



Shared Active Transportation Vehicle Right-Of-Way Use License Terms and Conditions

Definitions

Shared active transportation vehicle (SATV): A commercially-rented coaster, scooter, bike, or any other mobile vehicle, excluding motor vehicles, with a self-containing locking mechanism that does not require locking to a bicycle rack, docking system or other structure.

Operator: The Operator is the entity requesting and issued the right-of-way use license for SATVs.

User: Operator's customer who is legally responsible for the rental and proper use of the SATV.

Staged: Placement of the SATV by the Operator at a location in the community.

Parking surface: Concrete, asphalt, bricks or pavers. A parking surface does not include a parking space utilized by motor vehicles or any area of the street between face of curb and face of curb unless otherwise designated.

Residential street: A street with a lawful speed limit of 25 mph or less.

Section 1 – Safety

Requirement 1.1: Any Operator issued a license for SATVs in Tempe shall meet all standards outlined in the Code of Federal Regulations under Title 16, Chapter II, Subchapter C, Part 1512. Additionally, the Operator shall meet the operation and safety standards outlined in Chapters 7 and 29 of the Tempe City Code and Title 28, Chapter 3 of the Arizona Revised Statutes.

Requirement 1.2: Operator shall have commercial general liability insurance, or the equivalent, and additional coverages that include the terms contained in the attached *Right-of-Way Use Shared Active Transportation Vehicle License Insurance Requirements* document.

Requirement 1.3: Operator shall agree to indemnify and hold harmless the City of Tempe for all operations within the City and require all Users to likewise agree to indemnify and hold harmless the City of Tempe. The license

requires and includes a signed release of liability, assumption of risk and indemnification agreement. Operator shall also include a City-approved release of liability, assumption of the risk and indemnification provisions in their term and user agreement; alternatively, Operator shall add to terms and user agreement the release of liability, assumption of risk and indemnification agreement for the shared active transportation vehicle user agreement (included in the application packet) for all shared active transportation vehicles operating in Tempe.

Requirement 1.4: Operator agrees to educate Users regarding laws applicable to operating a shared active transportation vehicle in Tempe and to comply with all applicable federal, state and local laws including those outlined in Tempe City Code Chapter 7, Article V.

Requirement 1.5: Operator shall include language in its terms and use agreement that educates Users on the laws applicable to operating a shared active transportation vehicle in Tempe.

Requirement 1.6: Operator shall include language in its terms and use agreement to require all Users to park shared active transportation vehicles as outlined in Section 2 – Parking and Staging.

Requirement 1.7: Operator is required to maintain the SATVs in good and functioning condition as specified in the Code of Federal Regulations under Title 16, Chapter II, Subchapter C, Part 1512 and ISO 43.150. Failure to do so may result in termination of the license.

Section 2 – Parking and Staging

Requirement 2.1: Operator shall stage all SATVs upright on a parking surface and facing the same direction. No more than ten SATVs, regardless of SATV operator, shall be staged in a grouping. Groups of ten SATVs should be separated by a distance of at least 150 feet. Users shall park SATVs upright on a parking surface.

Requirement 2.2: On Mill Avenue between University Drive and Rio Salado Parkway, Operator shall stage all SATVs adjacent to a bicycle rack (no more than 10 feet away from the rack) within the City’s right-of-way, excluding GRiD bicycle racks.

Requirement 2.3: Operator shall stage, and Users shall park, SATVs so as not to block or impede pedestrian and wheelchair traffic in compliance with the Americans with Disabilities Act (ADA). A clear width of 48 inches on a walking surface must be accessible at all times.

Requirement 2.4: Operator may stage up to three SATVs adjacent to or at a bus stop. Operator shall not stage SATVs directly under the shade canopies of transit shelter structures and must not stage so as to impede the minimum 96-inch clear width required for boarding accessible devices on transit vehicles at bus stops.

