



Alameda County Fire Department

6363 Clark Avenue • Dublin, CA 94568 • <https://fire.acgov.org>

Tel (925) 833-3473 • (510) 632-3473 • Fax (925) 875-9387

AGENDA ___ August 3, 2021

WILLIAM L. McDONALD
Fire Chief

July 20, 2021

SERVING:

City of Dublin

City of Emeryville

City of Newark

City of San Leandro

City of Union City

Lawrence Berkeley
National Laboratory

Lawrence Livermore
National Laboratory

Unincorporated Areas
of Alameda County

Alameda County
Regional Emergency
Communications Center
"Accredited Center
of Excellence"

Honorable Board of Directors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Directors:

**SUBJECT: PERMIT AGREEMENT BETWEEN THE ALAMEDA COUNTY
FIRE DEPARTMENT AND COMMUNITY ASSOCIATION OF
PALOMARES HILLS FOR USE OF ACFD'S VACANT
PROPERTY**

RECOMMENDATION:

- A. Approve Permit Agreement between the Alameda County Fire Department and Community Association of Palomares Hills (Principal: Randy Smith, President), for the use of ACFD's vacant property at the corner of Villareal Dr and Clement Dr in the unincorporated area of Castro Valley, for the 30-day term beginning July 22, 2021, with no monetary fees; and
- B. Authorize the Fire Chief to execute the Agreement, subject to review and approval as to form by County Counsel and submit an executed copy of the Agreement to the Clerk of the Board for filing.

SUMMARY/DISCUSSION:

In July 2017, Alameda County Fire Department (ACFD) acquired a vacant parcel at the corner of Villareal Dr and Clement Dr in the unincorporated Castro Valley area of Alameda County (APN 85A-6405-166). This site acquisition was intended for the purposes of building a future ACFD Station 7 on the property.

The site is currently vacant, and ACFD is working on a comprehensive rehabilitation and replacement plan for the fire stations in the unincorporated areas of the County.

Community Association of Palomares Hills owns an adjoining property at 6811 Villareal Dr, Castro Valley. The Association is currently remodeling its recreation center and clubhouse, and requested to use a portion of the ACFD's vacant property

Honorable Board of Directors
July 22, 2021
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for a heavy equipment crane and truck to lift steel arbors and concrete piers from one of their adjacent buildings to the other for the purposes of installation of a pre-fabricated steel pergola.

Staff recommends that the Board approve the proposed Permit Agreement between the Alameda County Fire Department and Community Association of Palomares Hills, for the use of ACFD's vacant property at the corner of Villareal Dr and Clement Dr in the unincorporated area of Castro Valley, for the 30-day term beginning July 22, 2021, with no monetary fees, and authorize the Fire Chief to execute the Agreement, subject to review and approval as to form by County Counsel.

In exchange for use of the Site, Community Association of Palomares Hills will allow ACFD temporary use of its property at 6811 Villareal Dr., Castro Valley, from time to time upon request of ACFD within one year of final execution of this Agreement. Anticipated ACFD uses will include community outreach events, staging an incident command center, staging or hosting fire crews, and holding meetings.

VISION 2026 GOAL:

The proposed Agreement meets the 10x goal pathway of **Accessible Infrastructure** in support of our shared vision of **Safe and Livable Communities**.

FINANCIAL:

There is no financial impact to the County General Fund, or ACFD, resulting from this Agreement.

Sincerely,



William L. McDonald
Fire Chief

ALAMEDA COUNTY FIRE DEPARTMENT PERMIT AGREEMENT

This Agreement is made and entered into this 22 day of July 2021, by and between the Alameda County Fire Department ("ACFD") and The Community Association of Palomares Hills, a California non-profit corporation ("Permittee").

