

REVOCABLE NON-EXCLUSIVE LICENSE AGREEMENT

This Non-Exclusive Revocable License Agreement ("License"), dated June 20th 2017 ("Effective Date") is made by and between the City of Santa Rosa, a municipal corporation ("City") and Stark Family Properties, LLC (California entity number 200710610258) ("Licensee").

RECITALS

- A. City holds record title to certain real property located at 550 Lewis Road, Santa Rosa, California (apn 180-330-031) (City Property).
- B. Licensee holds record title to certain real property located at 600 Lewis Road, Santa Rosa, California (apn 180-340-070) (Dry Cleaner Site);
- C. A PCE dry cleaning machine was used at the Dry Cleaner Site, and solvent leaked into the ground.
- D. Licensee has requested that the City permit Licensee and its employees, consultants, contractors, subcontractors and their representatives and agents (collectively, Licensee's Representatives) to enter upon and have access to the City Property, on the terms and conditions set forth herein but only to the extent specifically set forth to construct, monitor and then decommission a monitor well located on City Property (Attachment One: Aerial image of proposed Groundwater Monitor Well MW-B)
- E. Presently, and at all relevant future times, City operates Santa Rosa Fire Department Station 11 on the City Property. No right granted in this License shall be construed to permit Licensee or Licensee's Representatives to prevent, interfere with, delay, or obstruct the operation of Santa Rosa Fire Department Station 11 at any time and in any way;
- F. 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. City grants to Licensee, subject to the conditions and covenants of this License, a non-exclusive revocable license to construct, monitor and decommission from service a monitor well located on City Property (Attachment One: Aerial image of location of proposed Groundwater Monitor Well MW-B) and perform the specified

environmental tasks upon the City Property pursuant to the November 22, 2016 Workplan for Down Gradient Groundwater Monitor Well Installation for the former U-SAVE CLEANERS, 600 Lewis Road, Santa Rosa, California for the Stark Family Properties-NCRWQB CASE #1NSR391 prepared by Franklin J. Goldman, Certified Hydrogeologist No. 466 (collectively, the Work).

2. Licensee and/or Licensee's Representatives shall at all times maintain a lane sufficient for unobstructed ingress and egress for Santa Rosa Fire Department vehicles and personnel, and the public, between Lewis Road and Station 11 Fire House. The lane shall at all times be free from any object or obstruction of any kind including vehicle, material, or tools, or personnel.
3. Licensee and/or Licensee's Representatives shall obtain any and all permits and approvals necessary to perform the Work, will perform and complete all Work in a good and workmanlike manner and in conformity with industry standards, and will comply with all applicable laws, regulations and ordinances pertaining to the Work.
4. Licensee and/or Licensee's Representatives shall perform the Work during the hours of 8:00 a.m. through 5:30 p.m., Monday through Friday, excluding State holidays. Performance of the Work shall be at the express permission of the Station Captain of the Santa Rosa Fire Department Station 11 which permission shall not be unreasonably withheld. Licensee and/or Licensee's Representatives shall notify the Station Captain of Santa Rosa Fire Department Station 11 no less than 48 hours in advance of performance of any Work of:
 - a. The identity of Licensee's Representatives that will be on-site;
 - b. The scope and schedule of work that will be performed.
5. Except during the performance of the Work, Licensee and/or Licensee's Representatives shall immediately remove all property, vehicles, tools and materials from the City Property and shall leave the area of the Work broom clean.
6. Access by Licensee and/or Licensee's Representatives to the City Property shall be restricted to the area immediately surrounding the monitor well located on City Property (Attachment One: Aerial image of proposed Groundwater Monitor Well MW-B). No other access shall be made or additional work performed by Licensee or Licensee's Representatives.
7. After the Work is completed, Licensee and/or Licensee's Representatives shall decommission the well and restore the City Property to a condition at least as good as the condition that existed before commencement of the Work.

