

Fees may change without further notice.

RENTAL AGREEMENT BATTELL COMMUNITY CENTER AUDITORIUM

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between the City of Mishawaka, Indiana, acting by and through its Parks and Recreation Board (“Park Board”), and _____ (“Performer”), each a “Party and collectively the “Parties.”

WITNESSETH:

WHEREAS, Park Board maintains and operates an auditorium and related facilities at Battell Community Center, 904 N. Main Street, Mishawaka, Indiana (“Battell Center”); and

WHEREAS, Battell Center, from time to time, rents portions of its facilities to various performing arts groups to rehearse and stage plays, musicals, concerts, and similar performances for public entertainment purposes; and

WHEREAS, Park Board desires to rent such facilities at Battell Center to Performer and Performer desires to rent such facilities from Park Board; and

WHEREAS, the parties hereto have agreed upon the terms and conditions of such Rental Agreement and desire to record their understanding in writing.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

1. Term. Battell Center hereby rents to Performer the Battell Center Auditorium (and any other related facilities listed in paragraph 2 hereinbelow) for the performances of (name of event)

_____ to be held on the following dates:

_____ Time (for each date including rehearsals please be specific):

_____ (Monday-Friday 8:00 am-9:00 pm; Weekend: Friday 5:00 pm-11:00pm, Saturday 8:00am-11:00 pm & Sunday 2:00 pm-9:00 pm)

For purposes of this Agreement, the words “performance” and “performances” shall refer to a single presentation of any particular show, play, concert, etc. The word “event” shall refer to a particular or specific show, play, concert, etc., regardless how many “performances” there are of that “event”.

2. Description of Event(s). Please provide details on the type of performance or event,

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3. Additional Facilities. In addition to the performance dates described hereinabove, Performer shall have the right to use the auditorium and (list any additional facilities)

for rehearsal and scenery construction and installation during normal business hours (only Monday-Thursday 8:00 am-9:00 pm; Friday 8:00 am-5:00 pm) at Battell Center on the following dates, pending room availability:

If Performer requires use of Battell Center facilities in addition to those specified hereinabove, subject to availability, such additional usage and times may be negotiated with the Battell Center staff for rent in accordance with the then current Battell Center room rental fee schedule. The "Contractor's Room" will be available for use as a dressing room during scheduled rental time per Performance.

No one associated with Performer shall possess a key *or* have access to Battell Center without the knowledge, permission and presence of a Battell Center staff member.

4. Usage Fees. Reservations must be made 30 days prior to event date. Payment in full is required at time of reservation. In order to qualify for the Not-for profit usage rates, Performer must provide proof of 501(c)(3) status at time of reservation.

Not-for-Profit:

- a. Half Day (Non-Performance: Not Ticketed) Event: \$100.00 (6 hours including setup/tear down) 8 a.m. -2 p.m. or 3 p.m. -9 p.m. Base Fee includes use of lighting and sound, one (1)-hour orientation for system use (orientation needs to be scheduled time prior to event) and 14 days advertising on Battell Community Center *Watchfire*® sign. Going past 9 p.m., and rental of additional rooms for before/during/after event use incur additional charges at room rates per hour.
- b. Full Day (Non-Performance: Not Ticketed) Event: \$150 (13 hours including setup/teardown) 8a.m.-9 p.m. Same allowances as half day, and same additional fees.
- c. Performance with per-day Rehearsal: \$300 Base Fee +\$50 per Rehearsal Day (Includes full sound/light, orientation, access to auditorium for rehearsals during business hours, and staff on duty for event.) Rehearsal days must be scheduled on days immediately preceding Performance. Additional fees will apply for staff overtime charges.
- d. One Performance with 5 days (M-F) Rehearsal: \$350 Base Fee (same inclusions and additional fees as option c.)
- e. One Performance with 10 days (M-F) Rehearsal: \$700 Base Fee (same inclusions and additional fees as option c.)
- f. Additional Performances added to options c-e.: \$200 per single performance
- g. Additional Room Use (Day of Performance) added to option A-E: \$30.00 per room per day.
- h. Additional Advertising: \$25/week (7 days) of additional advertising on Battell Community Center *Watchfire*® Sign

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For-Profit:

- a. Half Day (Non-Performance: Not Ticketed) Event: \$200 (6 hours including setup/teardown) 8 a.m. -2 p.m. or 3 p.m. -9 p.m. Base Fee includes use of lighting and sound, one (1)-hour orientation for system use (orientation needs to be scheduled time prior to event), and 14 days advertising on Battell Community Center *Watchfire*® sign. Remaining past 9 p.m., and rental of additional rooms for before/during/after event use incur additional charges at room rates per hour.
- b. Full Day (Non-Performance: Not Ticketed) Event: \$250 (13 hours including setup/teardown) 8a.m.-9 p.m. Same allowances as half day, with same additional fees.
- c. Performance with per-day Rehearsal: \$600 Base Fee +\$50 per Rehearsal Day (Includes full sound/light, orientation, access to auditorium for rehearsals during business hours, and staff on duty for event.) Rehearsal days must be scheduled on days immediately preceding Performance. Additional fees will apply for staff overtime charges.
- d. One Performance with 5 days (M-F) Rehearsal: \$750 Base Fee (same inclusions and additional fees as option c.)
- e. One Performance with 10 days (M-F) Rehearsal: \$1000 Base Fee (same inclusions and additional fees as option c.)
- f. Additional Performances added to options c – e: \$400 per single performance
- g. Additional Room Use (Day of Performance) added to option a – e: \$30.00 per room per day.
- h. Additional Advertising: \$25/week (7 days) of additional advertising on Battell Community Center *Watchfire*® Sign

