

AGREEMENT FOR TOBACCO RETAILER LICENSURE PROGRAM

between

COUNTY OF SANTA BARBARA

and

CITY OF GOLETA

THIS AGREEMENT (hereafter Agreement) is made this 15th day of September, 2015, by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and the City of Goleta, a municipal corporation in the COUNTY (hereafter CITY), wherein COUNTY agrees to provide and CITY agrees to accept the services specified herein.

WHEREAS, on May 20, 2014, the CITY adopted an ordinance that established a tobacco retailing licensing program (TRL) and codified such ordinance in Goleta Municipal Code (GMC), § 5.07 et seq.;

WHEREAS, the COUNTY implements a similar COUNTY program through the Tobacco Prevention Settlement Program (TPSP), a program operated by the COUNTY Public Health Department;

WHEREAS, the CITY desires to contract with the COUNTY to implement the CITY's TRL;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. SCOPE OF SERVICES.

The COUNTY will provide to the CITY the services specified in EXHIBIT A attached hereto and incorporated herein by reference.

2. TERM.

The term of this Agreement will be from September 15, 2015 through June 30, 2017. This Agreement will be automatically renewed on an annual basis unless terminated by either party pursuant to the procedures set herein.

3. COMPENSATION OF COUNTY.

In full compensation for all services rendered by the COUNTY to CITY pursuant to this Agreement, the CITY will pay the COUNTY a fee of \$379.00 per tobacco retailing business per year as defined in GMC § 5.07.010. No later than the 10th of each month, the CITY will send a copy of all tobacco retailing licenses issued the preceding month, along with their approved applications and related documents, to the COUNTY. Within thirty (30) days of such receipt, the COUNTY will submit an invoice for \$379.00 per tobacco retailing license issued. The CITY will remit payment to the COUNTY within thirty (30) days of receipt of the COUNTY's invoice.

4. DESIGNATED REPRESENTATIVE.

Dawn M. Dunn, Program Administrator of Tobacco Prevention Settlement Program with the Santa Barbara County Public Health Department, will administer this Agreement on behalf of the COUNTY. Vyto Adomaitis, Neighborhood Services and Public Safety Director, will administer this Agreement on behalf of the CITY. Changes in designated representatives will be made only after advance written notice to the other party.

5. NOTICES.

Any notice or consent required or permitted to be given under this Agreement will be given to the respective parties in writing, by first class mail, postage prepaid, delivered as follows:

To COUNTY: Dawn M. Dunn
Tobacco Prevention Settlement Program
300 N. San Antonio Road, Building 4
Santa Barbara, CA 93110
(805) 681-5407

To CITY: Vyto Adomaitis
Neighborhood Services and Public Safety Director
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117
(805) 961-7555

or at such other address or to such other person that the parties may from time to time designate in writing. Notices and consents under this section, which are sent by mail, will be deemed to be received within five (5) business days following their deposit in the U.S. mail.

6. INTERPRETATION/APPLICATION OF CITY CODES.

CITY will be responsible for the legal interpretation, enforcement and defense of the Goleta Municipal Code, except as specified within EXHIBIT A.

7. INDEPENDENT CONTRACTOR.

The parties hereto, in the performance of this Agreement, will be acting in their individual governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Without limiting the foregoing, the CITY will advise the COUNTY in the implementation and enforcement of the Goleta Municipal Code pursuant to this Agreement.

8. CONFLICT OF INTEREST.

The parties covenant that the parties presently have no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The parties further covenant that in the performance of this Agreement, no person having any such interest will be employed by parties.

9. OWNERSHIP OF DOCUMENTS.

All reports and documents prepared by the COUNTY under this Agreement are the joint property of the CITY and COUNTY. The COUNTY must provide the CITY with a written or electronic copy of any reports or documents within 30 days of the CITY's written request.

With the CITY's consent, the COUNTY may publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement to any governmental regulatory agency or nonprofit entity involved in monitoring tobacco sales to minors.

