

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Autumn  
**Date:** Tuesday, May 18, 2021 12:05:43 PM  
**Attachments:** [SF-#1141786-v1-FORM - 255 N Autumn Temporary Space License - SJDA 7.29.20 signed.pdf](#)  
[3.e. Renewal \(2\).pdf](#)

---

---

**From:** Willhite, Britney <[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)>  
**Sent:** Wednesday, May 12, 2021 12:38 PM  
**To:** Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>  
**Cc:** [pandes@allenmatkins.com](mailto:pandes@allenmatkins.com); [gmiller@coblenzlaw.com](mailto:gmillercoblenzlaw.com)  
**Subject:** RE: Autumn

[External Email]

Hi Johnny,

Attached are the existing leases for the Autumn parcels.

We are confirming there are no others.

Thanks,  
Britney

**[Britney J. Willhite](#)**

Allen Matkins Leck Gamble Mallory & Natsis LLP  
(949) 851-5452 (direct)  
(949) 280-3707 (mobile)  
[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)

---

**From:** Willhite, Britney  
**Sent:** Wednesday, May 12, 2021 10:55 AM  
**To:** Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>  
**Cc:** Andes, Pam <[PAandes@allenmatkins.com](mailto:PAandes@allenmatkins.com)>; [gmiller@coblenzlaw.com](mailto:gmillercoblenzlaw.com)  
**Subject:** RE: Autumn

Hi Johnny,

As discussed with AP and Dave this morning, attached are the surveys for the Autumn parcels.

The 255 N. Autumn survey also covers 260 N. Montgomery, as they were acquired as part of the same transaction.

Thanks,  
Britney

**[Britney J. Willhite](#)**

Allen Matkins Leck Gamble Mallory & Natsis LLP  
(949) 851-5452 (direct)  
(949) 280-3707 (mobile)  
[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)

---

**From:** Andes, Pam <[PAandes@allenmatkins.com](mailto:PAandes@allenmatkins.com)>  
**Sent:** Tuesday, May 11, 2021 8:28 PM  
**To:** Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>  
**Cc:** Willhite, Britney <[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)>; [gmiller@coblenzlaw.com](mailto:gmillercoblenzlaw.com)  
**Subject:** Autumn

**Subject to Contract / Contract Denied**

Hi, Johnny. Please find attached the Transfer Agreement for the Autumn Parcels. The PDF is a blackline. Please run your own blacklines since we are all moving fast.

Please note that the attached remains subject to any changes my client may have.

*Please note that this correspondence is not intended to create any legally binding obligation on Google and that no contract will arise or be in existence until such time as all corporate approvals necessary to ratify this transaction have been confirmed by Google and formal written contracts have been executed and exchanged between the parties.*

---

**From:** Andes, Pam  
**Sent:** Tuesday, May 11, 2021 4:30 PM  
**To:** Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>  
**Cc:** Willhite, Britney <[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)>; [gmiller@coblenzlaw.com](mailto:gmillercoblenzlaw.com)  
**Subject:** FW: Revised Transfer Agreements - H1, H5, H6

Johnny:

Attached for your review are the Transfer Agreements, as follows:

- H1 Transfer Agreement – Redline to City’s Sunday (pdf rad E0A88)
- H1 Transfer Agreement – Clean
- H5 Transfer Agreement – Redline to City’s Sunday draft (pdf radAFOE6)
- H5 Transfer Agreement -- Clean
- H6 Transfer Agreement – Redline to City’s Sunday draft (pdfC4563)
- H6 Transfer Agreement -- Clean

The Autumn Parcels Transfer Agreement will follow.

We are moving fast so please run your own redlines.

Please note that the attached remains subject to any changes my client may have.

Thanks! Pam

---

**From:** Willhite, Britney <[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)>

**Sent:** Thursday, May 6, 2021 4:44 PM

**To:** [johnny.phan@sanjoseca.gov](mailto:johnny.phan@sanjoseca.gov)

**Cc:** Andes, Pam <[PAandes@allenmatkins.com](mailto:PAandes@allenmatkins.com)>; [gmiller@coblentzlaw.com](mailto:gmillier@coblentzlaw.com)

**Subject:** Revised Transfer Agreements - H1, H5, H6 and Autumn

**Subject to Contract / Contract Denied**

Hi Johnny,

Attached for your review are the Transfer Agreements, as follows:

- H1 Transfer Agreement – Redline to City’s draft from 5/5 – This shows just the new changes
- H1 Transfer Agreement – Redline to Google’s initial draft from 4/13 – This shows the cumulative changes
- H5 Transfer Agreement – Redline to Google’s initial draft from 4/13
- H6 Transfer Agreement – Redline to Google’s initial draft from 4/13
- Autumn Transfer Agreement – Redline to Google’s initial draft from 4/13

In H5, H6 and Autumn, we made changes to conform with the cumulative changes to H1.

