

File No. 110496

Committee Item No. 1

Board Item No. 4

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: September 7, 2011

Board of Supervisors Meeting

Date 9/20/11

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget & Legislative Analyst Report          |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
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#### OTHER

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Completed by: Victor Young

Date: Sept 2, 2011

Completed by: Victor Young

Date: 9-6-11

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

FILE NO. 110496

ORDINANCE NO.

[License Agreement - Non-Stop Music Library, L.C.]

1  
2 **Ordinance retroactively approving an agreement with Non-Stop Music Library L.C. to**  
3 **license the use of a music library and waiving certain requirements of the**  
4 **Administrative Code with respect to the license agreement.**

5  
6 NOTE: Additions are single-underline italics Times New Roman;  
7 deletions are ~~strike-through italics Times New Roman~~.  
8 Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings. The Board of Supervisors of the City and County of San  
11 Francisco ("City") hereby finds that:

12 (a) The City's Department of Technology ("DT") operates the City's governmental  
13 television stations ("SFGTV"). SFGTV adds music to certain programming at various times of  
14 the day. SFGTV also adds music to its recordings of programs that are sold to the general  
15 public including meetings of the Board of Supervisors. DT also uses music to provide "music  
16 on hold" services to callers to the City.

17 (b) DT seeks to license the use of music produced by others from Non-Stop Music  
18 Library L.C. ("Non-Stop Music") for a minimal license fee (\$750 per year). Non-Stop Music  
19 uses a standard form license agreement, which it is generally unwilling to modify due to the  
20 small amount of the license fee to be paid by DT.

21 (c) While Non-Stop Music represents and warrants that it owns the music to be  
22 licensed to DT, and is authorized to enter into the license agreement, Non-Stop Music is  
23 willing to indemnify the City for copyright infringement only up to the amount paid to Non-Stop  
24

25 Supervisor Chu  
BOARD OF SUPERVISORS

1 Music by the City. Non-Stop Music is unwilling to include an insurance provision in the license  
2 agreement. The City's Risk Manager has approved these aspects of the license agreement.

3 (d) Non-Stop Music similarly seeks to limit its liability to the City to the amount of the  
4 license fee. The City Attorney has approved the limitation of liability provision.

5 (e) Non-Stop Music will also require the City to pay its attorney's fees and costs,  
6 should Non-Stop Music sue the City for breach of the license agreement. DT has determined  
7 that there is a minimal risk that the City would be required to pay attorney's fees and costs.

8 (f) DT and Non-Stop Music have agreed that the license agreement shall have a  
9 term of nine years and thereafter shall be automatically renewed for consecutive one-year  
10 periods unless cancelled by either party. There is a possibility, therefore, that the term of the  
11 license agreement shall extend beyond ten years.

12 (g) DT used licensed music from Non-Stop between September 2010 and  
13 November 2010 without having a written agreement with Non-Stop. For this reason, DT has  
14 not paid Non-Stop for that use.

15 (h) Funds for last year's and this year's license fee have been appropriated in DT's  
16 budget. If funds are not appropriated in future years, DT will give notice of cancellation to  
17 Non-Stop Music. Either the City or Non-Stop Music may cancel the agreement on 60 days  
18 notice.

19 Section 2. Authorizations.

20 (a) Pursuant to Charter Section 9.118(b), the Board of Supervisors retroactively  
21 approves the license agreement with Non-Stop Music. A copy of the license agreement is on  
22 file with the Clerk of the Board of Supervisors in File No. 11-0496.

23 (b) The ~~the~~ Acting City Chief Information Officer of the Department of Technology  
24 and the Director of the Office of Contract Administration are hereby authorized to execute the  
25 license agreement with Non-Stop Music effective September 1, 2010 for a term that may

Supervisor Chu  
BOARD OF SUPERVISORS

1 exceed ten years. Copies of the license agreement are on file with the Clerk of the Board of  
2 Supervisors in File No. \_\_\_\_\_.

