

**LEASE AGREEMENT
BETWEEN THE CITY OF BISBEE AND
BISBEE COUNCIL ON THE ARTS AND HUMANITIES, INC.,
FOR
THE BISBEE HISTORICAL AND MINING MUSEUM
(PHELPS DODGE OFFICE BUILDING)**

THIS LEASE AGREEMENT (“Lease”) is made and entered into January 1, 2023 (the “Effective Date”), by and between the CITY OF BISBEE, an Arizona municipal corporation (hereinafter “Lessor”) and BISBEE COUNCIL ON THE ARTS AND HUMANITIES, INC., an Arizona domestic nonprofit corporation (hereinafter “Lessee”). Lessor and Lessee are sometimes referred to in this Lease collectively as the “Parties,” or individually as a “Party.”

IT IS AGREED by and between the Parties hereto as follows:

1. **DESCRIPTION OF PREMISES.** Lessor hereby leases to Lessee, on the terms and conditions set forth in this Lease, the real property and building located at 5 Copper Queen Plaza, Bisbee, Arizona, commonly known and referred to as the Bisbee Mining and Historical Museum (Phelps Dodge Office Building) (hereinafter the “Premises”).
2. **OPERATION AND MAINTENANCE OF GRASSY PARK.** Notwithstanding any other provision contained in this Lease, Lessor retains the right to operate and maintain the portion of the leased Premises known as Grassy Park, including, without limitation, the right to seed, re-seed and water the Park as Lessor deems necessary and in its sole discretion.
3. **TERM.** This Lease shall run for a period of five (5) years commencing on January 1, 2023 and expiring on December 31, 2027 (the “Term”).
4. **TERMINATION.** This Lease will terminate at the end of the Term, unless extended or otherwise terminated earlier by the Parties as provided for herein. Upon the termination of this Lease or any extension thereof, Lessee shall vacate the Premises and surrender the Premises to Lessor in the condition described in Section 9 below. Notwithstanding the foregoing, Lessor may terminate this Lease at any time with one hundred eighty (180) days’ written notice to Lessee or as otherwise indicated in this Lease. This Lease may be terminated upon written consent of both Parties.

The failure of Lessee to continue to be a regularly constituted organization with proper officers, regular meetings and active participation in active affairs, or the failure of Lessee to retain its non-profit tax exempt status, shall constitute a termination of this Lease. Upon termination of this Lease, Lessee shall have one

hundred eighty (180) days' to move the contents of the Premises to another accredited museum where the artifacts Lessee has title to may be properly cared for.

5. **HOLDING OVER.** Lessee agrees not to hold over after the termination of the Lease Term. If Lessee does holdover, a new month-to-month tenancy is created which shall be subject to all of the terms and conditions of this Lease, except that such tenancy shall be terminable upon thirty (30) days written notice served by either Party.
6. **RENT.** Lessee shall pay Lessor one dollar (\$1.00) per year as rent for the Premises. The rent is first due and payable upon the Effective Date and payable on the anniversary date of the Effective Date each year thereafter. Payments shall be mailed to or made in person at the following location:

City of Bisbee
Attn: Finance Department
76 Erie Street
Bisbee, Arizona 85603

In consideration of the rent amount and the agreement to extend this Lease, and as a material condition of this Lease, Lessee shall appoint one member of its Board as a City representative, which appointment shall be made from either a current member of the City Council, the Mayor, or the City Manager or his/her designee, as determined by the City.

In addition, Lessee agrees to do and perform the covenants and agreements contained in this Lease. The duty to pay rent as required herein shall survive this Lease.

7. **USE.** Lessee shall only use Premises for the exclusive purpose of operating a museum and associated gift shop and for no other purpose without the consent of Lessor.
8. **CONDUCT OF BUSINESS.** Lessee shall not use or permit the Premises, or any part thereof, to be used for any purpose or purposes other than the purposes for which the Premises are hereby leased as set forth in Section 7. Lessee shall also not use or do anything to the Premises which will increase Lessor's existing rate of insurance upon the Building, or cause a cancellation of any insurance policy covering said Building, or any part thereof. Lessee shall not sell nor permit to be kept or sold, any article which may be prohibited by the standard form of fire insurance policy in and about the Premises.
9. **CONDITION OF PREMISES.** Premises are rented "as is." Lessee stipulates that it has examined the Premises, including the grounds and all buildings and improvements thereon and that Lessee takes the Premises in whatever condition it

is in at the time of execution of this Lease. Upon termination or expiration of Lease, the Premises shall be restored to as clean condition and good repair as when leased, with normal wear and tear excepted. Lessee shall remove all of Lessee's personal property and fixtures, except those items permanently affixed (including but not limited to lighting fixtures, fans, plumbing fixtures) before vacating the Premises.

