

**CITY OF TUMWATER
RIGHT-OF-WAY LICENSE**

THIS LICENSE is made and entered into this ____ day of _____, 2023, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as “Licensor” and Deschutes 106 LLC, a Washington Limited Liability Company, hereinafter referred to as “Licensee.”

WITNESSETH:

In consideration of the covenants, promises and terms contained herein, the parties hereby agree as follows:

1. **Licensed Premises.** The Licensor hereby licenses to Licensee and Licensee hereby licenses from Licensor the following described real property and attached Area Exhibit A, hereinafter referred to as the “Property”:

Section 26 Township 18 Range 2W Quarter NW SW Donation Land Claim
CROSBY DLC COM SE COR CUSTER & DESCHUTES WAY S03-29-10W
180F, S86-30-50E 55F, NLY ON DAVIDSON TRACT 80F, N86-30-50W 14F,
NLY

2. **Term.** The term of this license shall be five (5) years, commencing on the 1st day of August 2023 and terminating five (5) years thereafter on July 31, 2028, unless sooner terminated according to the provisions herein.

3. **Fee.** Licensee shall pay the Licensor for the use of said Property the sum of Four Hundred Sixty-Five dollars (\$465.00) total, for the five-year license period, to be paid in advance.

4. **Use of Property.** Licensee shall use the Property for the following purposes only:

Parking, dumpster access, loading and unloading of deliveries.

Prior to commencement of work to modify or change improvements within the licensed area, Licensee shall present, for City approval, a plan of the proposed modification or change to the improvements within the licensed area.

5. **Repairs and Maintenance.** Licensee agrees to accept all responsibility for maintenance of all improvements placed on the licensed Property by the Licensee and to keep the licensed premises and any such improvements thereon in a state of good repair and to maintain them at all times so as not to cause any safety hazard nor visual blight on the Property.

6. **Ownership of Improvements.** All improvements erected by Licensee on the property shall remain the property of the Licensee, and shall be removed by Licensee at the

termination of the license, at Licensee's cost and expense. It shall also be Licensee's obligation to return the Property to the condition in which it was received at the beginning of the license term.

7. **Compliance with Law.** In the use of the Property, Licensee shall fully comply with all applicable federal, state, county and municipal laws, ordinances and regulations.

8. **Assignment and Sublicense.** Licensee shall not assign or transfer its interest in this Property, or sublet the Property or any parts thereof, or permit the Property to be used for any purpose not permitted by this license, without prior written consent of the Licensor.

9. **Indemnification – Liability.** The Licensee shall defend, indemnify and hold the Licensor, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Licensee or on the Licensee's behalf out of issuance of this License, except for injuries and damages caused by the sole negligence of the Licensor.

10. **Insurance.**

A. **Insurance Term**

The Licensee shall procure and maintain for the duration of the License Term, 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 Licensee's behalf with the issuance of this License.

B. **No Limitation**

The Licensee's maintenance of insurance as required by the License shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the Licensor's recourse to any remedy available at law or in equity.

C. **Minimum Scope of Insurance**

The Licensee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Licensor shall be named as an additional insured under the Licensee's Commercial General Liability insurance policy using

ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

D. Minimum Amounts of Insurance

The Licensee shall maintain the following insurance limits:

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

E. Other Insurance Provision

The Licensee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Licensor. Any insurance, self-insurance, or self-insured pool coverage maintained by the Licensor shall be excess of the Licensee's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

The Licensee shall furnish the Licensor with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Licensee before issuance of the License.

H. Notice of Cancellation

The Licensee shall provide the Licensor with written notice of any policy cancellation, within two business days of Licensee's receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Licensee to maintain the insurance as required shall constitute a material breach of the License, upon which the Licensor may, after giving five business days' notice to the Licensee to correct the breach, immediately terminate the License or, at Licensor's discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Licensor on demand.

J. Public Entity Full Availability of Licensee Limits

If the Licensee maintains higher insurance limits than the minimums shown above, the Licensor shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Licensee, irrespective of whether such limits maintained by the Licensee are greater than those required by this License or whether any certificate of insurance furnished to the Licensor evidences limits of liability lower than those maintained by the Licensee.

11. **Termination.** Either party may terminate this license by furnishing to the other party, by registered mail, a notice of termination at least ninety (90) days prior to the intended date of termination. Licensee also acknowledges that Licensor holds the right-of-way in trust for the benefit of the public and Licensor may require full use of the right-of-way at any time for any reason. If Licensor requires the removal of Licensee's improvements for any reason, at Licensor's sole discretion, Licensee shall remove its improvements with ninety (90) days of receipt of written notification from Licensor. If Licensee defaults in the payment of the license fee, or breaches any other covenant or condition of this license, Licensor may immediately declare a forfeiture of this license for such default, reenter the Property, and take possession of all property.

*** Signatures on Following Page ***

IN WITNESS WHEREOF, the parties hereto have executed this license as of the date first hereinabove written.

LESSOR:
CITY OF TUMWATER

LICENSEE:
(name)

Debbie Sullivan, Mayor

By: _____
Name: _____
Title: _____
Street: _____
City, State, Zip: _____
Phone: _____

Attest:

Melody Valiant, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

Approved as to Form:

Karen Kirkpatrick, City Attorney

On this _____ day of _____,
2023, before me personally appeared _____
_____, to me
known to be the individual described herein
and who executed the within and foregoing
instrument and acknowledged to me that
he/she signed the same as his/her free and
voluntary act and deed for the purposes
therein mentioned.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my official seal the
day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires _____.