

DATE: May 10, 2023

TO: VACAVILLE-DIXON GREENBELT AUTHORITY

FROM: Raffi Boloyan, Community Development Director, City of Dixon

SUBJECT: License and Access Agreement for Vacaville-Dixon Greenbelt Authority on Salad Cosmo property for Westbound I-80 sign frame

Background

Since at least 2000, Vacaville-Dixon Greenbelt Authority (“VDGA”) has placed and maintained signs that identify the greenbelt area along Interstate 80. Recently it was discovered that one of the signs was placed on the private property of the Salad Cosmo operation, rather than on property VDGA has an interest in. To ensure that the sign can remain in place and VDGA can continue to maintain that sign, a license and access agreement with the Salad Cosmo has been drafted for the VDGA Board’s consideration.

Discussion

The proposed license and access agreement provides that VDGA or any entity that VDGA assigns its rights to, will have the ability to access, use, and maintain the sign where it is currently located on the Salad Cosmo’s private property. This right would run with the land and the license and access agreement would be recorded with the Solano County Recorder’s Office. That will ensure that VDGA continues to have the right to access, use, and maintain the sign on the Salad Cosmo’s private property into the future.

The license and access agreement would also limit VDGA and the property owner’s ability to bring a cause of action against each other for any activity related to the sign and VDGA’s access to it. This protection will limit both VDGA’s exposure to liability for the sign placed on the Salad Cosmo’s private property and Salad Cosmo’s exposure to liability when VDGA’s staff or contractors need to access the sign on their private property.

The license and access agreement formalizes and memorializes VDGA and Salad Cosmo’s existing relationship, ensuring that the sign will be accessible to VDGA in perpetuity. It also addresses possible consequences that VDGA and the Salad Cosmo’s or their successors could face given the location of the sign on private property. Should the VDGA Board elect to approve the agreement, thus formalizing the relationship between VDGA and Salad Cosmo and establishing limits on each party’s exposure, VDGA will be able to continue operating into the future on a clear path, while still allowing flexibility for VDGA to evolve as the Board sees fit.

Staff met with the property owner and presented the draft License Agreement in April 2022. The property owner informed staff of their consent to the agreement and

willingness to sign it, once the VDGA approves it to form. This has been the first meeting to occur for VDGA to consider this agreement.

Recommendations

Approve the proposed license and access agreement and authorize staff to take all necessary steps to execute and record the agreement.

Attachments

Attachment 1 Draft License Agreement

Recording Requested by)
)
 VACAVILLE-DIXON GREENBELT)
 AUTHORITY)
)
 After Recording Return to)
)
 CITY OF DIXON)
 ATTN: CITY CLERK)
 600 EAST A STREET)
 DIXON, CA 95620)
 _____)

(Space above this line for recorder’s use)

Space Above This Line for Recorder’s Use

SITE ACCESS AND LICENSE AGREEMENT

This **SITE ACCESS AND LICENSE AGREEMENT** (“Agreement”) is made and entered into on _____, 2023 (“Effective Date”) by and between Vacaville Dixon Greenbelt Authority (VDGA) (“Licensee”) and Salad Cosmo USA, a California Corporation (“Licensor”). Licensee and Licensor are referenced individually as the “Party” and collectively as the “Parties”.

RECITALS

A. Licensor is the owner of certain real property located at 5944 Dixon Ave W, Dixon, CA 95620, Solano County Assessor’s Parcel Number (“APN”) _____ (the “Property”).

B. Licensee maintain a sign on the Property identifying the area as part of the Vacaville-Dixon Greenbelt Authority (“VDGA”) (the “Sign”). The purpose of the VDGA is to provide for the preservation and conservation of viable agricultural and open space land and serve as a permanent separation between the urban areas of the cities of Vacaville and Dixon and the Sign provides notice to the public of the VDGA area.

C. Licensee desires to continue to use a portion of the Property to maintain and display the sign identifying the area as part of the VDGA. Licensee desires to obtain from Licensor a license to enter upon and use a portion of Property for the limited purpose of display, access, and maintenance of the Sign.

D. Licensor has agreed to allow Licensee to enter upon and use a portion of the Property for the Sign, as more particularly set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee and Licensor do hereby agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are incorporated herein by reference and made part of this Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 7 of this Agreement, Section 1 through 7 will prevail.

