

## **LICENSE AGREEMENT**

This License Agreement (this "Agreement") is made by and between the City of Napa, a California charter city, (the "City"), and Napa County Groundwater Sustainability Agency ("Licensee") effective as of the date last signed by the City, which is identified on the signature page as the "Effective Date."

### **RECITALS**

- A. City has a right of way interest in Redwood Road, a public street, located in Napa, California ("City ROW").
- B. Licensee desires to use a portion of the City ROW for the purpose of installing a groundwater monitoring well to collect measurements pertaining to water level and water quality. Licensee intends to monitor shallow and deep groundwater levels near Redwood Creek to better understand the interaction between surface water and groundwater to understand if groundwater levels impact surface waters.
- C. City is willing to grant a revocable license to Licensee upon the terms and conditions set forth herein to allow Licensee to use those portions of City ROW described herein for the purposes stated herein.

**NOW, THEREFORE, IT IS AGREED** by the parties hereto as follows:

1. **Prior Agreement.** This Agreement supersedes any prior existing agreement between City and Licensee, or their predecessors in interest, pertaining to the subject matter identified herein.
2. **Grant of License.** City grants to Licensee and its authorized representatives a revocable non-exclusive license to use in the portion of the City ROW identified as the triangular median at the Redwood Road split where it intersects Dry Creek Road, an area within Napa County Assessor's Parcel Map Book 42 Page 01 and shown in "Exhibit A" attached hereto and incorporated herein by reference ("Premises") for the purposes of installing a monitoring well ("Licensee's Improvements"), measuring static water level and taking water quality samples to study groundwater and surface water interaction adjacent to Redwood Creek.
3. **Term of License.** This Agreement shall commence on the Effective Date and shall terminate only upon sixty (60) day's written notice to the City by Licensee or at the request of the City, pursuant to the provisions of the following paragraphs 5 & 12. Upon expiration of the term (as may be extended) Licensee shall remove Licensee's Improvements and restore the Premises in accordance with Paragraph 13.
4. **Rent.** The rights granted herein to Licensee by City are done in consideration of the Licensee's agreement to comply with the terms set forth herein. Unless otherwise stated herein, no rent or fee shall be charged by City or paid by Licensee for the rights granted pursuant to this Agreement.
5. **Conditions of License.** City grants the license to Licensee subject to the following conditions:

- a. Licensee acknowledges that the Premises is currently utilized as a public street right-of-way and that public facilities and public utilities including, but not limited to, gas, electrical, water, storm drainage, sanitary sewer, telephone, fiber optic, and cable television facilities may exist either now or in the future within the Premises, pursuant to the authority granted by the State of California or other existing agreements with City. The rights granted Licensee by this Agreement are strictly subject to the rights of City and other public utility providers, and Licensee shall install Licensee's Improvements in such a manner as to not impede, obstruct, or preclude use of the Premises by City and/or any public utility provider. Nothing in this Agreement shall preclude or limit City's right, at its sole discretion, to access, construct, and maintain public utilities and/or improvements on the Premises, nor shall existing rights held by public utilities or others be impaired or limited by Licensee's use of the Premises. Prior to Licensee's installation of Licensee's Improvements, Licensee shall obtain, at Licensee's sole cost and expense, any and all governmental approvals and permits required for the Project.
- b. Prior to installation of Licensee's Improvements, Licensee shall obtain an encroachment permit from the City in accordance with Napa Municipal Code Chapter 12.12 and shall comply with its terms and conditions including, but not limited to, indemnification, inspection and insurance requirements.
- c. In the event that City desires to make any repair, reconstruction, change, addition, or modification to the Premises including, but not limited to, the surface, subsurface, drainage system, water delivery system, street alignment, or street grade, or in the event that any public utility referenced in Paragraph 5a, above, desires to make any repair, reconstruction, change, addition, or modification to its public utility facilities and/or infrastructure, Licensee shall, if required by City, remove or relocate Licensee's Improvements at its sole cost and expense. City agrees that it will consider other, equally feasible alternatives prior to requiring Licensee to remove or relocate Licensee's Improvements.
- d. Licensee shall be responsible for any present or future damage to the Premises, City ROW or lands adjacent to the City ROW, which are caused in whole or in part by the installation, construction, presence, operation, maintenance, or repair of Licensee's Improvements.
- e. Licensee shall construct Licensee's Improvements in accordance with all applicable state, federal and local laws and regulations.
- f. Licensee shall, at its sole cost and expense, regularly maintain the Premises and Licensee's Improvements in good, safe and sanitary condition and repair and in accordance with all applicable state, federal and local laws and regulations.
- g. In the event that Licensee fails to maintain Licensee's Improvements or the Premises in accordance with subsection (f), City shall have the right, but not the obligation, to perform such maintenance or repair or to remove the Licensee's Improvements, and Licensee shall reimburse City at its standard billing rate for time, materials and equipment used to repair, maintain and/or remove the Licensee's Improvements within thirty (30) days of receipt of an invoice from the City.
- h. Licensee shall comply with Napa Municipal Code section 8.08.020, Noise – Commercial Activity during all activities associated with construction, operation and maintenance of Licensee's Improvements.