Requirement 2.5: Operator shall not stage SATVs in front of single-family residential properties on residential streets.

Requirement 2.6: Operator shall inform Users how to properly park a SATV by using effective strategies outlined in the Operation Parking and Education Plan, Section 6, approved by the City.

Requirement 2.7: This license is only valid for operations within the City of Tempe right-of-way.

Requirement 2.8: Operator shall provide the City with a name, direct telephone number and email address of the local staff member responsible for staging SATVs. Operator shall notify the City immediately of any changes to the direct contact information.

Requirement 2.9: Operator shall stage all SATVs every 24 hours, which shall include removing all SATVs from single-family residential and private property.

Requirement 2.10: Any non-staged SATV parked in a location which causes a safety hazard, causes a nuisance for a business owner or resident, or is parked in a single location beyond the 24-hour restaging requirement, will be relocated by City staff and Operator will be charged a \$100 relocation fee.

The relocation process is as follows:

1. City of Tempe receives notification of improperly staged or parked SATV.
2. City of Tempe provides notice to the Operator that relocation of the SATV will occur if no action taken by Operator within two hours.
3. City of Tempe creates a work order for relocation and documents with photo evidence supporting relocation.
4. City of Tempe informs Operator of relocation site, as determined by the City Engineer, and generates an invoice with a \$100 charge for each relocated SATV labeled "Enforcement Fee – Relocation."
5. Invoice is sent directly to Operator. Payment is due to the City within 30 calendar days of receipt of invoice.

Requirement 2.11: SATVs may be staged in City parks excluding areas that impede the use of or access to park amenities or facilities.

Requirement 2.12: The Operator shall notify the City within 30 calendar days of entering into an agreement with private property owners for staging or parking.

Section 3 – Operations

Requirement 3.1: Operator shall have a 24-hour customer service phone number for Users and the public to report safety concerns, mechanical problems, complaints, SATV removal requests or ask questions, and imprint the customer service phone number prominently on the exterior of each SATV.

Requirement 3.2: At least 20 percent of the Operator’s SATV fleet must be staged south of Broadway Road in Tempe.

Requirement 3.3: Every SATV shall have a serial number that is visible to the User on the SATV.

Requirement 3.4: All SATVs shall be equipped with an on-board GPS device capable of providing real-time location data in accordance with the specifications described in Section 4 and may be subject to an audit by the City.

Requirement 3.5: If the City incurs any costs for repair or maintenance of damaged public property caused by the User, Operator or Operator’s representatives, the Operator shall reimburse the City for such costs within 30 calendar days upon receiving written notice of the costs.

Requirement 3.6: The City and/or Operator reserves the right to terminate this license at any time. Upon termination, the Operator’s entire fleet of SATVs shall be removed from City right-of-way. Decommissioning shall be completed within 30 calendar days unless the City agrees to a different time period.

Requirement 3.7: The City Engineer may make changes to the terms and conditions of the license at any time. The Operator will be notified in writing and must comply with such changes within 30 calendar days.

Requirement 3.8: Any SATV rendered inoperable or unsafe shall not be put into service. Any SATV deemed inoperable or unsafe shall be removed from the right-of-way within two hours and shall be repaired before returning to revenue service.

Requirement 3.9: Operator shall be solely responsible for all maintenance of the SATV.

Requirement 3.10: Operator shall not have paid or non-profit advertising on the SATVs.

Requirement 3.11: Subcontracting, subleasing, sublicensing or any type of assignment of the rights granted in this license is strictly prohibited. Any subcontracting, subleasing, sublicensing or any type of assignment of the rights granted in this license shall be by operation of law, null and void and shall immediately terminate this license without prior notice to the Operator.

