



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 6/6/2023

Agenda Item: 7N

Department: Public Works
Prepared By Kiel Koger, Public Works Director/City Engineer

Subject:
ADOPTION OF RESOLUTION NO. 23-30, APPROVING A LICENSE AGREEMENT WITH ABOUND FOOD CARE FOR EMERGENCY MEAL STORAGE

Summary:

At its Regular meeting of May 16, 2023, Council requested staff provide additional information regarding the Abound Food Care Emergency Meal Storage Program, concerning where expiring food is donated, County oversight of the program and overall program protocol. This information has now been provided to Council for consideration.

City Council approval of the resolution would approve a five-year license agreement with Abound Food Care to install, maintain and operate one solar powered cold storage unit with solar panels in a material storage yard at the City's Water Reclamation Plant at 380 Avenida Pico. The unit will store ready-to-eat meals for the purpose of providing meals to community members in times of disaster. The unit will be placed on a concrete pad and will be self-contained with no need for any utilities. Location of this emergency food storage unit was previously approved by the City Council at the November 1, 2022 Council meeting.

Background:

Founded in 2012, Abound Food Care's mission is to provide solutions and facilitate collaboration with public, private, and non-profit sectors to guide and support the implementation of regional food care programs that optimize the supply chain to end hunger and food waste. Their Emergency Food Management Program enables local jurisdictions, state and federal agencies, emergency services, and community organizations to provide ready-to-eat, nutritious meals following an emergency and ensuring that citizens have access to food. The meals are intended for emergency use only. As expiration dates approach, the meals will be rotated out for disbursement to local non-profits. The first priority will be to work with San Clemente non-profits, but Abound Food Care will also work with surrounding city agencies for distribution to residents in need. Serving San Clemente residents in need will be the first priority.

As discussed in the November 1, 2022 agenda report, this project is within the Coastal Zone and would require Abound Food Care to apply for, and receive, approval from the California Coastal Commission. The activities permitted under the License Agreement are not allowed to occur until a Coastal Development Permit or waiver is obtained.

Council Options:

- Adopt Resolution No. 23-30, approving the License Agreement with Abound Food Care.

- Modify and adopt Resolution No. 23-30, approving the License Agreement with Abound Food Care.
- Continue the Item and direct staff to provide additional information.
- Do not adopt the resolution and deny the request to approve the License Agreement with Abound Food Care.

Fiscal Impact:

None.

Environmental Review/Analysis:

This project was previously determined to be categorically exempt from the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures, 14 CCR Section 15303) under the State CEQA Guidelines as detailed in the November 1, 2022 agenda report.

Recommended Actions:

Staff Recommendation

Adopt Resolution No. 23-30, which would authorize the City Manager to sign the License Agreement between Abound Food Care and the City of San Clemente allowing the use of space in a material storage yard at the City's Water Reclamation Plant at 380 Avenida Pico to place and operate one solar powered cold storage unit with solar panels.

Attachment:

1. License Agreement
2. Agenda Report from November 1, 2022 City Council meeting
3. Resolution 23-30

Notification:

None.

**LICENSE AGREEMENT
BY AND BETWEEN THE CITY OF SAN CLEMENTE,
AND ABOUND FOOD CARE FOR USE OF REAL PROPERTY**

PARTIES AND DATE

This License Agreement (“Agreement”) is entered into as of _____, 2023 (“Effective Date”) by and between the City of San Clemente, a California municipal corporation (the “City”), the owners of real property at 380 Avenida Pico, and Abound Food Care, a California non-profit public benefit corporation, (the “Licensee”). The City and Licensee are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

