

MFS-16
UMC- Lot M

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and entered into this 13th day of December, 2016, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, 2220 Tulare Street, 6th Floor, Fresno, California, 93721-2120, hereinafter referred to as "LICENSOR," and Daisy Faola Garcia, a sole proprietor doing business as El Taconazo Catering, the address of which is 807 Lemieux Lane, Clovis, CA 93619, hereinafter referred to as "LICENSEE." LICENSOR and LICENSEE are hereinafter together referred to as the "Parties" and singularly as a "Party."

WHEREAS, LICENSOR owns the property known as the "University Medical Center Campus" located at Cedar and Kings Canyon Road in Fresno, CA, hereinafter referred to as "Premises;" and

WHEREAS, LICENSOR and LICENSEE mutually desire to allow LICENSEE to use the Premises for the operation of mobile/portable food service unit(s); and

WHEREAS, LICENSOR finds that LICENSEE'S operation of said mobile/portable food service unit(s) is in the public interest and that LICENSEE'S operating on the Premises will not substantially conflict or interfere with the use of the Premises by LICENSOR.

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

1. GRANT OF LICENSE: LICENSOR grants to LICENSEE an exclusive license to operate mobile/portable food service unit(s) on the Premises for the benefit of employees, guests, and patrons of LICENSOR. LICENSEE must have LICENSEE'S business name printed legibly on both sides of all mobile/portable food service unit(s) operating on the Premises. Failure to do so may result in not being allowed access to the Premises.

2. LOCATION: LICENSOR shall designate one (1) parking space in Parking lot "M" as assigned at the Premises, as shown in Exhibit "A," attached hereto and by reference incorporated herein as the location for LICENSEE'S portable food service equipment. LICENSEE shall operate solely from this designated locations, which may be changed upon

1 mutual written agreement between the Parties. The food service carts and mobile/portable
2 food service facilities, and all ancillary equipment, shall be removed at the end of each day of
3 operation. No equipment shall be left at the Premises overnight. LICENSEE'S setup shall not
4 interfere with pedestrian traffic traveling to the various County offices. Ample travel ways shall
5 be maintained at all times by LICENSEE.

6 3. TERM: This Agreement shall be for a term commencing on or about January 1,
7 2017 and ending December 31, 2021.

8 4. TERMINATION.

9 A. Breach of Contract - The LICENSOR may immediately suspend or terminate
10 this Agreement in whole or in part, where in the determination of the LICENSOR there is:

- 11 1) A failure to comply with any term of this Agreement;
- 12 2) Improperly performed service.

13 In the event of breach of this Agreement by LICENSEE, LICENSOR may immediately
14 terminate this Agreement. If LICENSEE terminates any time after execution, LICENSOR
15 reserves the right, at its sole discretion, to award the Agreement to the next highest bidder, or
16 re-bid the Agreement and LICENSEE will not be eligible to bid at that bid opening but will be
17 eligible at any successive bid opening for the subject Agreement.

18 B. Without Cause - Under circumstances other than those set forth above, this
19 Agreement may be terminated by LICENSOR upon the giving of thirty (30) days advance
20 written notice of an intention to terminate to LICENSEE. This Agreement may also be
21 terminated without cause by LICENSEE giving thirty (30) days advance notice in writing to
22 LICENSOR.

23 5. COMPENSATION: In consideration for granting this exclusive License,
24 LICENSEE shall pay to LICENSOR the sum of \$5,000.00 per year for the use of the Premises
25 payable in equal monthly installments of \$416.66 on or about the first day of each month
26 beginning April 1, 2017. A payment of \$249.98 will be made on March 1, 2017 by the
27 LICENSEE to cover the use of Premises for the month of March 2017. LICENSEE's bid
28 deposit in the amount of \$1,000.00 will be credited to the first two months and a part of the third

1 month's installment. If payment is not made by the 7th of each month, a 10% late penalty
2 charge will be due and payable with said payment. If payment is not made within three (3)
3 weeks of the first of each month, this Agreement may terminate as of the last day of said
4 month. Payments shall be made to the County of Fresno, Department of Public Works and
5 Planning, ATTN: Parks and Grounds Manager - 2220 Tulare Street, 6th Floor, Fresno, CA
6 93721-2120. Should LICENSEE terminate this Agreement as provided herein, no refund of
7 any prepaid fee shall be made, regardless of whether LICENSEE shall have exercised its
8 privileges under this Agreement for less than a full month to which such payment applies.

9 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and
10 obligations assumed by LICENSEE under this Agreement, it is mutually understood and
11 agreed that LICENSEE, including any and all of the LICENSEE'S officers, agents, and
12 employees will at all times be acting and performing as an independent CONTRACTOR, and
13 shall act in an independent capacity and not as an officer, agent, servant, employee, joint
14 venturer, partner, or associate of the LICENSOR. Furthermore, LICENSOR shall have no right
15 to control or supervise or direct the manner or method by which LICENSEE shall perform its
16 work and function. However, LICENSOR shall retain the right to administer this Agreement so
17 as to verify that LICENSEE is performing its obligations in accordance with the terms and
18 conditions thereof.

19 LICENSEE and LICENSOR shall comply with all applicable provisions of law and the
20 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
21 subject thereof.

22 Because of its status as an independent CONTRACTOR, LICENSEE shall have
23 absolutely no right to employment rights and benefits available to LICENSOR employees.
24 LICENSEE shall be solely liable and responsible for providing to, or on behalf of, its employees
25 all legally required employee benefits. In addition, LICENSEE shall be solely responsible and
26 save LICENSOR harmless from all matters relating to payment of LICENSEE'S employees,
27 including compliance with Social Security withholding and all other regulations governing such
28 matters. It is acknowledged that during the term of this Agreement, LICENSEE may be

1 providing services to others unrelated to the LICENSOR or to this Agreement.

2 7. MODIFICATION: Any matters of this Agreement may be modified from time to
3 time by the written consent of all the parties without, in any way, affecting the remainder.

4 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this
5 Agreement nor its respective rights or duties hereunder, without the prior written consent of the
6 other party. Such consent may be given on LICENSOR's behalf by the Fresno County Director
7 of Public Works and Planning or his/her designee.

8 9. HOLD HARMLESS: LICENSEE agrees to indemnify, save and hold harmless,
9 and at LICENSOR'S request, defend LICENSOR, its officers, agents, and employees from any
10 and all costs and expenses including attorney fees and litigation costs, damages, liabilities,
11 claims and losses which shall be caused by or may arise from the exercise by LICENSEE of
12 any rights herein granted, and from all costs and expenses, attorney fees, claims, demands
13 and causes of action that may be incurred by or brought against LICENSOR, its successors or
14 assignees, caused by, arising out of, or in any way connected with the exercise by LICENSEE
15 of any rights herein granted.

16 10. INSURANCE: Without limiting the LICENSOR'S right to obtain indemnification
17 from LICENSEE or any third parties, LICENSEE, at its sole expense, shall procure and
18 maintain in full force the following insurance policies throughout the term of this Agreement:

19 A. Commercial General Liability Commercial General Liability Insurance with
20 limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and an annual
21 aggregate of Two Million Dollars (\$2,000,000.00). This policy shall be issued on a per
22 occurrence basis. LICENSOR may require specific coverage including completed operations,
23 products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any
24 other liability insurance deemed necessary because of the nature of this contract.

25 B. Automobile Liability Comprehensive Automobile Liability Insurance with limits
26 for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per
27 person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages
28 of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single

1 limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and
2 non-owned vehicles used in connection with this Agreement.

3 C. Worker's Compensation A policy of Worker's Compensation insurance as may
4 be required by the California Labor Code.

5 LICENSEE shall obtain endorsements to the Commercial General Liability insurance
6 naming the County of Fresno, its officers, agents, and employees, individually and collectively,
7 as additional insured, but only insofar as the operations under this Agreement are concerned.
8 Such coverage for additional insured shall apply as primary insurance and any other insurance,
9 or self-insurance, maintained by LICENSOR, its officers, agents and employees shall be
10 excess only and not contributing with insurance provided under LICENSEE'S policies herein.
11 This insurance shall not be cancelled or changed without a minimum of thirty (30) days
12 advance written notice given to LICENSOR.

13 Within ten (10) days from the date LICENSEE executes this Agreement, LICENSEE
14 shall provide certificates of insurance and endorsement as stated above for all of the foregoing
15 policies, as required herein, to the County of Fresno, Department of Public Works and
16 Planning, Attn: Parks and Grounds Manager, 2220 Tulare Street, 6th Floor, Fresno, CA 93721-
17 2120, stating that all such insurance policies have been obtained and the coverage provided
18 thereunder is in full force; that the County of Fresno, its officers, agents and employees will not
19 be responsible for any premiums on the policies; that such Commercial General Liability
20 insurance names the County of Fresno, its officers, agents, and employees, individually and
21 collectively, as additional insured, but only insofar as the operations under this Agreement are
22 concerned. Such coverage for additional insured shall apply as primary insurance and any
23 other insurance, or self-insurance maintained by LICENSOR, its officers, agents and
24 employees shall be excess only and not contributing with insurance provided under
25 LICENSEE'S policies herein; and that this insurance shall not be cancelled or changed without
26 a minimum of thirty (30) days advance, written notice given to LICENSOR.

27 In the event LICENSEE fails to keep in effect at all times insurance coverage as
28 herein provided, the LICENSOR may, in addition to other remedies it may have, suspend or

1 terminate this Agreement upon the occurrence of such event.

2 All policies shall be with admitted insurers licensed to do business in the State of
3 California. Insurance purchased shall be purchased from companies possessing a current
4 A.M. Best, Inc. rating of A FSC VIII or better.

