

**A RESOLUTION APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT  
BETWEEN THE CITY OF ROLLING MEADOWS AND THE  
ROLLING MEADOWS PARK DISTRICT TO PERMIT A  
WALL MURAL ALONG THE KIRCHOFF ROAD UNDERPASS**

**WHEREAS**, it is the desire of the City Council to enter into a non-exclusive license agreement with Rolling Meadows Park District to allow for the wall mural designed by the Rolling Meadows High School Art Club located along the Kirchoff Road underpass.

**NOW THEREFORE**, be it resolved by the City Council of the City of Rolling Meadows, Illinois, as follows:

Section 1: That the Non-Exclusive License Agreement between the City of Rolling Meadows and the Rolling Meadows Park District ("License Agreement"), is hereby approved in substantially the form attached hereto as Exhibit A, and the Mayor is hereby authorized and directed to execute, and the Deputy City Clerk to attest, said License Agreement on behalf of the City, with such insertions, omissions and changes as shall be approved by the Mayor, the execution of such documents being conclusive evidence of such approval.

Section 2: This Resolution shall be in full force and effect upon its passage and approval in accordance with law.

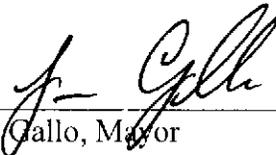
PASSED this 12<sup>th</sup> day of July 2022, pursuant to a roll call vote as follows:

AYES: Bisesi, Reyez, Sanoica, McHale, O'Brien

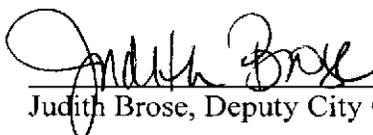
NAYS: 0

ABSENT: Vinezeano, Budmats

APPROVED this 12<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
Joe Gallo, Mayor

ATTEST:

  
\_\_\_\_\_  
Judith Brose, Deputy City Clerk

**EXHIBIT A**

## Non-Exclusive License Agreement

This Non-Exclusive License Agreement ("License") is made and entered into this 12<sup>th</sup> day of July, 2022, by and between the CITY OF ROLLING MEADOWS, ILLINOIS, (herein referred to as "Licensor"), and the ROLLING MEADOWS PARK DISTRICT (herein referred to as "Licensee").

Licensor is the owner of the Kirchoff Road underpass, located along Salt Creek in Rolling Meadows, Illinois. Licensee, in coordination with the Rolling Meadows High School Art Club, desires to install and paint a wall mural ("Mural") along the Kirchoff Road underpass, as represented by and within that area depicted on Exhibit "A," attached hereto and made a part hereof (the "Mural Location"); and the Licensor is willing to grant Licensee a license to do so, on the terms and conditions set forth below.

Licensor hereby grants Licensee and its contractors, subcontractors, invitees, employees and agents acting on its behalf, a temporary, non-exclusive license to install and maintain the Mural at the Mural Location, subject to the following terms and conditions:

(1) TERM. Unless otherwise terminated by this License, the term of this License shall begin upon installation of the Mural and remain for a period of five (5) years from the date set forth above (the "License Term"). The License may be extended for additional five (5) year terms through mutual agreement by the Licensor and Licensee.

(2) RESTRICTION ON USE. The Licensee shall not alter the Mural or Mural Location in any fashion without the written consent of the Licensor. Licensee shall, upon termination of this License, immediately remove the Mural and deliver up the Mural Location to the Licensor peaceably, quietly, and in as good order and condition as was prior to the installation of the Mural, normal wear and tear, casualty and damages unrelated to the Mural excepted. Licensee shall comply with all applicable federal, state, county and local laws, regulations and ordinances, as may be applicable to the Mural and Mural Location.

(3) CONDITION; MAINTENANCE; REPAIR; UTILITIES. Licensee accepts the Mural Location in its current condition, and Licensor makes no representations concerning the condition of the Mural Location. Licensor has no duty or obligation to maintain or repair the Mural Location during the License Term. Any preparation, maintenance, repairs or alterations made to the Mural Location by the Licensee shall be made at the sole expense of the Licensee, and the Licensee shall have no right to recover any such amounts from the Licensor. Further, Licensor shall not be liable to Licensee for any damage or injury to any of them or the Mural occasioned by the failure of the Licensor to keep the Mural Location maintained and in repair. Licensee shall have no obligation to maintain or repair the Kirchoff Road underpass, except for damages caused by Licensee.