- A. The City owns that certain real property, generally located at 380 Avenida Pico, with accessor’s parcel numbers [691-433-01], in the City of San Clemente, County of Orange, State of California (the “Property”).
- B. The Licensee wishes to place and operate one solar powered cold storage unit, with dimensions of approximately 40’ x 8’ x 10’ with solar panel extensions, to store ready-to-heat-and-eat meals (“Storage Container”) as part of the Emergency Nutritious Food Management Program (“Program”) on the City Property, for the purpose of providing meals to community members in times of disaster. Specifically, Licensee desires to place the Storage Container on a portion of the City Property and to have access to such Storage Container by ingress and egress across the Property as identified in Exhibit A, which is attached hereto and incorporated herein by reference (“Licensed Property”); and
- C. Licensee’s Program will involve the storage of ready-to-heat-and-eat-meals in cold storage units provided by Licensee, which Licensee will rotate and replace in advance of product expiration, with excess meals provided by Licensee to local organizations serving community members faced with food insecurity; and
- D. Placing Storage Container on the Licensed Property will increase the probability that otherwise food insecure families and individuals within the City of San Clemente will benefit from the Program and any meals obtained from the Storage Container, pursuant to Licensee’s policies and procedures; and
- E. Licensee will be solely responsible for managing and distributing the meals pursuant to its own policies and procedures, with City having no involvement, discretion, liability, or role in managing or maintaining the Storage Container or Program; and
- F. City is willing to grant Licensee a license to access and place the Storage Container on the Licensed Property to operate the Program in accordance with the terms and conditions of this Agreement; and
- G. City intends to provide Licensee with limited use of the Licensed Property pursuant to the terms of this Agreement, and in no way intends to grant property or easement rights to Licensee relating to the Licensed Property; and

- H. The City desires to accommodate the Licensee’s request, subject to the terms and conditions set forth in this Agreement.

TERMS

Now therefore, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. License.

1.1. Grant. The City hereby grants to the Licensee, and the Licensee’s representatives and agents, a revocable, non-transferable, non-exclusive license to access the Property for the limited purpose of conducting the Permitted Activities described in Section 3 (Permitted Activities) (the “License”). The Parties hereby acknowledge and agree that use of the Property by Licensee, as set forth in this Agreement, is with the consent of the City and shall be considered permissive.

1.2. No Transfer of Interest. Nothing in this Agreement shall be interpreted as, or otherwise deemed to be, a transfer or conveyance of any interest in the Property whatsoever between the City and the Licensee and the Licensee shall not claim any. The Parties hereby acknowledge and agree that nothing in the Agreement shall be interpreted as an agreement for the lease or other use of the Property by Licensee. This Agreement does not create any recordable interest and shall not be recorded in any official records.

2. Term. The term of this License shall commence on the Effective Date and shall, unless otherwise modified, continue for five (5) years unless the Agreement is extended by mutual agreement in writing or terminated by either Party without cause or penalty with 60 days written notice per Section 11 (Termination, Default, and Restoration).

3. Permitted Activities and Other Uses.

3.1. Permitted Activities. After obtaining all Required Approvals (as defined in Section 4.1 below), Licensee is authorized to conduct the following activities on the Property (“Permitted Activities”):

3.1.1. Place, access, operate, repair and maintain one solar powered cold storage unit, with dimensions of approximately 40’ x 8’ x 10’ with solar panel extensions, to store ready-to-heat-and-eat meals (“Storage Container”) as part of the Emergency Nutritious Food Management Program (“Program”) on the City Property, for the purpose of providing meals to community members in times of disaster. Licensee will be solely responsible for managing and distributing the meals pursuant to its own policies and procedures, with City having no involvement, discretion, liability, or role in managing or maintaining the Storage Container or Program.