Section 4 – Data Sharing

Requirement 4.1: Operator shall provide the City with real-time information for the entire SATV fleet including type and quantity of SATVs through a documented application program interface (API) and on-board GPS devices on all SATVs (e.g., not customer phones). Operator must provide a URL for both a “Production” API as well as a “Staging” API with demonstration data. The Operator is directly responsible for providing the API key

to the City and shall not refer the City to another subsidiary or parent company representative for API access. The API's URL shall be submitted at time of license application.

Data Sharing API's must be compatible with the Los Angeles Department of Transportation (LADOT) Mobility Data Specification (MDS), which is detailed at <https://github.com/CityOfLosAngeles/mobility-data-specification>. Any MDS compatible API must expose data where:

- The trip starts in the City of Tempe, or
- The trip ends in the City of Tempe, or
- GPS telemetry data shows the trip passing through the City of Tempe, or
- A crow-flies path between trip start and trip end intersects the City of Tempe, and
- Must also provide a link to Operator's open General Bicycles Share Feed Specification (GBFS) feed.

The API shall include the following information in real time for every SATV operated in the City:

1. Staging polygon locations
2. User's trip origin and destination point locations
3. User's route of travel
4. SATV serial number
5. Type of SATV

Requirement 4.2: Operator shall provide the City with historic information that also meets the content and location requirements of Requirement 4.1.

Requirement 4.3: Real-time SATV location data shall be provided via a publicly accessible API in General Bicycles Share Feed Specification (GBFS) format, which is detailed at <https://github.com/NABSA/gbfs>. Required files include:

- gbfs.json
- system_information.json
- Free_bicycle_status.json

Requirement 4.4: Operator will provide the following SATV availability:

Field name	Format
GPS Coordinate	X,Y
Availability duration	Minutes
Availability start date	MM, DD, YYYY
Availability start time	HH:MM:SS (00:00:00 – 23:59:59)

Requirement 4.5: In order to accurately convey SATV locations, use patterns, and other information, all SATVs must ping at a minimum every 90 seconds while in use.

Requirement 4.6: By the 15th day of each month, Operator will provide the City with a report regarding the previous month that specifies by SATV type:

- Maximum number of SATVs in service during any 24-hour period within the month.
- Total number of SATVs out of service (damaged) during the month.
- Aggregated system usage – total unique users, total miles ridden, total number of rentals and average rental duration – during the month, in an Excel format.
- Comprehensive report of SATV distribution and travel routes and GPS-based natural movement in heat map jpg formats.
- Comprehensive report of customer comments/complaints in Word format.
- Comprehensive report of safety incidents including location and cause of incident in an Excel spreadsheet format.
- Comprehensive report of SATV staging activities during any 24-hour period within the month, in Word format.

Section 5 – Fees

Requirement 5.1: Operator shall pay an annual fee of \$7,888 to cover application review, license issuance and monitoring, and data analysis and planning. The license becomes effective upon written approval of the City Engineer.

Requirement 5.2: Operator shall pay a \$100 vehicle relocation fee for SATV relocation activities as described in Requirement 2.10.

Requirement 5.3: Operator shall pay a right-of-way use fee of \$1.06 per SATV per day based on the maximum number of SATVs in the City of Tempe during any 24-hour period for that month. Invoicing will be generated monthly and will be based on data obtained from the Operator’s monthly report as described in Requirement 4.5 or on daily spot counts conducted by the City, whichever amount is higher.

Section 6 – Application

Operators shall submit an annual application for the license to the City. Applications must include the items below:

- a. Completed annual right-of-way use license application for SATVs. By signing the application, the Operator agrees to terms and conditions set forth in the license and accompanying documents.
- b. Proof of right-of-way use SATV license requirements insurance.

