

**USE AGREEMENT BETWEEN THE CITY OF BROKEN ARROW
AND ARTSOK, INC.**

This Agreement is entered, by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**City**) and ArtsOK, Inc. (**Licensee**).

I. LICENSE

City grants a non-exclusive license and agrees to allow **Licensee** to use facilities popularly known as the Brown-Kimbrough Center for Arts, Innovation & Creativity located at 302 South Main Street in Broken Arrow (**Premises**). **Licensee** shall refrain from interfering or otherwise changing the name to the building or the signage to the building.

City agrees to pay for the electrical and natural gas costs of the **Premises** during the full term of this Agreement. Water and sewer service shall be provided by the **City**. The amounts provided for herein shall not exceed \$25,000.00. Any cost for utilities (electric, natural gas, water and sewer) over \$25,000.00 shall be the responsibility of the Licensee. All utility usage shall be reasonable in its use. In the event that utilities are utilized in an unreasonable or illegal manner, the user group shall be solely responsible for that use.

Licensee shall pay for cable, internet, telephone, and trash service.

Licensee shall provide at least one individual to monitor the **Premises** during operating hours and all **Licensee** activities.

Licensee shall appoint a sitting member of the Broken Arrow City Council to Licensee's Board of Directors (or Licensees equivalent Board), to serve terms concurrent with the term of this agreement. The member of the City's City Council shall be determined by the City. In the event that an appointed City Council member is removed or vacates office during the term of this agreement, Licensee shall remove such individual from the Licensee's Board of Directors and replace the individual with another sitting member of the City's City Council chosen by the City, to serve the remainder of the Board term. Licensee has the sole obligation to ensure Licensee's bylaws and other governing documents are amended to comply with all governing law to accommodate and enforce this provision.

Within its limitations as a non-profit 501C3 organization, **Licensee** may charge an annual membership fee, activities/user fees, and hold periodic fundraiser events in order to cover its operating expenses. In order to assure compliance with **Licensee's** status, the **City** reserves the right to examine **Licensee's** financial statements upon request.

In accordance with City of Broken Arrow Code of Ordinances and the State of Oklahoma alcohol laws, **Licensee** is permitted to serve/sell alcohol, subject to licensing by the Alcoholic Beverage Laws Enforcement Commission (ABLE). **Licensee** shall gain appropriate licensing from the ABLE Commission for such permission. A copy of such license shall be provided to

the City. **Licensee** shall be responsible for obtaining all necessary permits from the City and County to serve/sell alcohol and or beer.

The **City** shall appoint one person who may attend meetings as needed of the **Licensee** Board of Directors. **Licensee** shall send said appointee timely notice of all meetings. Said appointee shall serve as liaison between the **City** and the **Licensee**.

The **City** shall be authorized to utilize the facility with reasonable notice and as **Licensee's** schedule permits for City events. **Licensee** shall not unreasonably withhold authorization for the City event.

Licensee shall comply with all laws governing the possession and/or use of firearms applicable to the Premises and shall require compliance of same from Licensee's invitees, guests, membership, and users. This includes 21 § 1277 (A)(1) that makes it unlawful for any person, including a person in possession of a valid handgun license issued pursuant to the provisions of the Oklahoma Self-Defense Act, to carry any concealed or unconcealed firearm into any structure, building, or office space which is owned or leased by a city, town, county, state or federal governmental authority for the purpose of conducting business with the public. Pursuant to Title 21 O.S. § 1277, no person shall carry a firearm either concealed or unconcealed whether loaded or unloaded into the Premises. Nothing contained herein shall prevent an individual from transporting or storing a firearm in a locked motor vehicle while parked in the user group's parking lot or on any property set aside for any motor vehicle.

Licensee shall present an organizational update at least one time per year at a regularly scheduled City Council meeting. The schedule of appearance shall be coordinated by the Community Relations Liaison of the City of Broken Arrow, or its representative. Licensee shall send a representative of the organization having knowledge of operations (for example board president, board member, or executive director of the organization) to speak on behalf of the organization and update the City Council.

As consideration herein, any fee or cost regarding any extracurricular event put on by the **Licensee** shall be waived by the **Licensee** with respect to all city council and personnel either sitting on the Board or acting as a liaison to the **Licensee**.

II. TERM

The term of this license shall commence on June 30, 2024, and shall expire on June 30, 2025, unless sooner terminated in accordance with the terms and conditions of the Agreement. This agreement does not renew automatically.

III. IMPROVEMENTS

The Premises shall remain the property of the City, and may not be modified, altered, or destroyed without the prior written permission of the Community Relations Liaison or designee

(Liaison). No other improvements, structures or fixtures of any kind may be built or brought upon said property without the prior written permission of the **Liaison**.

