

AGREEMENT

THIS AGREEMENT, made on this _____ day of _____, 2023, between the City of Norman, Oklahoma, a municipal corporation (hereinafter referred to as the "City"), and the Norman Arts Council, Inc., a not-for-profit corporation (hereinafter referred to as the "NAC").

WHEREAS, an ordinance known as the "Norman Transient Guest Room Tax Ordinance" directs imposition within the City of an excise tax upon the gross proceeds derived from rents received from occupancy of hotel rooms with further directions that the taxes collected be set aside and used exclusively for purpose of encouraging promoting and fostering the convention and tourism development of the City; and

WHEREAS, City and NAC agree that the promotion of arts and humanity activities are an important part of attracting tourists and conventions to the City; and

WHEREAS, the existence of adequate park facilities likewise fosters and encourages visitors to a city; and

WHEREAS, NAC was founded in 1976 to enrich the Norman community by stimulating artistic, cultural, and economic growth through the support and promotion of the arts; and

WHEREAS, NAC first contracted with the City in 1989, as the Norman Arts and Humanities Council, for the administration of arts and humanities promotion within the City of Norman, including gathering and distribution of ideas, research, and information designed to educate Norman citizens, assisting with the development and promotion of local arts and humanities activities and attractions through the Transient Guest Room Tax Grants Program, and enhancing the City of Norman's desirability to participants in arts and humanities activities; and has performed such services on behalf of the City of Norman since that time; and

WHEREAS, NAC's exhibits, art walks, art education experiences and festivals have drawn more than One Million visitors each year to Norman; and

WHEREAS, Visit Norman and the Norman Arts Council recently proposed an increase in the Transient Guest Room Tax Rate from 5% to 8%, with a proposed split of the additional 3% between Visit Norman and Norman Arts Council, all in furtherance of the purposes of the Ordinance and pursuant to agreements with each; and

WHEREAS, it is the desire of the parties hereto that NAC continues to provide such programs and services to the City as authorized in said Norman Transient Guest Room Tax Ordinance and in prior agreements with NAC and to utilize its facilities, employees, services, and expertise as hereinafter provided.

THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and conditions herein stated, and in consideration of the mutual benefits which will accrue to each of the parties hereof, the parties hereto agree as follows:

1. **Operations.** NAC agrees to provide a qualified and competent staff to be assigned to the solicitation of art pieces and acts for the City and in this connection, to provide all the management

and administrative services necessary to attract art pieces, art acts, art educators, to contribute to the benefit of the City, and to preclude unreasonable demands and assist in the development and promotion of local activities and attractions designed to enhance City's tourist desirability. This shall include administrative tasks required for the 1% for Art designated for Norman Forward projects.

- A. It is agreed that NAC's operation under this Agreement shall be in accordance with the City's Code of Ordinances and applicable state law and its sole purpose shall be the promotion of art within the City. The NAC Board of Directors shall consist of total of twenty five (25) voting members, and one (1) Ex-Officio member, to be made up as follows:
 - i. Twenty-five (25) voting members of the Board of Directors as follows:
 - a) Nineteen (19) Directors, and six (6) officers, elected by the Board of Directors.
 - ii. One (1) Ex-Officio representative as follows:
 - a) The Director of Parks and Recreation of the City of Norman or another employee as designated by the Director of Parks and Recreation.
- B. NAC agrees to provide office space in Norman, Oklahoma, with same being used for the purpose of implementing said promotional programs as provided herein.
- C. NAC agrees to provide all utility services, including telephone, and to further provide all stationary, postage, materials, supplies and equipment necessary for the purpose of this Agreement.
- D. NAC understands and agrees that all persons working for NAC under this Agreement shall be employees of NAC and shall in no way be considered as employees of the City. Should any liability arise under the Worker's Compensation Act of the State of Oklahoma due to injury of any employee of NAC, the same shall be the sole liability of NAC. NAC agrees as part hereof to have in force and paid for Worker's Compensation Insurance during any time that employees doing work for NAC are covered by said Worker's Compensation Act.
- E. NAC agrees to comply with all applicable competitive bidding statutes and ordinances with regard to contracts for the procurement of goods and services by NAC.
- F. NAC agrees to comply with the Oklahoma Open Meetings Act and Open Records Act to the extent each Act applies to private entities accepting public funding.
- G. NAC agrees to prepare and submit to Council for review a travel policy for all out-of-town travel by representatives of NAC. Said policy shall provide in detail the

amount to be paid and criteria for the reimbursement of or payment for travel expenses.

