

TEMPORARY SCULPTURE EXHIBITS
PARK LICENCE AGREEMENT

This agreement is dated for reference August 25, 2005.

Between:

**CITY OF VANCOUVER, represented by its
BOARD OF PARKS AND RECREATION,
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4**

(the "Park Board")

And:

**VANCOUVER INTERNATIONAL SCULPTURE BIENNALE (Federal
Incorp. No. 4123441)
790 - 1500 West Georgia Street
Vancouver, British Columbia
V6G 2Z6**

(the "Exhibitor")

Whereas:

- A. The Park Board has possession, jurisdiction and control of all areas in the City of Vancouver (the "City") designated as permanent and temporary public parks and care, custody and management of certain other areas within the City as its City Council may determine from time to time.
- B. The Exhibitor wishes to establish a program to be run over a period of ten (10) years for the installation in City parks of sculptures to be exhibited publicly there temporarily for periods of eighteen (18) months each.
- C. The Park Board has adopted a policy by which it wishes to support and provide for an environment within the City's parks that, among other things, is stimulating and vibrant to visitors and includes cultural activities and events and public displays of art.
- D. The Park Board, at its meeting of July 19, 2004, approved a proposal to permit the Exhibitor, by way of a contract satisfactory in form to the Park Board, to install temporary sculpture exhibits in City parks during and throughout the next ten (10) years.

THEREFORE, in consideration of the promises given and exchanged and on the terms and conditions contained in this agreement, the parties agree as follows:

1. Grant and Term of Licence

Subject to and in accordance with the terms and conditions contained in this agreement, the Park Board hereby grants to the Exhibitor and its authorized representatives and contractors, permission to install, at no cost to the Park Board or the City, temporary sculpture exhibits in City parks during and throughout the period of ten (10) years beginning July 25, 2005 and, during that period, to attend at such exhibit locations within City parks from time to time with such equipment, tools and work vehicles as are necessary, but only such equipment, tools and work vehicles as are necessary, for purposes of preparing and restoring exhibit sites and installing, maintaining and removing exhibits. Notwithstanding the foregoing, the Exhibitor will not enter onto any City parks or any portions thereof pursuant to this agreement with any workers, equipment, tools or work vehicles without giving to the Park Board at least forty-eight (48) hours prior written notice of the Exhibitor's proposed activities, including, without limitation, detailed descriptions thereof and the proposed routing and scheduling therefor, and without first receiving from the Park Board its written consent to the proposed activities, which consent the Park Board, in its discretion, may arbitrarily withhold.

2. Non-exclusive

The licence granted herein to the Exhibitor to install temporary sculpture exhibits in City parks during the next ten years is non-exclusive.

3. Licence Fee

The Exhibitor will pay to the Park Board, for the licence granted to the Exhibitor in this agreement, a fee in the amount of ten dollars (\$10.00). The Park Board hereby confirms the receipt and sufficiency of that fee.

4. Sculpture Installations

- (a) For purposes of administration of this agreement, its ten (10) year term will be divided into six (6) consecutive periods of eighteen (18) months each, the first of which will commence as of the effective date of this agreement, followed by one period of twelve (12) months. Each of those eighteen (18) month periods and that one twelve (12) month period will be a period of time that can be allotted to a sculpture for temporary installation and exhibition in the City's parks pursuant to this agreement ("Display Periods" or, for the singular, "Display Period").
- (b) Unless otherwise agreed in writing by the parties hereto, each of the sculptures to be installed and exhibited temporarily in the City's parks pursuant to this agreement ("Exhibits" or, for the singular, "Exhibit") will be installed and displayed in the City's parks during one (1) Display Period and removed from the City's parks by no less than sixty (60) days after each such Display Period.

- (c) For each and every Exhibit, no Exhibit will be installed in the City's parks pursuant to this agreement until:
- (i) the Exhibitor has delivered to the Park Board, at no cost to the Park Board or the City, and in form satisfactory to the Park Board, a set of materials and/or items, which can include, without limitation, drawings, photographs, models and any other useful materials or items (collectively, the "Pictures"), showing in detail the shape, form, size, dimensions, colour and appearance of the proposed Exhibit and identifying the name or title of the Exhibit and the artist or artists responsible for the Exhibit and his or her or their place of residence;
 - (ii) the Park Board has delivered to the Exhibitor express written approval regarding the shape, form, size, dimensions, colour and appearance of the proposed Exhibit, as shown in the Pictures, as an Exhibit to be installed within the City's parks pursuant to this agreement;
 - (iii) the Exhibitor has delivered to the Park Board a written notice identifying with reasonable precision and particularity a specific location or specific alternate locations within the City's parks that the Exhibitor proposes for installation of the Exhibit, and the Park Board has delivered to the Exhibitor express written approval of a location proposed for installation of the Exhibit ("Installation Site");
 - (iv) the Exhibitor, at no cost to the Park Board or the City, has delivered in writing to the Park Board, to its satisfaction, which may require, without limitation, certification by professional engineers, such details, plans and specifications as may be reasonably appropriate in the circumstances showing the construction of the Exhibit and of its proposed installation, and the Park Board has delivered to the Exhibitor express written approval in respect of such details, plans and specifications;
 - (v) the Exhibitor has delivered to the Park Board written notice of any signage the Exhibitor proposes for the Exhibit, and the Park Board has delivered to the Exhibitor express written approval for any such signage. The Park Board, in its sole discretion and at no cost to itself or the City, at any time during the term of this agreement, may require the Exhibitor to post additional signage at or on any of the Exhibits, including, without limitation, any warnings or disclaimers the Park Board might consider to be advisable;
 - (vi) the Exhibitor has delivered to the Park Board in writing a plan and schedule for transporting the Exhibit within the City's parks, to the Installation Site, and for its installation there, and the

Park Board has delivered to the Exhibitor express written approval of such plan and schedule; and

- (vii) the Exhibitor, at no cost to the Park Board or the City, has prepared the Installation Site for installation of the Exhibit to the express written satisfaction of the Park Board.
- (d) If at anytime the Park Board does not give approval for any act or thing the Exhibitor proposes and for which the Park Board's approval is required under this agreement, the Park Board will give the Exhibitor a detailed written explanation of its disapproval, and thereafter the Exhibitor may submit a revised proposal to the Park Board for its approval in accordance with the terms of this agreement.
- (e) The Exhibitor will not make, permit or implement any change or modification to any Exhibit, Installation Site, plan, specification, schedule, proposal or any other thing or matter that the Park Board has approved and for which the Park Board's approval is required pursuant to this agreement, without first seeking in writing and obtaining the Park Board's express written consent as to any such change or modification.
- (f) All of the Exhibits will be installed pursuant this agreement in a good and workmanlike manner and otherwise in accordance with the terms and conditions of this agreement.
- (g) The Park Board, in its own discretion, at any time, on written notice to the Exhibitor, may limit the number of Exhibits to be installed in City parks pursuant to this agreement.

5. "As Built" Drawings

For each and every Exhibit, within thirty (30) days after installation of an Exhibit in the City's parks pursuant to this agreement, at no cost to the Park Board or the City, the Exhibitor will deliver to the Park Board, to its satisfaction:

- (a) a set of digitally recorded photographic images of the Exhibit, delivered to the Park Board in a digital format usable to it, with a resolution of no less than 300 DPI, taken from at least three (3) different viewpoints;
- (b) a set of "as built" drawings showing details of the manner of its installation and of its precise location within the City's parks; and
- (c) a brief written biography of the person who has or persons who have created, constructed, fabricated and produced the Exhibit (the "Artist"), the Artist's statement regarding the Exhibit and such other information about the Artist and the Exhibit and its creation, fabrication or installation as the Park Board may request.

6. Maintenance

- (a) The Exhibitor, at no cost to the Park Board or the City, will keep each and every Exhibit and Installation Site in a safe, neat, tidy and clean condition and free from nuisance at all times to the satisfaction of the Park Board.
- (b) If at any time, in any instance, the Exhibitor fails to comply with these maintenance obligations, the Park Board may carry out such maintenance or other procedures as in its discretion it considers to be necessary or advisable in order to keep or put the Exhibits or Installation Sites or any of them in a reasonably safe, neat, tidy and clean condition and free from nuisance, and the Exhibitor on demand will pay to the Park Board the amount of any costs the Park Board has incurred in carrying out such maintenance or other procedures.
- (c) Any maintenance, repairs and restoration work the Park Board carries out on any Exhibit pursuant to this section will be made in reasonable accordance with recognized principles of conservation.