WHEREAS, the Alameda County Fire Department ("ACFD") owns property located at the corner of Villareal Dr. and Clement Dr. in the unincorporated Castro Valley area of Alameda County, California, APN 85-A-6405-166, ("ACFD Property"), which is currently vacant;

WHEREAS, Permittee is the owner of property located at 6811 Villareal Dr., Castro Valley, adjoining the ACFD Property, which is the site of Permittee's Recreation Center and Clubhouse;

WHEREAS, Permittee has requested to use a portion of the ACFD Property for a heavy equipment crane and truck to lift steel arbors and concrete piers from one of their adjacent buildings to the other for the purposes of installation of a pre-fabricated steel pergola; and

WHEREAS, ACFD is willing to allow Permittee to use a portion of the ACFD Property on a temporary short-term basis for crane work.

NOW THEREFORE, the parties agree as follows:

1) **Permit to Use:** Subject to the terms and conditions of this Permit, the ACFD grants permission to Permittee to enter and use a portion of the ACFD Property that is adjacent to the Community of Palomares Hills Parking Lot and Pool facility fence and out 50 feet, located on the corner of Villareal and Clement Dr, Castro Valley, as described in **Exhibit A** ("The Site") for the limited purpose of operating a crane and truck to move materials onto Permittee's adjacent property ("Permitted Use").

2) **Permit conditions** : Site Access. The Permittee may access and use the Site for 30 days, beginning on July 22, 2021, between the hours of 8AM to 5PM. ("Use Period").

- a) Set-up Location. The Permittee shall set up the crane on the ACFD's vacant property as depicted in **Exhibit A** ("The Site"). Permittee shall coordinate the specific location at the Site with ACFD's General Services Manager Pete Pegadiotes. In addition, such Permittee Set-up shall maintain the security of the ACFD Property and prevent unauthorized entry to the ACFD Property.
- b) Set-up close out. At the end of the Use Period, the Permittee shall remove all of its equipment and any other effects and materials and those of its contractor from the Site and the ACFD Property. The entire Site and ACFD Property accessed and used will be cleaned and returned to the condition it was prior to the Use Period.

3) Limitations

- a) Permittee shall not display or advertise in any form its or any other person's or entity's name or product at or on Site.
- b) In no event shall Permittee's activities interfere with any of ACFD's activities or operations or damage ACFD Property or any personal property or fixtures on ACFD Property. Should the ACFD determine, in its sole discretion, that any of Permittees' activities or equipment interfere with any ACFD activities or operations or have damaged any ACFD property, ACFD may immediately revoke this Permit. Alternatively, at its sole discretion, ACFD may require Permittee to eliminate immediately said interference or repair that damage, by providing Permittee with a written

request to do so. Immediately upon receipt of such notice, Permittee shall proceed to remove the interference or repair the damage as directed by ACFD. In the event Permittee fails to remedy or correct the problem or repair the damage as directed by the ACFD, ACFD may take such action, at Permittee's sole cost, as ACFD deems necessary, to remedy or remove such interference or repair such damage. Such action may include, but is not limited to, the removal, repair or disconnection of any equipment causing in whole or part that interference.

- c) Except as otherwise provided herein, the ACFD is not obligated to construct, provide or maintain access to the Site and does not guarantee or warrant access to the Site.
- d) Permittee shall plan, organize and perform the Permitted Use in the manner that results in the least amount of disruption to traffic and preserves the peace of residential and commercial neighborhoods. At its sole expense, Permittee shall provide all signs, barricades, lights, and other devices, materials, or personnel as may be needed in connection with the safe, secure and careful performance of its Permitted Use.
- e) The Site and any access thereto are permitted on an "as-is" basis. The ACFD has no obligation for maintenance or repair the Site or the access thereto at any time before, during or after the term of this Permit.
- f) In order to maintain the security at the Site, only those persons authorized by Permittee and by ACFD shall be granted access to the Site. Prior to accessing the Site, Permittee shall provide to the ACFD a written list of such authorized personnel, including any contractors. Upon request, Permittee's personnel and contractors must display appropriate and verifiable identification. The ACFD is under no obligation to permit access to any person not so designated by Permittee or not displaying such identification.
- g) Permittee shall be solely responsible for any injury, death, loss or damage to its equipment or personnel resulting from theft, vandalism or from any other cause. ACFD shall not provide security for Permittee's benefit. Permittee agrees to release ACFD from any responsibility or liability for any claim, injury, death, loss or damage (including but not limited to direct or indirect loss or damage, loss of use, or incidental or consequential loss or damage of any kind) to Permittee's equipment, personnel, contractors, or contractors' employees and agents incurred in connection with this Permit.
- h) Permittee shall not permit other persons, entities or other users to access or utilize the Site or to locate any equipment or devices of any kind at the Site except as authorized by this Permit.
- i) Permittee shall maintain all existing storm water run-off/drainage paths while operating under this Permit Agreement.