(4) ASSUMPTION OF RISK. Licensee shall use the Mural Location at its own risk; and Licensor shall not be liable for any damage to person or property resulting, directly or indirectly, from Licensee's use of the Mural Location; unless such damage is caused by Licensor's negligence or

willful misconduct. Licensee acknowledges and agrees that the Licensor shall not be liable for any loss, theft of or damage to the Mural.

(5) INDEMNIFICATION. Licensee shall indemnify and save harmless Licensor and its officials, officers, employees, staff, contractors, agents, representatives, consultants, successors and assigns (collectively, the "Indemnitees"), from and against any and all losses, verifiable and substantiated damages, third-party claims, actions, liabilities, reasonable actual out-of-pocket costs and expenses including, without limitation, reasonable outside attorneys' fees and expenses that the Indemnitees may suffer, incur or sustain arising out of or relating to the activities of Licensee, or any invitees thereof, under this License, or any acts or omissions of Licensee or its contractors, subcontractors, agents, employees, tenants, invitees or representatives hereunder, or with respect to or arising out of any use of the Mural Location or the rights herein granted, or the performance or non-performance of Licensee's obligations hereunder. The Licensee, in carrying out its obligations hereunder, shall use legal counsel reasonably acceptable to the Licensor. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage. The provisions of this Section 5 shall survive the termination of this License.

(6) INSURANCE. At all times that this License is in effect, Licensee shall, at its sole cost, acquire and maintain throughout the License the following insurance coverage.

- a. Property insurance for covering damages that may be caused by the installation, maintenance, repair or removal of the Mural at the Mural Location;
- b. Workers' compensation insurance, as required by law; and
- c. Commercial general liability insurance with respect to its activities pursuant to this License.

Acceptance by the Licensor of insurance submitted by the Licensee does not relieve or decrease in any manner the liability of the Licensee for performance of the obligations required under this License. The Licensee is responsible for any losses, claims, and costs of any kind that Licensee's insurance does not cover.

The Licensee shall furnish, or cause its contractors to furnish, to the Licensor, a certificate of insurance evidencing coverages and limits otherwise reasonably satisfactory to the Licensor pursuant to Licensor's requirements. The insurance policy shall be expressly endorsed to include the Licensor as additional insured. Such insurance shall be maintained during the License Term.

With the exception of Workers' Compensation insurance, the Licensor and its elected officials, officers, employees and agents shall be included as an additional insured under the insurance policies required herein. Coverage afforded the Licensor under these policies shall be primary insurance. If the Licensor has other insurance which is applicable to the loss, such other insurance shall be on an excess and/or contingent basis.

(7) REMOVAL. At all relevant times during this License, if the Licensor determines that the Mural is causing damage to the Mural Location or supporting structure and/or represents a hazard to public health and safety or a nuisance, then in its sole discretion, the Licensor may require the removal of the Mural at any time. If the Licensee fails to remove the Mural, then the Licensor may remove the Mural, without compensation or reimbursement to the Licensee.

(8) VARA WAIVER. Licensee shall require that the appropriate Rolling Meadows High School staff member leading the Rolling Meadows High School Art Club and participating in the creation of the Artwork execute a VARA Waiver of Works of Visual Art waiving all rights that may be waived under the Visual Artists' Rights Act of 1990, 17 U.S.C. Sec. 106, 106A and 113, in the form attached hereto as Exhibit B.

(9) ASSIGNMENT AND SUB-LICENSING. Licensee shall not assign this License or any part hereof in any manner whatsoever nor shall it assign any of the privileges herein granted without the prior written consent of the Licensor, which consent may be withheld, conditioned or delayed in its sole and absolute discretion. The Licensee shall not sublicense or otherwise provide any successor or operational rights to the Mural Location or any portion thereof, or any privileges granted herein, without the prior written consent of the Licensor, which may be withheld, conditioned or delayed in its sole discretion.