7. Right to Inspect

The Park Board may inspect the Exhibits or any of them at any time and in any manner as it, in its discretion, considers advisable.

8. Relocation of Exhibits

- (a) If at any time after an Exhibit has been installed in a City park pursuant to this agreement the Exhibitor wishes to relocate it within the City's parks, the Exhibitor will first notify the Park Board of its wish to relocate the Exhibit and of the location or locations for any such proposed moves. Any such relocating of any of the Exhibits will be governed by and subject to the terms of this Agreement.
- (b) If, at any time, for any reason, the Park Board in its discretion considers it to be necessary or desirable that an Exhibit be removed from or re-located within the City's parks, the Exhibitor, at its expense, will remove or re-locate the Exhibit as and when required by the Park Board, and any such Exhibit will continue to be and the removal of such Exhibit from or relocating of such Exhibit within the City's parks will be governed by and subject to the terms of this agreement.

9. Park Board Termination

The Park Board may terminate this agreement and the licence granted hereby:

- (a) at any time with ninety (90) days written notice to the Exhibitor;
- (b) immediately and without notice to the Exhibitor if, in the opinion of the Park Board, the Exhibitor has breached or is in breach of any term of

this agreement and has failed to rectify such breach upon reasonable notice from the Park Board demanding rectification. The terms and conditions of this licence, insofar as they can be applicable, will survive such termination; and

- (c) immediately and without notice to the Exhibitor if for any reason the Exhibitor ceases to exist as a legal entity or becomes insolvent or the subject of any proceedings under the *Bankruptcy and Insolvency Act of Canada*, and, in such circumstances, the Park Board may remove immediately all of the Exhibits from the City's parks and restore all Installation Sites to their original conditions in accordance with the terms of this agreement. Any such circumstances or event will be considered to be a breach of this agreement on the part of the Exhibitor. The terms and conditions of this agreement, insofar as they can be applicable, will survive such termination.

10. Exhibitor Discontinuance

The Exhibitor may discontinue its use of the licence granted to it in this agreement at any time without notice to the Park Board, except that the Exhibitor will continue to comply in all respects with the terms of this agreement insofar as they may apply after removal of all of the Exhibits from the City's parks and with respect to the maintenance and removal of any Exhibits still in place in City park's at the time of such discontinuance and the restoration thereafter of any Installation Sites not yet restored as required under the terms of this agreement.

11. Removal of Exhibits and Restoration of Installation Sites

- (a) At no cost to the Park Board or the City, and on reasonable notice to and to the satisfaction of the Park Board, the Exhibitor will:
 - (i) remove each Exhibit from the City's parks by no less than sixty (60) days after the expiry of the Display Period or Display Periods allotted to it;
 - (ii) restore forthwith to their original conditions any Installation Sites taken out of use as such at any time during the term of this agreement, regardless of the reasons for such discontinuance of use; and
 - (iii) in any event, remove all Exhibits from the City's parks and restore all Installation Sites to their original conditions in accordance with the terms of this agreement:
 - (A) before the expiry of this agreement;
 - (B) within ninety (90) days after the Park Board has delivered to the Exhibitor a notice of the Park Board's intention to terminate this agreement and the licence granted hereby; or

- (C) forthwith on the Park Board's termination of this agreement and the licence granted hereby for a breach of this agreement on the part of the Exhibitor.
- (b) If the Exhibitor fails to remove any Exhibit from the City's parks or restore any Installation Site to its original condition as required under the terms of this agreement, the Park Board may remove or cause the removal of any such Exhibits from the City's parks and restore any such Installation Sites to their original conditions, to the satisfaction of the Park Board, and, in such circumstances, the Exhibitor will pay to the Park Board on demand the full amount of any costs the Park Board incurs in removing and storing or disposing of such Exhibits and in restoring such Installation Sites to their original conditions.

12. Risk of Loss

The Park Board and the City will not bear any risk of loss, damage, destruction or deterioration to or of the Exhibits or any of them at any time before the commencement of the term, during the term, after expiry of the term or after the termination of this agreement.

13. Release and Indemnity

- (a) The Exhibitor hereby releases the Park Board and the City and their officials, employees, agents, contractors, subcontractors, permittees and licencees (collectively "City Personnel") in respect of and agrees to indemnify them for and save them harmless from and against any and all manner of complaints, claims, demands, causes of action, actions, suits, liabilities, damages, losses, costs, expenses and legal expenses experienced, suffered, incurred, raised, brought, commenced, prosecuted or advanced by or awarded to any person or entity, including, but not limited to, the Exhibitor or the Artists, or any of their employees, agents or contractors, or any other persons or entities having any ownership or intellectual property interests in any Exhibits, or the Park Board, the City or any City Personnel, relating to or arising from the transportation, installation, presence, display, exhibition, use, maintenance, function, operation or removal of the Exhibits, or any of them, to, in or from City parks. This release and promise of indemnification will survive termination and expiry of the term of this agreement.
- (b) The Exhibitor will require each Artist, for each Exhibit, and any other persons or entities having any ownership or intellectual property interest in each Exhibit, to give to the Park Board, the City and the City Personnel, prior to installation of the Exhibit in City parks, and in the form attached hereto as Schedule "A", a release of liability and an indemnification in respect of any claims or liabilities arising from or relating to each such Exhibit and deliver one original signed copy of it to each of the Park Board, to the attention of its General Manager, and the

City, to the attention of its Director of Legal Services, duly completed, signed and executed to their satisfaction.

14. Insurance

- (a) The Exhibitor, at its expense, and at no cost to the Park Board or the City, will obtain and carry throughout the term of this agreement commercial general liability insurance with limits of not less than five million dollars (\$5,000,000) per occurrence or such higher limit of coverage as the City's Director of Risk and Emergency Management may require from time to time and the policy will:
- (i) indemnify and protect the Exhibitor, the Artists and any other persons have ownership interests in the Exhibits, or any of them, and their respective employees, agents and contractors against any and all claims for loss, damage, injury or death to any person or persons and for damage to the Exhibits or any other public or private property occurring or arising by virtue of the installation and presence of the Exhibits in City parks;
 - (ii) contain a cross liability clause insuring the Exhibitor, the Artists, any other persons having ownership interests in the Exhibits, or any of them, the Park Board and the City and all of their respective officials, officers, employees and agents in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one them by the other or by any officer, employee or agent of one them, and any breach of a condition of the policy by any of them or by any officer, employee or agent of any of them will not affect the protection given by the policy to any of the others or to any officer, employee or agent of any of the others;
 - (iii) add the Park Board, the City and the Artists and all their respective officials, officers, employees, contractors and agents as additional insured;
 - (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this licence agreement; and
 - (v) prior to the commencement of the term of this agreement and from time to time during the term of this agreement, within 10 days after demand by the Park Board or the City, the Exhibitor will deliver to the Park Board and the City a certificate of insurance satisfactory to the City's Director of Risk and Emergency Management and a certified copy of the policy. If the Exhibitor fails to deliver to the Park Board and the City any such certificate or policy of insurance within the stipulated time, the Park Board and the City may obtain such insurance, and the

Exhibitor will pay to them on demand, as may be made from time to time, the costs of the premiums for such insurance.

- (b) The Exhibitor will carry, at no cost to the City, at all times that the Exhibits are, or any of them is, within City parks, any additional insurance required by law or otherwise necessary to protect the Exhibitor, the Artists and any other persons having ownership interests in the Exhibits from any loss or damage to the Exhibits while within City parks.

15. Parks Licensed "As Is"

The Park Board makes no representations or warranties as to the state, condition, fitness, safety or propriety of the City's parks or any parts or portions of them for the Exhibitor's purposes as contemplated by this agreement, and the Exhibitor warrants that it will carefully inspect all Installation Sites and hereby accepts them as is.

16. No Interest in Land Created

This licence agreement does not create in favour of the Exhibitor or any other person or entity any interest in land in the City's parks and shall not be registered in any way in the Land Title Office.

17. Proprietary Rights in Exhibits

Nothing contained in this agreement will be construed as an assignment to the City or the Park Board of any right, title or interest, including copyright and all other intellectual property rights, in or to the Exhibits, but, nevertheless, insofar as and to the extent that the Exhibitor may have any such rights in or to the Exhibits, the City and the Park Board, in their discretion and at no cost to them, may produce images of the Exhibits at any time in City and Park Board publications of all forms and in any medium. The Exhibits will not by reason of installation or attachment to any structure become or be deemed to become a fixture or appurtenant to the land and will at all times be severable.

18. Assignment or Transfer of Agreement

The Exhibitor will not assign or transfer any interest in this agreement without the prior written consent of the Park Board.

19. Force Majeure

Neither party will be responsible for delays or failures in performance resulting from causes beyond their control and without occurring without any fault of the party in delay or failing to perform, provided that the party makes reasonable efforts to correct such delays or failures.

20. Relationship

Nothing in this agreement will make or be construed to make the parties to it partners or agents of each other or, subject nevertheless to the terms of this agreement, to create any other relationship by which the acts of one of them are the acts of the other.

21. Compliance with all Laws

The Exhibitor will comply with all federal, provincial, City and Park Board statutes, ordinances, by-laws, regulations and guidelines applicable to the Exhibitor's activities under this agreement, including, without limitation, all City and Park Board by-laws, resolutions or guidelines requiring permits or licences relating to the Exhibits and any special events the Exhibitor may wish to hold in relation to them.

22. Entire Agreement

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

23. No Modification

No alteration, change or modification of the terms of the agreement will be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Park Board.

24. No Waiver

No waiver of performance by either party will be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this agreement. The payment or acceptance of fees for any period after a default will not be deemed a waiver of any right or acceptance of defective performance.

25. Governing Law

This agreement, regardless of where executed or performed, will be governed by and construed in accordance with the laws of the Province of British Columbia.

26. Heirs and Assigns

This agreement will be binding upon and will enure to the benefit of the Park Board and the Exhibitor and the Exhibitors respective heirs, personal representatives, successors and permitted assigns.

27. Notice

- (a) All notices, requests, demands and other communications which are required or permitted to be given under this agreement will be in

writing and will be deemed to have been properly given if delivered by hand or mailed by prepaid post:

- (i) if to the Park Board, unless otherwise specified herein, to

City of Vancouver
Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

Attention: General Manager

- (ii) if to the City, unless otherwise specified herein, to

City of Vancouver
453 W. 12th Ave.
Vancouver, British Columbia
V5Y 1V4

Attention: Director of the Office of Cultural Affairs

- (iii) if to the Exhibitor, to

VANCOUVER INTERNATIONAL SCULPTURE BIENNALE
790 - 1500 West Georgia Street
Vancouver, British Columbia
V6G 2Z6

Attention: President

- (b) Any notice or delivery sent by prepaid post pursuant to this agreement will be deemed to have been delivered seven (7) clear days after the date postmarked on the package.

28. Singular, Plural & Gender

Words importing the singular will include the plural and vice versa, and words importing gender will include the masculine, feminine and neuter genders.

29. References to Park Board

The term "Park Board" as used in this agreement includes within its meaning the Park Board staff members who are authorized to act on its behalf in relation to this agreement.

30. Time of the Essence

Time is the essence in and for this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

CITY OF VANCOUVER, represented by its
BOARD OF PARKS AND RECREATION, by its
authorized signatory:

**VANCOUVER INTERNATIONAL SCULPTURE
BIENNALE**, by its authorized signatory:

General Manager

Schedule "A"

Artist & Owner Release and Indemnification

In consideration of the City of Vancouver (the "City"), as represented by its Board of Parks and Recreation (the "Park Board"), permitting the installation and exhibition of the sculpture **[describe sculpture in question]** (the "Exhibit") within the City's parks, I, **[insert full name]**, **[describe relationship to sculpture in question- example, artist, owner, copyright holder]** of the sculpture hereby release the Park Board and the City and their officials, employees, agents, contractors, subcontractors, permittees and licencees (collectively "City Personnel") in respect of and agree to indemnify them for and save them harmless from and against any and all manner of complaints, claims, demands, causes of action, actions, suits, liabilities, damages, losses, costs, expenses and legal expenses experienced, suffered, incurred, raised, brought, commenced, prosecuted or advanced by or awarded to any person or entity, including, but not limited to, me or any of my employees, agents or contractors, or any other persons or entities having any ownership or intellectual property interests in any Exhibits, or the Park Board, the City or any City Personnel, relating to or arising from the transportation, installation, presence, display, exhibition, use, maintenance, function, operation or removal of the Exhibit, or any of them, to, in or from City parks or the City's or Park Board's use of photos or other images of the Exhibit in any of their publications of any form and in any medium.