- c. Signed release of liability, assumption of risk and indemnification agreement SATV document for the Operator.
- d. Proof that the release of liability, assumption of risk and indemnification agreement for the SATV of the User is included in the Operator's use agreement.
- e. Images and description of SATVs.
- f. An SATV Operation and Parking Education Plan indicating actions the Operator will undertake to educate Users on the proper locations to ride, safe riding recommendations, how to properly park the SATV, encouraging good parking and usage, and deterring poor parking and usage.
 - i. Operation and Parking Education Plan must include a staging map indicating the anticipated service area and times of operation. Any changes to staging areas and staging times must be provided with a 30-day notice to the City Engineer.
 - ii. Operator is required to provide in-app instructions about proper parking of the SATV and are required to affix a sign or message screen on the SATV indicating the legal areas for parking.
 - iii. Operator is required to communicate any incentives and/or disincentives for illegally parked SATVs.
 - iv. The Operation and Parking Education Plan must be approved by the City Engineer before license is issued.
- g. Payment of \$7,888 for: application, license issuance and monitoring, data analysis and planning fee. Operator will be invoiced a \$100 relocation fee for each SATV relocated by City staff and \$1.06 per SATV per day at the end of each month for the maximum number of SATVs staged in the City of Tempe the previous month. Checks should be made payable to City of Tempe. *Checks will only be cashed if a license is issued.*

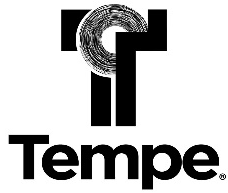


Right-of-Way Use Shared Active Transportation Vehicle License Insurance Requirements

1. Insurance. Prior to commencement of the services provided under this license, Operator shall procure and maintain for the duration of this license insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by Operator, its agents, representatives, employees, sub-operators, or sub-Operators. Operator shall deliver to the City a certificate of insurance acceptable to the City in the amounts and form. Failure of Operator to maintain insurance during the term of the license is a material breach and may result in temporary suspension and possible termination of the license. Insurance requirements are subject to periodic review and reasonable adjustment by the City.
2. Minimum Limits of Coverage. Without limiting any obligations or liabilities, the Operator, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.
3. Minimum Limits of Insurance. Operator shall maintain limits no less than:
 - a. Commercial General Liability. Commercial general liability insurance limit of not less than \$2,000,000 for each occurrence, with a \$4,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this license or the general aggregate shall be twice the required per claim limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this license which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof. In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance. Such policy shall contain a "severability of interests" provision.
 - b. Worker's Compensation. The Operator shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Operator employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit. In case services are subcontracted, the Operator will require the sub-Operator to provide worker's compensation and employer's liability to at least the same extent as provided by Operator.
 - c. Automobile Liability. Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any

owned, hired, and non-owned vehicles assigned to or used in performance of the Operator services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- d. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this license, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Operator shall be primary insurance, and that any insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the Operator.
- e. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the license is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this license.
- f. Primary Coverage. Operator's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by City shall be excess of the Operator's insurance and shall not contribute to it.
- g. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect City.
- h. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Operator.
- i. Deductible/Retention. The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Operator shall be solely responsible for deductible and/or self-insurance retention and City, at its option, may require Operator to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- j. Certificates of Insurance. Prior to commencing work or services under this license, Operator shall furnish the City with certificates of insurance, or formal endorsements as required by the license, issued by the Operator's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this license are in full force and effect. Such certificates shall identify this license number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: License Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
- k. Copies of Policies. City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. City of Tempe shall not be obligated, however, to review same or to advise Operator of any deficiencies in such policies and endorsements, and such receipt shall not relieve Operator from, or be deemed a waiver of, City's right to insist on strict fulfillment of Operator's obligations under this license.



