Development Services Department
Email: cannabis@costamesaca.gov
Cannabis Hotline: (714) 754-4902
Monday – Thursday; Every other Friday
8:00AM – 5:00PM

Cannabis Business Permit (CBP)

Submittal Guide and Application Forms

Materials included in this CBP submittal guide and application packet:

- Step-by-step CBP application submittal guide and instructions
- Checklist of required CBP application submittal documents and material
- CBP Application Form

STEP 1: Location and Use

Check Location. Make sure the type of cannabis business you wish to establish is allowed at the location you have selected:

- **Retail storefront (dispensary)** uses are only allowed in commercial zones. However, these uses may not be located in close proximity to certain sensitive uses.

- **Retail non-storefront (delivery)** uses are allowed in the Green Zone and commercial zones.

- **Manufacturing, testing, distribution, and research and development** (non-retail) uses are only allowed in the Green Zone.

Commercial cultivation is prohibited in the City.

You may obtain information about where cannabis businesses are allowed and the various location requirements on the cannabis webpage:
https://www.costamesaca.gov/hot-topics/cannabis-in-costa-mesa

Pre-application Review. A pre-application review is required prior to submitting a CBP application for a proposed retail storefront business *OR* a non-retail cannabis business using or storing hazardous materials in a multi-tenant building in the Green Zone.

A CBP **cannot** be submitted without a pre-application determination from the City for a storefront or non-retail cannabis business in a multi-tenant building.

All other cannabis types of businesses (e.g., manufacturing, distribution, research and development, delivery not located in multi-tenant building only with no storefront) **do not** require a pre-application review.

STEP 2: Complete the CBP Application Form

CBP Application Form. A copy of the CBP application form is provided in this submittal guide. Refer to the end of the submittal guide for the CBP application form.

The CBP application form must be completely filled out and signed by the applicant and the property owner. The signatures must be notarized. (Please note that notary services are not available at City Hall.)

Every owner and officer of the business must be identified. If the cannabis business is wholly or partially owned by a corporate entity, every owner of that entity must be disclosed. Every owner and officer must also pass a preliminary background check conducted by a third party designated by the City, as well as a live scan background check.

The application submittal requires a variety of documents as described in the section below. All of these documents **must be submitted** with the CBP application form or the application submittal will be rejected.

STEP 3: CBP Application Submittal

Please note that your CBP application ***MUST*** include all of the required documents, forms and information. The City will ***NOT*** accept incomplete applications for processing.

Required Documents and Materials. Refer to the "List of Required CBP Application Submittal Documents and Materials" included in this application packet for detailed information on the documents and materials required to be submitted with the CBP application form.

CBP Application Fees. Payment for CBP application fees must be made by a certified check, cashier's check, or money order made payable to the City of Costa Mesa. The schedule of fees is as follows:

- Cannabis Business Permit Fee for Measure X (Non-retail): $20,380.00
- Cannabis Business Permit Fee Measure Y (Retail): $19,732.00

File Organization. Each document within the CBP application submittal must be a separate file.

- Cannabis Business Permit Application
  - Application Form (please do NOT include submittal guide)
  - Floor Plan(s)
  - Operation History
  - Labor Peace Agreement (retail applications only)
  - Retail Cannabis Business Permit Defense and Indemnity Agreement (retail applications only)
- Background Check Information for Each Owner/Officer
  - Copy of Social Security Card
  - Copy of DMV-Issued Driver's License/Identification Card or Passport
  - Digital passport-type photo (JPEG, BMP or equivalent)
- File Number 3: Corporate Documents
- File Number 4: Business Plan
- File Number 5: Security Plan
- File Number 6: Pre-Application Determination (if required; refer to Step 1)

Application Submittal: All cannabis applications **will only be accepted online** through the City's cannabis application submission portal. Applications **will NOT** be accepted in-person at City Hall or via regular or electronic mail.

If staff determines your application contains all required information for processing, staff will arrange a date and time to collect the fees. Fees must be paid within three business days.

