

**FIRST AMENDED AGREEMENT BETWEEN THE CITY OF BROKEN ARROW AND
THE BROKEN ARROW HISTORICAL SOCIETY**

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

I. LICENSE

City grants a non-exclusive license and agrees to allow **Licensee** to use facilities in the City of Broken Arrow popularly known as the Historical Museum located at 400 S. Main St. (**Premises**).

City agrees to pay for the electrical, natural gas costs, water and sewer costs of the **Premises** during the full term of this Agreement in an amount not to exceed \$25,000.00. Any cost over this amount shall be solely paid by the Licensee. All utility usage must be reasonable. Any utility usage that is unreasonable or is illegal shall be paid solely by the **Licensee**.

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

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.

Licensee shall perform all scheduling and reservations of the **Premises**. Licensee shall allow the City to use, at no charge, the 3rd floor meeting space when schedule permits. City will pay Licensee for any museum staff's overtime expense.

In accordance with City of Broken Arrow Ordinance No. 2821, the **Historical Society** is permitted to serve alcohol, subject to licensing by the Alcoholic Beverage Laws Enforcement Commission (ABLE). The **Historical Society** shall gain appropriate Special Event licensing from the ABLE Commission for such permission. A copy of such license shall be provided to the **City**. The City then issues its own permit to the Historical Society. In the event that only low-point beer will be served, only the City's permit must be obtained.

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**.

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. In the event that the sitting member of the City Council has a conflict in scheduling or is unable to attend the meeting for any reason, the sitting Council member shall have the sole authority to designate a representative to appear at the meeting and said representative shall have the same voting rights and obligations as the sitting Council Member.

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 § 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.

Any and all requests for assistance by the Licensee or its personnel shall be coordinated through the City Manager's Office or the City Manager's designee.

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.

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 September 3, 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. The 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 artifacts in the exhibit gallery shall remain the property of the Historical Society. 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 be provided two keys. Any replacement or duplication of keys shall be paid by the **Licensee**.

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**.

The **City** shall replace or repair any major maintenance item that is not 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**, the parking areas and outdoor lighting fixtures. The **Licensee** shall replace or repair any minor maintenance item that is routine in nature of the **Premises**, which may include the plumbing, electrical, HVAC systems, indoor lightbulb replacement and structural components of the **Premises**. The **Licensee** will be responsible for the replacement or repair any portion of the actual structures involved in displaying artifacts in the exhibit gallery.

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

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

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

The City shall conduct annual cleaning and any needed repairs of humidifier.

The City shall manage and/or conduct fire extinguisher and fire suppression inspections.

The **Licensee** shall be responsible for keeping the mural in good condition and shall be responsible to repair any vandalism, damage or major wear and tear to the mural. The Licensee has purchased insurance to address any issues related to damage or vandalism to the mural and shall utilize the insurance coverage to repair any damage or vandalism to the mural.

Licensee is responsible for routine carpet and other flooring cleaning and upkeep, including any stain removal. Professional carpet cleaning services may be hired at the expense of Licensee with prior approval from the City. Carpet and flooring will be inspected regularly by City. Any carpet replacement due to normal wear and tear is the responsibility of and at the discretion of the City (typically every 10-20 years depending on use).

In the event that the indoor paint needs to be refreshed or repaired, **Licensee** shall be responsible for the cost and repair. All work must be done with express written permission of the City Manager prior to the work being performed. The City reserves the right to approve the painter(s) for the project. Outside painting shall be performed by the **City** and shall be at the City's sole discretion.

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 the same in a commercial dumpster provided by the **City**.

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 lock and secure the **Premises** after each use. All electrical, mechanical and technology rooms shall be kept clear of debris by the **Licensee** at all times and shall be accessible

only to City personnel. Additionally, areas around electrical panels, HVAC equipment and fire suppression equipment must be kept clear and accessible at all times.

Licensee shall promptly reimburse the **City** for the cost of parts and labor for any replacement or repair or routine maintenance on the **Premises** as a result of the 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. Any damage to personal property caused by the failure of the City to maintain an item shall be repaired or replaced by the City at its discretion.

The **City** retains the right to enter any portion of the **Premises** at any and all times, reasonable notice, to inspect the **Premises** or to conduct maintenance or repairs, or for the purpose of determining whether **Licensee** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the **City** under this Agreement. In the event of an emergency, no notice shall be required to enter or repair the premises.

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.

Any maintenance, repair, cleaning, or service required from the **City** hereunder shall be performed 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 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.

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.

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 estopping 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 or his designee.

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.

City of Broken Arrow

By: _____
Michael L. Spurgeon, City Manager

Attested:

City Clerk /Seal

AS APPROVED TO FORM:

Deputy City Attorney

Broken Arrow Historical Society

By: _____
Historical Society President

Printed Name: _____

Mailing Address (other than the premises
address):