4) Violations of Permitted Use

- (a) Any work or activity of the Permittee, its employees or agents outside the provisions of this of this Permit shall be grounds for immediate revocation of this Permit.
- (b) In lieu of immediate revocation, ACFD at its sole discretion may direct Permittee to remedy any non-permitted situation, cease any non-permitted work or activity or take such other remedial action as the ACFD may determine to be necessary and appropriate.
- (c) In the event Permittee fails to comply with ACFD 's directive, and in addition to any other remedies available to ACFD at law or in equity, ACFD may immediately revoke this Permit and take such remedial action as the ACFD deems appropriate to remedy the situation. Permittee agrees to be responsible for all costs associated with that remedial action.

5) Permit Fee and Reciprocal Use

Permittee shall pay no monetary fees to ACFD for this Permit and the use of the Site. In exchange for use of the Site, Permittee shall allow ACFD temporary use of Permittee's property at 6811 Villareal Dr., Castro Valley, from time to time upon request of ACFD within one year of final

execution of this agreement. Except in emergency situations, ACFD will provide Permittee with at least one week's notice to request use of Permittee's property. Permittee will allow ACFD's use of the property for up to 30 days total, except to the extent the property is reserved and booked for private event use. Anticipated ACFD uses include community outreach events, staging an incident command center, staging or hosting fire crews, and holding meetings.

6) Energy or Power Services

ACFD shall not provide any power or energy source or service to Permittee.

Permittee is solely responsible for obtaining and maintaining all electrical or other energy or power service, Permittee shall submit full information to ACFD so that the power source may be pre-approved by the ACFD as may be necessary for the safe and effective performance of the permitted access occurring on Site. Permittee shall be solely responsible for providing and paying for all fees, charges or costs for such service and agrees to indemnify, defend and hold harmless the ACFD from any and all such fees, charges or costs in any way related to the use of energy and power.

7) Term, Termination and Cancellation Rights

The term of this Permit shall be for 30 days from July 22, 2021, from 8AM to 5 PM.

In addition to other termination rights granted in this permit:

- (a) If any permit, license or approval from any federal, State or local jurisdiction necessary for Permittees intended use of the Site is not granted or is revoked, terminated, cancelled or expires without timely renewal, either party may terminate this Permit upon fifteen (15) days prior written notice.
- (b) In the event that the ACFD determines that the operation of the permitted activities interferes with the ACFD 's operations or activities, or that of tenants on the ACFD Property or neighboring properties, the ACFD may revoke this Permit immediately upon written notice, including via email.
- (c) Permittee's obligations under Section 8 ("Condition of Premises upon Termination") and Section 11 ("Indemnification") and 17 ("Hazardous Materials") shall-survive the termination of this Permit.
- (d) In the event that the ACFD loses, transfers, sells or ceases its ownership interest in the Site, this Permit is automatically revoked. In the event that the ACFD determines that continuing activities on and/or operation or use of Permittee's equipment at or on Site endangers the public health, safety or welfare, this Permit may be revoked immediately by the ACFD .

