

When Recorded Return To:

City of Tacoma
Planning and Development Services
747 Market Street, Room 345
Tacoma WA 98402-3701

Document Title: RIGHT-OF-WAY OCCUPANCY PERMIT
Permit Number: ROCC20-XXXX
Grantor: CITY OF TACOMA
Grantee: OWNER OR COMPANY NAME
Adjacent Property: ADDRESS / PARCEL# XXXXXXXXX

RIGHT-OF-WAY OCCUPANCY PERMIT

For activity/purpose of the permit to serve a **commercial occupancy** of public Right-of-Way.

THIS PERMIT, made and entered into this ____ day of _____, 20____, by and between the **CITY OF TACOMA**, hereinafter called the "City", and **OWNER OR COMPANY NAME**, hereinafter referred to as the "Permittee."

WITNESSETH:

WHEREAS the City, under Chapter 9.08, Tacoma Municipal Code, may grant the use of street right-of-way to owners and occupants of abutting real property; and

WHEREAS the Permittee desires to occupy a portion of the Right-of-Way for the purpose as described herein and as shown on Exhibit "A", attached to and made a part hereof; and

WHEREAS the Permittee owns or occupies the real property adjacent to the portion of Right-of-Way as described herein and as shown on Exhibit "A";

NOW THEREFORE, in consideration of the covenants and agreements of the parties hereto hereinafter set forth, the City does hereby grant unto the Permittee a Right-of-Way Occupancy Permit on that portion of the right-of-way adjacent to the property owned by the permittee, subject to and upon the following terms, covenants and conditions, to wit:

1. **USE, MAINTENANCE AND OPERATION OF THE PERMIT AREA.** The permit area is requested for [copy language included in summary] as depicted in Exhibit "A". The site authorized under this permit shall be maintained in an orderly, safe and sanitary condition at all times. The permit area shall not be expanded without written consent from the Planning and Development Services Director.

2. CONDITIONS OF USE.

- a. **Plans Approval.** All work performed on or under said right-of-ways by the Permittee, its successors and assigns, shall be in accordance with detailed plans and specifications prepared by the Permittee and approved by the City of Tacoma as submitted to the City of Tacoma. Permittee must comply with the conditions and requirements of any other subsequent permits for the overall project.
 - i. Site specific comments.
- b. **Labor and Materials.** All labor to be performed and material to be furnished in the operations of the Permittee hereunder shall be at the sole cost and expense of Permittee and the City shall not be chargeable with or liable for any part thereof. The Permittee shall protect and defend the City's property against liens of every character arising from Permittee's operations and use thereof.
- c. **Utilities.** Permittee, its successors and assigns, will be responsible for establishing the location and protection of any and all utilities located on, under, over, along or across the permit area. Permittee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or approved equivalent, and shall comply with all such applicable rules and regulations. Any costs incurred in repairing and/or relocating existing public or private utility facilities shall be at the Permittee's sole expense.
 - i. Site specific comments.
- d. **Removal, Relocation, Correction or Adjustment.** If the City of Tacoma directs the reasonable removal, relocation, correction or adjustment of any of the private improvements from the permit area, such restorative action will be taken by Permittee in a timely manner and at no cost to the City, which conforms to the Right of Way Restoration Policy.

3. **REQUIREMENT TO RENEW.** Subject to paragraph 11 of this permit, the term of this permit shall be for one (1) year and be renewable for additional one (1) year terms unless terminated under the terms of paragraph 11 of this permit. Said term shall commence upon the above date.

4. **FEES.** A schedule of applicable fees is included in Section 9.08.075 of the Tacoma Municipal Code.

- a. In accordance with the most recent version of the City's Municipal Code, there is currently an **annual renewal fee of \$90.00 and an annual use fee of \$1,000.00**, which includes the cost of a site inspection for compliance, file review, insurance review, and application of fee escalators/adjustments as required. The City of Tacoma reserves the right to adjust the fee rate to reflect an updated fee schedule as set by City Council

Ordinance or Resolution. The fee shall also be subject to leasehold excise taxes as applicable.

5. **INDEMNIFICATION.** In granting this Permit, the City and its officers, agents, and employees do not intend to be liable to the Permittee or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in or about the Permit Area or any part thereof as a result of Permittee's use. Permittee agrees to indemnify, defend, and hold the City and its officers, agents and employees harmless from and against any and all claims, liens and judgments for death of or injury to any person or damages to property whatsoever occurring, on or about the Permit Area or any part thereof, except to the extent any such claim arises from the City's sole negligence.

