

**LICENSE AGREEMENT FOR THE TEMPORARY USE
OF 255 N AUTUMN STREET**

THIS LICENSE AGREEMENT (“**Agreement**”) is made as of October 12, 2021, between the CITY OF SAN JOSE, a California municipal corporation (“**City**” or “**Owner**”), and SAN JOSE DOWNTOWN ASSOCIATION, a non-profit corporation (“**Licensee**”).

RECITALS

- A. WHEREAS, the City is the owner of that certain real property located at 255 N Autumn Street, San Jose, CA (“**Property**”), together with the building (“**Building**”) and all other improvements thereon; and
- B. WHEREAS, the Licensee desires to lease portions of the Building as shown on **Exhibit A** (“**Temporary Space**”); and
- C. WHEREAS, the City desires to grant to the Licensee the right to use the Temporary Space located with the Building pursuant to this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

- 1. Basic Terms. The following terms shall have the following meanings throughout this Agreement.
 - a. Term: The terms of this Agreement (“**Term**”) shall commence on October 12, 2021 (the “**Commencement Date**”), and expire on October 11, 2022, unless sooner terminated pursuant to the terms of this Agreement.
 - b. Option to Extend. City and Licensee shall have the option to mutually extend the term of this Agreement beyond the initial term described herein for up to three (3) additional one (1) year periods on the same terms, covenants and conditions that are contained in this Agreement (“**Option Term**”). Licensee shall provide notice to the City of it’s intention to exercise the option to extend this Agreement, if at all, by providing City with written notice no later than thirty (30) days prior to the expiration of the Term or any subsequent Option Terms.
 - c. Fee: Licensee shall pay City a minimum monthly fee (the “**Licensee Fee**”) equal to one dollar (\$1.00). The License Fee shall be due and payable in advance on the first day of each calendar month throughout the Term without notice or demand and without any set-off.
 - d. Deposit: None.
 - e. Permitted Activity and Purpose: Licensee shall be permitted to use the Temporary Space as temporary storage of equipment for the Downtown Ice program (the “**Permitted**”).

Use”). Licensee shall only be permitted to conduct the Permitted Use within the Temporary Space.

2. License. The City hereby grants to Licensee a non-transferable, temporary, non-exclusive, revocable license (the “**License**”) to use the Temporary Space for the Permitted Use during the Term set forth above, unless terminated sooner in accordance herewith, subject to the terms and conditions hereof. For clarification purposes only, Licensee hereby acknowledges and agrees that the License granted by the City to Licensee for the Permitted Use is temporary and revocable by the City in its sole discretion. Licensee hereby acknowledges and agrees that the City and its agents, consultant, employees and contractors/subcontractors, and each of their respective agents, consultants, employees and contractors/subcontractors (collectively, “**Agents**”) shall have continued access to and use of the Temporary Space for any and all purposes deemed necessary or desirable by the City. Notwithstanding anything to the contrary contained herein, Licensee shall at all times comply with all applicable laws, codes, ordinances, rules, regulations and other governmental and municipal requirements in connection with Licensee’s use of the Temporary Space. Licensee accepts the Temporary Space in its “as-is”, “with all faults”, “without any warranties or representations” condition. Licensee further covenants and agrees that Licensee shall not use, or suffer or permit any person or persons to use, the Temporary Space or any part thereof for any use or purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit B**, attached hereto and made a part hereof (the “**Regulations**”), or in violation of the laws of the United States of America, the State of California, the ordinances regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the property, including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect, or any “Underlying Documents” (as that term is defined below). A violation of the Regulations by Licensee shall be deemed a default under this Agreement and Licensee’s use of Temporary Space shall be subject and subordinate to, all recorded easements, covenants, conditions, and restrictions now or hereafter affecting the property (the “**Underlying Documents**”).
3. Term and Conditions. In consideration of the License granted to Licensee herein, Licensee agree to the following:
 - a. Purpose. Licensee shall have the License to use the Temporary Space only for the Permitted Use and for no other purpose. In no event shall the Temporary Space be utilized for any other purpose by any other parties, or for longer than the Term set forth above.
 - b. Regulations. Licensee shall comply with each of the Regulations. Licensee shall also comply with any additional rules or modifications of the Regulations that City may promulgate from time to time after the date hereof. If there is any conflict between the terms and conditions set forth in the Regulations (as the same may be amended and/or modified from time to time) and this Agreement, this Agreement shall control.
 - i. Compliance with Laws. Licensee shall obtain and maintain all necessary permits, licenses and approvals, from the relevant agencies having jurisdiction and comply with all current laws, ordinances, orders, rules, regulations and permits

with respect to its use of the Property pursuant to this Agreement. No entry shall be made until City has received and approved a schedule for the proposed work including details of the work to be performed and a list of the names of all contractors of Licensee authorized by Licensee to enter the Property. In no event shall Licensee's use of the Property involve any alteration thereto, all of which shall be undertaken by Licensee at its sole cost. No stand-by backup electrical power generation facility is allowed to be installed or constructed on the Property. At all times during the Term, Licensee shall maintain the Property in a safe, clean and orderly condition.

