

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON APPROVING A UNIFORM FACILITIES USE LICENSE AGREEMENT FOR THE CITY'S STOKE DENTON ENTREPRENEUR CENTER; AUTHORIZING THE CITY MANAGER, OR DESIGNEE TO EXECUTE THE FACILITY USE LICENSE AGREEMENT AS NEEDED; PROVIDING FOR A REPEALER; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, effective October 1, 2017, the City will take over day-to-day operation of the Stoke Denton Entrepreneur Center from the Dallas Entrepreneur Center;

WHEREAS, the Stoke Denton Entrepreneur Center has multiple levels of membership including the Dedicated Member level which entitles the member to use office space at the Stoke Denton Entrepreneur Center;

WHEREAS, the City desires to formally document a Dedicated Member's use of office space located in the Stoke Denton Entrepreneur Center through the use of a Facility Use License Agreement;

WHEREAS, because of the location of the City's Stoke Denton Entrepreneur Center, and increased volume in the use of office space in the same by Dedicated Members of the City's Stoke Denton Entrepreneur Center, it is a best customer service practice and organizationally efficient for the Facility Use License Agreement to be executed administratively by the City Manager, or his designee;

WHEREAS, the City Council finds it is in the public interest for City to formally document a Stoke Denton Entrepreneur Center Dedicated Member's use of office space located in the Stoke Denton Entrepreneur Center through the use of the attached Facility Use License Agreement and for the same to be executed administratively for the City Manager, or his designee; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The attached Facility Use License Agreement is approved for use by the City in conjunction with its Stoke Denton Entrepreneur Center and a Dedicated Member's use of office space located in the Stoke Denton Entrepreneur Center.

SECTION 3. The City Manager, or his designee, is authorized to execute the approved Facility Use License Agreement, or modified agreement after approval by the City Attorney, as needed without further authority, guidance, or direction from the Council, and is further authorized to carry out the rights and duties of the City under the Agreement.

SECTION 4. All ordinances or parts of ordinances in force when the provisions of this ordinance became effective which are inconsistent, or in conflict with the terms or provisions contained in this ordinance are hereby repealed to the extent of any such conflict.

SECTION 5. If any section, subsection, paragraph, sentence, clause, phrase or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 6. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

FACILITIES USE LICENSE AGREEMENT

This Facilities Use License Agreement ("Agreement") between the City of Denton, a Texas home-rule municipal corporation, ("CITY"), and LICENSEE as described in the LICENSEE's signature block below. The Agreement is effective after being executed by the CITY.

In consideration of the covenants and agreements contained herein, CITY and LICENSEE agree as follows:

1. Grant of License: CITY grants to LICENSEE a non-exclusive and revocable license to use the space described below, subject to the terms and conditions of both this Agreement and the Stoke Denton Entrepreneur Center Membership Agreement, as dedicated coworking space in accordance with LICENSEE'S membership in the CITY's Stoke Denton Entrepreneur Center (the "Use"). LICENSEE shall not change the function or activity described herein without a written amendment to this Agreement signed by CITY and LICENSEE.

2. Licensed Space:

a. This license covers only the following space (collectively, the "Licensed Space") located within 608 E. Hickory St. Suite 128, Denton, Texas:

b. This is not a Real Estate Lease. LICENSEE does not have the exclusive right to use a particular desk or space within 608 E. Hickory St. Suite 128, Denton, Texas ("Premises"). The CITY may relocate your desk or office space from time-to-time as necessary to accommodate membership in the CITY's Stoke Entrepreneurship Center generally. The Premises will remain in the CITY's sole and exclusive possession and control at all times and LICENSEE's membership in the CITY's Stoke Entrepreneurship Center is not a real estate lease, and LICENSEE is not a tenant. LICENSEE represents to the CITY that LICENSEE does not consider the CITY's Stoke Entrepreneurship Center Member Agreement a lease or LICENSEE a tenant. In the event the law affords LICENSEE any of the remedies or protections available to a tenant notwithstanding this Section, LICENSEE waives those remedies and protections to the maximum extent permitted by applicable law. LICENSEE has a license that is personal to LICENSEE who is licensed to use the Licensed Space or Premises on a fully revocable basis subject to both the Stoke Entrepreneurship Center Membership Agreement and this Agreement.

c. This Agreement does not entitle LICENSEE or LICENSEE's officers, employees, agents, contractors, or invitees to occupy, enter or use any area, facility or equipment not included within the

above description of the Licensed Space other than those common areas, common facilities and common equipment located generally within the Premises in accordance with LICENSEE'S membership level as a member of the CITY's Stoke Denton Entrepreneur Center.

