

## CITY OF BROKEN ARROW PARKS AND RECREATION USE AGREEMENT

This Agreement is entered by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**CITY**) and the Broken Arrow Volleyball Club, Inc. a registered 501(c)(3) (**BAVC**).

### I. LICENSE

**CITY** grants a non-exclusive license and agrees to allow **BAVC** to use facilities in the **CITY** more commonly known as the Nienhuis Park Community Center (NPCC) Gym Annex located at 3201 N. 9<sup>th</sup> St. (**PREMISES**). The license granted shall include only the designated areas of the NPCC Gym Annex building known as Gym #1 and #2, including the storage and restroom areas. **BAVC** shall have use of the NPCC Gym #1 for practice or games on Monday from 6pm-9pm. **BAVC** shall have use of NPCC Gyms #1 and #2 on Saturdays from 9am-12pm for practice and games.

As partial consideration for this Agreement, **BAVC** agrees to and shall comply with the **CITY'S** Parks and Recreation Criminal Background Check Policy for Youth Sports Managers and/or Coaches. A copy of which has been previously provided to **BAVC** and is available at the City Clerk's office.

**BAVC** agrees to pay the **CITY** ten dollars (\$10) per gym per hour for the **PREMISES** used during the life of this contract. Payment shall be due 30 days after **BAVC** season. This fee may increase in future contracts due to an increase in utility costs and or general operating costs.

**BAVC** shall provide their own referees and support personnel. **BAVC** shall help **CITY** personnel inform participants of the **PREMISES'** rules. **BAVC** shall help **CITY** personnel appropriately enforce the **PREMISES'** rules for all participants involved in **BAVC** activities. **BAVC** shall provide at least two individuals to monitor the **PREMISES** during all **BAVC** activities.

The **CITY** will permit, and **BAVC** agrees not to interfere with, others' scheduled utilization of the **PREMISES** when **BAVC** has not first received written approval for scheduled games or practices. Neither **BAVC** nor other persons may use the **PREMISES** without receiving written approval from the Broken Arrow Parks and Recreation Director, hereafter described as **DIRECTOR**. In case of scheduling conflict the decision of the **DIRECTOR** is final. **BAVC** shall not charge other users of the **PREMISES** for maintenance or use of the **PREMISES**. **BAVC** shall not permit non-**BAVC** groups or individuals to use the **PREMISES**.

All schedules and change requests are subject to the approval of the **DIRECTOR**. The **DIRECTOR** shall confirm in writing whether **BAVC's** requested dates and times are available. **BAVC** may not use the **PREMISES** at times where the **DIRECTOR's** approval has not first been obtained.

**BAVC** shall exit the **PREMISES** no later than 9pm during weekly scheduled practices and or games and no later than 5:00pm on Saturdays.

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

### II. TERM

The term of this Agreement will commence upon approval and end on April 29, 2016. **BAVC** may not use the **PREMISES** on Sundays or City Holidays throughout the term of this Agreement nor on December 19, 2015; January 18, 2016; and February 6, 2016.

The **CITY** may at any time if deemed necessary cancel this contract with written notice given to the **BAVC**.

### 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 **DIRECTOR**. Further, no improvements, structures or fixtures of any kind may be built or brought upon said property without the prior written permission of the **DIRECTOR**. 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. Any additions or modifications authorized to be removed shall be removed in a manner approved by the **DIRECTOR** immediately upon termination of the Agreement and **BAVC** shall restore the **PREMISES** to the condition that existed prior to the Agreement.

All locks on the **PREMISES** will be maintained as directed by the **DIRECTOR**. **BAVC** may not remove or change any locks without the prior approval of the **DIRECTOR** and without first supplying the **DIRECTOR** with the combination or key to any new locks.

### IV. MAINTENANCE

**BAVC** 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**.

**BAVC** shall inspect the **PREMISES** immediately prior to and immediately after each use, and shall immediately notify the **DIRECTOR** or his appointee of any damages or of any repairs that may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, **BAVC** shall not allow individuals to utilize the **PREMISES** until the defective portion of the **PREMISES** has been repaired or replaced.

**BAVC** agrees to take all reasonable precautions to prevent waste, damage or injury to the **PREMISES** by **BAVC** or by any competitors, volunteers, guests, invitees or others who may be on the **PREMISES**.