**RELEASE OF LIABILITY
ASSUMPTION OF RISK AND
INDEMNIFICATION AGREEMENT
SHARED ACTIVE TRANSPORTATION VEHICLE (SATV) OPERATOR**

1. **ACTIVITY AND ASSOCIATED RISKS:** The operator has chosen to provide a shared active transportation vehicle operation in Tempe, Arizona (hereinafter referred to as the “Activity”). Operator understands that:
 - a. The activity is inherently hazardous and the operator and the operator’s users may be exposed to dangers and hazards, including some of the following: falls, fractures, concussions, dangerous weather, overexertion, overheating, injuries from a lack of fitness or conditioning, hyperthermia, hostile or aggressive pedestrians, bicyclist, SATVs or vehicle drivers, death, equipment failures, losing control of or crashing the SATV, traffic, collisions with moving or parked vehicles, road and or trail hazards (such as sewer gratings, gravel, unlevel terrain, washouts and debris), failure to wear a helmet and or other protective equipment and negligence of others;
 - b. As a consequence of these risks, the operator or the operator’s users may be seriously hurt or disabled or may die from the resulting injuries and the property of the operator or operator’s user may also be damaged;
 - c. Hospital facilities, qualified medical care and emergency medical attention may be limited or unavailable during the Activity;
 - d. City of Tempe assumes no responsibility for providing medical care during the Activity and the operator or the operator’s users will have to pay for any medical care that the operator or the operator’s users incur.

In consideration of the permission to participate in the Activity, the operator agrees to the terms contained in this document:

2. **ASSUMPTION OF THE RISKS:** The Operator hereby freely and voluntarily assumes the above-mentioned risks, as well as other risks not listed, that are part of this Activity, and any harm, injury or loss that may occur to the operator or the operator’s user or the property of the operator or the operator’s user as a result of the participation in the Activity – including any injury or loss caused by the negligence of the City of Tempe, its employees and officers, officials and agents and other Activity participants. Operator also understands that any equipment provided or rented from the operator, or any other provider, is used at the operator’s own risk or the user’s own risk and that any such equipment is provided without any warranty from the City of Tempe about its condition or suitability. Operator also understands that any City of Tempe right of way is used for the Activity without any warranty about its condition or suitability.
3. **RELEASE OF LIABILITY:** Operator hereby **RELEASES** the City of Tempe, its employees and officers, officials and agents, the providers of any right of way, land owners, the State of Arizona parks and recreation, municipal or governmental providers of use permits, and their respective employees and officers, officials and agents

(the "Released Parties") **FROM ALL LIABILITIES, CAUSES OF ACTION, CLAIMS AND DEMANDS that arise in any way from injury, death, loss or harm that occurs to the operator** or any other person or to any property during the Activity. This **RELEASE** includes claims for the negligence of the Released Parties and claims for strict liability for unusually dangerous activities. This **RELEASE** does not extend to claims or any other liabilities that Arizona law does not permit to be excluded by agreement. Operator also agrees not to sue or make a claim against the Released Parties for death, injuries, loss or harm that occur during the Activity or are related in any way to the Activity.

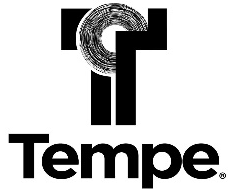
4. **INDEMNIFICATION, HOLD HARMLESS, AND DEFENSE:** Operator promises to INDEMNIFY, HOLD HARMLESS AND DEFEND the Released Parties against any and all claims to which section 3 of this agreement applies, including claims for the Released Parties' own negligence. Operator also promises to INDEMNIFY, HOLD HARMLESS AND DEFEND the Released Parties against any and all claims for its own negligence, and any other claim arising from its conduct during the Activity. In accordance with these promises, Operator will reimburse the Released Parties for any damages, reasonable settlements and defense costs, including attorney's fees, that the Released Parties incur because of any such claims made against them. Operator agrees that the terms of this agreement, including the indemnification obligation in this section, will be binding on any of Operator's successor's in interest who will be obligated to respect and enforce them.
5. **INDEPENDENT CONTRACTORS:** I acknowledge that the City of Tempe has no control over and assumes no responsibility for the actions of any operator or any independent contractors providing any services for the Activity.
6. **SEVERABILITY:** Operator agrees that the purpose of this agreement is that it shall be an enforceable RELEASE OF LIABILITY AND INDEMNITY as broad and inclusive as permitted by Arizona law. Operator agrees that if any portion or provision of this agreement is found to be invalid or unenforceable, then the remainder will continue in full force and effect. Operator also agrees that any invalid provision will be modified or partially enforced to the maximum extent permitted by law to carry out the purpose of the agreement.
7. **APPLICABLE LAW, FORUM AND ATTORNEY'S FEES:** This agreement is governed by and shall be construed in accordance with the laws of the state of Arizona, without reference to its choice of law rules. Operator agrees that any dispute arising from this Agreement or in any way associated with the Activity shall be brought only in a state or federal court located in Maricopa County, Arizona, and Operator agrees to the jurisdiction and venue of those courts for any such dispute. In any litigation in which the validity or enforceability of this agreement is contested, Operator agrees that the prevailing party will pay all attorney's fees and costs of the party seeking to uphold the agreement.

