

REPORT TO CITY COUNCIL

Approved by:

John Scarborough, Parks & Community
Services Director

Arnaldo Rodriguez, City Manager

Council Meeting of: January 6, 2021

Agenda Number: B-10

SUBJECT:

Pan-American Community Center as a COVID-19 Testing Site

RECOMMENDATION:

Adopt a Minute Order approving the License Agreement with the County of Madera for the establishment of a COVID-19 testing site at the Pan-American Community Center

SUMMARY:

The Madera County Department of Public Health (County) contacted the City in December 2020 to inquire about the use of City facilities as possible mobile COVID-19 testing sites. Staff and the County have identified the Pan-American Community Center (Pan-Am) as a potential testing site. In order to establish Pan-Am as a mobile testing site, a License Agreement with the County must be approved by City Council.

DISCUSSION:

Pan-Am is located at 703 E. Sherwood Way in the northeast quadrant of the City. The goal of expanding testing sites is to provide testing in neighborhoods where there is a higher propensity of COVID-19 cases. Pan-Am has been identified as an ideal location for these purposes. The County has proposed a six-month agreement to utilize the site once per week for mobile COVID-19 testing in the community center parking lot, pictured in Exhibit B to the License Agreement. Testing will be by appointment only in order to limit the amount of people and traffic at the site. Staff will provide the County with a key to the community center so that their employees can utilize the restroom facilities. The County will be responsible for all cleaning and sanitization of both the restroom facilities and the portion of property used for testing. While there is ongoing construction at Pan-Am currently, the County does not believe this will interfere with their mobile testing setup.

The County will provide an estimated timeline and duration of use to staff in the Parks & Community Services Department on a weekly basis. Either party may terminate this agreement with 14 days written notice.

FINANCIAL IMPACT:

There will be no fee charged to the County for the use of Pan-Am as a mobile testing site. Therefore, this item has no financial impact to the General Fund.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The recommended actions support the following Vision Madera 2025 strategies:

- 404: Community Wellness: Promote increased community wellness.

ALTERNATIVES:

1. Council may request staff bring additional information back to a subsequent meeting.
2. Council may deny the use of the Pan-American Center for this purpose and request the County search out an alternative site.

ATTACHMENTS:

1. License Agreement

MADERA COUNTY CONTRACT NO. _____
(COVID-19 Testing License Agreement)

THIS LICENSE AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2021, (“Effective Date”) by and between CITY OF MADERA (“LICENSOR”) and COUNTY OF MADERA (“LICENSEE”).

RECITALS

LICENSOR is located in the City of Madera, California.

LICENSEE has been tasked by the State of California OES with handling emergency services. Due to the 2020 COVID-19 Emergency requiring an emergency response by LICENSEE, LICENSEE wishes to partner with LICENSOR to establish a testing site to support 2020 COVID-19 testing activities on a portion of the Property (as defined in Section I.(D.) herein, and Exhibit A attached hereto).

I. DEFINITIONS

A. “LICENSOR” means the CITY OF MADERA.

B. “License Area” means the portion(s) of the Property that LICENSOR licenses to LICENSEE to carry out its emergency testing functions in response to the 2020 COVID-19 Emergency, as identified in a completed Property Use Selection Activation/ Deactivation Form attached hereto as Exhibit A.

C. “LICENSEE Activities” means LICENSEE’S use of the License Area as a testing site for emergency testing operations of LICENSEE and its employees, contractors, agents and representatives.

D. “Property” means LICENSOR’S property identified on Exhibit “A”.

II. RESPONSIBILITIES OF LICENSOR

A. Provide space and access to utilities, as available, for use in COVID-19 testing.

III. RESPONSIBILITIES OF LICENSEE

A. Identify which areas will be activated for use.

B. As soon as practical, complete Exhibit A to confirm areas activated per this Agreement.

C. Update Exhibit A if there are changes to the areas in use for testing.

- D. Provide an estimated timeline for duration of use.
- E. Update LICENSOR at least one each week on estimated timeline for duration of use.
- F. Provide LICENSOR with contact(s) for duration of use.
- G. Coordinate demobilization, and vacate and the License Area to LICENSOR at the end of this Agreement.
- H. Return the facilities used back to the original condition in which they were at the beginning of this Agreement, normal wear and tear excluded.