The **CITY** shall replace or repair any portion of the **PREMISES** in need of such service due to normal and routine wear and tear, including the volleyball equipment (volleyballs not included), bleachers, scoreboards, restroom supplies, parking areas and lighting.

**BAVC** shall not be liable to the **CITY** for the cost of parts or labor for the replacement or repair of any portion of the **PREMISES** due to normal and routine wear and tear. **BAVC** shall promptly reimburse the **CITY** for the cost of parts and labor for the replacement or repair required on the **PREMISES** as a result of **BAVC's** activities, and for the **CITY's** cost in performing any of **BAVC's** contractual duties, for any cause other than normal and routine wear and tear.

Listed duties: After every use, games and practices, **BAVC** shall pick up all trash in bleachers and areas utilized by **BAVC** and **BAVC** participants. This trash will need to be deposited in trashcans, provided by the **CITY**, located throughout **PREMISES**. Only on days when games are played will **BAVC** need to remove all trash with in used **PREMISES** and deposit it in commercial dumpsters provided by the **CITY**. **BAVC** shall pull out bleachers and return bleachers to their upright positions when scheduled event is finished. **BAVC** shall be responsible for setting up all equipment, chairs and tables for practices and games. **BAVC** is responsible for returning all equipment used during practices and games to their proper storage location.

The **CITY** retains the right to enter any portion of the **PREMISES** at any and all times, without prior notice, to inspect the **PREMISES** or to conduct maintenance or repairs, or for the purpose of determining whether **BAVC** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the **CITY** under this Agreement.

## V. SIGNS

**BAVC** may place temporary signs on the wall surrounding the playing court, according to the following terms and conditions:

a) All signs shall only be constructed of canvas, plastic or cardboard and shall be of a size and shape that will not cause damage to the wall to which it is attached during normal use. Under no circumstances shall signs constructed of wood, metal or other heavy material be used, nor shall any extension be used to enlarge the area covered. Signs shall be affixed only to walls and shall be positioned so that the face of the sign is visible only inside the gymnasium. All signs shall be easily removable from the walls. **Signs may not be displayed in locations where they are visible from any public street.**

b) Signs shall only be affixed during the dates and times **BAVC** is using the **PREMISES**. All signs shall be removed at the end of each day.

c) No signs shall contain advertising copy selling items that are not legally available to minors, including, but not limited to, alcoholic beverages (both "intoxicating" and "non-intoxicating" as defined by Oklahoma Statutes) and tobacco products, nor shall they contain obscene or profane language, symbols, or pictures. **BAVC** agrees that the term "obscene" as defined in Section 7-45 of the Broken Arrow Code shall be applicable with respect to all signs affixed under this license.

d) **BAVC** agrees that it is solely responsible for the maintenance of signs and further agrees that it is responsible for the removal of any signs that become damaged during the course of the season. **BAVC** releases the City of Broken Arrow from any and all liability for damages to any signs resulting from said City's maintenance of the gymnasiums, acts or omissions or City officials and/or employees, wind, flooding, fire, or other acts of god, and further acknowledges that city has the right to remove any and all damaged signs without permission of **BAVC**. If any sign becomes a nuisance, the City has the right to remove it without permission of **BAVC**.

## VI. INDEMNIFICATION

As partial consideration for this Agreement, **BAVC** 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 **BAVC**, its competitors, guests, invitees, licensees, members, volunteers, representatives, employees, agents, officers, contractors or subcontractors, including but not limited to permitted and non-permitted uses of the **PREMISES**, any injury or damage that occurs on or about the **PREMISES** relating to **BAVC** activities, or **BAVC's** performance or failure to perform the terms and conditions of this Agreement.

Such indemnification, hold harmless and defense 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.

**BAVC** shall provide the **DIRECTOR** 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.

## VII. INSURANCE AND WAIVER OF SUBROGATION

Without limiting the **CITY'S** right to indemnification, **BAVC** and each of its contractors and subcontractors shall obtain insurance in no less than or in terms more restrictive than the following:

General Liability Insurance covering all **PREMISES** and activities. The applicable limit of liability shall not be less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate; and

Worker's Compensation Insurance Coverage in compliance with the Worker's Compensation Laws of the State of Oklahoma. In lieu of providing proof of Worker's Compensation Insurance Coverage, **BAVC** may provide a "Certification of Non-Coverage under the Workers' Compensation Act."

**BAVC** shall include the **CITY**, its officials, representatives, agents and employees as Additional Insured on all required insurance policies. **BAVC** shall also require its contractors and subcontractors to list the **CITY** as Additional Insured. **BAVC** shall arrange for certificates of insurance and endorsements to be submitted to the **CITY'S** Risk Manager for approval prior to allowing any individuals, including but not limited to any contractors or subcontractors, to commence work or engage in any activities under this Agreement. Any insurance protecting the **CITY** against any loss relating to or arising out of the subject of this Agreement shall be made payable solely to the **CITY**.

**BAVC** and its contractors and subcontractors shall maintain the required insurance with insurers that carry a Best's "A" or equivalent rating and which are licensed and admitted to write insurance business in Oklahoma.

Such insurance shall not be invalidated by any action or inaction of **BAVC** and shall insure the **CITY** regardless of any breach or violation by **BAVC** of any warranty, declaration or condition contained in such insurance. The insurers shall have no recourse against the Additional Insured or loss payees for payment of any insurance premium.

Failure of **BAVC** or its contractors and subcontractors to obtain and maintain any required insurance shall not relieve **BAVC** from any liability hereunder.

**BAVC** hereby waives, on its own behalf and on behalf of its insurers, every claim for recovery from the **CITY** for any and all loss or damage to the extent that the damage is covered by valid and collectible insurance policies. **BAVC** agrees to give to each insurance company which has issued, or may issue in the future, policies of insurance, written notice of the terms of this waiver and to have said insurance policies endorsed as necessary by reason of this waiver.

## VIII. DEFAULT / TERMINATION

This Agreement shall be subject to termination upon the failure of **BAVC** 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 **BAVC** 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 estopping the **CITY** from enforcing the full provisions thereof.

If this Agreement is terminated, the **CITY** will be paid for costs incurred up to and including the date of termination, including but not limited to the costs of repairing the **PREMISES** to the condition existing at the beginning of this agreement and the costs of storing **BAVC's** property at a public warehouse selected by the **CITY**. The rights reserved in this section are alternative and in addition to, not in lieu of, any other rights and remedies provided by law or under this Agreement. Termination of this Agreement shall not terminate **BAVC's** liability for any losses that have occurred on or prior to that date, regardless of whether either party has received notice of the claimed loss.

Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned or encumbered by **BAVC**. Any attempt to sell, assign, alienate or encumber the **PREMISES** or this Agreement shall be cause for immediate termination of this Agreement.

In the event of substantial or total destruction of the **PREMISES** from any cause, either party may declare this lease terminated if repairs or restoration cannot be effectively accomplished at a reasonable cost, with the reasonableness of said costs being within the sole judgment of the **CITY**.

#### **IX. LAWS**

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. **BAVC** shall conform to and abide by all Federal, State and local laws and regulations regarding the subject of this Agreement.

#### **X. ENTIRE 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. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable. The parties shall agree, if reasonably practicable, upon provisions, which are equivalent from an economic point of view to replace any provision, which is determined to be invalid.

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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

Approved as to Form:

City of Broken Arrow

Leslie Myers  
Assistant City Attorney

\_\_\_\_\_  
City Manager

Attested:

\_\_\_\_\_  
City Clerk / Seal

Date of Execution:  
  
\_\_\_\_\_

Broken Arrow Volleyball Club, Inc.

Janet Tyler  
President Signature  
Printed Name: Janet Tyler

**BAVC** Mailing Address:

PO Box 1813  
Broken Arrow, OK 74013

State of Oklahoma )  
County of TULSA )ss.

Before me, a Notary Public, on this 24<sup>TH</sup> day of NOVEMBER, 2015  
personally appeared JANET TYLER known to me to be the  
identical person and the president of the Broken Arrow Volleyball Club, who executed the within  
and foregoing instrument, and acknowledged to me that he/she executed the same as his/her  
free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:  
3/28/19

Chaundra Cyr  
Notary Public