OPERATOR HAS FULLY INFORMED ITSELF OF THE CONTENTS OF THIS AGREEMENT BY READING IT BEFORE SIGNING IT. NO ORAL REPRESENTATIONS, STATEMENTS, OR OTHER INDUCEMENTS TO SIGN THIS RELEASE HAVE BEEN MADE APART FROM WHAT IS CONTAINED IN THIS DOCUMENT. OPERATOR UNDERSTANDS THIS IS A CONTRACT THAT AFFECTS LEGAL RIGHTS AND OPERATOR SIGNS IT VOLUNTARILY.

Signature of user: _____

Name printed: _____

Date: _____



**RELEASE OF LIABILITY
ASSUMPTION OF RISK AND
INDEMNIFICATION AGREEMENT
SHARED ACTIVE TRANSPORTATION VEHICLE (SATV) USER**

8. **ACTIVITY AND ASSOCIATED RISKS:** I have chosen to participate in a shared active transportation vehicle activity in Tempe, Arizona (hereinafter referred to as the “Activity”), with [*name of company/operator*]. I understand that:
- a. The activity is inherently hazardous and I may be exposed to dangers and hazards, including some of the following: falls, fractures, concussions, dangerous weather, overexertion, overheating, injuries from my lack of fitness or conditioning, hyperthermia, hostile or aggressive pedestrians, bicyclists, SATVs and vehicle drivers, death, equipment failures, losing control of or crashing the SATV, traffic, collisions with moving or parked vehicles, road and or trail hazards (such as sewer gratings, gravel, unlevel terrain, washouts and debris), failure to wear a helmet and or other protective equipment and negligence of others;
 - b. As a consequence of these risks, I may be seriously hurt or disabled or may die from the resulting injuries and my property may also be damaged;
 - c. Hospital facilities, qualified medical care and emergency medical attention may be limited or unavailable during the Activity;
 - d. City of Tempe assumes no responsibility for providing medical care during the Activity and I will have to pay for any medical care that I incur.

In consideration of the permission to participate in the Activity, I agree to the terms contained in this document:

9. **ASSUMPTION OF THE RISKS:** I hereby freely and voluntarily assume the above-mentioned risks, as well as other risks not listed, that are part of this Activity, and any harm, injury or loss that may occur to me or my property as a result of my participation in the Activity – including any injury or loss caused by the negligence of the City of Tempe, its employees and officers, officials and agents and other Activity participants. I also understand that any equipment that I provide or rent from the operator, or any other provider, I use at my own risk and that any such equipment is provided without any warranty from the City of Tempe about its condition or suitability. I also understand that any City of Tempe right of way is used without any warranty about its condition or suitability.
10. **RELEASE OF LIABILITY:** I hereby **RELEASE** the City of Tempe, its employees and officers, officials and agents, the providers of any right of way, land owners, the State of Arizona parks and recreation, municipal or governmental providers of use permits, and their respective employees and officers, officials and agents (the “Released Parties”) **FROM ALL LIABILITIES, CAUSES OF ACTION, CLAIMS AND DEMANDS that arise in any way from injury, death, loss or harm that occurs to me or any other person or to any property during**

the Activity. This **RELEASE** includes claims for the negligence of the Released Parties and claims for strict liability for unusually dangerous activities. This **RELEASE** does not extend to claims or any other liabilities that Arizona law does not permit to be excluded by agreement. I also agree not to sue or make a claim against the Released Parties for death, injuries, loss or harm that occur during the Activity or are related in any way to the Activity.