8) Condition of Site Upon Termination

Upon termination of this Permit, Permittee at its sole cost shall remove all equipment and effects from Site and clean and restore Site to the condition in which it existed immediately prior to the initial issuance of this Permit. If Permittee connects to power, it will follow any conditions related to permission granted for the power connection, including any conditions related to completion of the Permitted Use or termination of this Permit. Permittee agrees to perform all restoration work and restore the Site and the ACFD Property in compliance with all applicable federal, State or local laws.

9) Assignment

Neither this Permit nor any rights thereunder shall be transferred or assigned by the Permittee, nor shall the Permittee rent to any person or persons or Permit the use of any portion of Site by others without the prior written consent of ACFD. Despite ACFD's consent, no transfer or assignment shall release the Permittees from any of the obligations to be performed under the Permit. As used in this provision, "assignment" shall include but not be limited to any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights, obligations, or liabilities in or arising out of this Permit.

10) Acknowledgment of ACFD Title

It is understood and agreed that Permittee, by the acceptance of this Permit and by the use of Site, has not acquired and shall not acquire hereafter any property rights or interest in or to said Site, and that Permittees may use Site temporarily only as herein provided. This Permit does not convey a right of possession, and is neither a lease nor a license. Permittee shall not have, nor will it obtain, any right or claim to the continued use of said Site beyond that specifically given in this Permit.

Permittee also waives any and all rights, if any, to reimbursement or benefits under the Uniform Relocation Assistance and Land Acquisition Act or comparable federal, State or local law.

11) Indemnification

To the fullest extent permitted by law, Permittee agrees to defend, indemnify and hold harmless the ACFD from all claims, losses, damages, liabilities or expenses, including reasonable attorney fees incurred in the defense thereof, for the death of or injury to any person or persons (including employees of Permittee or Permittee's contractors or agents) or damage to any property (including but not limited to Permittee's property) which arise out of or are connected in any way with the issuance of this Permit, the work to be done or the installation, use, maintenance, repair or removal of Permittee's Equipment (collectively "Liabilities"). The only exception to the obligations imposed on Permittee under this provision is for those Liabilities caused by the ACFD's sole negligence or willful misconduct.

In addition, if any contamination or hazardous material migrating from Permittee's property or activities is found on the Site or ACFD Property, Permittee agrees to remove, clean up or otherwise remediate immediately that contamination at Permittee's sole cost. Permittee agrees to defend, indemnify and hold harmless the ACFD from all claims, losses, damages, liabilities or expenses including reasonable attorney fees incurred in the defense thereof for the death of or injury to any person or persons (including employees of Permittee or Permittee's contractors or agents or their employees) or damage to any property (including but not limited to Permittee's property) which arise out of or are connected in any way with that contamination or hazardous material.

12) Insurance

Permittee shall at all times during the term of this Permit maintain in force those insurance coverages designated in **Exhibit B** and shall send, without demand, annual Insurance Certificates showing proof of required insurance, to the ACFD. If the certificate is not received by the annual date, ACFD shall notify Permittees and Permittees shall have 15 days to send in the certificate. Failure to maintain such insurance shall void this Permit.

13) Property Taxes

By accepting this Permit, Permittee acknowledges that notice is and was hereby given pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy or use created by this Permit.

14) Inspection

The ACFD shall have the right to inspect Permittees' equipment and Permitted Use on Site to confirm compliance with the terms of this Permit and to determine if they endanger the public health, safety or welfare.

15) Repairs

Permittee shall be solely responsible for the safe installation, use, operation, and removal of the crane and truck and any other equipment or materials used on the ACFD property. Permittee shall be solely responsible for the timely repair of all damage to Site or to the ACFD Property caused by any activity of Permittee, its employees, agents or business visitors. In the event ACFD desires to perform repairs or maintenance of its own at Site during the term of this Permit, Permittee agrees to be responsible for the additional costs attributable to the presence of Permittee's equipment. In addition, should such repairs or maintenance require the temporary removal of Permittee's equipment, Permittee agrees to perform the removal work at its sole cost or pay the ACFD for the cost thereof and further agrees to waive all claims for down time, damages or lost revenues or profits associated with that temporary removal.

