

CONTRACT FOR OF ENGLEWOOD DISTRICT PUBLIC AREA FOR RE-ART FESTIVAL

THIS CONTRACT, made and entered into this _____, 2023 by and between the **CITY OF INDEPENDENCE, MISSOURI**, a municipal corporation, the “**City**”, party of the first part, and the **ENGLEWOOD ARTS**, 10901 E. Winner Road, Independence, Missouri, a Missouri corporation, the “**Arts**”, party of the second part.

WITNESSETH: That the City Council of the City deems it to be in the best interests of the City and its citizens to promote City pride, commerce, art, housing and tourism through cooperation with the Arts, in the production of the Englewood ReArt Festival, the “Festival”. In order to further this purpose, the City hereby grants permission and authority to the Arts upon the terms and subject to the conditions of this contract, to use all of the public areas in and around the area generally known as the Englewood Business District, which the City may presently own or controls, and contained within the boundaries as shown on the sketch attached hereto as **Exhibit A**, the “Festival grounds”, and made a part hereof by reference for the purpose of conducting the Festival on September 15th and 16th, 2023, tentative festival hours: Friday, 3-8 pm and Saturday, 10 am-8 pm.

SECTION I. In consideration of the granting the use of the “Festival ground,” the Arts, its employees, agents, contractors, vendors, exhibitors, and persons or organizations participating in the operation of the Festival hereby agree and covenant:

A. Festival Grounds. The Festival grounds shall be used only for the purposes of conducting the Festival, with the following definitions of the grounds and accompanying restrictions:

Festival Grounds Definition: Parking medians, islands, green areas, crosswalks, sidewalks and all other adjoining areas of Winner Road from Harris Street west to Northern Boulevard.

1. Public Streets and City Parking Lots. The Arts will neither drill holes nor allow any of its contractors, vendors or exhibitors to drill holes for anchoring or stabilizing any structure or device in any public street or City parking lot.

Only the use of white chalk location markings on asphalt is authorized. Vendor location markings must be visible until inspections are complete. Markings on the curbs or sidewalks must be removed by 6:00 PM on Monday following the close of the Festival.

2. The Arts, further agrees that upon the termination of the Festival, all booths shall be promptly removed from the Festival grounds not later than 10:00 AM on Sunday, the day after the festival ends. The sidewalks, steps, crosswalks, and other areas of the Festival grounds used for foot traffic shall be cleared prior to 10:00 AM on Sunday, the day after the festival ends.

B. To provide for the conduct of the Festival, **ARTS** agrees that:

1. Emergency Action Plan. Englewood Arts shall coordinate with the City's Emergency Preparedness division to develop an Emergency Action Plan for the Englewood Arts Festival. The Emergency Action Plan shall be completed at least 30 days prior to the Englewood Arts Festival.
2. Security. The Arts shall provide necessary security in quantity and during hours of operation, as specified by the Chief of Police.
3. Waste and Waste Water. Arts shall provide for a system of disposal of waste and waste water for the Festival grounds acceptable to the City. The Arts shall prohibit all vendors and exhibitors from disposing of waste or waste water into the storm sewers.
4. Trash and Debris – Festival Area. The Arts shall during the course of the Festival, provide a sufficient number of dumpsters for depositing trash and debris resulting from the Festival and shall further provide for the removal of said trash and debris from said dumpsters. The Arts shall provide, while the Festival is in operation, sufficient personnel for the removal of trash. Liners for the trash containers shall be provided by the Arts. The City shall deliver trash containers to the Festival grounds prior to the Festival and remove them following the Festival.
5. Electrical Service. Englewood Arts shall coordinate with Independence Power and Light staff on planning the electrical service for the Festival. This coordination shall be completed with enough time to account for material and/or installation/ modification lead times. Englewood Arts shall be responsible for the payment of the energy used during the Festival and any material/installation/ service/repairs. All charges shall be billed at the current IPL rate.
6. Accessibility. The Arts shall do all things necessary to assure handicap access to the Festival grounds is maintained. At least one ADA compliant restroom facility shall be made available at every bank of restrooms.
7. Handwash or Sanitizer Stations outside of Restroom Facilities. The Arts shall provide handwash or sanitizer stations outside of the restroom facilities.
8. Emergency vehicle accessibility: The Arts shall maintain booth spacing along streets to allow for clear access for emergency vehicles to enter the fairgrounds area. A minimum of 20 feet should remain clear of any obstructions that would inhibit emergency vehicle access.
9. Police Command Post Vehicles. Not Applicable
10. City Sponsor. The Arts shall include the name of the City as a sponsor in all media and promotional campaigns the same as any other sponsor. This may include, but is not limited to; pre-program publicity; on the Main Stage Banner, in theme oriented signage, festival t-shirts, information booth signage, festival programs; and other advertisements.

