

**RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF OLYMPIA
AND OLYMPIA COFFEE ROASTING CO.**

This RIGHT-OF-WAY USE AGREEMENT is entered into by and between the CITY OF OLYMPIA, a Washington municipal corporation (“City”), and SEA LEVEL COFFEE, SPC, a Washington Social Purpose Corporation, doing business as OLYMPIA COFFEE ROASTING CO (“OCR”). This agreement sets forth the terms and conditions by which OCR is permitted to use certain unopened City right-of-way for specific purposes set forth in this agreement.

Recitals

- A. There exists within the City of Olympia certain publicly owned right-of-way located at 600 4th Ave E. This right-of-way is more particularly described below.
- B. OCR does business as a coffee roaster and coffee shop/cafe. OCR leases premises pursuant to a premises lease agreement (“premises lease”) between OCR, as tenant, and KBJ Investments as landlord. The premises leased under the premises lease are located at 600 4th Ave E, Olympia, Washington and legally described as: Section 14 Township 18 Range 2W Plat SWANS ADDITION TO OLYMPIA BLK 4 LT 6-7-8 Document 001/037, tax, assessor number: 78200400600 (leased premises).
- C. City has determined that use of the right-of-way for outdoor cafe seating purposes is consistent with proper permitted use of said right-of-way.
- D. By this agreement, City will permit all of OCR’s use of City right-of-way, so OCR will not be required to obtain or pay for a separate pedestrian interference permit.
- E. The signatories to this agreement are authorized to execute associated documents, to correct legal descriptions, if need be, and to correct scrivener’s errors and other errors or omissions that are otherwise in substantial conformance with this agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Olympia Coffee Roasters agree as follows:

Agreement

1. **Grant of temporary use.** City hereby grants to OCR the right to temporarily use the right-of-way, as more particularly shown on Exhibit A (“right-of-way use area”), for outdoor cafe seating and other related business purposes, on the terms set forth in this agreement. The right-of-way use area is legally described as follows:

(Section 14 Township 18 Range 2W Plat SWANS ADDITION TO OLYMPIA BLK 4 LT 6-7-8
Document 001/037.)

2. **Term.** This agreement is effective the date of last signature below (which is the "effective date"). The term of this agreement is four years from the effective date, unless it is terminated earlier pursuant to this paragraph. City may terminate this agreement for any reason, at its sole discretion, by providing 120 days' written notice of termination to OCR as provided in Section 9, below.

3. **Consideration.** OCR shall every year pay to City the annual rent identified in this paragraph, plus leasehold excise tax, if applicable. For the first year, annual rent is Two Dollars and Seventy-Five Cents (\$2.75), per square foot of public right-of-way occupied, totaling 223 square feet, for a total amount of **Six Hundred Thirteen Dollars and Twenty-Five Cents** (\$613.25), plus leasehold excise tax, if applicable, which is due in full prior to the effective date. In each subsequent year, annual rent is due October 1 and is equal to the previous year's annual rent, increased by four percent. Except for the first year, the annual rent may be paid in two equal installments of 50 percent of the annual rent, due on October 1 and April 1. Annual rent will be proportionately pro-rated or reimbursed if this agreement is terminated within any year prior to July 1.

4. **Use of Right-of-Way.** OCR may, at its own expense, construct and maintain outdoor seating and related facilities ("seating facilities") on the right-of-way use area and shall, at its own expense, maintain any and all seating facilities in good repair. City is not liable for any of OCR's costs or expenses of construction, maintenance, or otherwise of the seating facilities by reason of this agreement. OCR may impose restrictions on the use of the seating facilities, including limiting the public use to be made of the seating facilities, subject to Section 5 below. Upon termination of this agreement, OCR shall remove any and all seating facilities installed in the right-of-way use area and restore the right-of-way use area to the condition it was in as of the effective date, including taking all necessary action to ensure that the right-of-way use area is fully open for City and public use. This obligation to remove any and all seating facilities installed in the right-of-way use area and restore the right-of-way use area survives termination of this agreement.

5. **Nondiscrimination.**

A. In exercising its rights under this agreement, OCR and OCR's owners, employees, and agents shall not discriminate against any person because of status protected from discrimination by law, including but not limited to sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, sexual orientation, or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability does not apply if the particular disability prevents the performance of the essential functions required of the position. This requirement applies, but is not limited, to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. OCR shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision is grounds for termination of this agreement by City and, in the case of OCR breach, may result in ineligibility for further City agreements.

B. In the event of OCR noncompliance or refusal to comply with the above nondiscrimination requirements, this agreement may be immediately terminated in whole or in part, and OCR may be declared ineligible for further contracts with City. OCR, will, however, be given a reasonable time in which to correct this noncompliance.

C. To assist City in determining compliance with the above nondiscrimination requirements, OCR must complete and return the Statement of Compliance with Non-Discrimination attached as Exhibit "B."

6. **Utilities.** City may construct underground utilities through the entire length and breadth of the right-of-way use area, but shall, upon completion of any such construction that may occur during the term of this agreement, restore the site to the condition created by OCR without cost to OCR.

7. **Assignment.** OCR may not assign this agreement without the prior written consent of City.

8. **Hold Harmless, Indemnification, and Insurance.** OCR shall defend, indemnify, and hold City, 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 OCR or on OCR's behalf as a result of this agreement, except for injuries and damages caused by the sole negligence of City.