8. The Work to be performed by Licensee pursuant to this Agreement shall be conducted by Licensee at Licensee's sole expense and cost, and City shall not be obligated to pay any expense or cost associated with the Work.
9. All materials related to the Work brought on City Property by Licensee and/or Licensee's Representatives shall be removed by Licensee.
10. City shall not remove locks or tamper in any way with the well or associated well materials.
11. Licensee shall provide City with copies of all Licenses and/or Licensee Representative reports to the North Coast Regional Water Board including the results of water, soil and vapor testing within sixty (60) days of Licensee's receipt of the respective test results.
12. No individual official, officer or employee of City shall be personally liable to Licensee and/or Licensee's Representatives for any amount or obligation pursuant to this Agreement in the event of any default or breach of this Agreement.
13. **NONEXCLUSIVENESS OF LICENSE:** This License is nonexclusive. City shall continue to control City Property, including, without limitation, the right to issue additional permits and licenses.
14. **TERM OF LICENSE:** 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 City or Licensee may terminate this License 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 monitor well for one continuous year or abandonment and removal of the monitor well. In removing the monitor well from City Property, Licensee shall restore City Property and all existing improvements thereon to their condition prior to construction of monitor well.
 - 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.

In the event of a termination pursuant to subsection 3(a) above, Licensee shall, at Licensee's sole cost and expense, and within thirty (30) days after the date of

the notice of termination or within thirty (30) days after the date the License is deemed terminated, whichever of the foregoing may first occur, remove monitor well from Property and restore Property and any improvements thereon to the condition that it was in as of the date Licensee entered Property to commence construction of monitor well. If Licensee fails to remove the monitor well and restore City Property within the time period provided, City may at its option perform said work, at the expense of Licensee, which expense Licensee agrees to pay to City upon demand.

15. **SUCCESSORS AND ASSIGNS:** The License granted herein is personal to Licensee and no right hereunder may be assigned or sublet, in whole or in part, and Licensee shall not permit any other person, firm, or corporation to use, in whole or in part, any of the rights or privileges granted pursuant to this License without first obtaining the written consent of City. City may withhold its consent to a transfer of this license in its sole and absolute discretion. 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.

16. **MAINTENANCE AND REPAIR:** Licensee assumes all responsibility for maintaining, repairing and inspecting the monitor well. Licensee shall, at Licensee's sole cost and expense, use Licensee's best efforts to diligently and adequately maintain and repair the monitor well. Licensee shall promptly perform or caused to be performed any and all maintenance and repairs to the monitor well when notified by City that such maintenance or repairs are necessary. In the event Licensee fails to satisfactorily maintain or repair monitor well as herein required, and Licensee fails to cure such failure within thirty (30) days after written notice to cure is given by City, City, its employees and agents, may enter City Property to cause any maintenance or repair as may be necessary to be done on the monitor well, and may thereafter bill Licensee for the entire cost and expense of such maintenance or repair, including administrative costs and interest to the maximum amount permitted by law from and after thirty (30) days from the date the maintenance or repair expense bill is mailed by City to Licensee. In the event any such maintenance expense bill is not paid within said thirty (30) days, City may initiate a civil action to recover the amount owed.

City shall have the right to require Licensee to make repairs or perform maintenance of monitor well in a shorter period of time if such maintenance or repair is necessary to protect the public safety or prevent property damage, and Licensee shall be responsible to reimburse City for the cost of same.

17. **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 or payments, including reasonable attorney

- fees and court costs, claimed or made against City, its officers, employees or agents arising from or in any way connected to the Work. Licensee's indemnity obligations set forth in this Section 17 shall survive termination or expiration of this License.
18. SECURITY: City may require Licensee from time to time to post security in a form, amount, and for a time period satisfactory to City to guarantee performance of the obligations stated herein. Should Licensee fail to perform the obligations under this License, City may, in the case of a cash bond, act for the Licensee using the proceeds from such cash bond, or in the case of a surety bond, require the surety to perform the obligations of this License.
19. INSURANCE: Licensee shall obtain and maintain in full force and effect during the term of this License, including any period during which Licensee and/or Licensee's Representatives are performing the Work or so long as monitor well remains on City Property, the insurance requirements in Attachment Two to this License which is incorporated herein by this reference.
20. 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.
21. CONDEMNATION: In the event all or any portion of the Property is condemned for public use, Licensee shall receive compensation only in the amount awarded for the taking or damaging of Licensee's monitor well. Any compensation for damages for taking Property or Licensee's license interest thereon awarded to Licensee shall be and hereby is assigned to City.
22. LICENSE FEE: Licensee shall pay a License Preparation Processing Fee of \$152.42. Licensee shall also pay an Annual License Compliance Review fee ("Fee") on July 1 of each year. The Annual License Compliance Review Fee for the first year shall be \$229.13, and shall increase annually effective each July 1 during the term of this License by an amount equal to four percent (4%) of the Fee in effect for the immediately preceding year (based on the Fee in effect for a full calendar year). The City may, in its own discretion, change the amount of the annual Fee by resolution of the City Council. City shall give Licensee notice of any change in annual Fee other than the regular annual increase set forth above at least thirty (30) days prior to the effective date of any increase. In addition to the annual 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 Property or Monitor well due to the failure of Licensee, actions to recover the annual Fee, or failure by the Licensee to provide up-dated insurance certificates, then Licensee shall be responsible to City for any cost thereby incurred by City, including but not limited to any time spent by City's employees,

