



Storyblocks Enterprise Royalty Free License Agreement

This License Agreement (the “**Agreement**”) is entered into as of October 18th, 2021 (the “**Effective Date**”) between The City of San José (“**you**” or “**company**”) and Footage Firm, Inc. (“**Storyblocks**” or “**we**”). This agreement provides user licenses/logins limited to the Parks, Recreation and Neighborhood Services and Environmental Services Departments.

Unlimited Member Libraries

Features	Enterprise Solutions
Storyblocks Video Unlimited Library: Full access to unlimited download library Storyblocks Image Unlimited Library: Full access to unlimited download library Storyblocks Audio Unlimited Library: Full access to unlimited download library Storyblocks Maker	Included
User Licenses	5 <i>(Limited for the PRNS & Environmental Services Departments)</i>
Email and phone support	Included
Dedicated Account Manager with priority support	Included
Duration / Effective Date	10/18/2021 – 10/17/2022
2021 Standard Price	\$15,000*
First-Year Price <i>(Contingent on signature on or before 10/18/2021)</i>	\$10,000*

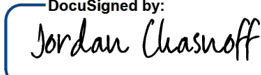
* Plus any applicable taxes (including, but not limited to, withholding, sales, and value added taxes), fees, duties, or governmental charges imposed by any taxing jurisdiction.

Payment Schedule:


- Annual subscription payment due net-30 days from the invoice date. An invoice for the total price will be issued on the effective date of this agreement. Due to the unlimited and perpetual nature of our business we have a strict no cancellation policy and all invoices must be paid in order to maintain this licensing agreement. Should there be a default in payment per the price and payment schedules, any content downloaded during the term of this agreement would not be licensed or guaranteed by Storyblocks.

BY SIGNING THIS AGREEMENT, COMPANY HEREBY ACCEPTS THE TERMS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS INCORPORATED BY REFERENCE.


Storyblocks:

DocuSigned by:

 Signature: _____
 Name: Jordan Chasnoff
 Title: CRO
 Date: 10/25/2021

City of San José:

Signature: 
 Name: Aaron Yu
 Title: Deputy City Attorney
 Date: 10/18/2021

Approved as to form:

Signature: 
 Name: Sarah Zarate
 Title: Director
 Date: 10/21/21

Storyblocks Enterprise Royalty-Free License Agreement

A. Your Rights. We, Footage Firm, Inc., the owner of storyblocks.com, videoblocks.com, graphicstock.com, and audioblocks.com, grant you a perpetual, worldwide right to incorporate the Stock Files you obtain from us into any work you create.

Retroactive Enterprise Royalty-Free License: In addition to the rights and guarantees specified below and provided for the Effective Dates of this agreement, Storyblocks will retroactively extend all rights, warrants, guarantees, indemnity, and limitations (the Enterprise Royalty-Free License) to all Storyblocks Stock Files used prior to the Effective Dates, downloaded by the accounts associated with the email addresses webmaster.prens@sanjoseca.gov and sjenvironment@sanjoseca.gov.

For any Stock Files you obtain from us, you may incorporate them into any project, commercial or otherwise, including feature films, broadcast, educational, print, multimedia, games, merchandise, and the internet.

Once you incorporate a Stock File into your project, you can share your finished project freely, but you may not share the underlying individual Stock File as a standalone file with anyone who does not also have an appropriate Storyblocks Enterprise (user) license. (That said, if you are working on a project and need to show someone else, such as a client, one of our files for the sole purpose of getting their input on whether to incorporate the file into your project, that is perfectly fine. But they cannot use the stock file themselves for any other purpose unless they get their own license.) You also agree to use your best efforts to avoid letting the Stock File be accessible to others as a standalone file, but since that's not always possible, your inability to prevent copying will not be considered a breach of this License.

Our Stock Files may include videos, photos, graphics, audio, fonts, templates, and more. This License covers all Stock Files obtained from our platform. Keep in mind that this License is limited in certain ways, as explained below, and it is neither exclusive to you nor transferrable to others.

B. Our Guarantee. We promise that if you use our Stock Files as described in this License, your use will not infringe on the rights (such as copyrights) of a third party.

We also put our money where our mouth is. In fact, we will provide you up to \$1,000,000 in indemnification if you incur any direct damages due to our breach of this promise. This is known as our Limited Warranty. Because this is a big number, we need to make a few things clear. **In no event, including negligence, will we be liable to you or any third party for incidental, indirect, or consequential damages of any kind. Our maximum aggregate liability for all breaches of the Limited Warranty will be limited to the lesser of \$1,000,000 and the actual, direct damages you incur directly arising from the breach. We make no other warranties of any kind about our files or services beyond the Limited Warranty.**

Note that trademarks, logos, or copyrights depicted *within* our Stock Files are not covered by this guarantee. For example, if one of our videos depicts someone holding a brand-name beverage, the beverage label may be protected by copyright and trademark law and should be used at your own risk. (We wouldn't want you to think that this License lets you reprint Coca-Cola cans.)

