LIMITED LICENSE AGREEMENT

THIS LIMITED LICENSE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2018 by and between the **City of Minneapolis**, a Minnesota municipal corporation, having its principal place of business at 350 South Fifth Street, Minneapolis, Minnesota 55415 ("Licensor"), and the **City of St. Paul**, a Minnesota municipal corporation, having its principal place of business at 25 West Fourth Street, St. Paul, Minnesota 55102 ("City"). Licensor and City are collectively referred to in this Agreement as the "Parties" and individually as a "Party."

WHEREAS, Licensor developed a customized framework to manage its youth employment program for certain secondary and post-secondary students from the Microsoft Customer Relationship Management (CRM) multifaceted, integrated data management platform (the "Product"); and

WHEREAS, City desires to obtain a license to use the Product to assist the City to manage its own youth employment program; and

WHEREAS, Licensor agrees to provide the City with a limited license to use the Product according to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1.   <u>Grant of License</u>.   Licensor hereby grants to City a limited, revocable, nontransferable, and nonexclusive license to use the Product for its internal use only (the "License").   The City shall have no right to grant a sublicense of the Product under this Agreement. Licensor reserves all rights not expressly granted to the City in this Agreement. For the avoidance of doubt, the City is not allowed to sell, distribute, license, alter, duplicate, or otherwise commercialize the Product.

2.   <u>Transfer of Product</u>. Licensor will transfer the Product to the City. The City will install and maintain the Product on its servers or contract with a third party to house, service and maintain the Product on the servers of a third party.   The Licensor will provide access to the Product through the issuance of passwords or by issuing to the City a general means of access.

3.   <u>Compensation</u>.   Licensor is providing the License at no cost to the City during the term of the Agreement.   Licensor reserves the right to pass along to the City any costs the Licensor is charged by the proprietary owner of the platform, Microsoft CRM, provided that Licensor provides Company with ninety (90) days' written notice.

4.   <u>Duration of Agreement</u>. This Agreement shall remain in effect for a period of five (5) years (the "Initial Term"), and shall automatically renew for one successive one year period on the anniversary of the Initial Term ("Renewal Date") unless the City sends written notice to Licensor at least 30 days prior to the Renewal Date. Upon completion of the fifth year

period this Agreement shall terminate. Upon the termination of this Agreement for any reason, the City will cease using the Product.

5.   Licensor's Rights to Product. Licensor is the owner of the Product. However, Licensor has received the web application from Microsoft and was permitted to use this Microsoft proprietary platform to create the customized framework for the Product. Therefore, Microsoft holds all rights, title and interest in all of the methods, processes, diagrams, practices and policies, methods of operation, ideas, know-how, framework, methodology, processes, trade secrets, documentation, presentations, concepts, techniques, reports, related to the platform from which the Licensor developed the Product.

6.   City's Limited Rights as Licensee. Unless expressly authorized in writing by Licensor and except as expressly provided in this Agreement, the City shall not at any time copy, reproduce, distribute, license, or sub-license the Product.

To the extent the City creates any improvements, modifications, or changes pertaining to the Product, the City hereby assigns all rights, title, and interest in and to such improvements free and clear of any liens, claims, or encumbrances to Licensor.

7.   City's Indemnification of Licensor. The City shall defend, indemnify and hold harmless the Licensor from and against any loss, liability, cost, or expense, including reasonable attorney's fees that may be incurred by the Licensor against any claims, actions, suits, or demands by a third party (excluding Microsoft) alleging that the Product infringes upon a patent, copyright or trademark or other proprietary right of the third party (excluding Microsoft).

