

City of St. Helens

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 20 __, (the “Effective Date”) by and between the **City of St. Helens**, a municipal corporation of the State of Oregon, (hereinafter referred to as “City” or “Licensor”), and **Soltronox LLC**, an Oregon limited liability company, (hereinafter referred to as “Licensee”).

RECITALS

A. The City owns that certain real property located at **277 Strand Street, St. Helens, Oregon**, including associated parking areas and public rights-of-way, being and situated in the City of St. Helens, Columbia County, Oregon (the “Property”).

B. The Licensee desires to obtain a license from the City to use, operate, and maintain an automated teller machine (“ATM”) within a certain portion of the Property, as depicted in Exhibit A, attached hereto and made a part hereof (the “Licensed Area”).

C. The City is willing to grant a license to the Licensee on the terms and conditions set forth herein.

AGREEMENT

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

1. RECITALS. The above statements are true and correct and are incorporated herein by this reference.

2. LICENSE. City hereby grants and delivers to Licensee, and Licensee hereby accepts, an exclusive license (the “License”) to use and occupy the Licensed Area for the purposes hereafter provided for the License Term (as defined in Section 3). The parties do not intend to create a lease or any other interest in real property for Licensee through this Agreement and the parties only intend to create a license that is revocable at will by the City.

3. LICENSE TERM. The term of this Agreement shall commence upon approval and execution by both City and Licensee (the “Commencement Date”) and shall terminate on December 31, 2022 (the “Expiration Date”). Either party may request in writing an extension of the License Term, which shall be an additional twelve (12) month period commencing on the day following the end of the initial term or any such extension (the “Extension Term”). Extensions must be set forth in writing and signed by authorized representatives of both parties. Notwithstanding the foregoing, this License shall be revocable by the City at any time during the License Term; provided that City provides to Licensee thirty (30) days’ prior written notice of its election to terminate the License. The termination notice shall state the date of termination and

shall be sent in accordance with the notice requirements of this Agreement.

4. USE. The Licensed Area shall be used for the operation of an ATM and for no other purpose except as may be agreed upon by City in writing in its sole discretion.

5. LICENSE FEE. Licensee shall pay a license fee (the "License Fee") for the Licensed Area in the amount of Fifty cents (\$0.50) per ATM transaction. The License Fee shall be payable to City on or before the 10th day of each calendar month, for all ATM transactions made during the immediately prior month. Payments shall be delivered to City at 265 Strand Street, St. Helens, OR 97051. Licensee shall provide a report of all ATM transactions during the same period with its payment of the License Fee. In the event of a termination of this Agreement, Licensee shall be responsible for the License Fee through the date of termination.

6. INSURANCE. Licensee, at its own cost and expense, shall procure and maintain insurance in accordance with the requirements of the attached and incorporated Exhibit B in full force and effect throughout the term of this Agreement. Licensee shall provide the City with copies of said insurance certificates and shall name the City as an additional insured. Any request to modify or waive the insurance requirements stated herein must be approved in writing by the City Council or the delegated Contracting Officer.

7. RELEASE. Licensee, for itself, its agents and employees, does hereby agree for themselves, their heirs, executors, administrators, successors and assigns, to release and forever discharge the City, its officers, directors, agents and employees, successors and assigns, from any and all claims or causes of action which Licensee, its agents and employees now has or which may hereinafter accrue against the City, in connection with or arising out of the activities permitted by this License, including without limitation, property damage, personal injury, or death.

8. INDEMNIFICATION. Licensee shall hold harmless, indemnify, and defend City, its officers, agents, and employees (the "Indemnified Parties"), from any and all liability, actions, claims, losses, damages or other costs, including attorneys' fees and costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity, including Licensee, arising from, during or in connection with the Licensee's use of Licensed Area under this Agreement, except liability arising out of the sole negligence of the City or its employees. Such indemnification shall also cover claims brought against the City under state or federal workers compensation laws. The indemnity obligations outlined herein shall survive any cancellations, expiration, or termination, for any reason, of this Agreement.

9. TERMINATION.

9.1 This Agreement may be terminated by mutual consent or by either party, at any time, upon thirty (30) days' prior written notice to the other party.

9.2 The City may terminate this Agreement for cause effective upon delivery of written notice to Licensee under any of the following conditions:

9.2.1 If any license or certificate required by law or regulation to be held by Licensee to provide the services permitted under this Agreement is for any reason denied, suspended, revoked, or not renewed.

9.2.2 If Licensee becomes insolvent, if a voluntary or an involuntary petition in bankruptcy is filed by or against Licensee, if a receiver or trustee is appointed for Licensee, or if there is an assignment for the benefit of creditors of Licensee.