If staff determines your application does NOT contain all information required for processing, staff will provide a written list of the information that needs to be provided.

Project Case Number. Once your CBP application is deemed acceptable for processing and the City has received your application payment in full, a project case number will be assigned to your application.

STEP 4: Third Party Background Check and Live Scan

Every owner and officer of the business must authorize a background check through the City's consultant, HdL. After the case number is assigned, staff will provide a link to HdL's online portal. Applicants will be required to submit payment of $300 to HdL with each background check request. Please note that the background checks **cannot** start before the CBP application has been accepted by the City.

In addition to the background check through HdL, every owner and officer must pass a live scan background check through the City. Once the CBP application has been accepted by the City for review, staff will provide live scan background check paperwork for the owners and corporate officers listed on the CBP application

(employee background check will occur later in the CBP review process).

The Live Scan may be provided by any operator offering State Department of Justice and FBI background checks. The Costa Mesa Police Department also provides Live Scan services by appointment only. Call (714) 754-5033 to schedule an appointment.

A copy of the completed Live Scan form returned by the operator must be submitted to the City via email to cannabis@costamesaca.gov (include the business address and permit number in the subject line).

Failure to return the completed Live Scan Forms will prevent the City from obtaining the Live Scan results, which may result in your CBP application being moved to the Cannabis Wait List or deemed withdrawn

STEP 5: CBP Application Review

CID Staff will review the CBP application submittal. Be aware that the City may require additional information or revisions during this review.

STEP 6: Notice to Proceed

Once all the documents have been approved by the City and all owners and officers have passed background checks, the City will issue a Notice to Proceed (NTP). At this point in the CBP process, an application for a Conditional Use Permit (CUP) may now be submitted to the Planning Division for review. Applicants may also begin to submit applications for background checks for employees once the NTP has been issued.

STEP 7: Conditional Use Permit

All cannabis businesses require approval of a CUP by the Planning Commission at a public hearing. Information on the CUP process including the application form, submittal requirements, and submittal guides can be found on the City's cannabis webpage.

STEP 8: Building Permits

Plan Check Application Submittal. Tenant improvements, landscape improvements, and other building modifications require issuance of building permits prior to commencing any construction or improvement. The applicant is responsible to obtain all required permits from the Building Division and Fire Department as applicable. Information about the plan check submittal and building inspection process may be found on the Building Division's webpage:
https://www.costamesaca.gov/city-hall/city-departments/development-services/building-safety

The CBP will not be issued until the Building Division has granted final approval for all construction.

Concurrent Submittal. Please note that the City will not accept an "at risk" plan check submittal for building improvements for any retail cannabis facility until the CUP has been approved and the appeal period has expired.

STEP 9: Issuance of the Cannabis Business Permit

CBP Issuance. The CBP **cannot be issued** until all of the following steps have been completed:

- The CUP has been approved and all conditions of approval have been satisfied;
- All required building and fire permits have been finalized and a Certificate of Occupancy has been issued, if applicable (Temporary Certificate of Occupancy is **NOT** allowed);
- Proof of Insurance has been provided pursuant to Section 9-945 of the Costa Mesa Municipal Code; and
- The site has passed an inspection conducted by the Fire Department, Planning Division, CID, and other applicable City departments. A site will pass inspection when all City departments have confirmed compliance with all approved plans, regulations and applicable documents.

  If any discrepancies with approved plans and documents are observed during the site inspection, the Applicant must correct them and compliance shall be determined with another site inspection.

Display CBP. Once the CBP is issued, it must be displayed at the cannabis business at all times.

Live Scan Background Checks Required for All Employees. The Costa Mesa Municipal Code requires that every owner, manager, supervisor, or employee of a cannabis business must undergo a Live Scan background check to verify that person's criminal history. The business may not employ anyone who fails the City's background check. The City will issue identification badges to each employee passing the City's check. The fee for each badge is $631. The City will accept requests to conduct background checks for employees after the Notice to Proceed is issued.