Please let us know if anything else remains open.

Please note that the attached remains subject to any changes my client may have.

Thanks,  
Britney

*Please note that this correspondence is not intended to create any legally binding obligation on Google and that no contract will arise or be in existence until such time as all corporate approvals necessary to ratify this transaction have been confirmed by Google and formal written contracts have been executed and exchanged between the parties.*

**[Britney J. Willhite](#)**

Partner

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5th Floor, Irvine, CA 92614-7321

(949) 851-5452 (direct)

(949) 280-3707 (mobile)

(949) 553-8354 (fax)

[bwillhite@allenmatkins.com](mailto:bwillhite@allenmatkins.com)

**Allen Matkins**

---

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If any reader of this communication is not the intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



Branch Office: DEREK SMITHERAM  
OUTDOOR SYSTEMS  
1695 EASTSHORE HIGHWAY  
BERKELEY, CALIFORNIA 94710  
510-527-3350  
Lease Number: 1738

# STANDARD LEASE RENEWAL AGREEMENT OUTDOOR SYSTEMS

THIS AGREEMENT, dated this X24 day of MARCH, 2000, is by and between JOSEPHINE RUSCIGNO ("LANDLORD"), and OUTDOOR SYSTEMS INC. corporation, doing business as OUTDOOR SYSTEMS ADVERTISING, 2502 N. Black Canyon Hwy. Phoenix, Arizona 85009.

1. PROPERTY LANDLORD is the owner (or authorized lessor) of that certain real property (the "Property") located about 200 feet S of JULIAN on the E side of MONTGOMERY for display(s) facing NS, being part of the LANDLORD'S property known as A.P.N. 490-13-1 situated in the Township of SAN JOSE County of SANTA CLARA State of CALIFORNIA. This display(s) are intended to be viewed from MONTGOMERY street or highway.

Effective Date: JANUARY 1, 2000

Size: 12'x25' Number of Faces: 2

3a. The ~~advance yearly rental~~ payments shall be made in equal monthly installments in the amount of \$350.00. Beginning in year six and each year thereafter, rent shall be paid monthly in advance in the amount of \$400.00.

-----  
SKETCH THE APPROXIMATE LOCATION OF OUTDOOR ADVERTISING STRUCTURE ON PROPERTY  
-----

2. TERM. LANDLORD hereby grants and leases to Outdoor Systems and Outdoor Systems accepts the grant and leases from LANDLORD the Property to have and to hold upon the terms and conditions contained in this lease. The Principal Term, as extended, and ~~Year to Year~~ Term are collectively the "Term" of this lease. month to month

PRINCIPAL TERM/EXTENSION. The Principal Term shall be for 10 years and shall commence upon expiration of the prior lease between LANDLORD and Outdoor Systems regarding the Property. ~~Outdoor Systems has the right to extend the Principal Term for an additional term of 0 years on the same terms beginning upon expiration of the initial Principal Term which shall be deemed exercised by tendering the first installment of the rent due for second term.~~

MONTH TO MONTH ~~YEAR TO YEAR~~ TERM. Upon the expiration of the Principal Term, ~~as extended~~, this Lease will continue on the then existing terms and conditions on a ~~year to year~~ basis. LANDLORD or Outdoor Systems may terminate this Lease effective at the end of any lease ~~year~~ of the ~~Year to Year~~ Term by giving at least thirty (30) days written notice prior to the end of that lease ~~year~~ month

3. RENT. Outdoor Systems shall pay Rent to LANDLORD ~~annually~~ <sup>monthly</sup> in advance in the following amounts: ~~for each Term: PRINCIPAL TERM/EXTENSION and YEAR TO YEAR TERM \$ 4200.00.~~ Rent shall be deemed to have been received on time unless LANDLORD notifies Outdoor Systems of non-receipt of payment. Outdoor Systems shall be permitted thirty (30) days from receipt of notice on non-receipt to make such payment without being in default of this lease.

