

RECREATION, LIB AND AUTHORITIES COMMITTEE

13-0354R

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE
DULUTH AIRPORT AUTHORITY FOR THE DISPLAY OF ART AT THE
NEW AIRPORT TERMINAL.

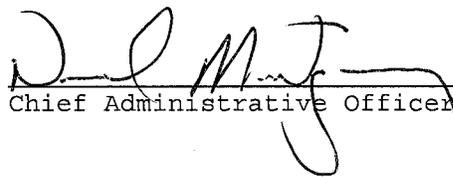
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a license agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with the Duluth Airport Authority for the display of local artists' work in the city's wooden display cases at the new airport terminal at no cost to the city.

Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

ATTY UCC:db 06/19/2013

STATEMENT OF PURPOSE: The City of Duluth recently accepted ownership of eight wooden display cases at the new terminal from the Duluth Public Arts Fund, Inc., which is dissolving. The display cases are used to showcase local artists' work within the terminal building. This resolution authorizes a license agreement setting forth the responsibilities of the parties with respect to obtaining artwork for display and maintaining the display cases. There is no cost to the City for the licensed premises.

LICENSE AGREEMENT
FOR THE DISPLAY OF ART

THIS AGREEMENT, dated _____, 2013, (the "Effective Date"), by and between Duluth Airport Authority ("DAA") and the City of Duluth, ("City").

WHEREAS, DAA operates the Duluth International Airport including its new passenger terminal facility ("Terminal"); and

WHEREAS, the City was granted ownership by the Duluth Public Arts Fund, Inc. of eight (8) wooden display boxes used to showcase local artists work within the Terminal (the "Display Boxes"); and

WHEREAS, the City desires to continue to utilize the Display Boxes in the Terminal as a rotating exhibit to enhance the Terminal's image, enrich the public's experience, and promote a sense of place through arts and culture; and

WHEREAS, the DAA desires to accommodate the City's request to continue to use the Display Boxes in the Terminal as described herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, both parties agree as follows:

1. License: Airport grants to the City limited, non-transferable license in the areas of the Terminal identified on the attached Exhibit A solely for the purpose of placing the Display Boxes (the "Licensed Premises"). City takes the Licensed Premises in an "as is" condition without representations or warranties of any kind, and the DAA shall not be obligated to make any alterations or improvements on or to the Licensed Premises. DAA shall have the right to modify the Licensed Premises upon written notification by the DAA's Executive Director or designee (the "Executive Director") to the City Director of Public Administration or designee ("Director"), of the new Licensed Premises location. DAA will provide the City with an Amended Exhibit A to be attached to the Agreement. The Director agrees to coordinate the moving of the Display Boxes within 72 hours of the Executive Director's notice or as soon thereafter as reasonably possible.

2. Use of Licensed Premises. City shall be responsible for obtaining all artwork (the "Art") displayed in the Display Boxes. The Art is subject to the prior written approval of the Executive Director. The City and DAA agree that the Art will be rotated on three-month intervals or in such other intervals as agreed upon between the Executive Director and Director. Art placed in the Licensed Premises is done so at the City's own risk. The City is responsible for all cleaning

and maintenance of the Display Boxes. The Art and Display Boxes may include the artists' contact information but shall not contain any price information.

3. Term and Termination: The term of the License shall begin on the Effective Date and shall continue until December 31, 2018. Additionally, this License Agreement may be terminated by either party upon sixty (60) days' written notice to the other party. Upon the expiration or other termination of this Agreement, the City's rights to use the Licensed Premises shall cease and City shall, promptly and in good condition surrender the same to DAA. In the event that the City has in any way changed, altered or modified the Licensed Premises, City agrees to return the same to the condition they were in at the time of the signing of this Agreement. Upon termination, any improvements or property which have become part of the realty shall become the property of DAA, and the same, together with the Licensed Premises, shall be immediately returned to the control of DAA. Any improvements or property not part of the realty shall be removed within fifteen (15) days after the termination of this Agreement or the same shall be deemed to have been abandoned to DAA and the City's right to possession shall cease.

Notwithstanding the foregoing, should the City be in default or violation of any of the provisions of this Agreement, DAA shall provide the City written notice of such violation or default and shall allow City thirty (30) days within which to cure or remedy any violations or defaults set forth therein. If such violation or default is not cured or remedied within thirty (30) days, DAA may terminate this Agreement immediately by serving notice to the City in the manner described herein and DAA, in addition to other rights or remedies it may have, shall have the immediate right to take possession of the Licensed Premises, and after five (5) days' prior written notice to the City, may remove all property from the Licensed Premises as provided for herein. In such event, all property including the Display Boxes shall be deemed to have been abandoned to the DAA and the City's right to possession shall cease.

4. Artist Release of Liability: City shall obtain a signed waiver from each artist releasing the City and the DAA from any liability relating to his or her display of Art within the Display Boxes and/or the Terminal. Copies of signed waivers will be provided to DAA upon request.
5. Insurance: City understands that DAA does not maintain insurance covering the Display Boxes or Art and it is the sole responsibility of the City to obtain such insurance. The City represents that it is self-insured with regard to comprehensive liability and property damage claims with a combined single limit of \$1,500,000 which are set forth within Minnesota Statute 466. The City also

represents that it is self-insured with regard to Workers' Compensation claims. There are no certificates that are issued for self-insured Workers' Compensation and General Liability insurance.

6. Notice: Notice to the City or the DAA provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

City: City of Duluth
322 City Hall
411 W. 1st Street
Duluth, MN 55802
Attn: Director of Public Administration

Airport: Duluth Airport Authority
Attn: Executive Director
4701 Grinden Drive
Duluth, MN 55811

7. General Terms and Conditions:

- a. City shall not assign its interest under this License Agreement or any part hereof.
- b. It is agreed that nothing contained in this License Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting City as an agent, representative or employee of DAA or the City for any purpose or in any manner whatsoever. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this License Agreement.
- c. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.
- d. It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who

- executed the original agreement or their successors in office.
- e. The City agrees to keep the Licensed Premises including the Display Boxes in a clean and neat condition.
 - f. Each party will be responsible for its own acts and omissions and the results thereof. If any claim or cause of action is asserted against a party in connection with the performance of this Agreement, that party will promptly notify the other party of the claim or cause of action. The liability of the DAA and the liability of the City is limited to the extent set forth in Minnesota Statutes Chapter 466.
 - g. The City agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United State of America, the State of Minnesota, the City and the DAA and their respective agencies now in effect or hereafter promulgated which are applicable to its activities under this License Agreement.
 - h. This License Agreement is to be construed and understood solely as an agreement between the DAA and the City and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third party beneficiary of this License Agreement or of any of the terms and conditions hereof, which, as between the DAA and the City, may be waived at any time by mutual agreement between the DAA and the City.
 - i. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

DULUTH AIRPORT AUTHORITY

CITY OF DULUTH

By _____
Its President

By: _____
Mayor

By _____
Its Secretary

ATTEST:

City Clerk
Date: _____

Approved as to form:

City Attorney

Countersigned:

City Auditor

EXHIBIT A
LICENSED PREMISES
(2nd floor of Terminal)