To start this process, **applicants will need to obtain a Live Scan intake-form with a unique case number from the City for each individual being screened**.

To obtain the form, submit the following information for each person needing a Live Scan:

1. Copy of Social Security Card

2. Copy of the Department of Motor Vehicles (DMV) issued driver's license, DMV issued ID card, or passport
3. A recent passport photo in digital format (JPEG or equivalent)

Information may be submitted electronically to cannabis@costamesaca.gov. Please include the City application number and project address in the subject line. The forms will be returned to the person submitting the information. Payment must also be submitted before the City will complete the required forms to initiate the background check.

Once the City has returned the form, the applicant must obtain a live scan fingerprint check from any operator that provides background checks from the California Department of Justice and the FBI. Live Scan fingerprinting is performed by the Costa Mesa Police Dept. by appointment only. Call 714-754-5033 to schedule an appointment.

It is imperative that the form stamped by the Live Scan operator, including the Costa Mesa Police Department, is returned to the Community Improvement Division. Live Scan results cannot be obtained without this information. Forms may be sent to cannabis@costamesaca.gov; include the permit number and business address in the subject line.

The Costa Mesa Police Department will notify the Community Improvement Division if the Live Scan background clearances resulted in a pass or fail.

Identification Badges. The City will issue identification (ID) badges for all owners, officers, employees, and volunteers. ID badge pick-up is by appointment only. Call (714) 754-4902 to schedule an appointment.

The badge-holder when at the place of business must wear their issued ID badges at all times. In the event of the termination of an employee, the terminated employee's ID badge must be returned to the City of Costa Mesa. New employees may not start working at the business until they have successfully passed a background check, and the City has issued the new employee an ID badge.

STEP 10: Obtain a City Business License

A cannabis business **cannot** begin to operate until a City of Costa Mesa Business License has also been obtained from the Finance Department. This City Business License is separate from the CBP but is also required for all cannabis businesses operating in Costa Mesa in addition to the CBP.

To apply for a City Business License, follow the instructions on the City's webpage: https://businesslicense.costamesaca.gov/

(Submittal checklist continues on next page.)

Checklist of Required CBP Application Submittal Documents and Materials

1. ____ **CBP Application Form.** Ensure the CBP application form is filled out completely with all required information. ***Important:*** the Applicant and Property Owner shall sign the application and their signatures must be notarized.

2. ____ **Floor Plans.** Existing and proposed floor plans, drawn to scale and fully dimensioned, depicting all proposed improvements to the facility. Also include on the floor plan (or on a separate floor plan sheet) the following: licensed premises, access controlled areas, all entry/exit points, and security camera locations.

3. _____ **Labor Peace Agreement**. For a retail (storefront or non-storefront) applicant with two or more employees, provide a notarized statement that the applicant will enter into, or demonstrate that it has already entered into, and will abide by the terms of, a labor peace agreement as otherwise required by Business and Professions Code section 26105.5.

4. ____ **Operation History.** Provide a written statement, signed under penalty of perjury, as to whether the cannabis business with one or more management members in common with the Applicant, previously operated in this or any other County, City, or State under a similar license/permit, and whether the cannabis business Applicant ever had such a license/permit denied, revoked, or suspended and the reason(s) therefore.

5. _____ **Retail Cannabis Business Permit Defense and Indemnity Agreement.** This agreement is required when a retail (storefront or non-storefront) component is proposed. The agreement must be executed by the business owner(s) and the signatures must be notarized. This Agreement may be found on the City's cannabis web page and is also attached to this submittal guide.

6. ____ **Proof of Identity.** Provide a copy of DMV-issued Driver's License, DMV-issued Identification Card, or Passport for each owner/officer.

7. ____ **Social Security Card.** Provide a copy of Social Security Card for each owner/officer.

8. ____ **Proof of Address.** Provide a recent Utility Bill in owner's name or officer's name if address is different than shown on identification.