10. INDEMNIFICATION AND INSURANCE.

10.1. Indemnification.

- A. In lieu of and notwithstanding the pro rata risk allocation which would otherwise be imposed upon the parties pursuant to Government Code sections 895 et seq., relating to joint enterprise liability, the parties agree that all losses or liabilities incurred by a party will not be shared pro rata, but instead all parties agree that pursuant to Government Code section 895.4, each of the parties hereto will fully defend, indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 818.08) or damages arising or occurring by reason of the acts or omissions of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof will be responsible for any damage, claim, expense, cost, or liability occurring by reason of the acts or omissions of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.
- B. Agency. COUNTY will act as CITY's agent only for the purposes specified herein and for no other purposes.
- C. Notification. Each party will give the other party prompt notification when it first learns of an incident or occurrence covered, or likely to be covered, under the terms of this section, as well as prompt notification if a claim is made or suit is brought against a party based on an incident or occurrence covered, or likely to be covered, by the terms hereof. Each party agrees to cooperate with the other, including making witnesses and documents reasonably available as necessary in the defense of any claim or suit arising out of this Agreement.
- D. Continuing Obligation. To the extent that COUNTY has agreed to indemnify, defend and hold harmless CITY, its officers, agents and employees under this Agreement, said obligations will continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during the term of this Agreement. To the extent that CITY has agreed to indemnify, defend and hold harmless COUNTY, its officers, agents and employees under this Agreement, said obligations will continue to exist during the term of this Agreement and subsequent to this Agreement for those acts or omissions giving rise to liability which occurred during the term of this Agreement.

10.2. Insurance.

Each party recognizes and accepts that the other party is self-insured. Either party may purchase commercial insurance to cover its exposure hereunder, in whole or in part.

11. NONEXCLUSIVE AGREEMENT.

The CITY understands that this is not an exclusive Agreement and that the COUNTY will have the right to negotiate with and enter into contracts with others to provide the same or similar services as those provided to the CITY as the COUNTY desires.

12. ASSIGNMENT.

COUNTY will not assign any of its rights or transfer any of its obligations under this Agreement without the prior written consent of CITY and any attempt to so assign or so transfer without such consent will be void and without legal effect and will constitute grounds for termination.

13. TERMINATION.

13.1. For Cause. In the event of a material breach of this Agreement, either party may initiate termination of the Agreement. The aggrieved party will serve the other party with a thirty (30) day written notice to cure the breach. The notice must specify in detail the nature of the alleged material breach, including the supporting factual basis and any relevant documentation. A material breach by the COUNTY may include, but not be limited to, COUNTY's failure to meet the requirements of this Agreement, including, but, without limitation, those duties described in EXHIBIT A of this Agreement. A material breach by the CITY may include, but not be limited to, failing to make timely payments as required by this Agreement and described in EXHIBIT A.

The party receiving the notice will have ten (10) days from the date of receipt (10-day response period) to respond to the alleged breach by either requesting in writing a meeting with the noticing party or curing the breach. If the breach is of such a nature that it cannot be reasonably cured within thirty (30) days from the end of the 10-day response period, the party receiving the notice will commence curing the breach within said period and notifying the other party of the actions taken. If a meeting is requested by the party receiving the notice, it will be scheduled within ten (10) days of the date notice is received. If corrective action is not taken by the party receiving notice, or the parties do not reach an agreement during the notice period, the parties will deliver to each other all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by the other party in performing this Agreement, whether completed or in process, and this Agreement will terminate within thirty (30) days from the end of 10-day response period at the option of the noticing party, notwithstanding any other provision of this Agreement.

13.2. Without Cause. The COUNTY or CITY may terminate this Agreement upon thirty (30) days written notice without cause. Following notice of such termination, the COUNTY will cease work and, within five (5) business days of such cessation of work, provide to the CITY a detailed written status of its performance and a copy of all records prepared pursuant to this Agreement.

13.3. Notwithstanding any other payment provision of this Agreement, the CITY will pay the COUNTY for services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. The foregoing is cumulative and will not affect any right or remedy which the COUNTY may have in law or equity.

14. SECTION HEADINGS.

The headings of the several sections will be solely for convenience of reference and will not affect the meaning, construction or effect hereof.

15. SEVERABILITY.

If any one or more of the provisions contained herein will for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. REMEDIES NOT EXCLUSIVE.

No remedy herein conferred upon or reserved to a party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

17. TIME IS OF THE ESSENCE.

Time is of the essence in this Agreement and each covenant and term is a condition herein.

18. NO WAIVER OF DEFAULT.

No delay or omission of a party to exercise any right or power arising upon the occurrence of any event of default will impair any such right or power or will be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to a party will be exercised from time to time and as often as may be deemed expedient in the sole discretion of the party.

19. ENTIRE AGREEMENT AND AMENDMENT.

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

20. SUCCESSORS AND ASSIGNS.

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, will be binding upon and inure to the benefit of such party, its successors and assigns.

21. COMPLIANCE WITH LAW.

Each party will, at its sole cost and expense, comply with all laws applicable to the party now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of a party in any action or proceeding against such party,

regardless of whether the other party is a party thereto, that the party has violated any such law, will be conclusive of that fact as between the CITY and COUNTY.

22. CALIFORNIA LAW.

This Agreement will be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents will be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to the County of Santa Barbara, if in federal court.