(10) FINANCIAL RESPONSIBILITY/NO THIRD-PARTY BENEFICIARIES. Licensor shall have no financial responsibility or obligation to Licensee or any third party as a result of Licensor's granting the privileges described herein to Licensee. This Agreement creates no rights, title or interest in any person or entity whatsoever (whether under a third-party beneficiary theory or otherwise) other than the Licensee and the Licensor.

(11) NO LEASE OR EASEMENT. Licensee expressly acknowledges that nothing herein is intended to create a corporal or possessory interest of Licensee and, accordingly, this License shall not be construed as a lease, easement or any other interest running with the land. Neither this Lease nor any summary or memorandum thereof shall be recorded with any public authority.

(12) RELATIONSHIP OF THE PARTIES. Under no circumstances shall this License be construed to create a relationship of agency, partnership, joint venture, or employment between the Licensor and the Licensee.

(13) WASTE. In the exercise of the privileges herein granted, Licensee will conduct all of its operations in a careful and proper manner, and will not commit any waste or damage or permit any nuisance upon, around or at the City Hall or the Mural Location.

(14) REPRESENTATIONS AND WARRANTIES REGARDING COPYRIGHT. Licensee warrants that it has all right, title and ownership interest in the Mural, and that the Mural is not subject to any ownership, lien, encumbrance, copyright infringement or other claim by any other person or entity. Licensee agrees that it shall not take any action to limit or affect this warranty during the term of this License unless it obtains the advance written agreement of the Licensor.

(14) **REVOCATION.** In the event of any violation by Licensee of the terms of this License and upon five (5) business days prior written notice to Licensee by Licensors, except in the case of an emergency for immediate revocation, this License and any rights granted herein may be revoked by the Licensors.

(15) **AUTHORITY.** Each party warrants to the others that it is authorized to execute, deliver and perform this License. Each party warrants to the others that execution, delivery and performance of this License do not constitute a breach or violation of any agreement, undertaking, law or ordinance by which that party is bound. Each individual signing this License on behalf of a party warrants to the others that such individual is authorized to execute this License in the name of the party on whose behalf he or she executes it.

(16) **EARLY TERMINATION.** Should Licensee elect at any time to terminate this Agreement earlier than the expiration of the Term (which Licensee shall have the right to do), written notice thereof will be given by Licensee to Licensors thirty (30) days in advance of such termination. Licensee shall remain obligated to restore the Mural Location as provided hereunder.

(17) **REMEDIES.** Licensors shall have any and all remedies for breach of this Agreement by Licensee, including but not limited to a claim for damages and equitable relief.

(18) **MISCELLANEOUS.**

(a) **No Liens.** Licensee shall pay for all labor done or materials furnished in the installation, repair, replacement, or maintenance of the Mural on the Mural Location by Licensee, and shall keep the Mural Location free and clear of any lien or encumbrance of any kind whatsoever created by Licensee's act or omission.

(b) **Waivers.** No waiver of default by the Licensors or any of the terms, covenants or conditions hereof to be performed, kept and observed by Licensee shall be construed or operate as a waiver by the Licensors of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by Licensee.

(c) **Waiver of Claims.** Licensee hereby waives any claim against the Licensors, and its elected officials, officers, agents and employees, that it may have on the date of execution of this License for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this License or any part thereof, or by any judgment or award in any suit or proceeding declaring this License null, void and voidable, or delaying the same or any part hereof from being carried out.

(d) **Attorney's Fees.** In the event that the Licensors brings and prevails in any action, suit or proceeding to take possession of the Mural Location or to ensure compliance with this License, Licensee shall pay the Licensors's reasonable outside attorney's fees, in an amount allowed by the court in said action, suit or proceeding.

(e) No Third-Party Beneficiary. This License is made for the benefit of the parties hereto and nothing herein shall be construed to create any right or benefit enforceable by any third party.

(f) Survival of Certain Provisions. Licensee shall remain obligated to the Licensor under all clauses of this License that expressly or by their nature extend beyond and survive the termination of this License, including the indemnity provisions hereof.

