

**AGREEMENT FOR WAIVER OF RIGHT TO REFUND
OF HOMELESSNESS GROSS RECEIPTS TAXES**

This Agreement for Waiver of Right to Refund of Homelessness Gross Receipts Taxes (this “Agreement”) dated as of _____, is between the City and County of San Francisco (the “City”) and _____ (Business Account Number _____) (“Filer”) and each member of Filer’s combined group engaging in business within the City, if any, as the phrase “engaging in business within the City” is defined in Business and Tax Regulations Code (“Code”) Section 6.2-12 (a list of which is attached as Exhibit A) (jointly and severally, “Taxpayer”).

This Agreement is made with reference to the following facts and circumstances:

A. In November 2018, the San Francisco electorate approved Proposition C with approximately 61% of the vote. Proposition C imposes an additional tax on certain businesses to fund services for the City’s homeless population (the “Homelessness Gross Receipts Tax”). In doing so, Proposition C amended the Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance (the “Ordinance”).

B. A question has been raised as to the validity of the Ordinance because of a legal issue about whether the Homelessness Gross Receipts Tax, adopted through a voter initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending resolution of the legal issue, the City’s Controller plans to impound the revenues from the Homelessness Gross Receipts Tax.

C. Despite the unresolved legal question, the City and Taxpayer desire to allow the City to appropriate and spend revenues from the Homelessness Gross Receipts Tax for the purposes allowed under the Ordinance. But the City is not willing to appropriate and spend these revenues unless Taxpayer irrevocably waives any right to a refund of those revenues based on

any argument that the Ordinance required at least a two-thirds vote of the electorate to pass, or any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. The City wishes to spend now as much of the revenues from the Homelessness Gross Receipts Tax as it can consistent with the allowable uses under the Ordinance, to the extent that the City can rely on waivers by taxpayers.

D. To allow the City to spend Taxpayer's Homelessness Gross Receipts Tax payments now, Taxpayer is willing to provide an irrevocable waiver of a refund based on any argument that the Ordinance required at least a two-thirds vote of the electorate to pass, or any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. In doing so, Taxpayer wishes to reduce its potential Homelessness Gross Receipts Tax liability by claiming the credit in Section 2805.1 of the Code.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are acknowledged by each party to this Agreement, the City and Taxpayer agree as follows:

1. Taxpayer irrevocably, fully, and unconditionally waives and releases its right to a refund (whether by return of payment, credit, offset, carryforward, or otherwise) of \$_____ of the Homelessness Gross Receipts Taxes reported on the person or combined group's originally-filed Homelessness Gross Receipts Tax return for tax year ____ (the "Subject Year"), based on either or both of the following (the "Waiver"):

- a. Any argument that the Ordinance required at least a two-thirds vote of the electorate to pass; and
- b. Any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate.

Taxpayer knowingly accepts the full range of risk encompassed by the scope of the Waiver and this Agreement, including, without limitation, that Taxpayer will not be able to claim a refund (whether by return of payment, credit, offset, carryforward, or otherwise) of any of the Homelessness Gross Receipts Taxes subject to the Waiver, based on any argument that the Ordinance required at least a two-thirds vote of the electorate to pass or any lawsuit challenging the Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. In doing so, Taxpayer acknowledges that the Waiver and this Agreement are made with the advice of counsel and with full knowledge and understanding of the consequences and effects of the Waiver. Further, as to unknown and unsuspected claims as of the date of this Agreement, Taxpayer acknowledges that the Waiver and this Agreement are made with the full knowledge, understanding, and agreement that California Civil Code Section 1542 provides as follows, and Taxpayer specifically waives the protection afforded by such code section and any similar law of the State of California or any other jurisdiction:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

2. Taxpayer acknowledges that the City is relying on Taxpayer's agreement in paragraph 1 in agreeing to spend revenues from the Homelessness Gross Receipts Tax subject to this Agreement before there is a final court decision upholding the validity of the Ordinance. Taxpayer further recognizes that but for this Agreement the City would not be willing to make such expenditures or enter into agreements or incur other obligations encumbering such funds before such a final court decision.

