

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (the “Agreement”) is made and entered into as of this _____ day of June, 2018 (the “Effective Date”), by and between **GEORGIA-PACIFIC LLC**, a Delaware limited liability company (“GP”), having a mailing address at 133 Peachtree Street NE, Atlanta, Georgia 30303, Attention: Law Department-Real Estate, and the **CITY OF FORT BRAGG**, a municipal corporation (the “City”), having a mailing address at 416 North Franklin Street, Fort Bragg, California 95437, Attention: City Manager.

RECITALS:

WHEREAS, GP is the fee simple owner of that certain real property located at 90 West Redwood Avenue, Fort Bragg, California (the “GP Property”);

WHEREAS, the City is the fee simple owner of certain land adjacent to GP’s Property, such property being approximately outlined on Exhibit A attached hereto and incorporate herein by this reference (the “City Property”);

WHEREAS, the City has constructed a walking trail and related improvements (the “Trail”) on the City Property;

WHEREAS, the City desires to utilize a certain area of the GP Property not to exceed twenty-five (25) feet in width as a pedestrian and bicycle walkway for the general public in the location shown in red on Exhibit A (the “Walkway License Area”) to facilitate pedestrian and bicycle access to the center section of the Trail from Alder Street);

WHEREAS, the City desires to utilize that certain parking area on the GP Property outlined in blue and noted as “Parking Lot” on Exhibit A as public parking for individuals utilizing the Trail (the “Parking License Area”; the “Walkway License Area” and the “Parking License Area” are sometimes collectively referred to herein as the “Licensed Areas”); and

WHEREAS, GP has agreed to allow the City temporary use of the Licensed Areas in accordance with the provisions of this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GP and the City, intending to be legally bound, hereby agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and hereby incorporated in their entirety by reference.

2. **Grant of Licenses.** (a) Walkway License Area. GP hereby grants to the City a non-exclusive, temporary license to use the Walkway License Area solely as a pedestrian walkway and bicycle path for the purpose of providing the general public with access to the Trail from Alder Street. No cars, trucks, motorcycles, scooters or other motorized vehicles of any sort (other than City owned vehicles and emergency response vehicles) shall be permitted on the

Walkway License Area. The City shall be responsible for maintaining the Walkway License Area in good repair and in a safe condition, free from trash and debris.

(b) Parking License Area. GP further grants to the City a non-exclusive temporary license to use the Parking License Area as a public parking area for persons utilizing the Trail. The Parking License Area shall not be used for any other purpose. Notwithstanding anything herein to the contrary, the Parking License Area shall not be used for long-term or overnight parking or for the servicing or refueling of vehicles. The City shall be responsible for maintaining the Parking License Area in good repair and in a safe condition, free from trash and debris.

3. **Fencing/Access to the Licensed Areas.** (a) Within one hundred and twenty (120) days after full execution of this Agreement, the City shall be responsible for installing, at its sole cost and expense: (i) fencing on either side of the Walkway License Area sufficient to prevent pedestrians, bicyclists and pets from entering the adjoining GP Property; (ii) the trail improvements which will consist of an 8 foot wide asphalt trail and a 4 foot wide soft jogging trail; (iii) required parking improvements and (iv) a set of gates (the "Gate"), also sufficient to prevent pedestrians, bicyclists and pets from entering the adjoining GP Property, which Gate is to be located where indicated on Exhibit A. These improvements shall be installed prior to public access across the license area. The parties hereto agree that the Gate shall be a minimum of sixteen (16) feet wide to permit the passage of dump trucks and tractor trailers through the Gate. Promptly upon completion of installation of the Gate, the City shall provide GP with copies of the key and/or the code for said Gate. Access to the Walkway and Parking Lot from public roads shall be limited to Alder Street and Chief Celeri Way (via Oak Street)). Notwithstanding anything herein to the contrary, in the event that the Walkway is not properly maintained, or if the use thereof is not in compliance with the terms of this Agreement, GP reserves the right to terminate this Agreement upon providing written notice to the City. The City and its contractors and employees are strictly prohibited for any reason from entering any other areas outside the Licensed Area on GP's Property and the City shall not permit the use or occupancy of any other areas outside the Licensed Areas GP Property by other parties.

