

LICENSE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2013 between the City of Minneapolis, a municipality of the State of Minnesota (“City”) and _____, (“Licensee”).

WITNESSETH:

WHEREAS, the City, through the Minneapolis Convention Center and the Mayor’s Office, offered a competition for architects, landscape architects, urban designers, planners, engineers, scientists, artists, and students to create and install a temporary, interactive, site-specific, eco-focused “portal” to the City of Minneapolis on the Plaza of the Minneapolis Convention Center (“Creative City Challenge”);

WHEREAS, Licensee was chosen as the winning recipient of the Creative City Challenge;

WHEREAS, as winner of the Creative City Challenge, Licensee is eligible to receive \$50,000 in exchange for creating, installing, maintaining, and eventually removing the artwork depicted on Exhibit A (“Artwork”), which is attached hereto and made part of this Agreement;

WHEREAS, the City is the owner of the plaza area immediately adjacent to the Convention Center near 1301 Second Avenue South, Minneapolis, Minnesota (“Plaza”);

WHEREAS, the City is willing to allow the installation and temporary display of the Artwork on the Plaza;

WHEREAS, Licensee is willing to install, maintain, and eventually remove the Artwork from the Plaza;

WHEREAS, the City is further willing to remit a total of \$50,000 to Licensee in exchange for Licensee’s installation, maintenance, and removal of the Artwork on the condition that Licensee enter into this License Agreement (“Monetary Award”).

NOW THEREFORE, in consideration of the mutual covenants hereinafter stated, the parties agree as follows:

1. License. The City hereby grants a license to build, place, maintain, and eventually remove and/or decommission the Artwork on and from the Plaza.
2. Artwork. Licensee agrees to build and display the Artwork according the design depicted on Exhibit A which is attached hereto and made part of this Agreement.

3. Costs. Licensee shall be solely responsible for all costs and fees associated with designing, building, placing, maintaining, removing and/or decommissioning the Artwork on the Plaza, including but not limited to all costs or fees for any permits required to fulfill the terms of this Agreement.

4. Monetary Award. City agrees to remit the Award to Licensee in the following manner:

- First installment at contract signing to be 10% of the award or \$5,000
- Second installment to be 70% of the award or \$35,000 by April 1, 2013
- Third installment at installation completion to be 10% of the award or \$5,000
- Final installment after the structure is removed and Plaza returned to acceptable condition to be 10% of the award or \$5,000

5. Right of Entry. The City agrees to allow Licensee and its contractors to enter upon the Plaza for purposes of construction, maintenance, and removal of the Artwork (“Services”) during the term of this Agreement. This Right of Entry shall not include excavation or modification to permanent structures on or about the Plaza and/or Minneapolis Convention Center property.

6. Maintenance. Licensee shall be solely responsible for Maintenance of the Artwork during the term of this Agreement. Maintenance shall include, but may not be limited to, proper upkeep of the Artwork in accordance with the 1990 Visual Artists Rights Act, together with repair and replacement of all aspects of the Artwork. The maintenance activities covered under this Agreement may be conducted at any time by Licensee upon providing two business days prior written notice to the City.

7. Modification, Removal or Deaccession of the Artwork. The City shall continue to display the Artwork on the Plaza for the full term of this Agreement. Upon termination of this Agreement, Licensee shall at its own cost and expense, remove the Artwork from the Plaza and restore the Plaza to its original, pre-existing condition.

8. Public Access. Both Parties shall seek to ensure ongoing public access to the Artwork for as long as it is displayed on the Plaza.

9. Term. This Agreement shall be in full force and effect from _____ through _____ unless otherwise extended by amendment, or terminated earlier under Paragraph 20, Cancellation, Default and Remedies.

10. Substitutions and Assignment.

The Services will be performed by the following person(s):

Upon written approval by the City, Licensee may substitute other persons or subcontractors to perform the Services. No assignment of this Contract shall be permitted without the written amendment signed by the City and the Licensee.

11. Contract Administration. All provisions of this Agreement shall be coordinated and administered by the persons identified in Paragraph 21.

12. Independent Contractor. Licensee and its employees, volunteers, or contractors shall not be an employee of the City. It is agreed that Licensee will act as an independent contractor under this Agreement, and acquire no rights to tenure, workers' compensation benefits, unemployment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the City, its departments or agencies. The parties agree that Licensee will not act or hold itself out as the agent, representative or employee of the City.

13. Subcontracting. Licensee shall provide written notice to the City and obtain the City's authorization to sub-contract any work or services to be provided to the City pursuant to this Agreement. As required by Minnesota Statutes, Section 471.425, Licensee shall pay all subcontractors for subcontractor's undisputed, completed work, within ten (10) days after Licensee has received payment from the City.

14. Liability. Licensee shall indemnify and hold the City and its officers and employees harmless from claims made by itself and/or third parties for damages sustained or costs incurred resulting from the construction, display, maintenance, or removal of the Artwork on or from the Plaza. Licensee shall further indemnify and hold the City harmless against all claims and liens for labor or services performed, and for material or equipment furnished or subcontracted for by Licensee without authorization of the City.

The City agrees to defend, indemnify and hold harmless Licensee against any and all claims, liability loss, damage or expense arising under the provisions of this Agreement and caused by the negligent acts or omissions of the City or its employees.

Notwithstanding the foregoing, the terms of this Agreement are not to be construed as, nor operate as, waivers of the City's statutory or common law immunities or limitations on liability.

15. Warranty. Licensee represents and warrants the Artwork against negligent or faulty design and/or workmanship during the Term of this Agreement. Licensee further represents and warrants that the Artwork does not and will not infringe upon the proprietary or any intellectual property rights of any other persons or entities.

16. Licensee's Insurance. Insurance secured by Licensee shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in

force on the date of execution of this Agreement and shall remain continuously in force for the duration of this Agreement. Licensee and any of its sub-contractors shall secure and maintain the following insurance:

a) Workers Compensation insurance that meets the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.

b) Commercial General Liability insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.

c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident.

d) Professional Liability Insurance or Errors & Omissions insurance providing coverage for 1) the claims that arise from the errors or omissions of Licensee or its sub-contractors and 2) the negligence or failure to render a professional service by the Contractor or its sub-contractors. The insurance policy should provide coverage in the amount of \$2,000,000 each occurrence and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.

e) Computer Security and Privacy Liability insurance for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Electronic Media Liability. Insurance will cover claims that arise from the disclosure of private information from files but not limited to: 1) the errors or omissions of Licensee, its employees or Sub-contractors and 2) penetration of the Licensee's electronic data network, "firewall" or other security devices by hackers or others. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must provide an extended reporting period and have a retroactive date that on or before the date of this contract or the date Licensee commences work, whichever is earlier.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of Licensee. Any policy deductibles or retention shall be the responsibility of the Licensee. Licensee shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Licensee's interest or provide adequate coverage. Evidence of coverage is to be provided on a City-approved Insurance Certificate. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. Licensee shall require any of its subcontractors, if subcontracting is allowable under this Agreement, to comply with these provisions.

17. Ownership Interests: The Artwork shall remain the property of Licensee during the Term of this Agreement. Licensee shall further retain all rights to the Artwork provided through the Copyright Act of 1976, 17 U.S.C. Section 101 et. seq. Since the

artistic designs leading up to and including the final design and dimension of the Artwork are unique, Licensee shall not make any additional, exact duplicate reproductions of the final design and dimension, nor shall Licensee grant to a third party, the right to replicate the artistic designs and dimensions of the Artwork, without the written permission of the City.

Licensee grants to the City and its successors or assigns, a perpetual and irrevocable license to make two-dimensional reproductions of the Artwork and the final designs to be used in brochures, web sites, media, publicity, and catalogs or other similar, non-profit publications.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the term of this Agreement. This Agreement does not affect the ownership of each party's pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Agreement to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Agreement.

18. Compliance with the Law. Licensee agrees to comply with all applicable Federal, State, and local laws and regulations including any requirements to obtain building permits. Licensee expressly understands and agrees that this paragraph includes but is not limited to the requirements and regulations of the Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363A), the Minneapolis Civil Rights Ordinance (Ch. 139), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, religion and with sexual harassment. In the event Licensee has questions concerning these requirements, the City agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to termination of this Agreement.

19. Data Practices. Licensee agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. Licensee will immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from Licensee concerning data requests. Licensee agrees to hold the City, its officers, and employees harmless from any claims resulting from Licensee's unlawful disclosure or use of data protected under state and federal laws.

20. Cancellation, Default and Remedies. The City may cancel this Agreement upon thirty (30) days written notice to Licensee, except in instances where Licensee fails to fulfill its obligations under this Agreement in a proper and timely manner, or otherwise violates the terms of this Agreement, the City has the right to terminate this Agreement, if

Licensee has not cured the default after receiving seven (7) days written notice of the default.

Notwithstanding any other terms set out in this Agreement, Licensee shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Agreement by Licensee. The City may, in such event, withhold payments due to Licensee for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided here shall not limit the City, in case of any default, error or omission, by the Agreement, from asserting any other right or remedy allowed by law, equity, or by statute. Nothing in this Agreement shall be construed as a waiver of any right, remedy, liability limit or immunity of the City under law.

21. Contacts. The following are designated as points of contact regarding all communication contemplated under this Agreement:

For the City: Jeff Johnson, Executive Director Minneapolis Convention Center

And/or:

For Licensee:

22. Billboard Advertising. Minneapolis City Ordinance 544.120 prohibits the use of City or City derived funds to pay for billboard advertising as a part of a City project or undertaking.

23. Conflict of Interest. By signing this Agreement, Licensee agrees that it will not represent any other party or other client which may create a conflict of interest in its representation with the City. If Licensee is unclear if a conflict of interest exists, Licensee will immediately contact the City representative identified in Paragraph 21.

In so far as it relates to its relationship with the City created by this Agreement, Licensee agrees to comply with City's Code of Ethics, as codified at Minneapolis Code of Ordinances, Title 2, Chapter 15. Licensee certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with Title 2, Chapter 15 of that Ordinance as it relates to their relationships between the City and Licensee created by this Agreement. Compliance with the Code of Ethics by Licensee will be in its potential role as an "interested person," "lobbyist," or "lobbyist principal" and not as a "local official" or "local employee" (except to the extent that a Licensee representative or member of its board of directors is already a City official or employee). It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

24. Entire Agreement. This License contains the entire agreement between the parties and there are no other terms, obligations, covenants, representations, statements

or conditions, oral or otherwise of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect this License in whole or in part unless such agreement is in writing and signed by the parties against whom enforcement of the change, modification or discharge is sought.

For Licensee

By: _____

For the City of Minneapolis

Approved _____
Department Head

Countersigned: _____
Finance Officer Designee

Approved as to Form

By: _____
Assistant City Attorney