



CITY OF JAMESTOWN

102 3RD AVENUE SE, JAMESTOWN, NORTH DAKOTA 58401

TELEPHONE 701-252-5900 - FAX 701-252-5903

Email: info@jamestownnd.gov

Website: www.jamestownnd.gov

OUTDOOR DINING AREA OR OUTDOOR MERCHANDISING AREA PERMITS within City Limits of Jamestown, ND – Occupying Sidewalk or Right-of-Way Areas

A. Procedure if a business is requesting to use State of NDDOT right-of-way:

1. The business submits a completed application (**pages 2 thru 6**) to the City of Jamestown with all required documents:
 - Permit fee of \$100 payable to City of Jamestown
 - An additional \$100 fee for Encroachment Agreement
 - A photograph of the site
 - A drawing with a complete description of the proposed site layout and equipment location, see page 6.
 - Certificate of Insurance (**City of Jamestown, ND, AND the State of North Dakota shall be endorsed as additional insureds.**)
2. City Staff reviews the permit through the City's approval process.
3. The City would then forward the permit, application & insurance certificate to the NDDOT to start the NDDOT approval process.
4. The NDDOT then types up the NDDOT Encroachment Agreement between the City and NDDOT and sends to City for signatures.
5. The City returns the signed agreements and required insurance certificates to the NDDOT.
6. The NDDOT reviews and forwards to NDDOT legal for NDDOT Director signature.
7. The NDDOT returns an executed Encroachment Agreement for this business to the City.
8. The City then notifies the business by sending the approved permit.
9. Once the business has received the permit, it may occupy the right-of-way area, not before.

B. Procedure if a business is requesting to use City of Jamestown right-of-way:

1. The business submits a completed application to the City of Jamestown with all required documents.
2. Permit Fee of \$100 payable to the City of Jamestown.
3. If approved, the City issues and sends a permit to the business.
4. Once the business has received the permit, it may occupy the right-of-way area, not before.



CITY OF JAMESTOWN

102 3RD AVENUE SE, JAMESTOWN, NORTH DAKOTA 58401

TELEPHONE 701-252-5900 - FAX 701-252-5903

Email: info@jamestownnd.gov Website: www.jamestownnd.gov

**PERMIT APPLICATION
OUTDOOR DINING AREA or OUTDOOR MERCHANDISING AREA
ON CITY OR STATE RIGHT-OF-WAY
JUNE 15, 2020 – OCTOBER 31, 2020
(If Required – Encroachment Agreement)**

Applicant Information
Name of Business: _____
Business (Local) Address: _____
Name of Applicant: _____ Title: _____
Mailing Address: _____
Name & mailing address of Business Owner/Mgr.: _____ (if different from above)
Primary Phone: _____ Cell Phone _____
Email Address: _____
Description of Request: _____
Does the request include permanent or semi-permanent fixtures, displays, fencing, etc.? <input type="checkbox"/> Yes <input type="checkbox"/> No
Describe: _____
Please attach the following: ___ photograph of the site _____ drawing with a complete description of the site layout and equipment location (see page 6 - illustration for guidance)

- The application must be accompanied by a permit fee of \$100.00. Upon approval an additional \$100.00 shall be required if an Encroachment Agreement is necessary.
- The permit is not transferable.
- The maximum term for this permit is June 15, 2020 through October 31, 2020.
- The applicant agrees to comply with all provisions of the City of Jamestown Municipal Code.

The applicant agrees to indemnify and hold the City of Jamestown and State of ND harmless from any and all claims, demands, or causes of action which may result from any permit issued pursuant to applicants' request. The applicant must submit with this application proof of insurance to cover the risk of injury to person or property with the City of Jamestown and State of North Dakota named as additional insured. Commercial general liability and automobile liability insurance – minimum limits of liability required of \$500,000 per person and \$1,000,000 per occurrence. (See page 2)

Applicant (Signature) _____ Date: _____
(Print name & title legibly) _____

Office Use Only
Outdoor Dining Area OR Outdoor Merchandising Area Permit Application: Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Fee(s) Paid: ___ Permit - \$100.00 ___ Encroachment Agreement - \$100.00 Date Paid: _____
Authorized Signature: _____
Comments: _____

1. _____ [Name of Business],
_____ [Location address],
to place outdoor seating within NDDOT right-of-way. The outdoor seating will be located at
_____ [Address].

2. The NDDOT *Risk Management Appendix* is attached and part of this permit application.

3. The City shall require _____ [hereafter Business]
to comply with the following indemnification and insurance requirements:

a. **Business** agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Business to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Business also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Business in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

b. **Business** agrees to defend, indemnify, and hold harmless the City of Jamestown, ND, its agencies, officers and employees (City), from and against claims, including but not limited to, claims based on the vicarious liability of the City or its agents, but not against claims based on the City's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Business to the City under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the City is necessary. Business also agrees to defend, indemnify, and hold the City harmless for all costs, expenses and attorneys' fees incurred if the City prevails in an action against Business in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

c. **Business** shall secure, provide the City a current certificate of insurance with the application and continue to provide current certificates of insurance during the term of this agreement. The insurance company must be authorized to do business in North Dakota. The insurance must include the following coverage:

- 1) Commercial general liability and automobile liability insurance with minimum limits of liability of \$500,000 per person and \$1,000,000 per occurrence.
- 2) Workers' compensation insurance meeting all statutory limits.
- 3) The State of North Dakota, its agencies, officers, and employees shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.