- 11. **INDEMNIFICATION, HOLD HARMLESS, AND DEFENSE:** I promise to INDEMNIFY, HOLD HARMLESS AND DEFEND the Released Parties against any and all claims to which section 3 of this agreement applies, including claims for their own negligence. I also promise to INDEMNIFY, HOLD HARMLESS AND DEFEND the Released Parties against any and all claims for my own negligence, and any other claim arising from my conduct during the Activity. In accordance with these promises, I will reimburse the Released Parties for any damages, reasonable settlements and defense costs, including attorney's fees, that they incur because of any such claims made against them. I agree that in the event of my death or disability, the terms of this agreement, including the indemnification obligation in this section, will be binding on my estate and my personal representative, executor, administrator or guardian will be obligated to respect and enforce them.
- 12. **INDEPENDENT CONTRACTORS:** I acknowledge that the City of Tempe has no control over and assumes no responsibility for the actions of any operator or any independent contractors providing any services for the Activity.
- 13. **SEVERABILITY:** I agree that the purpose of this agreement is that it shall be an enforceable RELEASE OF LIABILITY AND INDEMNITY as broad and inclusive as permitted by Arizona law. I agree that if any portion or provision of this agreement is found to be invalid or unenforceable, then the remainder will continue in full force and effect. I also agree that any invalid provision will be modified or partially enforced to the maximum extent permitted by law to carry out the purpose of the agreement.
- 14. **APPLICABLE LAW, FORUM AND ATTORNEY'S FEES:** This agreement is governed by and shall be construed in accordance with the laws of the state of Arizona, without reference to its choice of law rules. I agree that any dispute arising from this Agreement or in any way associated with the Activity shall be brought only in a state or federal court located in Maricopa County, Arizona, and I agree to the jurisdiction and venue of those courts for any such dispute. In any litigation in which the validity or enforceability of this agreement is contested, I agree that the prevailing party will pay all attorney's fees and costs of the parties seeking to uphold the agreement.

I HAVE FULLY INFORMED MYSELF OF THE CONTENTS OF THIS AGREEMENT BY READING IT BEFORE SIGNING IT. NO ORAL REPRESENTATIONS, STATEMENTS, OR OTHER INDUCEMENTS TO SIGN THIS RELEASE HAVE BEEN MADE APART FROM WHAT IS CONTAINED IN THIS DOCUMENT. I UNDERSTAND THIS IS A CONTRACT THAT AFFECTS MY LEGAL RIGHTS AND I SIGN IT OF MY OWN FREE WILL.

Signature of user: _____

Name printed: _____

Date: _____

If user is a minor, signature of a parent or responsible adult is required below. In consideration of the minor child being permitted to participate in the Activity, I accept and agree to the full contents of this agreement. I certify that I have the authority to sign on behalf of the minor child and to make decisions for the minor child

regarding this Activity. I also agree to **RELEASE, HOLD HARMLESS, INDEMNIFY AND DEFEND the Released Parties from all liabilities, and claims that arise in any way from any injury, death, loss of harm that occurs to the minor child** during the Activity or in any way related to the Activity. This includes any claim of the minor and any claim arising from the negligence of the Released Parties. I understand that nothing in this agreement is intended to release claims that Arizona law does not permit to be excluded by agreement.

Parent/Responsible Adult Signature: _____

Name printed: _____

Relationship: _____

Date: _____