

**PROFESSIONAL SERVICES AGREEMENT WITH
TREASURE VALLEY CHILDREN’S THEATER**

This PROFESSIONAL SERVICES AGREEMENT WITH TREASURE VALLEY CHILDREN'S THEATER (“Agreement”) is made this ___ day of _____, 2024, by and between the City of Meridian, a municipal corporation organized under the laws of the state of Idaho (“City”), by and through the Meridian Arts Commission, and Treasure Valley Children’s Theater, Inc., a nonprofit corporation organized under the laws of the State of Idaho (hereinafter “Organization”).

WHEREAS, the mission of the Meridian Arts Commission is to develop, advance, and nurture all facets of the arts to enhance the quality of life for Meridian residents and its visitors, and to that end, issued a Request for Proposals/Call for Youth Performing Arts Projects (“RFP”), a copy of which is attached hereto as *Exhibit A*;

WHEREAS, the mission of Organization is “Through the transformative power of the arts and our core values, Treasure Valley Children’s Theater empowers youth to realize their full potential and use the confidence gained and skills learned to change the world.”;

WHEREAS, City wishes to further these respective and complementary missions by engaging Organization to provide a performing arts experience and performances as set forth in the proposal attached hereto as *Exhibit B* (“Performance”);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, and in consideration of the recitals above, which are incorporated herein, City and Organization agree as follows:

I. SCOPE OF SERVICES.

Organization shall provide the following services and deliverables:

- A. **Compliance with Agreement and RFP.** Organization shall comply in every respect with the requirements of this Agreement and the RFP. Organization shall use the funds provided by City under this Agreement for the purpose and in the manner set forth in *Exhibit B*.
- B. **Performance.** By August 15, 2024, the Organization shall present the Performance to the public, as set forth in *Exhibit B*. Organizer shall ensure that the location of Performance is accessible to persons of all abilities, and that the Performance is appropriate for all ages, values, and sensibilities. The Performance shall not include language, attire, and/or behavior that is profane, sexual, violent, or discriminatory.
- C. **Final report.** By September 6, 2023, Organization shall submit to the Arts and Culture Coordinator a final written report describing the Performance and all services provided with funds provided by City under this Agreement.

D. **Recognition.** Organization shall recognize the Meridian Arts Commission's contribution in the manner set forth in *Exhibit B*. To the extent practicable, Organizer shall give City the opportunity to review and approve all promotional materials in advance of their publication.

II. COMPENSATION AND PAYMENT.

A. **Amount.** City shall pay Organization for professional services described herein in an amount not to exceed three thousand, five hundred dollars (\$3,500.00).

B. **Payment schedule.** City shall mail payment to Organization within thirty (30) days of Organization's provision of the following to City, in accordance with the following schedule:

1. By June 17, 2023, Organization shall submit to the Arts and Culture Coordinator all requested performance marketing and informational materials, a completed W-9 form, and an invoice, and City shall pay Organization in the amount of \$2,500.
2. By September 6, 2023, Organization shall submit a final report and invoice, and City shall pay Organization in the amount of \$1,000.00.

These amounts shall constitute full compensation for any and all services provided and any and all related expenses, including, without limitation: travel; materials; contingency; commission; insurance; equipment; all related costs for audition, rehearsal, and performance space; and any and all other costs of work to be performed or furnished by Organization under this Agreement. City shall not withhold any federal or state income taxes or Social Security tax from any payment made by City to Organization under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Organization.

C. **Materials fees; revenue.** Organization shall be entitled to collect a reasonable participation fee from each participant in the Performance. In exchange for such fee, each participant shall be entitled to participation in rehearsals per Organization's casting and direction; direction and coaching from Organization staff at rehearsals; and participation in the Performance per Organization's casting, direction, and scheduling. Organization may not turn away any person due to inability to pay the participation fee; Organization shall waive and/or make other accommodations for such fee upon request and demonstration of financial hardship. Organization shall be entitled to retain any revenues realized from ticket sales, sponsorships, or other fundraising undertaken by Organization.

III. GENERAL PROVISIONS.

A. **Assumption of risk.** Organization acknowledges that provision of services under this Agreement may carry a risk of injury, illness, and/or death, some of which risks may be unknown, and, with that knowledge, Organization hereby assumes all such risks and hazards.

B. **Indemnification.** Organization and each and all of Organization's employees, agents, contractors, officials, officers, servants, guests, and/or invitees, including any and all participants in or observers of Organization's programming and activities, shall indemnify and save and hold harmless City from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses caused or incurred by

Organization or any Organization employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observers of Organization's programming and activities.

C. Insurance. Organization shall submit to City proof of an insurance policy issued by an insurance company licensed to do business in Idaho protecting Organization, Organization's employees, and Organization's agents from all claims for damages to property and bodily injury, including death, which may arise during or in connection with Organization's programming and activities, including, without limitation, auditions, rehearsals, set-up, performance, and tear-down. Such insurance shall name City as additional insured, and shall afford at least five hundred thousand dollars (\$500,000.00) per person bodily injury, five hundred thousand dollars (\$500,000.00) per occurrence bodily injury, and five hundred thousand dollars (\$500,000.00) per occurrence property damage. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City as set forth in this Agreement or any permit. If City becomes liable for an amount in excess of the insurance limits herein provided due to the actions or omissions of Organization or any Organization employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of Organization activities, Organization covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. At all times during the course of this Agreement, Organization shall maintain worker's compensation coverage in the amount required by law for each and every employee utilized in the course of performance of this Agreement.

