

REVOCABLE NON-EXCLUSIVE LICENSE AGREEMENT

This Non- Exclusive Revocable License Agreement (“License”), dated _____ (“Effective Date”) is made by and between the City of Santa Rosa, a municipal corporation (“City”) and Museum On The Square LLC, a California limited liability company (“Licensee”).

RECITALS

- A. Licensee desires to obtain a license from the City to allow personal vehicles of employees of tenants in the Museum on the Square Building (MOTS Building) to use the Santa Rosa Transit Mall to access the surface parking lot adjacent to the MOTS Building on a continuing basis.
- B. City is willing to grant a license to Licensee on the terms and conditions hereinafter set forth.

LICENSE

Now, therefore, the parties agree as follows:

1. GRANT OF LICENSE: City grants to Licensee, subject to the conditions and covenants of this License and the Operating Memorandum, Tenant Employee Parking, 520 Third Street, Museum on the Square Building, as set forth as Exhibit A to this License and made part hereof (“Operating Memorandum”), which sets forth further operational requirements of the use of this License and which is attached hereto as Exhibit A and incorporated herein, a non-exclusive revocable license for the purpose of employees of tenants in the MOTS Building to use the Santa Rosa Transit Mall to access the surface parking lot of not more than fourteen (14) spaces adjacent to the MOTS Building.
2. NONEXCLUSIVENESS OF LICENSE: This License is nonexclusive. City shall continue to control Santa Rosa Transit Mall, including, without limitation, the right to issue additional permits and licenses.
3. TERM OF LICENSE: Subject to Section 10 the term of this License shall commence on the Effective Date. This License shall continue until it is terminated upon one of the following occurrences, whichever is earliest:
 - a. Either party may terminate this License without cause by giving the non-terminating party at least thirty (30) calendar days advance written notice.

- b. The License shall be deemed terminated upon Licensee's discontinuance of the use of the MOTS Building for one continuous year.
 - c. If Licensee defaults with respect to any obligation, covenant or condition of this License and fails to correct the default within thirty (30) days after receipt of notice from City to do so, City may immediately terminate this License by notice to Licensee.
 - d. City determines that the activity allowed of Licensee under this License interferes with the successful operation of the Santa Rosa Transit Mall for transit services.
4. MAINTENANCE OF CONTINUING CONTROL: As required by the Federal Transit Administration, the City shall conduct a biennial review of the use granted by this License to determine that such use does not interfere with the transit operation of the Transit Mall and to assure that the City is maintaining continuous control of the Transit Mall.
5. SUCCESSORS AND ASSIGNS: The License granted herein is personal to Licensee as the owner of the MOTS Building and no right hereunder may be assigned without the prior written consent of the City, in its sole and absolute discretion, provided, however, that Licensee may permit only tenants of the MOTS Building and their respective employees to use of the rights or privileges granted pursuant to this License without first obtaining the written consent of City consistent with the operational requirements set forth in the Operating Memorandum. As a condition to any transfer of this License approved by City, the successor in interest shall be required to execute a Revocable Non-Exclusive License Agreement with City and provide the insurance coverage required herein.
6. INDEMNITY: Licensee shall indemnify, hold harmless, and defend City, its officers, employees and agents from and against any and all claims, demands, suits, liabilities, losses, damages and payments, including reasonable attorney fees and court costs, claimed or made against City, its officers, employees or agents to the extent caused by (i) Licensee's installation of any access improvements adjacent to the Transit Mall; (ii) Licensee's failure to properly inspect, maintain, secure, or repair any improvements installed in connection with this License, including but not limited an access gate or other improvements made to the MOTS Building; (iii) use of this License by or through Licensee, and (iii) any breach or violation by or through Licensee hereunder. Licensee's indemnity obligations set forth in this Section 8 shall survive termination or expiration of this License.
7. INSURANCE: Licensee shall obtain and maintain in full force and effect during the term of this License, including any period during which Licensee is

performing work on improvements adjacent to the Transit Mall in connection with or necessary to implement use of this License, the insurance requirements in Attachment One to this License which is incorporated herein by this reference.

