



**CITY OF LA MESA
VENDOR OPERATION
APPLICATION**

OFFICE USE ONLY

DATE REC'D _____

REC'D BY: _____

APPROVED

RECREATION SUPERVISOR

APPLICANT NAME: _____

ADDRESS: _____

EMAIL: _____ **PHONE:** _____

**CITY MAINTAINS FIRST RIGHT OF USAGE AND MAY ALTER TERMS AND/OR
CONDITIONS OF THE PERMIT AT ANY TIME.**

BUSINESS NAME AND DESCRIPTION: _____

THE FOLLOWING ITEMS MUST ACCOMPANY YOUR APPLICATION:

1. \$80 Annual Application Fee (Due before application can be turned in. Non-refundable for incomplete applications.)
2. Copy of current City of La Mesa Business License
3. Insurance Requirements as outlined in the *Policies, Procedures, and Conditions for Commercial Vendor Use of Public Recreational Property* handout.
4. Indemnification and Hold Harmless Agreement
5. Copy of current Food Handler Permit (Food Vendors only)

THE APPLICANT DECLARES THAT HE/SHE IS A DESIGNATED REPRESENTATIVE OF THE ORGANIZATION AND HAS THE AUTHORIZATION TO APPLY FOR THIS APPROVED VENDOR APPLICATION ON BEHALF OF THE ORGANIZATION. THE APPLICANT UNDERSTANDS THAT SUBMISSION OF THIS APPLICATION AUTHORIZES THE CITY TO CONDUCT A BACKGROUND INQUIRY OF THE APPLICANT AND INDIVIDUALS INVOLVED IN THE ACTIVITY. THE UNDERSIGNED DECLARES UNDER THE PENALTY OF PERJURY THAT THE INFORMATION PRESENTED ABOVE, INCLUDING ATTACHMENTS, IS TRUE AND CORRECT. **SUBMITTAL OF APPLICATION DOES NOT CONSTITUTE OR GUARANTEE PERMIT APPROVAL.**

APPLICANT AGREES THESE ARE PUBLIC FACILITIES AND A SPECIAL APPROVAL DOES NOT GUARANTEE EXCLUSIVE USE OF A PARTICULAR AREA OR CONDITION OF THE FACILITY. APPROVAL ONLY AUTHORIZES A LEGAL USAGE AT CITY OF LA MESA PARKS AND FACILITIES.

Printed Name

Signature

Date

**INDEMNIFICATION AND HOLD HARMLESS AGREEMENT
FOR COMMERCIAL VENDOR USE OF CITY GROUNDS AND FACILITIES**

In consideration for the use of City grounds and facilities and to the furthest extent allowed by law, Vendor does hereby agree to indemnify, hold harmless and defend the City of La Mesa ("City") and its elected officials, 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, Vendor 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 use of City grounds and facilities. Vendor's obligations under the preceding sentence shall apply regardless of whether City or its elected officials, officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or its officers, officials, employees, agents or volunteers.

Vendor acknowledges the contagious nature of COVID-19 and other communicable diseases and voluntarily assumes the risk that Vendor, its officials, officers, employees, agents, volunteers, or invitees may be exposed to, or infected by COVID-19 in the course of providing contracted services for events held on City grounds or facilities, and that such exposure or infection may result in personal injury, illness, permanent disability, and death. Vendor understands that the risk of becoming exposed to or infected by COVID-19 in the course of providing contracted services for events held on City grounds or facilities may result from the actions, omissions, or negligence of Vendor and others, including, but not limited to, City employees, volunteers, and event participants and their families.

Throughout the life of this Agreement, Vendor shall pay for and maintain in full force and effect all insurance as required in application, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by City Manager or his/her designee at any time and in his/her sole discretion.

Vendor shall conduct all defense at his/her/its sole cost. The fact that insurance is obtained by Vendor shall not be deemed to release or diminish the liability of Vendor, 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 Vendor. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by Vendor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Vendor, its officials, officers, employees, agents, volunteers or invitees.