8.   LIMITATION ON LICENSOR'S LIABILITY. THE CITY ACKNOWLEDGES AND AGREES THAT ITS USE OF THE PRODUCT PURSUANT TO THIS AGREEMENT DOES NOT CONSTITUTE LICENSOR'S ENDORSEMENT OF OR ANY JOINDER IN ANY GUARANTEE OR WARRANTIES MADE BY CITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR, OR ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, ASSIGNS, SUBSIDIARIES, OR AFFILIATES BE LIABLE TO THE CITY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, INJURY, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY, OR LOSS OF DATA ARISING OUT OF, OR RELATED TO, IN ANY MANNER, THIS AGREEMENT, THE USE OF THE PRODUCT, OR THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS HEREUNDER REGARDLESS OF THE FORESEEABILITY THEREOF. THE CITY ACKNOWLEGES AND AGREES THAT THE AMOUNT OF LICENSOR'S TOTAL LIABILITY FOR ALL DAMAGES IS LIMITED BY THE FACT THAT THE CITY PAYS NO MONIES AND BENEFITS FROM THE LICENSOR'S DEVELOPMENT OF THE PRODUCT.

9.   NO EXPRESS OR IMPLIED WARRANTIES. LICENSOR AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, ASSIGNS, AND AFFILIATES PROVIDE THE PRODUCT "AS IS WITH ALL FAULTS" WITHOUT

WARRANTY OF ANY KIND, AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCT WHETHER EXPRESS OR IMPLIED AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE PRODUCT WILL MEET THE CITY'S REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY.

      10.   <u>Termination or Cancellation</u>.

      (a)   Licensor may terminate this Agreement and License if the City violates any provision of this Agreement or any other agreement between the City and Licensor.

      (b)   The City may terminate this Agreement upon any of the following: (i) Licensor fails to maintain the Product; or (iii) Licensor violates any other provision of this Agreement or any other agreement between Licensor and Company.

      (c)   Any party that elects to terminate this Agreement may do so upon delivery of written notice at least thirty (30) days prior to the termination date at the address indicated in the initial paragraph of this Agreement. Each party is obligated to provide notice of any change of address to the other party.

      11.   <u>Choice of Law and Venue</u>. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Minnesota and the parties hereto consent to the exclusive jurisdiction of the state and federal courts located in the State of Minnesota in connection with any controversy related to or arising out of this Agreement.

      12.   <u>Severability</u>. If a court of competent jurisdiction rules that any part of this Agreement is not enforceable, that part may be modified by the court to make it enforceable or it may be severed and the other parts of the Agreement shall remain enforceable. A Party's action in not enforcing a breach of any part of this Agreement shall not prevent a Party from enforcing it as to any other breach of this Agreement that it discovers. This Agreement may not be cancelled, modified, or otherwise changed except by another written agreement signed by the Parties. The City may not assign the License or Agreement without Licensor's express written consent. This Agreement incorporates the entire understanding between the Parties as to its subject matter; and all prior discussions, agreements and understandings are hereby superseded and merged into this Agreement.

      13.   <u>Assignment or Transfer of Agreement.</u> Neither party shall assign any of the rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. A party may assign its interest herein upon written notice to the non-assigning party to a subsidiary of such assigning party or to an entity that acquires substantially all of such assigning party's assets or business. Such assignment remains subject to the termination or cancellation provisions in Section 10 of this Agreement.

14.   <u>General Compliance.</u> The Licensor and the City will comply with all applicable federal, State and local laws and regulations governing funds payable for services provided under this Agreement.

15.   <u>Amendments.</u> This Agreement may only be modified or changed by written amendment signed by authorized representatives of the Licensor and the City.

16.   <u>Waiver</u>. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision or another circumstance.   Neither does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

17.   <u>Entirety of Agreement</u>.   This Agreement and any attachments or exhibits hereto constitute the entire and exclusive contract by the parties.

(Signature page follows.)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

CITY OF ST. PAUL   **CITY OF MINNEAPOLIS**

_____   Department Responsible for Administering
and Monitoring this Contract:

By: _____

Its: _____

By: _____
Its: Finance Officer or Designee

Approved as to Form:

_____
Assistant City Attorney