- 3.2. Time. Except for passive operations and access to the Storage Containers to provide meals in response to an emergency, all Permitted Activities are limited to the time of 7 a.m. to 5 p.m. Monday through Friday.
 - 3.3. Other Uses. The Licensee shall not use the Property for any other purposes whatsoever, except as authorized by subsequent written agreement signed by the City.
 4. Required Approvals and Compliance.
 - 4.1. Required Approvals. The use of the Licensed Property by the Licensee for Permitted Activities pursuant to this Agreement is subject to Licensee obtaining, at its sole cost and expense, and maintaining throughout the term of this License, all approvals and permits required by any federal, state, or local government agency, including a Coastal Development Permit or waiver thereof from the California Coastal Commission and the City Approvals listed in Section 4.2 (City Approvals) (“Required Approvals”).
 - 4.2. City Approvals. The Licensee must apply for and obtain the following approvals from the City (“City Approvals”):
 - 4.2.1. Required building permits for the proposed concrete foundation and Storage Container. A building permit will not be issued until Licensee has obtained a Coastal Development Permit or waiver thereof from the California Coastal Commission.
 - 4.3. City Review. The City does not make any representation that it will issue or otherwise assist in the issuance of any Required Approvals. The City shall have no obligation or liability to verify whether Licensee has obtained all Required Approvals.
 - 4.4. Compliance. The Licensee’s rights under this Agreement shall be conditioned upon, and Licensee shall, at its sole cost and expense, comply with each and every federal, state and local law, regulation, standard, court decision, ordinance, rule, code, order, decree, directive, guideline, permit and permit condition, together with any declaration of covenants, conditions and restrictions that are recorded in any official or public records with respect to the Property or any portion thereof, each as currently existing and as amended, enacted, issued or adopted from time to time, that are applicable to the Permitted Activities and the Property.
 5. Standard of Performance. All Permitted Activities shall be performed in accordance with the highest standards and practices in the industry.
 6. Hazardous Materials. The Licensee shall not under any circumstances store or bring onto the Property any Hazardous Materials. As used in this Agreement, the term “Hazardous Material” means any substance, material or waste which is (1) defined as a “hazardous

waste,” “hazardous material,” hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (7) defined as a “hazardous substance: pursuant to the Resource Conversation and Recover Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. §6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. §9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

7. No Duty to Warn. The City has no duty to inspect the Property and no duty to warn the Licensee or any person of any other latent or patent defect, condition or risk that might be incurred in entering the Property. The Licensee has inspected or will inspect the Property and hereby accepts the condition of the Property “AS IS.” The Licensee acknowledges that neither the City, nor any employee, agent or representative of the City, has made representations or warranties concerning the condition of the Property. All persons entering the Property under this Agreement do so at their own risk.
8. Liability for Damage. With respect to Licensee’s rights under this Agreement, the Licensee shall be responsible for any damage done to any person, or to the Property or any other property, caused by the Licensee or its officers, directors, employees, agents, independent contractors, insurers, lenders, representatives, successors or permitted assigns of the Licensee, or other users.
9. Insurance. Each Licensee shall maintain in effect during the entire term of this Agreement each of the following:
 - 9.1. Insurance Coverage.
 - 9.1.1. Comprehensive General Liability. Comprehensive General Liability Insurance which affords coverage including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Licensee performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:
 - 9.1.1.1. Name the City of San Clemente and its employees, representatives, officers and agents (collectively hereinafter “City and City Personnel”) as additional insured for claims arising out of Licensee’s performance of this Agreement.

- 9.1.1.2. Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.
- 9.1.2. Automobile Liability Insurance. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all “owned,” “hired” and “non-owned” vehicles, or coverage for “any auto.” Such insurance shall be endorsed to:
 - 9.1.2.1. Name the City and City Personnel as additional insured for claims arising out of Licensee performance of this Agreement.
 - 9.1.2.2. Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.
- 9.1.3. Workers’ Compensation Insurance. Workers’ Compensation Insurance in accordance with the Labor Code of California and covering all employees of the Licensee providing any service in the performance of this agreement. Such insurance shall be endorsed to: Waive the insurer’s right of Subrogation against the City and City Personnel.
- 9.2. Evidence of Insurance. The Licensee shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.
- 9.3. Endorsements.
 - 9.3.1. Valid Endorsements. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.
 - 9.3.2. Additional Insured Endorsements Additional Insured Endorsements shall not:
 - 9.3.2.1. Be limited to “Ongoing Operations.”
 - 9.3.2.2. Exclude “Contractual Liability.”