\$350.00 a month for the first 5 years and \$400.00 a month beginning in year six and each month thereafter.

4. LEASED PROPERTY. Outdoor Systems shall be entitled to use the Property to erect, maintain, service, remove and ~~reposition (if subsequently necessary)~~ an outdoor advertising structure (including necessary structures, footings devices, power poles and connections) on the Property for such use or uses as permitted by law. The leased portion of the Property includes all necessary areas over, across and under the Property to provide for the construction, maintenance, service of advertising copy, ~~repositioning~~ and removal of the advertising structure and to provide for the installation of electrical and telephone service to advertising structure, if necessary.

5. LEASE PROVISIONS. This lease contains the provisions on this page and on the reverse hereof. LANDLORD has read and understands all such terms and provisions.

Executed under the hand and seal of the parties on the dates provided below

Offer Date: MARCH 21, 2000

(i) X Josephine Ruscigno  
LANDLORD Signature  
Josephine Ruscigno  
Print Name/Title of Corporation or Partnership  
1351 Weaver Drive  
Address  
San Jose, CA 95125  
City/State  
408-292-2425  
Phone  
554-92-0564  
Tax Identification No. or Social Security No.

(ii) [Signature]  
Outdoor Systems Signature  
Print Robert H. Harbin, III  
Real Estate Manager, Northern California  
Witness (if applicable)  
Witness (if applicable)  
Acceptance Date 3.29.00

J.R.  
Initial  
J.R.  
Initial  
J.R.  
Initial  
J.R.  
Initial  
J.R.  
Initial







## LICENSE AGREEMENT TO USE TEMPORARY SPACE

**THIS LICENSE AGREEMENT** (this "**Agreement**") is made as of July 28, 2020 between GOOGLE LLC, a Delaware limited liability company ("**Owner**") and SAN JOSE DOWNTOWN ASSOCIATION, a non-profit corporation ("**Licensee**").

(a) **BASIC TERMS.** The following terms shall have the following meanings throughout this Agreement:

1. **Property:** That certain building (the "**Building**") located at 255 N Autumn Street, San Jose, CA, and the land on which the Building is located together with all other improvements located thereon.

2. **Temporary Space:** Those portions of the Building as shown on **Exhibit A** ("**Temporary Space**").

3. **Term:** The term of this Agreement ("**Term**") shall commence on August 1, 2020 (the "**Commencement Date**"), and expire on July 31, 2021, unless sooner terminated pursuant to the terms of this Agreement.

4. **Fee:** Licensee shall pay Owner a minimum monthly fee (the "**License Fee**") equal to One and No/100 Dollars (\$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.

5. **Deposits:** None.

6. **Type of Activity and Purpose:** Licensee shall be permitted to use the Temporary Space as follows (the "**Permitted Use**"): (i) temporary storage of equipment for the Downtown Ice program. Licensee shall only be permitted to conduct the Permitted Use within the Temporary Space.

(b) **LICENSE.** Owner 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 Owner to Licensee for the Permitted Use is temporary and revocable by Owner in its sole discretion. Licensee hereby acknowledges and agrees that Owner and its agents, consultants, 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 Owner. 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 "**Rules**"), 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 Rules by Licensee shall be deemed a default under this Agreement. Licensee shall comply with, and Licensee's rights and obligations under this Agreement and Licensee's use of the Temporary Space shall be subject and subordinate to, all recorded easements, covenants, conditions, and restrictions now or hereafter affecting the Property (the "**Underlying Documents**").

(c) **TERMS AND CONDITIONS.** In consideration of the License granted to Licensee herein, Licensee agrees to the following:

1. **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.