6. **Taxes.** Licensee recognizes that this Agreement may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee shall pay, before delinquency, all taxes, assessments, fees, and other charges ("taxes") that are levied or assessed during the term against Licensee's interest in the Premises or Licensee's Improvements. The foregoing notwithstanding, Licensee shall have the right, at no cost or other detriment to City, to contest with the taxing authorities the imposition or amount of any such taxes.
7. **Insurance.** Without limiting Licensee's indemnification provided herein, Licensee shall take out and maintain, throughout the term of this Agreement, the following policies of insurance against injury and or death to persons or damage to property which may arise from or in connection with the activities hereunder of Licensee, its agents, employees or subcontractors:
  - a. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000.00 per occurrence/\$2,000,000 aggregate. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:
    - (1) The City, its officers, employees and agents, are covered as insured for liability arising out of the operations performed by or on behalf of Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents and employees.
    - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
    - (3) For claims related to Licensee's use of the Premises, the Licensee's insurance is primary coverage to the City, and any insurance or self-insurance programs maintained by the City is excess to Licensee's insurance and will not be called upon to contribute with it.
    - (4) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to City, its officers, employees and agents.
  - b. Licensee shall furnish City with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by City. The endorsements shall be on forms provided by City or as approved by the City's Risk Manager. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by City. If Licensee does not keep all required insurance policies in full force and effect, City may, in addition to other remedies under this Agreement, take out the necessary insurance, and Licensee agrees to pay the cost of said insurance.

8. **Uses prohibited.** The Premises shall not be used or permitted to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto. Licensee agrees at all times during the term of this Agreement to maintain the Premises in compliance with any and all federal, state, or local laws, regulations or ordinances concerning the Premises or the conduct of Licensee in and on the Premises. Licensee shall not use, nor permit said Premises, or any part thereof, to be used, for any purpose other than the purpose set forth in Paragraph 2. Except as expressly permitted in Paragraph 2, Licensee shall not make, or cause to be made, any alterations to the Premises without the prior and express written consent of the City.
9. **No liens.** Licensee shall keep the Premises free from any and all liens arising out of Licensee's use of the Premises, materials furnished, or obligations incurred by Licensee.
10. **Indemnification.** To the fullest extent permitted by law, Licensee shall indemnify, hold harmless, release, and defend City, its elected and appointed officials, officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature (collectively, "Liability") that may be asserted by any person or entity including Licensee arising out of Licensee's acts or omissions hereunder, including Licensee's construction, operation or maintenance of the Licensee's Improvements, Licensee's use of the Premises or Licensee's failure to comply with the terms set forth herein, excepting only Liability due to the sole negligence or willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Licensee under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Licensee and shall continue to bind the parties after expiration or termination of this Agreement.
11. **Hazardous Materials.**
  - a. Licensee shall not cause or permit any hazardous material (as defined herein) to be generated, brought onto, used, stored, released or disposed of on, under, about or within the Premises by Licensee, or its employees, agents, contractors, tenants, sub-tenants, or invitees or other third parties. In the event during the term of this Agreement it is determined that the Premises is contaminated by hazardous materials through no action or inaction of Licensee, its employees, agents, contractors, tenants, sub-tenants, or invitees, Licensee shall have the right to terminate this Agreement upon thirty (30) days written notice to City, but shall not have the right to sue City for damages.
  - b. If either party becomes aware of any actual or threatened release of hazardous materials on, under, or about the Premises or any inquiry, investigation, proceeding or claim by any agency or person regarding the presence of hazardous materials on, under, or about the Premises, that party shall give the other party written notice of the same within five (5) days of learning of it and shall simultaneously furnish the other party copies of any claim, notices of violation, reports, or other writings received.
  - c. To the fullest extent permitted by law, Licensee shall, with counsel reasonably acceptable to City, indemnify, defend, release, and hold harmless City, its elected and appointed officials, officers, agents, and employees, from any and all Liability arising out of or resulting from Licensee's use or storage of any hazardous materials on the Premises, the release of any hazardous material in or about the Premises or the violation of any environmental law by Licensee, its employees, agents, contractors, tenants, sub-tenants, or

invitees. This indemnification obligation shall survive the expiration or termination of this Agreement.