23. EXECUTION OF COUNTERPARTS.

This Agreement may be executed in any number of counterparts and each of such counterparts will for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties will preserve undestroyed, will together constitute one and the same instrument.

24. AUTHORITY.

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, each party hereby warrants that it has not breached the terms or conditions of any other contract or agreement to which it is obligated, which breach would have a material effect hereon.

25. PRECEDENCE.

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in Exhibit A, the provisions of Exhibit A will prevail over those in the numbered sections.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on September 15, 2015.

COUNTY OF SANTA BARBARA

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD

JANET WOLF

Chair, Board of Supervisors

By: _____
Deputy Clerk

Date: _____

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED
TAKASHI WADA, MD, MPH
DIRECTOR / HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

APPROVED AS TO FORM:
RAY AROMATORIO
RISK MANAGER

By: _____
Director

By: _____
Risk Manager

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on September 15, 2015.

CITY OF GOLETA

Michelle Greene, City Manager

ATTEST:

Deborah S. Lopez, City Clerk

APPROVED AS TO FORM

Tim W. Giles, City Attorney

EXHIBIT A

STATEMENT OF WORK

The County of Santa Barbara (COUNTY) through its Tobacco Prevention Settlement Program (TPSP) will perform the following work under this Agreement on behalf of the City of Goleta (CITY).

Application Submittal and Review

1. TPSP will supply the list of tobacco retailers in the CITY to the CITY at the commencement of this Agreement and by June 1 of each year thereafter.
2. Upon receipt of a TRL application, the CITY will provide a copy to the COUNTY before granting or denying the application. Within five (5) business days of receipt of a copy of an application from the CITY, TPSP will provide a written recommendation on whether to grant or deny the application. Any recommendation to deny an application from TPSP will be accompanied by a written explanation. After receipt of the COUNTY's recommendation and if the CITY does not agree with the COUNTY's recommendation, both parties will consult with one another in order to come to an agreement. The CITY retains the ultimate authority to grant or deny an application.
3. TPSP will enter pertinent licensee data into COUNTY's TRL database for tracking purposes and provide the CITY with access to COUNTY's TRL database or a written or electronic copy of such data within 30 days of the CITY's written request.

Renewal Notification

1. TPSP will monitor the status of licenses to ensure that they are current as set forth below.
2. Approximately one month prior to the expiration of a license, the CITY will send a written notice to the licensee requesting that the license be renewed through the CITY. At the commencement of this Agreement, TPSP will provide the City with a fact sheet detailing the key provisions of the CITY's TRL ordinance and other tobacco-related laws applicable to licensees in the CITY. TPSP will provide updated fact sheets if applicable laws change. The CITY will send a copy of this fact sheet with every renewal notice.
3. The day after a license has expired TPSP will send a written notice via regular mail to the licensee whose license has expired. TPSP's written notice will include information about the late penalty fees specified in GMC, § 5.07.050, which includes a 30 day grace period. TPSP will provide CITY with a copy of any written notice sent pursuant to this section. If the first letter sent by TPSP does not result in compliance by the end of the grace period, TPSP will send a certified letter seeking compliance and explaining that late fees have been imposed.

Education Phase

1. Within three (3) months of execution of this Agreement, TPSP will schedule and conduct site visits to provide direct education and information packets to existing licensees.
2. Thereafter, within three (3) months of issuance of a new license, TPSP will schedule and conduct a site visit to provide direct education and information packets to the new licensee.

3. No later than June 1 of each year, TPSP will provide the CITY with a written summary of its educational activities taken pursuant to this section.

Enforcement

TPSP will conduct enforcement and compliance activities, including, but not limited to:

1. Sales to Minors: Stings or other undercover buy operations aimed at preventing sales to minors must be conducted at least once a year. TPSP will recruit and train youths and COUNTY Sheriff Staff in accordance with COUNTY District Attorney protocols for monitoring compliance of GMC, § 5.07 et seq. and other applicable laws. (Involvement by CITY staff or agents in the enforcement operations is allowable, provided that such involvement does not compromise the integrity of the operations.)
2. Compliance Monitoring: Compliance monitoring at each retailer location must occur at least once a year to insure compliance with the other requirements cited in GMC, § 5.07.020 unrelated to the sale of tobacco products to minors.
3. Potential Violations: Within 10 business days following the identification of any potential violations, the CITY will be notified in writing of any condition(s) requiring corrective action in tobacco retail businesses. The COUNTY will provide an annual summary of compliance monitoring to the CITY by June 1 of each year.

Violations

Criminal Citations and Hearings

TPSP is responsible for enforcement of violations of state statutes governing the sale, distribution and advertisement of tobacco products or paraphernalia, including but not limited to Penal Code, § 308. These violations are subject to criminal prosecution, which is done at the discretion of the District Attorney. TPSP will notify the CITY of any referrals for filing, filing decisions and dispositions.

