

LICENSE AGREEMENT

**FOR USE OF PUBLIC PROPERTY
FOR DISPLAY OF ARTWORK
(Name of Artwork)**

THIS LICENSE AGREEMENT (“License Agreement”) is made and entered into as of the ___ day of _____, 20___, by and between the City of San Rafael, a California Charter City (“City”) and _____ (“Licensee”).

RECITALS

A. Licensee (or “Artist”) is an individual who creates and produces certain works of art; and **[OR: if a business entity, describe the entity and purpose of the entity]**

B. Licensee submitted a proposal to the City for the temporary placement, installation and display of certain works of art and related identifying signs (the “Artwork or Artworks”), as designated in **Exhibit A**, on public property owned, controlled or managed by the City; and

C. On _____, pursuant to San Rafael Municipal Code (“SRMC”) Section 14.25.040 and the City’s Public Art Review Guidelines, **the City’s Public Art Review Board approved Licensee’s Artworks proposal [OR the City Council approved the Public Art Review Board’s recommendation to approve Licensee’s Artworks proposal]**, as designated in **Exhibit A**; and

D. City is willing to grant a license to Licensee for use of certain City property to display the approved Artworks, on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. License. The City grants Licensee permission to use that portion of the City’s property described and/or shown in **Exhibit B** (the “Premises”), for the temporary placement, installation, display, and maintenance of the Artworks, in accordance with the terms and conditions specified herein.

2. As-is Condition. Licensee acknowledges and agrees that the Premises are being licensed and accepted in their “as-is” condition, without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing their use. Licensee represents and warrants to City that it has investigated and inspected, either independently or through agents of Licensee’s own choosing, the condition of the Premises and the suitability of the Premises for Licensee’s intended use. Licensee has determined, based solely on its own investigation, that the Premises are suitable for Licensee’s intended use. Licensee acknowledges and agrees that neither the City nor any

of its agents have made, and the City hereby disclaims, any representations or warranties, express or implied, concerning the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for Licensee's intended use, or any other matter whatsoever relating to the Premises.

3. Term. Except as otherwise terminated as provided herein, the term ("Term") of this Agreement shall be from [REDACTED] to [REDACTED].

The City and Licensee may decide to extend the timeframe for the Artworks to be displayed or the Artworks may be purchased, donated, removed, or moved. Any such extension of the Term or amendment to this License Agreement shall be subject to written agreement between the City and Licensee.

4. Permitted Uses; Approved Artworks. Licensee may enter and use the Premises only for the uses specified in Section 1 of this License, and for no other purposes. Licensee shall only place, install, display, and maintain the Artworks as approved by the City, as designated in **Exhibit A**, and shall not make any changes to the Artworks or the manner in which the Artworks are placed, installed, displayed, or maintained, without written authorization from the City.

5. Title to Artworks. Licensee/Artist hereby represents and warrants that: i) the Artworks are solely the result of the artistic effort of Licensee/Artist, and ii) the Artworks are unique and original and do not infringe upon any patent rights, copyright, trade secret or any other proprietary right or trademark or intellectual property of a third party.

6. Installation, Maintenance, and Security. Licensee shall be solely responsible for the installation, maintenance, and security of the Artworks. Specifically:

(a) Licensee acknowledges the potential for vandalism to the Artworks and shall be solely responsible for maintaining and protecting the Artworks.

(b) Licensee acknowledges that the Artworks must be durable, taking into consideration that the Premises is an unsecured public space that is exposed to elements, including but not limited to, weather, temperature variation, and movement of people, vehicles and equipment.

7. License Personal. The license herein granted is personal to Licensee, and no right hereunder may be assigned, sublet or otherwise transferred in whole or in part.

8. Removal of Artworks. Notwithstanding the Term set forth in Section 3 of this License, at any time, the City may terminate this License Agreement and the Artworks may be removed at the City's sole discretion for one or more of the following reasons:

- (a) The condition or security of the Artworks cannot be reasonably guaranteed.

- (b) There is an emergency event such as a fire, storm, or other climate-related event.
- (c) The Artwork is damaged, and repair is infeasible, or the cost of repair is disproportionate to the value of the Artwork.
- (d) The Artwork requires unanticipated, excessive maintenance due to design flaws or other factors.
- (e) The Artwork endangers public safety.
- (f) The Premises is so altered or there are planned renovations/site improvements such that the Artwork is no longer compatible or relevant.
- (g) The Premises is no longer owned, controlled or managed by the City.
- (h) There has been sustained and overwhelming public objection to the Artwork over a period of time.
- (i) The Artwork has been stolen or destroyed.

Licensee shall be responsible for all associated costs of Artwork removal and site restoration, pursuant to Section 9.

9. Termination or Surrender; Restoration. On or before expiration of the Term of this License Agreement, or upon termination pursuant to Section 8 of this License Agreement, Licensee, at its sole cost and expense, shall safely remove all Artworks, fully restore the Premises to their original condition, and cease any further use of the Premises as provided herein and as designated in **Exhibit C**. Should Licensee not remove Artworks and restore the Premises to a condition satisfactory to the City, the City may perform such work or have such work performed, and Licensee shall immediately reimburse the City for all direct and indirect costs associated with such work upon receipt of a statement therefor. If Licensee fails to provide current contact information for notices pursuant to Section 15, or the City after reasonably diligent effort is unable to locate Licensee for the purpose of giving notice of termination and removal, the City shall have the right to have the Artwork removed and relocated, conveyed, or disposed of in any manner the City determines to be suitable. Licensee, on behalf of themselves, their heirs, successors and assigns, hereby assumes all risk of loss or damages of any kind and waives and releases the City from any claims or liability of any kind arising out of the City's removal, relocation, conveyance, and/or disposal of the Artwork.