8. SEVERABILITY: Each provision of this License is intended to be severable. If any term or provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this License and shall not affect the validity of the remainder of this License.
9. LICENSE FEE: Licensee shall pay an initial license fee of \$8500 to the City, payable upon execution of this License and a biennial fee \$5000 ("Biennial Fee") for the City's biennial review of the License to determine that the City is maintaining continuous control over the Transit Mall as described in Section 4 above. The first payment of the biennial fee shall be made to the City June 1 of the even numbered years starting in 2018. The Biennial Fee shall increase biennially effective May 1 of each even numbered year during the term of this License by an amount equal to the Consumer Price Index (CPI-U) for the San Francisco-Oakland-San Jose area for the two years between the times the payments are due. The City may, in its own discretion, change the amount of the Biennial Fee by resolution of the City Council. City shall give Licensee notice of any change in the Biennial Fee, above the regular biennial increase set forth above, at least thirty (30) days prior to the effective date of any such increase. In addition to the Biennial Fee, in the event that City takes any action hereunder to enforce the terms and conditions of this License, including but not limited to maintenance or repair of the Transit Mall or the MOTS Building interface with the Transit Mall due to the failure of Licensee, actions to recover the Biennial Fee, or failure by the Licensee to provide up-dated insurance certificates, then Licensee shall be responsible to City for any and all cost thereby incurred by City, including but not limited to any time spent by City's employees, agents, or contractors to recover same and the costs and expense of any efforts to recover such costs, which Licensee hereby agrees to pay upon receipt of any request and invoice therefor. Failure to pay the Biennial Fee or any other amounts owing under this License shall be a material breach of this License and shall entitle the City to all rights and remedies allowed in law or equity.
10. CONDITION OF EFFECTIVENESS: As a condition precedent to the effectiveness of this License, Licensee shall have provided satisfactory proof of insurance each year during the term of this License and shall have paid the Biennial Fee, together with any other costs due City hereunder.
11. INTEGRATION: This License and the Operating Memorandum constitute the complete expression of the agreement between the parties and supercedes any prior agreements, whether written or oral, concerning the subject of this License. Any modification of or addition to this License must be in writing signed by both parties.

12. INDEPENDENT CAPACITY OF LICENSEE: Licensee, its officers, agents, and employees shall act in an independent capacity and shall not represent themselves to be or be construed to be officers, agents, or employees of City.
13. LICENSE NOT A LEASE: This License does not constitute a lease, but constitutes a mere revocable non-exclusive license and Licensee is limited to the use of Structure expressly and specifically described above. Licensee disclaims any interest that when coupled with the license herein granted would render it irrevocable.
14. TIME OF ESSENCE: Time is and shall be of the essence of this License and of each and every provision contained in this License.
15. RELATIONSHIP: The parties intend by this License to establish the relationship of licensor and licensee only and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of licensor and licensee.
16. CAPTIONS: The captions in this License are for convenience only and are not a part of this License. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.
17. CHOICE OF LAW; VENUE: This License shall be construed, and its performance enforced, under California law. Any judicial proceeding in connection with any dispute under, or enforcement of, this License shall be brought in Sonoma County, California.
18. NOTICES: Except as otherwise specifically provided in this License, any notice, submittal or communication required or permitted to be served on a party shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Either City or Licensee may from time to time designate an alternate person or office for service in a written notice given to the other. Notices shall be deemed sufficiently served five (5) days after the date of mailing by certified or registered mail, one (1) day after mailing by overnight courier, or upon personal delivery. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

To Licensee:
Museum on the Square LLC
Attn: Hugh Futrell
200 Fourth Street
Santa Rosa, CA 95401
(707) 568-3482 x11

To City:
Department of Public Works
Attn: Director of Public Works
69 Stony Circle
Santa Rosa, CA 95401
(707) 543-3810

19. AUTHORITY: Licensee hereby represents and warrants to City that it is (a) is a duly organized and validly existing Limited Liability Corporation, formed and in good standing under the laws of the State of California; (b) has the power and authority and the legal right to conduct the business in which it is currently engaged; and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this License. Licensee hereby further represents and warrants that this License has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Licensee in accordance with the terms hereof.

If this License is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title and name of the corporate officers shall be printed under the signature.

The parties have executed this License as of the Effective Date.

LICENSEE:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Licensee:

Museum On The Square LLC

By: _____

TYPE OF BUSINESS ENTITY (*check one*):

Print Name: _____

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (please specify: _____)

Title: _____

APPROVED AS TO FORM:

Signatures of Authorized Persons:

By: _____

Office of the City Attorney

Print Name: _____

Title: _____

