

## AGREEMENT FOR PRIORITY USE OF SPORTS FACILITIES – 2021 SEASON

This AGREEMENT FOR PRIORITY USE OF SPORTS FACILITIES – 2021 SEASON is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Meridian Youth Baseball, a nonprofit corporation organized under the laws of the State of Idaho (“MYB”).

**WHEREAS**, City and MYB have historically worked together to enhance the Meridian community’s quality of life by providing and supporting recreational opportunities for members of the Meridian community;

**WHEREAS**, MYB desires to use, for its baseball programming, the baseball fields at Fuller Park, 3761 W Park Creek Drive, Meridian, Idaho, including all associated facilities, amenities, infrastructure, infields, outfields, fences, and/or vegetation (“Fields”);

**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 MYB agree as follows.

### **I. PRIORITY USE OF FIELDS.**

Throughout the term of this Agreement, MYB shall be entitled to priority use of the Fields for baseball practice sessions, games, tournaments, classes, camps, and related preparatory activities, which priority use shall preclude non-MYB uses of the Fields, at the following times:

**March 8 to May 27, 2021:** Monday through Friday from 5:30 p.m. to 8:00 p.m. and Saturdays from 8:30 a.m. to 6:00 p.m.

**May 28, 2021:** 12:00 p.m. to 8:00 p.m.

**May 29 to May 30, 2021:** 7:30 a.m. to 8:00 p.m.

**May 31 to June 3, 2021:** Monday through Friday from 6:00 p.m. to 8:00 p.m.

**June 4, 2021:** 12:00 p.m. to 8:00 p.m.

**June 5 and 6, 2021:** 7:30 a.m. to 8:00 p.m.

**June 7 to June 17, 2021:** Monday through Friday from 6:00 p.m. to 8:00 p.m.

**June 18, 2021:** 12:00 p.m. to 8:00 p.m.

**June 19 and 20, 2021:** 7:30 a.m. to 8:00 p.m.

**June 21 to July 9, 2021:** Monday through Friday from 6:00 p.m. to 8:00 p.m.

**August 17 to October 17, 2021:** Wednesday through Friday from 5:00 p.m. to 8:00 p.m. and Saturdays from 7:30 a.m. to 6:00 p.m.

MYB shall not be entitled to use the Fields for any purpose on any date or time other than those listed above, except where MYB makes a separate facility reservation through the Meridian Parks and Recreation Department.

## **II. MO BROOKS FIELD RESERVATIONS**

MYB shall be entitled to use of Mo Brooks Field at Storey Park, 205 E. Franklin Road, Meridian, Idaho, including all associated facilities, amenities, infrastructure, infields, outfields, fences, and/or vegetation, for baseball tournaments, at the following times:

**June 4, 2021:** 12:00 p.m. to 8:00 p.m.

**June 5 and 6, 2021:** 7:30 a.m. to 8:00 p.m.

**June 18, 2021:** 12:00 p.m. to 8:00 p.m.

**June 19 and 20, 2021:** 7:30 a.m. to 8:00 p.m.

MYB shall not be entitled to use Mo Brooks Field for any purpose on any date or time other than those listed above, except where MYB makes a separate facility reservation through the Meridian Parks and Recreation Department.

## **III. RIGHTS AND OBLIGATIONS OF PARTIES.**

### **A. General rights and obligations of MYB regarding Fields.**

- 1. Consideration.** In consideration for the priority use granted by this Agreement, MYB shall pay to City the amount of twelve thousand, seven hundred twenty two dollars and eighty eight cents (\$12,770.88). MYB shall make such payment by remitting to City two (2) installments. MYB shall pay to City the first installment of eight thousand, nine hundred ninety-three dollars and four cents (\$8,993.04) by August 1, 2021, and the second installment of three thousand, seven hundred seventy seven dollars and eighty four cents (\$3,777.84) by November 1, 2021.
- 2. Communication of MYB Fields use.** Communication between MYB and City regarding Fields use and scheduling shall occur by e-mail between MYB Contact and City Contact. Each party shall have the right to rely upon such communication in scheduling its uses of Fields.
- 3. Tournament staffing not included.** MYB's payment to City pursuant to this Agreement shall include staffing for routine maintenance as set forth herein. MYB shall be responsible for payment of all fees due and owing for additional City staffing and services necessitated by tournament play.
- 4. Reserve other use.** MYB's use of the Fields on days or times other than as specifically set forth in section I.A., above, shall be scheduled in accordance with City policy regarding field reservations and scheduling, including all applicable reservation and use fees. Reservation of the Fields on days or times other than as specifically set forth in section I.A., above, shall be scheduled on a first-come, first-served basis, and at such days and times, MYB shall be on an equal footing with the general public regarding its use of Fields, which shall include, but shall not be limited to, reservation requirements, priority of reservation of Fields, and payment of reservation and other applicable fees.