9.2.3 If Licensee is in breach of this Agreement, and such breach is not remedied within thirty (30) days of written notice.

10. SURRENDER. Upon the Expiration, Licensee shall vacate and surrender full and complete possession of the Licensed Area to City in as good or better condition and order as was originally received, except for reasonable wear and tear. Surrender is considered complete only upon approval of site conditions as determined, in its sole discretion, by the City. City will inspect the Licensed Area within two (2) business days of receipt of written notice from Licensee of readiness for inspection. The surrender obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License Agreement.

11. DISPUTE RESOLUTION.

11.1 The parties mutually agree that any dispute that may arise under this Agreement will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of arbitration or litigation. Such mediation shall occur in the Portland, Oregon metropolitan area, and the mediation fees and mediator's expenses shall be shared equally by the parties. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.

11.2 All legal and equitable disputes and controversies arising from or related to this Agreement shall be submitted to arbitration under the auspices and rules and procedures of the Arbitration Service of Portland, Inc. The parties may agree in writing that the arbitration be held before an arbitrator not affiliated with the Arbitration Service of Portland; however, in any event, the rules and procedures of the Arbitration Service of Portland will be applied to any arbitration between the parties. The party prevailing in the arbitration shall also recover such amounts for its costs and attorney fees incurred in connection with the arbitration as shall be determined by the arbitrator. The arbitration award shall be final and binding on the parties to the furthest extent allowed by law. Nothing herein, however, shall prevent a party to this Agreement from resorting to a court of competent jurisdiction to obtain injunctive relief.

12. NOTICE. All notices required by this Agreement shall be made in writing and delivered by personal delivery, email, or by United States first-class mail. Notices sent by mail should be addressed as follows:

City: City of St. Helens
Attn.: City Administrator
265 Strand Street
St. Helens, OR 97051
Phone: 503-397-6272

Licensee: Soltronox LLC
Attn: Liem Mai, Managing Member
PO Box 17192
Portland, OR 97217

Phone: 503-516-5316
Email: liem@soltronox.com

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. ASSIGNMENT/DELEGATION. Licensee shall not assign, sublet, transfer any interest in, or delegate any duty under this Agreement without the written consent of the City, and no assignment or delegation shall be of any force or effect whatsoever unless and until the City has so consented.

14. MISCELLANEOUS.

14.1 Counterparts. This License Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

14.2 Governing Law. This License Agreement shall be governed by and construed in accordance with the laws of the State of Oregon and ordinances of the City of St. Helens, Oregon.

14.3 Section Headings. The section titles herein are for convenience only and do not define, limit, or construe the contents of such sections.

14.4 Attachment and Exhibits. All attachments and exhibits to this License Agreement are hereby made a part hereof as if fully set out herein.

14.5 Severability. If any provision or provisions in this License Agreement is/are found to be in violation of any law or otherwise unenforceable, all other provisions remain unaffected in full force and effect.

14.6 Binding Effect. This License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and shall not be modified except by an express written agreement signed by a duly authorized representative of both parties.

14.7 Time of the Essence. Time shall be of the essence of each provision of this License Agreement in which time is a factor.

14.8 Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements.

14.9 Modification. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be effective as of the date first written above.

SOLTRONOX LLC,
an Oregon limited liability company

CITY OF ST. HELENS,
an Oregon municipal corporation

Print Name: _____
Title: _____

John Walsh, City Administrator
City of St. Helens
265 Strand Street
St. Helens, OR 97051

Approved as to form:

City Attorney

EXHIBIT A
LICENSED AREA



EXHIBIT B - INSURANCE REQUIREMENTS

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract.

It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

TYPE OF INSURANCE	LIMITS OF LIABILITY		REQUIRED FOR THIS CONTRACT
General Liability	Each occurrence	\$1,000,000	YES
	General Aggregate	\$2,000,000	
	Products/Comp Ops Aggregate	\$2,000,000	
	Personal and Advert. Injury	\$1,000,000	
			w/ umbrella or \$1,500,000 w/o umbrella
Please indicate if Claims Made or Occurrence			
Automobile Liability	Combined Single – covering any vehicle used on City business	\$2,000,000	YES
Workers' Compensation	Per Oregon State Statutes If workers compensation is not applicable please initial here _____. State the reason it is not applicable: _____		YES
Professional Liability	Per occurrence	\$500,000	NO
	Annual Aggregate	\$500,000	

Contractor's general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers' compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured, but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Certificates of Insurance shall be forwarded to:

City Administrator
City of St. Helens
265 Strand Street
St. Helens, OR 97051

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient to satisfy the City that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the City during the entire term of this Contract. Such certificates and/or binders must be delivered prior to commencement of the Work.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this Contract.