2. **Insurance.** Licensee shall maintain in full force and effect during the Term the following insurance: (i) commercial general liability insurance with respect to injury, death and property damage or loss occurring at the Temporary Space or arising out of Licensee's use of the Temporary Space or otherwise arising out of any act or occurrence at the Temporary Space, in an amount of at least \$1,000,000 combined single limit, per occurrence; and (ii) "all risk" property insurance covering all personal property, dry goods, materials and equipment kept or maintained in the Temporary Space in an amount of full replacement cost (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft and explosion. The policies shall name Owner, Owner's property manager, and such other parties as Owner may designate as additional insureds. In addition to the foregoing liability coverage, Licensee shall maintain worker's compensation insurance pursuant to all applicable state and local statutes and regulations; and employer's liability with a limit of \$1,000,000 each occurrence. On or prior to the date of this Agreement, Licensee shall furnish to Owner a certificate of insurance evidencing that such insurance is in effect. Licensee hereby waives all subrogation rights of its insurance carriers in favor of Owner and its partners, beneficiaries, trustees, officers, employees, and agents (the "**Owner Parties**"). The minimum limits of policies of insurance required of Licensee under this Agreement shall in no event limit the liability of Licensee under this Agreement. All insurance shall be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Owner. Licensee shall not do or permit to be done anything which invalidates the required insurance policies, and Licensee shall notify Owner as soon as reasonably possible, but in any event not less than thirty (30) days prior to the effective date of (A) any cancellation of insurance policies required hereunder, and/or (B) any change that results in a material change in coverage terms or limits of insurance policies required hereunder. In addition, the liability insurance shall specifically cover the liability assumed by Licensee under this Agreement, shall be



primary insurance as to all claims thereunder and provide that any insurance obtained by Owner is excess and is non-contributing with any insurance requirement of Licensee and contain a cross-liability endorsement or severability of interest clause acceptable to Owner. In the event Licensee, shall fail to procure such insurance or to deliver policies or certificates thereof to Owner, Owner may, at its option, procure such policies for the account of Licensee, and the cost thereof shall be paid to Owner within five (5) days after delivery to Licensee of bills therefor, or terminate this Agreement.

3. **Waiver of Claims and Indemnity.** To the extent not prohibited by law, Licensee shall indemnify, defend and hold and save harmless Owner and the Owner Parties from and against any and all liability, claims, damages, costs and expenses, including without limitation, attorneys' fees and costs and expert fees, resulting from or in connection with Licensee's use and occupancy of the Temporary Space or relating in any way to this Agreement. To the extent not prohibited by law, Licensee waives all claims against Owner and the Owner Parties for injury to persons, or damage to property or to any other interests of Licensee sustained by Licensee or any person claiming through Licensee resulting from any occurrence in or upon the Temporary Space or the Property, or relating in any way to this Agreement. Without limitation, all of Licensee's personal property which may at any time be at the Temporary Space shall be at Licensee's sole risk. Licensee's indemnification obligations hereunder shall survive the expiration or earlier termination of this Agreement.

4. **Hazardous Substances.**

(a) **In General.** Licensee shall not cause or permit any Hazardous Substances (as defined below) or materials, to be brought upon, produced, handled, transported, treated, stored, used, discharged, released or disposed of in or near the Temporary Space or Property without Owner's prior written consent (which Owner may give or withhold in its sole and absolute discretion). Any handling, transportation, storage, treatment, discharge, release, disposal or use of any Hazardous Substances in or about the Temporary Space or Property by Licensee, its agents, employees, contractors or invitees shall strictly comply with all applicable laws, ordinances, regulations and requirements, including, without limitation, "Environmental Laws" (as defined below). Licensee shall be solely responsible for obtaining and complying with all permits necessary for the maintenance and operation of its business, including, without limitation, all permits governing the use, handling, storage, treatment, transport, discharge and disposal of Hazardous Substances to the extent, if any, permitted by Owner. Licensee shall indemnify, defend and hold Owner and the Owner Parties harmless from and against any and all obligations, losses, claims, actions (including remedial and enforcement actions of any kind and administrative and judicial proceedings, suits, orders or judgments), causes of action, liabilities, penalties, damages, costs and expenses (including reasonable attorneys' and consultants' fees and expenses) (collectively, "**Claims**") which result from or arise out of the use, handling, storage, treatment, transportation, discharge, release, or disposal of any Hazardous Substances on or about the Temporary Space during the Term and on or about the Property outside of the Temporary Space by Licensee or any Licensee Parties (as defined below).