Section 2. Grant of License. Licensor hereby grants to Licensee, its employees, agents, consultants, and subcontractors (collectively, “Licensee’s Agents”) the right and irrevocable license (“License”) to: (a) enter and use a portion of the Property, consisting of approximately 50 square feet, composed of 12 sq ft for sign itself plus 38 sq ft surrounding for staging/access (the “Sign Area”), as depicted in greater detail in Exhibit A, attached hereto and incorporated herein by this reference, and (b) have ingress to, and egress from the Sign Area, for the maintenance and display of the Sign. Licensor agrees that the rights and license granted herein shall run with the Property and survive any conveyance or transfer thereof.

Section 3. Licensee’s Access to Premises. Notwithstanding anything to the contrary in this Agreement, Licensee shall be permitted to access the Sign Area twenty-four (24) hours a day, seven (7) days a week for emergency purposes, as reasonably determined by Licensee. Within twenty-four (24) hours of such emergency access, Licensee shall provide Licensor with a written explanation of the nature of the emergency. Non-emergency access shall be limited to normal business hours (i.e., Monday through Friday, excluding federal holidays, between the hours of 7:00 a.m. and 7:00 p.m.).

Section 4. Assignment. If Licensee assigns its rights under this Agreement (for example to the City of Vacaville or the City of Dixon), Licensor acknowledges and agrees that, upon receipt of written direction by Licensee, Licensor will recognize such assignee, as the proper and lawful successor to Licensee with respect to the rights provided hereunder and fully entitled to receive the rights and benefits of Licensee hereunder so long as Licensee performs the obligations of Licensee hereunder.

Section 5. Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 5.

Section 6. Indemnity. Licensor and Licensee hereby agree to defend, indemnify and hold the other Party harmless from and against any and all loss, damage, liability, penalties, fines or other costs (including, without limitation, reasonable attorneys’ fees) arising from or attributable to the activities of the other Party on or about the Property in connection with the License. This indemnification obligation shall not extend to any loss, damage, liability, penalties, fines, or other costs (including, without limitation, reasonable attorneys’ fees) arising from the negligence or willful misconduct of Licensor, its directors, officers, agents, employees, contractors, and subcontractors (collectively, “Licensor’s Agents”) attributable to the activities of Licensor or Licensor’s Agents in connection with the License.

Section 7. General Provisions.

(a) **Governing Law and Venue.** This Agreement is to be governed by, and construed in accordance with, the laws of the State of California. The venue of all legal proceedings arising from or in connection to this Agreement shall be in the Superior Court of California, in and for the County of Solano.

(b) **Notices.** Any notice or communication required hereunder between Licensee and Licensor must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to Licensee: City of Vacaville
650 Merchant St,
Vacaville, CA 95688
Attention: City Manager

City of Vacaville
650 Merchant St
Vacaville, CA 95688
Attention: Community Development Director

City of Dixon
600 East A St
Dixon, CA 95620
Attention: City Manager

City of Dixon
600 East A St
Dixon, CA 95620
Attention: Community Development Director

If to Licensor: _____

Attention:_____

(c) **Legal Costs.** If any party to this Agreement shall take any action to enforce this Agreement or bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys’ and experts’ fees and costs incurred in bringing such suit or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys’ and experts’ fees and costs incurred in enforcing such judgment. All fees and costs to be paid under this Section shall be determined by a court of competent jurisdiction and not by a jury. For purposes of this Section, attorneys’ and experts’ fees and costs shall include, without limitation, fees and costs incurred in the following: (a) post-judgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals.

(d) **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(e) **Entire Agreement.** This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument mutually agreed upon by the Parties. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto.

(f) **Construction.** This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same.

(g) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(h) **Authority.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no party hereto shall have breached the terms or

Attachment 1

conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

[Signatures on following page]

Attachment 1

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

LICENSOR:

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

By: _____

Name: Aaron Busch

Title: City Manager, City of Vacaville

Date: _____

LICENSEE:

By: _____

Name: Jim Lindley

Title: City Manager, City of Dixon

Date: _____

EXHIBIT A

Sign Area

