

# Creative Licence and Services Agreement

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BETWEEN

**The City of South Bend Venues Parks & Arts, operating through and by its Board of Park Commissioners** a duly incorporated company under the Laws of Indiana, having its head office at 321 E. Walter Street, South Bend, IN 46601, hereafter represented by Aaron Perri, Executive Director, duly authorised as he/she declares.

(hereinafter "SOUTH BEND")

AND

**DAILY TOUS LES JOURS INC.**, a duly incorporated company under the Laws of the Province of Québec, Canada, having its head office at 5445 de Gaspé Street, Suite 206, Montreal (Quebec) H2T 3B2, hereafter represented by Mouna Andraos, duly authorised as she declares.

(hereinafter "DTLJ")

(Hereinafter jointly referred to as the "Parties")

**WHEREAS** SOUTH BEND wishes to retain the services of DTLJ for the performance of work that DTLJ agrees to perform.

**WHEREAS** the parties herein wish to set out the nature and conditions of an agreement for the said services and therefore subscribe to the present Creative licence and Service Agreement (hereinafter the "Agreement") wherein the said nature and conditions are contained.

## WHEREFORE THE PARTIES HEREIN AGREE AS FOLLOWS:

### 1. Definitions

- 1.1 "SOUTH BEND" includes South Bend Venues, Parks and Arts, through the Howard Park Commissioners, its existing subsidiaries or divisions, if applicable, during the whole Agreement.
- 1.2 "Intellectual Property" means, namely and without limiting the generality of the foregoing, any information, invention, improvement, discovery, idea, and original work or any development, written work, that is protected or not by copyright, patent, trade mark, trade secret, industrial design or any other form of intellectual property;
- 1.3 "Services" mean all services required from DTLJ, as more fully described under *Description of Services* of the Agreement.

### 2. Description of Services

- 2.1 DTLJ undertakes to provide the services (the "Services") described below and in greater detail in Appendix A of this Agreement:
  - Preliminary concept development for an interactive installation (the "Installation") in South Bend

- 2.2 The budget and calendar for the execution of the Services is described in Appendix B of this Agreement.
- 2.3 SOUTH BEND will provide all pertinent information regarding the intended venue of the installation, including but not limited to structural, regulatory, insurance and labour requirements.
- 2.4 DTLJ undertakes to deploy its best efforts and to act diligently in the execution of its obligations under the Agreement. In order for the budget and schedule of the project to be respected, SOUTH BEND commits to answer DTLJ's questions and submission in the timeframes indicated by DTLJ.
- 2.5 DTLJ commits to communicate all foreseeable difficulties it encounters during the project's progress, in order to allow the other party to take the necessary measures.

### **3. Duration and Termination**

- 3.1 The Agreement will be in force as of June 2018 notwithstanding its date of signature and will terminate on or about September 2018 upon reception by DTLJ of final payment described in 4.1.2 unless both parties agree in writing to extend such termination date.
- 3.2 There will be no tacit renewal of the Agreement; any modification or extension of its duration has to be made in writing and signed by representatives of the parties.
- 3.3 Each party may terminate the present agreement. In case of termination, SOUTH BEND shall pay DTLJ for its services rendered as of the date of termination as well as all sums engaged in the project. The cancellation or termination of the Agreement will not in any way cause the parties to lose their right or to free said parties from obligations regarding confidentiality, liability or limitation of liability. Any said right and obligation will survive the termination of the Agreement.

### **4. Consideration**

- 4.1 In consideration of the Services and Licence stipulated in the Agreement, SOUTH BEND will pay DTLJ, the amount of Twenty-Five Thousand US Dollars (US\$ 25,000) plus any applicable taxes, to be paid as follows:
    - 4.1.1 the sum of Ten Thousand US Dollars (US\$ 10,000) plus applicable taxes on the date of signature of the project proposal;
    - 4.1.2 the sum of Fifteen Thousand US Dollars (US\$ 15,000) on presentation of the final concept;provided SOUTH BEND receives, within a minimum of thirty (30) days prior to each instalment deadline, a detailed invoice, with the exception of first payment which should be made at the start of the project.
- All payments should be made via municipal check.

## **5. Confidentiality**

- 5.1 Each Party acknowledges that Confidential Information (as defined below) belonging to the other, its clients or suppliers will be given to it during the execution of the Services and that all said information is privileged, confidential, unique, and crucial to the divulging Party.
- 5.2 For the purpose of this agreement, "Confidential Information" includes each and every one of the following elements:
  - 5.2.1 Any information or property belonging to a Party or designated as confidential by SOUTH BEND, either orally or in writing;
  - 5.2.2 Any information that is not generally known by a person who is not employed by the divulging Party;
  - 5.2.3 Any information that DTLJ creates, designs, develops or becomes aware of or has access to during the performance of its duties as per the present Agreement.
- 5.3 Immediately upon termination of the Agreement, for any reason whatsoever, the receiving Party will remit to the divulging Party all Confidential Information, files, and other documents and copies thereof, in any form whatsoever, upon written request. The obligations under this section will continue to apply after the termination of the Agreement.

## **6. Intellectual Property**

- 6.1 SOUTH BEND acknowledges that DTLJ will remain the owner of all Intellectual Property rights in all work performed in relation with the Services under this Agreement. Additionally, DTLJ shall retain all Intellectual Property rights in any technology or device developed while creating the Installation.
- 6.2 DTLJ upon completion of Phase 2 of the Installation grants SOUTH BEND a perpetual, unrestricted, non-exclusive licence for the use of the final deliverable, the Installation, or any parts thereof (the "Licence"), it being understood that the use of any technology or device developed by DTLJ while creating the Installation shall only be permitted within the context of the Installation. For the sake of clarity, it is understood that any and all ideas, sketches, and material produced by DTLJ and not included in the final Installation is excluded from the Licence.

## **7. Use of Name and Logo for Portfolio, Press and Promotion**

- 7.1 SOUTH BEND hereby grants to DTLJ the right to use SOUTH BEND's name and logo on DTLJ's portfolio on its web site.
- 7.2 SOUTH BEND shall mention DTLJ in any communication, advertising and promotion of the concept or the Installation including but not limited to any sign or poster announcing the Installation and on the premises of the Installation as follows: A Daily tous les jours project

## **8. Final Clauses**

- 8.1 The Agreement contains the entire agreement between the parties as to the Services. The Agreement replaces and prevails over any prior agreement or proposal, oral or in writing, regarding the Services, as soon as the Agreement is in full force.
- 8.2 To be valid, any modification to the Agreement has to be made in writing, signed by the parties, and attached to the Agreement.

- 8.3 Any notice under the Agreement has to be given in writing, either by registered or certified mail or by hand. If a notice is sent by registered or certified mail, it will be deemed received five (5) working days after the mailing date.
- 8.4 The cancellation of any clause of the Agreement does not entail the termination of the Agreement, which will then be read as if that clause had never existed.
- 8.5 The Agreement will be interpreted according to the laws in force in St. Joseph County, Indiana. The parties agree that any dispute arising from the Agreement will be subject to the Courts of the jurisdiction of St. Joseph County, Indiana.
- 8.6 Nothing in the Agreement will be interpreted in such a way as to create a partnership, joint venture or agent agreement between the parties and no similar relation will be deemed to exist between the parties, who declare to do business independently.

**THEREFORE**, the parties have signed the Agreement in two (2) original copies.

Date \_\_\_\_\_ 2018

**SOUTH BEND VENUES, PARKS & ARTS  
by and through its Board of Park Commissioners.**

Per: \_\_\_\_\_  
Name : Mark Neal, President  
Duly Authorised Representative

Date \_\_\_\_\_ 2018

**DAILY TOUS LES JOURS INC.**

Per: \_\_\_\_\_  
Name : Mouna Andraos  
Duly Authorised Representative

## APPENDIX A - Services

### Daily tous les jours services, Preliminary Concept for an interactive installation in South Bend (the "Installation")

#### 1.1 Preliminary research

- Understand any existing studies, research or documents pertaining to the specific site and adjacent communities
- Research local stakeholders, residents or site-users that we should meet during a site visit
- Conduct preliminary Skype or phone interviews
- General research on the history and stories of the site and communities

#### 1.2. Site visit

- Study existing circulation and everyday usage through observation
- Meet with local stakeholders to understand existing relationships and expectations for the site
- Possibility of holding an open meeting and/or workshop with any interested parties or residents to explore the potential of the site together
- Meet with key local partners for fabrication and/or installation

#### 1.3. Concept development

- Explore the promenade as a raw material for play: how can the trails remain functional while becoming a space for living together, better
- Prototype preliminary ideas, document (and share)
- Refine objectives
- Propose preliminary concept (short text and sketch)
  - Presentation \*Skype or in person

#### Deliverable

- Preliminary concept presentation document (PDF) including research summary, rough sketches and preliminary user scenario
- Preliminary budget for Phase 2 – Detailed Design, fabrication, shipping and installation

## **APPENDIX B – budget and timeline**

### **Budget:**

Fee: Research & preliminary concept proposal, USD \$25,000

Extra expenses: All travel including plane tickets, local transportation, accommodation, per diems for DTLJ team members to go to South Bend for any trip related to the execution of this mandate, including but not limited to research, meetings and or presentation. Not to exceed USD \$10,000.

### **Timeline:**

3 month timeline, starting June 2018

1.1 Preliminary research

1.2. Site visit

1.3. Concept development