2. Public Arts Committee

- A. NAC agrees to appoint a Public Arts Committee that will create and solicit public art pieces, review submissions for public art pieces, select artists, and oversee the installation of public art to create more appealing spaces in the City through public arts projects, with final approval of the public art and location of public art at sole discretion of City Manager or his designee. To ensure coordination regarding site locations for public art, the Director of Parks and Recreation of the City of Norman, or another employee as designated by the Director of Parks and Recreation shall serve on the Public Arts Committee in an ex-officio capacity.

B. Definitions:

- i. Art, artwork, or work of art means all forms of original creations of visual art, except for blasphemous material, as defined by section 901 of title 21 of the Oklahoma Statutes, or indecent or obscene material as defined by section 1024.1 of title 21 of the Oklahoma Statutes, including, but not limited to:
 - a) Sculptures, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;
 - b) Painting, including murals and frescoes;
 - c) Mosaic;
 - d) Photography;
 - e) Fine crafts made from clay, fiber and textiles, wood, glass, metal, plastics or any other material, or any combination thereof;
 - f) Drawing;
 - g) Calligraphy;
 - h) Mixed media composed of any combination of forms or media;
 - i) Unique architectural stylings or embellishments, including architectural crafts;
 - j) Ornamental gateways; and
 - k) Restoration or renovation of existing works of art of historical significance.
- ii. Art in public places means any visual work of art displayed for two weeks or more in a public place.
- iii. Artist means a practitioner in the visual arts committed to producing high quality work, as recognized by peers and critics of the artist, on a regular basis.
- iv. PAC means the Public Arts Committee.

- v. Maintenance means the ongoing upkeep required for artworks to retain their structural and aesthetic integrity.
 - vi. Public places means a site owned by the City with major public access and visibility that serves a business, social or environmental need. This includes public parks or other areas designated as public space, and the exterior or interior of any City-owned facility. Sites located on private property with access by the public or other public property not owned by the City shall occur only upon approval of a contract with the owner of said property by the City Council.
 - vii. Repair means those extraordinary activities required to repair or restore a malfunctioning or damaged work of art.
- C. Funding for PAC projects shall be provided by Art in Public Places Fund, Norman Forward 1%, the Voluntary Contribution to the Public Arts utility bill program, and any other funds intended to contribute to art accessible to the public. Such funds shall be deposited into an account used solely for the actions of PAC.
- D. Duties and powers of the Public Arts Committee.
- i. Adopt operating procedures for the operation of the PAC.
 - ii. Prescribe methods for competitive selection of art for display, including a method for appealing the decisions of the Public Arts Committee.
 - iii. Prescribe procedures for the acquisition and display of art in public places or other locations accessible to the public.
 - iv. Solicit submissions for works of art to be displayed in public places or other locations accessible to the public.
 - v. Maintain a detailed record of all art in public places or other locations accessible to the public, including site drawings, photographs, designs, names of artists, and names of architects, where feasible, and said records shall be housed by and maintained by the Norman Arts Council. The PAC shall attempt to give appropriate recognition to the artists and provide publicity and promotional materials regarding art in public places or other locations accessible to the public on the City website and with annual inserts provided in the City utility bill.
 - vi. Contract with artist (after approval by the City Manager for the piece and location) for the donation, commission, or purchase of art, and providing for the ownership in the name and title of said art to be held by the City or by the owners of the property the art is to be located on.
 - vii. Review all art submissions and make recommendations to the City Arts Council regarding which pieces should be displayed by the City in a

public place, as well as the location of the display of said art. Such determinations are to be made in accordance with the mission stated herein and according to the operating procedures as adopted by the PAC.