IV. TERMS AND CONDITIONS

LICENSOR agrees to allow LICENSEE use of the License Area under the following terms and conditions:

A. Use: LICENSEE shall use the License Area only for the purposes set forth in this Agreement. The License Area shall not be used for purposes other than those described in the Agreement without the prior written consent of LICENSOR. LICENSEE shall continuously update LICENSOR with the names and contact information of LICENSEE'S representatives as that information becomes available. LICENSEE'S Representatives agree to comply with applicable statutes, rules and regulations and LICENSEE shall be responsible for its actions while on the property.

B. Term. Agreement Term and Right to Terminate: The term of this Agreement begins on the Effective Date and shall expire six (6) months thereafter. Either party may, at its sole discretion and upon fourteen (14) days written notice, terminate this Agreement. The parties may extend the Agreement, on an as-needed basis, in writing executed by both parties.

C. Restrictions of Site Use: As listed on Exhibit "B".

D. Control of Property: By entering into this Agreement, LICENSOR does not relinquish the right to control the management of any of its facilities or to enforce all necessary and proper rules for the management and operation of the same. LICENSOR's officers, agents and/or employees may enter the License Area at any time and on any occasion after providing prior notice of such entry to LICENSEE via the contact information provided in this Agreement.

E. Property Management: During LICENSEE'S occupation and use of the License Area, and subject to Section D "Control of Property," LICENSEE shall have temporary, personal, and exclusive use of the License Area. The word "exclusive" in this Section refers only to the particular License Area designated in the Building Use Selection

Activation/Deactivation for LICENSEES Activities and accepted by LICENSOR. LICENSEE is responsible for maintaining the safety, security and efficiency of its equipment, personnel, and materials, and thus requires exclusive use of the License Area in order to meet those responsibilities. However, LICENSEE acknowledges and understands that the License Area will not encompass the entire Property and that LICENSEE does not retain any authority over the Property in whole by reason of its exclusive use of the License Area. LICENSEE shall designate a primary representative to coordinate property management with a LICENSOR representative for the duration of LICENSEE'S Activities. Any disagreement over the scope and extent of each parties' "property management" rights and responsibilities, as set forth in this Section E, shall ultimately remain in the discretion of LICENSOR.

F. Condition of Property: LICENSEE accepts the License Area "AS-IS," "WHERE-IS" and "WITH-ALL-FAULTS" and subject to all applicable local and state laws, ordinances and regulations governing the use of the License Area; and accepts this License Agreement subject thereto and to all matters disclosed thereby.

G. Custodial Services: LICENSEE shall be solely responsible for securing custodial resources, including supplies and custodial services labor to perform and maintain cleaning and sanitation of the License Area(s).

H. Security: During LICENSEE'S occupation and use of License Area, LICENSEE shall be responsible for providing for security and supervision, in relation to any and all guests;

I. Collection and Disposal of Non-Traditional and/or Hazardous Waste: LICENSEE shall comply with all applicable laws, Federal, State or local, during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any non-traditional and/or hazardous waste or substance, including but not limited to transformers, debris or medical waste as that term is defined in such applicable law.

J. Signs and Posters/Publicity: LICENSEE shall not post, exhibit, or allow to be posted signs or advertisements of any description on the Property without prior approval of LICENSOR. LICENSEE may post signs identifying LICENSOR as a specific type of LICENSEE testing operation in locations approved as to form and content by LICENSOR. All such signs shall be removed by LICENSEE when the testing operation concludes.

K. Closing an Incident: LICENSEE shall notify LICENSOR of the close of LICENSEE'S Activities. Prior to vacating the License Area, the LICENSEE and LICENSOR shall jointly conduct a post-occupancy inspection of the License Area.

L. Removal and Disposition of LICENSEE'S Equipment and Personal Property: During the term of this Agreement, all equipment and personal property placed in, upon or under the License Area by LICENSEE shall remain the property of LICENSEE and shall be removed by LICENSEE at its sole cost and expense within thirty (30) days after expiration or termination of LICENSEE'S Activities.

Should LICENSEE fail to remove said equipment and personal property within thirty (30) days after expiration or termination of LICENSEE'S Activities, LICENSOR may do so at the risk of, and cost to LICENSEE. Upon written demand by LICENSOR, LICENSEE shall immediately pay all costs and expenses of the removal of LICENSEE'S equipment and personal property.

M. Removal of Occupants: Upon expiration or termination of this Agreement, it is the sole responsibility of the LICENSEE to ensure all occupants have vacated and removed their personal property from the License Area. Should LICENSEE fail to ensure that all occupants have vacated, LICENSEE shall be responsible for all expenses associated with removal including any fees and court costs.

