

Record and Return To:
City Clerk's Office
City of Venice
401 W. Venice Avenue
Venice, FL 34285

USE AGREEMENT

This Use Agreement ("Agreement") is made this ____ day of _____, 2024, by and between the CITY OF VENICE, a Florida municipal corporation, whose address is 401 West Venice Avenue, Venice, Florida 34285, hereinafter referred to as the "City", and VENICE MAIN STREET, INC., a Florida not for profit corporation, whose address is 101 W. Venice Ave., Ste. 23, Venice, FL 34285, hereinafter referred to as "VMS".

W I T N E S S E T H

WHEREAS, the City is a municipality duly enacted under the laws of the State of Florida; and

WHEREAS, VMS is a not for profit organization in the State of Florida committed to preserving and enhancing the character, beauty, and economic vitality of historic downtown Venice and surrounding areas; and

WHEREAS, the City and VMS believe it is mutually beneficial to enter into this Agreement for the use and maintenance by VMS of a digital information sign to be installed by the City in Centennial Park.

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

1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement as if set forth therein.
2. City Obligations. The City shall have the following obligations and responsibilities under this Agreement:
 - a. To purchase and install a digital information sign in Centennial Park, to be generally located just south of the existing information kiosk.
 - b. To carry property insurance on the digital information sign.
 - c. To provide and pay for the monthly electrical charges for the operation of the digital information sign.
 - d. To provide and pay for the initial mobile connectivity hardware.

3. VMS Obligations. VMS shall have the following obligations and responsibilities under this Agreement:

- a. To utilize the digital information sign to provide interactive public information that supports the public in navigating the downtown business district, including both public and private destinations and the City as a whole.
- b. To include as content a current City public meeting schedule, current special event schedule, educational information on the City's history, and any other City announcements requested to be included by the City Manager or designee. In addition, during a declared state of emergency, any content provided by the City Manager or designee shall be programmed for priority display as soon as practicable.
- c. To be fully responsible for the costs related to the operation of the digital information sign, except as otherwise provided herein, including but not limited to any and all software licensure fees, mobile connectivity subscription costs, hardware maintenance costs and service calls, and content development costs.
- d. To maintain the digital information sign in good and operating condition.

4. Damage; Destruction. If the digital information sign is damaged, destroyed, or naturally deteriorates to the extent it no longer properly functions, the City may in its sole and absolute discretion, but is not obligated to, repair or replace the digital information sign.

5. Marketing Revenue. VMS may use the digital information sign for marketing purposes and shall retain any revenue generated therefrom.

6. Term; Termination. This Agreement shall remain in effect until terminated by either party as provided for herein. This Agreement may be terminated by either the City or VMS upon thirty (30) days' written notice to the other party as follows:

To the City:

Ed Lavalley, City Manager
City of Venice
401 W. Venice Ave.
Venice, Florida 34285
Email: Elavalley@venicefl.gov

To VMS:

Kara Morgan, CEO
Venice MainStreet Inc.
101 West Venice Avenue Suite 23
Venice, FL 34285
Email: kara.morgan@venicemainstreet.com

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

7. Assignment. Neither party may assign this Agreement or any portion thereof, without the prior written consent of the other party.

8. Third Parties. There shall be no third party beneficiaries with respect to this Agreement and no right nor any cause of action shall accrue to or the benefit of any third party.

9. Governing Law and Venue. This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any action or proceeding related to this Agreement shall be brought in Sarasota County, Florida.

10. Captions. The captions in this Agreement are for convenience of reference only and do not describe the scope or intent of this Agreement or the interpretation or construction thereof.

11. No Joint Venture or Agency. Nothing contained in this Agreement or in any other document executed in connection herewith, is intended or shall be construed to establish the City as a joint venturer or partner, team member, contractor, agent, or assign of VMS. The City and VMS, along with their respective agents and assigns, shall perform all activities that are required by this Agreement as separate and independent entities and not as agents of the other party hereto. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to VMS' use of the digital information sign.

12. Severability. If any sentence, phrase, section, provision or any portion thereof of this Agreement is for any reason held illegal or invalid by a court of competent jurisdiction, such part shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the full force and binding effect of the remainder of this Agreement.

13. Default Notice. The City and VMS will immediately notify each other in the event of any known, discovered, or anticipated default hereunder.

14. Non-Action or Failure to Observe Provisions. The failure of either party to promptly insist upon strict performance of any term of this Agreement shall not be deemed a waiver of any right or remedy and shall not be deemed a waiver of a subsequent default or nonperformance of such term.

15. Modification. Modification of this Agreement may only be made by written agreement of the parties hereto.

16. Defaults. Failure by either the City or VMS to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them, respectively, shall constitute a default under this Agreement and 1) if such default is not cured or remedied within thirty (30) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default or 2) if such default cannot be reasonably cured or remedied within such thirty (30) day period, the defaulting party fails to commence to cure or remedy the default within such thirty (30) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation the right to terminate this Agreement. This provision shall survive termination of this Agreement.

17. Litigation and Attorney's Fees. In the event either party to this Agreement should bring or defend any suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to reasonable attorney's fees and costs and expenses of investigation, all as actually incurred, including, without limitation, attorney's fees, costs and expenses incurred before, during or after trial or in any appellate proceedings. This provision shall survive termination of this Agreement.

18. Indemnification. VMS hereby agrees to indemnify, release and hold the City, its agents, assigns, employees, elected and appointed officials, harmless from and against any and all claims, causes of action, liability and damages (including attorney's fees) that may arise under this Agreement, except to the extent that said claims, causes of action, liability and damages arise from the negligence or willful misconduct of the City.

19. Effective Date. This Agreement shall be effective upon the date of full and complete execution by both parties hereto.

20. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes and controls any and all prior agreements, undertakings, representations and statements.

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IN WITNESS WHEREOF the parties have executed this agreement on the date first above written.

CITY OF VENICE

ATTEST:

Nick Pachota, Mayor

Kelly Michaels, City Clerk

APPROVED AS TO FORM:

Kelly Fernandez, City Attorney

VENICE MAIN STREET, INC.

Print Name: Kara Morgan
Its: Chief Executive Officer (CEO)

STATE OF FLORIDA
COUNTY OF SARASOTA

SWORN TO (OR AFFIRMED) AND SUBSCRIBED before me by means of physical presence or online notarization, this ____ day of _____, 2024 by _____, who is personally known to me or produced _____ as identification.

(SEAL)

NOTARY PUBLIC SIGNATURE
STATE OF FLORIDA
Printed Name: _____
My Commission Expires: _____