C. Basic Limitations. Ensuring fairness for all of our artists and other customers is a top priority. Here is how we protect them.

1. You cannot sell, license, or redistribute our Stock Files, nor can you build your own stock media site with our files. You cannot create a trademark or logo based on our Stock Files, since that could block other customers from using the Stock Files. Finally, you cannot use Stock Files to harm minors, to encourage violence, or for an unlawful purpose, such as defamation.
2. Our library offers an unlimited download model, and because of this, we want to make sure people are not abusing the membership to stockpile large numbers of clips without intending to actually use them in upcoming projects. For this reason, you cannot use automation, such as computer scripts, to download or "scrape" high volumes of Stock Files, nor can you do so manually if your intent is simply to stockpile content. (People often ask what we mean by "high volumes" of clips. Although this is a case-by-case determination, as a rule of thumb, it is perfectly fine to download a few dozen of our most beautiful clips that you think might be useful in the future. By contrast, downloading 500 files at once without intending to use them anytime soon would qualify as abuse.)
3. For Stock Files with identifiable people or property, we will clearly mark whether the Stock File is "model released" or "property released" or both on the clip description pages. We guarantee that such content will not infringe on the rights of an individual (for model-released content) or property (for property-released content). If content depicts identifiable people or property and does not have the appropriate release, you may still use the content, but you must satisfy yourself that all necessary releases are provided for your intended use. For example, content used for "editorial" purposes generally does not require a release. Also, for model-released Stock Files, you must not depict the models in a way that a reasonable person would find offensive. Just to be clear, the issue is whether your depiction of the models is offensive, not whether your project as a whole may be offensive. For example, you could use Stock Files with models in a documentary about a rare and embarrassing medical

condition, but you should not depict the models in a way that suggests they *personally* carry the condition, unless our clip already depicts them that way. (Our models do not want to be portrayed as scum or scallywags.)

4. This License allows you to use our audio clips in YouTube videos, but since we are not associated with YouTube or similar platforms, we cannot prevent other people from incorrectly claiming that your video violates a copyright. If you get such a claim, let us know, and we will walk you through the steps to help you resolve the problem. Still, platforms like YouTube could block your content for reasons beyond our control.

D. Multi-Seat Licensing. Our Enterprise License is written for and indemnifies you and your entity or company.

The license provided under this Agreement provides access to stock files and all the warranties and guarantees specified in this license to all authorized “Users” and the entity or company that they work for. User licenses / seats are limited to the number of licenses / seats specified above. All “Users” must have a unique login that is identified by first name, last name, and corresponding email address. If we have reasons to believe more than one person using the login this will be considered a breach of the terms of this agreement. If you or your company require additional user licenses or if you have a question about authorized users; contact our Enterprise Team at enterprise@storyblocks.com.

E. Other Legal Provisions. Here are a few remaining legal notes we need to tell you about.

1. You will make commercially reasonable efforts to credit Storyblocks as the provider of content: “*Footage provided by Storyblocks*”. Storyblocks may publicly refer to you, orally or in writing, as a customer of Storyblocks.
2. This Agreement will be governed by the laws of the State of California, excluding its body of law relating to conflicts of law and copyright law. If any provision of this Agreement is found invalid, the other provisions will not be affected. You must be of legal age to enter this Agreement.
3. On our website, we may offer plans that modify this agreement in certain ways, such as providing additional seats or indemnification. Except for those plan-specific terms, this agreement still applies.
4. Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
5. Gross up: All payments made by and/or amounts due from you to Storyblocks under this Agreement shall be made without any deduction and free and clear of and without any deduction for or on account of any applicable present or future taxes (including, but not limited to, withholding taxes, sales taxes, and value added taxes), fees, duties, or governmental charges imposed by any taxing jurisdiction (the “Taxes”). If any Taxes must be deducted from any amounts payable or paid by you, you shall pay such additional amounts as may be necessary to ensure that Storyblocks receives a net amount equal to the full amount which it would have received if no Taxes were payable. No sales tax will be collected by Storyblocks unless required by applicable laws, rules, or regulations. If any such sales tax is due by you, you agree to notify Storyblocks and you will be responsible for paying such sales tax and such additional amounts as may be necessary to ensure that Storyblocks receives a net amount equal to the full amount which it would have received if no sales taxes were payable.