5. **General field preparation.** Except as expressly provided in this Agreement, MYB shall be solely responsible at all times for any and all necessary field preparation necessary for its baseball programming, including, but not limited to, raking and chalking.
6. **Reasonable use.** MYB shall employ best efforts to ensure that its use of Fields and Fields facilities, amenities, infrastructure, and/or vegetation is appropriate and reasonable. Where MYB's use of Fields and Fields facilities, infrastructure, and/or vegetation causes disproportionately excessive damage to same, MYB shall reimburse City for the cost or proportionate cost of necessary repairs and/or replacement. MYB shall exercise best efforts to see that any and all use of Fields, where such use is scheduled or authorized by MYB, is in compliance with all laws and with City's policies regarding use of City parks and/or facilities, including, but not limited to, such reasonable policies as may be adopted or enacted by the Director of the Meridian Parks and Recreation Department.
7. **Collection of fees.** MYB shall have right to assess and collect reasonable fees for participation from members of the MYB program. MYB shall not collect any admission fee for access to Fields facilities. Except as otherwise agreed in writing, City shall not be entitled to any fee assessed and/or collected by MYB.
8. **Equipment.** Except as specifically set forth in this Agreement, MYB shall be solely responsible for providing, maintaining, preparing, repairing, and/or replacing any and all necessary equipment for any and all MYB activities at Fields. Any and all known and unknown risks and costs related to or arising from the use or storage of MYB's equipment, including, but not limited to, loss or theft of, damage to, and damage or injury caused by such equipment, shall be borne solely by MYB.
9. **Banners.** MYB shall be responsible for removing from Fields any banners or notices posted by MYB.
10. **No right to exclude conveyed.** Any exclusive use granted to MYB by this Agreement shall include neither the right to exclude any law-abiding person from Fields where such person is not interfering with MYB's use thereof, nor the right to interfere with any person's concurrent, lawful use of Fuller Park, where such concurrent use does not conflict or interfere with MYB's use. MYB shall exercise any exclusive use granted by this Agreement only in accordance with the terms of this Agreement and in accordance with any and all applicable laws and City policies.

**B. General rights and obligations of City regarding Fields.**

1. **Notification of Fields closure.** City shall provide thirty (30) days' notice to MYB when a field or fields at Fuller Park will be closed for routine or scheduled maintenance or repair of Fields facilities, infrastructure, vegetation, or other component, except that City may undertake, with fewer days' notice or no notice, emergency maintenance or repairs necessary to protect the health, safety, and/or welfare of the public, or where such

alterations, construction, or improvements will not unreasonably affect MYB's use of Park or Park amenities or facilities as set forth in this Agreement.

2. **Maintenance and utilities.** City shall provide all necessary utilities and services to MYB and Fields, including, but not limited to, electricity, restrooms, water, sewer, and/or waste removal. City shall maintain the turf, including re-seeding, sod laying, weed and/or pest control, fertilizing, mowing, and irrigating. City shall be responsible for general fence, field, and facility maintenance.
3. **Bases.** City shall provide bases for MYB's use on the Fields. MYB shall ensure that bases are left on the Fields for use by other Fields users.
4. **Stop use; field location.** Any duly authorized agent or employee of City may stop priority or scheduled use of Fields and/or City facilities, including play in progress, at any time where such action is warranted due to field or other conditions, or coach, player, or spectator conduct. Any duly authorized agent or employee of City may require that MYB utilize or not utilize a particular field or fields due to weather conditions and/or turf quality.
5. **Public park.** The parties hereto expressly acknowledge that Fields are public spaces, the management and scheduling of which shall at all times be within the sole purview of City. City shall have the right to use or allow the use of Fields for any and all purposes and under any and all conditions, so long as such use does not conflict or interfere with MYB's priority or scheduled use of the Fields.
6. **Scheduling; collection of fees.** City shall be solely responsible for scheduling all use of Fields and Fields facilities and amenities. In accordance with its policies, City shall have right to assess and collect reasonable user fees from persons who use Fields; however, the amount of such user fees shall not exceed costs and expenses actually incurred. MYB shall not be entitled to any Fields user fee assessed and/or collected by City.

#### **IV. GENERAL PROVISIONS.**

- A. **Day-to-day communications.** Communication between MYB and City regarding day-to-day matters (e.g., issues related to use, scheduling, and maintenance of Fields) shall occur via e-mail, facsimile, or telephone. City shall provide MYB the name, e-mail address, and telephone number of specific City personnel ("City Contact") who shall serve as the liaison between City and MYB for all matters regarding the day-to-day scheduling, use, and maintenance of Fields and Fields. MYB shall provide City the name, e-mail address, and telephone number of specific MYB personnel ("MYB Contact") who shall serve as the liaison between MYB and City for all matters regarding the day-to-day scheduling, use, and maintenance of Fields and Fields.
- B. **All other notice.** All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when sent via electronic mail ("e-mail"), personally served, or mailed via United States mail, to the following personnel and address:

Steve Siddoway  
Parks and Recreation Dept. Director  
City of Meridian  
33 E. Idaho Avenue  
Meridian, Idaho 83642  
ssiddoway@meridiancity.org

Jake Hines  
President  
Meridian Youth Baseball  
13601 W. McMillan Road  
Boise ID 83713  
jakehines14@gmail.com

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.