3 (c) DT may pay Non-Stop Music \$500 for DT's use of Non-Stop Music's licensed  
4 music for the period of September through November 2010.

5 Section 3. Waivers. For the purpose of this license agreement, the Board of  
6 Supervisors finds that it is reasonable and in the public interest to grant waivers of the City  
7 contracting requirements specified below:

8 (a) The requirement of San Francisco Administrative Code Section 12F.5 that every  
9 contract contain a statement urging companies doing business in Northern Ireland to move  
10 toward resolving employment inequities, and encouraging them to abide by the MacBride  
11 Principles.

12 (b) The requirement of San Francisco Administrative Code Section 21.9(b) that  
13 contracts not contain an automatic renewal provision.

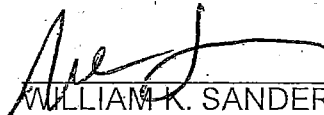
14 (c) The requirement of San Francisco Administrative Code Section 21.20 that every  
15 contract contain an insurance provision.

16 (d) The requirement of San Francisco Administrative Code Section 21.21 that any  
17 contractor entering into a contract with the City that involves the provision of intellectual  
18 property to the City must fully indemnify the City and any of its officers or agents from all  
19 damages, or claims for damages, costs or expenses resulting from an infringement claim.

20 (e) The requirement of San Francisco Administrative Code Section 21.35 that every  
21 contract include a statement regarding the liability of claimants for submitting false claims to  
22 the City.

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3  
4 By:

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6 WILLIAM K. SANDERS  
7 Deputy City Attorney  
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**LEGISLATIVE DIGEST**

**Ordinance approving an agreement with Non-Stop Music Library L.C. to license the use of a music library and waiving certain requirements of the Administrative Code with respect to the license agreement.**

**Existing Law**

Section 9.118(b) of the City and County of San Francisco Charter requires the Board of Supervisors to approve any contract that will have a term that may exceed ten years.

The City and County of San Francisco Administrative Code contains the following contracting requirements:

1. Bars the City from entering into contracts with an automatic renewal provision (§ 21.19);
2. Requires that all contracts for services contain language regarding the consequences of submitting false claims to the City (§ 21.35);
3. Requires that every contract contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles (§ 12F.5);
4. Requires that every contract contain an insurance provision (§ 21.20); and
5. Requires that any contractor entering into a contract with the City that involves the provision of intellectual property to the City must fully indemnify the City and any of its officers or agents from all damages, or claims for damages, costs or expenses resulting from an infringement claim (§ 21.21).

**Amendments to Current Law**

The Ordinance would: (1) authorize DT to enter into a contract with a term or more than 10 years; and (2) approve a waiver of each of the Administrative Code contracting requirements set forth above.

**Background Information**

The City's Department of Technology ("DT") operates the City's governmental television stations ("SFGTV"). SFGTV adds music to certain programming at various times of the day. SFGTV also adds music to its recordings of programs that are sold to the general public

FILE NO.

(including meetings of the Board of Supervisors). DT also uses music to provide "music on hold" services to callers to the City.

Rather than going to the expense of producing this music itself, DT can license the use of music produced by others from Non-Stop Music Library L.C. ("Non-Stop Music") for a minimal license fee (\$750 per year).

Non-Stop Music uses a standard form license agreement, which it is generally unwilling to modify due to the small amount of the license fee to be paid by DT. While DT could license similar music from other vendors, DT has determined that other vendors would similarly insist on using a standard form license agreement, and that Non-Stop Music's license fee is more reasonable than those of other vendors.

While Non-Stop Music represents and warrants that it owns the music to be licensed to DT, and is authorized to enter into the license agreement, Non-Stop Music is willing to indemnify the City for copyright infringement only up to the amount paid to Non-Stop Music by the City. This provision is reasonable in light of the small risk that the City will incur liability for copyright infringement. Non-Stop Music is unwilling to include an insurance provision in the license agreement. This provision is also reasonable because Non-Stop will only be providing DT with electronic copies of the licensed music. The City's Risk Manager has approved these aspects of the license agreement.