9.3.2.3.Restrict coverage to the “Sole” liability of Licensee.

9.3.2.4.Contain any other exclusion contrary to the Agreement.

9.4. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best’s rating of A VII or higher and authorized to do business in the State of California or approved in writing by the City.

10. Liens.

10.1. No Liens Due to Licensee’s Activities. Licensee shall not permit to be placed against the Property, or any part thereof, any design professionals’, mechanics’, materialmen’s, contractors’ or subcontractors’ liens due to Licensee’s construction activities thereon or use thereof. Licensee shall indemnify, defend (with counsel acceptable to City) and hold the City harmless from all liability for any and all liens, claims and demands, together with the costs of defense and reasonable attorneys’ fees, related to same.

10.2. Failure to Defend. In addition to, and not in limitation of, the City’s other rights and remedies under this Agreement, should Licensee fail either to discharge any lien or claim related to Licensee’ construction activities on or use of the Property or to bond for any lien or claim to the reasonable satisfaction of the City, or to indemnify, hold harmless and defend the City from and against any loss, damage, injury, liability or claim arising out of Licensee use of the Property, then the City, at its option, may elect to pay any lien, claim, loss, demand, injury, liability or damages, or settle or discharge any action or satisfy any judgment and all costs, expenses and attorneys’ fees incurred in doing so shall be paid to the City by Licensee upon written demand within ten (10) days, together with interest thereon at the rate of ten percent (10%) per annum from the date incurred or paid through and including the date of payment by Licensee.

11. Termination, Default, and Restoration.

11.1. Termination Without Cause. This Agreement may be terminated by either Party without cause by giving sixty (60) days’ written notice to the other Party.

11.2. Termination for Cause. In addition to the rights described in Section 11.1 (Termination Without Cause), the City shall have the right to terminate this Agreement immediately upon the Licensee’ Default.

11.2.1. Default. “Default” means the failure of the Licensee to perform or violation of any term, condition, covenant or agreement of this Agreement, and the continuation of such failure or violation for a period of ten (10) days after the City shall have given the Licensee written notice specifying the same, or in the case of a situation in which the default cannot reasonably be cured within ten (10) days, if the Licensee shall not promptly, within ten (10) days

after receipt of such notice, commence to remedy the situation by a means that can reasonably be expected to remedy the situation within a reasonable period of time, not to exceed thirty (30) days from the notice of Default, and diligently pursue the same to completion.

11.2.2. Termination and Removal of Licensee's Property. In the event of any Default by Licensee, including expiration of any applicable cure period, the City may terminate the Agreement and remove Licensee and their property from the Property by any lawful means available in law or equity.

11.3. Restoration of Land to Original Condition. Upon termination of the Agreement, the Licensee shall be responsible for removing all improvements the Licensee placed upon the land, unless the City elects in writing to accept some or all of said improvements. Any improvements accepted by the City will be at no cost to the City. The Licensee shall promptly initiate and exercise due diligence in removing said improvements until all improvements have been removed and restore the Licensed Property to its original condition or better to the City's satisfaction, which shall be completed within not more than thirty (30) days following termination of this Agreement.

11.4. Effect of Termination. Termination of this Agreement shall in no way prejudice any of the rights and remedies available to the City at law or in equity, and the Licensee acknowledge and agree that all of the obligations and responsibilities of Licensee under this Agreement shall continue and survive such termination.