Memorandum

TO: Sarah Zarate
Director

FROM: Jon Cicirelli
Director

SUBJECT: Approval of Retroactivity
Storyblocks

DATE: September 10, 2021

Approved

Sarah Zarate

Date

10/21/2021

SUBJECT: APPROVAL OF RETROACTIVITY IN THE AGREEMENT FOR STORYBLOCKS

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Department is seeking authorization for the retroactive provision to pay for services in the following agreement.

The justification for the requests detailed below that are to include a retroactivity provision is that the agreements were competitively procured and either:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:
If this option is selected, explain the City interest and how the services protected/advanced that City interest.

July 2021

Subject: APPROVAL OF RETROACTIVITY

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This agreement is with Storyblocks, a company that provides stock videos, photos, and music. The Department previously had a license that was procured in 2019, however the Department was later informed that the account had been misused and that an upgrade to the account license should be purchased. This license allows five seats for the account, which can be shared with other departments. Storyblocks has the highest level of legal protection for content produced and distributed through all mediums using their files. After comparing to other stock distribution services, Storyblocks has the content needed for our required communication needs with unlimited downloads and licensed longevity of these files to the City. Competitors like Shutterstock and Getty Images use a credit system, with the license only lasting as long as the account is active.

We understand that retroactive agreements are to be avoided. In this instance, the agreement is retroactive due to the administrative error made when procuring the license back in 2019. This agreement will alleviate the issues in 2019, and allow the City to continue using the license under the correct provisions. We request an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses.

 On behalf of

Jon Cicirelli
Director
Parks, Recreation and Neighborhood
Services

For questions please contact Petra Riguero, Interim Program Manager, at (408) 793-4198.





Memorandum

TO: Jennifer Cheng
Deputy Director, Purchasing

FROM: Daniel Lazo
Interim Public Information Manager

SUBJECT: Unauthorized Purchase

DATE: August 27, 2021

Acknowledged

Date August 27, 2021

This memorandum requests payment of an invoice for services from a stock licensing service for the amount of \$10,000.00

On July 23, 2021, we received a violation notice from Storyblocks representative, Sarah Zaharoff. She informed us that the current license is in violation of the terms and conditions of the initial license we procured back in 2019. The initial purchase was \$360 billed annually on a Purchase card and recommended by another city department using it at the time.

After speaking with Zaharoff in July, she informed us that the individual license only insures the individual rather than the larger organization itself. We consulted with the City Attorney's Office and they instructed us the next step is to procure the correct the license to properly allow the City of San Jose, to utilize the files legally.

The Attorney's Office has reviewed the agreement and approved it as to form.

By procuring the correct license, it will effectively remove the downloads from the individual name and re-license them to the City of San José. This license allows five seats for the account, which can be shared with other departments. Storyblocks has the highest level of legal protection for content produced and distributed through all mediums using their files.

After comparing to other stock distribution services, Storyblocks has the content needed for our required communication needs with unlimited downloads and licensed longevity of these files to the City. Competitors like Shutter Stock and Getty Images use a credit system, with the license only lasting as long as the account is active.

The Department of Parks, Recreation and Neighborhood Services' Director's Office of Communication is taking the following steps to prevent similar occurrences in the future:

- Review and inquire about enterprise licenses and what they provide for organization-wide licenses, rather than individuals, with City Manager's Office and City Attorney Office.

In the meantime, we do request that the current outstanding invoice be processed for payment since the error occurred as a result of staff direction, not through any fault of the vendor.

/s/

DANIEL LAZO

Interim Public Information Manager

For questions, please contact Daniel Lazo, Interim Public Information Manager, at daniel.lazo@sanjoseca.gov

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667222-000

Contractor: Storyblocks (Footage Firm, Inc)

Address: 1515 N Courthouse Rd Suite 1000, Arlington, VA 22201

Phone: _____

Email: sarah@storyblocks.com

Contract Description: Storyblocks will provide a subscription to allow the Department Communications Team to access unlimited stock music, photos, and videos.

Term Start Date: September 13, 2021 Term End Date: September 12, 2022 Extension: Select one

Method of Procurement: Select one RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): NA

Agenda Item No.: NA

Resolution No.: NA

Ordinance No.: NA

Original Contract Amount: NA

Amount of Increase/Decrease: NA

Option #: _____ of _____ Option Amount: _____

NTE/Updated Contract Amount: \$10,000

Fund/Appropriation: _____

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: _____

Expiration Date: _____

Department: PRNS (64)

Department Contact: Daniel Lazo, daniel.lazo@sanjoseca. PRNScontracts@sanjoseca.gov Customer (Finance Only): _____

Notes: DB#646995

Retroactive

Project Manager: Daniel Lazo

Department Director Signature:  On behalf of Jon Cicirelli 10/18/2021

Date

Jessica Lowry

10/21/21

Office of the City Manager Signature: _____

Date