3. Term: The period during which LICENSEE is entitled to use the Licensed Space is called the "Term." Any set-up and take-down activities in the Licensed Space shall occur during the Term. The Term of this Agreement is thirty (30) days unless it begins after the first of the month. If the Agreement begins after the first day of the month, the first month's Term shall be the days remaining in the month in which the Agreement was signed.

4. Automatic Renewal: This Agreement shall automatically renew for another Term unless this Agreement is terminated in accordance with this Agreement.

5. Fee: LICENSEE agrees to pay CITY a \$ _____ per month as consideration for both LICENSEE's use of the Licensed Space for the purpose described above (the "Fee") and LICENSEE's Stoke Denton Entrepreneur Center Membership. If the Agreement begins after the first day of the month the first month's Fee shall be prorated based on the days remaining in the month in which the Agreement was signed. Thereafter, the Fee will be the amount for a full month.

6. Deposit: At the time of execution of this Agreement, LICENSEE shall pay CITY, as a deposit, the sum of \$ _____ which shall be credited to expenses such as the Fee or any other amounts due to CITY hereunder.

7. Payments: LICENSEE shall make all deposits and payments under this Agreement under the same terms and conditions set forth in the LICENSEE's Stoke Denton Entrepreneur Center Membership Agreement with the CITY.

8. Utilities, Operating Personnel, Services, and Equipment: CITY shall furnish customary heating, lighting, water, electricity, and air conditioning for the Licensed Space.

9. Alcoholic Beverages: LICENSEE, if over the age of 21, is allowed to bring and consume beer, wine, or any beverage of alcoholic content in the Licensed Space. HOWEVER, LICENSEE will not sell or give away or allow beer, wine, or any beverage of alcoholic content to be sold, given away, sampled, or consumed in the Licensed Space or any part of the surrounding premises.

10. Care of Property: LICENSEE shall take good care of the Licensed Space and all property located therein and shall leave the Licensed Space clean and orderly after use. LICENSEE shall be liable for the cost of any repairs, restorations or replacements to the Licensed Space or CITY'S property necessitated by LICENSEE's or LICENSEE's officers, employees, agents, contractors, or invitees use, and LICENSEE shall reimburse CITY for all such costs within three days after delivery of an invoice therefor.

11. Notices: Any notices, consents, or approvals required or permitted shall be properly given if either emailed or in writing and personally delivered or delivered by certified mail, return receipt requested, and addressed to the following (which may be changed by providing notice to the other party):

To CITY:

City of Denton
Office of Economic Development
215 E. McKinney St.
Denton, Texas 76201
caroline.booth@cityofdenton.com

To LICENSEE:

12. Custody of Property: In the receipt, handling, care, or custody of property of any kind shipped or otherwise delivered to the Licensed Space by or for LICENSEE, CITY shall act solely for the accommodation of LICENSEE and neither CITY nor any of its officers, employees or agents shall be a bailee or liable for any loss, damage, or injury to such property.

13. Control of Premises and Right to Enter: In permitting the use of the Licensed Space, CITY specifically retains the right to enforce any and all laws, rules and regulations applicable to the Licensed Space, and representatives of CITY may enter any portion of the Licensed Space at any time and on any occasion without any restrictions.

14. Property Restrictions: LICENSEE shall not use or permit the Licensed Space to be used for any purpose other than that set forth herein. LICENSEE further covenants and agrees:

a. LICENSEE's use of the Licensed Space shall be in accordance with CITY ordinances and regulations.

b. Appropriate standards of dress and behavior will be observed at all times in the Licensed Space.

c. All minors (children under the age of 18) shall be under the care and supervision of an adult at all times while in the Licensed Space.

d. All activities in the Licensed Space shall be conducted so as not to endanger any person or damage any property therein.

e. All aisles, corridors, passages, vestibules, elevators, and stairways shall be kept free and clear of obstructions and shall not be used other than for ingress and egress.

f. No alterations shall be made to the Licensed Space.

h. No candles are permitted in the Licensed Space.

i. No carts, dollies or other equipment with metal casters are permitted in the Licensed Space or the surrounding premises.

j. No e-smoking or use of tobacco products of any kind is allowed in or around the Licensed Space or the surrounding premises.

k. No animals (except service animals) are allowed in or around the Licensed Space or the surrounding premises.

l. No signs, messages or other materials may be posted, displayed, distributed, or announced in, on or adjacent to, the Licensed Space or surrounding premises without prior written approval of CITY.

m. Any articles, exhibits, fixtures, materials, or displays of LICENSEE that have been previously approved by CITY shall be brought into or taken out of the Licensed Space only at such entrances as may be designated by CITY.

15. Indemnification: LICENSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF DENTON, AND THEIR OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, AND JUDGMENTS: FOR TAXES, LICENSE FEES, EXCISES, FINES AND PENALTIES; FOR SUPPLIES, SERVICES, OR MERCHANDISE PURCHASED BY LICENSEE; FOR WAGES OR FRINGE BENEFITS OF LICENSEE'S EMPLOYEES OR CONTRACTORS; OR FOR INJURY OR DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY THAT DIRECTLY OR INDIRECTLY RESULT FROM THE ACTS, OMISSIONS OR USE OF THE LICENSED SPACE OR SURROUNDING PREMISES BY LICENSEE OR LICENSEE'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR INVITEES. LICENSEE WILL NOT DO OR PERMIT TO BE DONE ANYTHING IN OR UPON ANY PORTION OF THE LICENSED SPACE OR SURROUNDING PREMISES OR BRING OR KEEP ANYTHING THEREIN OR THEREON WHICH WILL IN ANY WAY CONFLICT WITH THE CONDITIONS OF ANY INSURANCE POLICIES INSURING THE LICENSED SPACE OR SURROUNDING PREMISES OR ANY PART THEREOF AGAINST LOSS.

16. Cancellation for Cause by CITY: CITY may cancel this Agreement for cause, such as if LICENSEE fails to comply with the terms and conditions of this Agreement, fails on request to demonstrate in a manner acceptable to CITY that LICENSEE is willing and able to perform adequately all required duties

and responsibilities related to the Use, or if any other similar cause occurs that justifies cancellation, in the discretion of CITY. In any such event, no deposit or fee refund shall be made, and all fees and expenses called for by this Agreement, including reimbursement for any disbursements or expenses incurred by CITY in connection herewith, shall be made payable immediately to CITY by LICENSEE as liquidated damages and not by way of penalty.

17. Force Majeure: CITY may cancel or temporarily suspend the performance of any part of this Agreement without advance notice upon the occurrence of conditions or Uses that make performance not feasible, including without limitation, acts or omissions of government or military authority, acts of God, fires, floods, riots, wars, terrorist acts, or the requisitioning of the Licensed Space by any governmental agency ("Force Majeure"). In the Use of a Force Majeure, this Agreement shall terminate and no deposit or fee refund shall be made. LICENSEE hereby waives any claims for damages or compensation it may have against CITY should this Agreement be so terminated.

18. Cancellation by LICENSEE or Failure to Take Possession: Unless otherwise agreed to by the parties, if LICENSEE shall cancel this Agreement or fail to take possession of or use the Licensed Space covered by this Agreement, no deposit or fee refund shall be made, and all fees and expenses called for by this Agreement, including reimbursement for any disbursements or expenses incurred by CITY in connection herewith, shall be paid to CITY by LICENSEE as liquidated damages and not by way of penalty within 10 days following LICENSEE's receipt of a statement for such charges.

19. Assumption of Risk: LICENSEE assumes the risk of any loss or damage to its property or the property of any person or entity authorized by it to be in the Licensed Space. CITY and its officers, employees and agents shall not be responsible or liable for any loss of, or damage to, property while in the Licensed Space regardless of how the loss or damage is sustained. LICENSEE is advised to obtain their own insurance coverage to cover such a loss.