TPSP will not issue any criminal citations or interfere with a criminal citation issued by Sheriff staff pursuant to GMC, § 5.07 et seq. TPSP must provide any supporting evidence of a criminal violation it possesses to the CITY or other enforcing entity.

Administrative Citations and Appeal Hearings

1. Violations of GMC, § 5.07 et seq. may be handled through the CITY's Administrative Citation Program pursuant to GMC, § 1.02 et seq.
2. If facts constituting a violation of GMC, § 5.07 et seq. unrelated to the sale of tobacco products to minors exist but the violation is correctable, TPSP will attempt to obtain voluntary compliance. TPSP will engage in verbal and written requests for compliance. The written request will be sent via certified mail. The CITY will provide TPSP with template letters requesting compliance.

3. If a violator still refuses to comply after receiving verbal and written requests, TPSP will send a request for enforcement action to the CITY. The CITY may issue a Notice of Violation and/or Administrative Citation pursuant to GMC, § 1.02 et seq., or otherwise enforce any other applicable sections of the GMC.
4. If an appeal hearing of the Administrative Citation is requested, TPSP will conduct the hearing as required by GMC, § 1.02 et seq., TPSP must obtain the CITY's approval before scheduling an appeal hearing.
5. TPSP may propose a settlement or receive a settlement proposal from the violator. TPSP must obtain the CITY's approval of such settlement before entering into any agreement with the violator. Once a settlement has been reached, TPSP must memorialize such settlement and obtain execution of the settlement by the violator.

License Denials, Revocations and Suspensions and Appeal Hearings

1. TPSP will process any license denials, revocations and suspensions and appeals pursuant to GMC, § 5.07.080.
2. Before sending a notice of intent to deny, revoke or suspend a license, TPSP must consult with the CITY Attorney and obtain the City Attorney's approval of any notice of intent to deny, suspend or revoke. TPSP will also send the CITY a copy of each notice of intent to deny, suspend or revoke.
3. With regard to suspensions, the City Attorney will provide TPSP with a written recommendation for the length of a suspension no more than 30 days from receipt of the intent to suspend. Any questions from the retailer about the basis of the CITY's written recommendation will be referred to the CITY for disposition.
4. TPSP will correspond directly with the retailer about any denial, suspension or revocation except as described in the above section. TPSP may propose or receive a proposal of settlement of the denial, suspension or revocation. TPSP must obtain the City Attorney's written approval of any proposed settlement before accepting it. TPSP must memorialize any settlement in writing and obtain execution of the settlement by the retailer.
5. If an appeal hearing has been requested by the retailer at issue, TPSP will obtain written approval from the City Attorney before scheduling the hearing. The CITY will have a representative present at said hearing or will waive presence in writing.

Post-Hearing Monitoring

1. Suspensions – If a license is suspended, TPSP will monitor suspensions by visiting the suspended establishment to observe whether tobacco products or paraphernalia are being displayed, advertised, or offered for sale. TPSP must conduct at least one visit per suspension and, for suspensions greater than 30 days, at least one visit for every 30 days of a suspension period. TPSP will notify the suspended licensee in writing of the suspended licensee's violation of the terms of the suspension within five (5) business days of the observed violation.

2. Revocations – If a license is revoked, TPSP will monitor revocations by visiting retail sites that have had their tobacco retailing license revoked and observe whether tobacco products or paraphernalia are being displayed, advertised, or offered for sale. TPSP must conduct two (2) visits during the six month period following the revocation. TPSP will notify the retailer in writing of the retailer’s violation of the terms of the revocation within five (5) business days of the observed violation.

Community Relations

1. TPSP will develop an annual press release to announce data on sales of tobacco products or tobacco paraphernalia to minors in the CITY and countywide. TPSP will obtain the approval of CITY staff, including the: City Attorney, Public Information Officer, or Chief of Police, prior to the release of any information about the CITY to the press.
2. TPSP will respond to media inquiries following press releases or otherwise related to TRL operations/program. TPSP will consult with CITY and/or Sheriff, as necessary, before responding to the media.
3. No later than June 1 of each year, TPSP will send “good merchant certificates” to all retailers that have not violated GMC, § 5.07 et seq. over the previous twelve month period and a list of the recipients of these will be provided to the CITY.
4. TPSP will respond to all inquiries from retailers regarding “good merchant certificates.”

Tracking and Reporting

TPSP will collect, maintain, analyze and provide summary data and reports on all key indicators related to TRL activities and outcomes within the CITY and provide such data and reports to the CITY no later than June 1 of each year.