Non-Stop Music similarly seeks to limit its liability to the City to the amount of the license fee. The City Attorney has approved the limitation of liability. This provision is reasonable in light of the small risk that the City will suffer damages from any breach of the license agreement by Non-Stop Music.

Non-Stop Music will also require the City to pay its attorney's fees and cost, should Non-Stop Music sue the City for breach of the license agreement. This provision is reasonable, because DT has determined that there is a minimal risk that the City would be required to pay attorney's fees and costs.

DT and Non-Stop Music have agreed that the license agreement shall have a term of nine years and thereafter shall be automatically renewed for consecutive one-year periods unless cancelled by either party. There is a possibility, therefore, that the term of the license agreement shall extend beyond ten years. This provision is reasonable, because of DT's continuous need to license music for the purposes set forth in the agreement and the small amount of the license fee.

Funds for this year's fee have been appropriated in the DT's budget. If funds are not appropriated in future years, DT will give notice of cancellation to Non-Stop Music.



**Item 1****File 11-0496****Department:**

Department of Technology (DT)

**EXECUTIVE SUMMARY****Legislative Objectives**

- The proposed ordinance would authorize a new nine-year agreement from September 1, 2010 through August 31, 2019, between the Department of Technology (DT) and Non-Stop Music Library L.C. for DT to license the use of a music library for the San Francisco Governmental Television Station (SFGTV) for \$750 per year, and waive certain requirements of the City's Administrative Code. Subsequent to August 31, 2019, the agreement will be automatically renewed for consecutive one-year periods unless cancelled by either party.

**Key Points**

- In 2006, DT, on behalf of SFGTV, entered into an initial \$500 annual license agreement with Groove Addicts, to license the use of a music library for SFGTV. That agreement provided automatic annual renewals. Non-Stop Music Library L.C., a Warner / Chappell Music Division, purchased Groove Addicts in March 2010, such that the prior agreement with Groove Addicts transferred to Non-Stop Music Library L.C. According to Mr. Jack Chin, General Manager of SFGTV, when renewing the agreement for September 1, 2010, Non-Stop Music Library would not accept the City's standard contractual terms.

**Fiscal Impacts**

- The proposed new nine-year agreement between DT and Non-Stop Music Library would cost a total of \$6,750 (\$750 per year) of General Fund monies, to license the use of a music library from September 1, 2010 through August 31, 2019, and thereafter automatically renew for consecutive one-year periods for \$750 per year, unless cancelled by either party.
- The annual \$750 cost would be subject to Board of Supervisors appropriation approval. If funds are not appropriated in future years, DT would cancel the subject agreement with Non-Stop Music.
- Although the City's cost to license the use of a music library is only \$750 per year, the proposed ordinance waives various City existing contractual provisions, which potentially exposes the City to unknown risk and liability. According to Deputy City Attorney William Sanders, at the request of DT the City Attorney has approved the proposed incidental and consequential damages and liability caps. According to DT, these provisions are standard in the music broadcasting industry and are reasonable due to the minimal risk involved.

**Recommendations**

- Amend the proposed ordinance to provide for retroactive approval to September 1, 2010.
- Based on the representations by the City Attorney and the City's Risk Manager, approve the proposed ordinance, as amended.

## MANDATE STATEMENT AND BACKGROUND

### Mandate Statement

In accordance with City Charter Section 9.118(b), the approval of any contract or agreement which has a term that may exceed ten years is subject to Board of Supervisors approval.