agents, or contractors to recover same, which Licensee hereby agrees to pay upon receipt of any request and invoice therefor.

23. **CONDITION OF EFFECTIVENESS:** As a condition precedent to the effectiveness of this License, Licensee shall have paid the annual Fee, together with any other costs due City hereunder, and shall have provided satisfactory proof of insurance each year during the term of this License.
24. **COMPLIANCE WITH APPLICABLE LAWS:** Licensee shall comply with all applicable state and federal laws that apply to the monitor well, including the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA.
25. **INTEGRATION:** This License and the encroachment permit issued for the monitor well 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. In the event of any conflict between the provisions of this License and the encroachment permit applied for and granted herewith, the terms of this License shall control.
26. **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.
27. **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 monitor well expressly and specifically described above. Licensee disclaims any interest that when coupled with the license herein granted would render it irrevocable.
28. **TIME OF ESSENCE:** Time is and shall be of the essence of this License and of each and every provision contained in this License.
29. **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.
30. **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.

31. 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.

32. 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: Stark Family Properties, LLC (California entity number 200710610258)
Attention: Paul Schlieder
P.O. Box 365
Calistoga, CA 94515

paul.schleider@tweglobal.com

To City: Department of Public Works
Attn: Director of Public Works
69 Stony Circle
Santa Rosa, CA 95401

707-543-3800

and

Santa Rosa Fire Department
Fire Station 11-Station Captain
550 Lewis Road
Santa Rosa, California 95404

707-543-3511

33. AUTHORITY: Licensee hereby represents and warrants to City that it is (a) is a duly organized and validly existing limited liability company, formed and in good standing under the laws of the State of Delaware and authorized to do business in 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: U Save Dry Clean CITY OF SANTA ROSA

Name of Licensee: Stark Family Properties Municipal Corporation

By: Arlene Pettet / Paul Schlieder

TYPE OF BUSINESS ENTITY (check one):

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

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

By: Paul Schlieder

Print Name: Paul Schlieder

Title: manager

By: Arlene Pettet

Print Name: Arlene Pettet

Title: manager

APPROVED AS TO FORM:

[Signature]
Office of the City Attorney

Attachment:

Attachment One - Aerial image of proposed Groundwater Monitor Well MW-B

Attachment Two - Insurance Requirements

License Agreement

ATTACHMENT 1



Proposed Groundwater Monitor Well
at City of SR Fire Station #11

PROPOSED
GROUNDWATER
MONITOR WELL
MW-B

PROPOSED
GROUNDWATER
MONITOR WELL
MW-C

PROPOSED
GROUNDWATER
MONITOR WELL
MW-A

Family Pro
600 Lewis

Appr
0

ATTACHMENT 2

**ATTACHMENT
INSURANCE REQUIREMENTS FOR
LICENSE AGREEMENTS**

- A. **Insurance Policies:** Licensee shall, at all times during the term of this License, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Licensee has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Licensee, its employees, agents and subcontractors.
4. Pollution Liability	(contact Risk Mgmt for limits and whether pollution insurance required – if not required, remove this requirement)	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. **Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be

canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Licensee's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Licensee's insurance and shall not contribute with it; and,
 - b. The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy. General liability coverage can be provided in the form of an endorsement to Licensee'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 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Licensee shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the License. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this License shall prohibit Licensee from waiving any right of recovery prior to loss. Licensee hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Licensee and available or applicable to this License are intended to apply to the full extent of the policies. Nothing contained in this License limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Licensee or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Licensee may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this License is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.