

AGREEMENT FOR TOBACCO RETAILER LICENSURE PROGRAM

between

COUNTY OF SANTA BARBARA

and

CITY OF CARPINTERIA

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

WHEREAS, in November 2001, Chapter 37A of the COUNTY adopted; it requires retailers located in the unincorporated area of the county to obtain a Tobacco Retailer License (TRL) before selling tobacco products and imposes sanctions on tobacco retailers who violate the laws prohibiting the sale of tobacco products to minors;

WHEREAS, on May 13, 2013, the CITY amended Chapter 8.52 of the Carpinteria Municipal Code to require retailers located in the CITY to obtain a TRL before selling tobacco products and also imposes sanctions on tobacco retailers who violate the laws prohibiting the sale of tobacco products to minors;

WHEREAS, the CITY would like to contract to have the COUNTY to administer and enforce its TRL program;

WHEREAS, the Parties have been operating under an Agreement that ended on June 30, 2016;

WHEREAS, the parties would like to memorialize the COUNTY's administration and enforcement of the TRL program for the CITY with this new Agreement;

WHEREAS, in 2012, the COUNTY conducted a Fee Study which quantified the annual costs of having the COUNTY administer and enforce the TRL program in cities that elect to contract for these COUNTY services. The fee was calculated to be \$379 for each tobacco retailer license;

WHEREAS, effective January 11, 2013 the COUNTY Board of Supervisors adopted Resolution 12-288, which established a fee of \$379 for each Tobacco Retailer License in a city where the TRL program is administered and enforced by the COUNTY pursuant to an Agreement;

WHEREAS, if a city elects to utilize the COUNTY to administer and enforce a TRL program in its city, then that city shall pay the COUNTY \$379 for each TRL issued in the city. Each participating city would be responsible for issuing the TRL and collecting the license fees in their jurisdiction;

WHEREAS, Section 8.52.170 of the Carpinteria Municipal Code set the fees for a TRL at the amounts established by County Resolution 12-288, subject to subsequent amendments by the COUNTY Board of Supervisors;

WHEREAS, the scope of the functions to be conducted by the COUNTY and its agents for the CITY in relation to Chapter 8.52 are set forth in this Agreement.

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

1. SCOPE OF SERVICES.

COUNTY shall provide to the CITY the services specified in EXHIBIT A, which is attached and incorporated by reference.

2. TERM.

The term of this Agreement shall be from July 1, 2016 through June 30, 2021.

3. COMPENSATION OF COUNTY.

For services rendered by COUNTY between July 1, 2016 and June 30, 2021, CITY shall pay COUNTY an annual fee of \$379.00 for each Tobacco Retailer License issued within the CITY pursuant to Section 8.52.170 of the Carpinteria Municipal Code. Annually, CITY will provide the Tobacco Retailer License applications for each retail site to the Santa Barbara County Tobacco Prevention Program (TPP) for review and approval. COUNTY will submit to the CITY an annual bill for \$379.00 for each Tobacco Retailer License issued in the City of Carpinteria. Payment to COUNTY shall be made within thirty (30) days of receipt of the bill.

TPP will bill CITY quarterly for additional fees collected by CITY for late penalty payments or new/renewed licenses.

4. DESIGNATED REPRESENTATIVE.

Dawn M. Dunn, Program Coordinator of Tobacco Prevention Program with the Santa Barbara County Public Health Department, at 805-681-5407, is the representative of COUNTY who will administer this Agreement on behalf of COUNTY. Steve Goggia, Community Development Director, at 805-755-4414, is the representative of CITY who will administer this Agreement on behalf of CITY. Changes in designated representatives shall 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 shall 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 Rd., Bldg. 4
Santa Barbara, CA 93110

To CITY: Steve Goggia
Community Development Director
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

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, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

6. INTERPRETATION/APPLICATION OF CITY CODES.

CITY shall be responsible for the legal work associated with the interpretation and prosecution of its ordinances, and defense of the ordinance content and application, 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 shall 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 shall advise the COUNTY in the implementation and enforcement of its code pursuant to this Agreement.

