

AGREEMENT WITH TREASURE VALLEY CHILDREN'S THEATER FOR USE OF CENTENNIAL PARK

This AGREEMENT WITH TREASURE VALLEY CHILDREN'S THEATER FOR USE OF CENTENNIAL PARK (hereinafter "Agreement") is made this 9th day of March, 2021 ("Effective Date"), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (hereinafter "City"), and Treasure Valley Children's Theater, a nonprofit corporation organized under the laws of the State of Idaho (hereinafter "TVCT").

WHEREAS, the respective governing bodies of City and TVCT are mutually interested in enhancing the Meridian community's quality of life by providing and supporting arts opportunities, including theater arts experiences, for members of the Meridian community;

WHEREAS, TVCT seeks to use Centennial Park, located at 223 E. Idaho Avenue ("Park"), to provide an outdoor summer theater program in downtown Meridian, and Meridian City Council finds that it is in the best interest of the community to enter into an agreement for such use of Park;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, City and TVCT agree as follows:

I. TVCT PARK USE AND RESPONSIBILITIES.

- A. Rehearsals.** From June 14, 2021 through July 31, 2021, on Mondays through Fridays, from 9:00 a.m. to 3:00 p.m., TVCT shall have exclusive use of Park for rehearsals and related activities, with the exception of Wednesdays between 11:30 a.m. and 1:00 p.m.
- B. Performances.** From June 14, 2021 through July 31, 2021, on approximately four (4) Saturdays, the specific dates of which are to be determined, from 9:00 a.m. to 4:00 p.m., TVCT shall have exclusive use of Park for performances and related activities. TVCT Contact shall coordinate with City Contact to schedule the performances and reserve the Park for this purpose.
- C. Storage.** From June 7, 2021 through August 7, 2021, TVCT may use five (5) parking spaces in the parking lot on the west side of Park for storage of a mobile stage. TVCT accepts the Park and its parking lot as-is; TVCT shall be solely responsible for the maintenance and security of the mobile stage and all related equipment, and shall bear any and all known and unknown risks of storing its personal property at this location.
- D. Permitting and compliance.** In TVCT's use of Park under this Agreement, TVCT shall be responsible for obtaining and complying with any and all applicable permits, inspections, and approvals, including, but not limited to:
 - 1. Health orders and protocols.** TVCT shall comply in all respects with all health and safety requirements and recommendations of Central District Health ("CDH") and City, and shall ensure compliance with same by TVCT's employees, agents, volunteers, invitees, and guests. This obligation shall include, without limitation, compliance with orders to wear masks, socially distance, and monitor gathering size, at both rehearsals and performances. TVCT shall work with CDH to prepare a written COVID-19 prevention and response policy, and shall make such policy available to City upon request. TVCT shall obtain approval from CDH prior to hosting performances in Park.

2. **Temporary use permit.** TVCT shall work with City Contact to determine which, if any, temporary use permit is applicable to the performances as planned. TVCT shall apply for all necessary permits and comply with related conditions thereof.
 3. **Shade structures and tents.** TVCT shall obtain prior approval from City for all shade structures used at performances, in order to ensure compliance with the International Fire Code and all Parks & Recreation Department policies.
 4. **Electrical.** TVCT may use the electrical boxes in Park and on the exterior of the Meridian Community Center to power sound amplification devices, lighting, musical instruments and other such uses. TVCT's use of electricity shall comply in all respects with the National Electrical Code and the International Fire Code.
- E. Collection of fees.** TVCT shall have right to collect reasonable activity fees from persons participating in TVCT activities. TVCT may charge admission fees for access to Park or Park facilities for performances. TVCT shall not collect admission fees for rehearsals.
- F. Primary Source of Contact for TVCT.** TVCT shall provide City the name, e-mail address, and telephone number of specific TVCT personnel (hereinafter "TVCT Contact") who shall serve as TVCT's primary contact between City AND TVCT for all matters regarding scheduling, use, and maintenance of Park.
- G. Reasonable use.** TVCT shall employ best efforts to ensure that its use of Park and Park facilities, amenities, infrastructure, and/or vegetation is appropriate and reasonable. TVCT shall exercise best efforts to see that any and all use of Park, where such use is scheduled or authorized by TVCT, is in compliance with all laws and with City's policies regarding use of City parks and/or facilities.

II. CITY RESPONSIBILITIES.

- A. Park maintenance.** Except as otherwise set forth herein, City shall provide maintenance, mowing, irrigation, and custodial services with regard to all Park facilities, infrastructure, and vegetation. This shall include maintenance of all Park turf and cleaning, maintaining, and stocking all restroom facilities. City shall provide additional trash receptacles upon request from TVCT.
- B. Play structure sound.** On Saturdays from June 14, 2021 through July 31, 2021, City shall turn off the sound function of the play structure in Park until 4:00 p.m.
- C. Scheduling.** City shall be solely responsible for scheduling all use of Park and Park facilities and amenities.
- D. Primary Source of Contact for City.** City shall provide TVCT the name, e-mail address, and telephone number of specific City personnel (hereinafter "City Contact") who shall serve as City's primary contact between City and TVCT for all matters regarding the day-to-day scheduling, use, and maintenance of Park.

III. GENERAL PROVISIONS.

- A. Public park.** The parties hereto expressly acknowledge that Park is a public space, the management and scheduling of which shall at all times be within the sole purview of City. City

and the public shall have the right to use or allow the use of Park for any and all purposes and at all times not enumerated herein or otherwise reserved, so long as such use does not conflict or interfere with TVCT's use of Park as agreed herein, reserved, or as otherwise agreed by TVCT Contact and City Contact.

- B. Alterations/Improvements to Park.** Upon thirty (30) days' notice to TVCT in the manner established herein, City shall have the right to make alterations of Park and/or to construct or locate fences, fixtures, structures, and/or any other improvements in or upon Park or Park facilities, infrastructure, and vegetation, except that City may undertake alterations, construction, or improvements to or in Park on an emergency or immediate basis without notice to TVCT where such action is necessary to protect the health, safety, and/or welfare of the public, or where such alterations, construction, or improvements will not unreasonably affect TVCT's use of Park or Park amenities or facilities as set forth in this Agreement.
- C. No right to exclude conveyed.** Any exclusive use granted to TVCT by this Agreement shall include neither the right to exclude any law-abiding person from Park where such person is not interfering with TVCT's use thereof, nor the right to interfere with any person's concurrent, lawful use of Park where such concurrent use does not conflict or interfere with TVCT's use. TVCT 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.
- D. Indemnification.** TVCT and each and all of TVCT's employees, agents, contractors, officials, officers, servants, guests, and/or invitees, including any and all participants in Event or related 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 TVCT or any TVCT employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of TVCT programming, at or in its use of Park or any lack of maintenance or repair thereon and not caused by or arising out of the tortious conduct of City.
- E. Insurance.** TVCT shall submit to City proof of an insurance policy issued by an insurance company licensed to do business in Idaho protecting TVCT, TVCT's employees, and TVCT's agents from all claims for damages to property and bodily injury, including death, which may arise during or in connection with the play, including 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 TVCT or any TVCT employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of TVCT activities, TVCT 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, TVCT 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.

F. 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 TVCT:

Autumn Kersey
Treasure Valley Children's Theater
P.O. Box 9144
Boise ID 83707

If to City:

Audrey Belnap, 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.

G. Assignment. 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 TVCT. TVCT shall not assign or sublet all or any portion of TVCT's interest in this Agreement or any privilege or right hereunder, either voluntarily or involuntarily, without the prior written consent of City. 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.

H. No agency; independent contractor. Neither TVCT 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 TVCT's use and occupancy of Park and/or any facility at which rehearsals and/or performances are held. In all matters pertaining to this agreement, TVCT shall be acting as an independent contractor, and neither TVCT nor any officer, employee or agent of TVCT shall be deemed an employee or agent of City in any manner or for any purpose. Specifically, without limitation, TVCT understands, acknowledges, and agrees that TVCT 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.

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

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. 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.

- L. Termination.** 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 or impractical 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. 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. If due to default or breach, 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 default providing grounds for termination has not occurred, this Agreement shall be terminated.
- M. 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.
- N. 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.
- O. Discrimination prohibited.** In performing the Services required herein, TVCT shall not discriminate against any person on the basis of race, color, religion, gender, sexual orientation, national origin or ancestry, age, or physical handicap.
- P. Applicable law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.
- Q. Approval Required.** This Agreement shall not become effective or binding until approved by the respective governing bodies of both City and TVCT.

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.

TREASURE VALLEY CHILDREN'S THEATER:

BY: 
 Autumn Kersey
 Executive Director

CITY OF MERIDIAN:

Attest:

 Robert E. Simison
 Mayor

 Chris Johnson
 City Clerk