

## **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 Community Playhouse, Inc., a 501c3 organization, (**Licensee or Community Playhouse**).

### **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 Senior Center located at 1800 S. Main St. (**Premises**),

**City** agrees to pay for the electrical and natural gas usage of the Premises during the full term of this Agreement which is not to exceed \$14,500.00 per fiscal year.

**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 its events. **Licensee** shall allow the **City** to use, at no charge, the meeting space when schedule permits. **City** will reimburse **Licensee** for any staff's overtime expense.

**Community Playhouse** is permitted to serve/sell alcohol, subject to licensing by the Alcoholic Beverage Laws Enforcement Commission (ABLE). The **Community Playhouse** shall gain appropriate licensing from the ABLE commission for such permission. A copy of such license shall be provided to the **City** before any alcohol sales are made. The **Community Playhouse** 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**.

**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.

## II. TERM

The term of this license shall commence upon execution, and shall expire on June 30, 2023, 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 Director of Parks and Recreation (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.

**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.

**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. 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 **Licensee** shall restore the Premises to the condition that existed prior to the additions or modifications.

**Licensee** shall provide lighting and sound systems necessary for playhouse performances and other events. All such equipment and furnishings provided by **licensee** for use at the Premises shall remain the property of Licensee unless otherwise donated to **City**.

**Licensee** may not have, remove or change any locks on the Premises without the prior approval of the Director and without first supplying the Director 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 Director, or his designee, 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 the **Licensee** has allowed use of the **Premises**. **Licensee** acknowledges that access to mechanical rooms and the equipment therein is restricted to qualified **City** personnel and approved contractors. These areas are to remain locked and free from obstruction.

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, termite prevention, and structural components of the **Premises**, and the parking areas and outdoor lighting fixtures.

The **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; operation of security system), HVAC systems (setting thermostats, changing batteries in thermostats), and structural components (pest control) of the **Premises**.

The **City** shall mow and fertilize outdoor areas surrounding 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 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 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.

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, 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 part of the 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 personal injury or property damage that occurs relating to **Licensee's** activities, or **Licensee's** performance or failure to perform the terms and conditions of this Agreement. Such obligation specifically encompasses, but is not limited to, any claims, demands, suits, or actions asserted against **City** arising from a complaining party's attendance any at **Licensee** activity. Such obligation to defend, indemnify, and hold harmless 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. Termination under this Agreement shall be accomplished by the **Director** submitting to **Licensee**, at the address identified in the signature block below, written notification of the termination and the grounds therefore. The termination shall be effective as of the fifth calendar day from (1) the date the notice is deposited in the U.S Mail or tendered to a third party commercial carrier, if notice is transmitted via U.S Mail or tendered to a third-party commercial carrier (e.g., Fedex or UPS) or (2) the date received by **Licensee**, if hand delivered. 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**.

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 Court 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 and written, and all other communications between the parties with respect to the subject matter of the 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.

Approved as to Form:

City of Broken Arrow

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Attorney for City

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Michael Spurgeon, City Manager

Attested:

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City Clerk / Seal

Date of Execution:

Broken Arrow Community Playhouse, Inc.

Maria Taylor

President Signature

Printed Name: Maria Taylor

**BACP** Mailing Address:

P.O. Box 452

Broken Arrow, Ok 74013

State of Oklahoma )

) ss.

County of \_\_\_\_\_ )

Before me, a Notary Public, on this 15 day of June, 2022 personally appeared Maria Taylor known to me to be the identical person and the president of the Broken Arrow Community Playhouse, 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:

1/12/2026

A. Stevens

Notary Public