(b) **Definitions.** "**Hazardous Substances**" means (1) any substance or material that is included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "pollutant," "contaminant," "hazardous waste," or "solid waste" in any

Environmental Laws; (2) petroleum or petroleum derivatives, including crude oil or any fraction thereof, all forms of natural gas, and petroleum products or by-products or waste; (3) polychlorinated biphenyls (PCB's); (4) asbestos and asbestos containing materials (whether friable or non-friable); (5) lead and lead based paint or other lead containing materials (whether friable or non-friable); (6) urea formaldehyde; (7) microbiological pollutants; (8) batteries or liquid solvents or similar chemicals; (9) radon gas; (10) mildew, fungus, mold, bacteria and/or other organic spore material, whether or not airborne, colonizing, amplifying or otherwise; and (11) any additional substance, material or waste (A) the presence of which on or about the Temporary Space (i) requires reporting, investigation or remediation under any Environmental Laws, (ii) causes or threatens to cause a nuisance on the Temporary Space or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Temporary Space or any adjacent area or property, or (iii) which, if it emanated or migrated from the Temporary Space, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws. **"Environmental Laws"** means all statutes, terms, conditions, limitations, restrictions, standards, prohibitions, obligations, schedules, plans and timetables that are contained in or promulgated pursuant to any federal, state or local laws (including rules, regulations, ordinances, codes, judgments, orders, decrees, contracts, permits, stipulations, injunctions, the common law, court opinions, and demand or notice letters issued, entered, promulgated or approved thereunder), relating to pollution or the protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances into ambient air, surface water, ground water or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, including but not limited to the: Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 et seq.; Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300f et seq. "Environmental Laws" shall include any statutory or common law that has developed or develops in the future regarding mold, fungus, microbiological pollutants, mildew, bacteria and/or other organic spore material. "Environmental Laws" shall not include laws relating to industrial hygiene or worker safety, except to the extent that such laws address asbestos and asbestos containing materials (whether friable or non-friable) or lead and lead based paint or other lead containing materials. **"Licensee Parties"** means Licensee or of any person claiming by, through or under Licensee, or of the contractors, agents, servants, employees, invitees, guests or licensees of Licensee or any such person.

(c) **Survival.** Licensee's obligations under this Section 5 shall survive the expiration or earlier termination of this Agreement until all Claims within the scope of this Section 5 are fully, finally, and absolutely barred by the applicable statutes of limitations.

5. **Costs of Litigation.** Notwithstanding anything to the contrary contained herein, should any claim, action, or proceeding (including, for the avoidance of doubt, any appeals of a claim, action, or proceeding) be commenced between the parties hereto concerning any provision of this Agreement, or the rights or duties of any person or entity in relation thereto, each party shall bear its own fees and costs (including, without limitation, attorneys' fees, accounting fees, expert witness fees, consulting fees, court costs, and all other costs) to the extent incurred in



prosecuting or defending such claim, action, or proceeding against the other party. Nothing in this Section shall be construed to limit a party's obligation, as may be set forth elsewhere in this Agreement, to indemnify another from any fees or costs (including, without limitation, attorneys' fees, accounting fees, expert witness fees, consulting fees, court costs, and all other costs), except to the extent incurred by the indemnified party in an action brought against the indemnifying party to enforce such indemnification provisions under this Agreement.

6. **Relocation and Early Termination.** Owner may immediately terminate this Agreement and/or revoke the License granted herein upon a violation by Licensee of any provision hereof. Upon any such termination of this Agreement or revocation of this License, this Agreement shall be immediately terminated and the License immediately and automatically revoked, and Licensee shall immediately vacate the Temporary Space and surrender the same to Owner in as good condition and repair as it is in on the date of this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, Owner may also, upon ninety (90) days' prior written notice to Licensee (i) terminate this Agreement without cause, and/or (ii) relocate the Temporary Space to another property owned by Owner (in Owner's sole discretion and cost).

7. **Removal of Property; Holding Over.** Upon the expiration or earlier termination of this Agreement, or upon the relocation of the Temporary Space as set forth herein, 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 Thousand Five Hundred and No/100 Dollars (\$1,500.00) 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.

8. **Assignment.** This Agreement is personal to Licensee. Licensee shall not assign, sublicense or in any other manner transfer or encumber this Agreement or Licensee's rights hereunder, by operation of law or otherwise. Licensee acknowledges that Owner has the right to assign its interest in this Agreement to any person or entity with any interest in the Property or the Temporary Space, and Licensee agrees that in the event of any such assignment, Owner shall automatically be released from all liability under this Agreement and Licensee agrees to look solely to such assignee for the performance of Owner's obligations hereunder after the date of assignment.