12. Miscellaneous.

12.1. Indemnification.

12.1.1. Indemnification of the City by the Licensee. The Licensee shall defend (with counsel acceptable to City), indemnify and hold the City, its officials, officers, employees, and agents (the "Indemnified Parties") free and harmless from any and all liability from any and all claims, causes of action, proceedings, losses, damages, costs (including attorney fees), expenses, taxes, fines, liens and injuries to property or persons, including wrongful death, in any manner arising out of, related to or incident to this Agreement or the acts, omissions, and/or operations by the Licensee, its officials, officers, personnel, employees, contractors, employees and/or subcontractors as well as its contractors' and/or subcontractors' officials, officers, employees, agents and/or volunteers. Further, the Licensee shall defend at its own expense, including attorneys' fees, the Indemnified Parties in any legal action based upon such acts, omissions and/or operations.

12.1.2. The Licensee's Obligations. The Licensee's obligations under this Section 12.1 (Indemnification) shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, regardless of whether or not the City has prepared, supplied, or approved any plans or for the uses

allowed by this Agreement, and regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

12.1.3. The City's Rights. The City does not and shall not waive any rights against the Licensee that the City may have under the indemnification provision in this Section 12.1 (Indemnification) because of the City's acceptance of any security deposits or insurance policies.

12.1.4. Survival. The indemnification provision in this Section 12.1 (Indemnification) shall survive the termination or expiration of this Agreement.

12.2. Possessory Interest Taxes. Licensee recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that the Licensee may be subject to the payment of property taxes levied on such interest. Licensee agrees to promptly pay any such taxes.

12.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County. Licensee waives any rights that it may have under Code of Civil Procedure §394.

12.4. Waiver. The City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or the City's waiver of any breach hereunder, shall not relieve the Licensee of any of its obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the City's actions are intentional or unintentional. Further, the Licensee agrees to waive as a defense, counterclaim, or setoff any and all defects, irregularities, or deficiencies in the authorization, execution, or performance of this Agreement as well as any laws, rules, regulations, ordinances, or resolutions of the City with regard to this Agreement.

12.5. Supplement, Modification, and Amendment. No supplement, modification, and/or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

12.6. Assignment or Transfer.

12.6.1. No Assignment without the City's Consent. The Licensee shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of the City. Any attempt to do so shall be null and void, and any assignee, hypothecate, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in the City's written consent, any assignment, hypothecation, or transfer shall not release or discharge the Licensee from any duty or responsibility under this Agreement.

12.6.2. Merger. The transfer of a majority of the ownership interests in the Licensee, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, or the merger of the Licensee into any other entity in which the Licensee is not the surviving entity, or the sale of all or substantially all of the Licensee's assets, shall be deemed an assignment of the Licensee's rights hereunder subject to the requirements of Section 12.6.1 (No Assignment without the City's Consent).

12.7. Construction, References, and Captions.

12.7.1. Simple Construction. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

12.7.2. Section Headings. Section headings contained in this Agreement are for convenience only and shall not have an effect in the construction or interpretation of any provision.

12.7.3. Calendar Days. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days.

12.7.4. References to the City. All references to the City shall include, but shall not be limited to, City Council, City Manager, City Attorney, City Engineer, or any of their authorized representatives. The City shall have the sole and absolute discretion to determine which public body, public official or public employee may act on behalf of the City for any particular purpose.

12.7.5. References to the Licensee. All references to the Licensee shall include all officials, officers, personnel, employees, agents, contractors, volunteers and subcontractors of Licensee, except as otherwise specified in this Agreement.

12.8. Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

To City:

City of San Clemente
910 Calle Negocio
San Clemente, CA 92672
Attn: Kiel Koger

To Licensee:

Abound Food Care
200 N. Tustin Suite 110
Santa Ana, CA 92705
Attn: Mike Learakos,
CEO

12.9. Entire Agreement and Severability.

- 12.9.1. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied.
- 12.9.2. Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 12.10. Binding Effect.
- 12.10.1. The Parties. Each and all of the terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns.
- 12.10.2. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- 12.10.3. Counterparts and Electronic Signatures. This Agreement may be executed electronically by DocuSign® and in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. True facsimile, electronic or photocopies shall be binding to the same extent as an original signature page.
- 12.10.4. Authority. Each of the signatories below represents and warrants that he/she has the authority to enter into this Agreement and bind the Party such person is signing as the representative of and that no further actions or authorizations are required to enter into this Agreement.