(b) Notwithstanding anything herein to the contrary, GP shall have the ongoing right to temporarily shut down the City and the public's access to all or any portion of the Licensed Areas at any time (each such event, a "Closure") when GP, its consultants or contractors are undertaking construction and/or maintenance work on the GP Property or in the event that GP determines, in its sole discretion, that certain activities taking place on the GP Property may pose a safety hazard to pedestrians. GP shall endeavor to provide the City with two (2) week's advance notice of a Closure when possible.

4. **Term.** The licenses granted herein for the Licensed Areas shall commence on the date on which GP has received the City's signed counterpart of this Agreement together with a certificate of insurance and will continue for a period of one (1) year (the "Term"). Thereafter, the Term shall automatically renew for successive one-year periods; provided however, that after the initial Term, either party shall have the right to terminate this License at any time by providing thirty (30) days written notice to the other party.

5. **Surrender.** Upon expiration of the Term or the earlier termination of this License, the City shall remove all materials and debris and, at its sole cost and expense, shall restore the License Areas to substantially the same condition existing on the commencement of this Agreement, unless this obligation is expressly waived by GP in writing upon expiration of the term or termination of this License. The City shall remain liable for any and all costs relating to any removal or disposition of any items not timely removed by the City and releases GP of any and all liability in connection therewith.

6. **Condition of Licensed Area.** The City accepts the Licensed Areas in their present condition and as suited for the uses intended by the City. The City shall maintain the Licensed Areas in a neat and clean condition during the term of this Agreement.

7. **Hazardous Materials.** The City is strictly prohibited from storing or bringing any fuel tanks, petroleum products or any Hazardous Materials in the Licensed Areas or anywhere else on GP's property without the express written permission of GP, except for those products directly related to the construction of the City improvements. In the event that the City breaches the terms of this Section 7, the City shall be responsible for any and all costs to remove the Hazardous Materials and remediate the GP Property and GP shall have the right to immediately terminate this Agreement. The term "Hazardous Material" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by Mendocino County, the State of California, the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the Food and Drug Administration, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

8. **Assumption of Risk, Waiver & Release.** The City, for itself and all of its employees, agents, contractors, affiliates, successors and assigns (collectively, the "**City Parties**"), hereby assumes all risk of loss, damage and injury that the City and such City Parties may incur or suffer on account of the City or the City Parties' exercise of their rights granted by this Agreement. The City, for itself and all City Parties, hereby waives any and all claims of loss, damage or injury against GP and all employees, directors, shareholders, agents, affiliates and contractors of GP (collectively, the "**GP Parties**") suffered or incurred by the City and any of the City Parties on account of the exercise of the rights granted by this Agreement unless due to the sole negligence or willful misconduct of GP or the GP Parties. The City, for itself and all City Parties, hereby releases and forever discharges GP and all GP Parties from and against any all such claims, whether at law or in equity, whether known or unknown at the time of this Agreement or accruing hereafter arising out of the City and City Parties' exercise of the rights granted in this Agreement, unless due to the sole negligence or willful misconduct of GP or the GP Parties. The assumptions, releases and waivers set forth herein are given knowingly and intentionally and without relying on any representation or warranty, express or implied, written or oral, of any kind from GP or any of the GP Parties.

9. **No Representation.** The City acknowledges that: (i) neither GP nor any of the GP Parties has made any representations or warranties concerning the Licensed Areas or any matters related to either and (ii) in entering into this Agreement, the City is not relying on any

representations or warranties from or by GP or any of the GP Parties. The rights and license granted herein are granted without warranty of title and are subject to any and all easements, rights of way, restrictions covenants, leases, servitudes, and encumbrances of whatever kind or nature, which may be presently of record or revealed by a physical inspection of the Licensed Area.