- 11 Vendors and Exhibitors Rules and Regulations. All vendors and exhibitors will operate under the rules and regulations of the 2023 Arts vendor contract including requirements for inspections by city departments, hours of operation, parking and vehicle restriction inside festival grounds as outlined. Vendors profiting by sales of items or services will be considered to be a regular vendor of the event and must register and pay for the booth space, electric, insurance and related costs per current Arts vendor contract.
- 12 Food Service and Vendor booth Inspections. The City shall conduct the necessary inspections to ensure compliance with applicable City Codes.
- 13 Post Festival Clean Up. The Arts shall provide the personnel, equipment and materials necessary to clean the Festival area at the conclusion of the Festival event. Final clean-up shall be complete by 10:00 a.m. Sunday September 17th 2023. The City's contribution outlined in Section II (A) of this agreement shall be made payable by the City to the satisfactory completion of the post-festival cleanup. Such cleanup will also include a good-faith effort to remove grease and other food debris from the festival grounds and public right-of-way.

C. Compliance With Law:

1. Arts, vendors, and exhibitors shall use and occupy the Festival grounds in a safe and careful manner and shall comply with all applicable municipal, state, and federal laws and rules and regulations pertaining to the carnival, food establishments, exhibits, and temporary structures as prescribed by the City, its employees and agents including those laws or ordinances regarding sale of alcoholic beverages and distribution of pornographic materials. It shall be the responsibility of the Arts to inspect all temporary installations, tents, other enclosures and structures for suitability and safety. The Arts shall require any vendor or exhibitor to remove or correct any unsightly or hazardous structure or condition which is so deemed by the City.

The City shall have the power to immediately close or prevent the opening to the public of any vendor or exhibitor which may be in violation of federal or state law or City ordinance. The Arts and its contractors, vendors and exhibitors agree to abide by the decision of the City in this regard and shall not make any claim or bring any action against the City, or its agents or employees, in regard to any such action taken by the City.

2. City Inspections During the Event. The Arts agrees that the City shall have the right to designate certain of its employees or agents as inspectors, and Chamber agrees that such inspectors shall have the right at any time, and as often as the City may consider necessary, to inspect any property, and services being rendered, any riding devices, shows, displays, food establishments, or any activities of the Arts or the vendors, or exhibitors located on the Festival grounds, and the Arts, vendors, or exhibitors located on the Festival grounds shall give said inspectors free access to any space used or occupied by them or under their control for the purpose of such inspection and shall, upon request of such inspector, operate or demonstrate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of the Arts, vendors, or

exhibitors located on the Festival grounds, or demonstrate or operate any process or activities being carried on by Arts, vendors, or exhibitors located on the Festival grounds.

3. Contractors Permits and Licenses. The Arts shall require all contractors and subcontractors of the Arts to obtain all necessary permits and licenses before providing contracted services at the Festival. The Arts shall submit a list of all contractors and subcontractors to the Regulated Industries Division of the Community Development Department a minimum of twenty (20) days before the Festival. The City reserves the right to immediately cease the operations or prevent the operation of any contractor or subcontractor that has not obtained all necessary permits and licenses required by the City.

All permits shall be obtained and license fees shall be paid prior to use of any device, show or display or food establishment which are required to be obtained or secured.

3. Temporary Health Permits. The granting of this license to the Arts shall be in lieu of all other business licenses required by vendors under Chapter 5 of the City Code of the City. The Arts shall provide to all food vendors instructions for obtaining a Temporary Health Permit along with guidelines for operating a food booth. Food service booths operating during the Festival will not be allowed to open until a Temporary Health Permit is obtained, the fee is paid, and a satisfactory inspection has been completed. (To assist with the orderly conduct of the Festival starting in June the Arts will provide to the Community Development Department a list of all vendor applicants denoting which ones that will be sampling/serving food. Designated City staff will have online access to all vendors serving or sampling food or beverages and a map of booth locations. (with monthly updates through July and then during August notification of applicants when received.) The Arts will provide to the Health Department a minimum of ten (10) days prior to the Festival a location map of the vendor booths providing food service to the public. This location map will be updated by the Arts as necessary.)
4. Vendor Sales Tax. The Arts will submit to the City at least ten (10) business days before the Festival a list of all vendors, including their contact information as on file with the Arts and their Missouri Retail Sales Numbers. Within ten (10) business days after the Festival, the Arts shall provide follow up list of all vendors attending the festival that includes Missouri Retail Sales Tax numbers. The Arts shall inform all vendors of the sales tax rate within the Festival area as 9.24%.
5. Alcoholic Beverages. The Arts shall limit the number of temporary vendors that sell alcoholic beverages to no more than two (2) at a maximum of four (4) locations. These vendors must obtain all state and local licenses and shall be restricted to the sale of non-intoxicating or intoxicating beer by the drink, or malt liquor and light wine by the drink as provided for in Chapter 2 of the Code of the City.

The Arts may apply for and be approved for the appropriate liquor license if they become engaged in the sale or serving of alcoholic beverages. Said license shall define the open carry area if different from the Festival area. Signage must be present at all exits to the Festival area and entrances to the Carnival grounds prohibiting alcohol beyond this point. Only sales from the Arts and/or authorized vendors may be utilized in the Festival area. All

signage must be approved by the City. Any existing business in the Festival grounds with an existing liquor license may request approval from the City to be included in the open carry area.

D. Liabilities:

1. The Arts shall secure from each vendor or exhibitor on the Festival grounds, an agreement absolving the City of any liability for theft, loss or damage to property of vendor or exhibitor on the Festival grounds, irrespective of the cause thereof except for liability arising from any occurrence directly involving the gross negligence or intentional act of an employee or agent of the City. Each such agreement to release and waive all rights and claims against the City, and its agents and employees with respect to such theft, loss or damage shall also include release as to any liability for loss to an exhibit or other installation that results from shutdown by the City.
2. If the Festival grounds, or any portion thereof, during the term of this license, shall be damaged by the act, default or negligence of the Arts, its employees or agents, vendors, exhibitors, or any occupants and users of the Festival grounds, the Arts shall pay to the City, upon demand, such sum as shall be necessary to restore the Festival grounds to its previous condition. The Arts hereby assumes full responsibility for the character, acts and conduct of all its employees or any person acting for and on behalf of the Arts.
3. The Arts shall obtain "Commercial General Liability and Liquor Liability insurance coverage for the period of Friday prior to the Festival through the Monday following the Festival of at least \$1,000,000 aggregate limit for bodily injury and property damage under a Special Event policy issued to the Arts with an owner's protective liability provision to indemnify and save harmless the City, and its agents and employees, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Festival grounds (except for any occurrence directly involving the gross negligence or intentional act of an employee or agent of the City), or arising out of the occupancy or use of the Festival grounds or any part thereof by the Arts, its employees or agents, vendors, exhibitors, or any other occupant or user thereof, or occasioned wholly or in part by any act or omission by the Arts, its employees and agents, and any other occupant or user of all or any part of the Festival grounds, and their agents, servants, contractors and employees. The Arts, vendors, exhibitors, and those occupants and users of the Festival grounds, upon receiving written notice thereof, agree to defend such action or proceeding at its own expense by counsel satisfactory to the City. For the purpose of this contract occupants and users shall be limited to those individuals or entities who participate in the Festival by virtue of a contract, license or agreement with the Arts. Said definition shall not include members of the general public who attend the Festival or individuals who are otherwise on the Festival grounds not as a result of any contract, license or agreement with the Arts.

4. The Arts will name the City as an additional insured on all Arts liability insurance policies. The Arts will provide the City with a copy of the Arts Additional Insured – Owners, Lessee or Contractors’ Endorsement for the dates of the festival..

E. Notices:

1. The Arts shall notify all property owners and tenants within the Festival grounds of the dates of the Arts Festival.
2. The Arts shall provide a listing including each vendor and their location on the festival map to the Police Chief, Fire Chief, Community Development Director, Health Department, Emergency Manager and Director of Municipal Services to assist with regulatory enforcement and public information. The listing should be sent at least two weeks prior to festival set-up.

SECTION II. For its part, the **CITY** agrees to contribute services as provided below.

- A. Police Protection. The City’s Police Department shall provide the police protection necessary to handle and govern the conduct of those attending the Festival and to maintain public order during the following hours. In addition, the Police Department shall provide the enforcement and traffic control, including that required during the set-up and dismantling of the Festival.

The police protection to be provided shall be determined by the Chief of Police or his designee in consultation with the Arts.

- B. Water Supply. The City shall provide a water supply to the Festival grounds subject to the following terms and conditions:
- a. The Arts shall notify the City, in a timely fashion, of the number and location of temporary water supply spigots on existing fire hydrants and of the date needed.
 - b. The Arts shall be responsible for the reasonable and ordinary costs of the installation of the supply spigots and the cost of water consumption in accordance to the Rate A Commodity Charge schedule at an amount of \$45.00 per temporary connection. This rate includes water consumed.
 - c. The Arts shall be responsible for any damage to the City’s water supply equipment assigned to them.

- C. Barricades/Traffic Control. Subject to availability, the City shall provide barricades to Englewood Arts for the purpose of traffic control. The number and location of the barricades shall be determined by Municipal Services staff. If additional barricade and concrete blocks are needed as determined by Municipal Services staff, the Englewood Arts shall be responsible to provide acceptable barricades and concrete blocks for the Festival. Barricades provided by the City shall not be used to limit access to parking areas where a fee to park will be charged. The City reserves the right to remove such barricades immediately.

SECTION III. The City and the Arts further agree to the following:

- A. Temporary Vendors. This contract also grants a right to the businesses located within the Festival grounds to lease private property to temporary vendors for operation during the dates authorized by this contract. It will be the responsibility of the City to inspect and license for the period of the Festival these temporary vendors. The Arts shall not be billed for these inspections or time.

- B. Examination of Records. The Arts shall, upon request of the City or the City's authorized representative, permit inspection of all books, records or other information that the City deems necessary to determine the receipts and expenses and resulting profits or losses associated with the Arts production of this and the previous two (2) Arts Festivals. The City agrees that any financial or other information obtained during this inspection that does not relate to the Arts Festival shall be kept confidential by the City.

SECTION IV. Contract Termination.

The City and Arts hereby agree that if the City fails to appropriate the funds necessary to provide the services as identified in the Contract during the fiscal year of the Contract, City shall not be required to provide such services and this Contract shall be terminated effective July 1 after the failure to appropriate the funds for that fiscal year.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CITY OF INDEPENDENCE, MISSOURI

INDEPENDENCE ARTS FESTIVAL

By: _____
Zachary Walker, City Manager

By: _____
Michael Baxley, E.D.

ATTEST:

City Clerk

APPROVED AS TO FORM ONLY:

City Counselor