Signatures on next page.

**SIGNATURE PAGE TO LICENSE AGREEMENT
BY AND BETWEEN THE CITY OF SAN CLEMENTE,
OWNER OF THE PROPERTY AT 380 AVENIDA PICO,
AND ABOUND FOOD CARE (LICENSEE)**

In witness thereof, the Parties here to have executed this Agreement:

City of San Clemente

Licensee: Abound Food Care

By:

By: _____

ANDY HALL,
CITY MANAGER

MIKE LEARAKOS
CEO

ATTEST:

By:

LAURA CAMPAGNOLO,
CITY CLERK

APPROVED AS TO FORM:

By:

ELIZABETH MITCHELL,
CITY ATTORNEY

EXHIBIT A
LICENSED PROPERTY
LOCATION OF STORAGE CONTAINER AND ACCESS AT CITY OF
SAN CLEMENTE



**CONTAINER TO BE
LOCATED IN THIS AREA A**

**PATH OF
INGRESS/EGRESS TO BE
LOCATED IN THIS AREA B**

Areas A and B together shall constitute the Licensed Property under the Agreement for the Permitted Activities.



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 11/1/2022

Agenda Item: 4F

Department: Community Development

Prepared By: Adam Atamian, Deputy Community Development Director

Subject:

RECOMMENDATION OF THE PUBLIC SAFETY COMMITTEE TO CONSIDER SITE AT 380 AVENIDA PICO (THE CITY'S WATER RECLAMATION PLANT PROPERTY) AS A POTENTIAL LOCATION FOR AN EMERGENCY FOOD STORAGE UNIT

Fiscal Impact:

None.

Summary:

On June 28, 2022, the Public Safety Committee (PSC) approved forwarding a recommendation to the City Council to consider providing space at the City's Water Reclamation Plant located at 380 Avenida Pico for a food storage unit.

Background:

This item was presented at the City Council meeting of September 6, 2022. At that meeting, the Council directed staff to bring this item back for Council consideration after Councilmembers, either individually or in pairs, had an opportunity to meet with representatives of Abound Food Care (AFC). Council members who were interested met recently with AFC to learn more about the operations of their organization and the food storage-unit program. As result, this item is being brought back for the Council's consideration.

As part of the PSC's 2021-2022 Annual Work Plan, the PSC received a special presentation by AFC related to disaster preparedness and planning, specifically methods to make food available for distribution during an emergency. The food-storage units are typically manufactured from shipping containers, measuring 20 ft. by 8 ft. by 8.5 ft.

Discussion:

AFC has worked with other local government agencies and organizations in Orange County to place emergency, food-storage units around the County. The meals inside would be available for distribution to the community in case of a natural disaster or other serious emergency. If no emergency occurs, the meals are distributed to local nonprofits at regular intervals, then new meals are prepared for storage in the unit.

AFC staff indicated to the PSC that they are looking for a location in San Clemente for placement of a food-storage unit. Attachment 1 provides a location map of the proposed area. AFC has grant funding to cover expenses related to the preparation of the food and provision of the food-storage unit, no costs of this program are required to be paid by the City. This consideration relates only to the approval of a location on City property for the potential placement of a food-storage unit at a date

in the future which is currently unknown.

Should Council accept the PSC's recommendation to allow the use of the City's Water Reclamation Plant property for the purpose of an emergency, food-storage unit, future applicants, such as AFC, would be required to submit a request to the City for the use of said property. This request may require a lease agreement with the City to ensure the long-term maintenance of the unit and the City's property. In addition, due to its location in the Coastal Zone, prior to the placement of a food-storage unit within the proposed area, applicants would be required to apply for, and receive, approval of the project from the California Coastal Commission.

