

FIRST AMENDED CITY OF BROKEN ARROW SERVICES CONTRACT
BROKEN ARROW SENIORS, INC, (BASI)

This Agreement is entered by and between the City of Broken Arrow, Oklahoma, a municipal corporation (**City**) and the Broken Arrow Seniors, Inc., a 501c3 organization, (**BASI/Licensee**). The **City** has determined there is a continuing need for education, recreation, social and nutrition programs for senior citizens in the **City** area, The **City** further finds that **BASI** is comprised of knowledgeable people having many years' experience in this field, whose expertise can supplement the activities of the **City**.

The term of this Agreement commences on **June 30, 2023**, and expires **June 30, 2024**. This Agreement does not renew automatically.

The **City** shall pay **BASI** four thousand six hundred seventy-four dollars and fifty cents (\$4,674.50) per month totaling \$56,094.00 per year, for reimbursement to **BASI** for **BASI** to employ a fulltime person (**BASI** Executive Director) to coordinate **BASI** activities on behalf of the **City** to meet the needs described within this agreement. The selection of the **BASI** Executive Director shall be made by the **BASI** Board, after advising and considering the opinion of the City Manager of the City of Broken Arrow. Furthermore, **BASI** shall keep the City Manager apprised of any personnel matter that could affect the employment of the **BASI** Executive Director. The **BASI** Executive Director is not an employee of the **City** and has no affiliation with the **City** and is not intended to be a third-party beneficiary of this agreement. **BASI** shall have exclusive control over the **BASI** Executive Director and all its employees, officials, agents, representatives and volunteers. **BASI** agrees to make efforts to expand its activities as the needs of the community and its own resources allow, **BASI** has no authority to make any commitments that bind the **City**.

In addition to the **BASI** Executive Director, due to expended hours of the **BASI**, the **CITY** shall reimburse **BASI** up to three thousand dollars and zero cents (\$3,000.00) per month, totaling \$36,000.00 per year, as reimbursement to **BASI** for **BASI** to employ for fulltime hours a position of (**BASI** Volunteer and Events Coordinator) to coordinate **BASI** activities on behalf of the **CITY** to meet the needs described within this agreement. This position may be split into two part time positions. Such reimbursement shall only establish upon the retention of the **BASI** Volunteer and Events Coordinator, pro-rated to the date of retention. The **BASI** Volunteer and Events Coordinator is not an employee of the **CITY** and has no affiliation with the **CITY** and is not intended to be a third-party beneficiary of this agreement. **BASI** shall have exclusive control over the **BASI** Volunteer and Events Coordinator and all its employees, officials, agents, representatives and volunteers. **BASI** agrees to make efforts to expand its activities as the needs of the community and its own resources allow, **BASI**, and the Volunteer and Events Coordinator, has no authority to make any commitments that bind the **CITY**.

In addition, the **City** shall pay to **BASI** an additional \$2,500.00 per month totaling \$30,000.00 per year for additional programing and hours of operation. That payment shall not be due until an operational plan for the additional programming and hours of operations is approved by the City Manager of the City of Broken Arrow.

The **City** shall allow **BASI**'s employees to participate in the **City**'s health insurance and supplementals plan. **BASI** agrees to adopt a section 125 plan and make all applicable payments into

the plan per IRS rules regarding tax free premiums. **BASI** further agrees to take any and all action needed to accomplish insurance coverage through the **City**. **BASI** further understands that the amounts for insurance premiums may increase at any time and adjustments to contributions shall be made accordingly. Any increases shall not exceed the City's increased amount. That all participating employees shall remain employees of **BASI** and shall not be considered employees of the **City**. That the **City** shall make a monthly payment to **BASI** in an amount equal to the employer group health and life contribution (currently approximately \$22,685.00 per year, which amount may change at any time). Said amount shall be retroactive to the beginning of the fiscal year, namely July 1. That **BASI** shall be solely responsible for deducting the employer and employees' portion of health insurance and supplement payment and remitting the payment to the **City** per the terms of payment required herein by the **City** to participate. **BASI** agrees that payment of health insurance premiums and supplemental plans may be changed or addressed in the future by the **City** and **BASI** shall abide by any reasonable requirement regarding payment and remittance and the procedure for making those payments. **BASI** shall pay all applicable contributions to the health care plan and supplementals which shall be invoiced to **BASI** monthly. **BASI** shall forward all amounts due (the employer and employee deduction amounts) due under the health insurance plan and supplementals to the **City** within a reasonable amount of time after invoice but not to exceed 30 days.

BASI shall organize and distribute information, investigate and propose new programs, and coordinate existing efforts as an aid to the Senior citizens within the **City**'s community. **BASI** shall provide a comprehensive, centralized program for senior citizens, including but not limited to a nutritional program in Broken Arrow at 1800 S. Main Street and 1811 S. Main Street through a third-party user agreement with the Tulsa Senior Nutrition Program. All parties agree that the "Annex" shall be used as a catering kitchen and shall not be required to be licensed by the Tulsa County Health Department or State of OK unless required by those entities.

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.

BASI shall furnish the **City** with a copy of an approved financial review conducted by an independent accounting firm within two hundred seventy (270) days of the end of **BASI**'S current fiscal year.

BASI 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 **BASI** or its officers, employees, contractors or representatives for any purpose. **BASI** understands and agrees that all persons (including, but not limited to the **BASI** Executive Director) furnishing services in implementing this Agreement are employees solely of **BASI**, and **BASI** 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 part of the consideration for this Agreement, **BASI** 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 **BASI**, 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 **BASI** activities, or **BASI**'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.

BASI 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 to the Community Service liaison no later than 24 hours after receipt or knowledge of occurrence whichever occurs first.

Without limiting the **City**'s right to indemnification, **BASI** and each of its contractors, including but not limited to its Nutrition Program, 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. **BASI** shall include the **City** as an Additional Insured on all required insurance policies. **BASI** shall also require its contractors to list the City as an Additional Insured, **BASI** 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. **BASI** and its contractors shall maintain the required insurance with insurers that carry a Best's "A" rating, and which are licensed and admitted writing insurance business in Oklahoma. Failure of **BASI** or its contractors to obtain and maintain any required insurance does not relieve **BASI** from any liability hereunder.

This Agreement shall be subject to termination upon the failure of **BASI** 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 **BASI** 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 **BASI**.

This Agreement is not a waiver of any permit or other legal requirement or request and does not assure approval of any permit or other legal requirement or request 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. **BASI** 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.

Approved as to Form:

City of Broken Arrow

Attorney for City

Michael Spurgeon, City Manager

Attested:

City Clerk / Seal

Date of Execution:

Broken Arrow Seniors, Inc.

President Signature

Printed Name: _____

BASI Mailing Address:
