

[MILWAUKEE ART MUSEUM LETTERHEAD]

April 2012

City of Milwaukee
200 East Wells Street
Milwaukee, WI 53202

Re: Trademark License – Brise Soleil Image

Dear _____:

This letter agreement (“Agreement”) will confirm the terms and conditions upon which Milwaukee Art Museum, Inc. (“MAM”) grant to the City of Milwaukee (“City”), a nonexclusive, nontransferable, royalty-free license to use the image of MAM’s Brise Soleil (“the Licensed Image”) in modified form in connection with the logo shown in Exhibit A hereto (“the Milwaukee Mark”) in connection with the City’s promotional activities (“Licensed Services”). Included in this license grant is the City’s right to use the Milwaukee Mark on all of its promotional and marketing materials, web sites, External emails, vehicles, Police uniform patch, letterhead, publications, brochures, fliers used to communicate externally and ancillary give-away and not for sale to the public souvenir items. Any other potential uses that may come up in the future would be sent in advance to MAM for approval.

The term of the license shall commence on the date this Agreement is signed by the City and remain in effect for a period of three (3) years, unless otherwise terminated in accordance with this Agreement. The Agreement will automatically renew for subsequent periods of three (3) years each, unless terminated upon the mutual written consent of both parties. During the term of this Agreement, MAM shall have the right to register the Milwaukee Mark with the United States Patent and Trademark Office (“PTO”) for the Licensed Services. In consideration for this license and the other promises set forth in this letter agreement, the parties agree to the terms and conditions set forth herein.

MAM represents and warrants that it is the owner of the Licensed Image, and all proprietary rights thereto, including copyright and trademark rights thereto, and owns the following United States trademark registrations therefore: Registration Nos. 2,808,414 (for “paper note pads, posters, calendars, and booklets featuring museums” in Int. Class 16); 2,808,415 (for “museum services” in Int. Class 41); 2,808,416 (for “umbrellas and tote bags” in Int. Class 18); 2,808,419 (for “t-shirts, sweat shirts, polo shirts and caps” in Int. Class 25); 2,819,385 (for “pre-recorded videos, CDs and DVDs featuring information

City of Milwaukee

April ____, 2012

Page 2

about museum architecture and museum exhibits” in Int. Class 9); and 2,822,734 (for “ornamental lapel pins” in Int. Class 14 and “non-metal key chains” in Int. Class 20). MAM further represents and warrants that, to its knowledge, the Licensed Image does not infringe the valid proprietary right of any third party and that no allegations of such infringement have been received by MAM.

The City understands and acknowledges that this Agreement gives it no rights in the Licensed Image other than those expressly granted to it herein, and all other rights, express or implied, are reserved to MAM. The City may not use the Licensed Image or the Milwaukee Mark except as authorized herein or any images confusingly similar thereto in any manner. The City agrees and acknowledges that all use of the Licensed Image and the Milwaukee Mark as set forth in this Agreement and any and all goodwill arising from such use shall inure to the benefit of MAM. This Agreement is personal to the City, and the City may not sublicense, assign, encumber, or otherwise transfer, in whole or in part, this Agreement or any rights of obligations under it without MAM’s prior written consent, which consent will not be withheld unreasonably. The City represents and warrants that it will not and shall not at any time challenge or aide or abet anyone else to challenge the validity or enforceability of this Agreement or of the Licensed Image or MAM’s ownership of it.

Upon termination of this Agreement for any reason, the City shall not use the Milwaukee Mark for any purpose and a phased removal of the mark should be part of the termination agreement. Notwithstanding, nothing contained in this Agreement shall affect MAM’s right to use the Licensed Image, or any other similar trademark rights during the term of this Agreement or thereafter.

The City represents and warrants and shall ensure that the Licensed Services shall at all times be provided in compliance with all applicable federal, state, international, and local laws and regulations and that such services, and the advertising and other promotional materials used in connection therewith, will remain at a level or quality at least as high as that in effect immediately prior to the signing of this Agreement. The City agrees to cooperate with MAM in assuring compliance with this standard and to supply MAM with specimens of use of the Milwaukee Mark upon request. MAM reserves the right to refuse authorization to use the Milwaukee Mark in connection with such materials, if they do not meet with MAM’s established image guidelines.

City of Milwaukee

April ____, 2012

Page 3

The City shall provide MAM with prompt notice of any apparent infringement of the Licensed Image or the Milwaukee Mark, including the use by any third party of any mark confusingly similar to or any colorable imitation of the Licensed Image or Milwaukee Mark, of which the City becomes aware. MAM shall have the sole right, at its expense, to bring any action on account of any such infringement or unauthorized use, and the City shall cooperate with MAM, as MAM may request, in connection with any such action bring by MAM. MAM shall retain any and all damages, settlement and/or compensation paid in connection with any such action bring by MAM. If MAM does not undertake such action within ninety (90) calendar days after notice form the City of such alleged infringement, the City may prosecute the same, at its expense, provided that no settlement shall be made without the prior written approval of MAM. In the event that any damages, settlement and/or compensation are paid in connection with any such action, the City shall first retain an amount in reimbursement of its expenses; any remaining amount shall be divided equally between MAM and the City.

Either party shall be entitled to terminate this Agreement upon ninety (90) days prior written notice to the other party should the other party breach any term or condition of this Agreement and fail to cure such breach within the notice period. In addition, this Agreement shall terminate automatically if either party makes as assignment for the benefit or creditors, files or has filed against it a petition in bankruptcy, or discontinues operations. Upon the expiration or termination of this Agreement, the City shall immediately discontinue all use of the Licensed Image and the Milwaukee Mark.

Any notice, request, or communication required under this Agreement shall be delivered by First Class Mail, U.S. postage prepaid, or via overnight service to the addresses for each party provided above.

This Agreement shall be construed in accordance with and governed by the internal laws, but not the laws of conflicts, of the State of Wisconsin and the Lanham Act. This Agreement constitutes the complete agreement between the parties with respect to the subject matter hereof and supersedes any and all previous agreements, oral or written, that may have been made between the parties or acquired by the parties. This Agreement may be amended only in writing by an agreement duly executed by the parties hereto. If any provision of this Agreement is found to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall be interpreted in order to give effect to the parties' intentions.

City of Milwaukee

April ___, 2012

Page 4

Those requirements of this Agreement, which by their nature survive the expiration or termination of this Agreement shall continue to bind the parties, including but not limited to the parties' representations and warranties.

Prior to the execution of this Agreement, the Museum must approve the format style guide and rollout guide for the intended mark usage throughout city departments.

Duly authorized representatives of the parties have signed below, thereby binding the parties to this Agreement..

Very truly yours,

Milwaukee Art Museum, Inc.

By:_____

Title:_____

AGREED AND ACCEPTED:

On Behalf of the City of Milwaukee

By:_____

Title:_____

Date: April ___, 2012

Enclosure: Exhibit A

1033-2012-647:179417