

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-103

SAP Number

Real Estate Services Department

Department Contract Representative
Telephone Number

Terry W. Thompson, Director
(909) 387-5252

Contractor
Contractor Representative
Telephone Number
Contract Term

OptumServe Health Services, Inc
Sarah Wabaunsee, Director
(866) 852-1988, Ext. 51116
January 18, 2022 through
March 31, 2022

Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center
GRC/PROJ/JOB No.
Internal Order No.

N/A
N/A
N/A

Briefly describe the general nature of the contract: This Use Permit is for the use of a certain portion of the parking lot located at the County-owned property at 172 West 3rd Street in San Bernardino, CA, comprising approximately 1,600 square feet, for the period of January 18, 2022 through March 31, 2022 between the hours of 7:00 AM through 7:00 PM, to park a bus that will serve as a walk up COVID-19 testing site for Permittee's OptumServe program. The fee to Permittee for the use permitted under this Use Permit for the use period is \$0.00.

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE SIGNATURE PAGE
Agnes Cheng, Deputy County Counsel

Date

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Lyle Ballard, Real Property Manager, RESD

Date

USE PERMIT

1. **PARTIES:** San Bernardino County, hereinafter referred to as COUNTY, hereby permits OptumServe Health Services, Inc., whose address is 328 Front Street, La Crosse, WI 54601, hereinafter referred to as PERMITTEE, for the use of a certain portion of the parking lot at the COUNTY-owned property, comprising approximately 1,600 square feet ("Use Area"), located at 172 West 3rd Street, San Bernardino, CA. 92415, as the Use Area is shown in Exhibit "A" attached hereto. This Use Permit is for the period of January 18, 2022 through March 31, 2022 between the hours of 7:00 AM through 7:00 PM, as a walk up COVID-19 testing site ("Use Period").

2. **USE:**

A. PERMITTEE shall use the Use Area during the Use Period for only the following purpose: to park a bus that will serve as a walk up COVID-19 testing site for Permittee's OptumServe program ("Permitted Use"). PERMITTEE must not use the Use Area for any other purpose. PERMITTEE acknowledges, and understands that PERMITTEE accepts the Use Area is provided in "AS IS" condition without any representations or warranties by COUNTY. PERMITTEE shall not park or otherwise leave the bus or any other personal property in the Use Area outside of the permitted times during the Use Period and assumes all risk of theft, loss, and other damage for its personal property.

B. PERMITTEE shall be solely responsible for establishing and implementing health and safety protocols during the Use Period in response to COVID-19, including but not limited to cleaning, sanitation, and disinfection procedures, prevention measures, and screening of its employees, contractors, agents, volunteers, and invitees in compliance with then current local, state, and federal laws and guidance issued by recognized health agencies, such as the Centers for Disease Control and the World Health Organization. PERMITTEE shall ensure its employees, contractors, agents, volunteers, and invitees comply with all health and safety protocols at all times during the Use Period.

C. PERMITTEE shall be responsible at its sole cost and expense for complying with all laws regarding biohazardous materials and waste arising from its Permitted Use of the Use Area, including but not limited to handling during the Use Period and removal at the end of the Use Period.

3. **FEES:** There are no fees payable by PERMITTEE for the Use Area during the Use Period.

4. **INDEMNIFICATION:** The PERMITTEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless the COUNTY and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, injuries, and/or liability arising out of this Use Permit from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses, including but not limited to attorneys' fees, incurred by the COUNTY on account of any claims, actions, losses, damages, injuries, and/or liability, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The PERMITTEE's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. The PERMITTEE's obligation under this paragraph shall survive the expiration or earlier termination of this Use Permit.

5. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. The PERMITTEE agrees to provide insurance set forth in accordance with the requirements herein. If the PERMITTEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the PERMITTEE agrees to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the Use Permit hereunder.

Without in anyway affecting the indemnity herein provided and in addition thereto, the PERMITTEE shall secure and maintain throughout the Use Period the following types of insurance with limits as shown.

(1) Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons, including employees, providing services on behalf of the PERMITTEE and all risks to such persons under this Use Permit.

If PERMITTEE has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Director of Risk Management.

If PERMITTEE is a non-profit corporation, organized under California or Federal law, volunteers for PERMITTEE are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance – The PERMITTEE shall carry General Liability Insurance covering all operations performed by or on behalf of the PERMITTEE providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse, and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) Two Million Dollars (\$2,000,000) general aggregate limit.

(3) Reserved.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the PERMITTEE is transporting one or more non-employee passengers in the use of this Use Permit, the automobile liability policy shall have a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the PERMITTEE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(5) Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury, and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

B. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this Use Permit hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85, or equivalent.

C. Waiver of Subrogation Rights – The PERMITTEE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers,

contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the PERMITTEE and PERMITTEE's employees or agents from waiving the right of subrogation prior to a loss or claim. The PERMITTEE hereby waives all rights of subrogation against the COUNTY.

D. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

E. Reserved.

F. Severability of Interests – The PERMITTEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the PERMITTEE and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

G. Proof of Coverage – The PERMITTEE shall furnish Certificates of Insurance to the COUNTY's Real Estate Services Department (RES D) administering the Use Permit evidencing the insurance coverage, including endorsements, as required, prior to the commencement of use hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RES D, and PERMITTEE shall maintain such insurance from the time PERMITTEE commences use under the Use Permit hereunder until the end of the period of the Use Permit. Within fifteen (15) days of the commencement of this Use Permit, the PERMITTEE shall furnish a copy of the endorsements immediately upon request.

H. Reserved.

I. Reserved.

J. Insurance Review – Insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Director of Risk Management or designee is authorized, but not required, to reduce, waive, or suspend any insurance requirements whenever the COUNTY's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Use Permit. PERMITTEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RES D or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RES D or the COUNTY.

K. Failure to Procure Insurance. All insurance required must be maintained in force at all times by PERMITTEE. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all PERMITTEE's business activities on the Use Area. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Use Permit, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by PERMITTEE to COUNTY upon demand but only for the pro rata period of non-compliance.

L. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with PERMITTEE in PERMITTEE's operations.

M. Reserved.

6. DAMAGE PROVISIONS: PERMITTEE must repair the Use Area (or any portion thereof) and/or any improvements on the Use Area improvements that are damaged by PERMITTEE, its employees, volunteers, agents, members, invitees, or guests.

7. **ATTORNEY'S FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph will not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable to the COUNTY under Paragraph 4, **INDEMNIFICATION**, Paragraph 5, **INSURANCE REQUIREMENTS AND SPECIFICATIONS**, and Paragraph 15, **PUBLIC RECORDS DISCLOSURE**.

8. **CONDUCT OF EMPLOYEES:** PERMITTEE is responsible for the conduct of its employees, volunteers, agents, members, invitees, and guests on the Use Area and the entire property of which the Use Area is part. PERMITTEE shall not disrupt nor permit its employees, contractors, or invitees to disrupt the County's operations at the property nor impede access to and from the property, including the buildings, parking areas (other than the Use Area), and the common areas thereon, by COUNTY and its employees, contractors, agents, and invitees

9. **TERMINATION:** In the event that either party is in default of any of the terms and conditions of this Use Permit, the non-defaulting party may give written notice to the defaulting party of specific violations. If, within one (1) business day after written notice and demand, the defaulting party has not corrected such default, the non-defaulting party shall have the right to terminate this Use Permit.

10. **DESIGNATION:** The COUNTY's Director of the Real Estate Services Department is authorized to exercise the COUNTY's rights under this Use Permit, including but not limited to the COUNTY's right to terminate this Use Permit in accordance with its terms.

11. **COMPLIANCE WITH LAWS:** PERMITTEE and its employees, volunteers, agents, members, invitees, and guests comply with all rules and regulations established by the COUNTY for the Use Area and with all applicable ordinances, statutes, and laws of the San Bernardino County, State of California, the United States of America, and all other governmental or regulatory agencies having jurisdiction over the Permitted Use and the Use Area.

12. **NO INTEREST OR ESTATE:** PERMITTEE agrees that it does not have and will not claim at any time any interest or estate of any kind or extend whatsoever in the Use Area and the entire property of which the Use Area is part, by virtue of this Use Permit or its use hereunder.

13. **RESERVED.**

14. **ASSIGNMENT AND TRANSFER:** This Use Permit is personal to the PERMITTEE and PERMITTEE shall not have any right to assign or otherwise transfer this Use Permit to any other person or entity.