9. ____ **Photo.** Digital passport-size photo for each owner/officer in one of the following formats: JPEG, BMP or equivalent. PDFs are not acceptable.

10. ____ **Business Structure Documents.** Provide documents pertaining to the business structure, if applicable:
    - Articles of Incorporation;
    - Articles of Organization;
    - Certificate of Limited Partnership;
    - Statement of Partnership Authority;
    - Fictitious Name Statement.

11. ____ **Business Plan.** Provide a Business Plan that includes at a minimum the following information:

    (Note that additional information is also required to be included in the Business Plan depending on the specific type of cannabis business as indicated in the requirements below.)

    - Description of the target consumer for your product or service.
    - A budget for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operational costs. The budget must demonstrate sufficient capital in place to pay start-up costs and at least three (3) months of operating costs, as well as a description of the sources and uses of funds.
    - Proof of capitalization, in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets.
    - A schedule for beginning operation, including a narrative outlining any proposed construction, improvements, and a timeline for completion.
    - A pro forma for at least three years of operation.
    - How the business will conform to local and State laws.
    - How cannabis will be tracked and monitored to prevent diversion.
    - A description of the day-to-day operations, which meet industry best practices for the specific type of permit sought from the City. At minimum, the description shall include the following information:
        - The total number of employees at initial opening, and at full capacity.
        - Any third party vendors or consultants who will be utilized at the on-site operation.
        - The supply chain the facility will utilize to acquire items for the operation.
        - A floor plan with a flow diagram and accompanying narrative describing how the cannabis will travel starting at the time the product arrives on-site in the delivery vehicle until it is leaves the location. Identify the designated parking locations for delivery vehicles and all delivery entrances. Floor plans shall be drawn to scale and fully dimensioned.
    - In addition to the above Business Plan minimum requirements, the following information is also required to be included in the Business Plan depending on the type of cannabis business:

For Manufacturing and Distribution businesses:

- A narrative detailing production steps and description of the functions and processes which will occur in each room.
- Specific details of manufacturing from the prospective of components and materials moving down the production line. Identify each step of the production process, providing numerical detail such as production capacity.
- Detailed description of the methods used to store and distribute product after production. At minimum, it should include: On-site warehousing capacity.
    - Location of, if any, off-site warehousing.
    - Number of vehicles used for transportation.
    - Type of vehicles used for transportation.
    - Procedure for transporting product.
    - Whether a third-party transport company will be utilized.
    - Name of third-party transport company, if applicable. You must identify the transport company.

For Retail Storefront businesses:

- How customers will be notified, both verbally and via signage, of the following provisions:
    - Unlawful sale, barter, or distribution of cannabis is a crime and subject to fines or arrest.
    - Loitering on and around the premises is prohibited by California Penal Code Section 647, and that patrons must immediately leave the premises and not consume cannabis in the vicinity, in the parking lot, or on the property.
    - A warning that patrons and/or employees may be subject to prosecution under Federal cannabis laws, if applicable.
    - Use of cannabis may impair a person's ability to drive a motor vehicle or operate machinery and that doing so is illegal.
- How patrons will be screened at the entrance to the facility to ensure that no one under the age of 21 years enters the facility, unless the business holds a retail medical cannabis license issued by the State. The plan shall include verification of the age of the every person, other than employees, entering the premises. The electronic age verification device may be mobile or fixed, and shall be able to retail a log of all scans that include date, time, and age.
    - The proposed product line to be sold and the estimated percentage of sales of flower and manufactured products.
    - Estimates of the number of customers to be served per hour and per day.

For Non-Storefront Retail (Delivery) businesses:

- The number and location where delivery vehicle(s) shall be stored when not in use. If they are to be stored on-site, a site plan depicting parking space(s) to be used.
- How the delivery vehicle(s) will be equipped with a GPS device, and provide secure storage for cannabis goods.