- C. Quarterly review.** The MYB Contact and the City Contact shall meet quarterly to review Fields use and scheduling, address any problems which may have arisen, and discuss improvements regarding the parties' joint use of Fields.
- D. Conflict Resolution.** If either party believes that the other party is not fulfilling its obligations as established by this Agreement, the complaining party shall give written notice of its complaint to the other party. The party receiving the complaint shall, within fifteen (15) calendar days, correct the situation and confirm the correction in writing, or reject the complaint, explaining the mitigating circumstances and why a remedy cannot be achieved.
- E. Assignment.** MYB shall not assign or sublet all or any portion of MYB's interest in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written consent of City. City shall not assign or sublet all or any portion of City's interest in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written consent of MYB. This Agreement and each and all of the terms and conditions hereof shall apply to and are binding upon the respective organizations, legal representative, successors, and assigns of the parties.
- F. No agency.** Neither MYB 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 their use and occupancy of Fields.
- G. Indemnification; insurance.** MYB and each and all of its employees, agents, contractors, officials, officers, servants, guests, and/or invitees, and all participants in MYB programming, 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 MYB or any MYB employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of MYB programming, at or in its use of Fields, Fuller Park, Mo Brooks Field, Storey Park, and/or any amenity or appurtenance thereto, or any lack of maintenance or repair thereon, which is not caused by or arising out of the tortious conduct of City. MYB shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City; and if City becomes liable for an amount in excess of the insurance limits herein provided due to the actions or omissions of

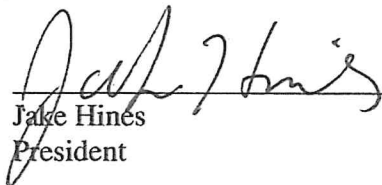
MYB or any MYB employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of MYB programming, MYB covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. City makes no warranty or promise as to the condition, safety, usefulness, or habitability of the premises; MYB accepts Fields for use as is, both at the Effective Date of this Agreement and for each practice session, game, and/or tournament, and any portion thereof.

- H. Compliance with Laws.** In performing the scope of services required hereunder, City and MYB shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
- I. Cancellation.** The Director of the Parks & Recreation Department may, in his sole discretion, elect to close Fuller or Storey Park, the Fields, and/or Mo Brooks Field, and cancel MYB's priority use and/or reservation, with no notice to MYB, where closure is in the best interest of City or the public health, safety, or welfare, due to weather, Act of God, or other reason. City shall neither assume nor incur any liability for costs, damages, or losses incurred due to such cancellation, except that City shall prorate the amount due and owing under this Agreement, following mutual negotiation and written amendment of this Agreement by the Parties. For purposes of this agreement, an Act of God shall include, but shall not be limited to: fire, storm, flooding, disease, national or local emergency, natural or human-caused disaster, or any other emergency or hazard under which it is illegal, impractical, or unsafe for use of the parks, fields, or other facilities to proceed as scheduled.
- J. 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.
- K. Term of Agreement.** This Agreement shall become effective as of the Effective Date upon execution by both parties, and shall expire December 31, 2020. If the parties to this Agreement fail to mutually extend this Agreement, and neither has terminated the Agreement, the term of this Agreement, or such other terms as the parties have agreed upon in writing, shall be renewed automatically for one-year periods thereafter unless terminated by either party in the manner provided in this Agreement.
- L. Grounds for termination.** Grounds for termination of this Agreement shall include, but shall not be limited to:
1. An act or omission by either party which breaches any term of this Agreement.
  2. An Act of God or other unforeseeable event which precludes or makes impossible the performance of the terms of this Agreement by either party.
  3. A change in circumstances that renders the performance by either party a detriment to the public health, safety, or welfare.
  4. A decision by either party that termination will serve its best interests.

- M. Termination process.** Either party may terminate this Agreement by providing thirty (30) days' advance written notice of intention to terminate. Such written notice shall include a description of the breach or circumstances providing grounds for termination. A seven (7) day cure period shall commence upon mailing of the notice of intention to terminate. If, upon the expiration of such cure period, cure of the breach or circumstances providing grounds for termination has not occurred, this Agreement may be terminated upon provision of written notice of termination.
- 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.
- P. Non-waiver.** Failure of either party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after the governing body of either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement.
- Q. Applicable law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.
- R. Approval required.** This Agreement shall not become effective or binding until approved by the respective governing bodies of both City and MYB. The parties signatory hereto represent and warrant that each is duly authorized to bind, respectively, City and MYB to this Agreement in all respects.

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.

**MERIDIAN YOUTH BASEBALL:**

  
 \_\_\_\_\_  
 Jake Hines  
 President

**CITY OF MERIDIAN:**

BY: \_\_\_\_\_  
 Robert E. Simison  
 Mayor

Attest: \_\_\_\_\_  
 Chris Johnson  
 City Clerk