

REVOCABLE LICENSE AGREEMENT

This Revocable License Agreement ("License"), dated as of the date of last signature ("Effective Date") is made by and between the City of Santa Rosa, a municipal corporation ("City") and the County of Sonoma, a political subdivision of the State of California ("Licensee").

RECITALS

- A. City provides recreational and leisure services to residents of Santa Rosa through the Department of Recreation and Parks ("Department") at various recreational facilities and parks.
- B. Licensee desires to design, site, construct and maintain a public art installation and associated facilities, which may include lighting, seating, pathways and other related equipment, as a reflection and memorial area for victims and families impacted by the 2017 Sonoma Complex Fire ("Program").
- C. City desires to permit Licensee to enter on a portion of City property, commonly known as Nagasawa Community Park, located at 1313 Fountaingrove Parkway, Santa Rosa, CA, APNs 173-670-017 ("Property") for the purpose of installing and maintaining the Program.
- D. 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, a revocable license to use not greater than 1 acre of the Property as depicted in Exhibit A, consisting of both improved and unimproved site areas ("Facility") for the purpose of installing and maintaining the Program ("Activities"), together with the necessary rights of ingress and egress over the Property. Licensee shall use the Facility for the Activities and for no other purpose without the prior written consent of the City Manager ("CM") or the CM's designee. The parties agree to the truth and accuracy of the recitals stated above which are hereby incorporated into this License.
- 2. EXCLUSIVENESS OF LICENSE: This exclusive License is limited to Licensee's use as it relates to the Facility only and is granted with the understanding that the Facility must be fully open to the public in accordance with the terms of this License. Notwithstanding the foregoing, City shall continue to control the Property,

including, without limitation, the right to issue additional permits and licenses for use of the Property to the extent not inconsistent with the Program and Activities.

3. TERM OF LICENSE: The term of this License shall commence on the Effective Date. In the event the Completion Date (defined below) is not achieved within five (5) years of the Effective Date, this License shall automatically terminate, unless an extension is approved in writing by the CM and Licensee. Upon completion of construction of the Program, which shall be deemed to occur upon recordation by Licensee of the Notice of Completion as to all Program improvement work (the "Completion Date"), this License shall continue (the "Term") until it is terminated upon one of the following occurrences, whichever is earliest:
- a. The CM shall have the right to terminate or suspend all or part of this License at any time when the Facility is required for public necessity or emergency use at any time when the CM determines that termination is necessary to preserve the public peace, prevent damage to public property, or prevent riots, mobs or violence. Upon such termination, neither the City, nor its officers, agents or employees shall be liable to Licensee for any expenses or damages whatsoever related to the termination. In no event shall City, its officers, agents, or employees be liable to Licensee for lost revenue or consequential damages.
 - b. The License shall be deemed terminated upon Licensee's discontinuance of the use and maintenance of the Facility at any time after the Completion Date. Licensee shall restore Property and Facility thereon to the same condition prior to use.
 - 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. If the Facility or any part thereof is destroyed or damaged by fire or any other cause, or if any unforeseen casualty, including strikes, labor disputes, war or acts of military authorities, shall render the performance of this License difficult or impossible, this License shall be automatically terminated. City shall not be held liable to Licensee for any damage caused by such termination and City shall be relieved from further liability by reason of this License and no claims for compensation shall be made against City by Licensee.
 - e. At any time after ten (10) years following the Completion Date, the CM shall have the right to terminate for convenience, in City's sole discretion, subject to providing Licensee six (6) month written notice. Upon such termination, neither the City, nor its officers, agents or employees shall be liable to

Licensee for any expenses or damages whatsoever related to the termination. In no event shall City, its officers, agents, or employees be liable to Licensee for lost revenue or consequential damages.

At the expiration or termination of this License, Licensee shall vacate the Facility and remove all property brought to the Facility by, or on behalf of, Licensee, except as otherwise set forth herein. Should this License terminate or expire or should the terms and conditions of this License make it impossible or difficult to perform its obligations under this License, City shall not be liable to Licensee for any damages sustained by Licensee, whether direct or consequential, resulting therefrom.

4. **PROGRAM DESIGN AND IMPROVEMENTS:** Parties agree that details of the Program including but not limited to content, size, construction drawings, utility availability and usage, and timeline are still subject to community input, design and construction planning. The Parties shall meet and confer as appropriate to best facilitate a Program design that will maximize utilization of the Facility and Program goals, ensure operability and maintenance, and reduce project costs. Notwithstanding, Licensee shall be solely responsible for and in control of the design, technical specifications, and improvements constituting the Program. The Program shall consist of artwork and other site design and improvements which shall be determined by Licensee, on condition that all such work comply with applicable building codes and regulatory permitting requirements. The Program shall be subject to Licensee's processes for community engagement, public input, and final project determination by Licensee's Fire Memorial Task Force. In addition, Licensee shall, once adequate public input and design have been completed and prior to finalization of Program planning and design, present the Program plans to City's "Art in Public Places Committee" (APPC) for general input and project feedback.

