

**USE AGREEMENT BETWEEN THE CITY OF BROKEN ARROW AND THE BROKEN
ARROW HISTORICAL SOCIETY**

This Agreement is entered 11 day of June, 2018, 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 and natural gas costs of the **Premises** during the full term of this Agreement, not to exceed \$24,000.00

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 Code of Ordinances, the **Historical Society** is permitted to serve/sell 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 Historical Society 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**.

II. TERM

The term of this license shall commence upon execution, and shall expire on June 30, 2019, unless sooner terminated in accordance with the terms and conditions of the Agreement. This agreement does not renew automatically. The Agreement may renew annually by agreement of the parties.

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.

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, and structural components of the **Premises**, the parking areas and outdoor lighting fixtures. The **Licensee** will be responsible for the replacement or repair any portion of the actual structures involved in displaying artifacts in the exhibit gallery.

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 **Licensee**.

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.

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.

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 **Licensee** is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the **City** under this Agreement.

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.

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.

As approved to form: City of Broken Arrow

Assistant City Attorney

By: _____
Michael L. Spurgeon, City Manager

Attested: _____
City Clerk / Seal

Broken Arrow Historical Society

By: Nicholas Parker
President

Printed Name: Nicholas Parker

Mailing Address (other than the premises address):

9338 S 98th east ave
Tulsa, 74133