Plan and Policy Consistency:

The Centennial General Plan's Safety Element includes the Goal to, "[continue] to be a safe, disaster -resilient community that is prepared through effective community outreach, proactive monitoring, and efficient emergency services, response, recovery and mitigation." This goal is achieved through implementation of Policy S-7.04, Interdepartmental and Interagency Collaboration, which states, "We collaborate among City departments and with organizations outside of the City for a comprehensive approach to emergency services and disaster preparedness, response and recovery, including continuity of operations (e.g. information technology and financial services)."

Environmental Review (CEQA):

The Community Development Department completed an environmental assessment for the proposed project in accordance with the California Environmental Quality Act (CEQA). Staff recommends the City Council hereby finds and determines that the proposed project is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15303 (Class 3: New Construction or Conversion of Small Structures), 15304 (Class 4: Minor Alterations to Land), and Section 15311 (Class 11: Accessory Structures).

The Class 3 exemption specifically exempts from further CEQA review, the construction and location of limited numbers of new, small facilities or structures, such as accessory and appurtenant structures. The Class 4 exemption specifically exempts minor alterations in the condition of land, water, and/or vegetation that do not involve the removal of healthy, mature, scenic trees. The Class 11 exemption specifically exempts the construction or replacement of minor structures accessory or appurtenant to existing commercial, industrial, or institutional facilities, such as mobile food units. Here, the project involves the placement of a non-permanent, food-storage unit, potentially involving minimal grading to create a level pad, accessory to the existing use of the proposed property location.

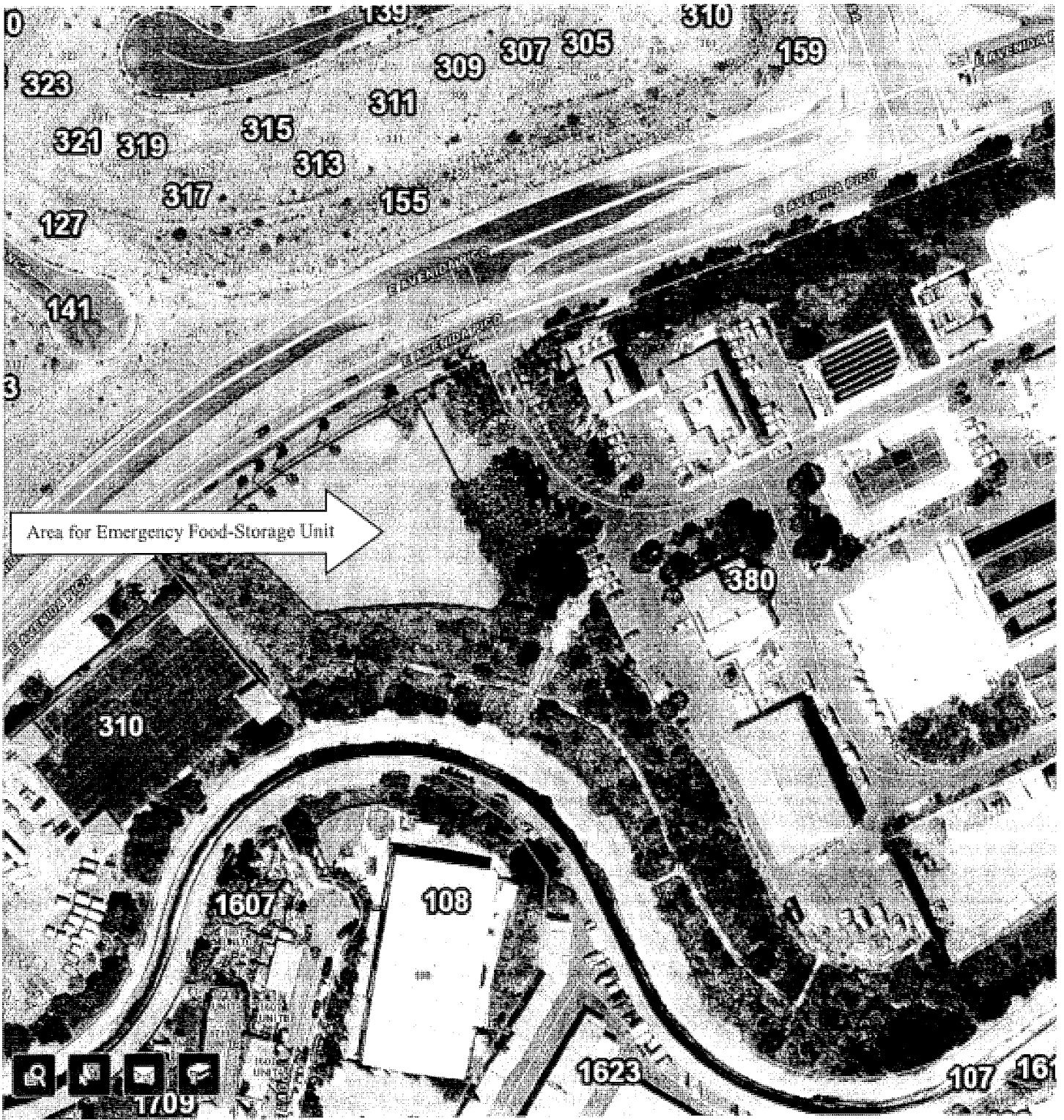
Furthermore, none of the exceptions to the use of the Class 3, 4 and 11 categorical exemptions identified in State CEQA Guidelines section 15300.2 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. There are no sensitive resources, such as endangered species, on the project site or in the vicinity. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources.