16) Notice

Any demand or notice which either party shall be required, or may desire to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid certified mail to the respective parties as follows:

(a) ACFD : **Alameda County Fire Department**
Attn: Pete Pegadiotes
General Services Manager
5777 Scarlett Ct., Dublin, CA 94568

(b) PERMITTEE: **The Community Association of Palomares Hills**
Attn: Randy Smith
President
6811 Villareal Dr.
Castro Valley, CA 94552

17) Hazardous Materials

- (a) Hazardous Materials shall mean:
- (i) any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by all applicable local, state and federal laws, including but not limited to 42 U.S.C. 6901 et seq. 42 U.S.C. 9601 et seq. and California Health and Safety Code Sections 25100 et seq., and 25300 et. seq.;
 - (ii) Petroleum and petroleum-based products, by products and fractions;

- (iii) Asbestos and asbestos-containing materials;
 - (iv) Polychlorinated biphenyls;
 - (v) Radioactive materials.
- (b) ACFD hereby notifies Permittees that the Site may contain Hazardous Materials. In the event Permittee encounters any Hazardous Materials during accessing and using Site, Permittee shall notify ACFD immediately for instructions. Permittee agree to follow the ACFD 's general procedures and handling instructions pertaining to Hazardous Materials as directed by ACFD.
 - (c) Permittee shall not introduce or use any Hazardous Materials at Site in violation of any applicable law or otherwise. Permittee shall assess and remediate any such Hazardous Materials if necessary in compliance with all applicable laws and regulations.
 - (d) Permittee shall bear all costs of abatement or remediation of Hazardous Materials which have migrated from Permittee's property or necessitated as a result of its activities at the Site.
 - (e) To the fullest extent permitted by law, Permittee agrees to defend, indemnify and hold harmless the ACFD from all claims, losses, damages, liabilities or expenses, including reasonable attorney fees incurred in the defense thereof, for the death of or injury to any person or persons (including employees of Permittee or Permittee's contractors or agents) or damage to any property or remediation costs or expenses arising out of or associated in any way with any Hazardous Materials which have migrated from Permittee's property or which have been introduced at Site by Permittee or its agents.

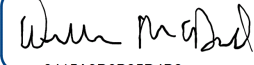
18) Miscellaneous

- (a) The terms of this Permit supersede all negotiations and other agreements concerning use of the ACFD Property. Any amendments to this Permit must be in writing and executed by both parties.
- (b) If any provision of this Permit is invalid or unenforceable with respect to any party, the remainder of this Permit or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Permit shall be valid and enforceable to the fullest extents permitted by law.
- (c) This Permit shall be governed by the laws of the State of California.
- (d) Permittee agrees to abide by any future rules and regulations which may be adopted by ACFD related to the ACFD Property. Such rules and regulations shall be reasonably developed by ACFD and shall be promptly provided to Permittee.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Permit on the dates appearing below their respective authorized signatures.

ACFD:

DocuSigned by:

0415A9D0B85D4B8...
William McDonald
Fire Chief
Alameda County Fire Department

Date: July 22, 2021

PERMITTEE

DocuSigned by:

7EA4AC1A7B3D4C4...
Randy Smith
The Community Association
of Palomares Hills

Date: July 22, 2021

Approved as to Form

Donna R. Ziegler, County Counsel

DocuSigned by:

4F16CF9B888B421...
By _____
Heather Littlejohn Goodman

EXHIBIT A

"The Site"



EXHIBIT B

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) As required by State of California	WC: Statutory Limits EL: No less than \$1,000,000 per accident for bodily injury or disease

D **Endorsements and Conditions:**

1. **ADDITIONAL INSURED:** County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed on behalf of the Grantee. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County.
2. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
3. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.
4. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
5. **SUBCONTRACTORS:** Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit.
6. **JOINT VENTURES:** If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
 - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
 - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".
7. **CANCELLATION OF INSURANCE:** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions.
8. **CERTIFICATE OF INSURANCE:** Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.