



# CITY OF SNOHOMISH

116 UNION AVENUE | SNOHOMISH, WASHINGTON 98290 | (360) 568-3115 | WWW.SNOHOMISHWA.GOV

## SIDEWALK USE PERMIT AND AGREEMENT

This Restrictive Covenant, Agreement, and Sidewalk Use Permit is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ **owner name dba business name** \_\_\_\_\_, (hereinafter "APPLICANT") and the City of Snohomish, a Washington municipal corporation (hereinafter "City").

WHEREAS, \_\_\_\_\_ is the tenant at or owner of certain real property legally described as follows: \_\_\_\_\_ **legal description** \_\_\_\_\_. This property lies in the county of Snohomish, state of Washington; Tax Parcel # \_\_\_\_\_ **TPN** \_\_\_\_\_ ("the parcel"); and

WHEREAS, the APPLICANT is seeking a permit to utilize City sidewalk right-of-way located at \_\_\_\_\_ **street address** \_\_\_\_\_, Snohomish, WA for the following purposes: description of proposed use.

WHEREAS, the CITY and the APPLICANT (PARTIES) wish to enter into a Sidewalk Right-of-Way Use Permit and Agreement to allow the 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, the 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 the 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 the APPLICANT temporary, non-exclusive use of the following CITY sidewalk/right-of-way pursuant to Chapter 12.14 SMC:

A portion of the sidewalk immediately abutting \_\_\_\_\_ **street address** \_\_\_\_\_, Snohomish, WA 98290.

- A. **Term of the Permit.** Unless specifically authorized by the City Planner, Sidewalk Use permits shall be valid for a period of up to five years unless terminated as provided in Section 2 (E) below.

This permit shall be effective on \_\_\_\_\_, 20\_\_ and terminate on \_\_\_\_\_, 20\_\_.

i. **Modifications of Terms and Conditions.** The CITY and the 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 the 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 description of merchandise or non-commercial display, 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, the 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 the 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.** The 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

- i. **Without Cause.** The CITY may revoke this Permit at its sole discretion, upon thirty (30) days written notice to the APPLICANT.
- ii. **For Cause.**
  - a. 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.
  - b. The CITY may revoke and declare this Permit terminated if upon 30 days written notice, the APPLICANT fails to:
    - 1. maintain insurance in accordance with SMC 12.14.090; or
    - 2. comply with the terms and/or conditions of the Permit; or
    - 3. comply with any provision of SMC Chapter 12.14; or
    - 4. pay any required use or other applicable fees.

**F. Upon Termination.**

- i. Upon termination, the 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 the APPLICANT fails to make such restoration in a timely manner, the CITY, after prior written notice to the APPLICANT, may make the repairs, in which event the APPLICANT shall reimburse the CITY for all of the 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 the APPLICANT fails to reimburse the CITY within 15 days after tender of an invoice for the 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.**

- i. Notices to the CITY shall be sent to the following address:

**City of Snohomish  
Planning & Development Services Department  
116 Union Avenue  
Snohomish, WA 98290**

- ii. Notices to the APPLICANT shall be sent to the following address:
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(INCLUDE NAME, TITLE AND ADDRESS OF APPLICANT)

- iii. 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.** The 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 the APPLICANT or its use of the sidewalk right-of-way in this permit, including, but not limited to, the 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. The 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 the APPLICANT or caused, in whole or in part, by the presence of the 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.  
  
The 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, the 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 the 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 respects 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.** The 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, the APPLICANT shall provide the CITY with such proof of insurance as the 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\_\_.

By \_\_\_\_\_  
CITY OF SNOHOMISH

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
APPLICANT

**NOTARY ACKNOWLEDGEMENT**

STATE OF WASHINGTON)

ss.

COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath acknowledged that he is 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\_\_.

\_\_\_\_\_  
[Notary Signature]

\_\_\_\_\_  
[Title of Office]

NOTARY PUBLIC in and for the State of Washington,  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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 and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Notary Signature]

\_\_\_\_\_  
[Title of Office]

NOTARY PUBLIC in and for the State of Washington,  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_