The City's Administrative Code contains the following contracting requirements:

- Section 21.19 bars the City from entering into contracts with an automatic renewal provision;
- Section 21.35 requires that all contracts for services contain language regarding the consequences of submitting false claims to the City;
- Section 12F.5 requires that every contract contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles;
- Section 21.20 requires that every contract contain an insurance provision; and
- Section 21.21 requires that any contractor entering into a contract with the City that involves the provision of intellectual property to the City must fully indemnify the City and any of its officers or agents from all damages, or claims for damages, costs or expenses resulting from an infringement claim.

### Background

The Department of Technology (DT) operates the San Francisco Governmental Television Station (SFGTV). As part of these services, SFGTV provides background music to the public, including (a) at the beginning of meetings, (b) at the end credits of meetings, (c) in video programs produced for City departments that air on both government channels<sup>1</sup> and (d) in recordings of SFGTV programs that are then sold to the general public, including Board of Supervisors meetings.

According to Mr. Jack Chin, General Manager of SFGTV, producing music for SFGTV can be very expensive as DT does not have in-house music production capabilities, which requires recording studios, writers, performers, etc. Instead, DT licenses the use of music produced by outside music libraries for SFGTV.

In 2006, DT initially entered into a one-year \$500 license agreement, with automatic annual renewals, with Groove Addicts, from September 1, 2006 through August 31, 2007. This agreement was automatically renewed each year through August 31, 2010. The initial agreement

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<sup>1</sup> Video programs available on DVD include: all Board of Supervisor's meetings, all City commission meetings, Mayor's Press conferences, City events and Summits, Public Service Announcements (PSAs), and any original SFGTV production programs.

was part of a group purchase agreement from multiple government TV stations in California negotiated by SCAN-NATO (an organization of local government channels throughout California). Mr. Chin reports that a Request for Proposal (RFP) was not issued in 2006 due to the group purchase agreement and the relatively small \$500 cost of the agreement. Non-Stop Music, a Warner / Chappell Music Division, purchased Groove Addicts in March 2010, such that the prior agreement with Groove Addicts transferred to Non-Stop Music Library L.C.

According to Mr. Chin, in August, 2010, while negotiating the annual renewal of the agreement, Non-Stop Music advised that they would no longer accept the City's standard contractual terms, as outlined in the above Mandate Statement section of this report. Mr. Chin advises that, anticipating a timely resolution of this issue, SFGTV continued to use Non-Stop's Music's music library for production music from September 1, 2010 through October 31, 2010, at which time Non-Stop Music suspended the City's access to the music library.

Mr. Chin reports that since the suspension of the Non-Stop Music library services, on November 1, 2010, DT has used their old non-licensed music that was purchased prior to the 2006 Groove Addicts music services agreement. According to Mr. Chin, this method is not preferred because the purchased non-licensed music is limited; such the same music is played and repeated hundreds of times without enough variety. Since the suspension of the Non-Stop Music agreement, DT has not purchased any new music, but Mr. Chin advises that one CD of ten songs would cost \$50 to \$100 each depending on quality, if DT wanted to improve the variety of music used.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would authorize a new nine-year agreement, from September 1, 2010 through August 31, 2019, between DT and Non-Stop Music Library L.C. to license the use of a music library at a cost of \$750 per year and waive certain requirements of the City's Administrative Code with respect to license agreements. After August 31, 2019, the proposed license agreement would automatically renew for consecutive one-year periods, unless cancelled by either party. Such annual automatic renewals would not be subject to future Board of Supervisors approval.

The Budget and Legislative Analyst notes that the proposed agreement would have an effective date of September 1, 2010, such that the proposed ordinance should be amended to provide for retroactive approval.

According to Mr. Chin, the proposed increase of \$250 from \$500 per year under the existing agreement to \$750 per year under the proposed new agreement will allow SFGTV to sell original video productions to the public with the music provided by Non-Stop Music Library L.C. As noted above, SFGTV uses music (a) at the beginning of meetings, (b) at the end credits of meetings and (c) in video programs produced for City departments that air on both government channels. Additionally, members of the public can purchase a DVD copy of any meeting or video programs produced by SFGTV. Mr. Chin states that this provision in the proposed

agreement will allow DT to sell DVDs to the public, which will off-set a portion of the labor costs associated with reproducing the DVDs.

The proposed agreement would waive the following City contracting requirements:

- Section 21.19 bars the City from entering into contracts with an automatic renewal provision;
- Section 21.35 requires that all contracts for services contain language regarding the consequences of submitting false claims to the City;
- Section 12F.5 requires that every contract contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles;
- Section 21.20 requires that every contract contain an insurance provision; and
- Section 21.21 requires that any contractor entering into a contract with the City that involves the provision of intellectual property to the City must fully indemnify the City and any of its officers or agents from all damages, or claims for damages, costs or expenses resulting from an infringement claim.

According to Mr. Chin, Non-Stop Music is not willing to modify their standard form license agreement to comply with the various City contracting requirements cited above, due to the relatively small licensing fee of \$750 per year to be paid by DT. For example, while City contracting requirements provide that contractors must fully indemnify the City and any of its officers or agents from all damages, or claims for damages, costs, or expenses resulting from an infringement claim, under the proposed agreement Non-Stop Music would only indemnify the City for copyright infringement up to the total amount paid to date by the City to Non-Stop Music. Therefore, the City would only be indemnified for an additional \$750 each year. For example by the 3<sup>rd</sup> year of the proposed 9-year agreement, the City would be indemnified up to \$2,250 (3 x \$750). In addition, Mr. Chin advises that Non-Stop Music is not willing to include an insurance provision in the proposed license agreement.

## FISCAL IMPACTS

The proposed ordinance would approve a new nine-year agreement between DT and Non-Stop Music Library L.C. for DT to license the use of a music library from Non-Stop Music Library L.C. for a total cost of \$6,750 (\$750 per year times 9 years) from City General Fund monies from September 1, 2010 through August 31, 2019, and thereafter automatically renews for consecutive one-year periods at the same \$750 per year, unless cancelled by either party. Although the consecutive automatic one-year renewals would not be subject to separate future Board of Supervisors approval, the appropriation of \$750 annually in DT's budget would be subject to Board of Supervisors approval. If funds are not appropriated in future years, DT would give notice of cancellation to Non-Stop Music.

According to Mr. Chin, \$750 for the license was included in both the FY 2010-11 and FY 2011-12 DT budgets. However, Mr. Chin advises that, because the subject license agreement was still being negotiated, no payments were made by DT to Non-Stop Music Library in FY 2010-11; however, the \$750 payment is expected to be made for FY 2010-11 once the subject agreement is approved by the Board of Supervisors.<sup>2</sup> Subsequent annual payments of \$750 for the license will be due September 1<sup>st</sup> of each year.

As stated above in the Details of Proposed Legislation section of this report, the proposed agreement allows DT to sell DVDs to the public, which offsets a portion of the labor costs associated with reproducing the DVDs. Per the City's Sunshine Ordinance, DT is allowed to sell the reproduction of each meeting on DVD for \$10.00, but meetings may range in length from one to three DVDs. According to Mr. Chin, the estimated total cost to produce each DVD is \$12.50, resulting in an estimated net cost of \$2.50 (\$12.50 less \$10.00) per meeting reproduced on DVD. Mr. Chin reports that in an average year, DT sells approximately 150-200 DVDs at a cost of \$1,875 to \$2,500 a year, which is offset by an average \$1,500 to \$2,000 in DVD sales, resulting in a net cost of \$375 to \$500 a year to DT.

As stated above, Non-Stop Music is not willing to modify their standard form license agreement to comply with certain City contracting requirements. The proposed ordinance waives the City's existing contractual requirements, as listed in the Details of Proposed Legislation section above. Such waivers potentially expose the City to unknown risk and liability.

However, the City's Risk Manager, Mr. Matt Hansen, approved the waiver of the insurance provision in the proposed license agreement.<sup>3</sup> According to Deputy City Attorney William Sanders, the City Attorney has approved the proposed incidental and consequential damages and liability caps. Additionally, Non-Stop Music's request will limit the liability to the City to the amount of the annual license fee paid to Non-Stop Music and will require the City to pay Non-Stop Music's attorney fees and costs, should Non-Stop Music sue the City for breach of the subject license agreement.

Further, according to Mr. Chin, the requested waivers of the City's contracting requirements listed above are standard in the music broadcasting industry and are reasonable due to the minimal risk involved, as DT determined that (a) it is highly unlikely for the City to be sued for breach of the subject license agreement, (b) the City is also protected through checks and balances, including project oversight by City staff and (c) it is in the best interests of the City to enter into the license agreement.

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<sup>2</sup> According to Mr. Chin, DT has used the Non-Stop Music Library from September 1, 2010 through October 31, 2010 and as a result owes the entire year's \$750 payment for the license for FY 2010-11.

<sup>3</sup> According to Mr. Hansen, DT met the requirements of Administrative Code Section 1.24 (the three-part test that assesses (1) normal business practice in the industry, (2) level of risk/cost, and (3) business need) and DT's review of the risk factors concluded that the risk to the City would be minimal, resulting in the Risk Management's support of the Department's and City Attorney's Office decision to cap the indemnification. Additionally, the waiver of insurance was granted since the vendor would not be conducting any business on City premises and it is a standard practice in the music broadcasting industry to provide such waivers.

## RECOMMENDATIONS

1. Amend the proposed ordinance to provide for retroactive approval to September 1, 2010.
2. Based on the representations by the City Attorney and the City's Risk Manager, approve the proposed ordinance, as amended.

Non-Stop Music Library, L.C.  
915 West 100 South  
Salt Lake City, Utah 84104  
(801) 531-0060

Contract# : COSF09012010\_5GALIBS  
Contract Date: \_\_\_\_\_, 2011  
Library ID#: 2010.0048

## ANNUAL LICENSE AGREEMENT

LICENSEE: City of San Francisco ("City")

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**SHIPPING ADDRESS:**

1 Dr. Carlton B Goodlett Place  
San Francisco, CA 94102  
Attn: Jack Chin

**BILLING ADDRESS:**

SAME

By signing below, City agrees to the following:

1. This Agreement includes the **Terms and Conditions contained herein**, including all subparts and subparagraphs. City hereby becomes an annual license subscriber of the NON-STOP MUSIC LIBRARY.
2. The compact discs (CDs), DVDs or other storage media from the NON-STOP MUSIC LIBRARY containing music, as shown on the attached Schedule "A", including discs licensed by NON-STOP, or such additional music media as may be provided to City by NON-STOP ("Music") are included in and subject to this Agreement.
3. City shall pay to NON-STOP the amount of Six Thousand Seven Hundred and Fifty Dollars (\$6,750.00 USD) payable in nine (9) annual installments of Seven Hundred and Fifty Dollars (\$750.00 USD) payments due upon on the dates as follows: 02/17/2011, 09/01/2011, 09/01/2012, 09/01/2013, 09/01/2014, 09/01/2015, 09/01/2016, 09/01/2017 and 09/01/2018.
4. City acknowledges and agrees that authorized use of the Music requires City to report any and all music usage.
5. The starting date of this Agreement is September 1, 2010. The term of this Agreement (Term) shall be for nine (9) years from the starting date, and shall automatically extend for consecutive one-year periods unless terminated by either NON-STOP or City giving written notice at least sixty (60) days prior to the end of the then-current term.