15. **PUBLIC RECORDS DISCLOSURE:** Use Permit PERMITTEE acknowledges and agrees that all information received by COUNTY from PERMITTEE or any source concerning the Use Permit or the Permitted Use, including the Use Permit itself, may be treated by COUNTY as public information, subject to disclosure under the provisions of the California Public Records Act (Government Code Section 6250 et seq.), the Ralph M Brown Act, or any other open records laws ("Public Records Laws"). PERMITTEE further acknowledges and agrees that, although all information received by COUNTY in connection with the Use Permit or the Permitted Use are intended for the exclusive use of COUNTY, such information is potentially subject to disclosure under Public Records Laws. In the event PERMITTEE, at the time any information is provided to COUNTY, has reasonably requested in writing that certain information as to the Use Permit or the Permitted Use be held in confidence and a request for disclosure of such information is thereafter received by COUNTY, COUNTY shall endeavor to notify PERMITTEE of said request and shall thereafter disclose the requested information unless PERMITTEE, within five (5) days of COUNTY's notice of such disclosure request: (i) requests that the information not be disclosed; (ii) provides a legally sound basis for nondisclosure (as determined in COUNTY's sole discretion); and (iii) agrees in writing to indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of or related to the required disclosure. Notwithstanding anything to the contrary in the Use Permit, if COUNTY does not notify PERMITTEE of such disclosure request or if COUNTY does not deem PERMITTEE's basis for nondisclosure to be legally sufficient, as determined by COUNTY in its sole discretion, COUNTY shall not be liable for any claims for

damages, lost profits, or other injuries of any and all kinds and PERMITTEE waives any and all such claims against COUNTY. PERMITTEE's indemnity obligation shall survive the expiration or earlier termination of the Use Permit.

16. **RESERVED.**

17. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this Use Permit, the COUNTY determines that the PERMITTEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Use Permit may, at COUNTY's option, be immediately terminated. If this Use Permit is so terminated, the COUNTY shall be entitled to pursue any available remedies at law or in equity.

18. **RESERVED:**

19. **DISCLAIMER OF LIABILITY:** COUNTY shall not be liable for any claims, actions, loss, damages, liabilities, or injuries to the person or property of any person whomsoever at any time occasioned by or arising out of this Use Permit or the Permitted Use from any cause whatsoever, including (without limitation) any acts, errors, or omissions of PERMITTEE, anyone claiming or holding by, through or under PERMITTEE (including without limitation PERMITTEE's employees, volunteers, agents, members, invitees, and guests) or any other person, from the use of the Use Area through or under the PERMITTEE (including without limitation PERMITTEE's employees, volunteers, agents, members, invitees, and guests) or any other person, or whether directly or indirectly from any state or condition of said Use Area.

20. **SECURITY:** PERMITTEE understands and agrees that the COUNTY is not required to provide, nor shall COUNTY provide, any security for the personal property and/or the person of PERMITTEE or its employees, volunteers, agents, members, invitees, or guests using the Use Area. PERMITTEE shall provide at its sole cost sufficient security personnel to secure the Use Area during the Use Period.

21. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party under the provisions of this Use Permit shall be in writing and shall be served personally, delivered by reputable overnight courier service, or sent by United States mail, postage prepaid, certified, or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by reputable overnight courier service or United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5:00 pm on a business day shall be deemed effective on the immediately following business day.

PERMITTEE: OptumServe Health Services, Inc.
328 Front Street South
La Crosse, WI 54601

COUNTY: San Bernardino County
Real Estate Services Department, 3rd Floor
385 North Arrowhead Avenue
San Bernardino, CA 92415-0180

22. **SURRENDER:** PERMITTEE agrees that it will, upon any termination of this Use Permit, return the Use Area in a clean and tidy condition and all damages caused by the Permitted Use repaired or restored to the condition existing immediately prior to the commencement of the Use Period.

23. **VENUE:** The parties acknowledge and agree that this Use Permit was entered into and intended to be performed in the San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Use Permit will be the Superior Court of the State of California, San Bernardino County. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or

rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Use Permit is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of the State of California, San Bernardino County.

24. **LAW:** This Use Permit shall be construed and interpreted in accordance with the laws of the State of California.

25. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Use Permit is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Use Permit or any other portion thereof.

26. **SURVIVAL:** The obligations of the parties that, by their nature, continue beyond the Use Period, will survive the termination of this Use Permit.

27. **AUTHORIZED SIGNATORS:** Both parties to this Use Permit represent that the signators executing this document are fully authorized to enter into this Use Permit.

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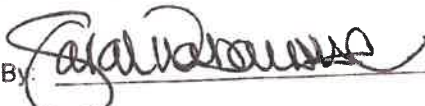
28. **ENTIRE AGREEMENT:** This Use Permit constitutes the entire agreement between the parties. No modifications or waiver will be binding unless made in writing and signed by both parties.

SAN BERNARDINO COUNTY

By: 
Leonard X. Hernandez
Chief Executive Officer

Date: 1/25/2022

OPTUMSERVE HEALTH SERVICES, INC.

By: 
Title: Director, Program Mgmt

Date: 1/14/2022

Approved as to Legal Form:

TOM BUNTON, County Counsel
San Bernardino County, California

By: 
Agnes Cheng, Deputy County Counsel

Date: 1/12/2022

EXHIBIT "A"

USE AREA

