

Return to:
City of Tampa
Right of Way Permitting
306 E Jackson St, 4E
Tampa, FL 33602

Applicant's Business Address:

Parcel ID or Folio No. _____

RESTRICTIVE COVENANT AND HOLD HARMLESS,
AGREEMENT

THIS AGREEMENT is made as of this _____ day of _____,
20__ by _____ with an address of _____

(hereinafter referred to as
"APPLICANT"), in favor of the City of Tampa, 315 E. Kennedy Blvd., Tampa, Florida
33602 (hereinafter referred to as "CITY").

W I T N E S S E T H:

WHEREAS, the APPLICANT has applied to the City for a Right-of-Way Use Permit in accordance with a permit application submitted to the CITY which permit application is incorporated herein by this reference ("Permit"); and

WHEREAS, the proposed Permit includes activities and/or installations ("Installations") in or on public right-of-way as permitted in the proposed Permit; and

WHEREAS, the CITY is willing to issue the proposed Permit for such activities and/or Installations in the public right-of-way provided that the APPLICANT agrees to maintain the Installations, waive any liability that the CITY may have and to indemnify and hold the CITY harmless from any liability that may arise as a result of issuing a permit for such activity and/or Installations in or on public right-of-way and use of the proposed Permit, all as set forth herein.

NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated into the body of this Agreement by reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the APPLICANT hereby agrees as follows:

1. The APPLICANT hereby assumes all risks incident to the maintenance of the Installations and shall defend, absolve, discharge, indemnify and hold the City harmless from and against any and all claims, demands, actions, suits, judgments and decrees, costs, fees (including appellate attorney fees) of any kind and character whatsoever (excluding consequential and special damages) arising out of, or resulting from the maintenance, repair, reconstruction, operation, use or existence of the Installations or issuance of the Permit. Additionally, APPLICANT waives, relinquishes, absolves, and discharges the CITY from any and all liability, damages, costs and expenses of any nature whatsoever resulting directly or indirectly from the issuance of a permit by the CITY for the above described activity and/or Installation on public right-of-way, including, without limitation any injuries or damages that APPLICANT and the employees, contractors, subcontractors, invitees and guests of the APPLICANT may suffer or incur in connection with the issuance or use of the above described permit by the CITY. Nothing in this indemnity provision shall be deemed a waiver of the limits or rights set forth in Section 758.28, Florida Statutes. .
2. IT IS UNDERSTOOD AND AGREED that this hold harmless and release of claims is intended to cover ALL CLAIMS, KNOWN OR UNKNOWN, including claims for both PERSONAL INJURIES and PROPERTY DAMAGE. This hold harmless and release of claims is further intended to release from all actions, arising either directly or indirectly out of the issuance of the above described permit or in connection with the use of the public right-of-way by the APPLICANT as a result of the issuance of said permit, as now appearing or as may appear at any time in the future, including but not limited to personal injury and/or property damage.
3. The APPLICANT shall provide the CITY with evidence of a commercial general liability insurance policy covering bodily injury, death and property damage with a limit of not less than \$1,000,000.00 for each occurrence and a \$2,000,000.00 annual aggregate in connection with the above described activity, installation, maintenance, and use of the above described structure in the public right-of-way. Such insurance is to be placed with insurers admitted in the State of Florida and who have a current A.M. Best rating of B+ or better and Class VII or higher. The insurance policy shall also provide: (a) that the City of Tampa is named as an additional insured; (b) for severability of interest; and (c) thirty (30) days prior written notice from the insurance company to the City of Tampa of any proposed termination, cancellation or material change in the insurance coverage or limits. The insurance coverage required herein shall be primary to any insurance carried by the City of Tampa or any self-insurance of the City of Tampa. The insurance coverage and limits required herein shall be evidenced by a properly executed certificate of insurance on a form or on forms furnished or required by the City of Tampa as provided for herein. The APPLICANT or its successor in interest shall maintain said insurance and provide the City of Tampa with evidence thereof as a condition precedent to the

erection of the above described structure in the public right-of-way and thereafter for so long as the structure continues to exist. This policy must not exclude explosion and collapse coverage. Proof of continued insurance should be mailed annually to:

Right of Way Permitting
City of Tampa
306 E. Jackson Street, E4
Tampa, FL 33602

4. All Contractors, and its subcontractors of every tier, are required to secure and maintain Workers Compensation Insurance as required by statute throughout the installation of the above described Installations in the public right of way.
5. Said Installations as shown on the site plan shall continue to be located and installed as shown on the site plan.
6. The APPLICANT shall repair any damage caused to the public right-of-way arising from the APPLICANT's use of the public right-of-way to be restored to approximately the same condition as it existed prior to the activities and/or installations.
7. The APPLICANT shall have a continuing duty and obligation to maintain the Installations in good repair. In the event the Installations are not maintained in good repair, the CITY shall provide notice thereof to the property owner whom shall then take prompt necessary action to effect repairs. In the event APPLICANT or its successor fails to promptly commence to effect any needed repairs, or in the event the conditions of the Installations are a danger to public safety, then the CITY, acting through its Department of Transportation & Stormwater Services Director may require APPLICANT to remove the Installations at the cost of the APPLICANT or successor in interest and to restore said right-of-way to approximately the same condition as it existed prior to the activities and/or installations. CITY will not be required to replace any decorative or alternative materials in the public right of way.
8. This Agreement does not give Applicant any exclusive property interest with regard to the public right-of-way.
9. The APPLICANT agrees that should the CITY, acting through its Department of Transportation & Stormwater Services Director determines in writing to the APPLICANT that the subject right of way occupied by the Installations is needed for public right of way purposes, the above described Installations will be removed by the APPLICANT and the public right-of-way restored to approximately the same condition as it existed

prior to the activities and/or installations at the expense of the APPLICANT's or its successor in interest.

10. This Agreement shall constitute a covenant running with the land and be binding on all successors and assigns in title to the property receiving benefit of the permitted activity, except that, if there is a change in zoning of the property, the Department of Transportation & Stormwater Services Director may require Applicant or its assign to remove the Installations or reapply for the Permit.
11. The APPLICANT shall record this Agreement in the official records of Hillsborough County and provide a copy of the recorded Agreement to the Department of Transportation & Stormwater Services pursuant to the permit Application.
12. This Agreement shall remain in effect for the longer of: (a) the time period that the permit issued by the CITY remains in effect; or (b) the time period that the APPLICANT uses the public right-of-way for the permitted activity and/or Installations; or (c) so long as a valid sidewalk café permit is in effect. Applicant shall comply with the provisions of CITY's sidewalk café ordinance.

[END OF PAGE]

IN WITNESS WHEREOF, the APPLICANT has executed this Agreement as of the date set forth above.

WITNESSES:

(Print/Type Name)

(Print/Type Name)

APPLICANT:

By: _____
(Signature)

By: _____
(Print Name)

Title: _____

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 20____, by _____. He/She is personally known to me, or produced _____ (picture identification), as identification.

[AFFIX NOTARY SEAL/STAMP]

Signature of Notary

Name: _____
(Print or Type Name)

Notary Public: State of Florida

Serial No. _____

My Commission Expires: _____

APPROVED AS TO FORM:

Julie Hardy

Assistant City Attorney

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