(g) Severability. In the event any term, covenant or condition herein shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein, provided that such invalidity does not materially prejudice either the Licensee or the Licensor in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

(h) Written Amendment. Unless otherwise provided herein, this License may be amended only by a written instrument duly executed by the parties.

(i) Time of Essence. Time is expressed to be of the essence in this License.

(j) Force Majeure. Timely performance by both parties is essential to this License. However, neither party is liable to the other for damages resulting from delays or other failures to perform its obligations under this License to the extent the delay or failure is caused by Force Majeure. For purposes of this License, "*Force Majeure*" shall mean pandemics, epidemics, fires, floods, explosions and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

(k) Notices. All notices provided for herein shall be in writing and served or given by electronic delivery, with confirmation of receipt, hand delivery, or an overnight delivery service. Any notice permitted or required to be served upon Licensee may be served upon it at:

Rolling Meadows Park District  
Attn: Executive Director  
Park Central - 3000 Central Road  
Rolling Meadows, Illinois 60008

Any notice permitted or required to be served upon the Licensor may be served upon it at:

City of Rolling Meadows  
Attn: City Manager  
3600 Kirchoff Road  
Rolling Meadows, Illinois 60008

Either party may give notice in writing to the other party of any change in such address, and, in such event, notices shall then be given to the party's substituted address.

(l) Venue. This License is subject to and shall be interpreted under the laws of the State of Illinois. Court jurisdiction shall exclusively be in the Circuit Court of Cook County, Illinois. Licensee shall ensure that Licensee and its employees, agents and officers are familiar with and comply with all applicable federal, state and local laws, regulations and ordinances as now written or hereafter amended or promulgated.

(m) No Waiver of Tort Immunity. Nothing contained herein shall be construed or deemed to diminish or constitute a waiver or relinquishment by any party of the rights, privileges, defenses and immunities available or afforded to it under the Illinois Local Governmental and Governmental Employee's Tort Immunity Act or under other State statutes affording similar protections.

(n) Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument. In the event any signature is delivered by facsimile or by e-mail delivery of a scanned PDF file, such signature shall create a valid and binding obligation of the party with the same force and effect as if the facsimile or scanned PDF signature page were an original thereof.

**LICENSOR**

CITY OF ROLLING MEADOWS,

By: \_\_\_\_\_  
Joe Gallo, Mayor

Attest: \_\_\_\_\_  
Judith Brose, Deputy City Clerk

**LICENSEE**

ROLLING MEADOWS PARK DISTRICT

By: \_\_\_\_\_  
Kevin Romejko, Executive Director

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

Before me, the undersigned, a Notary Public in and for said county and state, on this \_\_\_\_ day of \_\_\_\_\_, 2022, personally appeared Joe Gallo and Judith Brose, to me known to be the Mayor and Deputy City Clerk, respectively, of the City of Rolling Meadows, an Illinois municipal corporation, who executed the foregoing License Agreement and acknowledged to me that they executed the same as their free and voluntary act and deed and as the free and voluntary act of the City of Rolling Meadows, for the uses and purposes therein set forth.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared, Kevin Romejko, to me personally known as the Executive Director of Rolling Meadows Park District, who being by me duly sworn did say that he/she executed the said instrument as his/her voluntary act and deed for the purposes set forth herein.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

EXHIBIT A

MURAL AND MURAL LOCATION

**EXHIBIT B**

**VARA Waiver of Works of Visual Art**

Name of Artist: \_\_\_\_\_

Artist has read the Non-Exclusive License Agreement with which this Exhibit is associated hereby acknowledges the accuracy of the description of the Artwork in Exhibit A.

With respect to the City of Rolling Meadows, its officials, employees, agents, and volunteers, Artist hereby waives any right that Artist, or any Artist associated with the creation of the Artwork, may have under the Visual Artists' Rights Act, 17 U.S.C. §§ 106, 106A, and 113, as amended ("VARA"), and any successor statutes, related to the Artwork described herein the Non-Exclusive License Agreement.

Artist has read and understood the above waiver. By signing Artist's name below, Artist understands that Artist is signing this waiver on Artist's behalf and on behalf of all Artists associated with the creation of the Artwork and agrees to be bound by its terms.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

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