**AGREED TO BY:**

**CITY OF SAN FRANCISCO**

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

City Vendor Number:  
Approved as to Form:  
Approved: Dennis J. Herrera

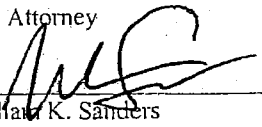
**ACCEPTED BY:**

**NON-STOP MUSIC LIBRARY, L.C.**

By: Non-Stop Music Holdings, Inc., its operating  
manager

By: Randall Thornton  
Title: Chief Executive Officer

City Attorney

By:   
William K. Sanders  
Deputy City Attorney

Naomi Kelly  
Director of the Office Contract Administration,  
and purchaser

**NOTE:** All shipping will be by UPS ground, unless specifically requested otherwise by City. Additional charges will be at City's expense.

## TERMS AND CONDITIONS

1. The Music Library Materials subject to this agreement consist of the compact discs (CDs), DVDs, or other storage media containing the Music, written or electronic media containing descriptions of the Music, including timings and features; and any other materials provided to City hereunder. Upon termination of this Agreement, all Music Library Materials provided to City must be returned to Non-Stop, via traceable means, at City's expense.

2. NON-STOP reserves any and all rights (including, but are not limited to all publishing rights, rights of reproduction, distribution and public performance, and all rights under the United States and international copyright laws) in and to all Music Library Materials, and any scores, tracks, lyrics, titles, themes and melodies, and any and all derivations, arrangements or versions thereof. City acknowledges that NON-STOP exclusively owns such rights, and that no arrangements, derivations or alternative versions may be made without NON-STOP's prior written consent. NON-STOP, for itself and its writers, specifically and expressly reserves the right to license its music through, and to collect public performance royalties from applicable performing rights societies. Broadcasters, cable or satellite transmitters or other public performers of the Music not maintaining valid performing rights licenses from applicable performing rights societies are subject to clearance of performing rights directly from and payment of fees directly to NON-STOP.

3. The rights granted to City hereunder are limited to the right to synchronize the Music, including the composition(s) and sound recording(s), with visual images, voice and/or sound effects, and to incorporate the same into audio-visual productions or programs during the Term, subject to the limitations of ¶7 below. This right includes non-broadcast use such as music-on hold and in program(s) and PSA(s) broadcasts aired on the local free television and basic cable stations SFGTV (cable channel 26) and SFGTV2 (cable channel 78) owned or controlled City, subject to performing rights licensing and reporting obligations contained in ¶2 above. Such right extends in perpetuity beyond the expiration of the Term with respect solely to productions or programs into which the Music is incorporated during the Term, or any extension thereof.

4. City acknowledges that rights granted under this Agreement are non-exclusive.

5. City acknowledges and agrees that the Music and Music Library Materials are unique and proprietary, that any unauthorized use of them, or use after termination or expiration of this Agreement, will result in irreparable harm and damage to NON-STOP, and that NON-STOP shall be entitled to equitable and injunctive relief.

6. NON-STOP warrants and represents that (a) the music contained in the Library is wholly original in content or an arrangement of music in the public domain; and (b) it is authorized to grant to City the rights herein granted. If said warranties shall be breached in whole or in part NON-STOP agrees to either repay to City the consideration theretofore paid to NON-STOP for this license to the extent of the part thereof which is breached, or shall hold City harmless to the extent of the consideration theretofore paid to NON-STOP for this license. In no event shall the total liability of NON-STOP exceed the consideration received by it hereunder. City agrees to defend and hold NON-STOP harmless from and against any claim, loss or damage sustained by NON-STOP as a result of City's breach of its obligations under this Agreement. In no event shall the total liability of City exceed the consideration paid by it hereunder.

7. Incorporation of the Music into productions or programs of any kind to be sold or to be resold, or anticipated to be sold or resold to the general public, including, without limitation, records, (including CDs, tapes, minidisks, or other audio media), videotapes, DVDs, laserdiscs, computer programs, applications, diskettes, CD-ROMs or similar computer-based and/or machine readable information media are within the scope of this blanket and City can produce up to three hundred (300) DVD units per year.

