

FILE NO. 110496

ORDINANCE NO.

182-11

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

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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.**

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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;  
9 Board amendment deletions are ~~strike through 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

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

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.

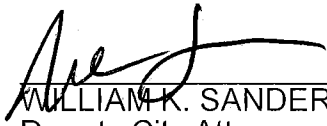
14 (c) The requirement of San Francisco Administrative Code Section 21.20 that every  
15 contract contain an insurance provision.

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:



5 WILLIAM K. SANDERS  
6 Deputy City Attorney  
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**City and County of San Francisco**  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 110496

**Date Passed:** September 20, 2011

Ordinance retroactively 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.

September 07, 2011 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

September 07, 2011 Budget and Finance Committee - RECOMMENDED AS AMENDED

September 13, 2011 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

September 20, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110496

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 9/20/2011 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

Mayor Edwin Lee

9/20/2011

Date Approved