

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**).

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 Community Playhouse located at 1800 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 \$14,500.00 per calendar 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 the **Premises**. **Licensee** shall allow the City to use, at no charge, the meeting space when schedule permits and the City will pay **Licensee** for any staff's overtime expense for events.

In accordance with City of Broken Arrow Ordinance No. 2821, the **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**. 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**.

II. TERM

The term of this license shall commence upon execution, and shall expire on June 30, 2020, 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 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 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 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** 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 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, performance sound and

lighting systems), 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 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**.

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.

The parties have caused this Agreement to be executed on the dates hereinafter set forth.

As approved to form:

Danny L. Lugo Sr.
Deputy City Attorney
Asst

City of Broken Arrow

By: _____
Michael L. Spurgeon, City Manager

Attested:

City Clerk / Seal

Broken Arrow Community Playhouse

President: *Kris Osborn*

Printed Name: Kris Osborn

Date of Execution:

Mailing Address (other than premises address):

State of Oklahoma)
) ss.
County of Tulsa)

Before me, a Notary Public, on this 23rd day of August, 2019, personally appeared Kris Osborn, known to me to be the identical person who executed the within and foregoing instrument, and as President of Broken Arrow Community Playhouse, acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

5-6-23



Amanda Spurgeon
Notary Public