SECOND AMENDMENT TO REVOCABLE LICENSE AGREEMENT
FOR USE OF COUNTY FACILITIES

This Second Amendment ("Second Amendment") dated and effective as of October 30, 2019, is made by and between the COUNTY OF SONOMA, a political subdivision of the State of California, (hereinafter called "County") and The Bird Rescue Center, a California non-profit corporation (hereinafter called "Licensee"). All capitalized terms used herein shall, unless otherwise defined, have the meaning ascribed to those terms in the Original License (as defined below).

RECITALS

WHEREAS, County and Licensee entered into that certain Revocable License Agreement for Use of County Facilities dated February 11, 2014 ("Original License") for the "Premises" located at 3430 Chanate Road, Santa Rosa, CA, County of Sonoma, wherein the term of the Original License was agreed to be five (5) years and set to expire on February 11, 2019;

WHEREAS, Licensee acknowledges that County notified it regarding County’s intent to sell the Chanate Campus, which includes the Premises, and County’s requirement that Licensee move its property and operations to a new location off County property;

WHEREAS, pursuant to that certain First Amendment dated February 1, 2019 (the “First Amendment”), County agreed to extend the term of the License until not later than October 30, 2019, subject to certain terms and conditions as stated in that First Amendment, including Licensee’s delivery of financial information regarding capacity to move to a new location and construct new facilities, and Licensee making measurable progress towards securing a new lease and entitlements for a new premises;

WHEREAS, Licensee has made certain progress towards relocating its operations, including executing a lease with the owners of property at 1475 W. Sierra Ave., Cotati for Licensee’s new facility and operations ("Cotati Premises"). Licensee informed County that its use of the Cotati Premises requires a zoning change and use permit among other entitlements. Licensee has requested a further extension of the term while said lessor and Licensee each pursue their respective entitlements, and undertake efforts to raise funds to finance construction of said new facility at the Cotati Premises, and moves its property and operations;
WHEREAS, Licensee and County agree to an extension for a limited period of time, specifically until November 1, 2020, on the following terms and conditions, including that Licensee shall continue to use good faith efforts to raise funds to finance the construction of its new facility and take all actions necessary to receive the approvals and entitlements to develop said new facility at the Cotati Premises; and

WHEREAS, the Original License as amended by the First Amendment shall be referred to as the “Amended License”.

NOW, THEREFORE, in consideration of the Premises and of the agreements of the respective parties herein set forth, it is mutually agreed as follows.

AGREEMENT

1. Section 4 “Term” of the Amended License, is amended as follows:
   
a. The expiration date of the Term is extended to November 1, 2020 (“Extended Term”), subject to Licensee’s compliance with the provisions of the following paragraphs:

b. No later than June 1, 2020, Licensee shall provide County with: (i) a balance sheet for the year ending December 31, 2019; (ii) approximate construction budget and proforma identifying costs to plan, approve and construct its new facility, and identifying sources and uses of revenue therefor; (iii) a report identifying efforts to solicit grants and donations to finance said new facility including a total of funds sought and received, as well as conditional pledges received, including a summary of grant applications, solicitations of support, letters of support and pledges; and (iv) copy of most-current site plans and construction drawings for Licensee’s proposed new facility and operations if available.

c. On April 6, 2020, and again on August 3, 2020, Licensee shall provide County in writing with a progress report regarding (i) Licensee’s efforts to meet the commencement criteria under its Cotati Premises lease and (ii) Licensee’s efforts to obtain all entitlements required to conduct its use at the Cotati Premises, including a summary of notices of Project Status and project review correspondence with Permit Sonoma.

d. In the event Licensee fails to meet any of the above conditions, then County may terminate Licensee’s right to use the Premises on 60 days written notice to Licensee. In such event, Licensee shall, within said 60 day period, remove its personal equipment and items and vacate and surrender the Premises as otherwise required by the Original License.
e. Unless the term of the License is extended pursuant to the terms of Subparagraph f. below, Licensee shall remove its personal equipment and items and vacate and surrender the Premises as otherwise required by the Original License prior to the expiration of the Extended Term. Barring further, separate written agreement between County (or any successor) and Licensee, Licensee acknowledges that no further use of the Premises is allowed.

f. Notwithstanding the foregoing, prior to the expiration date of the Extended Term, County may agree to allow Licensee further use of the Premises, but only if good cause is found as determined by County in County’s sole discretion. In no event shall any further use be allowed if, as of the expiration date of the Extended Term: (i) Licensee has not secured at least fifty percent (50%) of the total funds needed to construct its new facility; and (ii) the County has not “deemed complete” all entitlement applications submitted to Permit Sonoma for Licensee’s new facility at the Cotati Premises. Any such allowance for further use must be in writing and shall be upon such terms and conditions as the parties may agree at such later time.

g. Nothing in this License shall be read or interpreted to create any right of holdover or additional occupancy of the Premises beyond the Extended Term.

2. Except to the extent specifically amended by this Second Amendment, the Amended License, together with all exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to modify, invalidate or otherwise affect any provision of the Amended License or any right of County or Licensee arising thereunder.

3. Nothing in this agreement is intended to, or shall be construed to, impact in any way the entitlement process regarding the Cotati Premises. The County, in its capacity as the licensor in this agreement, makes no representations as to the merits or outcome of the proposed zoning change or other entitlement-related issues arising out of the proposed use of the Cotati Premises, and does not by its references to such premises endorse, approve of, or otherwise support the anticipated entitlement request.

4. This Second Amendment shall be governed by and construed under the internal laws of the State of California, and any action to enforce the terms of this Fourth Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.
5. This Second Amendment may be executed in any number of counterparts, including electronically transmitted counterparts, each of which shall be enforceable against the Parties mutually executing such counterparts, and all of which together shall constitute one instrument.

COUNTY AND LICENSEE HAVE CAREFULLY READ AND REVIEWED THIS SECOND AMENDMENT AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS SECOND AMENDMENT, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.

IN WITNESS WHEREOF, Licensee represents it has full power and authority to enter into this agreement. The Parties have executed this instrument as of the dates set forth below.

"LICENSEE": The Bird Rescue Center, a California non-profit corporation

By: Jeremy Nichols, CEO & Board Chair
Dated: 2/8/2020

By: Sam Marsh, Board Vice Chair
Dated: 2/8/2020

"COUNTY": COUNTY OF SONOMA, a political subdivision of the State of California

By: Caroline Judy, Director
Department of General Services

Dated: 2/11/20
The General Services Director is authorized to execute this agreement pursuant to the Board of Supervisors Summary Report dated April 30, 2019, pursuant to Agenda Item No. 7.

APPROVED AS TO FORM FOR COUNTY:

[Signature]
Deputy County Counsel

CERTIFICATE OF INSURANCE ON FILE WITH DEPARTMENT:

[Signature] 4/7/20
Real Property Specialist