5 11. PERMITS: LICENSEE shall provide to the foregoing address a copy of a valid
6 Permit To Operate (Permit) issued by the County of Fresno, Department of Community Health,
7 Environmental Health Division not later than fourteen (14) days following the beginning of the
8 Term of this Agreement. LICENSEE understands that said Permit must be obtained on an
9 annual basis and LICENSEE shall provide a copy of any new annual Permit to the
10 aforementioned address within fourteen (14) days of obtaining the Permit. LICENSEE
11 understands that Permits are not transferable or refundable and said Permits become void
12 upon change of ownership. LICENSEE also understands that any new owner(s) and/or
13 operator(s), (if approved by LICENSOR as required in Section 8 above) must obtain a new
14 Permit prior to beginning operation.

15 12. AUDITS AND INSPECTIONS: The LICENSEE shall at any time during business
16 hours, and as often as the LICENSOR may deem necessary, make available to the LICENSOR
17 for examination all of its records and data with respect to the matters covered by this
18 Agreement. The LICENSEE shall, upon request by the LICENSOR, permit the LICENSOR to
19 audit and inspect all of such records and data necessary to ensure LICENSEE'S compliance
20 with the terms of this Agreement.

21 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
22 subject to the examination and audit of the Auditor General for a period of three (3) years after
23 final payment under contract (Government Code Section 8546.7).

24 13. LITTER AND CLEANUP: LICENSEE shall provide adequate trash disposal units
25 adjacent to the mobile/portable food service facility and shall be responsible for trash removal
26 and area cleanup, including raking or wet mopping on an as needed basis, but no less often
27 than daily. LICENSEE shall prevent staining of any grass, cement walkway or asphalt parking
28 area by insuring that no residue from the unit or food preparation will drip on the grass,

1 concrete or asphalt. Trash containers are to be removed when the mobile/portable food
2 service facility is removed.

3 14. SPECIFICATIONS: LICENSEE shall only sell food and food related products
4 from mobile/portable food service unit(s) and no tables, stands or other methods of vending will
5 be allowed. No general merchandise shall be sold other than those items specifically approved
6 by LICENSOR. LICENSEE shall comply with all of the following:

7 A. The California Retail Food Code (Part 7 of Division 104 of the California Health
8 and Safety Code, commencing with Section 113700, hereinafter "CRFC") and regulations
9 promulgated thereunder, including but not limited to any future laws and regulations
10 enacted/promulgated to replace or supplement CRFC.

11 B. All County of Fresno Ordinances, including all regulations, policies and
12 requirements of the County of Fresno's Department of Community Health.

13 C. Any other laws, regulations or ordinances as they relate to mobile/portable food
14 concession units.

15 15. DAYS OF OPERATION: LICENSEE shall provide food service Monday through
16 Friday, except County observed holidays, during hours mutually agreed upon between
17 LICENSOR and LICENSEE. LICENSEE shall not be required to provide service on such days
18 where inclement weather makes operation uneconomical.

19 16. GOVERNING LAW: Venue for any action arising out of or relating to this License
20 Agreement shall only be in Fresno County, California. The rights and obligations of the parties
21 and all interpretation and performance of this License Agreement shall be governed in all
22 respects by the laws of the State of California.

23 17. NOTICES: Any and all notices between either party under the terms of this
24 Agreement or by law shall be in writing and shall be deemed to be duly given if served when
25 personally delivered or deposited into the United States mail, with postage prepaid, registered,
26 and addressed to the respective addresses stated as follows:

27 ///

28 ///

County of Fresno
Dept. of Public Works and Planning
Parks and Grounds Manager
2220 Tulare Street, 6th Floor
Fresno, CA 93721-2120
(559) 600-3004

El Taconazo Catering
Daisy Faola Garcia
807 Lemieux Lane
Clovis, CA 93619
Office - (559) 307-8651
Cell - (559) 790-0961

For all claims arising out of or related to this Agreement, nothing in this Section 19. establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

18. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the LICENSEE and LICENSOR with respect to the subject matter thereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

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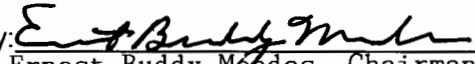
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1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of
2 the day and year first above written.

3 LICENSEE

COUNTY OF FRESNO

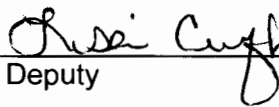
4
5 By: 
6 Daisy Faola Garcia, Owner

By: 
Ernest Buddy Mendes, Chairman
Board of Supervisors

7 El Taconazo Catering
8 807 Lemieux Lane
9 Clovis, CA 93619

ATTEST:
Bernice E. Seidel, Clerk
Board of Supervisors


10 Date: 10-26-16

By: 
Deputy

11 REVIEWED AND RECOMMENDED
12 FOR APPROVAL:

13 By: 
14 Steven E. White, Director
Department of Public Works and Planning

15 APPROVED AS TO LEGAL FORM:
16 Daniel C. Cederborg, County Counsel

17 By: 
18 Deputy

19 APPROVED AS TO ACCOUNTING FORM:
20 Oscar J. Garcia, CPA
21 Auditor-Controller/Treasurer-Tax Collector

22 By: 
23 Deputy

24
25 FOR ACCOUNTING USE ONLY:

26 Budget Unit No.: 7910
27 Fund No.: 0001
28 Account No.: 3400

Exhibit A
UMC Campus