- c. Insurance. Licensee shall have and maintain in full force and effect during the Term of this Agreement the minimum insurance requirements as set forth in the attached **Exhibit D**.

- d. Release and Waiver. To the maximum extent permitted by law, Licensee on behalf of itself and its employees, owners, members, officers, agents, contractors and invitees (collectively, the "**Licensee Parties**" and each a "**Licensee Party**"), waives and releases the City and all its officers, employees and agents from any and all liability that occurs on the Property that is suffered by Licensee or any Licensee Party for any injury suit, action, claim, demand, loss, damage, liability, or liability for damages of any kind of nature, whether for loss or damage to property, or injury to or death of persons, and whether or not known or suspected (collectively "**Claims**"), which may arise out of use of the Property by Licensee or any Licensee Party except such loss or damage as is caused by the active negligence or willful misconduct of City, its officers, employees or agents acting in their official capacities and acting within the scope of their official duties. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from Licensee's or any Licensee Party's introduction or generation of Hazardous Materials, as defined in **Exhibit C**, on the Property, or the creation of increased hazard to the public from existing materials arising from the use of the Property by Licensee of any Licensee Party. However, Licensee shall not be responsible for any cleanup of Hazardous Materials not caused, generated or distributed by Licensee or any Licensee Party.

- e. Indemnification. To the maximum extent permitted by law, Licensee shall indemnify, defend, and hold harmless City and its officers, employees and agents against any and all Claims, resulting from or arising out of Licensee's or any Licensee Party's use of the Property, including, but not limited to, entries of Licensee or any Licensee Party, except such loss or damage as is caused by or the sole active negligence or willful misconduct of City, its officers, employees or agents acting in their official capacities and acting within the scope of their official duties. The foregoing shall include, but not be limited to, any Claims resulting from Licensee's or any Licensee Party's introduction or generation of Hazardous Materials, as defined in **Exhibit C**, on the Property, or the creation of increased hazard to the public from existing materials arising from the entries of Licensee or any Licensee Party. However, Licensee shall not be responsible for any cleanup of Hazardous Materials not caused, generated or distributed by Licensee of any Licensee Party.

- f. As-Is Condition and Assumption of Risk. Licensee accepts the condition of the Property as-is and with all faults and acknowledges that: i) City is under no obligation to provide any additional preparations, improvements, utilities or equipment to the Property prior to use by Licensee, and ii) Licensee's use of the Property is entirely at its own risk. Without limiting the generality of the foregoing, Licensee acknowledges that it shall be solely responsible for instituting and carrying out security measures on the Property to prevent vandalism or theft (which measures, if any, shall be subject to the prior written approval of City), and that City shall not be responsible for providing any security at the Property and shall not be liable for any vandalism or theft that may occur on the Property. For avoidance of doubt, Licensee acknowledges that its use of the Property shall be at its own risk and that Licensee shall be responsible for all costs, risk or liability that occurs or arises during or as a result of its use or occupancy of the Property.
- g. Survival. The provisions of subsections 3(d), 3(e), 3(f) and 3(h) shall survive expiration or termination of the Right of Entry as to liabilities and other Claims arising out of events that occur prior to the later of: (i) expiration or termination of the Right of Entry or (ii) the date Licensee vacates the Property and restores it to its original condition and free of hazards.
- h. Restoration of Property. Licensee shall fully restore the Property to its pre-existing condition or better upon expiration of the Right of Entry or upon vacating the Property prior to termination or expiration of the rights granted by this Agreement. If the restoration is not so performed by Licensee upon expiration or termination of this Agreement or upon Licensee's vacation of the Property prior to termination or expiration, City shall have the right, but not the obligation, to perform the necessary restoration after providing no less than thirty (30) days prior written notice to Licensee that it will do so. Upon receipt of the notice of restoration costs from City, Licensee agrees to reimburse City for such costs incurred, plus an additional amount equal to twenty percent (20%) thereof for administrative overhead within thirty (30) days. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Licensee. This provision shall survive expiration or termination of the Right of Entry or this Agreement.
- i. Removal of Property; Holding Over. Upon the expiration or earlier termination of this Agreement, Licensee shall have removed all of its property from the Temporary Space and shall leave the Temporary Space in a clean condition and in as good or better condition than when Licensee took possession of the Temporary Space. Licensee, at Licensee's sole cost and expense, shall repair all damage to the Temporary Space caused by the removal of Licensee's property therefrom or otherwise caused by Licensee and/or any Licensee Parties, or in connection with Licensee's use of the Temporary Space. For each day or part of a day after the end of the Term that Licensee shall have failed to do the foregoing, Licensee shall pay to Owner One Hundred Fifty and No/100 Dollars (\$150.00) by cashier's or certified check or other immediately available funds in consideration of such holdover. Payment of said sum shall not prejudice any other rights available to Owner with respect to the holding over by Licensee. If Licensee fails to remove its property by the end of the Term, Owner may dispose of said property in such

