

REVOCABLE ENCROACHMENT LICENSE

APPLICATION & INSTRUCTIONS FOR PERMANENT ENCROACHMENTS

SUBMITTAL CHECKLIST

This checklist has been provided to serve the applicant as a reminder to include all required documents and application processing fees. **INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.**

- Read, understand and fill out the application completely. DO NOT LEAVE BLANK SPACES.
- Permanent encroachment exhibits must include an 8½" x 11" drawing, accurately and legibly prepared and stamped/sealed/dated by a Colorado Professional Land Surveyor. All drawings must include the following information:
 - Property lines.
 - Property address.
 - Abutting street and alley name.
 - Exact location of items that encroach
- Obtain a certificate of Liability Insurance that:
 - Names the City of Aspen as an additional insured with applicant's name and address.
 - Has a cancellation clause that **must state**, "Shall notify the City in writing" **instead of** "Endeavor to" notify.
 - If the insurance policy is canceled/not renewed, the encroachment license may become null and void at that time.
 - Must be issued by an insurance company licensed to do business under Colorado State laws.
 - Witnessed execution of application document by a Notary Republic.
- A nonrefundable application review fee of **\$1,000.00***, in cash or check issued to the City of Aspen to be submitted with application.

*Recording fees determined by the Pitkin County Recorder's Office and collected by the City of Aspen as part of the permit application fees.

- Please allow Fourteen (14) business days for review.

REVOCABLE ENCROACHMENT LICENSE REVIEW PROCEDURES

Encroachment license applications are received and reviewed by the Engineering Staff and approved or disapproved by the City Engineer. Depending upon the feasibility of an encroachment into a public right of way and restrictions imposed upon use of the ROW for public access, delivery and installation of underground services, an application for encroachment license may be approved or rejected in accordance with the City of Aspen Municipal Code (AMC 21.04.050, 21.04.060, 21.04.070, 21.04.080, and 21.04.090).

PART ONE – APPLICATION REVIEW PROCEDURE

All applications for permanent encroachments will be reviewed by the Engineering Department according to the following criteria:

- **UNRESTRICTED ACCESS** to the area of encroachment within the public ROW corridor must be provided at all times to service/construct utilities, roadways or any other activity as deemed necessary by the City.
- **IMPACT ON TRAFFIC CIRCULATION** and areas designated for vehicular turning movements, deck overhang space, etc.
- **STREET OR ALLEY MAINTENANCE OPERATIONS** including snow storage and snow removal operations.
- **CODE AND LAW ENFORCEMENT:** Would the encroachment cause a problem or compound an existing problem for traffic control, City Police, ambulance service or fire protection district operations?
- **INCOME PRODUCING SPACES** for paid parking stalls, net leasable commercial area or other income producing spaces may not be encroached unless a rental agreement is obtained from the City of Aspen prior to application for encroachment.
- **COMPLIANCE WITH ADOPTED MASTER PLANS:** An encroachment shall not override the requirements of other adopted land use master plans such as the Trail corridors, Malls, improvement districts, etc.
- **BENEFIT:** Consideration of whether the encroachment is beneficial to the City of Aspen. An encroachment effectively provides public property for private use. Therefore, as a general policy, it is not in the City's interest to grant encroachments. New structures should be able to accomplish their various needs within the confines of their property boundaries and required setbacks. Granting of encroachment would generally occur under one of the following conditions:
 - a) To acknowledge an existing, historical unlicensed encroachment and to outline the owner's liability and responsibility for maintenance and the future removal of the encroaching structure, or
 - b) To license an encroachment that is a public amenity. Examples may include awnings on commercial structures, non-restrictive safe objects, planters in the right-of-way (but not within pedestrian walkways), irrigation systems approved by Engineering and Parks Departments to maintain landscaping within public right-of-way.

PART TWO – INSURANCE REQUIREMENTS

Licensee shall provide proof of the necessary General Liability insurance certificate, in the amount not less than statutory limits, to the City before any application will be approved. Such certificate must be issued by an insurance company having an established office in Colorado and licensed to do business under Colorado State laws. The insurance certificate must be issued under the following conditions:

- 1) The certificate must name the "City of Aspen" as an additional insured.
- 2) Must be valid for the duration of the encroachment. It shall be renewed if necessary to provide continuous coverage.
- 3) The insurance certificate shall not be canceled under any circumstances. Failure to comply with this requirement shall automatically revoke the encroachment license.

NOTE: All insurance policies that are maintained pursuant to this agreement shall contain the following endorsement: ***"It is hereby understood and agreed that this insurance policy may not be canceled by the surety until forty-five (45) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew."***

REVOCABLE ENCROACHMENT LICENSE APPLICATION

Date Received: _____ Permit Number: _____

INSTRUCTIONS: COMPLETE THE FOLLOWING SECTIONS AS IT APPLIES TO YOUR REQUEST

THIS LICENSE IS FOR: (CHECK ONE ONLY)

- PERPETUATUAL UNTIL REVOKED BY THE CITY.
- PRE-EXISTING CONDITION AND PERPETUATUAL UNTIL REVOKED BY THE CITY.