10. Indemnification; Risk of Loss. Licensee shall indemnify, release, defend and hold harmless the City, its officers, agents, employees and volunteers (collectively, the "City's Parties"), against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorneys' fees and administrative costs (collectively, "Losses"), arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of Licensee or Licensee's officers, agents, employees, or volunteers (collectively, "Licensee's Parties"), or from Licensee's Parties' occupancy, use or misuse of the Premises pursuant to this License Agreement, or from any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property Losses claimed by a third party associated with the Artworks.

Licensee shall assume all risk of loss, damage, or injury to Licensee, or its property including any and all Artworks, arising out of or connected to its use or occupation of the Premises pursuant to this License Agreement, and shall indemnify and hold the City harmless from any claim related to such loss, damage or injury.

This provisions of this Section 10 shall survive termination of this License Agreement.

11. Liability for Damage to Artworks; Artworks Insurance. The City shall bear no responsibility, nor incur any liability, for loss, damage, or injury to the Artworks or any property or equipment owned or controlled by Licensee's Parties, involved in Licensee's use or occupancy of the Premises under this License Agreement. Notwithstanding the insurance requirements set forth in this Agreement, the City recommends that Licensee procure and maintain risk-of-loss insurance for the Artworks in a minimum value covering full loss of the Artworks and any associated property or equipment.

12. Artist's Release and Waiver; Grant of Rights to City. Licensee/Artist has executed the Artist's Release and Waiver, hereby incorporated into this License Agreement as Exhibit C. Licensee/Artist hereby grants to the City the right to display the Artworks and all materials included in Exhibit A, and the right to make and reproduce photographs, copies, or other two-dimensional reproductions of the Artworks and materials in Exhibit A for publicity and program purposes.

13. Insurance. Licensee shall procure and maintain in effect during the Term of this License Agreement, at no expense to the City, insurance in a form approved by the City Attorney, as follows:

a. Worker's Compensation insurance with statutory limits as required by the Labor Code of the State of California.

b. Comprehensive General Liability Insurance, in the minimum amount of one million dollars (\$1,000,000) per occurrence for death, bodily injury, personal injury, and property damage. Said policy shall be endorsed with the following specific language:

i. "The City of San Rafael, its officers, employees and volunteers, are named as additional insureds under this policy."

ii. "The insurance provided herein is primary coverage to the City of San Rafael with respect to any insurance or self-insurance maintained by the City, and shall not call upon City's insurance or coverage for any contribution."

c. Risk of Loss Insurance, covering the Artworks, in an amount not less than the full estimated value of the Artworks. [Include this insurance requirement for any Artworks with a value of at least \$10K.]

d. Licensee shall submit to the City certificates of insurance and properly executed endorsements evidencing the term, coverage, limits and endorsements as required above.

14. Compliance with Laws. Licensee shall observe and comply with all applicable federal, state, City, or other governmental statutes, ordinances, and regulations now in force or which hereafter may be in force, including the ADA.

15. Notices. Any notice required under this License Agreement shall be in writing. Delivery of such written notice shall be deemed sufficiently given forty-eight (48) hours after deposit in the United States Mail, registered or certified, return receipt requested, with postage thereon fully prepaid, or upon personal delivery, addressed as follows:

If to City: Library & Recreation Director
 City of San Rafael
 1400 Fifth Avenue
 San Rafael, CA 94915-1560

If to Licensee:

Either party may at any time change its address for notice by giving written notice of such change in the manner provided above. Licensee shall have the sole responsibility to provide the City with a current and valid address for notice throughout the Term of this Agreement, and the City shall not be responsible for Licensee's failure to provide the City with any changes to Licensee's address for notice under this Agreement.

16. Attorneys' Fees. If either party should commence a legal action or proceeding to enforce the terms of this License Agreement, the prevailing party in the proceeding shall receive, in addition to court costs, reasonable attorneys' fees, including the reasonable value of services rendered by the City Attorney's Office.

17. Joint and Several Liability. If Licensee consists of more than one person or party, their obligations and liabilities under this License Agreement shall be joint and several.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the day and year first written above.

CITY OF SAN RAFAEL:

By _____ Dated: _____
City Manager

LICENSEE:

By _____ Dated: _____
Its _____

EXHIBITS:

- Exhibit A** **Approved Artworks**
- Exhibit B** **Premises**
- Exhibit C** **Artwork Decommissioning and Premises Restoration Plan**
- Exhibit D** **Artist's Release and Waiver**

EXHIBIT A
APPROVED ARTWORKS

(Include entire package describing Artworks as submitted to the Board/Council and approved, including signs, installation/security devices)

DRAFT

**EXHIBIT B
PREMISES**

(Description of Licensed Premises; include map, if applicable)

DRAFT

EXHIBIT C
ARTWORK DECOMMISSIONING AND PREMISES
RESTORATION PLAN

(Description of plan to decommission artwork at end of term and restore premises;
include means & methods of decommissioning, anticipated length of time required, and
other details if applicable)

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EXHIBIT D
ARTIST'S RELEASE AND WAIVER

The undersigned Artist hereby acknowledges and agrees that neither the City of San Rafael nor its officers, employees, agents, or volunteers shall be liable for any distortion, mutilation, modification or destruction, by accident, act of God or person, of any artwork created by Artist and displayed on public property of the City of San Rafael for and as part of the Artworks Installation. The undersigned Artist hereby waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, and volunteers, arising under the federal Visual Artists Rights Act (17 U.S.C. Sections 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code Sections 987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. Section 106A, Cal. Civil Code Sections 987 et seq., or any other type of moral right protecting the integrity of works of art.

ARTIST

Dated: _____

[signature]

[print name]

[address]

[telephone number]