

RIGHT OF ENTRY AGREEMENT
(1138 Olinder Court)

This Right of Entry Agreement (“Agreement”) is entered into by and between ALLIANCE ROOFING COMPANY, INC A CALIFORNIA CORPORATION, , (“LICENSEE”) and the CITY OF SAN JOSE, a California municipal corporation (“CITY”) (collectively, “PARTIES”), and shall become effective upon execution by the CITY.

RECITALS

- A. CITY is the owner of the property described as Assessor’s Parcel Number 472-10-108, consisting of approximately 47,916 square feet of land located at 1138 Olinder Court in San José, California (“Property”) more particularly depicted on Exhibit A attached hereto; and
- B. LICENSEE desires to enter upon the Property hereto and incorporated herein (“Access Area”), in order to repair and restore electrical power on the property; and
- C. LICENSEE desires to enter upon the Property for a period of limited duration in order to complete installation and construction necessary for restoration of electrical power; and
- D. CITY is willing to permit LICENSEE to access the Staging Area proposed by LICENSEE for the purposes described herein;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. Right of Entry. CITY hereby grants to LICENSEE, and its employees, owners, members, officers, agents, contractors and invitees, (collectively with LICENSEE, “LICENSEE PARTIES and individually a “LICENSEE PARTY”) a temporary, non-exclusive right of entry (“Right of Entry”) for the purpose of and upon the terms and conditions hereinafter described, subject to all licenses, easements, leases, encumbrances and claims of title affecting the Property.
- 2. Purpose. Subject to the limits herein stated, the Right of Entry granted herein is a right to enter onto the Property for the sole purpose of installing an electrical panel on the PG&E power pole, repair and restore electrical power in the Access Area. There will be no boring or drilling, from the Property and no staging or storing of waste or products that would undermine the clean state of the property. LICENSEE PARTIES’s defined use shall also include fencing the Access Area from public access or use as further defined in Paragraph 4 (M), below.
- 3. Term. Subject to the termination provision set forth in Section 5 below, the term of the Right of Entry (“Term”) shall begin upon mutual execution of this Agreement by the CITY and LICENSEE (the “Commencement Date”) and shall terminate on or before **December 31, 2021** at 11:59 p.m (“Termination Date”). CITY, notwithstanding any of the foregoing to the

contrary, CITY may terminate this Right of Entry at any time without any reason upon seven (7) days advance written notice to LICENSEE.

4. Terms and Conditions. The Right of Entry is given subject to the following terms and conditions.
 - A. Compensation. In consideration of the rights granted under this Agreement, in lieu of 's payment to CITY ("License Fee"), LICENSEE shall, at its sole cost and expense, be responsible for the proper disposal of any materials that are brought onto the property by LICENSEE PARTIES, during the Term of this Agreement.
 - B. Compliance with Laws. LICENSEE PARTIES 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. In no event shall LICENSEE PARTIES's use of the Property involve any alteration thereto. No stand-by backup electrical power generation facility is allowed to be installed or constructed on the Property. No entry shall be made until CITY has received and approved a schedule for the proposed work that includes details of the work to be performed and a list of the names of all contractors of LICENSEE PARTIES authorized by LICENSEE to enter the Property and the estimated hours of operation. At all times during the Term, LICENSEE PARTIES shall maintain the Property in a safe, clean and orderly condition, including any fencing described in Paragraph M, below.
 - C. As-Is Condition and Assumption of Risk. LICENSEE PARTIES 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 PARTIES, and ii) LICENSEE PARTIES's use of the Property is entirely at its own risk. For avoidance of doubt, LICENSEE PARTIES acknowledges that its use of the Property shall be at its own risk and that LICENSEE PARTIES 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.
 - D. Release and Waiver. To the maximum extent permitted by law, LICENSEE, on behalf of itself any LICENSEE PARTY, waives and releases CITY and its officers, employees and agents from any and all liability that occurs on the Property that is suffered by LICENSEE PARTIES or any LICENSEE PARTY for any injury suit, action, claim, demand, loss, damage, liability, or liability for damages of any kind or nature, whether for loss of 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 PARTIES or any LICENSEE PARTY, except such loss or damage as is caused by or arises out of 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 on behalf of CITY. The foregoing shall include any loss, damage, claim, or liability for damages or injury

caused by or resulting from LICENSEE PARTIES's or any LICENSEE PARTY's introduction or generation of Hazardous Materials, as defined in **Exhibit B**, on the Property, or the creation of increased hazard to the public from existing materials arising from the use of the Property by LICENSEE PARTIES 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 PARTIES's or any LICENSEE PARTY's use of the Property, including but not limited to entries of LICENSEE PARTIES's or any LICENSEE PARTY's officers, employees, agents or contractors, except such loss or damage as is caused by or arises out of the sole active gross 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 PARTIES's or any LICENSEE PARTY's introduction or generation of Hazardous Materials, as defined in **Exhibit B**, on the Property, or the creation of increased hazard to the public from existing materials arising from the entries of LICENSEE PARTIES or any LICENSEE PARTY.

