

DRAFT

MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF YOUNTVILLE AND DONOR ROBERT ORR

This memorandum of understanding (the "Agreement") is made on this 16 day of July, 2024 (the "Effective Date") between **Robert Orr** (hereafter referred to as the "Donor"), and the Town of Yountville, a municipal corporation, (hereafter referred to as the "Town").

RECITALS

1. WHEREAS, the Town supports robust public art and historical artifact programs that include the outdoor Sculpture Walk, George C. Yount Mill Stones, the 9-11 Memorial and numerous plaques and historically informative installations throughout Town.
2. WHEREAS, the Donor has made a generous offer to gift a sculpture of George C. Yount to the Town for its sole ownership. The sculpture of George C. Yount is constructed of bronze and standing 6 feet Tall and 24 inches wide and valued at \$80,000.
3. WHEREAS, the Town Council voted to approve Resolution Number 24-XXXX accepting the gift of the sculpture, and authorizing the Town Manager to execute the Agreement between the Town and the Donor.

THEREFORE, Donor and Town agree as follows:

1. THE DONOR

- a. The Donor agrees to gift the sculpture titled "George C. Yount", a visual depiction of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Sculpture"), to the Town of Yountville upon the execution of this Agreement.
- b. The Donor agrees that the Town shall have full ownership of the sculpture.
- c. The Donor agrees that the Town will have full rights to the Sculpture images and use of its image as it sees fit.
- d. The Donor agrees to be named as the Donor in any publication or marketing materials.

2. THE TOWN

- a. Agrees to list the Donor and Artist by name as appropriate when the Sculpture is placed for public viewing or when images are used in marketing materials or otherwise.
- b. Agrees that it will not fundamentally change the Sculpture or make alterations contrary to its understanding of the Donor's original intent. If modifications are needed in the future for safety or stability, the Town will attempt to contact the Donor and donor for consultation prior to making such modifications.
- c. Agrees to maintain the Sculpture to the Donor/Artists specifications.
- d. Agrees to provide an appropriate mounting base as agreed upon to be installed in front of Town Hall for display.
- e. Agrees to insure the sculpture at its own expense for the full value of \$80,000.

3. Term: This Agreement shall be in full force and effect upon execution and thereafter.

4. Copyright: The Donor shall retain the copyright and all other rights in and to the Sculpture, provided that the Town is hereby granted an unlimited, non-exclusive, irrevocable license to do the following with respect to the Sculpture: (i) use and display the Sculpture in public or private venues; and (ii) make, display, and distribute, and authorize the making, displaying, and distribution of photographs and other reproductions of the Sculpture without prior approval of or compensation to the Donor. Failure to include such credit line and notice in any reproductions shall not constitute a breach of this Agreement. Town shall not be responsible for any third party infringement of Donor's copyright or for protecting Donor's intellectual property.

5. WAIVER.

- a. With respect to the Sculpture, Donor hereby waives any and all claims, arising at any time and under any circumstances, against Town, its officers, agents, contractors, employees, volunteers, successors and assigns, arising under the federal Visual Donors Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§ 987, et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, Cal. Civil Code §§ 987, et seq., or any other type of moral right protecting the integrity of works of art. Specifically, Donor hereby waives any and all such claims against any future owners of the Sculpture, and their agents, officers and employees. Donor hereby represents and warrants that Donor is authorized to sign this waiver and assigns to the Town any and all rights he/she has or may have, or his/her heirs, beneficiaries, devisees, or personal representatives have or may have, under the foregoing laws..
- b. Donor expressly waives, as to Donor, his/her successors in interest, and assigns, to the greatest extent allowed by law, any rights Donor, his/her successors in

interest, and assigns may have under California Civil Code Sections 986 through 989. Specifically, but not exclusively, Donor disclaims, for Donor, his/her successors in interest, and assigns, any right to collect a royalty payment upon the sale or transfer of the Sculpture. Donor also agrees that in no event shall Donor have the right to place a lien upon the site where the Sculpture is installed or located or upon the Sculpture itself. Donor, his/her successors in interest, and assigns shall not be entitled to punitive, consequential, incidental, or other damages under this Agreement.

