

Merry Main Street 2016

Vendor Rules and Regulations/Insurance/Indemnification Agreement (“Agreement”)

- The City of Frisco Merry Main Street (“Event”) is a family-friendly, and Vendors must agree to and meet the high standards that are hereby outlined.
- The City of Frisco reserves the right to revoke or refuse to grant Vendor booth space without recourse by the Vendor and shall not be held liable to anyone for this action, should any Vendor not meet and continue to comply with any/all rules, regulations and requirements of the Event.
- Set-up must be completed between 1:00 p.m. and 4:00 p.m. on the day of the Event. All vehicles must be removed from the Event site by 3:00 p.m. on the day of the Event and be parked in permitted areas only. Teardown of each Vendor booth space must be completed between 9:00 p.m. - 10:00 p.m. on the day of the Event. Vehicles will not be allowed back into the Event until police and City of Frisco clear the streets.
- All booth spaces are required to be open between 5:00 p.m. – 9:00 p.m. and continue to have items to sell during the Event.
- All property of Vendor must be removed from Event grounds no later than 10:00 p.m. on the day of the Event. Any property remaining on the Event grounds after 10:00 p.m. on the day of the Event, may be removed and disposed of by the City of Frisco, at the Vendor’s expense, in any manner deemed appropriate by the City of Frisco. **VENDOR RELEASES THE CITY OF FRISCO FOR ANY DAMAGES, LOSS OR OTHERWISE RESULTING FROM THE CITY OF FRISCO’S REMOVAL AND/OR DISPOSAL OF PROPERTY IN ACCORDANCE WITH THIS PARAGRAPH.**
- Vendors will be responsible for damages to booth space structures, set-up and furnishings (including, but not limited to, tables, chairs, extension cords, extension cord covers, signage, lighting, drapes, etc).
- Vendors may not erect and/or construct any staging and/or other structure, whether vertically or otherwise, inside a booth space. All contents of each booth space must be located on the ground (including, but not limited to, tables, chairs, extension cords, extension cord covers, signage, lighting, drapes, etc.) unless such contents can be safely and are customarily situated on a display table.
- Vendors shall utilize each booth space in a manner that does not disrupt and/or hinder other Vendors at the Event (including, but not limited to, sound, music, lighting or otherwise).
- All Vendors must keep merchandise inside their rented booth space, unless otherwise approved in writing by City of Frisco.
- No exclusive rights for sales of any item will be guaranteed.
- Vendors are solely responsible for having cash on hand to make change.
- Vendors are solely responsible for the security of their booth spaces and the contents therein.
- Vendors may only sell the items or conduct the activities that have been specifically approved in writing by the City of Frisco. Changes in products to be sold and/or given away and/or activities must be approved in writing by City of Frisco prior to the Event.
- The possession and selling and/or offer to sell weapons or fireworks are prohibited on Event grounds. If caught with weapons and/or fireworks, your booth space will be closed immediately.

- The following items, among others, will not be allowed for sale and/or giveaway during Event hours: alcohol or alcohol related paraphernalia, tobacco or tobacco related paraphernalia, all things resembling drug paraphernalia or with drug emblems, all things pertaining to inappropriate language or nudity and supplements, vitamins, stimulants, diuretics, homeopathic, herbal, organic, natural and/or other types of similar products, whether in a pill, solid and/or liquid form, excluding coffee, caffeinated sodas, teas including (herbal tea).
- Vendor agrees that its employees involved with the Event shall not drink beer, wine or any other alcoholic beverage or smoke while performing their duties under this Agreement. Alcoholic beverages may not be brought into any part of the Event area including, without limitation, the Vendor booth space.
- Vendors are not allowed to bring pets and/or other animals to the Event; however, service animals are permitted.
- Vendors are required to clean up their booth space prior to vacating the premises. Booth space shall be returned to the condition it was in prior to Vendor's use of same.
- Approved Vendors are responsible for the booth space provided and may not sublease or sublet the space to other parties. If parties other than the approved applicant occupy the booth space, these parties will be asked to leave immediately, and the booth space may be closed immediately.
- Should the Event be postponed or cancelled for any Act of God, public safety and welfare and/or for any reason, solely determined by the City of Frisco, /Vendor hereby releases and forever discharges the City of Frisco, its officers, Council Members, employees, representatives, agents and volunteers from any and all liability and claims for damages and/or loss which result from postponement or cancellation of the Event.
- Vendors will be asked to leave immediately, if at any time they are not in compliance with any/all rules, regulations and requirements of the Event.