- F. Survival. The provisions of subsections 4.C through 4.E. and 4.J. 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 PARTIES vacates the Property and restores it to its original condition and free of hazards.

- G. Insurance. During the Term, LICENSEE PARTIES shall have and maintain the minimum insurance requirements as set forth in the attached **Exhibit C**.

- H. No Grant; Limited to Access Area. The Right of Entry constitutes a revocable license; nothing herein shall be construed as a grant of title or any interest in the Property. LICENSEE PARTIES's use of the Property shall only include the Access Area.

- I. 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 PARTIES as to any Hazardous Materials which may be found on the Property.

- J. Restoration of Property. LICENSEE PARTIES 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. LICENSEE PARTIES shall notify City for final site inspection prior to termination or expiration of the Agreement. Restoration includes, but is not limited to: curb/gutter, decomposed granite, irrigation system, fencing, bollards, turf, mulch, trees and vegetation, header board, off-haul excess spoils if necessary and re-grade to existing

conditions. If the restoration is not so performed by LICENSEE PARTIES upon expiration or termination of this Agreement or upon LICENSEE PARTIES'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 PARTIES that it will do so. Upon receipt of the notice of restoration costs from CITY, LICENSEE PARTIES 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 PARTIES. Failure by the LICENSEE PARTIES to fully restore the Access Area, and any additional damage to the Property surrounding the Access Area, shall be deemed possession of the Access Area by the LICENSEE PARTIES. This provision shall survive expiration or termination of the Right of Entry or this Agreement.

- K. City Access to Access Area. 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. Public Access to Access Area. LICENSEE PARTIES shall have exclusive use of the Access Area, except for CITY access as defined in Paragraph L, above. LICENSEE PARTIES shall erect and maintain adequate fencing encompassing the Access Area to the effect of restricting public access to the Access Area. LICENSEE PARTIES is solely responsible for the costs associated with restricting access and shall indemnify and hold harmless the CITY for any damages incurred in relation to this obligation.
5. Termination of Right of Entry. CITY shall have the right to terminate the Right of Entry, without cause, by giving not less than seven (7) 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 subsection 4.J and complete the compensatory work described in subsection 4.A by 11:59 p.m. on the date of termination.
 6. 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.
 7. 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.
 8. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties 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 in writing executed by both parties hereto.

9. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.
10. 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.
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
12. 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.
13. 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:	ALLIANCE ROOFING COMPANY, INC 630 Martin Avenue Santa Clara, CA 95050 rmiller@allianceroofigcal.com tyslava@allianceroofigcal.com
CITY:	City of San José OED - Real Estate Services 200 E. Santa Clara Street, 12 th Floor San José, CA. 95113 Attn: Real Estate Manager

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

“CITY”

APPROVED AS TO FORM: CITY OF SAN JOSE,
a California municipal corporation

× Cameron Day
Cameron Day (12/2/2021)
Email: cameron.day@sanjoseca.gov

CAMERON DAY
Deputy City Attorney

× Nanci Klein
Nanci Klein (12/2/2021)
Email: nanci.klein@sanjoseca.gov

NANCI KLEIN
Director of Economic Development

Date

“LICENSEE”

ALLIANCE ROOFING COMPANY, INC

× Romy Roque
rroque@alliancerroofingcal.com (12/2/2021)
Email: rroque@alliancerroofingcal.com

By: _____
Name: ROMY ROQUE
Title: PRESIDENT
rroque@alliancerroofingcal.com

Date

EXHIBIT B

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 C

INSURANCE REQUIREMENTS

LICENSEE PARTIES, at LICENSEE PARTIES'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 PARTIES, 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.

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 PARTIES 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.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

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

Any deductibles or self-insured retentions in excess of \$50,000 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 PARTIES; products and completed operations of LICENSEE PARTIES; premises owned, leased or used by LICENSEE PARTIES; and automobiles owned, leased, hired or borrowed by LICENSEE PARTIES. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, and agents.
 - b. LICENSEE PARTIES'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 PARTIES's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by LICENSEE PARTIES shall not affect coverage provided CITY, its officers, employees, or agents.
 - d. Coverage shall state that LICENSEE PARTIES'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. Workers' Compensation and Employers' Liability

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

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 PARTIES shall furnish CITY with certificates of insurance and with original 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 José – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

G. **Contractors**

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