

PROGRAM AGREEMENT

This Program Agreement (Agreement) is entered into as set forth below between Arts Council Oklahoma City (Group) and The City of Oklahoma City (City).

WITNESS:

WHEREAS, the City provides an extensive system of parks and recreational venues and services for the use and enjoyment of the public; and

WHEREAS, the mission of the City's Parks and Recreation Department (OKC Parks) is to provide cultural, social, and recreational experiences to our community so they can have the opportunity to cultivate wellness and enjoy a healthy lifestyle; and

WHEREAS, Group is a local non-profit dedicated to bringing the arts and the community together through arts outreach activities that impact underserved populations; and

WHEREAS, for many years, Group and OKC Parks have partnered to provide arts programming; and

WHEREAS, through this partnership, which has included initiatives such as "Arts in the Park," participants have learned about art and the positive impact it can have on their lives; and

WHEREAS, the parties wish to enter into a new Agreement to continue providing the types of activities described above.

NOW, THEREFORE, the City and Group agree:

1. **TERM**

This Agreement shall be effective from July 1, 2023, through June 30, 2024.

2. **NOTICES**

A. Official communications to the City regarding this Agreement shall be sent to:

The City of Oklahoma City
Parks and Recreation Department
420 West Main Street, Suite 210
Oklahoma City, Oklahoma 73102
okcparks@okc.gov
(405) 297-3882

and

The City of Oklahoma City
City Clerk's Office
200 North Walker Avenue, 2nd Floor
Oklahoma City, OK 73102
cityclerk@okc.gov
(405) 297-2391

B. Official communications to Group regarding this Agreement shall be sent to:

Arts Council Oklahoma City
c/o All Access Arts Director
400 West California Avenue
Oklahoma City, OK 73102
jcoker@artscouncilokc.com
(405) 270-4848

or to the persons or addresses the parties later designate in writing.

3. COMPLETE AGREEMENT

This Agreement contains all terms agreed to by the parties. Neither party shall be bound by any statement or representation that does not conform to this Agreement.

4. GOVERNING LAW

This Agreement shall be governed by, and construed according to, Oklahoma law. It shall be interpreted as a whole according to its fair meaning.

5. VENUE OF ACTIONS

Any legal proceeding regarding this Agreement shall be pursued in the appropriate court in Oklahoma County, Oklahoma. Each party shall pay its own attorney fees or other expenses related to such legal proceeding.

6. AMENDMENT

This Agreement may be amended by written consent of both parties.

7. ASSIGNMENT

This Agreement shall not be assigned without written approval of the City.

8. SECTION HEADINGS

The Section headings of this Agreement are for convenience only and shall not affect its meaning or interpretation. Group acknowledges that its signatory was able to fully review all Agreement terms before signing. This Agreement shall not be construed in favor of (or against) either party based on who drafted it.

9. REPRESENTATIONS

Group warrants that it can fulfill its obligations under this Agreement and that its signatory can bind it under the Agreement terms.

10. LAW GOVERNING TORT LIABILITY

Any tort action brought against the City under this Agreement shall be governed by the Oklahoma Governmental Tort Claims Act (51 O.S. § 151 et seq., Tort Claims Act), as it may be amended.

11. SEVERABILITY

If any part of this Agreement is determined by a court of appropriate jurisdiction to be invalid, that shall not affect other parts of this Agreement, which shall remain in full force and effect.

12. NO JOINT VENTURE

This Agreement shall not create a joint venture or agency or employment relationship between the City and Group or their agents, contractors, or participants.

13. CITY DESIGNEE

The City Manager of the City or designee is authorized to exercise any right or duty of the City under this Agreement.

14. NON-DISCRIMINATION

Group shall not discriminate against any person because of age; race; creed; color; religion; sex (to include sexual orientation, gender identity, or gender expression); national origin; ancestry; or disability as defined by the Americans with Disabilities Act, as it may be amended; in furnishing services, privileges, activities, or employment opportunities under this Agreement. Nothing in this Section shall prohibit Group from establishing categories for participation based on the age, gender, or skill level of the participants.

15. CONSIDERATION

- A. The City shall coordinate Group's use of multiple OKC Parks recreation centers throughout Oklahoma City to present the arts programming described in Subsection 15.C. For its services, the City shall pay Group five thousand dollars (\$5,000).
- B. The payments required under Subsection 15.A. shall be made as follows:
- Two thousand five hundred dollars (\$2,500) for services provided from July 1, 2023, through July 31, 2023, shall be due by August 15, 2023. This payment shall be contingent upon Group's timely submission of an itemized invoice reasonably acceptable to the City and subject to applicable timeframes for processing such claims.
 - Two thousand five hundred dollars (\$2,500) for services to be provided between August 1, 2023, and June 30, 2024, shall be due by July 15, 2024. However, it shall be contingent upon Group's timely submission of an itemized invoice reasonably acceptable to the City and subject to applicable timeframes for processing such claims.
- C. Group shall provide approximately one hundred and fifty-eight (158) hours of arts programming at various City recreation centers. This shall include, but is not limited to, furnishing all needed supplies, equipment, and instructors. Participants shall receive instruction in fine arts-related subjects (e.g., painting, sculpting, principles of art, etc.). The parties acknowledge that Group's activities under this Agreement shall include five thousand dollars (\$5,000) of in-kind services, bringing the total value of services provided under this Agreement to ten thousand dollars (\$10,000).

- D. The parties' authorized agents shall agree in advance on venues for presenting the arts programming, as well as its content, duration, and scope. Such agreement shall not be unreasonably withheld.
- E. Additional components of the arts programming may be added, if supplemental funding is identified. The parties' authorized agents shall, by mutual agreement, determine the additional cost per site at the time of program expansion. Such agreement shall not be unreasonably withheld.

16. INDEMNIFICATION

- A. Group shall release, defend, indemnify, and hold harmless the City, and its officers, agents, and employees, for any claims or liability arising from any activity under this Agreement. This provision shall survive the expiration or termination of this Agreement, not be limited by any other Agreement provision, and be binding upon Group's representatives, successors, and assigns.
- B. The City is constitutionally and statutorily prohibited from indemnifying any third party. This includes, but is not limited to, Group, pursuant to Article X, Sections 9, 14, 17, 19, and 26 of the Oklahoma Constitution and the Tort Claims Act, as it may be amended.

17. INSURANCE

- A. Group shall provide a comprehensive general liability insurance policy sufficient to meet the City's maximum liability under the Tort Claims Act, as it may be amended. The current required minimum general liability coverage is one hundred seventy-five thousand dollars (\$175,000) per person for injury or death, twenty-five thousand dollars (\$25,000) per claim for property damage, and one million dollars (\$1,000,000) for all claims arising from a single occurrence, to be effective throughout the Agreement term. Group shall pay required insurance premiums or deductibles.
- B. Group's insurance policy shall name the City as additional insured. Group shall not cancel, fail to renew, nor decrease the limits by endorsement without thirty (30) calendar days' prior, written notice to the City by certified mail using the contact information contained in Subsection 2.A.
- C. Group shall provide employers' liability insurance and workers' compensation insurance as required by state law.
- D. Group shall provide a Certificate of Insurance to the City's authorized agent(s) before this Agreement is docketed for City Council action. (See Attachment A, incorporated herein.)

18. EXCUSABLE DEFAULT

Neither party shall be in default of this Agreement if it cannot perform its obligations due to conditions beyond its control. These shall include, but are not limited to, Acts of God, fire, severe weather, riot, terrorism, strikes, lawsuits or appeals, zoning or other governmental appeals, unforeseeable limits on necessary resources, or any unforeseeable act or omission.

19. TERMINATION FOR CAUSE

- A. Consistent with the requirements of Section 18, if Group fails to fulfill any Agreement terms, the City may give it written notice to correct such breach within ten (10) calendar days. If Group does not do so, the City may terminate this Agreement immediately thereafter without cost or liability. However, if Group has made substantial progress toward correcting the breach within the written-notice period, Group shall have a reasonable time to fully correct such breach.
- B. Consistent with the other requirements of this Section, if during any program session, the City's authorized agent(s) determine, in good faith, that Group has allowed a condition that poses a significant danger to persons or property, they may declare Group to be in breach and terminate this Agreement immediately thereafter without cost or liability. However, if upon such notice, Group demonstrates an ability to promptly correct the situation, it shall have a reasonable opportunity to do so before the City terminates this MOU.
- C. If the City terminates this Agreement for cause, as authorized in Subsections 19.A. or 19.B., Group shall promptly return to the City, on a prorated basis and without interest, any unused portion of the consideration required under Subsection 15.A.

20. TERMINATION WITHOUT CAUSE

- A. Either party may terminate this Agreement, for any reason and without cost or liability, upon thirty (30) calendar days' written notice to the other party.
- B. If Group terminates this Agreement without cause, as authorized in Subsection 20.A., Group shall promptly return to the City, on a prorated basis and without interest, any unused portion of the consideration required under Subsection 15.A.

21. COMPLIANCE WITH LAWS

This Agreement shall be subject to applicable laws, rules, regulations, guidelines, and policies.

22. BACKGROUND SCREENING PROCESS

Group shall ensure that its employees, agents, or volunteers who will interact with youth under this Agreement pass a background screening process consistent with the OKC Park's Youth Protection Policy (see Attachment B, incorporated herein). Group shall maintain documentation of such background screening processes and provide it to the City's authorized agent(s) upon request.

23. WAIVER OF BREACH

The City may waive any Agreement breach. However, that shall not constitute a continuing waiver of such breach, or similar Agreement breaches. Also, the City may later require Group to comply with any previously waived Agreement breach.

24. LIAISONS

The City and Group shall each designate at least one (1) representative to coordinate Agreement-related issues and serve as liaisons between the parties.

25. EMERGENCY, INCLEMENT WEATHER, OR UNFORESEEN CIRCUMSTANCE

- A. If an emergency, inclement weather, or other unforeseen circumstance threatens to prevent Group from conducting any Agreement activity, the parties shall notify each other's liaisons as soon as is feasible.
- B. If either party, acting in good faith, elects to postpone or cancel any Agreement activity as provided for under this Section, it shall do so in writing to the other party (by email, text, or other means). Group shall be responsible for providing proper notice of such postponement or cancellation to program participants and their parents or legal guardians.
- C. If any Agreement activity is postponed or cancelled, as provided for under this Section, the City and Group may reschedule it upon mutual consent, which shall not be unreasonably withheld.
- D. Postponement or cancellation of any Agreement activity due to an emergency, inclement weather, or other unforeseen circumstance shall be without cost or liability to the City.
- E. As used in this Section, an emergency or other unforeseen circumstance shall include, but is not limited to, a declaration of a state of emergency by a federal, state, or local jurisdiction that substantially impacts, or prevents Group from conducting, any Agreement activities.

REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE TO FOLLOW

APPROVED by Arts Council Oklahoma City this 1st day of June, 2023.

Nick Caudle
Authorized Agent
Nick Caudle

Oklahoma County)
) SS:
State of Oklahoma



This instrument was acknowledged before me on this 1st day of June, 2023.
Notary Public Katy Caudle My commission expires 10/20/2026

APPROVED by the Council of The City of Oklahoma City this 20TH day of JUNE, 2023.

Amy K Simpson
City Clerk



David Holt
Mayor

REVIEWED for form and legality.
Jill Burnett
Assistant Municipal Counselor

Attachment A
Certificate of Insurance
(Attached)

Attachment B
Youth Protection Policy
(Attached)

City of Oklahoma City
Parks and Recreation Department
YOUTH PROTECTION POLICY

Section I:

1. The City of Oklahoma City Parks and Recreation Department (Department) operates numerous recreational facilities in which youth sports/activities organizations play a prominent role. The Department wishes to protect the youth of the City who are participating in youth sports/activities sponsored or funded by the City, or by any youth sports/activity organization using a City facility.
2. This Youth Protection Policy (Policy) shall apply to all volunteers who have direct contact with youth sports/activities participants (with the exception of special event volunteers) for any youth sports/activities organizations sponsored or funded by the City, or by any youth sports/activities organizations using a City facility.
3. The City hereby adopts the standards of the National Recreation and Park Association (NRPA) recommended guidelines for credentialing volunteers. The following are the criteria for the exclusion of adult volunteers including, but not limited to, managers, sports officials, coaches, or any other volunteer who has direct contact with youth sports/activities participants. An adult means a person eighteen (18) years of age or older. Any adult volunteer shall be disqualified from participating as a volunteer of a youth sports/activity organization if the person has been found guilty of any one of the crimes listed below. "Guilty" means that person was found guilty following a trial, entered a guilty plea, or entered a no contest plea accompanied by a finding of guilt, regardless of whether there was an adjudication of guilt or a withholding of guilt.
 - a. All sex offenses, regardless of the amount of time since the offense. Examples include, but are not limited to: child molestation, rape, sexual assault, sexual battery, sodomy, prostitution, solicitation, indecent exposure, or similar offenses.
 - b. All felony offenses involving violence, regardless of the amount of time since the offense. Examples include, but are not limited to: murder, manslaughter, aggravated assault, kidnapping, robbery, or aggravated burglary.
 - c. All felony offenses, other than violence or sex offenses, within the past ten (10) years. Examples include, but are not limited to: drug offenses, theft, embezzlement, fraud, or child endangerment.
 - d. All misdemeanor violence offenses within the past ten (10) years. Examples include, but are not limited to: simple assault, battery, domestic violence, or hit and run.

- e. Two (2) misdemeanor drug or alcohol offenses within the past seven (7) years. Examples include, but are not limited to: driving under the influence, simple drug possession, drunk and disorderly conduct, public intoxication, or possession of drug paraphernalia.
 - f. Any other misdemeanor within the past five (5) years that would be considered a potential danger to children or is directly related to the functions of that volunteer. Examples include, but are not limited to: contributing to the delinquency of a minor, providing alcohol to a minor, or theft – if the volunteer is to handle money.
 - g. Any adult volunteer who has been charged with any of the disqualifying offenses above, and with a case pending in court, shall not be permitted to volunteer until the official adjudication of the case.
4. The Department shall require all adult volunteers to complete a background screening and to pay a fee to cover the background screening process. Exception: the cost of a background screening process fee shall be paid for by the Department for volunteers associated with Department's youth sports programs and activities.
 5. Sports officials/umpires working Parks and Recreation Department youth sports programs and activities shall pay the fee to cover the costs of the background screening process. Adult volunteers who have not successfully passed the background screening process shall not be allowed to officiate/umpire any youth sports/activities games, leagues, tournaments, etc.
 6. The City shall use a qualified entity to undertake the background screenings. The criteria set forth above shall be applied by the background screening entity. The background screening entity shall conduct the background screenings and provide the results to the Department.
 7. If the Department determines an adult volunteer does not meet the criteria set forth herein, the Department shall provide notice to the adult volunteer that they shall not be permitted to volunteer in any youth sports/activities program, league, tournament, etc.

Section II:

1. All partner youth sports/activities organizations shall comply with this Policy and shall not permit any adult volunteer who has not successfully passed the background check to participate as a volunteer with their organization. All volunteers associated with partner youth sports/activities organizations using City property shall comply with this Policy.

2. The youth sports/activities organization shall submit an affidavit, on a form provided by the Department (**see Exhibit A**), that the youth sports/activities organization shall not use any volunteer who has direct contact with youth sports/activities participants who has not undergone a background check as required by this Policy, or who failed the background check based upon criteria set forth in this Policy. Such affidavit shall be submitted to the Department Director or his designee prior to any youth sports/activities. Prior to the background checks, all volunteers shall submit the national background screening consent form (**see Exhibit B**).
3. In addition to the above requirements, and in accordance with this Policy, all youth sports organizations that are independent sanctioning authorities and that have athletic coaches who volunteer for a youth athletic team for twenty (20) or more hours within a calendar year shall provide evidence that a background check of the athletic coach has been conducted. An “independent sanctioning authority” means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team, sport or activity, if the team includes one or more minors and is not affiliated with a private school.

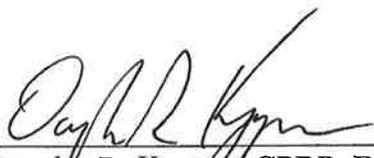
Attachments:

Exhibit A – Affidavit Form

Exhibit B – National Background Screening Consent Form

Recommended by the Oklahoma City Park Commission: March 18, 2015.

Effective Date: March 18, 2015.



Douglas R. Kupper, CPRP, Director
Parks and Recreation Department

EXHIBIT A

City of Oklahoma City
Parks and Recreation Department

YOUTH SPORTS/ACTIVITIES BACKGROUND CHECK AFFIDAVIT

I, the undersigned, being first duly sworn, do hereby affirm, under oath and penalty of perjury, that the following statements are true:

1. I am 18 years of age or over and am a resident of the state of Oklahoma.
2. I am the All Access Arts Director (title) of Arts Council Oklahoma City (name of youth sports organization), and I have the authority to make the representations set forth within this Affidavit.
3. In accordance with the Oklahoma City Parks and Recreation Department Youth Protection Policy, volunteers who have direct contact with youth sports/activities participants have passed the criminal background check.
4. My organization will not use any volunteer who has direct contact with youth sports/activities participants who has failed, or not undergone, the criminal background check.

Executed this 1 day of June, 2023.

By *Nick Caudle*
(Signature)

By Nick Caudle, All Access Arts Director
(Name and Title)

Oklahoma County)
) SS:
State of Oklahoma)

This instrument was acknowledged before me on this 1st day of June, 2023.

Notary Public *Katy Caudle*

My commission expires 10/20/2026



Exhibit B

Oklahoma City Parks and Recreation Department National Background Screening Consent Form

Applicant's **Legal** Name (printed):

Social Security Number: _____ Date of Birth: _____

Applicant's Address:

City: _____ State: _____ Zip: _____

I, _____, authorize and give consent for the Oklahoma City Parks and Recreation Department (Department) to obtain information regarding myself. This includes the following:

- Local & National Criminal Background Records/Information
- All 50 State Sex Offender Registries
- Full Address Trace
- Social Security Verification

I, the undersigned, authorize this information to be obtained, either in writing or via telephone, in connection with my application. Any person, firm or organization providing information or records in accordance with this authorization is released from any and all claims of liability for compliance. Such information will be held in confidence in accordance with the Department's guidelines.

By signing this document, I provide the Department my consent for an initial background check, as well as any subsequent background checks the Department deems necessary.

Print Name: _____ Date: _____

Signature: _____