8. CONFLICT OF INTEREST.

CITY covenants that CITY presently has no interest and shall 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. CITY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CITY.

9. OWNERSHIP OF DOCUMENTS.

All reports and documents prepared by COUNTY under this Agreement are the joint property of the CITY and the COUNTY.

COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

10. INDEMNIFICATION AND INSURANCE.

10.1. Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully defend, indemnify and hold the other party, its 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 810.8) 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. Neither party, nor any officer, board member, employee or agent thereof shall be responsible for any damage, claim, expense, cost, or liability occurring by reason of the acts or omissions of other party hereto, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other party under this Agreement

10.2. Insurance.

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

11. NONEXCLUSIVE AGREEMENT.

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

12. ASSIGNMENT.

COUNTY shall not assign any of its rights nor 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 shall be void and without legal effect and shall 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 shall serve the other party with a thirty (30) day 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. (i) A material breach by COUNTY may include, but not be limited to, COUNTY's failure to meet the requirements described in EXHIBIT A of this Agreement; (ii) A material breach by 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 shall have ten (10) days from the date of receipt to respond to the alleged breach by either requesting in writing a meeting with the noticing party, curing the breach, or if the breach is of such a nature that it cannot be reasonably cured within thirty (30) days, 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 shall 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 shall 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 shall terminate upon completion of the thirty (30) days notice period, at the option of the noticing party, notwithstanding any other provision of this Agreement.

13.2. Without Cause. COUNTY or CITY may terminate this Agreement upon thirty (30) days written notice without cause. Following notice of such termination, COUNTY shall cease work and notify CITY as to the status of its performance.

13.3. Notwithstanding any other payment provision of this Agreement, CITY shall pay COUNTY for service 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 shall not affect any right or remedy which COUNTY may have in law or equity.

14. SECTION HEADINGS.

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

15. SEVERABILITY.

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall 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, shall 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 shall impair any such right or power or shall 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 shall 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 their 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, shall be binding upon and inure to the benefit of such party, its successors and assigns.

21. COMPLIANCE WITH LAW.

Each party shall, 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, shall be conclusive of that fact as between CITY and COUNTY.

22. CALIFORNIA LAW.

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

23. EXECUTION OF COUNTERPARTS.

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall 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 the Exhibit, the provisions of the Exhibit shall prevail over those in the numbered sections.

Agreement for Tobacco Retailer License program services between the **County of Santa Barbara** and **City of Carpinteria**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on July 1, 2016.

COUNTY OF SANTA BARBARA

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Van Do-Reynoso, MPH, PhD

By: _____
Department Head

**APPROVED AS TO ACCOUNTING
FORM:**

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

Agreement for Tobacco Retail License services between the **County of Santa Barbara** and **City of Carpinteria**.

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CITY OF CARPINTERIA

By: _____
Dave Durflinger, City Manager

Date: _____

EXHIBIT A

STATEMENT OF WORK

The City of Carpinteria (CITY) enters into this Agreement with the County of Santa Barbara (COUNTY) to administer and enforce CITY's Tobacco Retailer License (TRL) program. The Tobacco Prevention Program (TPP) will perform the work under this Agreement on behalf of the COUNTY.

Application Submittal and Review

1. CITY shall send TRL applications to TPP for review. TRL applications that are approved by TPP will be signed and returned to the CITY for issuance. The CITY will email to TPP a copy of each license it issues. TRL applications that are not approved by TPP will be returned to the CITY with an explanation of why the applications were not approved.
2. TPP shall enter pertinent licensee data into a TRL database for tracking purposes.
3. Tobacco Retailer Licenses must be renewed annually, and a renewal fee is due the first business day after a Tobacco Retailer License expires. A late penalty of fifty percent (50%) of the renewal fee will be assessed if the renewal fee is not paid within 30 days of its due date. TPP shall send standardized notification letters, using certified mail, to retailers who are late in renewing licenses. A copy of each notification letter will also be sent to the CITY.
4. TPP shall notifying retailers of any late penalty fees specified in Section 8.52.170 of Chapter 8.52 of the Carpinteria Municipal Code.
5. TPP will advise tobacco retailers to submit late penalty fees directly to CITY along with their annual license renewal fees. CITY shall pay COUNTY any license renewal late penalty fees.