lawful manner as it shall determine in its sole and absolute discretion, and the cost of such disposal shall be reimbursed to Owner within five (5) days of Owner's demand.

- j. Graffiti Abatement. Licensee shall be responsible for the prompt abatement of any and all graffiti that occurs in the Access Area during the term of this Agreement. If Licensee fails to abate any graffiti in a prompt manner, City may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Licensee for reimbursement, and Licensee shall reimburse City within fifteen (15) days after its receipt of an invoice therefor and reasonable supporting documentation of the work completed.
- k. City Access to Property. City shall continue to have the right to use and access the Property in its entirety and grant such use and access rights to third parties.
- l. No Grant; Limited to Access Area. The Agreement constitutes a revocable license; nothing herein shall be construed as a grant of title or any interest in the Property. Licensee's use of the Property shall only include the Temporary Space.
- m. No Admission of Liability. Nothing herein shall be construed as an admission of liability by City of its responsibility as to any Hazardous Materials that may be found on the Property, nor, except as expressly provided herein, as an admission of liability by Licensee as to any Hazardous Materials which may be found on the Property.
- n. Termination without Cause. City shall have the right to terminate the Agreement, without cause, by giving not less than thirty (30) days prior written notice of termination to Licensee. City's Director of Economic Development is authorized to terminate the Right of Entry on behalf of City. Notwithstanding anything to the contrary in this Agreement, Licensee shall vacate the Property and restore it as provided in Section 3 (h) & 3 (i) by 11:59 p.m. on the date of termination.
- o. No Liens or Encumbrances. Licensee shall not permit or suffer any liens or encumbrances to be imposed upon the Property or any building or structure thereon, as a result of Licensee's activities without promptly discharging the liens or encumbrances.
- p. Assignment. Licensee may not assign this Agreement or its rights and obligations hereunder without obtaining City's prior written consent. Any assignment without such written consent shall be void. Any assignment by Licensee shall not relieve Licensee of its indemnification obligations set forth in this Agreement.
- q. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be amended or revised except by a writing executed by both parties hereto.
- r. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but such counterparts together will constitute one and the same instrument. Each party (i) has agreed to permit the use, from time to time and when allowed by law, of electronic signatures in order to

expedite the transaction contemplated by this Agreement, (ii) intends to be bound by electronic signature, (iii) is aware that the other will rely on the electronic signature, and (iv) acknowledges such reliance and waives any defenses (other than fraud) to the enforcement of any document based on the fact that a signature was sent by telecopy. As used herein, the term “electronic signature” shall include any signature sent via facsimile or via email in portable document format (“.pdf”).

- s. Authority. Each person signing below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the respective party and that such execution shall bind said party to the terms of this Agreement.
- t. Notices. All notices given in conjunction with this Agreement shall be written, and shall be effective upon personal delivery to the other party or, if by mail, three (3) days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

“Licensee”

San Jose Downtown Association
28 N First Street, Suite 1000
San Jose, CA 95113
Attn: Scott Knies

“City”

City of San Jose
200 E Santa Clara Street, 12th Floor
San Jose, CA 95113
Attn: Real Estate Manager

- u. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- v. Venue. In the event that suit shall be brought by either party hereunder, the parties hereto agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year written below.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a California municipal corporation


Cameron Day (10/12/2021)
Email: cameron.day@sanjoseca.gov


Nanci Klein (10/12/2021)
Email: nanci.klein@sanjoseca.gov

Cameron Day
Deputy City Attorney

Nanci Klein
Director, Office of Economic Development and Cultural Affairs

“LICENSEE”