Upon the Completion Date, Licensee shall promptly provide City, at no cost to City, with copies of all maintenance plans, engineering, architectural and/or mechanical plans and specifications and original final building permits for the Program.

5. **OPERATIONAL REQUIREMENTS OF LICENSEE:** Licensee agrees, throughout the Term, to abide by the following conditions and requirements:
 - a. Licensee and its invitees, as members of the public, may use the Facility year-round, seven days per week, dawn to dusk. Department and Licensee may modify the dates and time of Facility use when agreed upon by the parties.

- b. Payment shall not be a requirement for persons to visit the Facility, although donations may be accepted for ongoing maintenance and/or City approved capital enhancement purposes at the Facility and on-line by Licensee.
 - c. Licensee shall provide all volunteers and workers, supplies, and equipment to carry out the Program and will ensure its volunteers and workers possess any required trainings and certifications.
 - d. Licensee further acknowledges that the Department will not provide staffing for either the Facility or the Program.
 - e. Department understands and agrees that Licensee is not required to staff the Facility.
 - f. Licensee, at its sole cost and expense, is responsible for performing maintenance, repair, safety checks and preparing the Program and the portions of the Facility used therefor, for the operation of the Program.
 - g. Licensee shall be solely responsible for the orderly conduct of its officers, agents, employees, and volunteers at the Facility. Department reserves the right to eject from the Facility any person engaging in unlawful conduct.
 - h. Licensee shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the irrigation or utility systems, free access to the public areas, streets, common areas, walkways or sidewalks within or adjacent to the Facility.
 - i. City retains the right to photograph Program activities for its own purposes, if used solely for non-commercial purposes, advertising, tourism promotion, descriptive brochures, and other similar purposes. All reproductions by City shall contain a copyright notice substantially in the following form: "©, [Artist's name, date]", in such a manner and location as shall comply with applicable laws, including U.S. Copyright laws.
 - j. In the receipt, handling, care, custody and storage of property of any kind shipped or otherwise delivered to the Facility prior to, during or subsequent to the use of the Facility by Licensee, Department and its employees shall act solely for the accommodation of Licensee, and Department shall not be liable for any loss or damage to the property.
 - k. Upon actual notice thereof, Licensee shall immediately report any Facility issues, incidents and/or accidents to Department in writing.
6. 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 License Agreement with City and provide the insurance coverage required herein. Any attempted or purported assignment without City's written consent shall be void and of no effect.

7. **ANNUAL INSPECTION:** Licensee shall, at Licensee's sole cost and expense, inspect the Program as often as necessary, but in any event at least once each year, and shall provide City with an annual inspection report on or before each anniversary of the Completion Date in a form approved by City, which describes the condition of the Program. City reserves the right to require inspections on a more frequent basis in its sole and absolute discretion. Licensee shall promptly perform any and all necessary and appropriate repairs or maintenance identified as a result of said inspection. In the event Licensee fails to submit an annual inspection report or fails upon request of City to perform and report on an inspection of the Program hereunder, City shall have the right, but not the obligation, to perform, or cause to be performed, an inspection at the expense of Licensee, which expense Licensee agrees to pay to City upon demand therefor. Notwithstanding the foregoing, duly authorized representatives of Department shall have the right to enter Program and all parts thereof at any time and without prior notification of Licensee.

8. **MAINTENANCE AND REPAIR; ALTERATIONS:**

- a. Maintenance and Repair. Licensee assumes all responsibility for maintaining, repairing and inspecting the Program. Licensee is responsible for the cleanliness of the Program and for maintaining its appearance in a neat and orderly condition. Licensee shall, at Licensee's sole cost and expense, use Licensee's best efforts to diligently and adequately maintain and repair the Program. Licensee agrees to pay the cost of repair or replacement for all damages to the Facility whatever origin or nature to the extent resulting from the negligence or intentional misconduct of Licensee, its officers, employees, agents, volunteers, invitees or members and the cost to maintain and store any of Licensee's property during the Term in addition to any of Licensee's property not removed from the Facility at the termination of this License.

Licensee, at its sole cost and expense, shall promptly perform or cause to be performed any and all maintenance and repairs to the Program when notified by City that such maintenance or repairs are necessary. In the event Licensee fails to satisfactorily maintain or repair the Program 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 cause any maintenance or repair as may be necessary to be done on the Program, 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 under this Section to require Licensee to make repairs or perform maintenance of the Program 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.