12.____ **Security Plan.** Provide a Security Plan prepared by a professional security consultant that includes at a minimum the following information:

(Note that additional information is also required to be included in the Security Plan depending on the specific type of cannabis business as indicated in the requirements below.)

- Details on operational security, including but not limited to:
  - Employee specific policies, training, sample written operational policies and procedures.
  - Transactional security and cash handling system.
  - Visitor security.
  - Third party contractor security.
- Security personnel, if utilized, must be licensed by the State of California Bureau of Security and Investigative Services.
- Delivery security. Specifically address how security will be provided when a delivery vehicle arrives and product and/or money is transferred to and from the delivery personnel and the facility's personnel.
- Designation of a security representative/liaison to the City, who shall be reasonably available to meet with the City Manager regarding any security-related measures or operational issues.
- A description and detailed schematic of the overall facility security, including but not limited to:
  - An alarm system on all perimeter entry points and perimeter windows shall be professionally installed, maintained, and monitored. The alarm system shall be approved by the City.
  - Video surveillance system including information on quality, color rendition, resolution, and retention procedures. The exterior of the business shall be monitored at all times by web-based, closed-circuit television for security purposes. The camera and recording system must be approved by the City and must be adequate quality, color rendition, and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained for a period of not less than three (3) months. The owner/operator shall make the recordings available to Costa Mesa Police Department within 24 hours of receipt of such a request.
  - Capability to remain secure and operational during a power outage and ensure that all access doors are not solely controlled by an electronic

access panel, thus ensuring that locks are not released during a power outage.
  - Security measures for doors and windows.
  - General security measures and any other procedures to prevent diversion, theft, and loss.
- Security diagram(s) of the Licensed Premises that is accurate, dimensioned and to-scale (minimum scale of ¼") that depicts the following information:
  - Locations where cannabis products shall be stored and secured. Depict the safe, vault, and secure rooms. If using a secured room, then provide an accompanying narrative describing what security measures are employed in that area including, but not limited to type of lock(s) and wall construction. Include any other procedures to prevent diversion, theft, and loss.
  - Boundaries of limited access areas accessible only to authorized cannabis business person.
  - Location of sensors installed to detect entry and exit from secure areas.
  - Camera locations – exterior and interior.

- In addition to the above Security Plan minimum requirements, the following information is also required to be included in the Security Plan depending on the type of cannabis business:

For Retail Storefront businesses:

- A plan to ensure at least one (1) licensed private security guard shall be on premises twenty-four (24) hours a day.
- A plan to demonstrate how the private security guard(s) and business personnel shall monitor the premises to ensure:
  - Patrons leave immediately;
  - Patrons do not consume cannabis in the vicinity of the retail business;
  - Patrons do not consume cannabis on the property or in the parking lot; and
  - Patrons do not loiter, linger, or otherwise congregate within fifty (50) feet of the entrance.
- Customer Check-In Procedures: Describe how proof of age of every person other than employees entering the business shall be verified with an electronic age verification device, prior to entry to the retail area or delivery to that person. Describe how that device shall be able to retain a log of all scans for a minimum of 180 days that includes the date and time of each transaction and the customer's age.
- Cash handling procedures: opening, mid-day, and closing procedures; whether cash will be stored on-site or off-site; and security measures for storing cash on the premises and during transportation.
- An exterior lighting plan indicating how exterior lighting will provide satisfactory illumination for safety purposes and for continuous video monitoring and recording of the exterior premises.

- A plan depicting the location and type of all internal and exterior video cameras to ensure said cameras shall record video of all entry and exit ways of the premises, system point-of-sale areas and areas where cannabis goods are displayed for sale. The plan shall be drawn to scale and fully dimensioned.
- Procedures to ensure deliveries of cannabis goods shall be accepted inside the facility, and that deliveries shall only occur during regular business hours.
- The technology that will be used to implement point-of-sale tracking. The system shall record and store the following information for each transaction:
    - Date and time;
    - Sales employee's first name and their employee number;
    - A list of product purchased including the quantity;
    - Total amount of sale, including the individual prices paid for each cannabis product purchased, and any amounts paid for taxes.
    - A plan to secure all inventory during non-business hours.

For Retail Non-Storefront (Delivery) businesses:

- How proof of age of every person receiving a delivery shall be verified with an electronic age verification device, prior to delivery to that person. Describe how that device shall be able to retain a log of all scans for a minimum of 180 days that includes date and time of each transaction and the customer's age.
- The technology that will be used to implement point-of-sale tracking. The system shall record and store the following information for each transaction:
    - Date and time;
    - Sales employee's first name and their employee number;
    - A list of product purchased including quantity;
    - Total amount of sale, including the individual prices paid for each cannabis product purchased, and any amounts paid for taxes.
- A plan to secure all inventory during non-business hours.

Costa Mesa

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CANNABIS BUSINESS PERMIT (CBP) APPLICATION

All items described in the submittal instructions must be provided or this application will not be accepted for processing by the City

Applicants: It is your responsibility to check with the Planning Division regarding any land use questions for your proposed location prior to starting this process. In addition, be aware that failure of any owner(s)/corporate officer(s) to pass the third party or Live Scan background process will automatically disqualify this application. Processing fees are non-refundable.

Application Fees:

- Measure X (non-retail except for commercial cultivation): $20,380
- Measure Q (retail): $19,732

CBP APPLICATION PART I

SECTION 1 – PERMIT TYPE (Please select type of permit(s) you are applying for):

___ Distributor (Type 11) ___ Distributor (Type 13)

___ Testing Laboratory (Type 8) ___ Manufacturer (Type 6 and 7)

___ Retail Storefront (Type 10) ___ Retail Non-storefront (Type 9)

SECTION 2 – PROPOSED LOCATION AND PROPERTY OWNER INFORMATION

Property Address: _____

Assessor's Parcel Number (APN): _____

Property Owner Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

SECTION 4 – OWNERS AND OFFICERS

Please provide the following information for each and every individual owner and officer (attach additional sheets if necessary). If owner(s) is a corporation, every owner of the corporation shall be identified. Percentage of ownership identified must total 100.

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Percentage of Ownership in the Applicant Entity: _____

****

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Percentage of Ownership in the Applicant Entity: _____

****

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Percentage of Ownership in the Applicant Entity: _____

****

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Percentage of Ownership in the Applicant Entity: _____

****

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Percentage of Ownership in the Applicant Entity: _____

SECTION 5 – REQUIRED DOCUMENTS AND MATERIALS

Refer to the CBP Application Submittal Guide for a checklist of required items to submit with the CBP Application Form.

When a retail cannabis application Waitlist is established, applicants with cases currently under review by the City shall respond to all comments, requests for additional information, corrections, etc. from the City within 30 calendar days. Failure to timely respond may result in the application being declared inactive and moved to the end of the retail cannabis application Waitlist.

SECTION 6 – AFFIRMATION AND SIGNATURES

Please read carefully:

I understand that as defined by Title 1, Section 1-35(l) of the Costa Mesa Municipal Code (CMMC), I am deemed the responsible party for any violation(s) of the CMMC that may arise at the proposed facility location.

I understand and acknowledge that the operation of the cannabis facility must adhere to all the requirements of Titles 9 and 13 of the CMMC and all other applicable state and local laws and all regulations promulgated thereunder and affirm that this business will be operated in compliance with applicable state and local law and all regulations promulgated thereunder. I understand and

acknowledge that any permit issued based on false or misleading statements provided in this application will be deemed invalid and subject to revocation.

I declare under PENALTY OF PERJURY under the laws of the State of California that the foregoing statements are true and correct.

Signatures – Property owner and Applicant must provide notarized signatures.

Applicant

Print Name: _____

Signature: _____ Date: _____

Attach notary form

Property Owner

Print Name: _____

Signature: _____ Date: _____

Attach notary form

Costa Mesa

Retail Cannabis Business Permit Defense and Indemnity Agreement

Must be Executed by the Entity or Person to be Issued the Measure Q
Retail Storefront or Non-storefront Permit
Permittee Signatures Must be Notarized

THIS RETAIL CANNABIS BUSINESS PERMIT DEFENSE AND INDEMNITY AGREEMENT to defend and indemnify the City of Costa Mesa ("Agreement") is made and entered into this __ day of _____, 20__ ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City") and _____, a [state] [type of entity] ("Permittee"). City and Permittee are each a "Party" and collectively the "Parties" to this Agreement.

A. Permittee has applied for a Commercial Cannabis Business Permit ("Permit") to engage in retail sales (storefront and/or non-storefront) of cannabis pursuant to the provisions of Chapter VI of Title 9 of the Costa Mesa Municipal Code; and

B. The City's ordinances and regulations set forth various requirements for the issuance of retail Commercial Cannabis Business permits, including but not limited to defense and indemnity of the City and maintenance of specified insurance amounts; and

C. The Parties desire to set forth herein the various obligations and requirements related thereto.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the Parties hereby agree as follows:

1. Defense, Indemnification and Hold Harmless. Permittee shall defend, with attorneys of City's choosing, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers, agents, employees and/or volunteers from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and/or expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the Permittee or the Permittee's activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the Applicant, Permittee, City and/or the parties initiating or bringing such proceeding, and shall not be limited by the types and/or amounts of insurance required herein.

2. Insurance. Permittee shall obtain, maintain and keep in full force and effect at all times during the term of its Permit comprehensive general liability insurance and comprehensive automotive liability insurance protecting the Permittee in an amount of not less than two million dollars ($2,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than two million dollars ($2,000,000.00) aggregate for each personal injury liability, products/completed operations and each accident, issued by an insurance provider rated at least A-:VIII in A.M. Best and Company's Insurance Guide and either admitted and authorized to do business in California or is listed on the California Department of Insurance's List of Approved Surplus Line Insurers. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions: (a) Additional insureds: "The City of Costa Mesa, its City Council, boards, commissions, officers, agents, employees and/or volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Permittee; products and completed operations of the

Permittee; premises owned, occupied or used by the Permittee; automobiles owned, leased, hired, or borrowed by the Permittee"; (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."

2.5. Approval. City agrees that Permittee's entering into this Agreement shall satisfy the requirement for an agreement to defend and indemnify the City pursuant to Chapter VI of Title 9 of the Costa Mesa Municipal Code.

3. Attorneys' Fees. In the event that litigation is brought by any Party in connection with this Agreement, the prevailing Party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the Parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

5. Assignment. Permittee shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Permittee's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Permittee of Permittee's obligation to perform all other obligations to be performed by Permittee hereunder for the term of this Agreement.

6. Binding Effect. This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

7. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Permittee and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

9. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment.. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

10. Amendments. Only a writing executed by the Parties hereto or their respective successors and assigns may amend this Agreement.

11. Waiver. The delay or failure of either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of

this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

12. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any Party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both Parties agree to substitute such provision(s) through good faith negotiations.

13. Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so the Parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

PERMITTEE

_____ Date: _____
Signature

_____
[Name and Title]

_____ Date: _____
Signature

_____
[Name and Title]

[CITY'S SIGNATURES ON FOLLOWING PAGE]

CITY OF COSTA MESA

_____ Date: _____

Jennifer Le
Director of Economic and Development Services

ATTEST:

_____

Brenda Green
City Clerk

APPROVED AS TO FORM:

_____ Date: _____

Kimberly Hall Barlow
City Attorney

[PERMITTEE NOTARIZATIONS FOLLOW]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____)

Permittee's Signature(s) Must be Notarized

On _____ before me, _____ (insert here the name and title of officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature: _____

Place Notary Seal Above

On _____ before me, _____ (insert here the name and title of officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted, executed the instrument.

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Signature: _____

Place Notary Seal Above