d. If the presence of any hazardous material brought onto the Premises by Licensee or Licensee's employees, agents, contractors, tenants, sub-tenants, and/or invitees results in contamination of the Premises, Licensee shall promptly take all necessary actions, at Licensee's sole cost and expense, to return the Premises to the condition that existed prior to the introduction of such hazardous material. Licensee shall first obtain the City's written approval of the proposed remediation action. Remediation shall not limit Licensee's indemnification obligation set forth above.

e. As used herein, hazardous materials shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the federal, state or local government, including:

(1) "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA, 42 USC §§960114 and (33) and regulations issued pursuant thereto;

(2) "Extremely hazardous substances," "hazardous chemicals," and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC §§1102(a), 1121(e) and 1122(c) and regulations issued pursuant thereto;

(3) "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR §1910.1200;

(4) Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in 1-3 above; and

(5) Any materials not covered by, or exempted from, the sources listed in subsections 1-4 above that may nevertheless pose a threat to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, radon, PCB's, radioactive material, toxic pesticides and herbicide, valuable solvents, materials containing asbestos or formaldehyde.

12. **Default and Termination.** This Agreement may be terminated by either party for any reason upon sixty (60) days' written notice to the other party, effective on the date set forth in the written notice. This Agreement may be terminated by City for cause if the City has a good faith belief that the Licensee is not complying with the terms of this Agreement. In such event, City shall give written notice of the default (with reasonable specificity) to Licensee and demand the default to be cured within ten days of the notice. If: (a) Licensee fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and Licensee fails to give adequate written assurance of due performance to City within ten days of the notice, then (c) City may either: (1) terminate this Agreement upon written notice to Licensee, in which case the termination of this Agreement shall be effective on the date set forth in the notice, or (2) remedy the default and charge Licensee costs incurred by City to cure the default, including City staff time, or (3) exercise any other remedy available at law or equity.

13. **Removal of Improvements Upon Termination.** Upon termination of this Agreement, Licensee shall remove Licensee's Improvements from the Premises and take all actions necessary to reasonably restore the Premises following the removal of Licensee's Improvements.

14. **Notices**. Any notice or other communication under this Agreement shall be in writing and either served personally or sent by prepaid, USPS certified mail or overnight service (tracking), addressed to the other party at the following addresses:

City: Public Works Director  
City of Napa  
P. O. Box 660  
Napa, CA 94559-0660

Licensee: Natural Resources Program Manager  
Groundwater Sustainability Agency  
County of Napa  
1195 Third Street, 2<sup>nd</sup> Floor  
Napa, CA 94559

15. **General Provisions**.

- a. **Headings**. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- b. **Severability**. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- c. **Governing Law, Jurisdiction, and Venue**. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.
- d. **Attorney's Fees**. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorneys' fees, costs, and expenses incurred, whether or not such action or proceeding is prosecuted to judgment.
- e. **Assignment and Delegation**. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Licensee's duties be delegated, without the written consent of City. Any attempt to assign or delegate this Agreement without the written consent of City shall be void and of no force or effect. A consent by City to one assignment shall not be deemed to be a consent to any subsequent assignment.
- f. **Modifications**. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- g. **Waivers**. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

- h. **Time.** Time is of the essence in carrying out the duties hereunder. Each Party shall, upon request by the other party, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the terms and conditions of this Agreement.
- i. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- j. **Each Party's Role in Drafting the Agreement.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- k. **Signatures.** The individual executing this Agreement represent they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensee and City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The parties agree that this Agreement may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5.
- l. **Counterparts.** This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

**LICENSEE:**

NAPA COUNTY GROUNDWATER SUSTAINABILITY  
AGENCY

By \_\_\_\_\_  
BELIA RAMOS, Chair  
Board of Directors

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<p>APPROVED AS TO FORM Office of NCGSA Counsel</p> <p>By: <i>Chris R.Y. Apallas</i> NCGSA Counsel</p> <p>Date: October 3, 2023 Doc. No. 100812_2</p>	<p>APPROVED BY THE NAPA COUNTY GROUNDWATER SUSTAINABILITY AGENCY BOARD OF DIRECTORS</p> <p>Date: _____</p> <p>Processed By:  Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Directors</p> <p>By: _____</p>
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**CITY:**

**CITY OF NAPA, a California charter city**

By: \_\_\_\_\_  
Julie Lucido, Public Works Director

Date: \_\_\_\_\_  
"Effective Date"

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Barrett, City Attorney

COUNTERSIGNED:

By: \_\_\_\_\_  
Erika Leahy, Auditor



EXHIBIT "A"  
Premises