9. **Inspection.** Owner reserves the right to inspect the Temporary Space at any time, and to enter the same for any other reasonable cause, including without limitation, the making of repairs to the Property.

10. **Statutory CASp Disclosure.** For purposes of Section 1938(a) of the California Civil Code, Owner hereby discloses to Licensee, and Licensee hereby acknowledges, that neither the Temporary Space nor the Property has undergone inspection by a Certified Access Specialist ("**CASp**"). In addition, the following notice is hereby provided as required by Section 1938(e) of the California Civil Code: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of and in connection with such notice: (i) Licensee, having read such notice and understanding Licensee's right to request and obtain a CASp inspection and with advice of counsel, hereby elects not to obtain such CASp inspection and forever waives its rights to obtain a CASp inspection with respect to the Temporary Space and/or the Property to the extent permitted by applicable laws now or hereafter in effect; and (ii) if the waiver set forth in clause (i) hereinabove is not enforceable pursuant to applicable laws now or hereafter in effect, then Owner and Licensee hereby agree as follows (which constitute the mutual agreement of the parties as to the matters described in the last sentence of the foregoing notice): (A) Licensee shall have the one-time right to request for and obtain a CASp inspection, which request must be made, if at all, in a written notice delivered by Licensee to Owner on or before the Commencement Date; (B) any CASp inspection timely requested by Licensee shall be conducted (1) between the hours of 9:00 a.m. and 5:00 p.m. on any business day, (2) only after ten (10) days' prior written notice to Owner of the date of such CASp inspection, (3) in a professional manner by a CASp designated by Owner and without any testing that would damage the Temporary Space or the Property in any way, (4) in accordance with all of the provisions of the Agreement applicable to any work, alterations or improvements being conducted by or for Licensee, and (5) at Licensee's sole cost and expense, including, without limitation, Licensee's payment of the fee for such CASp inspection, the fee for any reports and/or certificates prepared by the CASp in connection with such CASp inspection (collectively, the "**CASp Reports**") and all other costs and expenses in connection therewith; (C) Owner shall be an express third party beneficiary of Licensee's contract with the CASp, and any CASp Reports shall be addressed to both Owner and Licensee; (D) Licensee shall deliver a copy of any CASp Reports to Owner within two (2) business days after Licensee's receipt thereof; and (E) any information generated by the CASp inspection and/or contained in the CASp Reports shall not be disclosed by Licensee to anyone other than (I) contractors, subcontractors and/or consultants of Licensee, in each instance who have a need to know such information and who agree in writing not to further disclose such information, or (II) any governmental entity, agency or other person, in each instance to whom disclosure is required by law or by regulatory or judicial process.

11. **Operation.** Licensee shall operate the Temporary Space for the activity and purpose described above during the times (if any) specified above, unless Owner shall agree otherwise in writing. Licensee may not make any improvements, alterations, additions or changes to the Temporary Space without first procuring the written consent of Owner thereto. Owner shall provide utilities in connection with Licensee's use of the Temporary Space in reasonable amounts



suitable for the nature and duration of the Permitted Use. Licensee shall pay Owner for all electricity, water, sewer, trash and other utility charges in connection with the Temporary Space during the Term, as well as trash removal and other operating expenses actually incurred as a result of Licensee's use of the Temporary Space during the Term. Owner shall invoice Licensee for such costs on a monthly basis and Licensee shall pay the same within fourteen (14) days of receipt of such invoice. In the event that Licensee's use of the Temporary Space includes a partial month, then Licensee shall pay a pro-rated portion of the utilities for such partial month based on the period of Licensee's actual use of the Temporary Space.

12. **Compliance with Laws.** Licensee shall (i) obtain prior to the beginning of the Term all necessary permits and licenses necessary or appropriate to the activities Licensee shall be carrying on at the Temporary Space (including, without limitation, the Permitted Use), (ii) continue during the Term to obtain all such necessary permits and licenses, and (iii) upon Owner's request, provide copies of same to Owner. Licensee shall at all times comply with all applicable laws, codes, ordinances, rules, regulations and other governmental and municipal requirements.