10. **Indemnification.** The City agrees to indemnify GP for all acts and omissions of itself and all of the City Parties in exercising the rights granted in this Agreement, and the City agrees to indemnify GP and the GP Parties, and to defend and hold GP and the GP Parties free and harmless, from and against any and all losses, costs, damages, liabilities, demands and expenses (including, without limitation, reasonable attorneys' fees, court costs, costs of litigation and the cost and expense of removing or bonding any liens affecting the Licensed Area) suffered or incurred by GP or any of the GP Parties by reason of the exercise of the rights granted to the City, the City Parties and the general public herein unless due to the sole negligence or willful misconduct of GP or the GP Parties. The indemnity contained in this Section shall expressly survive the expiration or earlier termination for any reason of this Agreement.

11. **Insurance.** At all times from and after the City's exercise of any of the rights granted to the City herein, the City shall maintain general liability insurance ("**GL Insurance**") with limits of liability not less than \$2,000,000 per occurrence with a general aggregate of not less than \$3,000,000 covering liability arising from the City's entry and use of the Licensed Area, independent contractors, personal injury, property damage and contractual liability that includes this Agreement as an insured contract. The City shall name GP as an additional insured with respect to any claims arising out of the City's entry upon or use of the Licensed Area. In addition, the City's GL Insurance: (i) must be endorsed to be primary and non-contributory, rather than excess, with respect to GP's additional insured status; (ii) endorsed to provide cross-liability coverage if it does not contain a standard ISO separation of insureds provision; (iii) shall not contain any endorsement or provision that states the limits of the policy will not stack, pyramid or be addition to any other limits provided by that insurer, and (iv) have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by an additional insured under the policy against another insured under the policy. The insurance provisions set forth herein set forth the minimum amounts and scopes of coverage to be maintained by the City and are not to be construed in any way as a limitation on the City's liability under this Agreement. The City shall furnish a certificate of insurance to GP evidencing the insurance required hereinabove upon execution of this Agreement.

12. **No Assignment.** The City may not assign this Agreement to any other person or entity without first obtaining the prior written consent of GP, which consent may be withheld in GP's sole discretion.

13. **Default.** If the City breaches this Agreement in any manner, GP shall provide the city notice and a reasonable time to cure. If the City fails to cure such breach within a reasonable time, GP may terminate this Agreement following thirty (30) day written notice to the City and pursue a claim for damages against the City and for any other remedy available at law or in equity on account of such failure or breach.

14. **Notices.** Any notice required or permitted under this Agreement must be in writing and given by personal delivery, overnight delivery service or by U.S. registered or certified mail, postage prepaid, return receipt requested, to the address of the recipient party first set forth above. Such notices will be deemed delivered on the earlier of actual receipt or refusal to accept receipt.

15. **Complete Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the matters contained herein and supersedes any and all prior and contemporaneous agreements with respect to the matters contained herein. Any changes, additions, or deletions hereto must be in writing and signed by all parties.

16. **Covenant Not to Record.** Neither this Agreement nor any memorandum hereof may be recorded in any public records, and upon any violation of this covenant, the rights granted to the City in this Agreement will immediately terminate.

17. **License Only.** The rights granted hereunder constitute a license, not an easement, and no estate passes out of GP with respect to the Licensed Areas.

18. **Miscellaneous.** Article and Section headings are inserted in this Agreement for convenience only and do not form a part of the text of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The provisions of this Agreement are not intended to benefit any third party who is not a party hereto. If any provision of this Agreement, or the application thereof to any person, entity, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void in any respect, the remainder of this Agreement and such provisions as applied to other persons, entities, places and circumstances shall remain in full force and effect. This Agreement may be executed by pdf transmitted by electronic mail followed by delivery of the originals and shall be considered executed and binding upon receipt of the pdf of the signature page of the last party to sign this Agreement. Time is of the essence of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year indicated beneath their signatures.

GP:

GEORGIA-PACIFIC LLC

By: _____
Michael E. Cruz
Vice President-Real Estate

Date of Execution: _____, 2018

CITY:

CITY OF FORT BRAGG

By: _____
Tabatha Miller
City Manger

Attest: _____
June Lemos, CMC
City Clerk

Approved as to Form:

By: _____
Russell Hildebrand
City Attorney

Date of Execution: _____, 2018

EXHIBIT A