N. Damage or Defacement of Property: LICENSEE agrees if the Property, or LICENSOR's equipment or personal property are damaged by the acts, default or negligence of LICENSEE or LICENSEE'S Representatives, LICENSEE shall repair and restore the property, equipment and personal property to its original condition prior to such damage.

O. Indemnification and Hold Harmless Clause: LICENSEE shall indemnify, defend, and hold harmless the LICENSOR, its officers, employees, agents and volunteers ("Licensor indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the LICENSEE's performance of its obligations under this agreement or out of the operations conducted by LICENSEE, except for such loss or damage arising from the sole negligence or willful misconduct of the LICENSOR. In the event the Licensor indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from LICENSEE's performance of this agreement, the LICENSEE shall provide a defense to the Licensor indemnitees, or at the LICENSOR's option, reimburse the Licensor indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

P. Safe Condition: LICENSEE, at its sole cost and expense, shall maintain the License Area in as good, clean, safe, and sanitary condition as is reasonably possible during its occupation and use of the License Area for the COVID-19 related testing set forth above. LICENSEE acknowledges and understands that the License Area is part of LICENSOR's facility grounds which, after termination of LICENSEE occupancy, may be open to the public and other users, and it is imperative that the facility is maintained in a good, clean, safe and sanitary condition.

Q. Independent Contractors: The parties hereto agree that LICENSEE, and any of its agents, servants, or employees of LICENSEE, in the performance of this Agreement, shall act in an independent capacity and not as officers, servants, agents or employees of LICENSOR.

R. Waiver: Any waiver with respect to any provision of this License Agreement

shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

S. Writing Requirement: Notwithstanding anything herein contained to the contrary, this Agreement may be terminated and the provisions of this Agreement may be altered, changed, or amended, by mutual written consent of the parties hereto. It is mutually understood and agreed that no alterations or variation of the terms of this Agreement shall be valid unless made in writing and signed by LICENSOR and LICENSEE, and that no oral understanding or agreement, and no alterations or variations of the terms hereof unless made in writing between the parties hereto, shall be binding on any of the parties hereto.

T. Time is of the Essence: Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

U. Counterparts: This License Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

V. Notice: Notice necessary to the performance of this Agreement shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

TO LICENSEE/COUNTY:

Robin Siminoff
Department of Public Health Madera
County
1604 Sunrise Avenue
Madera, CA 93638

TO LICENSOR:

John Scarborough
Parks & Community Services
Department
City Of Madera
701 East 5th Street
Madera, CA 93638

COPY TO:

Clerk of the Board
Madera County Board of Supervisors
200 West 4th Street
Madera, CA 93637

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IN WITNESS WHEREOF the foregoing Agreement is executed on the date and year first above-written.

COUNTY OF MADERA

By: _____
Sara Bosse (Signature)

Title: Public Health Director (Print)

ATTEST:

CITY OF MADERA

Clerk, Board of Supervisors

By: _____
Santos Garcia (Signature)

Mayor (Print)
Title: _____

Approved as to Legal Form:
COUNTY COUNSEL

By: _____

ACCOUNT NUMBER(S)