5. **Additional Rental.** In addition to the rental payments required hereinabove, Performer shall pay for custodial/maintenance overtime necessitated by Performer's production based on an hourly rate of \$40.00 per hour payable to Battell Community Center as invoiced. Performer will be invoiced at this rate if custodial/maintenance personnel are required to stay past their scheduled hours for the Performer's production or rehearsal.

Staff Schedule: _____

6. Liability Insurance/Liability Waivers. Prior to its first rehearsal or use of the auditorium, Performer shall provide Battell Center with a copy of a General Liability Certificate of Insurance issued by a company acceptable to Park Board in the amount of \$1,000,000.00 naming the City of Mishawaka, the Mishawaka Board of Parks and Recreation and Battell Community Center as additional insureds.

7. Tickets. Performer shall provide, at Performer's expense, printed production tickets for each performance. Sale of such tickets shall be the sole responsibility of Performer and Battell Center will not sell tickets or act as a box office for Performer.

Present auditorium capacity is limited to 402 fixed seats and 8 handicap accessible spaces (410 seats total). No tickets in excess of the seating capacity will be sold.

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A. **RESERVED SEATING IS REQUIRED FOR ANY EVENT WITH MORE THAN ONE PERFORMANCE.** Reserved ticket master sheets with seat and aisle numbers will be provided to the Performer by Battell Center and must be used when printing tickets. Final ticket design must be submitted to Battell Center staff and approved by Battell Center staff prior to printing by Performer. Tickets shall be printed in different colors for each performance. Any duplication of reserved tickets or overselling the auditorium in excess of its stated capacity will result in the forfeiture of any future use of the auditorium by Performer.

B. **NO RESERVED SEATING IS REQUIRED FOR AN EVENT LIMITED TO A SINGLE PERFORMANCE.** The words “NO RESERVED SEATING” will be conspicuously printed on the face of each such ticket. Performer may request reserved seating for single performances, in which case the foregoing rules regarding reserved seating will be followed.

8. Performer’s Duties and Responsibilities under this Agreement.

- A. Performer is responsible for all aspects of the production including, but not limited to, costumes, sound, set, lights and licenses.
- B. Mounting items arbitrarily to walls or stage floor for prop purposes is prohibited. Mount only to blocks provided.
- C. Performer will pay for all repairs to the building or its contents if needed after a walk through following each performance (including, but not limited to, missing items such as electrical cords, microphones, etc.). A final walkthrough inspection of the leased premises will be conducted by a representative from Performer and Battell Center within twenty-four (24) hours after the final performance of the event. Any necessary repairs and cleanup shall be noted in writing and corrected by Performer within two (2) business days for cleanup and five (5) business days for repairs. If such work is not completed by Performer within such time, Battell Center will perform the necessary maintenance and cleanup at Performer’s expense at the rate of \$40.00 per hour plus the cost of any materials used.
- D. At the conclusion of Friday OR Saturday event(s), Performer must strike stage to make available for Sunday usage. This includes the removal of sets, props, instruments, microphones, equipment and any additional outside items.
- E. Set construction must be completed according to prevailing industry standards. Painting of any kind is not allowed to be done in the Battell Community Center facility. Glitter of any kind is not allowed to be used on sets in the Auditorium. If Battell Center staff is required to clean up, paint, or repair damage to the stage, Performer shall reimburse Battell Center for the cost of such work.
- F. The parties agree that the facilities covered by this Agreement are rented in “as is” condition. Performer has inspected the facilities covered by this Agreement and agrees that they are in good condition except _____

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_____. However, if Performer requires temporary and non-damaging modifications to the facility (i.e. Marley surface, multi-purpose flooring, etc.), prior written approval from Battell Center is required. Any modification made will be at Performer's expense and Performer shall restore stage to its original condition, except as provided in paragraph 11. A. hereinbelow.

G. Battell Center has a limited amount of lighting and sound equipment that may be utilized by Performer. If additional equipment is required, Performer is solely responsible for any equipment that is brought in and not the property of Battell Center.

H. Performer will be required to choose from one of the following options for an audio and lighting technician.

 a. Battell Center will provide a list of certified sound and lighting technicians for hire. Battell Center shall provide Performer with contact information for the certified technician at time of signed Agreement. Performer is responsible for arrangement and fees required.