Should a court with jurisdiction determine that RCW 4.24.115 applies to this agreement, then OCR shall defend, indemnify, and hold City, its officers, officials, employees, and volunteers harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes OCR waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. **This waiver has been mutually negotiated by the parties.** The provisions of this section survive the expiration or termination of this agreement.

A. **Insurance Term.** OCR shall procure and maintain for the duration of this agreement, 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 OCR behalf in connection with this agreement.

B. **No Limitation.** OCR maintenance of insurance as required by this agreement may not be construed to limit the liability of OCR to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

C. **Minimum Scope of Insurance.** OCR shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance must be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and must cover liability arising from operations, products-completed operations, and stop-gap liability. There may be no exclusion for liability arising from

explosion, collapse, or underground property damage. City must be named as an additional insured under OCR's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 13 or a substitute endorsement providing at least as broad coverage.

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

D. **Minimum Amounts of Insurance.** OCR shall maintain the following insurance limits:

1. Commercial General Liability insurance must 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.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
3. OCR shall procure and maintain for the duration of the agreement Liquor Liability insurance in the amount of not less than \$1,000,000 per occurrence if the User is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. City is to be named as an additional insured on the Liquor Liability insurance.
4. If each occurrence or products-completed are only \$1,000,000, then shall also procure an Umbrella or Excess Liability policy for \$1,000,000 to meet the limits requirement.
5. The certificate must list City as: "City of Olympia is added as additionally insured." And include an additional insured endorsement form ISO CG 2012 or at least as broad as equivalent.

E. **Other Insurance Provision.** OCR Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they are primary insurance as respects City. Any insurance, self-insurance, or self-insured pool coverage maintained by City is excess of OCR's insurance and does 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.** OCR shall furnish City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of OCR before entering into this agreement.

H. **Notice of Cancellation.** OCR shall provide City with written notice of any policy cancellation, within two business days of its receipt of such notice.

I. **Failure to Maintain Insurance.** Failure on the part of OCR to maintain the insurance as required is a material breach of this agreement, upon which City may, after giving five business days' notice to OCR to correct the breach, immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to City on demand.

J. **Public Entity Full Availability of Permittee Limits.** If OCR maintains higher insurance limits than the minimums shown above, City is insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by OCR, irrespective of whether such limits maintained by OCR are greater than those required by this agreement or whether any certificate of insurance furnished to City evidences limits of liability lower than those maintained by OCR.

9. **Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands, or other communications required or desired to be given hereunder by a party (collectively "Notices") must be in writing and must be validly given or made to another party if delivered either personally or by Federal Express (FedEx), UPS, USPS, or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it must be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express (FedEx) or other overnight delivery service of recognized standing, it must be deemed given 24 hours after the deposit thereof with such delivery service. If such Notice is mailed as provided in this section, such must be deemed given 48 hours after the deposit thereof in the United States mail. Each such Notice must be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To: Olympia Coffee Roasting Co.	Oliver Stormshak Co-Owner and CEO 600 4 th Ave E Olympia, WA 98501 Email: oliver@olympiacoffeeroasting.com
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To City of Olympia:	Steven J. Burney Olympia City Manager 601 4 th Avenue East PO Box 1967 Olympia, WA 98507-1967 Email: jburney@ci.olympia.wa.us
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With a copy to:	Legal Department Olympia City Attorney 601 4 th Avenue East PO Box 1967 Olympia, WA 98507-1967 Email: mbarber@ci.olympia.wa.us
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Any party hereto may change its address for the purpose of receiving notices as provided in this section by a written notice given in the manner aforesaid to the other party hereto.

10. **Event of Default.** In the event of a default under this agreement by OCR, City may, in addition to all other remedies, seek monetary damages and specific performance of OCR obligations under this agreement.

11. **Applicable Law.** This agreement is governed by the laws of the State of Washington.

12. **Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations under this agreement to carry out the intent of the parties.

13. **Modification or Amendment or Waivers.** No amendment, change, or modification of this agreement is valid, unless in writing and signed by both of the parties. No waiver of any breach or covenant or provision in this agreement is a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this agreement. No extension of time for performance of any obligation or act may be deemed an extension of the time for performance of any other obligation or act.

14. **Entire Agreement.** This agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings, or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this agreement to any person, firm, or corporation other than the Parties executing this agreement.

15. **Construction.** Captions are solely for the convenience of the Parties and are not a part of this agreement. This agreement may not be construed as if it had been prepared by one of the Parties, but rather as if both parties had prepared it.

16. **Attorneys' Fees and Costs.** Should either Party bring suit to enforce this agreement, the prevailing party in such lawsuit is entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

17. **Partial Invalidity.** If any term or provision of this agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this agreement, or the application of such term or provision to persons or circumstances other than those held invalid or unenforceable, are not affected thereby; and each such term and provision of this agreement is valid and may be enforced to the fullest extent permitted by law.

18. **Time.** Time is of the essence of every provision of this agreement.

****SIGNATURES ON FOLLOWING PAGES****

City of Olympia, a Washington municipal corporation

By: _____
Steven J. Burney
City Manager

Date: _____

Approved as to form:

Michael M. Young
Deputy City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the _____ day of _____, 2023 before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven J. Burney, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

OLYMPIA COFFEE ROASTING CO.

By: _____
Oliver Stormshak
Co-Owner, CEO

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the ____ day of _____, 2023, before me personally appeared _____, to me known to be a _____, a _____, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath states he/she is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

EXHIBIT A

ALLEY