VALIDATION PERIOD: REQUESTED START DATE: _____

This Agreement made under this license and entered into this ____ day of _____, 20____, by and between the CITY OF ASPEN, Pitkin County, Colorado, hereinafter referred to as "ASPEN" and

_____, at _____,
(Print Full Name) (Print Legal Mailing Address)

daytime phone number: _____, hereinafter referred to as "Licensee",

WHEREAS, Licensee is the owner of the following described properties located in the City of Aspen, Pitkin County, Colorado

Street Address: _____

Legal Address: _____

WHEREAS, said properties about the following described public right(s)-of-way:

WHEREAS, Licensee desires to encroach upon said right-of-way for the following purposes and as shown and described in **Exhibit "A"**, attached to this License. **Describe Exhibit "A":**

WHEREAS, Section **21.04.050** of City of Aspen Municipal Code delegates the authority to the City Engineer to grant encroachment licenses,

WHEREAS, ASPEN agrees to the grant of a private license of encroachment as built subject to certain conditions,

THEREFORE, the consideration of the mutual agreement hereinafter contained ASPEN and Licensee covenant and agrees as follows:

A revocable license is hereby granted to Licensee to occupy, maintain and utilize the above described portion of public Right-of-way for the purposes described.

This license is granted for a specific use and within a specified term as checked above, subject to being terminated at any time and for any reason at the sole discretion of the City Engineer of the City of Aspen.

This license shall be subordinate to the right of ASPEN to use said area for any public purposes.

The Licensee shall obtain right-of-way and Building Permits as required by the City for any work to be performed in the public right-of-way with design approvals for such work obtained from the Engineering Department. Licensee agrees to join any improvement district formed for the purpose of constructing improvements within public right-of-way. Licensee is responsible for the maintenance and repair of the public right-of-way, together with improvements constructed therein, which ASPEN, in the exercise of its discretion, shall determine to be necessary to keep the same in a safe and clean condition. In the event that Licensee defaults in any of its duties as set forth

herein, ASPEN shall have the right, upon written notification to the Licensee, to perform duties to ASPEN standards and to recover all costs for performing duties from the Licensee. Further, Licensee waives any claim for damages sustained by Licensee and Licensee shall hold the City of Aspen harmless for any claims, causes of action or damages asserted against the City of Aspen for the work performed by the City of Aspen pursuant to this paragraph.

Unless the property that is the subject of this license agreement is covered by a homeowner's insurance policy, Licensee shall at all times during the term hereof, carry public liability insurance for the benefit of the City with limits of not less than those specified by Section 24-10-114, C.R.S., (currently \$350,000 per person and \$990,000 per occurrence) as may be amended from time to time, naming the City as "**Additional Insured**".

Licensee shall maintain said public liability insurance coverage in full force and effect during the term of this License and shall furnish the City with a most current certificate of such coverage evidencing its validity. All insurance policies maintained pursuant to this agreement shall contain the following endorsement: "**It is hereby understood and agreed that this insurance policy may not be canceled by the surety until forty-five (45) days after receipt by the City of a written notice of such intention to cancel or not to renew.**" The Licensee shall show proof of this insurance to the City before this agreement is filed.

Licensee agrees to indemnify and hold harmless the City of Aspen, its officers, employees, insurers, and self-insurance, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, death, property loss or damages, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this license, including but not limited to, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or part by the act, omission, error, professional error, mistake, negligence, or other fault of licensee or the City. Licensee agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claim or demands at the sole expense of the licensee or, at the option of the City of Aspen, licensee agrees to pay City of Aspen or reimburse City of Aspen for the defense costs incurred by the City of Aspen in connection with, any such liability, claims, or demands. The licensee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false or fraudulent.

This license may be terminated by Licensee at any time and for any reason following delivery of a written notice of Licensee's intent to cancel. ASPEN may terminate this license at any time and for any reason. Upon termination, Licensee shall at Licensee's expense, remove any improvements or encroachments from said property. The property shall be restored to a condition satisfactory to ASPEN.

This license is subject to all state laws, the provisions of the Charter of the City of Aspen as it now exists or may hereafter be amended, and the ordinances of the City of Aspen now in effect or those which may hereafter is adopted.

Nothing herein shall be construed so as to prevent Aspen from granting such additional licenses or property interests in or affecting said public property as it deems necessary.

The conditions hereof imposed on the granted license of encroachment shall constitute covenants running with the life of improvements encroaching in public right of way, and binding upon Licensee. The encroachment shall terminate when the improvement has failed or out of compliance with required standards of performance or if it is revoked by the City, whichever comes sooner.

In any legal action to enforce the provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees.

If the structure for which this license was issued is removed for any reason, Licensee shall not continue to rebuild in the public right-of-way. The public right-of-way is for the general public benefit, and it is not for occupation or construction of encroachments.

The licensee waives any and all claims against the City of Aspen for loss or damage to the improvements constructed within the encroachment area.

The Licensee clearly understands the following actions of Licensee or his/her agents and employees shall automatically terminate and cancel this agreement:

- 1) **Discontinuation of insurance coverage**
- 2) **Change of ownership or alteration of use from the original specific use in encroached area**
- 3) **Restriction of ASPEN or its agents and contractors from access to its public land under the encroached area not occupied by a previously constructed building**

Under these circumstances, the Licensee shall restore the right-of-way under the encroachment to its original or better conditions immediately and in accordance with the latest Engineering Department standards for improvements of Public right of way.

IN WITNESS WHEREOF, the parties executed this agreement at ASPEN the day and year first written.

(Licensee signature must be notarized)

THE FOLLOWING SECTION MUST BE COMPLETED BY A NOTARY PUBLIC:

STATE OF COLORADO)

) ss.

County of Pitkin)

The foregoing instrument was acknowledged before me this

_____ Day of _____, 20____, by _____ (Licensee).
(Print Licensee Name)

WITNESS MY HAND AND OFFICIAL SEAL.

Notary commission expires: _____ (Date) _____ (Notary Public)

(Address)

(DO NOT WRITE BELOW THIS LINE, FOR CITY USE ONLY)

CONDITIONS of APPROVAL (if any):

BY: _____
CITY of ASPEN, ENG DEPT

DATE: _____