- b. Alterations. To the extent any existing improvements at the Facility are to be relocated, removed, or otherwise altered as part of the Program design and construction, Licensee shall obtain City's prior written consent and Licensee shall be responsible at its sole cost and expense for any repairs, replacement, or other mitigation required by City in connection with such removal, relocation, or alteration. After the Completion Date, Licensee agrees not to make any alterations of, changes in, or additions to the Facility in any way, including but not limited to, the installation of security systems or devices, additional artwork, pathways, benches, tables, lighting, irrigation or plantings without the prior written consent of City. Any request for alteration should also inquire as to whether such alterations will be required to be removed by Licensee at the end of the Term, or alternatively whether such alteration may remain on the Facility permanently. If any alteration includes a change, removal, or alteration of park features including but not limited to, walking or accessibility pathways, tables, benches, or picnic areas, Licensee agrees to replace and replicate the feature elsewhere in the Facility or Property, subject to City's approval which will not be unreasonably withheld. Licensee agrees that should City give written consent, unless otherwise agreed in writing, all such alterations, replacements, removals, additions and improvements, including fixtures, made in, to or associated with the Facility shall be made at the sole cost and expense of Licensee and shall and if City requires it at the end of the Term, Licensee shall restore the Facility to the same condition as before the alterations, entirely at Licensee's cost and expense.

For sake of clarification, any repairs, maintenance, or other work on the improvements to the Program, as designed and constructed prior to the Completion Date, shall not require City consent.

- i. Licensee covenants and agrees to indemnify, defend and hold harmless City from all claims, liens or demands arising out of any work performed, materials furnished, or obligations incurred by or for Licensee upon the Facility during the Term.
 - ii. All work done by Licensee under these provisions shall be done in a good and workmanlike manner, and in compliance with all applicable laws and all ordinances, regulations and orders of governmental authority, including but not limited to Labor Code Section 1720 et seq.
 - iii. Upon completion of work performed by Licensee relating to the Facility, if any, Licensee shall promptly provide City, at no cost to City, with copies of all engineering, architectural and/or mechanical plans and specifications and original final building permits for all alterations, modification and repairs to the Facility by Licensee.
9. **SIGNS:** Other than for a permanent plaque with stand indicating the Program artist, name, and other related information which shall be part of the Program design and construction, no signs or advertisements shall be placed in, on or about the Facility without the prior written consent of the CM and then only for the Program authorized by this License. Safety rules and operational information, including A-frame signs, may be displayed at the Facility during Program operating hours. Banners may be utilized upon written consent of Department.
10. **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 use of Facility and the Property; (ii) Licensee's failure to properly inspect, maintain, secure, or repair the Program; or (iii) any breach or violation by Licensee hereunder. Licensee's indemnity obligations set forth in this Section shall survive termination or expiration of this License.
11. **INSURANCE:** County represents that it is self-insured. Licensee and Licensee's contractors performing work on Facility or Property, if any, 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 Facility or the Property, the insurance requirements in Attachment One to this License which is incorporated herein by this reference.
12. **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.

13. 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 interest in the Facility. Any compensation for damages for taking Property or Licensee's license interest thereon awarded to Licensee shall be and hereby is assigned to City.
14. COMPLIANCE WITH APPLICABLE LAWS, RULES, REGULATIONS AND REQUIREMENTS: Licensee, its officers, agents, volunteers, employees and invitees, and members shall comply with all rules and regulations prescribed by City for the use of the Facility and with all applicable rules and regulations, local, state and federal laws that apply to the Facility and Property, including the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.). No activity shall be held in the Facility that is in violation of any law. Licensee is further responsible for understanding and complying with the endangered species mitigation in place at the Facility. Department will provide details of the mitigation areas and measures upon request.
15. INTEGRATION: This License constitutes the complete expression of the agreement between the parties and supersedes 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 granted herewith, the terms of this License shall control.
16. 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.
17. LICENSE NOT A LEASE: This License does not constitute a lease, but constitutes a mere revocable license and Licensee is limited to the Activities expressly and specifically described above. Licensee disclaims any interest that when coupled with the license herein granted would render it irrevocable.
18. TIME OF ESSENCE: Time is and shall be of the essence of this License and of each and every provision contained in this License.
19. 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.

20. 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.

21. 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.

22. 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: County of Sonoma
Creative Sonoma
Attn: Executive Director

Santa Rosa, CA 95404

To City: City of Santa Rosa
Attn: City Manager
2060 W. College Avenue
Santa Rosa, CA 95401

24. AUTHORITY: Licensee hereby represents and warrants to City that it is (a) is a duly organized and validly existing public agency, 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.

25. COUNTERPARTS/ELECTRONIC SIGNATURES. This License may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one License. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both City and Licensee wish to permit this License to be electronically signed in accordance with applicable federal and California law. Either party to this License may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to this License. The parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective License. City reserves the right to reject any digital signature that cannot be positively verified by City as an authentic electronic signature.

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

COUNTY OF SONOMA

a political subdivision of the State of California

"LICENSEE":

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Print Name: _____

Title: Deputy County Counsel

CITY OF SANTA ROSA

a Municipal Corporation

By: _____

Print Name: _____

Director, _____ Department
Title: _____

APPROVED AS TO FORM:

Office of the City Attorney

Attachments:

Exhibit A – Depiction of Facility
Attachment One – Insurance Requirements

License Agreement
Form approved by BBK 8/6/21