



**INDEMNIFICATION AND HOLD HARMLESS AGREEMENT
FOR MOBILE DEVICE PERMIT / FRANCHISE
AGREEMENT**

In consideration for the issuance of a Permit for Mobile Devices and to the furthest extent allowed by law, OPERATOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, OPERATOR or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the issuance of or decision to approve this Permit, the OPERATOR'S (including its officers, managers, employee, contractors, agents and volunteers) business conduct and operations, any violation of any laws by the by the OPERATOR (including its officers managers, employees, contractors, agents and volunteers) or its users or any bodily injury including death at any time or damage to the property arising out of or in connection with any use, misuse, placement or misplacement, including but not limited to placement or misplacement resulting in violations of the American's with Disabilities Act (ADA), of OPERATOR'S device or equipment by any person. OPERATOR'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the sole negligence or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers.

Operator acknowledges that any information submitted in applying for the Permit is a public record subject to disclosure under the California Public Records Act (CPRA) unless the City determines that a specific exemption applies. The City may protect information that Operator has clearly marked confidential or proprietary and treat it with confidentiality to the extent permitted by law. However, it shall be Operator's responsibility to provide the specific legal grounds justifying withholding of the requested information. General references to sections of the CPRA shall not suffice; the Operator must provide a specific and detailed legal basis, including applicable case law, that clearly establishes that the requested information is exempt from disclosure.

If the Operator does not provide a specific and detailed legal basis for withholding Operator's confidential or proprietary information, City will release the information as required by the CPRA. City shall not have any obligation to notify the Operator or obtain the Operator's approval or consent before releasing information subject to disclosure under the CPRA. Operator shall hold harmless the City, its elected officials, officers, and employees for the release of such information.

Furthermore, the Operator shall defend, at its expense, and indemnify and hold harmless the City, its officers, officials, officers, employees, agents and volunteers from and against any action, claim or liability arising or resulting from the City's refusal to release information withheld at Operator's request. Operator's obligations herein include, but are not limited to, all reasonable attorney's fees, reasonable costs of litigation incurred by the City or its attorneys (including all actual costs incurred by the City, not merely those costs recoverable by a prevailing party, and specifically including costs of experts and consultants) as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against the City, through and including any appellate proceedings.

If OPERATOR should subcontract all or any portion of the work to be performed under this Agreement, OPERATOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement.

Throughout the life of the Mobile Device Permit, OPERATOR shall pay for and maintain in full force and effect all insurance as required in Exhibit A, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.



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OPERATOR shall conduct all defense at his/her/its sole cost. The fact that insurance is obtained by OPERATOR shall not be deemed to release or diminish the liability of OPERATOR, including, without limitation, liability assumed under this Agreement. The duty to indemnify shall apply to all claims regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of OPERATOR. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by OPERATOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of OPERATOR, its officials, officers, employees, agents, volunteers or invitee

City shall be reimbursed for all costs and reasonable attorney's fees incurred by City in enforcing this Agreement. This Indemnification and Hold Harmless Agreement shall survive the expiration or termination of the Permit.

The undersigned acknowledges that he/she (i) has read and fully understands the content of this Indemnification and Hold Harmless Agreement; (ii) is aware that this is a contract between the City and OPERATOR; (iii) has had the opportunity to consult with his/her attorney, in his/her discretion; (iv) is fully aware of the legal consequences of signing this document; and (v) is the OPERATOR or his/her/its authorized signatory.

Signed on this day of 2019.

Permittee/Operator company

City Employee

Print Name

Print Name

Address

Title

Telephone Number

Telephone Number