20. Removal of Property; Abandoned Property: If the LICENSEE fails, neglects, or refuses to remove its property from the Licensed Space prior to the expiration of the Term, said property shall be deemed abandoned and CITY shall have the right to move, place in storage, or otherwise dispose of any such property at the sole cost and expense of LICENSEE. LICENSEE irrevocably constitutes and appoints CITY as its special attorney in fact to do and perform all acts necessary in removing, storing, and disposing of said abandoned personal property and to execute and to deliver a bill of sale therefor.

21. Waivers and Modifications: No waiver of any provision hereof shall be effective unless stated in writing and signed by CITY and LICENSEE. No such waiver shall constitute a waiver of the same provision on a subsequent occasion nor of any other provision of this Agreement. The delay or failure of either party to assert or exercise any right, remedy, or privilege hereunder shall not constitute a waiver of such right, remedy, or privilege.

22. Miscellaneous Provisions:

a. This Agreement constitutes the entire agreement between the parties with respect to the Use of the Licensed Space matter and no prior agreement, written or oral, will be effective to vary the terms of this Agreement.

b. No amendment to this Agreement will be effective unless reduced to writing and signed by an authorized representative of each party.

c. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

d. By statute, mandatory venue for all legal proceedings against CITY is to be in Denton County.

e. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.

f. All contracts related to the Use, including contracts between LICENSEE and caterers, speakers, performers, managers and others, must be made available to CITY for review prior to the Use.

g. Any claim or cause of action that accrues to any party under this Agreement shall survive the termination of this Agreement.

h. Should CITY commence suit against LICENSEE under the terms of this Agreement because of LICENSEE's breach thereof, LICENSEE agrees to pay CITY'S reasonable attorneys' fees, costs, and expenses.

i. The invalidity or illegality of any part of this Agreement shall not affect the validity or force of any other part hereof.

j. The paragraph titles herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.

k. Time, and especially time of payment of monies due from LICENSEE, shall be of the essence of this Agreement.

l. The parties shall be independent contractors in the performance of this Agreement and nothing herein is intended or may be construed to make either party the employee, agent, partner, or representative of the other.

23. Force and Effect: This Agreement shall have no force or effect unless fully executed by both parties. LICENSEE covenants and agrees that its failure to fully and faithfully perform all covenants and agreements hereunder shall excuse CITY'S continued performance.

24. Publicity: LICENSEE shall not use CITY'S name, logo or other likeness in any press release, marketing materials or other public announcement without receiving CITY'S prior written approval.

25. Status as Home-Rule Municipal Corporation: LICENSEE expressly acknowledges that CITY is a Texas home-rule municipal corporation and nothing in this Agreement will be construed as a waiver or relinquishment by CITY of its right to claim such exemptions, privileges, and immunities as may be provided by law.

26. Dispute Resolution: LICENSEE must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and this process is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practices and Remedies Code. LICENSEE must submit written notice of a claim of breach of contract to the designated official of CITY, who shall examine LICENSEE's claim and any counterclaim and negotiate with LICENSEE in an effort to resolve the claim.

27. LICENSEE's Breach of Stoke Denton Entrepreneur Center Membership Agreement. LICENSEE understands and agrees that a breach of LICENSEE's Stoke Denton Entrepreneur Center Membership Agreement with the CITY will be considered by the CITY to be a breach of this Agreement.

28. Funding and Non-Appropriation. This Agreement shall terminate in the event that the CITY's governing body shall fail to appropriate sufficient funds to satisfy any obligation of LICENSEE hereunder. Termination shall be effective as of the last day of the fiscal period for which sufficient funds were appropriated or upon expenditure of all appropriated funds, whichever comes first. Termination pursuant to this non-appropriation clause shall be without further penalty or expense to either party.

----- This space left blank intentionally. -----

CITY:

CITY OF DENTON,
a Texas home-rule municipal corporation

Signature

Printed Name

Title

Signed on the ____ of _____, 2017
and under the authority of Ordinance No. 2017-_____.

LICENSEE:

Printed Name of Entity (Leave blank if Individual)

Signature

Printed Name

Title of Person Signing If Entity (Leave blank if Individual)

If Entity, Type of Entity and State of Incorporation

Signed on the ____ of _____, 2017.