

FORM P-41(B)
MEDICINAL CANNABIS DELIVERY SERVICE
LICENSE INDEMNITY AGREEMENT AND CONSENT TO TERMS AND CONDITIONS

THIS MEDICINAL CANNABIS DELIVERY SERVICE LICENSE INDEMNITY AGREEMENT AND CONSENT TO TERMS AND CONDITIONS (“AGREEMENT”) is made and entered into as of _____ (“Agreement Date”), by and between the **CITY OF CARLSBAD**, a chartered municipal corporation (“City”), and _____ (“Licensee”).

(Legal business name and status)

City and Licensee are sometimes individually referred to as a “Party” and collectively as “Parties.”

RECITALS

A. Licensee desires to obtain a license to operate a medicinal cannabis delivery service business and deliver medicinal cannabis within the city limits of City.

B. Carlsbad Municipal Code section 8.95.050 requires Licensee to enter into an indemnity agreement and agree to defend and indemnify City and others against certain legal challenges and actions.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Licensee agree as follows:

AGREEMENT

1. No prosecutorial immunity. Licensee understands that a Carlsbad medicinal cannabis delivery service license (“License”) does not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to such laws or the Carlsbad Municipal Code.
2. No modification of license terms or conditions. Licensee understands that any other type of state or county licenses or permits shall not exempt their business from obtaining a License, nor shall the terms and conditions of any other such permit or license modify the requirements of a Carlsbad medicinal cannabis delivery service license.
3. California Public Records Act disclosure requirements. Licensee understands that all materials submitted in connection with a License application, with the exception of criminal background check results, are public records subject to inspection and copying by members of the public. By filing such application, Licensee agrees that the public may inspect and copy these materials and the information contained in them, and that some or all of the materials may be posted on City’s website. For any materials that may be subject to copyright protection, or which may be subject to Sections 5500.1 and 5536.4 of the California Business and Professions Code, by submitting such materials to City, Licensee represents that it has the authority to grant, and grants, City permission to make the materials available to the public

for inspection and copying, whether in hardcopy or electronic format.

In the event a request for information under the California Public Records Act (CPRA) seeks disclosure of License application materials marked by Licensee as “confidential information,” City will make reasonable efforts to provide notice to Licensee prior to such disclosure to allow Licensee to seek a protective order, injunctive relief, or other appropriate remedy. If Licensee contends any designated application materials are exempt from the CPRA and wishes to prevent disclosure, Licensee agrees that it is required, at its own, cost, liability, and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court having jurisdiction over the matter at least two (2) days before City’s deadline to respond to the CPRA request. Licensee understands and acknowledges that a failure to obtain such a remedy before the deadline for City’s response to the request will result in City’s disclosure of the requested information, and City shall not be liable or responsible for such disclosure.

4. Indemnification Associated with License. Licensee waives, releases, and discharges City and its officers, elected and appointed officials, employees, volunteers, and agents (the “Indemnified Parties”) from all claims and demands, rights, and causes of action of any kind with respect to the License. Licensee further agrees to indemnify, defend, and hold harmless (at its sole cost and expense) the Indemnified Parties from and against each and every claim, loss, damage, injury, including death, cost, fee, action, proceeding, judgment, award or liability of any nature, including legal fees and costs (individually and collectively, “Liability”) arising from (a) any challenge to the issuance of this License to Licensee, (b) any decisions to renew or extend this License, (c) any repeal or amendment of any provision of the Carlsbad Municipal Code relating to commercial cannabis activity, or (d) any investigation, arrest or prosecution of Licensee, or the medicinal cannabis business’s owners, operators, employees, clients or customers, for a violation of local, state, or federal laws, rules or regulations relating to cannabis activities, whether arising directly or indirectly from any act or failure to act by Indemnified Parties. Licensee’s duties under this subsection are solely subject to and conditioned upon the Indemnified Parties’ written request to Licensee to indemnify the Indemnified Parties. Licensee shall provide defense reasonably acceptable to City, as reasonably determined by the City Attorney, within five business days of notice from City of a Liability. Licensee shall deposit the expected costs of defense, as reasonably determined by the City Attorney, with City within five business days of such direction, if any.
5. Indemnification Associated with Operations. Licensee waives, releases, and discharges the Indemnified Parties from all claims and demands, rights, and causes of action of any kind with respect to its operations of a medicinal cannabis delivery service business in the City of Carlsbad. Licensee further agrees to indemnify, defend, and hold harmless the Indemnified Parties against any and all Liability arising out of or in connection with Licensee’s operations and conduct under this License, including conduct by Licensee’s drivers, except: (1) Liability

caused by City's sole negligence or willful misconduct; or (2) for Liability caused by City's active negligence, in which case the indemnity received by City shall be reduced by the amount: (a) that City's active negligence contributed to the Liability on a comparative basis; or (b) such other amount as may be required by law. This obligation is effective without reference to the existence or applicability of any insurance coverages which may have been required under this License or any additional insured endorsements which may extend to Indemnified Parties. Licensee, on behalf of itself and all parties claiming under or through it, waives all rights of subrogation and contribution against the Indemnified Parties while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of Licensee regardless of any prior, concurrent, or subsequent passive negligence by the Indemnified Parties.

6. City notification requirements. City will promptly notify Licensee of any claim, action, or proceeding that is or may be subject to this Agreement. City may, within its unlimited and sole discretion, participate in the defense of any such claim, action, or proceeding.
7. Counsel. All defense obligations under this Agreement shall be made using legal counsel reasonably selected and employed by City.
8. Interpretation. Without in any way limiting the provisions of sections 1 and 2 above, the Parties agree that these sections shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the date of this Agreement. Licensee's indemnity obligations set forth in these subsections shall survive the termination or expiration of any License issued or renewed in connection with this Agreement for a period of five years.
9. Insurance. Licensee shall comply with the insurance provisions set forth in Exhibit A.
10. No other agreements. This Agreement contains all the agreements of the Parties with respect to the matters covered by it, and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by both Parties.
11. Agreement separate from license approval. This Agreement shall constitute a separate agreement from any License approval, and that if the License, in part or in whole, is revoked, invalidated, rendered null or set aside by a court of competent jurisdiction, Licensee agrees to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.
12. Enforcement and venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California and in any legal action or other

proceeding brought by either party to enforce or interpret this Agreement; the appropriate venue is the San Diego County Superior Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Agreement Date.

CITY OF CARLSBAD, a municipal corporation of the State of California

LICENSEE, _____
(legal business name and status)

By:

By:

City Manager or designee

Signature Business Owner*
(print name/title)

ATTEST:

By:

Deputy City Clerk

Signature Record Property Owner*
(print name/title)

*Attach additional pages for additional business owner(s) and record property owner(s) as defined by Carlsbad Municipal Code Section 8.90.020.

If required by City, proper notarial acknowledgment of execution by Licensee must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

Group A

Chairman,
President, **or**
Vice-President

Group B

Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

RISK MANAGEMENT REVIEW

CINDIE K. McMAHON, City Attorney

ED GARBO, RISK MANAGER

By: _____
Deputy / Assistant City Attorney

By: _____
Name & Title

EXHIBIT A INSURANCE REQUIREMENTS

Licensee shall procure and maintain for the duration of the License Indemnity Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Licensee, its agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (“CGL”): Insurance Service Office Form CG 00 01 covering CGL on an “occurrence” basis, including products, completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability**: Insurance Service Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.

If Licensee maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

3. **Workers Compensation**: Statutory limits with waiver of subrogation endorsement.

If Licensee maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. **City, its officers, elected or appointed officials, employees, volunteers and agents are to be covered as additional insureds** on the CGL policy and automobile liability policy with respect to liability arising out of work or operations performed by or on behalf of Licensee including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of Licensee. General liability coverage can be provided in the

form of an endorsement to Licensee's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used), unless otherwise approved in advance by City.

B. For any claims related to this Project, **Licensee's insurance coverage shall be primary** insurance as respects the Indemnified Parties. Any insurance or self-insurance maintained by the Indemnified Parties shall be excess of Licensee's insurance and shall not contribute with it.

C. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to City.

Waiver of Subrogation

Licensee hereby agrees to waive rights of subrogation which any insurer of Licensee may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Verification of Coverage

Licensee shall furnish City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this License Agreement. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Licensee's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.