EXHIBIT A

PROPERTY AND SITE LOCATION

Pan-American Community Center Parking Lot
703 E. Sherwood Way
Madera, CA 93638

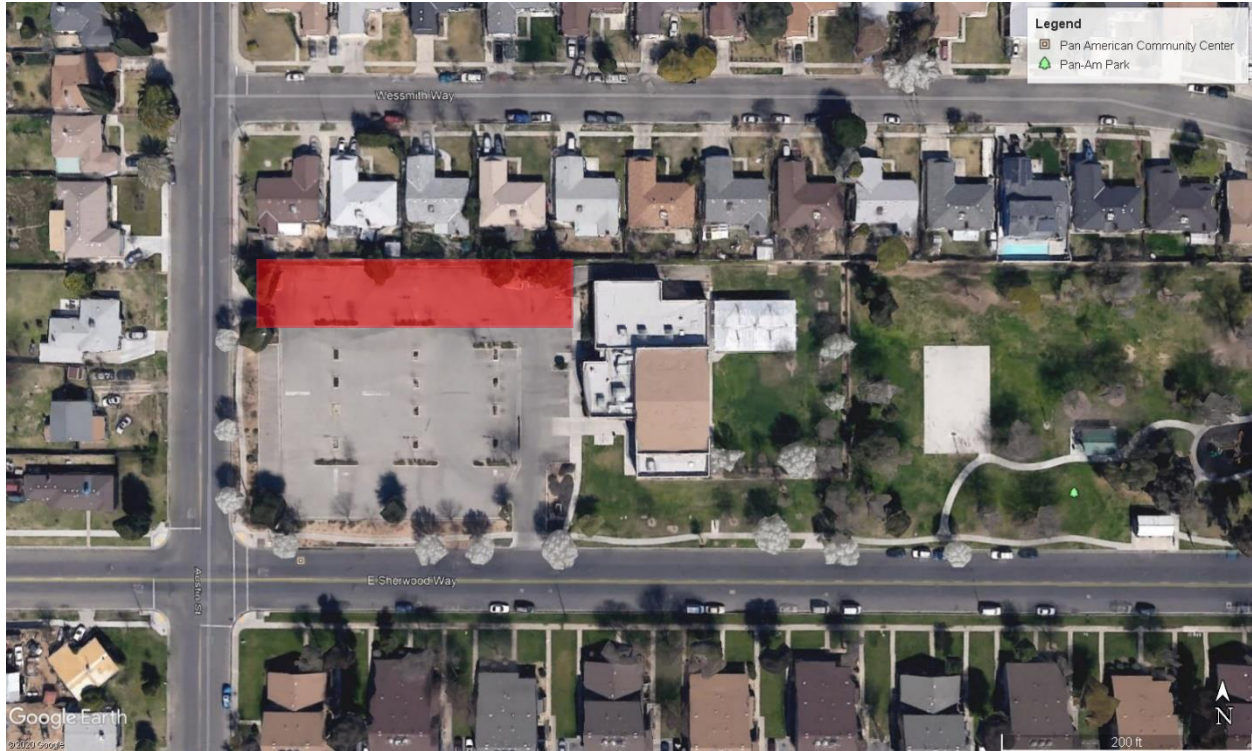


EXHIBIT B

SITE USE CONDITIONS

A. Access to Pan American Community Center Building

LICENSOR will provide LICENSEE one key to the Pan-American Community Center in order to access restroom facilities. LICENSOR will disarm security alarms prior to 7:00 A.M. and after 7:00 P.M. during scheduled usage days. LICENSEE will keep the building locked at all times and only provide access to LICENSEE'S officers, agents, or employees. LICENSEE will maintain cleaning and sanitation of the restroom facilities utilized.

B. Insurance Requirements

Without limiting LICENSEE's indemnification of LICENSOR, and prior to commencement of facility use, LICENSEE shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the LICENSOR.

1. Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:
 - a. \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10, or its equivalent, that the LICENSOR and its officers, officials, employees and agents shall be additional insureds under such policies.
 - b. **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. LICENSEE shall submit to the LICENSOR, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the LICENSOR, its officers, agents, employees, and volunteers.
2. Maintenance of Coverage: LICENSEE shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by LICENSEE, its agents, representatives, employees, subcontractors or sublicensees as specified in this Agreement.

3. Proof of Insurance: LICENSEE shall provide to the LICENSOR certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the LICENSOR prior to commencement of facility use. Current evidence of insurance shall be kept on file with the LICENSOR at all times during the term of this Agreement. LICENSOR reserves the right to require complete, certified copies of all required insurance policies, at any time.
4. Acceptable Insurers: All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.
5. Waiver of Subrogation: All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the LICENSOR, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow LICENSEE, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. LICENSEE hereby waives its own right of recovery against the LICENSOR and shall require similar written express waivers and insurance clauses from each of its sublicensees or subcontractors.
6. Enforcement of Contract Provisions (non estoppel): LICENSEE acknowledges and agrees that any actual or alleged failure on the part of the LICENSOR to inform LICENSEE of non-compliance with any requirement imposes no additional obligations on the LICENSOR, nor does it waive any rights hereunder.
7. Specifications not Limiting: Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If LICENSEE maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by LICENSEE.
8. Notice of Cancellation: LICENSEE agrees to oblige its insurance agent or broker and insurers to provide to the LICENSOR with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

9. Self-insured Retentions: Any self-insured retentions must be declared to and approved by the LICENSOR. The LICENSOR reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the LICENSOR's Risk Manager.
10. Timely Notice of Claims: LICENSEE shall give the LICENSOR prompt and timely notice of claims made or suits instituted that arise out of or result from LICENSEE's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
11. Additional Insurance: LICENSEE shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the activities to be conducted at the licensed facility.