City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this Agreement.

This Indemnification and Hold Harmless Agreement shall survive the use of City grounds and facilities.

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 Vendor; (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 Vendor or his/her/its authorized signatory.

Signed, sealed and delivered this _____ day of _____ 2022.

Vendor Signature

Witness

Print Name

Print Name

Address

Address

Telephone Number

Telephone Number

POLICIES, PROCEDURES, AND CONDITIONS FOR COMMERCIAL VENDOR USE OF PUBLIC RECREATIONAL PROPERTY

The purpose of this policy is to establish an effective mechanism for allowing activities or services provided by Commercial Operators (individuals or organizations, including non-profit organizations) who receive a form of payment or other consideration as fee for activities while safeguarding the City's public recreational property and the rights of public recreational property users who access and use these facilities.

Section 9.08.050 of the La Mesa Municipal code regulates commercial use or professional instruction on public recreational property and all Commercial Operators desiring to conduct activities on public recreational property must obtain a permit. This policy and the procedures established for this application process provide City staff the opportunity to review the Commercial Operator's proposed activities plan for its impacts to the general public's regular use and enjoyment of the facility as well as maintenance and operations of the City's park and recreational facilities. The proposed activities' potential impacts will be reviewed and evaluated on a case-by-case basis and activities determined to create excessive negative impacts may be conditioned or prohibited at the sole and exclusive discretion of City staff.

Vendor approvals will be granted on an annual and vendor approval for one year does not guarantee approval for additional years. Only one application per calendar quarter per activity use for each applicant will be considered for vendor approval. Within this application process an activity or use is defined as: attractions and equipment usage on City property, selling of products or services on City property, food services including cooking on City property. City property is defined as parks or facilities managed by the City of La Mesa.

Submission of an application indicates the applicant's acceptance of and compliance with all policies, procedures, and conditions of the application as well as all other laws and regulations pertaining to public recreational properties. In addition to the application, Commercial Operators must submit the following at the time of application:

- Permit application fee of \$80
 1. Due before submission of the application. Insurance documentation will not be reviewed for accuracy until the fee is paid.
 2. Application fee is non-refundable, including incomplete applications.
- Copy of a current City of La Mesa Business License
- Insurance Requirements:
 1. General Liability Insurance with limits of liability of not less than the following:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 general aggregateCertificate Holder on the certificate of insurance shall be listed as: *City of La Mesa, 8130 Allison Avenue, La Mesa, CA, 91942*
 2. **Additional Insured Endorsement** naming the *City of La Mesa, its elected officials, officers, officials, agents, employees and volunteers* as the additional insured.
 3. **Primary and Non-Contributory Endorsement:** The General Liability policy shall be endorsed so Applicant's insurance shall be primary and no contribution shall be required of *City of La Mesa, its elected officials, officers, officials, employees, agents and volunteers*.
 4. **Workers' Compensation Insurance** as required by the State of California and Employer's Liability Insurance, unless Applicant states that it is not subject to California Labor Code Sections 3300, Workers' Compensation coverage, and that no natural persons will be employed by the Applicant pursuant to this Application. The Workers' Compensation insurance policy shall contain a **Waiver of Subrogation** as to *City of La Mesa, its elected officials, officers, officials, employees, agents and volunteers*.

If Applicant does not have employees or volunteers, the following written statement needs to be submitted: "Under penalty of perjury, I do hereby attest that Applicant Name does not have any employees and/or volunteers, and, therefore, it is not required by law to maintain Workers' Compensation insurance."

