

COMMITTEE OF THE WHOLE

13-057-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER OF DESIGNEE TO EXECUTE AGREEMENTS WITH ARTISTS FOR THE DISPLAY OF ARTWORK

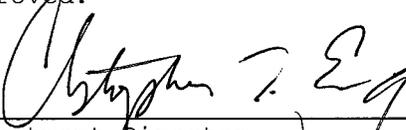
CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That pursuant to Section 32 of the home rule charter of the City of Duluth, the chief administrative officer or his/her designee is hereby authorized to enter into agreements substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_ with local artists for the display of artwork throughout the City, including the Duluth International Airport, beginning on the effective date of this ordinance through December 31, 2018, at no cost to the city.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

BED CE:slw 8/15/2013

STATEMENT OF PURPOSE: This ordinance authorizes the Chief Administrative Officer or designee, for ease of administration, to execute agreements with local artists for the public display of artwork throughout the city, including the Duluth

International Airport, for the community benefit of expanding public art opportunities. Under the terms of the agreement, the artist agrees that the loan of his/her artwork to the city is without financial stipend or payment of any kind and releases the city from any claims resulting from the display of the artwork.

## **Artwork Loan Agreement**

THIS AGREEMENT (“Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between the City of Duluth (“City”) and \_\_\_\_\_, (“Artist”) relating to the display of Artist’s work

WHEREAS, the City owns wooden display boxes (the “Display Boxes”) used to showcase local artists’ work within the passenger terminal at the Duluth International Airport (the “Terminal”) [Note: to be modified to fit the specific location for display of artwork] ;

WHEREAS, the City desires to display the work of local artists within the Terminal; and

WHEREAS, the Artist desires to have his/her artwork (“Artwork”) displayed in the Terminal as described herein.

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

1. The Administrative Assistant to the Mayor or designee (“Administrative Assistant”) shall administer and execute this Agreement.

2. The term (“Term”) of this Agreement shall be from \_\_\_\_\_, 20 \_\_ through \_\_\_\_\_, 20 \_\_ unless earlier terminated as provided for herein. The Administrative Assistant may, in his or her discretion, terminate this Agreement upon five (5) days notice.

3. Artist shall loan his/her Artwork to the City without financial stipend or payment of any kind to be displayed by the City in its Display Boxes located on the second (2<sup>nd</sup>) floor of the Terminal. A description of the Artwork is attached hereto as Exhibit A. The location of the Display Boxes is subject to change at the sole discretion of the City.

4. Artist warrants that it has all right, title and ownership interest in the Artwork, and that the Artwork is not subject to any ownership, lien, encumbrance, copyright infringement or other claim by any other person or entity.

5. Artist shall be responsible for transporting his/her Artwork to the designated Display Box within the Terminal at a time mutually agreed between the Administrative Assistant and Artist. Upon expiration or any termination of this Agreement, Artist shall be responsible for the timely pick-up of the Artwork from the Display Boxes at a mutually agreed upon time. The Artwork will be released only to the Artist specified in this Agreement unless the City is notified in writing.

6. The Artwork shall remain in the possession of the City for the time specified in this Agreement, but may be withdrawn from display at any time by the City. Artist may include a

business card or other contact information with the Artwork but shall not include any price information.

7. Artist hereby releases, waives, discharges and covenants not to sue the City and Duluth Airport Authority (“DAA”) and their representatives, insurance carriers, agents, officers and employees, (the “Releasees”) from all liability to the Artist for any and all loss or damage, and any claims or demands resulting from injury to persons or property of the Artist arising out of or related to the displaying of the Artwork, whether caused, in whole or in part, by the sole or concurrent negligence or strict liability or fault of the Releasees or otherwise.

8. Neither the City nor the DAA maintains insurance covering any of Artist’s Artwork or property and it is the sole responsibility of the Artist to obtain such insurance.

9. The Artist shall request a written waiver of subrogation from its insurer in favor of the City and DAA prior to the display of the Artwork in the Art Boxes. If the Artist fails to request the waiver of subrogation, this Agreement shall constitute a release of the City and DAA from all liability in connection with the display of the Artwork in the Display Boxes.

10. Artist acknowledges that from time to time, photographs, motion pictures and/or video recordings (collectively the “Recordings”) may be made in the Terminal, which Recordings may include images of Artist’s Artwork. The Artist may not hinder, obstruct or interfere in any way with such Recordings whether by City, the DAA, its agents or patrons. By signing this Agreement Artist agrees that City or DAA may publish or distribute the Recordings through print, video, multi-media or any other advertising mediums for commercial purposes, including, without limitation, to advertise, promote and market the City of Duluth or the Duluth International Airport.

11. Unless otherwise provided herein, notice to the City or Artist shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth  
Attention: Jessica Tillman  
Room 403 City Hall  
411 W. 1<sup>st</sup> Street  
Duluth, MN 55802  
jtillman@duluthmn.gov

Artist:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
e-mail: \_\_\_\_\_

12. This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State

of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

13. 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.

14. 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.

15. 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. If this Agreement is executed in counterparts, no signatory hereto shall be bound by this Agreement until all parties have executed a counterpart of this Agreement. 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.

16. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City or DAA for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement.

17. The waiver by either party of any breach or failure to comply with any provision of the Agreement by the other party will not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

18. The parties acknowledge and agree that the provisions of this Agreement shall not be construed against one party by reason of the rule of construction that a document is to be construed against the party who drafted that document.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

**CITY OF DULUTH**

By: \_\_\_\_\_  
Administrative Assistant to the Mayor

By: \_\_\_\_\_  
Artist  
Print Name: \_\_\_\_\_

**EXHIBIT A**

Description of Artwork