3. For the Subject Year, Taxpayer agrees that, notwithstanding Section 6.22-1 of the Code or any other provision of law that would limit public disclosure, the City may make public the aggregate amount of Homelessness Gross Receipts Tax liability subject to waiver under all agreements described in Section 2805.1(b) of the Business and Tax Regulations Code of all persons and combined groups, regardless of the number of persons or combined groups that enter into such agreements.

4. In reliance on the validity of Taxpayer's Waiver in paragraph 1 of this Agreement, the City agrees that Taxpayer shall be entitled to a non-refundable credit against its Homelessness Gross Receipts Tax liability for the Subject Year equal to 10% of the amount subject to the Waiver for the Subject Year.

5. If Taxpayer does not claim the credit described in paragraph 4, Taxpayer shall remain subject to the terms of this Agreement.

6. No provision of this Agreement shall preclude the City's Office of the Treasurer and Tax Collector from conducting an audit or other investigation of Taxpayer, within the appropriate statute of limitations and subject to applicable laws, with respect to Taxpayer's Homelessness Gross Receipts Tax liability, or from issuing a deficiency determination to Taxpayer increasing Taxpayer's Homelessness Gross Receipts Tax liability.

7. No provision of this Agreement shall preclude Taxpayer from requesting, claiming, or otherwise demanding or receiving a refund of all or any portion of its Homelessness Gross Receipts Tax payments from the City on any grounds other than those described in paragraph 1.

8. This Agreement shall be effective upon execution and delivery by the parties and, after, shall be binding upon the City, Taxpayer, and Taxpayer's permitted successors and assigns. Taxpayer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which the City, through its Office of the Treasurer and Tax Collector, may give or withhold in its sole discretion.

9. This Agreement is made and entered into for the sole protection and benefit of the parties to this Agreement and their permitted successors and assigns. No other person or entity shall have or acquire any right or action based upon any provisions of this Agreement.

10. The Waiver in paragraph 1 shall survive any termination of this Agreement.

11. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

12. To be valid, this Agreement must be signed by the Filer and each member of Filer's combined group engaging in business within the City, if any. The persons signing this Agreement on behalf of Filer and each member of Filer's combined group engaging in business within the City, if any, each certifies, represents, warrants, and covenants to the City that they have the full power and authority to execute, deliver, and perform Taxpayer's obligations under this Agreement and that execution, delivery, and performance has been duly authorized by all requisite action on Taxpayer's part. This Agreement, including without limitation, the Waiver, is a legal, valid, binding, and enforceable obligation of Taxpayer.

13. Any person determined to be engaging in business within the City, as defined in Code Section 6.2-12, as a member of Taxpayer's combined group for the Subject Year after Taxpayer executes this Agreement shall be deemed to have executed this Agreement and shall be subject to its terms as if such member had executed this Agreement itself. Taxpayer hereby indemnifies the City for any refund of Homelessness Gross Receipts Taxes paid and all attorneys' fees and costs in enforcing this paragraph 13, based on any person requesting a refund in violation of this paragraph 13.

14. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which shall constitute one instrument.

* * *

IN WITNESS WHEREOF, the City, Filer, and each member of Filer’s combined group engaging in business within the City, if any, have executed this Agreement effective as of the day and year first written above.

Filer

CITY AND COUNTY OF SAN FRANCISCO

(Name and Business Account Number)

By: _____
(Signature)

Print Name: _____

Print Title: _____

(Address)

APPROVED AS TO FORM

By: _____
(Signature)

By: _____
(Signature)

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Combined Group Member

(Name and Business Account Number)

(Address)

By: _____
(Signature)

Print Name: _____

Print Title: _____

Exhibit A

Name

Business Account Number

_____	_____
_____	_____
_____	_____
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