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council approve the Public Safety Committee's recommendation to allow a portion of the City's Water Reclamation Plant property to be used for the placement of an emergency food-storage unit.

Attachment:
Location Map.



RESOLUTION NO. 23-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SAN CLEMENTE, CALIFORNIA, APPROVING A
LICENSE AGREEMENT WITH ABOUND FOOD CARE

WHEREAS, the City wishes to have a storage facility within the City limits for emergency food in the time of a disaster or emergency; and

WHEREAS, Abound Food Care's mission is to provide solutions and facilitate collaboration with public, private, and non-profit sectors to guide and support the implementation of regional food care programs that optimize the supply chain to end hunger and food waste; and

WHEREAS, Abound Food Care's Emergency Food Management Program enables local jurisdictions, state and federal agencies, emergency services, and community organizations to provide ready-to-eat, nutritious meals following an emergency and ensuring that citizens have access to food; and

WHEREAS, Abound Food Care's first priority will be to work with San Clemente non-profits, but will also work with surrounding city agencies for distribution to residents in need; and

WHEREAS, the location of this emergency food storage unit was previously approved by the City Council at the November 1, 2022 Council meeting; and

WHEREAS, the project was previously determined to be categorically exempt from the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures, 14 CCR Section 15303) under the State CEQA Guidelines; and

WHEREAS, a five-year license agreement with Abound Food Care to install, maintain and operate one solar powered cold storage unit with solar panels in a material storage yard at the City's Water Reclamation Plant at 380 Avenida Pico is in the best interests of the citizens of San Clemente.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby resolve as follows:

SECTION 1. That the above recitations are true and correct.

SECTION 2. That the City Manager is authorized to execute a License Agreement with Abound Food Care to install, maintain and operate one solar powered cold storage unit with solar panels in a material storage yard at the City's Water Reclamation

Plant at 380 Avenida Pico for a five-year term in a form substantially similar to the agreement attached to this resolution as Exhibit A and incorporated fully herein by this reference.

SECTION 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of June, 2023.

Mayor of the City of
San Clemente, California

ATTEST:

CITY CLERK of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _23-30 was adopted at a regular meeting of the City Council of the City of San Clemente held on _____ day of June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney