

**CITY CLERK
ORIGINAL**

**C-8825
07/01/2013**

**City of Glendale
Facilities Use Agreement**

This Facilities Use Agreement ("Agreement") is entered into as of **(July 1, 2013)** (the "Effective Date"), between the City of Glendale ("City") and Glendale Arts Council ("Licensee") for the use by Licensee of the Fruit Packing Shed at Sahuaro Ranch Park Historic Area ("Facilities").

RECITALS

WHEREAS, Licensee has a mission dedicated to promoting the visual arts in Glendale and has partnered with the City since 1963 to provide opportunities for residents and visitors to create, display, sell and purchase art; and

WHEREAS, the mission of the Licensee is consistent and complements the objectives of the City of Glendale Municipal Arts Program; and

WHEREAS, Licensee wishes to obtain from the City a license to use the Fruit Packing Shed at Sahuaro Ranch Park Historic Area; and

WHEREAS, the City's approval of such use is contingent upon Licensee's adherence to all policies established by the City for such uses.

AGREEMENT

NOW THEREFORE, it is agreed as follows:

1. Facilities. Subject to the terms of this Agreement and the policies established by the City, the City agrees that Licensee may use the following Facilities:

The Fruit Packing Shed and any other mutually agreed upon locations at the Facilities.

2. Exclusive Use. Licensee may use the Facilities for the following purpose or purposes, and for no other purpose or purposes: exhibits and receptions for the Juried Fine Arts Show, subject to dates and times set forth by the City in Section 3 of this Agreement.

- a. Licensee agrees to conduct its activities in the Facilities in a careful and safe manner and in accordance with the terms of this Agreement;

- b. Licensee agrees to comply with all laws and regulations, and with the policies and regulations of the City pertaining to the use and occupancy of the Facilities;
- c. Licensee agrees to exercise due caution and apply good and diligent care in the use of the Facilities and to maintain the Facilities in as good order and condition as it was prior to Licensee's use;
- d. Licensee agrees not to use or allow the Facilities to be used for any unlawful purposes and to not commit or allow to be committed any waste or nuisance in or about the Facilities or subject the Facilities to any use that would damage the Facilities or raise or violate any insurance coverage maintained by Licensee or the City;
- e. Licensee agrees that the City may terminate or preclude any use immediately upon a determination by the City, at its sole discretion and consistent with its police powers, that such a use would endanger the public or be inconsistent with the health, safety and general welfare of the public;
- f. Licensee agrees that nothing within this Agreement shall be construed to have created a tenancy of any type or manner;
- g. City agrees to provide assistance to Licensee with mutually agreed upon programs that the Licensee provides, such as assisting with preparation (e.g. moving & painting art panels) of the space for the exhibit and advertising and promoting the event in appropriate city publications, website and social media outlets. This includes any future obligations mutually agreed upon by the parties in this contract.
- h. Licensee agrees to provide the City a list of all artwork and equipment kept in the facility at the beginning of the juried exhibition period. The Licensee shall provide an inventory that lists each artwork to be exhibited. This inventory shall include for each piece the full appraised or owner's estimated value for purposes of insurance, the name of the owner of the piece, the year the piece was created, the medium of the piece.
- i. Upon request by the City, the Licensee and a City representative will review the condition and location of all artwork and equipment prior to opening the exhibit so as to address the protection of the art work, equipment, and the public.

- j. The City shall not accept responsibility for the Artwork when Glendale Arts Council representatives are not on site. In no event shall the City's be responsible for damage to the art or art pedestals before, during or after the exhibition period regardless of the actual dates of installation and removal. All artwork is subject to reasonable wear while on exhibit. Reasonable wear, such as small scratches and dirt on frames, will not be compensable.
- k. The Licensee agrees to remove all artwork and equipment located at the Facilities surrounding area within one week of the closing of the art exhibition. The City will assist with the removal of all equipment, accessories, and all items not related to the actual submitted artwork. If Licensee fails to pick up the artwork from the Facilities within one week from the closing of the exhibit, the City shall have the right to place the Artwork in storage. The City shall charge the Licensee reasonable storage fees and costs. Furthermore, the City may seek any and all legal remedies at its disposal to collect the reasonable storage fees and costs.
- l. The initial term of the agreement shall be for five years and commence upon execution and expire five (5) years thereafter, unless sooner terminated pursuant to the provisions contained herein. This agreement may be renewed only by the mutual written consent of the parties.

3. Use Periods. Licensee may use the Facilities listed above on the mutually agreed upon dates and during the following hours ("Use Periods"), subject to mutual change:

- Established park hours, plus five evenings until 10:00 p.m.
- January 1 -31.

4. Condition of Facilities. The City will make reasonable efforts to construct and maintain the Facilities consistent with their intended uses, to include a working security system and monitoring service. Licensee assumes sole and full responsibility to inspect and investigate the Facilities to assure its use can and will be conducted in a safe manner. Any deficiency perceived by Licensee shall be immediately brought to the City's attention. The City may, at its sole option, address the condition of concern or cancel this Agreement. Should the City elect not to correct the condition and Licensee decides to proceed with the use, Licensee assumes full responsibility for the condition and indemnifies the City as set forth below.

5. Facility Improvements. Beginning in calendar year 2014, Licensee agrees to contribute annually to the facility improvement fund in the amount of no less than \$1,500 annually. Funds will be dedicated to making annual structural and aesthetic improvements to the Fruit Packing Shed. The City shall seek input from the Licensee regarding the use of these funds prior to improvements beginning. The contribution shall be made in full no later than 60 days after last day of each occupancy period.

6. Insurance. Licensee, at its expense, agrees to procure and maintain during the term a policy of commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000), single limit, against claims for bodily injury, death and property damage occurring in connection with Licensee's use of the Facilities. The policy and the insurer shall be acceptable to the City.

- a. This insurance must name the City of Glendale as additional insured;
- b. Insurance must be issued by an insurer authorized to do business in the State of Arizona; and
- c. Licensee must provide City with a certificate evidencing this insurance coverage no later than 180 days prior to Licensee's use of the Facilities.

7. Indemnification. Licensee shall indemnify, defend, and save harmless the City from any and all claims, demands, suits, actions, proceedings, losses, costs and damages of every kind and description, including attorneys' fees and litigation expenses, which may be brought or made against or incurred by the City as the result of (i) any injuries to or death of a person, (ii) any loss or damage to property, or (iii) any breach or default in the performance of any obligation on Licensee's part, including any claims of a purported third party beneficiary of this Agreement, and which are or asserted to be or have been caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake, or negligence of Licensee, its agents, employees, representatives, sublicenses or invitees, in connection with or incidental to any use, authorized or unauthorized, or any occupancy of the Facilities. Licensee's obligation hereunder shall not extend to any liability that is the sole negligence of the City (such negligence shall exclude liability arising as a result of a non-delegable duty). Licensee's obligation under this provision shall survive the termination or expiration of this Agreement regardless of the purpose of the termination.

8. Prohibitions.

- a. Other than for show sponsors, Licensee shall not permit any commercial advertising to be displayed in or upon the Facilities without the prior approval of the City, which consent may be granted or withheld at City's sole discretion; Licensee shall make its request thirty days before the event or date of planned use. The Licensee may display four non-commercial banners on the Fruit Packing Shed and at the park entrance promoting the art shows.
- b. Licensee shall not permit any alcohol to be sold, consumed, stored, or transported in, upon or through the Facilities without a specific, separate license for such activity.
- c. In accordance with all applicable federal and state laws, Licensee shall not permit any firearms, other weapons, or dangerous objects to be possessed in or upon the Facilities, with the exception of City approved exhibits.
- d. The City's name cannot be used to suggest co-sponsorship or endorsement of any activity without prior written approval by the City; Licensee shall make its request thirty days before the event or date of planned use.
- e. Licensee shall not admit a larger number of persons than can safely and freely move about in the Facilities. The City shall notify Licensee of the recommended capacity of the Facilities and the decision of the City concerning questions arising under this paragraph shall be final.
- f. Licensee shall request written approval to use City's equipment, tools or furnishings, located in or about the Facilities, beyond items used annually to prepare and operate the exhibits (ladder, refrigerator, tables, chairs) thirty days before the event or date of planned use.
- g. Licensee shall not produce or allow amplified sound, live or recorded music or any other noise that might disturb the neighborhoods surrounding or near the Facilities after 10:00 p.m.;
- h. Licensee will not permit any hazardous substance to be used, stored, generated or disposed of on, in, or about, or transported to or from, the Facilities, by Licensee, Licensee's agents, employees, Licensees, invitees, subtenants, or concessionaires without first obtaining City's written consent, which City may give or withhold at its sole discretion, or revoke at any time. If City consents, all hazardous substances must be handled at Licensee's sole cost and expense, in

compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. Without limitation, if Licensee causes or permits the presence of any hazardous substance on, in or about the Facilities and this results in contamination of any part of the Facilities, Licensee will promptly, at its sole cost and expense, take all necessary actions to return the Facilities and any adjacent facility to the condition existing prior to the presence of any hazardous substance; provided, however, Licensee shall first obtain City's approval for any such remedial action. "Hazardous substance" means any substance regulated by any local government, the State of Arizona or the United States government. Hazardous substance includes any material or substances that are defined as "hazardous material," "hazardous waste," "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local government law. Hazardous substance includes, but is not restricted to, asbestos, polychlorobiphenyls and petroleum.

i. Immigration Law Compliance.

Licensee, and on behalf any sublicensee, or subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, as amended, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

Any breach of warranty of Immigration Law Compliance is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

City retains the legal right to inspect the papers of any Licensee or sublicensee employee who performs work under this Agreement to ensure that the Licensee or any sublicensee is compliant under A.R.S. § 41-4401.

City may conduct random inspections, and upon request of City, Licensee shall provide copies of papers and records of Licensee demonstrating continued compliance with the warranty under A.R.S. § 41-4401. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of A.R.S. § 41-4401.

Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Licensee and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any sublicensee to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

j. Licensee, and on behalf any sublicensee, certifies, to the extent applicable under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that neither has "scrutinized" business operations, as statutorily defined above, in Sudan or Iran.

9. Additional Users. Licensee understands and agrees that during the term of this Agreement there may be other events taking place in other parts of the Facilities not covered by this Agreement. Licensee shall conduct its activities so as not to interfere with other events.

10. Parking Facilities. The City shall make the parking facilities at the Facilities available for the vehicular traffic and parking necessitated by Licensee's use on a nonexclusive basis.

11. Violations. If at any time the use of the Facilities by Licensee violates this Agreement, any and all applicable laws, rules or regulations of the City of Glendale, County of Maricopa, State of Arizona or the United States of America, Licensee shall either cease or desist from continuing such use or shall surrender the Facilities forthwith upon demand of the City.

12. Control of Facilities. In permitting the use of the Facilities described herein, the City does not relinquish control or custody thereof and does hereby specifically retain the right to enforce any and all laws, rules and regulations applicable thereto. All portions of the Facilities will and at all times be under the charge and

control of the City. Employees, officials, agents or other authorized representatives of the City may enter upon the Facilities at any and all times to make inspections to ensure compliance with this Agreement.

13. Assignment. Licensee does not have the right to assign this Agreement or allow any other person or entity to use or occupy any of the Facilities without the prior written consent of City, which consent may be granted or withheld at City's sole discretion.

14. Default and Termination. If Licensee fails to pay any fee or other sum required to be paid by Licensee when due, or otherwise fails to comply with or observe any other provision of this Agreement or the City's policies, in addition to any other remedy that may be available to City, whether at law or in equity, City may immediately terminate this Agreement and all rights of Licensee. Both parties may terminate for convenience, and the terminating party must give the non-terminating party 180 days notice.

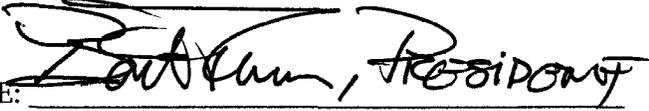
15. Interpretation. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Arizona, the courts of which state shall have jurisdiction over its subject matter.

16. Relationship. Neither Licensee nor any personnel of Licensee will for any purpose be considered employees or agents of City. Licensee assumes full responsibility for the actions of Licensee's personnel, and is solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits. Licensee is an independent Licensee and not the agent or employee of the City.

17. Authority. The individual signing below on behalf of Licensee hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of Licensee and that this Agreement is binding upon Licensee in accordance with its terms.

18. Miscellaneous.

- a. Licensee agrees to comply with all federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.
- b. This Agreement is subject to A.R.S. §38-511. This Agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of City is an employee, consultant, or agent of any other party to this Agreement.
- c. If City's performance under this Agreement depends upon the appropriation of funds by the City Council, and if the City Council fails to appropriate the funds necessary for performance, then City may provide written notice of this to Licensee and cancel this Agreement without further obligation of City.

LICENSEE:  Paul Chun, President Date: 10.18.13
GLENDALE ARTS COUNCIL

CITY:  Date: 12.17.13
Erik Strunk, Executive Director