- Indemnification and Hold Harmless Agreement (Exhibit A)

Completed applications and all required attachments should be submitted to the attention of:

Recreation Supervisor
La Mesa Community Services Department
4975 Memorial Drive
La Mesa CA 91942

All applications for vendor use of public recreational property shall be evaluated on a case-by-case basis. City staff shall consider the following criteria when reviewing and evaluating vendor applications and proposed activities:

- Is the proposed use in compliance with all federal, state or local laws, local rules and regulations, and Departmental policies and procedures?
- Is the proposed use a common and customary use of public recreational property or is it not generally recreational in nature?
- Does the proposed use present a substantial risk of having a negative impact on the public health or safety?
- Does the proposed use present a substantial risk of having a negative impact on the public recreational property, other City property, or nearby private property?
- Does the proposed use present a substantial risk of having a negative impact on the public's ability to access or use any public recreational property?
- Does the proposed use present a substantial risk for damage to public recreational property that exceeds the value of the activity being conducted?
- Does the proposed use have the potential for noise, vibration, or glare that will likely cause a substantial nuisance to other public recreational property users, persons traveling on nearby streets, or to residents or occupants of nearby private property?
- Has the applicant made any false or misleading statements on the application or failed or refused to provide relevant information concerning the proposed use?

Vendor approvals are a privilege, not a right, and may be revoked at any time, for any reason, at the sole and exclusive discretion of the City. An approved vendor may not assign their approval to another Commercial Operator (individual or organization).

The City of La Mesa makes no warranties or guarantees as to the suitability or unsuitability of any public recreational property and vendor accepts the assigned site "as is."

Public recreational property is intended for shared use by all and vendors shall not be granted exclusive use of any public recreational property. Vendors may not deny or restrict access to any public recreational property to the point of hampering other users' enjoyment of the site.

Any City of La Mesa city-sponsored or conducted events, programs, and activities shall have priority over all other requests for use of City public recreational properties.

Park Use Permits may contain restrictions such as date and/or time of use, maximum number of participants or attendees, the nature and extent of activities, and other requirements, limitations, or conditions described in this policy or the Park Use Permit. An approved Park Use Permit must be in the possession of the Commercial Operator at all times while conducting their activities on City public recreational property.

Vendors shall be responsible for conducting all activities in a safe and professional manner and shall ensure that other public recreational property users and neighbors are treated in a courteous and respectful manner. Trash and debris associated with a permit holder's activities must be removed from the use site and the surrounding area must be left in the same condition in which it was found.

Vendors shall obtain waivers of liability from all participants in their activities. The waivers shall indemnify, defend and hold harmless the City, and its elected and appointed officials, officers, employees, volunteers, and agents from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the vendor, caused in whole or in part by any negligent act, misconduct or omission of the vendor, anyone directly or indirectly employed by vendor or anyone for whose acts any of them may be liable.

Vendors shall not use amplification equipment, or other electrical equipment, boom boxes, bull horns, or whistles. Vendors may not generate noise that exceeds the levels as established in Section 10.80.040 of the La Mesa Municipal Code.

Vendors are prohibited from using any of the following facilities at any public recreational property in the conduct of their activities: athletic fields, playing courts, and playgrounds.

Vendors must hand carry all equipment into and out of the site. No machinery, canopy, tent, sign, or other equipment shall be attached or secured to any tree, facility or structure, including handrails, fencing, and sign posts. No public recreational property shall be used for storage.

Vendors are not permitted to purchase park permits. The customer must be the permit holder.

Vendors are only allowed to access the park space for the duration of the event in which they are scheduled.

Vendors must remain in a stationary location for the entirety of the event in which they are scheduled.

Vendors and their participants shall not drive motorized vehicles on sidewalks, service pathways, trails, or turf.

Parking will not be reserved in advance by City staff. Vendors or permit holders will be required to block off any space needed for vendor parking. Please ensure a safe, easily accessible location for the permit holder to access.

The City of La Mesa, in its sole and exclusive discretion, reserves the right to withdraw City public recreational property from availability at any time and suspend or revoke any permits issued. In the event of a permit suspension or revocation for appropriate purposes, City staff may suggest an alternative site or provide a pro-rated refund based on time remaining on the permit.

In the event of any violation of these policies or permit conditions by a vendor, permit holder or activity participants, the permit may be suspended or revoked without refund of fees or charges and future permit requests may be denied.

Please contact the City's Recreation Supervisor at 619-667-1307 if you have any questions or need additional information regarding this application process.