- viii. Seek community input whenever possible from those potentially affected by the placement of public art.
- ix. Employ outside consultants as necessary to assist in the mission of the PAC.
- x. Make recommendations to the City Arts Council regarding the acquisition, commission, and display of public art.
- xi. Submit to the City Council, not later than March of each year, a report of its activities for the prior year.

3. Reporting

- A. NAC agrees to devote its best efforts to the City's interest and to endeavor in every way to increase the value of the City as a tourism center by attracting artworks and programs to the City. NAC understands and agrees that the establishment of objective criteria by which to judge NAC's performance is necessary and an important part of this Agreement. As part of its reports to the City Council and in any event no less than semi-annually, NAC shall provide Council with the information set forth herein.
- B. NAC shall report to the City no less than approximately semi-annually, with information that provides the City with a reasonably good understanding of the activities that NAC has undertaken since the prior reporting through efforts to encourage, promote, and foster the arts and art programming development in the City. The information will provide to the City with knowledge as to the NAC's work in areas such as, but not limited to, the following:
 - i. Arts acquisition activities, including those of the PAC;
 - ii. Marketing and communications activities and performance measures;
 - iii. Arts programming and education events;
 - iv. Funding efforts for Tourism and Promotion (such as the 2nd Friday Norman Arts Walk program); and
 - v. The total return on investment, with such figures as may be related to visitor spending, convention sales, and marketing/communications.

These semi-annual reports shall include one annual report provided to the City of Norman Board of Parks Commissioners.

- C. NAC shall furnish quarterly financial reports that include revenue and expense reports compared to budget and balance sheets covering the period and the year-to-date. The year-end financial report submitted by NAC to the City shall include an audited financial statement for the previous year. Said audited financial statement

shall be furnished by NAC to the City as soon as reasonably possible after the close of the previous fiscal year.

4. Funding

- A. The parties hereto agree that of the sums collected from the Norman Transient Guest Room Tax, the City of Norman shall retain Four Percent (4%) to reimburse the City for its administrative costs involved in administering the tax and administering the contract. Of the remaining Ninety-Six Percent (96%), 25% shall be paid to NAC as compensation for its services rendered during the term of the Agreement. Of the remaining tax collected, 15.625 % shall be set aside for the Norman Parks Department.
- B. The City agrees to remit to NAC any funds collected by the City from the Voluntary Contribution to the Public Arts utility bill program in monthly increments during the term of this Agreement.
- C. The City agrees to pay to NAC the funds received from the Norman Transient Guest Room Tax in monthly increments during the terms of this Agreement. Prior to May 1 of each year, NAC shall prepare and submit to the City Council a detailed plan of work and integrated budget for Ninety-Five Percent (95%) of the estimated revenues of the next fiscal year. The City's contribution to NAC's estimated revenues shall be based upon the City Manager's estimate. NAC may not spend funds until both the detailed annual plan of work and integrated budget are approved by the City Council. Funds will not be available from the room tax fund until appropriated by the City Council.

5. Term of Agreement

- A. The terms of this Agreement shall be for a one-year period commencing on the 1st day of July, 2023, and shall terminate on the 30th day of June, 2024, provided, however, that this Agreement shall be self-executing for each new year unless either party hereto, at least sixty (60) days prior to the renewal date, which date shall be the day, one year subsequent, as the commencement date as set forth above, gives notice of intent to terminate this Agreement, in writing, to the current operating address and Manager of the other party.
- B. In case the NAC herein enter into an arrangement or bankruptcy or receivership under the laws of the United States and/or any State, either voluntarily or not voluntarily, the City may elect to declare the unexpired term of this Agreement cancelled as of the date of such event.

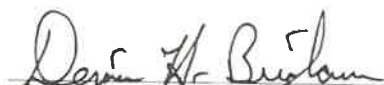
6. Integration. This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

7. **Waiver.** The Waiver by the City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of such term, condition or covenant or any subsequent breach of the same, or any other term, condition or covenant.
8. **Modification.** No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.
9. **Severability.** Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

WITNESS our hands the 7 day of July, 2023, at Norman, Oklahoma.

NORMAN ARTS COUNCIL, INC.

By:


Dennis Brigham, President

ATTEST:



President Elect

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 7 day of July, 2023.



CITY ATTORNEY