- c. In the event that Town's use of the Sculpture creates a trademark, service mark or trade dress rights in connection with the Sculpture, the Town shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

6. **Original Material.** The Donor represents and warrants that the Sculpture titled George C. Yount is wholly original materials not published elsewhere (except for materials in the public domain or used with the permission of the owner) and does not infringe any copyright or rights of any third party.

7. **Status of Donor:** Any services performed by Donor will be performed as an independent contractor and in pursuit of Donor's independent calling, and not as an employee of Town. Donor and any contractor(s), subcontractor(s), or agents thereof shall be responsible for their own insurance (liability, worker's compensation, health and automotive), retirement contributions, expenses, and state and federal taxes. Donor acknowledges and agrees that the Town will make no income tax or other withholdings from the amounts payable to Donor pursuant to this Agreement. Donor shall: (i) Report all income paid to it pursuant to this Agreement for state and federal income tax purposes; (ii) Pay all state and federal income, social security, and other taxes and liabilities on such income when due; and (iii) indemnify and hold harmless the Town from any liability, damage, cost of expense resulting from Donor's failure to make any such payments when due.

8. **Indemnification:**

- a. Donor hereby releases and shall defend and hold harmless the Town, its officers, employees, volunteers, agents, and contractors from any and all causes of action, suits at law or equity, claims, demands, losses and liabilities of any nature (including but not limited to attorney's fees) arising out of any act or omission of Donor or any employee, volunteer, agent, or contractor thereof in the performance of this Agreement.
- b. Donor hereby releases and shall defend and hold harmless the Town and its officers, employees, volunteers, agents, and contractors from any and all causes of action, suits at law or equity, claims, demands, losses and liabilities of any nature (including but not limited to attorney's fees) arising out of any breach of any of Donor's obligations, representations, or warranties set forth in this Agreement.
- c. Town hereby releases and shall defend and hold harmless Donor, his/her officers, employees, agents, and contractors from any and all causes of action,

suits at law or equity, claims, demands, losses and liabilities of any nature (including but not limited to attorney's fees) caused by the active negligence, sole negligence, or willful misconduct of the Town, or of any officer, volunteer, agent, contractor, or employee of the Town in the performance of this Agreement.

- d. Town hereby releases and shall defend and hold harmless Donor/Donor, his/her officers, employees, volunteers, agents, and contractors from any and all causes of action, suits at law or equity, claims, demands, and liabilities of any nature (including but not limited to attorney's fees) arising out of any breach of any of the Town's obligations, representations, or warranties set forth in this Agreement.
 - a. Town, Donor and Donor expressly agree that any reasonable payment, attorney's fees, costs or expense Town incurs or makes to or on behalf of an injured employee under the Town's workers' compensation plan is included as a loss, expense or cost for the purposes of this section. This section will survive the expiration or early termination of the Agreement.
9. **Compliance with Laws:** The Donor will comply with all applicable local, state, and federal laws and regulations prohibiting discrimination and harassment. The Donor/Donor, his/her agents, contractors, officers, volunteers, and employees in the performance of this Agreement shall not discriminate against any person on the basis of race, color, religion, sex, creed, marital status, national origin, ancestry, or any other prohibited class.
10. **Venue and Jurisdiction:** The Donor agrees and stipulates that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this Agreement is the Superior Court of California for the County of Napa.
11. **Assignment:** The Donor may not assign this Agreement or any part of it without the prior written consent of the Town.
12. **Amendments:** This Agreement may be amended by mutual consent of the Town and Donor. Any amendment will be in writing, signed by both parties, with a statement of the changes.
13. **Construction:** This Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties.
14. **Execution:** This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed an original document, and all of which together shall constitute one and the same document.
15. **Entire Agreement:** This Agreement embodies the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede any other attachment or exhibit. Neither this

Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

- 16. Notice:** Any notices required by this Agreement shall be sent to the following addresses:

To Town of Yountville:

Town of Yountville
Town Manager
6550 Yount St.
Yountville, CA 94599
707-944-8851

To Donor

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and entered into as of the Effective Date.

DONOR:

Printed Name: _____

Date: _____ Signature: _____

TOWN OF YOUNTVILLE:

Printed Name: _____

Date: _____ Signature: _____

Exhibit "A"
(Visual Depiction of Sculpture Titled "George C. Yount")
Depiction Not Exact