D. Waiver. Except as to rights held under the terms of this Agreement, Organization and each participant in Performance, shall, and hereby do, waive any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident the performance of this Agreement, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees.

E. Notices. All notices required to be given by either of the parties shall be in writing and be deemed communicated when personally served or mailed via U.S. mail, addressed as follows:

If to Organization:

Allison Terenzio Moody
Executive Director, Treasure Valley
Children's Theater
440 W. Pennwood St., Ste. 100
Meridian ID 83642

If to City:

Arts and Culture Coordinator
City of Meridian
33 East Broadway Ave
Meridian ID 83642

Either party may change its authorized representative and/or address for the purpose of this paragraph by giving written notice of such change to the other party in the manner herein provided.

F. Assignment; subcontractors. Organization shall not assign or subcontract all or any portion

of Organization's interest in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written approval of City. Any assignee or subcontractor so approved shall be bound by all the terms and conditions of this Agreement. This Agreement and each and all of the terms and conditions hereof shall apply to and are binding upon the respective organizations, legal representatives, successors, and assigns of the parties.

G. No agency; independent contractor. Neither Organization nor its employees, agents, contractors, officials, officers, servants, guests, and/or invitees shall be considered agents of City in any manner or for any purpose whatsoever. In all matters pertaining to this agreement, Organization shall be acting as an independent contractor, and neither Organization nor any officer, employee or agent of Organization shall be deemed an employee or agent of City in any manner or for any purpose. Specifically, without limitation, Organization understands, acknowledges, and agrees that Organization and its employees, agents, contractors, officials, officers, servants, guests, and/or invitees:

1. Are free from actual and potential control by City in the provision of services under this Agreement.
2. Are engaged in an independently established trade, occupation, profession, or business.
3. Have the authority to hire subordinates.
4. Own and/or will provide all major items of equipment necessary to perform services under this Agreement.

H. Compliance with laws. In performing the scope of services required hereunder, City and Organization shall comply with all applicable federal, state, and local laws.

I. Attorney Fees. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

J. Time of the essence. The parties shall fulfill obligations described in this Agreement in a timely manner, as set forth herein. The parties acknowledge and agree that time is strictly of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a default of this Agreement.

K. Termination.

1. **Grounds.** Grounds for termination of this Agreement shall include, but shall not be limited to: an act or omission by either party which breaches any term of this Agreement; an act of nature or other unforeseeable event which precludes or makes impossible the performance of the terms of this Agreement by either party; or a change in or occurrence of circumstances that renders the performance by either party a detriment to the public health, safety, or welfare.
2. **Process.** Either party may terminate this Agreement by providing fourteen (14) days' notice of intention to terminate. Such notice shall include a description of the breach or circumstances providing grounds for termination. A forty-eight (48) hour cure period

shall commence upon provision of the notice of intention to terminate. If the defaulting party successfully cures the breach or circumstances providing grounds for termination, the terminating party shall signify such cure by issuing written withdrawal of the notice of termination. If, upon the expiration of such cure period, cure of the breach or circumstances providing grounds for termination has not occurred, this Agreement shall be terminated.

3. Return of funds. If Organization defaults or terminates this Agreement prior to the Performance, Organization shall return to City all funds dispersed, regardless of costs incurred by Organization.

L. Non-Waiver of breach. A waiver of any breach or default of any provision of this Agreement shall not be construed as a waiver of a breach of the same or any other provision hereof. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights, and the obligations of the party with respect to such future performance shall continue in full force and effect.

M. State of Idaho requirements. The following provisions are required by the State of Idaho.

1. Anti-Boycott Against Israel Act. Pursuant to Idaho Code § 67-2346, as applicable, Organization certifies that Organization is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under Israel's control. The terms "company" and "boycott Israel" shall have the meanings ascribed to them in Idaho Code § 67-2346.

2. Contract with company owned or operated by the government of China prohibited. Pursuant to Idaho Code § 67-2359, as applicable, Organization certifies that Organization is not a company currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China. The terms "company" and "government of China" shall have the meanings ascribed to them in Idaho Code § 67-2359.

N. Construction and severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

O. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by both parties hereto.

P. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.

Q. Discrimination prohibited. In performing the Services required herein, Organization shall not discriminate against any person on the basis of race, color, religion, gender, sexual orientation, national origin or ancestry, age, or physical handicap.

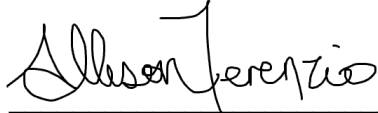
R. Applicable law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

S. Third-party beneficiaries. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person or entity not a party hereto.

T. Warranty of authority. The undersigned expressly warrant that they are duly authorized to act as the representative and agent of Organization and City, respectively. Organization's undersigned further warrants that such undersigned person is authorized to bind each and all of the Performance participants to the obligations set forth herein, and to accept the liabilities as established herein on behalf of such participants.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers to be effective as of the day and year first above written.

ORGANIZATION:



Allison Terenzio Moody
Executive Director, Treasure Valley Children's Theater

CITY OF MERIDIAN:

Attest:

Robert E. Simison, Mayor

Chris Johnson, City Clerk