SAN JOSE DOWNTOWN ASSOCIATION, a non-profit corporation


sknies@sjdowntown.com (10/12/2021)
Email: sknies@sjdowntown.com

Scott Knies
Executive Director

EXHIBIT A

Temporary Space



EXHIBIT B

Regulations

1. Conditions of Temporary Space and Surrounding Area. Licensee shall continually keep the Temporary Space and any booths, tables or other items which Licensee may have at the Temporary Space, in a neat, clean and attractive manner. No boxes, trash, back-up stock or personal items shall be visible to invitees at any time. Licensee shall continually keep the area around the Temporary Space free of any refuse or other items originating from the Temporary Space or arising out of Licensee's activities there at. Without limitation, Licensee shall not allow any substance on the floor area at or around the Temporary Space which may cause the floor to be slippery or otherwise hazardous to persons walking on the floor. Licensee shall promptly repair any damage to the Temporary Space or the surrounding area caused by Licensee or arising out of Licensee's activities.
2. Objects at or around Temporary Space. Licensee shall obtain City's prior approval with respect to any objects Licensee intends to place on the Temporary Space. Licensee shall not place any item outside the Temporary Space. Licensee shall not place any type of tape on the floor or on any fixture in or around the Temporary Space. No item shall be placed on any fixture at the Property including, without limitation, on fountains, cans, planters, walls, columns, banisters or railings.
3. Work at Temporary Space. Any type of work Licensee shall wish to perform at the Temporary Space, including setting up or taking down of any display, and also including any type of construction work or painting, shall require and be subject to City's advance approval and shall be performed only at such times as permitted by City.
4. Transport of Objects. Licensee shall transport items to the Temporary Space by such route and at such times as are approved in advance by City (which routes are shown on Exhibit A). No items shall be brought to the Temporary Space during ordinary business hours without City's prior consent.
5. Personal Appearance; Conduct. Licensee and each member and employee of Licensee shall maintain a personal appearance, including attire and grooming, consistent with the highest possible standards. Licensee and its members and employees shall conduct activities in a quality manner and shall not carry on any activity that may be considered offensive or which may injure the reputation of the Property in any way. No soliciting or badgering of other occupants or visitors of the Property shall be allowed.
6. Signs. All signs Licensee may wish to install at the Temporary Space shall be subject to City's advance approval in all respects, including but not limited to, their location, and any such signs shall be of professional design and quality.
7. Interest. Any sums due from Licensee to City, and not paid when due, shall bear interest at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is less.
8. Approvals. Whenever City's approval is required hereunder, such approval shall not be effective unless granted in writing by an authorized representative of City. Any approval granted shall apply only to the specific matter for which approval is sought. Any such approvals may be granted or withheld in City's sole discretion.

9. Noises, Odors and Other Matters. Licensee shall not permit any noises, music, odors, or other matters to occur at or about the Temporary Space so as to bother or annoy other occupants of the Property or visitors thereto.

10. Alcoholic Beverages. No alcohol is permitted in or around the Temporary Space.

11. Cleaning Requirements. Garbage must be disposed of in the trash containers specified by City for such purpose. The Temporary Space and surrounding areas must be swept clean and left in an orderly, broom-clean condition. Excess clean-up required by City will be billed to Licensee.

EXHIBIT C

Definition of Hazardous Materials

For the purpose of this Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, “**Environmental Laws**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.

EXHIBIT D

Insurance Requirements

Licensee, at Licensee's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by Licensee, its officers, employees, agents or contractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property insurance covering all personal property, contents or materials of Licensee, its licensees, contractors or materials men or subcontractors stored at, on or about the Temporary Space.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

Licensee shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

4. Property insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through Licensee at the Temporary Space.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by City's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

- a. City, its officers, employees, and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Licensee; products and completed operations of Licensee; premises owned, leased or used by Licensee; and automobiles owned, leased, hired or borrowed by Licensee. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, and agents.
- b. Licensee's insurance coverage shall be primary insurance as respects City, its officers, employees, and agents. Any insurance or self-insurance maintained by City, its officers, employees, or agents shall be excess of Licensee's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by Licensee shall not affect coverage provided City, its officers, employees, or agents.
- d. Coverage shall state that Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain waiver of subrogation in favor of City, its officers, employees, and agents.

2. Property and Workers' Compensation and Employers' Liability Coverages

Coverage shall contain waiver of subrogation in favor of City, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. **Verification of Coverage**

Licensee shall furnish City with certificates of insurance and copies of endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to Riskmgmt@sanjoseca.gov:

Certificate Holder

City of San Jose – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

G. **Contractors**

Licensee shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor.