

CITY COUNCIL
AGENDA SUBMITTAL
Meeting Date: December 12, 2017

SUBJECT: Consideration of a Location Agreement between the City of Perris and TechStyle, Inc.

REQUESTED ACTION: **Approve** a Location Agreement between the City of Perris and TechStyle, Inc.; and 2) **Authorize** the City Manager or his designee to execute the Location Agreement and all related actions and documents.

CONTACT: Clara Miramontes, Assistant City Manager



BACKGROUND/DISCUSSION:

The Location Agreement will result in TechStyle, Inc. locating its e-commerce retail sales operations to the City of Perris, thereby creating jobs and generating additional sales tax revenues for the City. TechStyle Inc., which is currently headquartered in El Segundo, California, recently moved into a 474, 235 square-foot distribution facility at 290 Markham Street and entered into a 12 year lease with two 5-year options for a total of 22 years. The facility in Perris operates as a fulfillment center only with no point of sales coming from this location. The approval of this agreement would allow for TechStyle Inc. to move its sales business portion into Perris, thereby generating sales tax revenue that is not being collected at this time under current operations.

On September 27, 2017, the City received a letter (Attachment No. 2) from Deloitte Tax LLP representing TechStyle, Inc. ("TechStyle" or "TechStyle Fashion Group") requesting that the City of Perris ("City") consider entering into a local sales tax revenue sharing agreement in exchange for TechStyle to locate their e-commerce sales business portion into the City of Perris. TechStyle Fashion Group is comprised of high-value membership driven fashion brands supported by a community of approximately 4.5 million members. This online subscription retailer sells apparel, athletic apparel, shoes, handbags, and other accessories, through its website(s). TechStyle Fashion Group includes Fabletics, LLC, JF Retail Services, LLC, Justfab, Inc., Personal Retailing, Inc. dba Fabkids, Personal Styling Services, LLC and ShoeDazzle.com, Inc. dba ShoeDazzle.

Under the Location Agreement for a 20-year term or the end of TechStyle's lease, whichever comes first, the City of Perris will share 50% of all sales tax revenues generated through its E-Commerce Retail Sales which will be fulfilled through TechStyle's Fulfillment Distribution Center. TechStyle will become one of the City's highest sales tax producer.

Current hiring forecasts and operating plans for the new Perris distribution center reflect approximately 175 total employees by the end of 2017, with nearly 75% of them being full-time employees and 30 being Perris residents. TechStyle's growth plan over the next five years anticipates to hire approximately 122 additional employees. TechStyle has agreed to an "Employment Outreach for Local Residents" provision to foster employment opportunities for Perris residents. TechStyle shall use commercial reasonable efforts to recruit and hire local residents for full and part time employment opportunities as determined by TechStyle in its sole discretion and shall furnish the City of Perris Human Resources Development and/or Development Services Department with the location, dates and times for such recruitment activities prior to the date of accepting applications or such employee recruitment efforts commence.

BUDGET (or FISCAL) IMPACT: The receipt of additional sales tax revenues to the City's General Fund.

Prepared By: Christopher J. Chung, Nexus Consultants
Reviewed by: Assistant City Manager, Clara Miramontes
Assistant City Manager: Darren Madkin 
Director of Finance: Jennifer Erwin 

Attachments: Attachment No. 1 – Location Agreement
Attachment No. 2 - September 27, 2017 Letter from Deloitte Tax LLP

Agenda: Consent

LOCATION AGREEMENT

between

CITY OF PERRIS

a Municipal Corporation

and

TECHSTYLE, INC.

a Delaware Corporation

November 17, 2017

ARTICLE I PARTIES AND EFFECTIVE DATE.

1.1 Parties. This Location Agreement ("Agreement") is entered into by and between the City of Perris, a municipal corporation ("City"), and TechStyle, Inc., a Delaware corporation, for and on behalf of itself, and certain of its subsidiaries and affiliates (collectively, "TechStyle"). City and TechStyle are sometimes referred to individually as a "Party" and collectively as "Parties" herein.

1.2 Effective Date. This Agreement is dated for reference purposes only. This Agreement will not become effective until the date ("Effective Date") on which both of the following are true: (i) this Agreement has been approved by the City Council following all legally required notices and hearings; and (ii) this Agreement has been executed by the appropriate authorities of City and TechStyle.

ARTICLE II RECITALS.

2.1 City, in consideration of the additional Local Sales Tax Revenues to be collected and remitted by TechStyle, for the benefit of City, which City would not otherwise realize, desires to provide City Payments to TechStyle as compensation for TechStyle establishing Operations within City through its Distribution Center and otherwise satisfying its obligations under this Agreement.

2.2 Such City Payment for each Fiscal Quarter will be an amount paid from any legally available source of funds and shall be measured by a percentage of the Local Sales Tax Revenues generated in such Fiscal Quarter, as more particularly set forth in this Agreement.

2.3 The operations of TechStyle in City will provide significant public benefits to City, in that the additional Local Sales Tax Revenues to be generated as a result of TechStyle's efforts represent a substantial and significant source of additional public revenue for City, which may be used by City for the funding of necessary public services and facilities, including public safety services and facilities.

2.4 City and TechStyle desire to enter into this Agreement for the purposes described above.

ARTICLE III DEFINITIONS.

3.1 Definitions. Unless the context otherwise requires, the terms defined in this Article 3 shall, for all purposes, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein; the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

3.1.1 "Agreement" shall have the meaning set forth in Section 1.1.

3.1.2 "Applicable Reporting Period" means, for purposes of determining the Parties' financial obligations hereunder, the Reporting Period applicable to the Fiscal

Quarter for which the financial obligation is being calculated. As an example, the Applicable Reporting Period for determining a financial obligation attributable to Sales occurring in the Fiscal Quarter ending September 30, shall include the then-current Fiscal Quarter ending September 30, and the three immediately prior Fiscal Quarters ending December 31, March 31, and June 30 respectively.

3.1.3 "Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California or City are closed.

3.1.4 "CDTFA" means the California Department of Tax and Fee Administration and any successor agency.

3.1.5 "City" shall have the meaning set forth in Section 1.1 and shall include any nominee, assignee or successor to City's rights, powers and responsibilities.

3.1.6 "City Payment" means, with respect to a particular Fiscal Quarter within the Term, the sum total amount of City's "Location Payment Obligation" (LPO), as defined in Section 3.1.15, for such Fiscal Quarter.

3.1.7 "Data and Documentation" shall have the meaning set forth in Section 4.2.2.

3.1.8 "Designated Sales Territory" means the geographical boundaries the sales, service and distribution area served by the Distribution Center which is located within the jurisdiction of the City. Except as otherwise provided in this Agreement, TechStyle shall have the right in its business discretion to adjust or modify the Designated Sales Territory to correspond to its business needs and requirements.

3.1.9 "Dispute Notice" shall have the meaning set forth in Section 6.15.

3.1.10 "Distribution Center" means any location operated by TechStyle within the City at which E-Commerce Retail Sales and other sales transactions are consummated pursuant to the Sales Tax Law. The "Initial Distribution Center" shall be located at 290 Markham Street in the City.

3.1.11 "E-Commerce Retail Sales" means all sales of Material conducted electronically on the internet to any person or entity distributed through the Distribution Center, which is subject to the Sales Tax Law and which generates Local Sales Tax Revenues.

3.1.12 "Effective Date" shall have the meaning set forth in Section 1.2.

3.1.13 "Enforced Delays" shall have the meaning set forth in Section 6.12.

3.1.14 "Event of Default" shall have the meaning set forth in Section 4.6.

3.1.15 "Fiscal Quarter" means one three-month period within the Term and commencing on January 1, April 1, July 1, or October 1, and ending on, as applicable, the immediately following March 31, June 30, September 30, or December 31.

3.1.16 "Initial Distribution Center" shall have the meaning contained within "Distribution Center".

3.1.17 "Location Payment Obligation" or "LPO" means, as to a particular Fiscal Quarter during the Term, an amount equal to fifty percent (50%) of each dollar of Local Sales Tax Revenues received by City and attributable to TechStyle for each Fiscal Quarter.

3.1.18 "Local Sales Tax Revenues" means that portion of the Sales Tax, paid by TechStyle, which is allocated and paid to City pursuant to the Sales Tax Law. Local Sales Tax Revenues shall not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of Riverside, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation, (v) any Sales Tax attributable to transactions other than E-Commerce Retail Sales, or (vi) any Sales Tax attributable to any transaction not consummated within the Term, or (vii) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

3.1.19 "Material" means any and all tangible personal property offered for sale by TechStyle to its customers/clients which is subject to the Sales Tax Law.

3.1.20 "Operations" means E-Commerce Retail Sales consummated through one or more Distribution Centers located in the City and operated by TechStyle.

3.1.21 "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed or otherwise collected from TechStyle.

3.1.22 "Prohibited Financial Assistance" shall have the meaning set forth in Section 4.1.

3.1.23 "Reporting Period" means, at any one point in time, the then-current Fiscal Quarter together with the immediately preceding three (3) Fiscal Quarters. As to any Fiscal Quarter, TechStyle's returns to the State under applicable Sales Tax Law are due by the end of the calendar month following a Fiscal Quarter, and accordingly, TechStyle's reporting for a Reporting Period shall be due to the City by the end of the calendar month following the calendar month in which TechStyle is obligated to file. For example, for Fiscal Quarter ending September 30th, TechStyle's Data and Documentation shall be received by the City by November 30th.

3.1.24 "Resolution Period" shall have the meaning set forth in Section 6.15.

3.1.25 "Sale" and "Sales" mean, individually or collectively, Retail Sale(s).

3.1.26 "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law, excluding Sales Tax which is to be refunded to TechStyle, because of an overpayment of Sales Tax.

3.1.27 "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 *et seq.*, and any successor law thereto, (ii) any legislation allowing City or other public agency with jurisdiction in City to levy any form of Sales Tax, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

3.1.28 "Term" shall mean that period commencing on the Effective Date and ending on the earlier of (i) the date that is twenty (20) years after the Effective Date, or (ii) the date on which TechStyle's lease agreement for the Initial Distribution Center in the City expires or terminates.

ARTICLE IV LOCATION AND OPERATION

4.1 Location and Operation Covenant. TechStyle hereby represents, warrants and covenants that it shall, on or before the commencement of the Term, establish its Operations through a Distribution Center within the jurisdictional boundaries of the City and shall thereafter, for the full Term, conduct its E-Commerce Retail Sales operations for the Designated Sales Territory through the Distribution Center in accordance with this Agreement, the Sales Tax Law, and all other applicable provisions of local, state and federal law. TechStyle shall use commercially reasonable, good faith efforts to market, promote and administer its E-Commerce Retail Sales activities, with the objective of maximizing the amount of Local Sales Tax Revenues within the Designated Sales Territory. TechStyle's Distribution Center(s) located in the City shall conduct its (or their) operations in accordance with all applicable provisions of local, state and federal law.

For purposes of this Section 4.1, the term "Prohibited Financial Assistance" shall mean any direct or indirect payment, subsidy, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financings, property or sales tax relief, relief from public improvement obligations, and payment for public improvements to or for the benefit of TechStyle, to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in a relocation of the Distribution Center from the City or an Event of Default by TechStyle hereunder or a reduction or re-allocation of Local Sales Tax Revenues. TechStyle covenants and agrees for the Term, that without first obtaining the City's prior written approval, which may be given in City's sole and absolute discretion, TechStyle will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity for itself or for any Distribution Center.

TechStyle shall use commercially reasonable efforts to ensure that its Operations within the City conduct their business so that the place of sale for taxable sales occurring in the City during the Term will be the City, pursuant to the Sales Tax Law. In all sales reports filed by TechStyle with the CDTFA relating to taxable sales by such Operations, where such a designation is permitted or required under Sales Tax Law, TechStyle shall use commercially reasonable efforts to ensure that its Operations shall specify the City as the place of sale for all of its taxable sales that are conducted in the City.

4.2 Payment of City Payment. Within thirty (30) days following the later of: (i) City's receipt of final reconciliation reports from the CDTFA for a Fiscal Quarter occurring within the Term, and (ii) City's receipt of any and all Data and Documentation applicable to such Fiscal Quarter, City will determine and pay to TechStyle the City Payment due for such Fiscal Quarter.

4.2.1 Conditions Precedent to City Payments. City's obligations under Section 4.2 hereof are contingent on a year-to-year basis and, for each Fiscal Quarter within the Term, City's obligations to make any payments to TechStyle hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each Fiscal Quarter after TechStyle has begun E-Commerce Retail Sales in City:

- (i) TechStyle having, for the entirety of such Fiscal Quarter, completely fulfilled its material obligations under this Agreement; and
- (ii) City's receipt and reasonable approval of the Data and Documentation, certified as complete and accurate by an authorized TechStyle officer or an authorized signatory delegate.

Should any one or more of the foregoing conditions precedent not be satisfied for each Fiscal Quarter, then City shall have no obligation to make any City Payment to TechStyle for such Fiscal Quarter until such conditions precedent are met.

4.2.2 Data and Documentation. For the purposes of this Agreement, the term "Data and Documentation" means any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, statements and any other documents evidencing the amount of E-Commerce Retail Sales generated within the applicable Fiscal Quarter, including: copies of all schedules and reports filed by TechStyle with CDTFA during that Fiscal Quarter, including, without implied limitation, those relating to E-Commerce Retail Sales occurring at or through the Distribution Center and Sales Tax paid by TechStyle relating to E-Commerce Retail Sales occurring at or through the Distribution Center during such Fiscal Quarter. For the purposes of this Agreement, the term "Data and Documentation" means to evidence the net dollar value of all E-Commerce Retail Sales consummated at or through the Distribution Center in such Fiscal Quarter.

4.2.3 Adequate Consideration. Each City Payment due and payable hereunder shall constitute the total payment to TechStyle for the Fiscal Quarter to which it

relates. The Parties hereto have determined and agreed that the City Payment due and payable during each Fiscal Quarter represents fair consideration to TechStyle for its covenants and obligations hereunder.

Both City and TechStyle expressly acknowledge and agree that TechStyle will receive no compensation under this Agreement other than the City Payment. TechStyle shall not be entitled to any reimbursement or other compensation from City for any costs incurred by TechStyle in performing or preparing to perform its obligations under this Agreement. The City Payments shall not be reduced or offset for any costs or expenses incurred by City in performing or preparing to perform its duties under this Agreement.

4.2.4 No Carry Forward or Back. City and TechStyle acknowledge and agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Fiscal Quarter-to-Fiscal Quarter basis. Revenues generated in one Fiscal Quarter may not be carried forward or back to any prior or future Fiscal Quarter, it being the express agreement and understanding of the Parties that for each Fiscal Quarter the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Fiscal Quarter.

4.2.5 Source of City Payment. City Payments shall be payable from any source of legally available funds of City. City covenants to reasonably consider such actions as may be necessary to include all City Payments owed hereunder in each of its annual budgets during the Term and to reasonably consider the necessary annual budgetary appropriations for all such City Payments.

4.2.6 Recapture of City Payments. If, at any time during or after the Term of this Agreement, CDTFA makes a final Board determination that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if CDTFA requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales Tax Revenues, then TechStyle shall, within thirty (30) days after written demand from the City, together with reasonable documentation, repay all City Payments (or applicable portions thereof) theretofore paid to TechStyle which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If TechStyle fails to make such repayment within thirty (30) days after the City's written demand, together with reasonable documentation, then such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. In addition, City may withhold such amounts from future City Payments.

City and TechStyle agree that, should the CDTFA question the correctness of the allocation or determine that there has been an improper allocation to the City, City will (at the request of TechStyle) engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Costs associated for such efforts will be borne by both City and TechStyle in proportion to their respective percentage interests in Sales Tax revenue. For purposes of this paragraph, administrative

proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board members. TechStyle will cooperate fully with the City and its attorney.

4.3 Audit of Books and Records. Either Party shall, upon no less than seventy-two (72) hours prior to written request from the other party, make its books and records relating to the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, including, without implied limitation, the California Evidence Code, California Government Code (including the Public Records Act), the Code of Civil Procedure, federal statutes and state or federal judicial decisions. Furthermore, TechStyle may redact or omit confidential information, including but not limited to customer information such as addresses, names and phone numbers. Furthermore, all such non-privileged books and records may be made available and introduced as evidence if ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records; provided, however, that any audit and/or investigation ordered by the court, may be recovered as an item of litigation expense pursuant to Section 6.14.

4.4 Reconciliation. Each City Payment shall be accompanied by a statement setting forth the calculations made to determine the amount of such disbursement and setting forth all disbursements made to date. The City Payment may be subject to any credits or offsets necessary to account for adjustments to Local Sales Tax Revenues in accordance with section 3.1.18 or any other provision of this Agreement. Each Party shall have the right to contest any of the calculations or information contained in said statement or the determined amount of payment upon written notice to the other Party within sixty (60) calendar days of the date of the statement or City Payment. If the challenging Party can show to the reasonable satisfaction of the other Party, within sixty (60) calendar days of receiving such notice, that the amount of a City Payment was incorrect, either City shall disburse to TechStyle the correct amount due, or TechStyle shall reimburse City for any amount received in excess of the correct amount due.

4.5 Employment Outreach for Local Residents. A goal of the City in entering into this Agreement is to foster employment opportunities for Perris residents. To that end, TechStyle shall use commercial reasonable efforts to recruit and hire local residents for full and part time employment opportunities as determined by TechStyle in its sole discretion. To the extent TechStyle conducts any local on-site and/or off-site job recruitment, TechStyle shall use commercially reasonable efforts to furnish the City of Perris Human Resources Development and/or Development Services Department with the location, dates and times for such recruitment activities prior to the date of accepting applications or such employee recruitment efforts commence. The City shall be authorized to post and advertise the job recruitment information provided to the City on the City's website and other jobs available and job recruitment sites within the region. Offers of employment shall be at TechStyle's sole discretion and all employment shall be at-will

employment. Nothing in this paragraph shall require TechStyle to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 4.5 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

4.6 Event of Default. Each of the following shall constitute an "Event of Default":

4.6.1 Failure by a Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control.

4.6.2 Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made.

4.7 Rights and Remedies; Rights and Remedies Not Exclusive. Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of City and TechStyle under this Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively. Upon the other Party's Event of Default, in addition to those remedies expressly granted herein, the Parties shall also have the right to seek all other available legal and equitable remedies.

4.8 Termination. In addition to all other rights and remedies granted to the Parties under this Agreement or available to them in equity or at law, either Party may terminate this Agreement and all of its obligations hereunder without cost or liability upon the other Party's Event of Default. Such termination shall not limit or abridge the rights and remedies available to the non-defaulting Party.

ARTICLE V

5.1 City Representations and Warranties. City represents and warrants to TechStyle that, to City's actual current knowledge:

- (i) City is a municipal corporation exercising governmental functions and powers and organized and existing under the State of California;
- (ii) City has taken all actions required by law to approve the execution of this Agreement;

- (iii) City's entry into this Agreement and the performance of City's obligations under this Agreement do not violate any contract, agreement or other legal obligation of City;
- (iv) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement;
- (v) City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein; and
- (vi) The individual executing this Agreement is authorized to execute this Agreement on behalf of City.

The representations and warranties set forth above are material consideration to TechStyle and City acknowledges that TechStyle is relying upon the representations set forth above in undertaking TechStyle's obligations set forth in this Agreement.

The term "City's actual current knowledge" means, and is limited to, the actual current knowledge of City Manager, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation. All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of City and its nominees, successors and assigns.

5.2 TechStyle Representations and Warranties. TechStyle represents and warrants to City that, to TechStyle's actual current knowledge:

- (i) TechStyle is a duly formed Delaware corporation and is in good standing and qualified to do business under the laws of the State of California;
- (ii) The individuals executing this Agreement are authorized to execute this Agreement on behalf of TechStyle;
- (iii) TechStyle has taken all actions required by law to approve this Agreement;
- (iv) TechStyle's entry into this Agreement and the performance of TechStyle's obligations under this Agreement do not violate any contract, agreement or other legal obligation of TechStyle;

- (v) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of TechStyle's obligations under this Agreement; and
- (vi) TechStyle has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by TechStyle is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

The representations and warranties set forth herein are material considerations to City and TechStyle acknowledges that City is relying upon the representations set forth above in undertaking City's obligations set forth above.

The term "TechStyle's actual current knowledge" means, and is limited to, the actual current knowledge of TechStyle staff as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

5.3 The City has entered into this Agreement with TechStyle because of the unique qualifications and identity of TechStyle. No voluntary or involuntary successor-in-interest of TechStyle shall acquire any rights or powers under this Agreement except as expressly set forth herein. TechStyle may not assign or transfer all or any part of this Agreement without the prior written approval of City, which may be given or withheld in City's sole and absolute discretion.

ARTICLE VI MISCELLANEOUS

6.1 Amendment; Modification. At any time City and TechStyle may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason. Any such amendment to this Agreement shall only be by written agreement between City and TechStyle. City and TechStyle agree to consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, although neither Party shall be obligated to approve any such amendment. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and TechStyle. With the concurrence of the City Attorney, the City Manager is authorized on behalf of City to approve and execute minor amendments to this Agreement on behalf of City. Any such approved amendment shall control over this Agreement.

6.2 California Law. This Agreement shall be construed and governed in accordance with the laws of the State of California without regard to its conflict of laws principles.

6.3 Execution in Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one (1) and the same instrument.

6.4 Business Days. Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

6.5 Tax Consequences. TechStyle shall be responsible and assume all liability for federal, state and/or local income or other taxes resulting from its receipt of City Payments.

6.6 Rights Not Granted. This Agreement is not, and shall not be construed to be, a statutory development agreement under California Government Code Section 65864 *et seq.* or a disposition and development agreement under California Health and Safety Code Section 33000 *et seq.* This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by City concerning any project, development, or construction by TechStyle in City. This Agreement does not, and shall not be construed to exempt TechStyle in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development or construction within City.

This Agreement does not, and shall not be construed to exempt TechStyle' from the application and/or exercise of City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

6.7 Consent. Whenever consent or approval of either Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

6.8 Notices and Demands. All notices or other communications required or permitted between City and TechStyle under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the addresses below subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been received on the fourth (4th) Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

To City:

City of Perris

101 North "D" Street
Perris, CA 92570
Attn: City Manager

With a copy to:

Aleshire & Wynder, LLP
3880 Lemon Street, Suite 520
Riverside, CA 92501
Attn: Eric L. Dunn, City Attorney

To TechStyle:

TechStyle, Inc.
800 Apollo Street
El Segundo, CA 90245
Attn: James Matthews

With a copy to:

Deloitte Tax LLP
555 West 5th Street
Los Angeles, CA 90013
Attn: Marcus Panasewicz

6.9 Non-liability of Parties' Officials and Employees. No officer, elected official, contractor, consultant, attorney or employee of City shall be personally liable to TechStyle, any voluntary or involuntary successors or assignees of TechStyle, or any lender or other party holding an interest in TechStyle's property, in the event of any default or breach by City, or for any amount which may become due to TechStyle or to its successors or assignees, or on any obligations arising under this Agreement.

No officer, official, contractor, consultant, attorney or employee of TechStyle shall be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by TechStyle, or for any amount which may become due to City or to its successors or assignees, or on any obligations arising under this Agreement.

6.10 Conflicts of Interest. No officer, elected official, contractor, consultant, attorney or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer, elected official, contractor, consultant, attorney or employee participate in any decision relating to this Agreement which unlawfully affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

6.11 Entire Agreement; Confidentiality. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. The terms and

existence of this Agreement will not be publicized or made public beyond what is required by law. To the extent City desires to issue a press release referencing this Agreement or TechStyle's e-commerce business during the Term of this Agreement, City agrees to seek TechStyle's prior written consent prior to issuing such press release.

6.12 Extensions and Delays. Time is of the essence in the performance of the obligations of City and TechStyle under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation or orders and judgments of courts of competent jurisdiction; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; freight embargoes; and other circumstances outside of a Party's reasonable control (collectively, "Enforced Delays") provided, however, that the Party claiming the extension shall notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. In no event shall either Party be deemed in default of this Agreement because of an Enforced Delay event.

6.13 Indemnification; Offset. TechStyle agrees to indemnify City and hold it harmless from and against all demands, suits, proceedings, causes of action or claims of any kind arising under the Sales Tax Law or any other alleged ground or basis, other than the negligence or intentional act of City, to the extent arising from this Agreement or from City's performance of this Agreement, with the exception of CDTFA administrative proceedings described in Section 4.2. In the event that a court or administrative body determines that any portion of Local Sales Tax Revenues must be shared with another jurisdiction, such amount shall be deducted from Local Sales Tax Revenues and shall not be used to calculate the Location Payment Obligation.

6.14 Attorneys' Fees. In the event of the bringing of an action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to recover from the other Party all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees (collectively, "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 6.14, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 6.14 shall survive any termination of this Agreement.

6.15 Informal Dispute Resolution. The Parties shall attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement

promptly by negotiations between senior officials of the Parties who have authority to settle the difference or controversy. The disputing Party may give the other Party written notice ("Dispute Notice") that a dispute exists between them. Within twenty (20) days after receipt of a Dispute Notice, the receiving Party shall submit to the disputing Party a written response. The Dispute Notice and response shall include (a) a statement of each Party's position and a summary of the evidence and arguments supporting its position, and (b) the name and title of the official who shall represent that Party. The senior officials shall meet at a mutually acceptable time and place or by telephone conference within thirty (30) days of the date of the Dispute Notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute, up to a maximum of ninety (90) days of the date of the Dispute Notice ("Resolution Period"). In the event any Party fails to provide a response to a Dispute Notice in accordance with this section or fails to cooperate in the scheduling of, or to attend, the meetings, described above, to resolve the dispute, then, with respect to that Party, the Resolution Period shall be deemed to have run so that the dispute may immediately be subject to legal action.

6.16 Jurisdiction and Venue. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate State of California court in the County of Riverside, California. Both Parties hereto irrevocably consent to the personal jurisdiction of that court. City and TechStyle each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between City and TechStyle, due to the fact that City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, City and TechStyle specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. TechStyle acknowledges that the provisions of this Section 6.16 are material consideration to City for its entry into this Agreement, in that City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

6.17 Interpretation. City and TechStyle acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

6.18 No Waiver. Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver by any Party of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

6.19 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

6.20 No Third Party Beneficiaries. The performance of the respective obligations of City and TechStyle under this Agreement are not intended to benefit any party other than City or TechStyle. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

6.21 No Effect on Eminent Domain Authority. Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever City's eminent domain powers with respect to any property.

6.22 Warranty Against Payment of Consideration. TechStyle warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 6.22, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by TechStyle.

6.23 Severability. City and TechStyle declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

6.24 Further Acts. City and TechStyle each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder. The foregoing shall not, however, be deemed to require City to exercise its legislative discretion in any particular fashion or to provide to TechStyle any remedy or claim for damages against City based on the lawful exercise of City's discretion.

