

LICENSE AND INDEMNITY AGREEMENT WITH WESTERN STATES EQUIPMENT COMPANY FOR 2023 PUBLIC WORKS WEEK MINI HEAVY EQUIPMENT RODEO

This LICENSE AND INDEMNITY AGREEMENT WITH WESTERN STATES EQUIPMENT COMPANY FOR 2023 PUBLIC WORKS WEEK MINI HEAVY EQUIPMENT RODEO is made this ____ day of _____, 2023 ("Effective Date"), by and between Western States Equipment Company whose address is 500 E Overland Road, Meridian, Idaho ("Licensee"), and the City of Meridian, Idaho, a municipal corporation organized under the laws of the State of Idaho ("City"), whose address is 33 E. Broadway Ave., Meridian, Idaho.

WHEREAS, City is hosting an event at the Meridian City Hall Plaza on June 7, 2023 to celebrate Public Works Week; and

WHEREAS, as part of the Public Works Week celebration, Licensee is sponsoring a mini heavy equipment rodeo activity in the City Hall east parking lot (referred to herein as the "Property"); and

WHEREAS, the City of Meridian is willing to allow Licensee a limited license to use Property for this purpose;

NOW THEREFORE, in consideration of the recitals and mutual covenants, agreements, and inducements contained herein, the parties hereby agree as follows:

I. SCOPE OF LICENSE GRANTED BY CITY.

A. Scope of use. Licensee's use and occupancy of the Property shall be limited to activities associated with the mini heavy equipment rodeo, specific activities include the following: Up to two mini excavators will be on site for the public to test their skills at operation of the equipment in a competition setting. The setup will include picking up and moving a plastic bucket filled with water with the bucket and arm of the excavator. The area of operation will be delineated with traffic candles and caution tape for public safety.

B. Participant Waiver and Release Required. Licensee shall have each participant execute the "Release and Waiver of Liability Agreement" in form and content substantially similar to that set forth in *Exhibit A* hereto and incorporated herein.

C. Term of license. The term of this Agreement shall be from 4 p.m. to 7 p.m. on June 7, 2023, along with sufficient time to set up and tear down immediately before and after this time period.

II. INDEMNIFICATION; INSURANCE.

A. Indemnification. In consideration of Licensee's fee-free access to and use of Property, Licensee shall, and hereby does, indemnify and save and hold harmless City from and for any and all losses; claims; actions; judgments for damages; injury to its members, agents, invitees, volunteers, contractors, officials, officers, guests, employees, other persons, or property; and/or losses and expenses caused or incurred by Licensee, and not caused by or arising out of the

tortious conduct of City of Meridian, which are directly attributable to Licensee's operation of the mini heavy equipment rodeo, as described in Section I.A. Licensee acknowledges that accessing or using Property carries risks, some of which are unknown, and assumes these and any and all other known and unknown risks and hazards of such activity and any activity related thereto. Licensee forever waives and releases, on behalf of itself, its members, its agents, its employees, and their heirs, executors, administrators, assigns, and/or personal representatives, any and all claims and/or rights for damages Licensee and its members, agents, invitees, volunteers, contractors, officials, officers, guests, employees now has or may hereafter have against the City of Meridian and/or its employees, elected officials, agents, guests, and/or business invitees, suffered in connection with or arising out of Licensee's access to and use of City facilities and/or any activity related thereto and not caused by or arising out of the negligence, misconduct, or tortious conduct of the City of Meridian or its employees.

B. No coverage provided. Licensee acknowledges that the City of Meridian shall not provide for Licensee or for its members, agents, invitees, volunteers, contractors, officials, officers, guests, employees, any insurance or coverage of any kind, whether financial, medical, property, or otherwise, for any accidents, injuries, deaths, illnesses, losses, or damages that result during or arise out of Licensee's actions or omissions hereunder and/or any activity related thereto.

C. Licensee to maintain insurance. Licensee shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, and upon each and every occasion on which Licensee uses the Property hereunder, liability insurance in which the City of Meridian shall be named additional insured 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, Licensee covenants and agrees to indemnify and save and hold harmless City from and for any and all such losses, claims, actions, or judgments for damages or liability to persons or property. Licensee shall provide the Clerk City with a Certificate of Insurance or other proof of insurance evidencing Licensee's compliance with the requirements of this paragraph. In the event the insurance minimums of the Idaho Tort Claims Act are changed, Licensee shall immediately submit proof of compliance with the changed limits.

D. Waiver. Licensee and its members, agents, invitees, volunteers, contractors, officials, officers, guests, employees 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 to Licensee's use of City's Property, whether such loss or damage may be attributable to known or unknown conditions, except for liability caused by or arising out of the negligence, misconduct, or tortious conduct of the City of Meridian or its employees.

E. As-is condition. The City makes no warranty or promise as to the condition, safety, usefulness, or habitability of the premises of the Property; Licensee accepts same as-is, both at the effective date of this agreement and at the time and for the purpose of each event and activity specified herein.

F. Good faith. Licensee will utilize the Property in a manner that will best conserve the current condition of the Property.

III. GENERAL PROVISIONS.

A. Alterations, improvement to real property. Licensee shall not make, or permit to be made, alterations to or improvements to Property without first obtaining City's written consent.

B. Relationship of Parties. Licensee and its members, agents, invitees, volunteers, contractors, officials, officers, guests, and employees are not independent contractors nor employees, agents, joint venturers, or partners of City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Licensee and City or any official, agent, or employee of City; or between any of Licensee's members, agents, invitees, volunteers, contractors, officials, officers, guests, employees, and the City or any official, agent, or employee of City.

C. Termination. If, through any cause, Licensee fails to comply with the terms of this Agreement, violates any of the covenants, agreements, and/or stipulations of this Agreement, or of any other applicable law, ordinance, regulation, or policy, and/or engages in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement, City may immediately terminate this Agreement without the necessity of providing written notice to Licensee of such termination. Notice of for-cause termination shall be effective immediately upon verbal notification by City.

D. No waiver. City's waiver on one or more occasion of any breach or default of any term, covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach or default of the same or a different term, covenant or condition, nor shall such waiver operate to prejudice, waive, or affect any right or remedy City may have under this Agreement with respect to such subsequent default or breach by Licensee.

E. Notices. Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed by United States Mail, certified, return receipt requested, addressed as follows:

City: City of Meridian Public Works Department
33 E. Broadway Avenue
Meridian, Idaho 83642
Licensee: Western States Equipment Company
500 E Overland Rd
Meridian, ID 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.

F. Compliance; no discrimination. In undertaking activities under or related to this Agreement, Licensee shall comply in all respects with all applicable laws, ordinances, regulations, policies, agreements, and requirements, and further shall not discriminate against

any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.

- G. Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
- H. Advice of attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorney and/or has received the opportunity to seek such advice.
- I. Applicable law.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of Ada County, Idaho.

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.

LICENSEE:
Western States Equipment Company

Jesikah Luangaphay

Jesikah Luangaphay
VP, Finance

CITY OF MERIDIAN:

Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk

EXHIBIT A
RELEASE AND WAIVER OF LIABILITY AGREEMENT

With respect to participation in the 2023 City of Meridian Public Works Exposition Equipment Rodeo:

I hereby voluntarily release, forever discharge, and agree to defend, indemnify and hold harmless the City of Meridian and Western States Equipment Company (the “**Company**”) and their respective owners, agents, employees, officers, directors, affiliates, successors, and assigns (“Released Parties”), jointly and individually from any and all liability, damage, expense, causes of action, suits, claims or judgments, arising from injury, damage or loss, or claims of injury, damage or loss, to me or my personal property arising from or in any way related to my participation in any activities or events sponsored or conducted by Company, including any such claims that allege the negligent acts or omissions of the Released Parties.

I agree to observe and obey all posted rules and warnings, and further agree to follow any oral instructions or directions given by Company, or the employees, representatives or agents of Company.

If the participant is a minor (under the age of 18), I agree that this Release is made on behalf of that minor participant and that all of the releases, waivers, and promises herein are binding on that minor participant. I represent that I have full authority as parent or legal guardian of the minor participant to bind the minor participant to this Release, and further agree to defend, indemnify and hold harmless the Released Parties from any and all claims or suits for personal injury, property damage or otherwise which are brought by, or on behalf of the minor, and which are in any way connected with the minor’s participation in the activity or event, including injuries or damages caused by the negligence of the Released Parties.

I understand that participation in activities may cause serious or grievous injuries, including bodily injury, damage to personal property and/or death. I certify that I know of no medical problems that would increase my risk of illness or injury as the result of the activities. I assume any risk, and take full responsibility and waive any claims of personal injury, death or damage to personal property associated with the activities.

I have read and understand the foregoing statements and voluntarily sign this Release with full knowledge of its significance. I agree that this Release is intended to be as broad and inclusive as is permitted by the law of the state of Idaho, and that if any portion hereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

Participant: _____ Date of Birth: _____ Age: _____

Signature (parent or legal guardian if participant is a minor)

Printed Name

Date: _____

LICENSE AND INDEMNITY AGREEMENT with Western States Equipment 05-04-23 Final

Final Audit Report

2023-05-08

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