Permittee specifically assumes potential liability for actions brought by Permittee's own employees against the City and, for the purpose of this indemnification and defense, Permittee specifically waives any immunity under the state industrial insurance law, Title 51 RCW. PERMITEE ACKNOWLEDGES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

6. **LIABILITY INSURANCE.** The Permittee shall maintain liability insurance policies that shall name the City as an additional insured and, at a minimum, provide coverage in substance and in amount as specified in Title 9.08 of the Official Code of the City of Tacoma (or any amendments thereto) pertaining to street occupancies. Specifically, for a commercial use, coverages shall include, but not be limited to, Operations Liability, Products/Completed Operations Liability, Owner's and Contractor's Protective Liability, and Blanket Contractual Liability. The insurance policy shall: (1) name the City of Tacoma as a named Additional Insured; (2) apply as primary insurance, regardless of any insurance the City may carry; (3) include a "cross-liability" (severability of interest) clause; and (4) include limits of protection of not less than \$1,000,000 combined single limit, bodily injury and property damage. If Permittee's insurance includes a deductible or any form of self-retention, Permittee shall be solely responsible for satisfying such deductible or self-retention requirement.

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It is to be understood and agreed that the obligation of Permittee to indemnify, defend and hold harmless the City from claims for damages arising out of the use or operations related to this Permit shall not be limited to the amount of insurance provided by the Permittee. The insurance policy shall further contain a clause obligating the issuing company to give notice to the Risk Manager of the City of Tacoma 30 days before the cancellation of the policy. A copy of said policy, including an endorsement naming the City as an additional insured, shall be forwarded to the City for approval and filing.

This Permit is conditioned upon Permittee's maintaining the City's minimal insurance requirements and said Permit shall not become effective until the City has approved Permittee's insurance. If the insurance lapses or terminates, this Permit is automatically

cancelled and Permittee's rights hereunder are terminated. Evidence of self-insurance in sufficient amounts may be substituted by the Permittee for said certificates of insurance.

7. **ASSIGNMENT.** This permit may not be assigned by the Permittee or any part thereof sublet by the Permittee without the prior written consent of the City.
8. **TAXES.** Permittee shall pay City as an additional permit fee, (a) all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes), (b) any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Permit Area, and (c) any taxes levied or assessed in lieu of the foregoing, in whole or in part. Leasehold excise tax is calculated by the State using a percentage multiplier of either the fee required hereunder or an imputed fair market rental value, and as a result, Permittee shall be responsible for any increases in leasehold excise tax that result from an increase in permit fee for the Permit Area over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Permittee provides City with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, Special Programs Division, (360) 570-3265, then Permittee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Permittee shall be required to obtain documented renewal of such exemption and provide such to City in order to claim continued exemption under this Permit. To the extent that any use fee credit provisions are a part of this Permit, Permittee's obligation to pay leasehold excise tax shall not be obviated by such credit.
9. **NONWAIVER OF DEFAULTS.** The Waiver by the City of any breach by Permittee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same nor may any condition of this agreement be waived, except by the written consent of the City, and forbearance or indulgence by the City in covenant or condition to be performed by the Permittee to which the same may apply, and until complete performance by the Permittee of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this permit or by law, despite said forbearance or indulgence.
10. **COVENANT RUNNING WITH THE LAND.** The Permittee agrees that this permit and indemnity agreement is and shall be deemed to be a covenant attaching to and running with the above described real estate.
11. **RIGHT TO TERMINATE.** This permit is wholly of a temporary nature and vests no permanent right whatsoever. Notwithstanding any other provision herein to the contrary, the City reserves and shall have the right to terminate this permit at any time upon thirty (30) days written notice to the Permittee, if the City determines that such termination is necessary to allow for such public or municipal uses of the Permit Area as may be in the best interests of the City of Tacoma or the general public. Any removal or adjustment will be done at the sole expense of the Permittee. This permit may be terminated without such notice if the permitted use becomes dangerous, or any structures related to the use become insecure or unsafe, or if such structures are not constructed, maintained or used in accordance with this agreement or Chapter 9.08 of the Municipal Code of Tacoma.

At such time that Permittee wishes to voluntarily terminate the agreement and associated covenant, as described in Paragraph 10 above, a release shall be recorded. The release must be requested to the City by Permittee and an inspection will be required to ensure that no permanent damage to the right-of-way has been incurred as a result of the permitted use. A separate recording fee will be required for the release.

12. **COUNTERPARTS PROVISION.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

EXAMPLE

IN WITNESS WHEREOF the parties hereto have executed this document as of the day and year first written above.

CITY OF TACOMA

**PLANNING AND DEVELOPMENT SERVICES
DEPARTMENT**

ACCEPTED subject to said
Terms and Conditions:

By:

By:

Peter Huffman
Director

AUTHORIZED SIGNATORY
TITLE
COMPANY NAME

Saada Gegoux
Risk Manager

Approved as to form:

Deputy City Attorney

State of Washington
County of _____

I certify that I know or have satisfactory evidence that **AUTHORIZED SIGNATORY** is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the **TITLE** of **COMPANY NAME** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature
Notary Public, State of Washington

L.S.

Printed Name

My appointment expires: _____

Exhibit "A"

Site Plan or Drawing

Exhibit "A" (cont.)

Site Plan or Drawing