13. **Security.** Licensee shall be responsible for the safety and security of all visitors at the Property. Licensee hereby agrees that Owner and the Owner Parties shall not be liable for, and are hereby released from any responsibility for, any damage either to person or to property sustained by Licensee incurred in connection with or arising from any acts or omissions of any security officers. If Licensee elects to install perimeter fencing or remote cameras, or otherwise implement measures to satisfy its obligations hereunder, then Licensee shall first obtain Owner's prior written consent thereto. As a condition of granting such consent, Owner may impose reasonable restrictions including insurance or bond requirements. No security officers (if any) may carry firearms.

14. **Rules.** Licensee shall comply with each of the Rules. Licensee shall also comply with any additional rules or modifications of the Rules that Owner may promulgate from time to time after the date hereof. If there is any conflict between the terms and conditions set forth in the Rules (as the same may be amended and/or modified from time to time) and this Agreement, this Agreement shall control.

15. **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) transmitted by telecopy (only if a telecopy or facsimile number is set forth for such party in the Summary), if such telecopy is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Licensee at the appropriate address set forth below, or to such other place as Licensee may from time to time designate in a Notice to Owner, or to Owner at the addresses set forth below, or to such other places as Owner may from time to time designate in a Notice to Licensee. Any Notice will be deemed given on the date of receipted delivery, of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no Notice was given:

Owner: Google LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Attention: Lease Administration

and

Google LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043  
Attention: Legal Department / RE Matters  
and

c/o CBRE, Inc.  
225 W. Santa Clara Street, Suite 1200  
San Jose, California 95112  
Attention: Sandy Izumi

Licensee: San Jose Downtown Association  
28 N. 1<sup>st</sup> Street, Suite 1000  
San Jose, CA 95113  
Attention: Scott Knies

16. **Authority.** If Licensee is a corporation, trust or partnership, each individual executing this Agreement on behalf of Licensee hereby represents and warrants that Licensee is a duly formed and existing entity qualified to do business in California and that Licensee has full right and authority to execute and deliver this Agreement and that each person signing on behalf of Licensee is authorized to do so. Licensee shall, within ten (10) days after Owner's request therefor, deliver to Owner satisfactory evidence of such authority and, if a corporation, upon demand by Owner, also deliver to Owner satisfactory evidence of (i) good standing in Licensee's state of incorporation and (ii) qualification to do business in California.

17. **Brokers.** Owner and Licensee hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Agreement, other than CBRE, Inc., on behalf of Owner (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Agreement. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party.

18. **Miscellaneous.**

(a) Time is of the essence of this Agreement and each of its provisions.



(b) No waiver by Owner or Licensee of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach of the same or any other of the terms, provisions and covenants herein contained. Forbearance by Owner in enforcement of one of more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

(c) This Agreement shall be construed and enforced in accordance with the laws of the State of in which the Property is located.

(d) It is understood and agreed that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Owner to Licensee with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement.

(e) If there is more than one entity which constitutes Licensee, the obligations imposed upon Licensee under this Agreement shall be joint and several.

(f) If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) It is expressly understood and agreed that the liability of Owner and the Owner Parties hereunder (including any successor owner hereunder) shall be limited solely and exclusively to the interest of Owner in and to the Property.

(h) Submission of this instrument for examination or signature by Licensee does not constitute a reservation of, or option to enter into a license, and it shall not be effective as a license or otherwise until execution and delivery by both Owner and Licensee.

(i) Licensee acknowledges that the content of this Agreement and any related documents are confidential information. Licensee shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Licensee's financial and legal consultants.

(j) None of the Owner Parties (other than Owner) shall have any personal liability for any default by Owner under this Agreement or arising in connection herewith, and Licensee hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Licensee. The limitations of liability contained in this Section shall inure to the benefit of Owner's and the Owner Parties' present and future members, partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective members, partners, heirs, successors and assigns. Under no circumstances shall any present or future member or partner of Owner have any liability for the performance of Owner's obligations under this Agreement. Notwithstanding any contrary provision herein, neither Owner

nor the Owner Parties shall be liable under any circumstances for injury or damage to, or interference with, Licensee's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

(k) Submission of this instrument for examination or signature by Licensee does not constitute a reservation of, or option to enter into a license, and it shall not be effective as a license or otherwise until execution and delivery by both Owner and Licensee.