Initials _____
Date _____

- 4) The City of Jamestown, its agencies, officers, employees, and representatives shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.
 - 5) The endorsements shall contain a Waiver of Subrogation in favor of the state of North Dakota, and then the City of Jamestown, ND.
 - 6) The policies and endorsements may not be canceled or modified without thirty (30) days written prior notice to the City of Jamestown, ND, and the State of North Dakota.
- d. The State and the City independently reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.
 - e. The Business' insurance coverage shall be primary (i.e., pay first) regarding any insurance, self-insurance or self-retention maintained by the State or by the City. Any insurance, self-insurance or self-retention maintained by the State and by the City shall be in excess of the Business' insurance and shall not contribute with it. The insolvency or bankruptcy the Business shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents Business from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of Business. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The State and the City will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Business in excess of the minimum requirements set forth above.
- 4. The Business will obey and enforce all federal, state and local laws.
 - 5. The City reserves the right to terminate this permit, with or without cause.
 - 6. This permit expires at midnight on October 31, 2020.

Initials _____
 Date _____

Risk Management Appendix

Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: State – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability insurance** – minimum limits of liability required of the Governmental Entity are \$250,000 per person and \$500,000 per occurrence. The minimum limits of liability required of the State are \$250,000 per person and \$1,000,000 per occurrence.
- 2) **Workers compensation insurance** meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

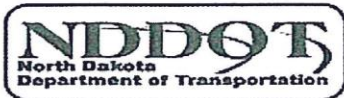
Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See North Dakota Risk Management Manual, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09



Initials _____
Date _____

City of Jamestown Outdoor Dining Area or Outdoor Merchandising Area Requirements

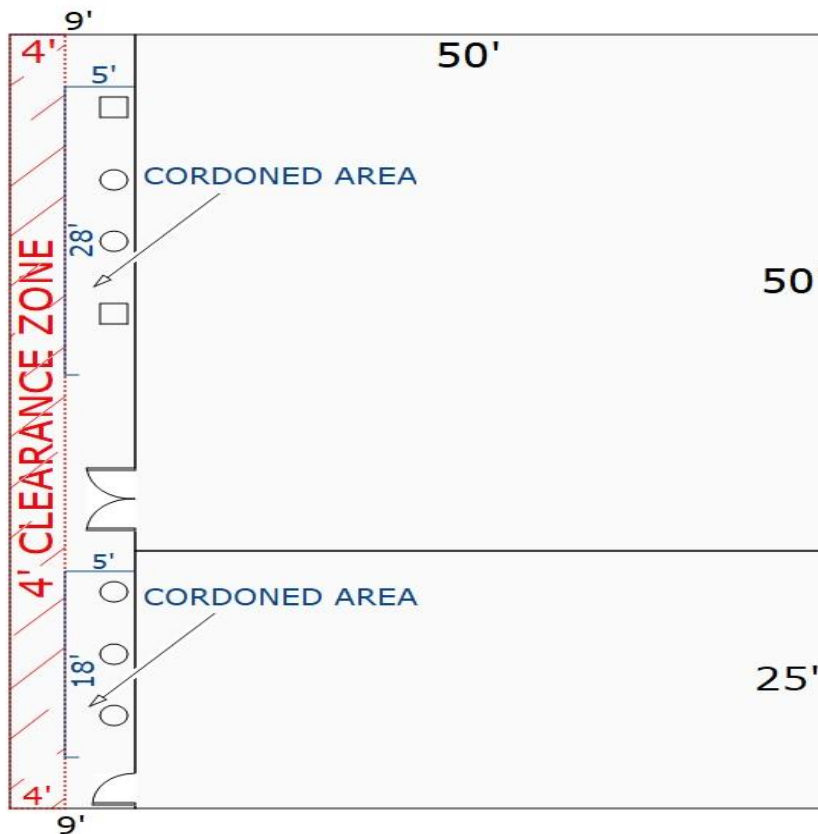


Illustration or Layout Plan – Additional Guidance – Right-of-Way Areas

A drawing indicating the proposed area showing clear widths to curb:

- The site plan will need to include the open space to allow pedestrian traffic (4 foot minimum required on NDDOT right-of-way).
- The site plan will need to include temporary barrier type; for example, a stanchion and belt system not easily movable, but still temporary, provides a clearly defined area.
- A barrier will be required if any type of alcoholic beverages will be served or consumed.
- No permanent barriers will be allowed.
- The site plan must show seating.
- The proposed area must be wholly adjacent to applicant's building and not encroaching upon adjoining properties or adjacent to other buildings.

If any further questions, please contact the City Building Inspector at 701-252-5900.

Initials _____
Date _____