INDEMNIFICATION:

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY OF FRISCO, ITS RESPECTIVE OFFICERS, COUNCIL MEMBERS, VOLUNTEERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS FROM ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LIABILITY, LAWSUITS, JUDGMENTS, DAMAGES, INJURIES (INCLUDING DEATH), COSTS OR EXPENSES, (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), FOR INJURY TO PERSON OR PROPERTY OR DEATH OF ANY PERSON RESULTING FROM OR BASED UPON, IN WHOLE OR IN PART, ANY ACT PERFORMED OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT BY VENDOR, ITS AGENTS, OFFICERS, REPRESENTATIVES AND EMPLOYEES, INCLUDING BUT NOT LIMITED TO SERVING FOOD. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

VENDOR, ITS OFFICERS, DIRECTORS, REPRESENTATIVES, VOLUNTEERS, AGENTS AND EMPLOYEES DO HEREBY WAIVE ANY AND ALL CLAIMS FOR DAMAGE, INJURY OR LOSS TO ANY PERSON OR PROPERTY, INCLUDING THE DEATH OF ANY PERSON, THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY

THE ACT OR FAILURE TO ACT OF THE CITY OF FRISCO, ITS RESPECTIVE COUNCIL MEMBERS, OFFICERS, AGENTS, DIRECTORS, REPRESENTATIVES, VOLUNTEERS OR EMPLOYEES. VENDOR, ITS OFFICERS, DIRECTORS, REPRESENTATIVES, VOLUNTEERS, AGENTS AND EMPLOYEES ASSUME THE RISK OF ALL CONDITIONS, WHETHER DANGEROUS OR OTHERWISE, IN AND ABOUT THE PREMISES OF FRISCO AND THE EVENT, AND WAIVE ANY AND ALL SPECIFIC NOTICE OF THE EXISTENCE OF ANY DEFECTIVE OR DANGEROUS CONDITION IN OR ABOUT THE SAID PREMISES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

VENDOR HEREBY RELEASES THE CITY OF FRISCO AND ITS RESPECTIVE COUNCIL MEMBERS, OFFICERS, AGENTS, DIRECTORS, REPRESENTATIVES, VOLUNTEERS AND EMPLOYEES FROM ANY ACTIONS FOR ANY LOSS OR DAMAGE SUSTAINED BY REASON OF ANY DEFECT OF ANY PART OF THE WATER SUPPLY SYSTEM, THE SEWAGE AND DRAINAGE SYSTEM, THE GAS SYSTEM, ELECTRICAL APPARATUS AND/OR WIRING ON THE EVENT SITE OR BOOTH SPACE(S) OR ANY OTHER PREMISES OR BAND STAND, AND FOR ANY LOSS OR DAMAGE RESULTING FROM FIRE, THEFT, WATER, TORNADO, RAIN, SNOW, STRIKES, CIVIL COMMOTION RIOT, OR OTHERWISE CAUSED BY THE GROSS NEGLIGENCE OR NEGLIGENCE OF THE CITY OF FRISCO AND ITS RESPECTIVE COUNCIL MEMBERS, OFFICERS, AGENTS, DIRECTORS, REPRESENTATIVES, VOLUNTEERS OR EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

MISCELLANEOUS PROVISIONS:

- ❖ **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.153 of the Texas Local Government Code, as it exists or may be amended.
- ❖ **Vendors Warranties/Representations.** All warranties, representations and covenants made by Vendors in this Agreement or in any certificate or other instrument delivered by the Vendor to the City of Frisco under this Agreement shall be considered to have been relied upon by the City of Frisco and will survive the termination of this Agreement, regardless of any investigation made by the City of Frisco or on the City of Frisco's behalf.
- ❖ **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- ❖ **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
- ❖ **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

- ❖ **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- ❖ **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

- ❖ **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

- ❖ **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

- ❖ **Indemnification.** The Vendor agrees that the indemnity provision set forth above in this Agreement herein is conspicuous, and the /Vendors have read and understood the same.

- ❖ **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

- ❖ **Sovereign Immunity.** The parties agree that the City of Frisco has not waived its sovereign immunity by entering into and performing its obligations under this Agreement, except with regard to the enforcement of the City of Frisco's obligations set forth herein.

- ❖ **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by the parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

Signature: _____
 Date: _____

I, _____, hereby grant permission to the *City of Frisco* to use photographs and tape recordings made of me and my business during the celebration for publicity and other non-commercial purposes.

The undersigned agrees to participate as a food/beverage/craft/activity Vendor at *Merry Main Street* on Saturday, December 3, 2016. I understand that Vendors are responsible for complying with State of Texas sales tax laws. I further understand that set-up shall occur between 1:00 p.m. and 4:00 p.m. on the day of the Event, and all vehicles must be removed from the Event site by 3:00 p.m. Teardown must be completed by 10:00 p.m. on the day of the Event.

Printed Name: _____

Title: _____

Signature: _____

Date: _____