to the APPLICANT shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF APPLICANT]

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

3. **AUTHORITY TO BIND.** The APPLICANT warrants to the CITY that they are lawfully seized and possessed of the land aforesaid; have good and lawful right, power and authority to bind, sell, convey and encumber the property.
4. **ENFORCEMENT.** Should any action be required in a court of law to enforce the terms of this Sidewalk Use Permit and Agreement, the PARTIES consent and agree to venue in the Snohomish County Superior Court. In any such action, the substantially prevailing party shall be entitled to an award of costs and reasonable attorney fees.
5. **INDEMNIFICATION/HOLD HARMLESS.**
APPLICANT shall indemnify, save harmless and defend the CITY, its elected and appointed officials, employees, volunteers and agents (including reimbursing the CITY for all costs and attorneys' fees) from any and all damages, claims, or demands, of any kind, on account of injury to or death of any and all persons, caused by APPLICANT or its use of the Sidewalk Right of Way in this permit, including, but not limited to, APPLICANT, its agents, employees, subcontractors and their successors and assigns as well as the CITY or the CITY's employees, elected and appointed officials and agents, contractors and all third parties. APPLICANT shall further indemnify, save harmless and defend the CITY, as provided above, from all property damage of any kind, whether tangible or intangible, including loss of use resulting from such damage, that occurs in connection with any work performed by APPLICANT or caused, in whole or in part, by the presence of APPLICANT or its officials, employees, agents, contractors, subcontractors, or their property upon or in proximity to CITY right of way. Such indemnification will not extend to damages, claims, or demands that are caused by the negligence or intentional misconduct of the CITY, its employees, agents or contractors. Such negligence shall not include the issuance of this Permit.

APPLICANT/ agrees that its obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, APPLICANT, by mutual negotiation, hereby waives, as respects the CITY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the CITY incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from APPLICANT.

6. **INSURANCE.** The APPLICANT shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the APPLICANT's behalf with the issuance of this Permit.

No Limitation. Applicant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the APPLICANT to the coverage provided by such insurance, or otherwise limit the CITY's recourse to any remedy available at law or in equity.

- a) **Minimum Scope of Insurance.** Applicant shall obtain insurance of the type described below:

Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The CITY shall be named as an insured under the Applicant's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage.

- b) **Minimum Amounts of Insurance.** Applicant shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

- c) **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

The CITY shall be named as an additional insured on any policy for the purposes of any actions performed under this Agreement

The Applicant's insurance coverage shall be primary insurance as respect the CITY. Any Insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the Applicant's insurance and shall not contribute with it.

In the event that the APPLICANT receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the APPLICANT shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

- d) **Acceptability of Insurers**
Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

- e) **Verification of Coverage**
APPLICANT shall furnish the CITY with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement,

evidencing the insurance requirements of the APPLICANT before issuance of the Permit. In addition, APPLICANT shall provide CITY with such proof of insurance as CITY may from time to time request.

7. **COMPLIANCE WITH SMC CHAPTER 12.14/LAWS/REMEDIES.**

- a) The conditions of the current Snohomish Municipal Code Chapter 12.14 are adopted by reference by this agreement.
- b) This Agreement shall be governed by the laws of the State of Washington.
- c) **Civil Penalties and Additional Relief.**
 - i. The APPLICANT, and the officers, directors, and employees of the APPLICANT or any agent, subcontractor or other person acting on behalf of the APPLICANT failing to comply with any of the provisions of this Agreement shall be subject to a civil penalty in the manner and to the extent provided for in SMC 1.01.080 and Chapter 1.14 SMC.
 - ii. In addition to any penalty which may be imposed by the CITY, any person violating or failing to comply with any of the provisions of this Agreement shall be liable for any and all damage to CITY property or right of way arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.
 - iii. Notwithstanding any other provision herein, the CITY may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Agreement when civil or criminal penalties are inadequate to effect compliance. In addition to the penalties set forth in this section, violation of any provision of this Agreement may also result in the revocation of any right of way use agreement, right of way use permit, facilities lease, or other authorization.
 - iv. Nothing in this Section shall be construed as limiting any remedies that the CITY may have, at law or in equity, for enforcement of this Agreement.

8. **SEVERABILITY.** If any term, provision, condition, or portion of this Agreement shall be held to be invalid or unconstitutional for any reason, the portion declared invalid shall be severable and the remaining portions of this agreement shall be enforceable unless to do so would be inequitable or would result in a material change in the rights and obligations of the parties hereunder.

DATED this ____ day of _____, 20__.

CITY OF SNOHOMISH

By _____

DATED this ____ day of _____, 20__.

APPLICANT NAME

NOTARY ACKNOWLEDGEMENT

STATE OF WASHINGTON)

ss.

COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____
_____ is/are the person(s) who appeared before me, and said person(s)
acknowledged that he/she/they signed this instrument, on oath acknowledged that he/she/they
is/are authorized to execute the instrument, and acknowledged it as _____
_____ for THE CITY OF SNOHOMISH to be the free and voluntary act of such party for
the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 20__.

[Legibly print name of notary]
NOTARY PUBLIC in and for the State
of Washington, residing at _____

My commission expires _____