Licensee shall contract directly with the telephone company for monthly service and telephone installation on the **Premises**.

Any improvements, structures, or fixtures of any kind, which are built or brought upon said property, shall become the property of the **City** upon the termination of this Agreement unless the **City** gives prior written permission for their removal. The structures involved in displaying artwork in the exhibit gallery shall remain the property of Licensee. Any additions or modifications authorized to be removed shall be removed in a manner approved by the **Liaison** immediately upon termination of the Agreement and **Licensee** shall restore the **Premises** to the condition that existed prior to the additions or modifications.

Licensee may not have, remove, or change any locks on the **Premises** without the prior approval of the **Liaison** and without first supplying the **Liaison** with combination or key to all locks.

Licensee shall follow all Oklahoma State laws and City of Broken Arrow ordinances regarding improvements made to the premises. **Licensee** agrees to comply with the City of Broken Arrow's purchasing manual and all Oklahoma State and City of Broken Arrow competitive bidding and construction laws.

IV. MAINTENANCE

Licensee acknowledges that it has inspected the **Premises** thoroughly and has full knowledge of the conditions of the **Premises**. The **City** makes no representations or warranties, express or implied, as to the condition of the **Premises**.

Licensee shall inspect the **Premises** immediately before and immediately after each use and shall immediately notify the **Liaison** of any damages or of any repairs, which may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, **Licensee** shall not allow individuals to utilize the **Premises** until the defective portion of the **Premises** has been repaired or replaced.

Licensee agrees to take all reasonable precautions to prevent waste, damage, or injury to the **Premises** by **Licensee** or by any competitors, volunteers, guests, invitees or others who may be on the **Premises** that **Licensee** has allowed use of the **Premises**. Any and all use of natural resources (electric, water, etc.) shall be reasonable in its use.

Licensee acknowledges that access to mechanical rooms, Information Technology rooms and the equipment therein, along with roof access is restricted to qualified **City** personnel and approved contractors. These areas are to remain locked and free from obstruction.

The **City** shall mow and fertilize the outdoor area surrounding the **Premises**.

The **City** shall maintain, replace, or repair any major maintenance item that is not considered routine in nature of the **Premises** in need of such service due to normal and routine wear and

tear, which may include the plumbing, electrical, HVAC systems and structural components of the **Premises**, and the parking areas and outdoor lighting fixtures. **City** shall also maintain a security server, cameras, and door access equipment. **Licensee** shall maintain, replace or repair any minor maintenance item that is considered routine in nature of the **Premises**, which may include the plumbing (unstopping sinks and lavatories), electrical (replacing light bulbs), and structural components (pest control) of the **Premises**. **Licensee** will be responsible for the replacement or repair of any portion of the actual structures involved in displaying artwork in the exhibit gallery. **City** shall give reasonable notice prior to entering the building for maintenance. That in the event of an emergency, no notice shall be required prior to entering or repairing the premises.

The **City** shall perform all clearing of snow and ice from the parking lots and sidewalks of the premises.

Licensee shall perform all custodial duties of the **Premises** as needed, and on a regular basis to ensure cleanliness of facility. **Licensee** shall pick up all trash and deposit in a commercial dumpster provided by **Licensee**.

In the event any landscaping is installed by the Licensee, the Licensee shall be responsible for maintenance and upkeep. Any landscaping installed by the City, shall be the City's responsibility for maintenance and upkeep.

All outside maintenance including painting, cleaning of windows, flashing and façade shall be the responsibility of the **City** and shall be maintained at the **City's** sole discretion.

Licensee shall maintain climate control devices at reasonable levels. **Licensee** shall keep the lights turned off in areas not being used and turn off all lights when leaving the **Premises**. **Licensee** shall ensure that all exhibits are appropriately lit, if applicable.

Licensee shall lock and secure the **Premises** after each use. That the **Licensee** is allowed two keys to the property. Any required duplication of any key, for any reason, over the two allotted, shall be at the sole cost of the **Licensee**.

Licensee shall promptly reimburse the **City** for the cost of parts and labor for any replacement or repair on the **Premises** as a result of the negligent acts of **Licensee** or by its competitors, volunteers, guests, or invitees, and for the **City's** cost in performing any of **Licensee's** contractual duties.

City shall pay for all maintenance and annual inspections required on the elevator contained within the structure.

City shall manage and conduct all fire extinguisher and fire suppression inspections.

City shall initially furnish the furniture, fixtures, equipment, and technology (FFE) for the building. **Licensee** shall be responsible to maintain the items provided. Should **Licensee** desire to replace the items provided by the **City**, **Licensee** shall give **City** reasonable notice thereof and

shall return the items to the **City**. If **Licensee** chooses to replace any items above, said replacement cost shall be solely borne by **Licensee**.

All required maintenance, repair, washing, maintenance, removals or any other service provided by the **City** herein shall be at the **city's** sole discretion and timing.

Licensee shall be responsible for ensuring adherence to all Fire Life Safety codes and ensuring a safe environment. Licensee agrees to allow the Broken Arrow Fire Department access to the building for the purposes of inspection and/or safety review and Licensee agrees to be solely responsible for any remediation required. The opinion of the Fire Chief or his or her designee shall be conclusive evidence of the need for remediation and all remediation shall be considered a condition for the continued use of the premises.

V. INDEMNIFICATION

Licensee is an independent contractor under this Agreement. This Agreement shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association as between the **City** and **Licensee** or its officers, employees, contractors or representatives for any purpose. **Licensee** understands that all persons furnishing services in implementing this Agreement are employees, independent contractors and volunteers, solely of **Licensee**, and **Licensee** shall bear the sole responsibility and liability for furnishing and shall furnish Workers' Compensation benefits for injuries from or connected with services performed pursuant to this Agreement. Not including City employees.

As partial consideration for this Agreement, **Licensee** agrees to indemnify, defend (at the **City's** option), and hold harmless the **City**, its employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings, reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or misconduct of **Licensee**, its competitors, guests, invitees, licensees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including but not limited to any injury or damage that occurs relating to **Licensee** activities, or **Licensee's** performance or failure to perform the terms and conditions of this Agreement. Such obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the **City** and in accordance with the terms, conditions and exceptions in the Governmental Tort Claims Act. The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

Licensee shall provide the **City** with prompt written notice of any serious injuries (serious injuries include all injuries which require medical treatment), written or oral complaints received, and actual or anticipated disputes with or claims by any individual.

Licensee agrees to complete all required background checks for all its employees, officers and volunteers.

VI. INSURANCE AND WAIVER OF SUBROGATION

Without limiting the **City's** right to indemnification, **Licensee** and each of its contractors, shall obtain insurance in no less than or in terms more restrictive than the following: General Liability Insurance covering all premises and activities, with an applicable limit of liability not less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate; and Comprehensive Automobile Liability Insurance applicable to all owned, hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence; and Worker's Compensation Insurance Coverage in compliance with the Worker's Compensation Laws of the State of Oklahoma. **Licensee** shall include the **City** as an Additional Insured on all required insurance policies. **Licensee** shall also require its contractors to list the **City** as an Additional Insured. **Licensee** shall submit certificates of insurance to the **City's** Risk Manager for approval before allowing any individuals, including but not limited to any contractors, to commence work or engage in any activities under this Agreement. **Licensee** and its contractors shall maintain the required insurance with insurers that carry a Best's "A" rating, and which are licensed and admitted to write insurance business in Oklahoma. Failure of **Licensee** or its contractors to obtain and maintain any required insurance does not relieve **Licensee** from any liability hereunder.

VII. DEFAULT/TERMINATION

This Agreement shall be subject to termination upon the failure of **Licensee** to keep, perform and observe all promises, covenants, conditions and agreements set forth in this Agreement. The right to terminate this Agreement upon default of **Licensee** is not exclusive and is in addition to any other rights and remedies provided by law or under this Agreement. Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure to require exact, full, and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping the **City** from enforcing the full provisions thereof.

Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned, or encumbered by **Licensee**. That the Licensee shall be allowed to temporarily rent the premises or allow meetings at the premises with other groups with the agreement of the Broken Arrow City Manager.

This Agreement is not a waiver of any permit or other legal requirements and does not assure approval based upon any circumstances other than compliance with the law.

This Agreement shall be construed under the laws of the State of Oklahoma. Exclusive Original Jurisdiction and venue for any action relating to this Agreement shall be solely in the Tulsa County District Courts of Oklahoma. **Licensee** shall conform to and abide by all Federal, State

and local laws and regulations, including, but not limited to all laws regarding employment of aliens, and that no person shall be subjected to discrimination under a project, program or activity supported by this Agreement.

This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Agreement.

This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by the parties.

The parties have caused this Agreement to be executed on the dates hereinafter set forth.

City of Broken Arrow

By: Michael J. Spurgeon 6/13/2024
Michael J. Spurgeon, City Manager



ATTEST:

Curtis Green 6/13/2024
City Clerk / Seal

APPROVED AS TO FORM:

Danny Littlefield 6/3/2024
Deputy City Attorney

Date of Execution:

ArtsOK, Inc.

By: Melinda Clonts 6/13/2024
President
Printed Name: Melinda Clonts

Mailing Address (other than the premises address):