8. Events of default by City under this Agreement are: (1) Failure to pay to NON STOP any amount when due, time being of the essence; (2) Failure strictly to observe any term of condition hereof; (3) Any unauthorized use of the Music; (4) The following on behalf of City: insolvency, the filing of a petition for bankruptcy protection, the appointment of a receiver or the assignment of assets for the benefit of creditors. Any default by City will automatically terminate this Agreement. Such termination shall not affect any of NON-STOP's other rights or remedies under this Agreement, which NON-STOP may pursue at law or in equity, including but not limited to acceleration of all amounts due by and the return of all Music Library Materials furnished to City, actions for damages and/or injunctive relief.



9. This agreement shall not be effective nor shall any rights be granted hereunder until NON-STOP receives the executed agreement and payment of the license fee. In the event that the executed agreement and payment of the license fee are not received within sixty (60) days from the date of this Agreement, NON-STOP's offer to grant this license will terminate, and any use of the Music will be considered to be a willful infringement of copyright.

10. NON-STOP reserves the right to remove any musical materials from the Library at any time, in NON-STOP's sole discretion.

11. New releases of the Music Library Materials will be provided to City if (1) City is current on any and all amounts due to NON-STOP hereunder; (2) City is not in breach of any provision of this Agreement; and (3) City notifies NON-STOP immediately of any change of address for City. Any new release materials shall become part of the Music Library Materials, and subject to this Agreement.

12. This Agreement is the entire agreement and understanding between the parties and may not be modified or amended except in writing, signed by the parties.

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13. No rights granted to City under this Agreement can be assigned or transferred without NON-STOP's prior written consent.

14. This Agreement shall become effective only upon its acceptance and execution by authorized officers of NON-STOP and City.

15. This Agreement shall be governed by and construed according to the laws of the State of California, and jurisdiction over any dispute hereunder shall be in the courts of San Francisco County, State of California.

16. In the event of any breach of or default under this Agreement by City, NON STOP and/or its Licensor(s) shall be entitled to recover from City costs and expenses of enforcing this Agreement, including reasonable outside attorneys fees, incurred with or without suit, before or after judgment.

## Schedule "A"

### GROOVE ADDICTS MUSIC CATALOGS

Gravity

Ignite

Mindbenders

Revolucion

Who Did That Music

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City & County of San Francisco

## Department of Technology

Powered by Innovation

One South Van Ness Avenue, 2nd Floor  
San Francisco, CA 94103-0948  
Office: 415-581-4001 • Fax: 415-581-4002

June 20, 2011

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689


Dear Ms Calvillo:

Attached please find an original and four copies of a proposed resolution/ordinance/motion for Board of Supervisors approval, to enter an agreement with Non-Stop Music Library L.C. to license the use of a music library and to waive certain requirements of the Administrative Code with respect to the license agreement. The Department of Technology seeks to license the use of music produced by others from Non-Stop Music Library L.C. for video productions at the City's governmental television stations (SFGTV) and for the music on hold program for City Departments.

Your handling of this time sensitive matter in the most expedient manner possible is greatly appreciated. The following person may be contacted regarding this matter:

Sheila A. Maxwell, DT Contracts & Procurement at 581-4088.

Thank you,

  
Jon Walton  
Acting Chief Information Officer,  
Executive Director, Department of Technology

cc: Ron Vinson, DT  
Jack Chin, DT  
Ms. Kendall Gary, DT

File 110496

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**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> (Please print clearly.)	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> (Please print clearly.)	
Name of contractor: Non Stop Music Library, LC	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. 1) N/A 2) Randall Thornton CEO; Brian Roberts CFO; Brian Hofheins COO 3) N/A 4) N/A 5) N/A	
Contractor address: 915 West 100 South, Salt Lake City, UT 84104	
Date that contract was approved: (By the SF Board of Supervisors)	Amount of contract: \$6,750.00 total; Payable in nine (9) annual installments of \$750.00
Describe the nature of the contract that was approved: Music Synchronization License	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☒ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> (Please print clearly.)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed