

**ANN ARBOR DISTRICT LIBRARY
AND
CLEAN ENERGY COALITION
BIKE SHARE PROGRAM
LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this "Agreement"), dated as of _____, 2014 (the "Effective Date"), by and between The Ann Arbor District Library (the "Library") and The Clean Energy Coalition, a Michigan non-profit corporation ("Licensee"), is based upon the following:

A. The University of Michigan and Licensee are parties to a Bike Share Master Agreement regarding the operation of a bike share program ("Bike Share Master Agreement").

B. Library owns parcels of land situated in the City of Ann Arbor, County of Washtenaw, State of Michigan (individually and collectively, the "Library's Property").

C. Licensee desires that Library grant to Licensee a license for Licensee to use that portion of Library's Property identified on **Exhibit A**, which shall hereafter be referred to as the "License Area."

D. Library is willing to grant to Licensee a license for use of the License Area upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is acknowledged, the parties agree as follows:

- (1) **LICENSE AREA AND PERMITTED USES:** Library grants to Licensee a license for Licensee to use the License Area (the "License") solely for the purpose of installing, repairing, and removing a bicycle rental kiosk ("Kiosk"), concrete pads on which the Kiosk will be attached ("Concrete Pads"), electrical service and operating the bike share program

in accordance with the terms of the Bike Share Master Agreement in the License Area during the Term. The License applies only to the License Area and not to any other portion of the Library's Property.

- (2) **TERM:** The term of the License shall be for a period of three years from the Effective Date to _____ (the "Term").
- (3) **INITIAL INSTALLATION:** Preliminary plans for the design and installation plans for the Kiosk, including any Concrete Pads and any tie-ins to Library electrical services, are attached to this Agreement as **Exhibit A**. Prior to installation of the Kiosk in the License Area, the final plans for design and installation and work schedule for the Kiosk, including any Concrete Pads and tie-in to electrical services, must have been approved by the Library in writing. Prior to operation of the Kiosk for business, the installed Kiosk must be approved by the Library, including Library building code inspectors. Licensee shall not make any alterations, additions, improvements or modifications to the License Area without the prior written consent of the Library.
- (4) **ELECTRICITY:** Library shall provide electricity to the Kiosk, if approved by the Library in advance. Alternatively, if the Library approves the installation of a solar panel by CEC, the Kiosk will be solar-powered.
- (5) **SEASONAL REMOVAL AND REINSTALLATION:** Licensee and Library may agree that Licensee shall remove the Kiosk from the License Area at a mutually-agreed upon date close to the end of each Fall season and reinstall the Kiosk to the License Area at a mutually-agreed upon date during each Spring season ("Seasonal Removal and Installation"). Licensee will notify Library in writing pursuant to Section 12 below, at least 72-hours prior to its suggested Seasonal Removal and Installation of the Kiosk. Library

may object to such date and the parties will work to reasonably work to develop a mutually agreeable schedule.

- (6) **RELOCATION:** Library may relocate the License Area to comparable space on other Library real property at Library's sole discretion upon thirty (30) days prior written notice. Upon such relocation, **Exhibit A** to this License shall be revised to show the relocated License Area.
- (7) **CONDITION AND CARE OF LICENSE AREA:** Licensee accepts the License Area in "as is" condition without any obligation on the part of the Library to improve same, unless specifically set forth in this Agreement. Licensee is responsible for keeping and maintaining the License Area and all of Licensee's equipment and supplies located at the License Area, including the Kiosk and bicycles, in good working order and good, clean, orderly and safe condition. Licensee shall be responsible for the disposal of trash generated in the License Area. In the event that Licensee does not maintain the License Area and all of Licensee's equipment and supplies located at the License Area, including the Kiosk and bicycles, in good working order and good, safe and usable repair and condition, and does not dispose of the trash, Library may, at its option and in addition to any other available remedy, perform or have performed any necessary repairs or maintenance and any amounts paid by Library for such repairs and maintenance shall become due from Licensee to Library within ten (10) days of receipt of an invoice from Library.
- (8) **CONDUCT OF BUSINESS:** Licensee, at its expense, shall obtain all necessary licenses and permits required to conduct its business at the License Area. Licensee shall, at its expense, comply promptly with the reasonable recommendations of Library, or its own insurance company, concerning safety in the License Area.

- (9) **SUPERVISION:** Licensee shall be responsible during the term of this License for the supervision of the activities of all of Licensee's agents, employees, contractors, subcontractors, licensees and invitees, including customers of the Bike Share Program, in connection with access to and use of the License Area, and Licensee shall take all precautions, including but not limited to the policing of the area, the posting of signs and the placing of fencing and barricades as are necessary during the initial installation of the Kiosk with the Library's prior written approval, in the interest of public safety and for the safety of any persons working on or traveling upon or in any way using the License Area or land adjacent thereto.
- (10) **CONFORMITY WITH LIBRARY POLICIES AND LAW:** All operations and activities conducted by Licensee on the License Area shall conform with safe practices and shall at all times comply with all Library rules, regulations and policies and all local, State, and Federal laws, statutes, rules, and regulations pertaining thereto.
- (11) **TEMPORARY REMOVAL:** Upon the Library's request, and at the Library's cost, Licensee shall remove the Kiosk from the License Area for a short period. If a removal period will be longer than seven days, the Library will provide an alternative location for the Kiosk for the duration of the removal period.
- (12) **INSURANCE:**
- a. Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect without interruption during the term of this License, the following types of insurance coverage, with minimum limits as set forth below:
 - i. Commercial General Liability covering liability arising from premises, operations, independent contractors, products-completed operations,

personal and advertising injury, and blanket contractual liability - \$1,000,000 each occurrence, \$1,000,000 aggregate.

- ii. Business Automobile Liability covering all owned, hired, and non-owned vehicles - \$500,000 each occurrence, including all applicable statutory coverages.
 - iii. Workers Compensation – statutory limits for all states of operation.
 - iv. Employers Liability - \$500,000 each employee for bodily injury by accident and \$500,000 each employee for bodily injury by disease.
- b. All policies of insurance procured by Licensee shall be written as primary policies; not contributing with or in excess of coverage that Library may carry. If Licensee's liability policy does not contain the standard separation of insureds provision, or a substantially similar clause, it shall be endorsed to provide cross-liability coverage. Licensee shall agree to waive its insurer's right of recovery under its policies. Library shall be listed as an additional named insured on such policies (except Workers Compensation and Employers Liability) and at Library's request Licensee shall provide Library with certificates of insurance evidencing compliance with the limits, insurance requirements and waiver of subrogation set forth above. Such certificates shall be in a form acceptable to, and underwritten by an insurance company reasonably satisfactory to Library and with an A.M. Best Company rating of A-, IX or above. By requiring insurance herein, Library does not represent that coverage and limits will necessarily be adequate to protect Licensee or Library. The purchase of appropriate insurance coverage by Licensee or the furnishing of certificates of insurance shall not release Licensee from its

obligations or liabilities under this Agreement. The insurer under such policy shall agree not to cancel, materially change, or fail to renew the coverage provided by such policy, without first giving Library ten (10) days advance written notice.

- (13) **INDEMNIFICATION:** Licensee shall defend, indemnify, protect, and save harmless Library, its officers, directors, agents, representatives and employees from and against any and all claims, demands, actions, suits, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and disbursements that: (i) arise from or are in connection with the License granted hereunder for the License Area or any portion thereof; (ii) arise from or are in connection with any act or omission of Licensee or Licensee's agents, employees, contractors, subcontractors, licensees, invitees including customers of the Bike Share Program, or others; (iii) result from any default of this License Agreement or any provision hereof by Licensee; or (iv) result from the presence of Licensee's agents', employees', contractors', subcontractors', licensees', or invitees' property or equipment on the License Area; all regardless of whether such claims are asserted or incurred before, during, or after the term of this Agreement. Licensee's obligations under this Paragraph shall survive the expiration of this Agreement. Licensee's indemnification of Library includes any and all costs and expenses incurred in connection with the enforcement of this Section.
- (14) **DEFAULT:** If Licensee fails to observe or perform any of its obligations under either this License Agreement or the Bike Share Master Agreement and fails to correct such failure within ten (10) days of receipt of written notice from the Library describing such failure, then Licensee shall be in default under this License Agreement and Library may, at its option, exercise one or more of the following remedies:

- a. Immediately declare this License Agreement terminated;
- b. Obtain specific performance of the covenants and obligations of Licensee under this License Agreement; or
- c. Perform such obligation on behalf of Licensee in which event the costs and expenses paid or incurred by Library in performing Licensee's obligations shall be immediately due and payable to Library following receipt of Library's invoice.

(15) **VACATION OF PREMISES:** Upon termination of this License Agreement, Licensee shall be responsible for (i) the general cleaning of the License Area, (ii) the disposal of trash generated in the License Area, (iii) restoration of the License Area to the condition they were in immediately prior to the term of the License; except for any Concrete Pad or underground utilities installed with the Library's prior written consent, and (iv) the removal of the Kiosk and other equipment and personal property from the License Area; except for any Concrete Pad or underground utilities installed with the Library's prior written consent.

(16) **WASTE OR NUISANCE:** Licensee shall not commit or suffer to be committed any waste or nuisance upon the License Area. Licensee shall take such action as may be necessary to prevent or terminate any such nuisance or waste arising out of Licensee's use of the License Area, including, without limitation, any nuisance created by Licensee's agents, employees, contractors, subcontractors, licensees and invitees including customers of the Bike Share Program.

(17) **NATURE OF LICENSE:** No legal title, easement or other possessory interest in real estate, including any leasehold interest in the licensed premises, or any appurtenances thereto, shall be created or deemed or construed to have been created or vested in Licensee by anything contained in this License Agreement.

(18) **GOVERNING LAW:** This License Agreement shall be governed and construed in accordance with the laws of the State of Michigan and shall not be modified, altered, or amended except in writing as agreed to by the parties to this License Agreement.

(19) **NOTICES:** All notices or other communications provided for under this License Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by registered or certified mail, postage prepaid, return receipt requested; or (iii) one (1) business day after being sent by overnight delivery service, all to the following addresses:

If to Library: Ann Arbor District Library
 343 South Fifth Ave.
 Ann Arbor, MI 48104
 Attention: Josie Parker

If to Licensee: Clean Energy Coalition
 924 North Main Street, Suite 2
 Ann Arbor, MI 48104
 Attn: Sean Reed

Each party shall have the right to designate other or additional addresses or addressees for the delivery of notices, by giving notice of the same in the manner as previously set forth in this License Agreement.

(20) **COUNTERPARTS:** This License Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(21) **ENTIRE AGREEMENT:** This License Agreement constitutes the entire agreement between the parties to the License Agreement regarding the subject matter of this Agreement and cannot be amended or modified except by a writing signed by all of the

parties to this Agreement. The exhibit attached to this Agreement is incorporated into the Agreement and made a part of this Agreement for all purposes.

- (22) **SUCCESSORS AND ASSIGNS:** This License Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, Library and Licensee entered into this License Agreement on the date first above written.

ANN ARBOR DISTRICT LIBRARY

By: _____

Its:

CLEAN ENERGY COALITION

By _____

Its: _____