(l) Licensee acknowledges that the content of this Agreement and any related documents are confidential information. Licensee shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Licensee's financial and legal consultants.

(m) Neither party may make any public statement regarding this Agreement without the other party's written approval. Without limiting the foregoing, Licensee shall not name Google or make any public statement regarding Google in any media coverage related to Licensee's use of the Temporary Space or otherwise.

(n) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(o) This Agreement may be executed in any number of facsimile counterparts, each facsimile signature shall be deemed to be an original, and all such facsimile counterparts, when taken together, shall be deemed to constitute one and the same instrument.

(p) None of the terms, covenants, conditions or provisions of this Agreement can be modified, deleted or added to except in writing signed by the parties hereto.

*[Signatures follow on next page]*

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

OWNER:

GOOGLE LLC,  
a Delaware limited liability company

DocuSigned By:  
*Emilie Snow*  
2AD1542418C84F6...

By: Emilie Snow

Title: Asset Management Lead

7/29/2020

LICENSEE:

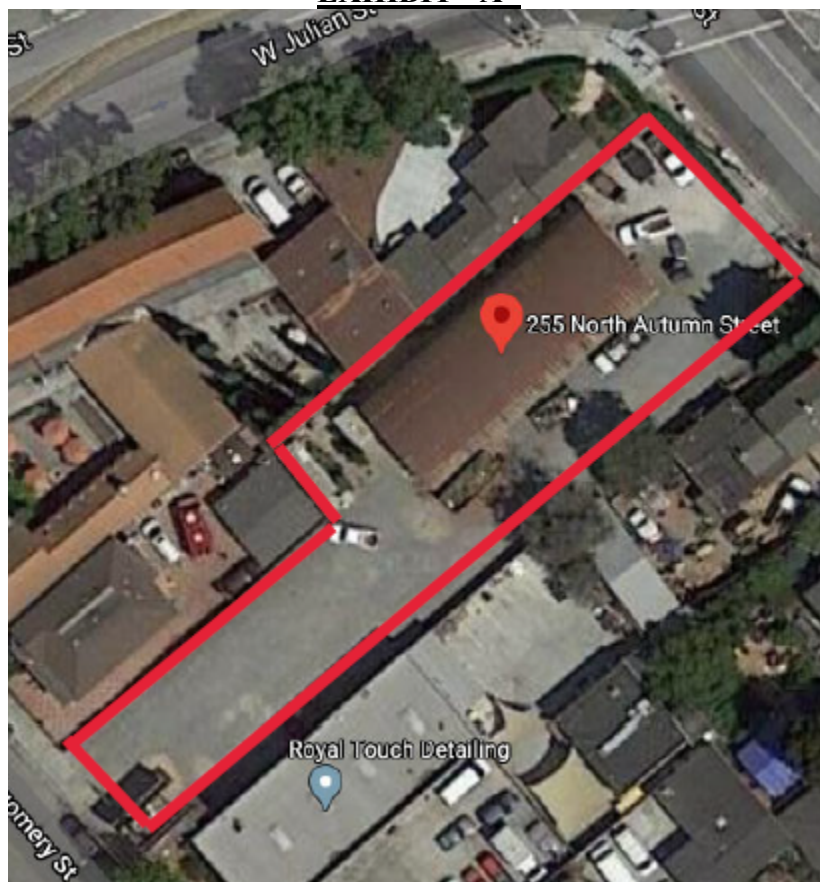
SAN JOSE DOWNTOWN  
ASSOCIATION,  
a non-profit corporation

*Scott Knies*  
By: Scott Knies

Title: Executive Director



**EXHIBIT "A"**





## **EXHIBIT "B"**

### **RULES**

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 thereat. 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 Owner'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 Owner's advance approval and shall be performed only at such times as permitted by Owner.

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 Owner (which routes are shown on **Exhibit A**). No items shall be brought to the Temporary Space during ordinary business hours without Owner'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 Owner'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 Owner, 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 Owner's approval is required hereunder, such approval shall not be effective unless granted in writing by an authorized representative of Owner. Any approval granted shall apply only to the specific matter for which approval is sought. Any such approvals may be granted or withheld in Owner'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 Owner 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 Owner will be billed to Licensee at then current standard overtime labor rates of Owner's janitorial contractor.