Education Phase (provided within 3-6 months of issuance of license)

1. TPP shall schedule and conduct site visits to provide direct education and information packets about the TRL program to each retailer in the CITY.
2. Annually, TPP will provide the CITY with of summary of its educational activities.

Enforcement (1-3 times per year)

1. TPP shall recruit and train youths and Sheriff staff in accordance with District Attorney protocols for monitoring compliance of Chapter 8.52 of the Carpinteria Municipal Code . (Details of this process are available upon request. 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. TPP shall request and review Sheriff's reports and court records associated with the prosecution of any violations of Chapter 8.52 of the Carpinteria Municipal Code for the purpose of determining actions related to the suspension/revocation process.
3. TPP shall develop an annual press release to announce data on sales of tobacco products or tobacco paraphernalia to minors in the CITY and countywide. CITY officials may review and edit the press release with regards to sales in the CITY, prior to its release.

4. TPP shall respond to media inquiries following press releases or otherwise related to the TRL operations/program. TPP will consult with CITY and/or Sheriff, as necessary, before responding to the media.
5. Annually TPP shall send “good merchant certificates” to all retailers that have not violated any law governing the sale, distribution, advertisement or display of tobacco, tobacco products or tobacco paraphernalia, over the previous twelve month period.
6. TPP shall respond to all inquiries from retailers regarding “good merchant certificates”.

Revocations and Suspensions

1. If a tobacco retailer violates any law governing the sale, distribution, advertisement or display of tobacco, tobacco products or tobacco paraphernalia, TPP shall send a “notification of violation” letter to the retailer, in accordance with Section 8.52.240 of Chapter 8.52 of the Carpinteria Municipal Code.
2. TPP shall respond to tobacco retailer inquiries about suspension options and follow up with any unresponsive retailers.
3. Revocations and suspensions shall be set by TPP in accordance with Section 8.52.240 of Chapter 8.52 of the Carpinteria Municipal Code. Notice of Suspension shall be provided to the retailers by TPP by personal service or by certified mail. TPP will send CITY a copy of all TPP correspondence sent to tobacco retailers.
4. Settlement in Lieu of Appeal Hearing – For first and second violations within a five-year period, TPP may enter into a settlement with a tobacco retailer in lieu of an appeal hearing. All settlements must include a settlement payment of at least \$1,000 for 1st violation and at least \$5,000 for 2nd violation, and the duration of a suspension may be reduced by up to 50%. Settlement payments shall be collected and retained by CITY. Notification, prepared by TPP, to the tobacco retailers will specify the amount of payment owed to CITY and indicate that payment, in full, is required prior to the completion of the revocation or suspension. Retailers must continue to serve their revocation or suspension until settlement is paid in full.

TPP shall be responsible for monitoring suspensions in coordination with CITY. CITY staff or TPP will visit retail sites serving a suspension and observe whether tobacco products or paraphernalia are being displayed, advertised, or offered for sale. One to two such visits will be conducted during the suspension period. Private citizens may also report to TSPS if they observe tobacco products or paraphernalia being displayed, advertised, or offered for sale by a tobacco retailer who is serving a suspension. The notification may be made orally or in writing.

5. TPP and the County’s Public Health Department Health Officer, along with County Counsel and Sheriff personnel, will conduct any formal appeal hearings. The appeal hearings will be open to the public.

Tracking and Reporting

TPP shall collect, maintain, analyze and provide summary data and reports on all key indicators related to TRL activities and outcomes within the CITY and provide these to the CITY annually.