

AGREEMENT FOR USE OF KLEINER PARK FOR SPECIAL EVENT

This AGREEMENT FOR USE OF KLEINER PARK FOR SPECIAL EVENT ("Agreement") is made this ____ day of March, 2023 ("Effective Date"), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (hereinafter "City"), and Kenneth G. Wilde, on behalf of Capital Christian Center, Inc., a religious corporation organized under the laws of the State of Idaho (hereinafter "Organizer").

WHEREAS, the respective governing bodies of City and Organizer are mutually interested in enhancing the Meridian community's quality of life by providing and supporting special event opportunities for members of the Meridian and greater communities;

WHEREAS, City and Organizer recognize that publicly-held facilities are resources requiring heightened stewardship and protection;

WHEREAS, Organizer has agreed to be responsible for any costs incurred by City in the course of the large-scale special event hosted by Organizer at Julius M. Kleiner Memorial Park ("Park"), located at 1900 N. Records Avenue, in Meridian, Idaho, on April 8, 2023; and

WHEREAS, the Meridian City Council finds that it is fiscally responsible and in the best interest of the community to enter into a contractual agreement establishing the terms and conditions of Organizer's use of Park;

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 Organizer agree as follows:

I. PERMISSION GRANTED.

Subject to the terms and conditions set forth herein, City hereby grants to Organizer permission to utilize Park at the time, place, and manner set forth in this Agreement and in City of Meridian Temporary Use Permit no. TUP-23-0006 for a large-scale special event known as "Capital Community Egg Hunt" ("Event").

II. OBLIGATIONS OF ORGANIZER.

- A. Reasonable use.** Organizer shall employ best efforts to ensure that its use of Park and Park facilities, amenities, infrastructure, and/or vegetation are appropriate and reasonable. Where Organizer's use of Park and Park facilities, infrastructure, and/or vegetation causes disproportionately excessive damage to same, Organizer shall reimburse City for the cost or proportionate cost of necessary repairs and/or replacement. Organizer shall exercise best efforts to see that any and all use of Park, to the extent reserved by Organizer, is in compliance with all laws and with City's policies regarding use of City parks and/or facilities, including, but not limited to, policies be adopted or enacted by the Director of the Meridian Parks and Recreation Department.
- B. Permitting.** In addition to compliance with all terms and provisions of this Agreement, Organizer shall separately obtain and comply with each and all of the following permits, as required by law:

1. City of Meridian Temporary Use Permit for Large Scale Special Event;
2. Any and all applicable licenses, permits, inspections, and/or certifications from the Federal Aviation Administration;
3. Any and all applicable licenses, permits, inspections, and/or certifications from the Ada County Highway District;
4. Any and all applicable licenses, permits, inspections, and/or certifications from the Central District Health Department;
5. Any and all reservations, permits, and inspections required by the Meridian Parks and Recreation Department.

C. Fees. By noon (12:00 p.m.) on Friday, March 24, 2023, Organizer shall remit to City four thousand, nine hundred and forty dollars and thirty-four cents (\$4,940.34), which amount includes:

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|-------------|---|
| \$1,590.00: | Fee for reserving Park for one day |
| \$ 720.00: | Fee for Meridian Parks and Recreation personnel to provide facility maintenance and janitorial services before, during, and after the Event, from 7:00 a.m. to 4:00 p.m. (4 staff @ \$20/hour x 36 staff hours) |
| \$1,296.24: | Fee for Meridian Police Department personnel to provide public safety and traffic control services before and during the Event, from 9:00 a.m. to 3:00 p.m. (4 officers @ \$54.01/hour x 24 staff hours) |

If additional staffing or extended hours are required for the protection of public safety or maintenance of Park, Organizer shall reimburse City for all staffing costs within fourteen (14) days of City's invoice for such costs. If Organizer fails to timely reimburse City pursuant to such invoice, the City may decline to provide extra-duty personnel staffing, decline to reserve City facilities, release existing reservations of City facilities, or decline to allow the subsequent use of City facilities for Event or any iteration thereof.

D. Time and place. The permission extended under this Agreement shall apply to the areas of Park detailed on the event site plan approved by City under City of Meridian Temporary Use Permit no. TUP-23-0006, from 8:00 a.m. to 4:00 p.m. on Saturday, April 8, 2023.

E. Manner. The permission extended under this Agreement shall be subject to all terms and conditions as set forth in this Agreement, in City of Meridian Temporary Use Permit no. TUP-23-0006, and in any applicable laws and policies, including, without limitation, the Meridian Parks and Recreation Event Planners' Handbook. Such terms and conditions shall include, but shall not be limited to, the following:

1. The public must have general access to all areas of Park at all times, so long as such access does not unduly interfere with Organizer's use of Park for Event.
2. Driving or parking vehicles on non-designated driving or parking surfaces shall be prohibited, except at the direction of Meridian Parks & Recreation Department staff. Further, Organizer or his designee may operate one (1) golf cart at Park during event, so long as such operation may be undertaken safely.
3. Where activities or equipment related to Event damage or destroy turf, landscaping, sprinklers, or other Park infrastructure or facilities, or otherwise require City to incur additional expenses,

Organizer shall reimburse City for all costs of repair, replacement, or expense within fourteen (14) days of City's invoice for such costs.

4. Organizer shall make every effort to provide and maintain access to Event for persons with disabilities.
5. No smoking shall be allowed in Park, except in designated parking areas.
6. Used water, grease, charcoal, and other materials and supplies must be carried out of Park at the conclusion of Event, and may not be disposed of at Park.
7. Organizer is authorized to post signs for the purpose of identifying, promoting, advertising, or directing patrons to Event as represented and approved in City of Meridian Temporary Use Permit no. TUP-23-0006. Organizer acknowledges that the permission extended by City under this Agreement to post signs shall extend only to the locations approved in City of Meridian Temporary Use Permit no. TUP-23-0006, and that it is unlawful to post a sign identifying, promoting, advertising, or directing patrons to Event without the permission of the owner of such property. Organizer shall remove all signs identifying, promoting, advertising, or directing patrons to Event by dusk on Saturday, April 8, 2023.
8. Organizer shall offer for public use four (4) shuttle buses to transport event attendees to and from designated parking areas and the Event, and shall publicize the availability of such buses.
9. Organizer shall provide an adequate number of volunteers to staff the inflatables, egg fields, designated parking areas, the crosswalks between the Meridian Village and the Park, and the temporary crosswalk between the designated parking area on Records Road and the Park.
10. Organizer shall provide a medical services station at Event. Such station shall be staffed by at least two (2) personnel trained and certified to provide first aid. Such station shall be clearly marked and accessible to all Event participants.
11. Organizer shall provide and install temporary "no parking" signs adequate to prevent parking in the bike lanes on Records Road.
12. Organizer shall provide eight (8) portable toilets at Event, including one (1) for use by disabled persons.

F. Skydiving. Pursuant to Meridian City Code section 13-2-6(B)(2), the Director of the Parks and Recreation Department hereby orders that Organizer may feature skydivers at the event subject to the following conditions:

1. The skydivers may land only on the designated landing area, and Organizer shall ensure that the designated landing area is clear and safe for Event attendees and the skydivers.

2. This permission extends to Organizer's use of Sky Down Skydiving, LLC and its employees and agents only, and shall not be transferrable or assignable to any other entity. Sky Down Skydiving, LLC and all its employees and/or agents shall be properly licensed and certified.
3. Sky Down Skydiving, LLC and all of its employees and agents shall follow all local, state, and federal laws and regulations.
4. Premises used under this permission are offered on an as-is basis.
5. This order is subject to immediate revocation or modification at any time where such revocation or modification would serve the best interest of the City of Meridian.
6. **Insurance.** As required by Meridian City Code, Organizer shall submit to City proof of an insurance policy issued by an insurance company licensed to do business in Idaho protecting Organizer, Organizer's employees, and Organizer's agents from all claims for damages to property and bodily injury, including death, which may arise during or in connection with Event, including Event set-up and tear-down. Such insurance shall name City as additional insured, and shall afford at least one million dollars (\$1,000,000.00) per person bodily injury, one million dollars (\$1,000,000.00) per occurrence bodily injury, and one million dollars (\$1,000,000.00) 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 Organizer or any Organizer employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of Event or related activities, Organizer 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.
7. **Primary Source of Contact for Organizer.** Organizer shall provide City the name, e-mail address, and telephone number of specific personnel (hereinafter "Organizer Contact") who shall serve as Organizer's primary contact between Organizer and City for all day-to-day matters regarding set-up, operation, and tear-down of in Park. Organizer Contact for Event shall be:
Organizer Contact: Mark Thornton
E-mail: mark@capitalchurch.co
Phone: 208-888-1060, ext. 4

III. OBLIGATIONS OF CITY.

- A. **Facility operation.** Except as otherwise set forth herein, City shall provide general maintenance, mowing, irrigation, and custodial services with regard to Park facilities, infrastructure, and vegetation. City shall provide all necessary utilities and services to Park facilities, including, but not limited to, electricity, potable water, sewage service, and/or typical waste and refuse removal. City shall cause the repair and/or replacement of any and all Park facilities, infrastructure, and/or vegetation that are physically damaged by acts of nature. To the extent that the cause of damage is attributable to Event activities, Organizer shall be responsible for the cost of repair or replacement.
- B. **Primary Source of Contact for City.** City shall provide Organizer 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 Organizer for all day-to-day matters regarding set-up, operation, and tear-down of in Park. City Contact for Event shall be:

City Contact: Skyler Cook, Recreation Coordinator, Sports & External Events
Meridian Parks and Recreation Department

E-mail: scook@meridiancity.org

Phone: 208-888-3579

IV. GENERAL PROVISIONS.

- A. Notice.** Communication between Organizer and the City Contact regarding day-to-day matters shall occur via e-mail or telephone. All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when personally served, or mailed in the United States mail, or via e-mail, addressed as follows:

City:

City of Meridian
Attn: City Clerk
33 E. Broadway Avenue
Meridian, Idaho 83642

Organizer:

Kenneth G. Wilde, President
Capital Christian Center
2760 E. Fairview Ave
Meridian, Idaho 83642

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

- B. 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 shall have the right to allow the use of Park, and close all or any portion of Park, for any and all purposes and under any and all conditions.
- C. No right to exclude conveyed.** Any exclusive use granted to Organizer by this Agreement shall include neither the right to exclude any law-abiding person from Park where such person is not interfering with Organizer'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 Organizer's use. At all times Organizer shall be on an equal footing with the general public regarding its use of Park. Organizer 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. Force Majeure.** No Party will be liable for failure to perform any duty under this Agreement where such failure is due to or made impracticable by unforeseeable causes beyond the Parties' control and without the fault or negligence of the Parties, including, but not restricted to, acts of God or the public enemy, fire, flood, natural disaster, epidemic, strike, or order of any court or authorized agency.
- E. Assignment.** Organizer shall not assign or sublet all or any portion of Organizer'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 representative, successors, and assigns of the parties.

- F. No agency.** Neither Organizer nor Organizer's 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 Park.
- G. Indemnification.** Organizer and each and all of Organizer'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 Organizer or any Organizer employee, agent, contractor, official, officer, servant, guest, and/or invitee, or any participant in or observer of Organizer 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.
- H. No warranty.** City makes no warranty or promise as to the condition, safety, usefulness, or habitability of the premises; Organizer accepts Park for use as is, both at the Effective Date of this Agreement and throughout the course of Event and all related activities.
- I. Compliance with laws.** In performing the scope of services required hereunder, City and Organizer shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
- 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.**
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 twenty-four (24) hours notice of intention to terminate. Such notice shall include a description of the breach or circumstances providing grounds for termination. A twenty-four (24) hour cure period shall commence upon provision 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 shall be terminated upon mailing or e-mailing of notice of termination.

- M. Breach.** Any act or omission by either party which breaches any term of this Agreement may provide grounds for termination. In the event of breach, the City may also decline to provide extra-duty personnel staffing, decline to reserve City facilities, release existing reservations of City facilities, or decline to allow the subsequent use of City facilities for Event or any iteration thereof.
- 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. 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 both Organizer and by Meridian City Council.

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.

ORGANIZER:

BY: 

Kenneth G. Wilde
President, Capital Christian Center Incorporated

CITY OF MERIDIAN:

Attest:

BY: _____
Robert E. Simison, Mayor

Chris Johnson, City Clerk