10. **ALTERATIONS AND IMPROVEMENTS.** Lessee shall make no changes, alterations, or improvements to the Premises without the prior, express written consent of Lessor, nor shall Lessee cause, or permit to be caused, any damage to the Premises. All alterations, changes and improvements built, constructed or placed on the Premises by Lessee, with the exception of fixtures removable without damage to the Premises and movable personal property, shall, unless otherwise provided for by written agreement, be the property of Lessor and remain on the Premises at the expiration or sooner termination of this Lease.
11. **UTILITIES.** Utilities (including, but not limited to, electricity, telephone, communications, water, wastewater, gas, and sanitation) and janitorial and facilities maintenance services are not included in the rent set forth in this Lease and are the sole responsibility of Lessee. Lessee shall be responsible for all other service charges associated with operation of the Premises, including telephone and Internet access charges. Lessor shall not be liable for, and Lessee shall not be entitled to any relief by reason of, the unavailability, suspension or limited availability of any utilities or services resulting from matters not within Lessor's control, including without limitation riot, strike, fire, flooding, labor disputes, energy shortage, inability to obtain supplies or materials from the usual source of supply, inevitable accident or breakdown, or for the stoppage to or interruption of any such services for the purpose of making routine or necessary maintenance and repairs.
12. **MAINTENANCE.**
 - a. Lessor shall use commercially reasonable efforts to keep and maintain the roof, exterior surfaces, and all electrical, plumbing, HVAC and mechanical systems of the Premises in a good state of repair, provided that Lessor shall have no obligation to make any repairs until Lessor shall have received notice of the need for such repair. Notwithstanding the foregoing, all repairs made necessary by Lessee's specific use, occupancy or alteration of the Premises, or by the negligent acts of Lessee, its agents, employees or invitees (and, without limiting the foregoing, any repairs or maintenance required to any specialized or supplemental equipment installed by or for Lessee and not of a "building standard" nature), shall be made at the sole cost and expense of Lessee.
 - b. Lessee shall be responsible for any interior maintenance of the Premises, including, but not limited to, being solely responsible for the Halon fire

system. Lessee shall keep and maintain the interior of the Premises in a reasonable condition of repair at Lessee's sole expense, including but not limited to interior walls, plumbing fixtures, electrical fixtures, heating and air conditioning filters, telephone lines, and interior doors, except as set forth in subsection (c) of this Section.

- c. Lessor shall insure the Premises against fire or storm loss. Lessee shall insure the Premises against and bear the risk of vandalism, theft, window glass breakage, exterior vandalism, and casualty and fire loss to its own merchandise and wares or other personal property.
 - d. Lessee shall give Lessor written notice of any required repairs or maintenance. Lessor shall not be liable for any failure to repair or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice. Except as specifically herein set forth, there shall be no abatement of rent and no liability of Lessor by reason of any injury to or interference with Lessee's business arising from the making of any repairs, alterations or improvements to any portion of the Building or the Premises or to fixtures, appurtenances and equipment therein. Lessee waives the right to make repairs at Lessor's expense under any law, statute or ordinance now or hereafter in effect.
 - e. Lessee agrees that no sign shall be placed or painting done on or about the Premises without the prior written consent of Lessor.
13. **COMPLIANCE WITH AUTHORITIES.** Lessee shall, at its sole cost and expense, comply with and obey all applicable requirements of all municipal, county, state and federal laws, regulations, and ordinances now in force or which may hereafter be in force, pertaining to the Premises. Lessee shall maintain and procure at Lessee's expense all licenses, permits or inspection certificates required by any governmental authority with respect to Lessee's business. Lessee may, at its expense, contest any such law, ordinance or regulation.
14. **INSURANCE.** Before the commencement of this Lease, Lessee shall, at its own expense, secure and maintain during the term of this Lease, Commercial General Liability insurance including bodily injury, property damage, contractual, personal injury, and products/completed operations. Liability limits shall be no less than \$1,000,000.00 per occurrence, and no less than a \$2,000,000.00 general aggregate limit. If Lessee sublets the Premises, Lessee shall require and verify that all sublessees maintain insurance meeting all the requirements stated in this Lease. Certificates of Insurance shall be delivered to the Lessor prior to the commencement of this Agreement. The policy shall include endorsements naming the Lessor and its officers, elected offices, agents, directors, employees, and volunteers as additional insureds. The policy shall also contain an endorsement waiving subrogation against Lessor, its officers, elected officials,

directors, employees, and agents for losses arising from activities under this Lease.

Lessee shall during the term of this Lease, at the expense of Lessee, insure the Premises and other improvements owned by Lessor on the Premises against broad perils of property loss or casualty for a minimum of \$500,000.00. Lessor, its officers, elected officials, employees, and agents shall be named and endorsed as an additional insureds on the policy. The policy shall also contain an endorsed waiver of subrogation against Lessor, its officers, elected officials, employees, and agents for losses arising from activities under this Lessee. Lessor shall be named as a Loss Payee with respect to the Premises and any other improvements owned by Lessor on the Premises.

If Lessee has employees, Lessee must carry Worker's Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of employees engaged in the performance of the work or services, and Employer's Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease for each employee, and \$500,000.00 disease policy limit. The policy shall also contain an endorsed waiver of subrogation against Lessor, its officers, elected officials, employees, and agents for losses arising from activities under this Lease.

The policies of insurance required under this Section shall be endorsed as primary insurance policies and any insurance policy maintained by the Lessor is considered excess, non-contributory insurance. The existence of excess insurance policies should in no way be construed to limit the requirements of insurance described herein.

Failure to provide required coverage and failure to comply with the terms and conditions of this Lease shall not waive the contractual obligations herein. If the policy or policies are canceled or not renewed, the insurance company shall provide thirty (30) days written notice to the Lessor prior to the effective date of such cancellation or termination.

The amount and types of insurance coverage requirements set forth in this Lease will in no way be construed as limiting the scope of the indemnity in this Lease.

15. **VACATION OR ABANDONMENT.** Lessee shall not vacate or abandon the Premises at any time during the term of this Lease or any extension thereof, except when required to do so by this Lease. If Lessee abandons, vacates, surrenders, or is dispossessed of the Premises by process of law or otherwise, any personal property belonging to Lessee that is left on the Premises shall be deemed to be abandoned at the sole option of Lessor. Vacation or abandonment of Premises does not relieve Lessee of the duty to pay rent for the remainder of the term of this Lease.

16. **ENTRY AND INSPECTION.** Lessee shall permit Lessor and its employees and agents to enter the Premises at all reasonable times to inspect and/or maintain the Premises, or to make repairs, alterations or additions to any other portion of the Premises or improvements thereon, including the erection of scaffolding, props, or other mechanical devices, without any rebate of rent to Lessee or damages for occupation or quiet enjoyment of the Premises. Within thirty (30) days prior to the expiration of the Lease Lessee shall permit Lessor, or its employees and/or agents, at reasonable hours, to enter the Premises to show the Premises to prospective tenants.
17. **ASSIGNMENT AND SUBLETTING.** Lessee shall not assign this Lease, or any interest therein, and shall not sublet the Premises or any part thereof or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of Lessor. The requirements of this Lease are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
18. **BREACH.** In the event of any breach of this Lease by Lessee, Lessor, in addition to any other rights or remedies available to Lessor, may terminate this Lease and shall have the immediate right of re-entry and may remove all persons and property from the Premises. Lessee hereby waives all claims for damages which may be caused by the re-entry of Lessor and Lessor's taking possession of the Premises or removing or storing Lessee's property, and will defend and save Lessor harmless from any losses, liabilities, costs, or damages occasioned Lessor thereby, and no such re-entry shall be considered or construed to be a forcible entry. Should Lessor at any time terminate this Lease for any breach, Lessor may, in addition to any other remedy it may have, recover from Lessee all damages Lessor may incur by reason of such breach, including the cost of recovering the Premises, and the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term.
19. **RESTRICTIONS.** This Lease is subject to any and all provisions of leases and encumbrances of record or extensions thereof under which Lessor holds title or possession of the Premises.
20. **ASBESTOS NOTICE.** An asbestos inspection has not been conducted and the existence of asbestos material in the facility has not been determined.
21. **NON-WAIVER FOR BREACH.** The failure by Lessor to pursue a remedy of any default or breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or other term, covenant or condition herein contained. The acceptance of rent hereunder shall not be a waiver of any breach by Lessee of any term, covenant or condition of this Lease.

22. **ADDITIONAL RULES AND REGULATIONS.** Lessor has the further right and power to prescribe rules and regulations for the use, entry, operation and management of the Premises, to insure the safety, care and cleanliness of the Premises and preservation and good order thereon.
23. **CUMULATIVE REMEDIES.** It is understood and agreed that the remedies herein given to Lessor are cumulative, and the exercise of any one remedy by Lessor is not to the exclusion of any other remedy.
24. **NOTIFICATION.** All notices, demands or other communications must be in writing and are deemed duly delivered upon personal delivery or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To Lessor: City of Bisbee
Attn: City Manager
76 Erie Street
Bisbee, Arizona 85603

To Lessee: Bisbee Council on the Arts and Humanities, Inc.
5 Copper Queen Plaza
P.O. Box 14
Bisbee, Arizona 85603

If any Party changes its address, the Party must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing address.

25. **CHOICE OF LAW/VENUE.** This Lease shall be interpreted in accordance with the laws of the State of Arizona. Any action to enforce any provision of this Lease or to obtain any remedy with respect this Lease shall be brought exclusively in the Superior Court, Cochise County, Arizona (or, as may be appropriate, in the Justice Courts of Cochise County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action commenced in accordance with the terms of this Section.
26. **INDEMNITY.** To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless the Lessor, its elected officials, agents, employees, officers, volunteers, and appointed officials ("Indemnified Party") for, from and against all claims, liabilities, demands, damages, losses, and expenses, including attorneys' fees and litigation expenses, to which any such Indemnified Party may become subject, under any theory of liability whatsoever, ("Claims") to the extent

that such Claims result from and/or arise out of the Lessee's intentional, reckless, or negligent acts, mistakes, errors, or omissions at, on or relating to the Premises or in performance of this Lease. This includes any intentional, reckless, or negligent acts, mistakes, errors, or omissions of Lessee's employees, agents, contractors, and officers employed directly or indirectly by Lessee, and any intentional, reckless, or negligent acts, mistakes, errors, or omissions of Lessee's customers, guests, students, visitors, invitees, licensees, assignees, and sublessees.

This indemnity provision shall also apply to any liability or remediation costs under Comprehensive Environmental Response, Compensation, and Liability Act, state statute or municipal ordinance arising as a result of contamination of the property or the surrounding environment, or violation of any Federal or state environmental laws due to any discharge of waste by Lessee, its employees and agents, regardless of whether the event requiring such remediation was intentional or accidental.

This Section 26 shall survive the expiration or early termination of this Lease.

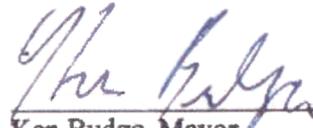
27. **FORCE MAJEURE.** Should the Premises or any part thereof become unsafe, unsuitable for use or otherwise uninhabitable due to an act of God, nature, or act of war or other event beyond the control of the Lessor, the Lessor may, at its sole option, choose not to repair or replace the Premises, and no liability shall accrue to Lessor. Should Lessor determine that the Premises are beyond reasonable repair, Lessee shall be relieved of any further duty to pay rent beyond the date the event occurs, and any rent paid by Lessee for any rent period falling after the date of such event shall be promptly returned to Lessee. Lessee shall, if feasible, remove all personal property from the Premises. If Lessor elects to repair the Premises: (i) this Lease shall continue in full force and effect, but the rent from the date of the event through the date of substantial completion of the repair shall be abated with regard to any portion of the Premises that Lessee is prevented from using by reason of such damage or its repair, and (ii) in no event shall Lessor be liable to Lessee by reason of any injury to or interference with Lessee's business or personal property, alterations, additions or improvements to the Premises arising from such event, or by reason of any repairs to the Premises necessitated by the event.
28. **COMPLIANCE WITH LAW.** The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.
29. **TIME.** Time is of the essence in this Lease except where specified.

30. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the Parties and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Lease, or specifically referred to in a written agreement shall be valid or binding; and this agreement may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed herein.
31. **RIGHTS/OBLIGATIONS OF PARTIES ONLY.** The terms of this Lease are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
32. **CONFLICT OF INTEREST.** This Lease shall be subject to the Conflict of Interest provisions of Arizona Revised Statutes § 38-511, as amended.
33. **BOYCOTT OF ISRAEL.** Pursuant to A.R.S. § 35-393.01, Lessee certifies it is not engaged in a boycott of Israel as of the Effective Date of this Lease, and agrees for the duration of this Lease to not engage in a boycott of Israel.
34. **NO PARTNERSHIP.** Nothing in this Lease constitutes a partnership or joint venture between the Parties, and neither Party is the principal or agent of the other.
35. **SEVERABILITY.** If any provision of this Lease is held invalid the remainder of the Lease shall not be affected thereby and all other parts of this Lease shall be in full force and effect.
36. **PROVISIONS REQUIRED BY LAW.** Each and every provision of law and any clause required by law to be in this Lease will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Lease will promptly be physically amended to make such insertion or correction.
37. **HEADINGS AND COUNTERPARTS.** The headings of this Lease are for purposes of reference only and shall not limit or define the meaning of any provision of this Lease. This Lease may be executed in two or more counterparts, each of which is an original and all of which together constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged are effective to bind a Party.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused to be affixed the signatures of their respective authorized officials on the Effective Date written above.

Lessor:
CITY OF BISBEE



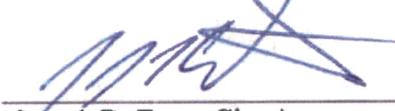
Ken Budge, Mayor

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

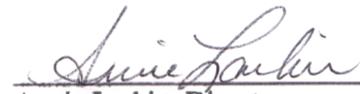


Joseph D. Estes, City Attorney

Lessee:
**BISBEE COUNCIL ON THE
ARTS AND HUMANITIES,
INC.**



David Smith, President



Annie Larkin, Director