



Date February 11, 2008

APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY AND WORLD FOOD PRIZE FOUNDATION FOR LIMITED USE OF OLD CENTRAL LIBRARY BUILDING

WHEREAS, by Roll Call No. 01-3105 of October 8, 2001, the City Council directed City staff in conjunction with the City Vision Iowa Project to negotiate terms for the development of the World Food Prize Center in the old central library building; and

WHEREAS, City staff has proposed urban renewal competitive disposition procedures and has negotiated a development agreement for the proposed restoration and renovation of the old central library building for a World Food Prize Center or other community betterment project; and

WHEREAS, in conjunction with preparing a developer-initiated urban renewal development proposal for the old central library building, the World Food Prize Foundation is actively engaged in efforts to obtain funding for its development proposal and desires to enter upon the building to conduct limited events and gatherings to promote and assist fundraising for the development proposal.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the License Agreement between the City of Des Moines and World Food Prize Foundation on file in the office of the City Clerk is hereby approved and the Mayor is hereby authorized and directed to execute such License Agreement on behalf of the City and the City Clerk is directed to attest to his signature.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby directed to administer the terms of the License Agreement on behalf of the City.

APPROVED AS TO FORM:

Moved by _____ to adopt.

Lawrence R. McDowell
Deputy City Attorney

(Council Communication No. 08-077)

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Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, HENSLEY, KIERNAN, MAHAFFEY, MEYER, VLASSIS, and TOTAL.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk

LICENSE AGREEMENT

This LICENSE AGREEMENT is entered into as of the _____ day of February, 2008, by and between the City of Des Moines, Iowa, a municipal corporation (hereinafter "City"), the World Food Prize Foundation (referred to as "Licensee").

WHEREAS, Licensee is preparing a development proposal to acquire possession of the old central library building, located on the land described in paragraph 1 below, for restoration, renovation and preservation of such building and Licensee is actively engaged in efforts to obtain funding for its development proposal.

WHEREAS, Licensee desires to enter upon such building in order to conduct limited events and gatherings to promote and assist fundraising for the development proposal.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained the adequacy of which is hereby acknowledged, the parties agree as follows:

1. In and for the consideration of One Dollar (\$1.00) paid in hand by Licensee, the City does hereby conditionally grant unto Licensee, its employees and agents a License to enter upon the old central library building located on Lots 5, 6, 7 and 8 and the intervening vacated alley in Block 33, Fort Des Moines, an Official Plat ("Licensed Area") for the purpose of conducting events approved by the City Manager of the City that are intended to promote and support fundraising for Licensee's development proposal.

2. This License is expressly contingent upon Licensee first obtaining any and all necessary governmental permits and obtaining written permission from the City Manager for each proposed event or gathering within the Licensed Area. It is specifically understood by Licensee that its employees, agents and contractors have no right to enter upon the Licensed Area until all necessary permits and written permission from the City Manager have been issued. Licensee shall provide the City with a proposed schedule for each planned event or gathering and a detailed summary of each planned event or gathering, including use of equipment and furnishings and estimated attendance. Licensee shall be responsible for paying all City costs and expenses relating to Licensee's activities conducted under this License including expenses relating to entry, closing and securing the Licensed Area. Licensee shall hire and pay the costs relating to an off duty police officer or other person approved by the assigned City representative to provide security during all times Licensee is utilizing the Licensed Area. Prior to set up of each planned event or gathering, Licensee shall coordinate with the assigned City representative on all procedures for entry and use of the Licensed Area and for securing the Licensed Area upon exit from the Licensed Area.

3. In conducting the events or gatherings within the Licensed Area, Licensee and its employees, agents and contractors shall observe and comply with all terms and requirements contained in any permits issued by governmental authorities, shall observe and comply with all Federal, State and local laws, orders and regulations and shall comply with all terms and conditions incorporated in the City Manager's grant(s) of permitted use. Licensee shall further observe and comply with all terms and requirements for access to and securing of the Licensed Area established by the assigned City representative.

4. Promptly after each event or gathering, Licensee shall remove all trash and debris and clean the Licensed Area. Licensee shall further repair all damages to the Licensed Area caused by or resulting from its activities.

5. The Licensee shall purchase and maintain insurance in accordance with the insurance requirements set forth in Attachment 1 to protect the Licensee and City throughout the duration of this License. The Licensee shall not commit any act which shall invalidate any policy of insurance. The Licensee shall defend, indemnify and hold harmless the City in accordance with the indemnification requirements set forth in Attachment 1. The Licensee shall be subject to all terms and provisions set forth in Attachment 1 and the exhibits thereto.

6. Licensee acknowledges that the condition of the Licensed Area is not suitable for unconditional occupancy and the Licensed Area may contain certain hazards. As further consideration for this License, Licensee for itself, employees, agents, invitees and contractors, hereby specifically agrees that it will make no claim or demand whatsoever against the City, and shall indemnify the City from all claims made against the City by other parties, for any damage or injury, and further, that it does hereby waive, release, acquit and forever discharge the City and its successors, assigns, agents, employees, servants, officers, elected officials, independent contractors and all other persons, firms, corporations acting in its behest, for and from any claim or demand arising, either now or in the future, directly or indirectly, out of the activities performed or conducted by Licensee, its employees, agents, invitees and contractors within or upon the Licensed Area. This paragraph shall not be interpreted to limit in any manner the indemnification requirements of Licensee contained in Attachment 1.

7. This License shall expire upon the occurrence of any of the following as determined by the City:

- a. Default of performance by Licensee in accordance with the terms and provisions of this License; provided, however, before any such termination, the City shall give Licensee written notice specifying the default(s) and stating that this License Agreement will be terminated two (2) business days after the giving of such notice unless such default(s) is remedied within such grace period; or
- b. Termination of this License Agreement by the City without cause upon the giving of ten (10) business days written notice; or
- c. City's conveyance of possession of the Licensed Area to Licensee pursuant to written agreement with the City.

IN WITNESS WHEREOF, the parties have caused this License to be duly executed on or as of the day first written above.

THE WORLD FOOD PRIZE FOUNDATION

By: _____

By: _____

ATTACHMENT 1

STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS

(Major)

1. GENERAL

The Licensee shall purchase and maintain insurance to protect the Licensee and the City of Des Moines, Iowa throughout the duration of the License. Said insurance shall be provided by an insurance company(ies), “admitted” and “nonadmitted” to do business in the State of Iowa, having no less than an A.M. Best Rating of “B+”. All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to License execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

A. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE:

The Licensee shall procure and maintain during the life of this License, Worker’s Compensation Insurance, including *Employer’s Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, the Licensee is not required to carry such coverage.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Licensee shall procure and maintain during the life of this License, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$2,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground (XCU).

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions “a” through “o” or any subsequent ISO equivalent or a non-ISO equivalent form). Any additional exclusions shall be submitted with the Certificate of Insurance and shall be subject to the review and approval of the City. Aggregate Per Location Endorsement is required.

C. AUTOMOBILE LIABILITY INSURANCE: The Licensee shall procure and maintain during the life of this License, Automobile Liability Insurance with limits of

liability of not less than \$2,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

If the Licensee does not own any vehicles, coverage is required on non-owned and hired vehicles.

D. **UMBRELLA/EXCESS INSURANCE**: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

E. **INSURANCE FOR OTHER LOSSES**: The Licensee shall assume during the life of this Agreement, full responsibility for all loss or damage from any cause whatsoever to any property brought onto City property that is owned or rented by the Licensee, or any of the Licensee's employees, agents, subcontractors, suppliers or their employees, to the extent that such property is utilized in carrying out the provisions of this Agreement. The Licensee shall cause its insurance carrier(s) providing physical damage insurance to the Licensee to provide a Waiver of Right of Subrogation against the City of Des Moines, Iowa.

F. **SUBCONTRACTORS**: The Licensee shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this License carry Workers Compensation Insurance and, otherwise, meet similar insurance requirements as are required of the Licensee.

G. **ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY**: Except for Workers Compensation, the insurance policies providing the liability coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are attached. As indicated in E above, the City shall also be included as an Additional Insured on the Property Insurance policy using standard language for doing so.

H. **CANCELLATION & MATERIAL CHANGE ENDORSEMENT**: The insurance policies providing the coverages specified in A, B, C, D and E above shall include the City of Des Moines, Iowa Cancellation & Material Change Endorsement. A copy of this endorsement is attached.

I. **PROOF OF INSURANCE**: The Licensee shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage and waivers as provided in A through F and H and I above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the agreement. and (2) the following statement, "*As required by License, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included on the above*

policies as per the attached.” These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

3. INDEMNIFICATION REQUIREMENTS

A. INDEMNIFICATION (HOLD HARMLESS) PROVISION: To the fullest extent permitted by law, the Licensee agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Des Moines, Iowa against any and all claims, demands, attorneys’ suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with the Licensee’s use or occupancy of City Property.

It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by the Licensee, its officers, employees, subcontractors, invitees and others affiliated with the Licensee due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the Licensee’s use or occupancy of City Property.

The Licensee expressly assumes full responsibility for any and all damages caused to the City of Des Moines, Iowa premises resulting from the activities of the Licensee, its officers, employees, subcontractors, invitees and others affiliated with the Licensee. The Licensee represents that its activities pursuant to the provisions of this License will be performed and supervised by adequately trained and qualified personnel, and the Licensee will observe, and cause its officers, employees, subcontractors, invitees and others affiliated with the Licensee to observe all applicable safety rules.

4. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, Licensee hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or responsibility to the Licensee or anyone claiming through or under the Licensee by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty, loss due to liability and for any Licensee workers compensation loss. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this License. The Licensee’s policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the Licensee to recover thereunder.

**CITY OF DES MOINES, IOWA
ADDITIONAL INSURED ENDORSEMENT**

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT
(For use when including the City as an Additional Insured)**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF DES MOINES, IOWA
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 East First Street, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.