6.25 No Assignment, Transfer, Pledge or Hypothecation. TechStyle may not assign, transfer, encumber or hypothecate its rights or obligations under this Agreement to any person or entity, without the express written consent of City, which may be withheld in City's sole and absolute discretion. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation, or any attempt to do so, shall not confer any rights upon the purported assignee or transferee and shall constitute TechStyle's immediate and incurable material default of this Agreement, and City may, without providing TechStyle notice or opportunity to cure, exercise those remedies available to City pursuant to Section 4.7 or 4.8.

6.26 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or a joint venture by virtue of this Agreement, nor shall either Party be an agent,

representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

6.27 Non-Dedication of Property. The execution of this Agreement by TechStyle does not result in the dedication of any TechStyle property for public use.

[Signatures on following pages]

SIGNATURE PAGE
TO
LOCATION AGREEMENT

CITY:

CITY OF PERRIS
a California Municipal Corporation

Dated: _____

By: _____
Richard Belmudez, City Manager

ATTEST:

By: _____
Nancy Salazar, City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Eric L. Dunn, City Attorney

SIGNATURE PAGE
TO
LOCATION AGREEMENT

TECHSTYLE:

TECHSTYLE, INC., a Delaware
corporation

Dated: 11-20-17

By: 

James Matthews

Its: Vice President, Tax

see attached CA acknowledgment

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

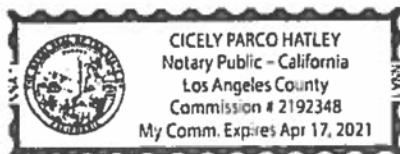
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Los Angeles)
 On November 20, 2017 before me, Cicely Parco Hatley,
 Date Here Insert Name and Title of the Officer
 personally appeared James Matthews
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
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☐ Other: _____
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corporation

Dated: 11-20-17

By: 

James Matthews
Its: Vice President, Tax

see attached CA acknowledgment

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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☐ Other: _____
 Signer Is Representing: _____

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TO
LOCATION AGREEMENT

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TECHSTYLE, INC., a Delaware
corporation

Dated: 11-20-17

By: 

James Matthews

Its: Vice President, Tax

see attached CA acknowledgment

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

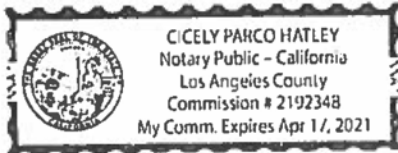
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☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

September 27, 2017

Mr. Christopher Chung
Economic Development Director
Community Economic Development Corporation
135 North "D" Street
Perris, CA 92570

Dear Mr. Chung:

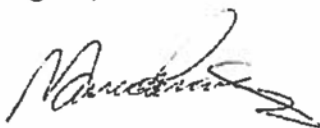
Deloitte Tax LLP has been engaged by our Client, TechStyle, Inc. ("TechStyle" or "TechStyle Fashion Group") to assist TechStyle in discussions with the City of Perris, California ("City" or "Perris") regarding a potential local sales tax revenue sharing agreement.

TechStyle Fashion Group is comprised of high-value membership driven fashion brands supported by a community of approximately 4.5 million members. This online subscription retailer sells apparel, athletic apparel, shoes, handbags, and other accessories, through its website. The website offers a personalized shopping experience for members, based on each member's indicated tastes and preferences. The website uses this information to personalize the shopping process and showcase specific products to each member, based on their stated preferences.

TechStyle is currently headquartered in El Segundo, California. However, TechStyle has opened a new distribution center in Perris to facilitate the fulfillment of online orders. Current hiring forecasts and operating plans for the new Perris distribution center reflect approximately 170 total employees by the end of 2017, with nearly 75% of them being full-time employees. TechStyle's growth plan over the next two years projects approximately 240 total employees in the City of Perris by the end of 2019, with approximately 70% of them being full-time employees. TechStyle's plan is to grow operations significantly in the City and continue growing sales and its employee base within the City of Perris.

Thank you for your consideration in this matter. Should you have any questions please do not hesitate to contact me to set up a meeting at 213-688-1837.

Regards,



Marcus Panasewicz
cc: James Matthews, TechStyle, Inc.
Bruce Kessler, Deloitte Tax LLP