OR

 b. Performer provides its own technician of age 18 or older and its own production equipment.

I. Any damage to Battell Center lighting and sound equipment, whether by technicians recommended by Battell Center or Performer's technicians approved by Battell Center, shall remain the sole responsibility of Performer.

J. Performer agrees to use the facilities covered by this Agreement solely and exclusively for the purposes shown hereinabove and agrees not to sublet the facilities or assign this Agreement.

K. Performer hereby grants to Park Board or its representatives the right to enter and inspect the facilities covered by this Agreement at any time without notice to Performer.

9. Battell Center's Responsibilities under this Agreement.

A. A representative of Battell Center will be present during each performance.

B. Battell Center staff will create the following *Watchfire*® sign and schedule Performance advertisement for the requested 14 days.

a. Text (15 characters per line, 5 lines total)

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10. Performer agrees to comply with all Battell Center rules, including, but not limited to, the following:

- A. Alcoholic beverages (and consumption thereof) shall not be permitted during rehearsal or production.
- B. Illegal drug use or sales at Battell Center are absolutely prohibited. If anyone associated with Performer violates this rule the Mishawaka Police Department will be contacted.
- C. No food or drinks (except drinking water) are allowed in the auditorium at any time.
- D. Battell Center expects and demands decent and courteous behavior from every person associated with Performer. Improper or disorderly behavior will not be tolerated and may deprive Performer of future use of Battell Center auditorium.
- E. Use of Battell Center is at Performer's own risk. Battell Center shall not be liable for property damage, property loss, or personal injury sustained by Performer, its participants, or any other person, occurring at Battell Center during Performer's rehearsals, set construction, or production. Performer agrees to indemnify and hold harmless Battell Center from any expense or liability, including attorney fees, arising from any such claims or other legal action.
- F. Any other written policy, rule, or regulation adopted and promulgated by the City of Mishawaka, Indiana, the Mishawaka Board of Parks and Recreation, and Battell Community Center.

11. License Fees.

- A. All license fees, or any cost of filing fees for license required for the production of a play or performance is the sole responsibility of Performer. The City of Mishawaka, the Mishawaka Board of Parks and Recreation, Battell Community Center, their agents, employees, officials, and trustees, shall not be responsible for failure to obtain and/or pay for rights or licenses required for any production or performance by Performer.
- B. Prior to any performance, Performer shall provide to Battell Center a paid invoice for rights to the production to include, but not limited to ASCAP, BMI, SAMUEL FRENCH, TAMS WITMARK, ROGERS & HAMMERSTEIN, and the like, and Performer agrees to abide by all rules set forth by these organizations. Failure to

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pay for rights will result in cancellation of production. Performer is responsible for any monetary penalties associated with such rights.

12. Additional Conditions.

- A. Any improvements made to Battell Center by Performer must be approved in advance in writing; such improvements shall become and remain the sole property of Battell Center after completion or, at Battell Center's option, shall be restored to original condition by Performer.
- B. If deemed available by Battell Center, Performer may store sets, props, instruments, microphones, equipment and additional outside items in the East Gym Balcony on Friday or Saturday evenings, provided they have reserved the auditorium for the following day.
- C. This Agreement covers only the time and performance described hereinabove and shall not entitle Performer to reservation of auditorium on future dates. A new Agreement must be negotiated and executed for each event. During such negotiations the parties shall review, evaluate and, if necessary, amend the terms and conditions contained in this Agreement.

13. Cancellation.

- A. By Performer. Written notice of cancellation of any performance or production under this Agreement must be given by Performer to Battell Center at 904 N. Main Street, Mishawaka, Indiana 46545 at least sixty (60) days prior to the date of the scheduled performance. Performers failing to provide such notice shall be responsible for the minimum per-performance charges set forth in this Agreement and shall also forfeit advance rental payment as liquidated damages.
- B. By Battell Center. The Mishawaka Parks and Recreation reserves the right to refuse, reschedule or cancel any approved reservation due to any unforeseen circumstances that may arise. Every effort will be made to schedule a make-up time if the event is cancelled due to inclement weather or causes beyond Park Board's control. However, in the event the performance is not rescheduled, no partial refund will be provided. Provided, however, if such termination is not for cause, any deposit made by the contracting party shall be refunded.
- C. Force Majeure. Should either party be unable to perform this Agreement because of an Event of Force Majeure occurring within sixty (60) days of any performance of the scheduled event, the cancellation provision set forth in paragraph 12.A. hereinabove may be waived by Park Board. For purposes hereof, an "Event of Force Majeure" shall be defined as the occurrence of the following (to the extent the same is unforeseeable): an Act of God, war,

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terrorism, civil commotion, casualty, extreme weather conditions, government regulations or other causes beyond the reasonable control of the parties. To qualify as an Event of Force Majeure, the affected party must have (i) periodically kept the other Party hereto fully advised by notice of such problems and the cause thereof, and (ii) used reasonable efforts and reasonable due diligence to carry out the performances of the event per this Agreement.

14. Miscellaneous Provisions.

- A. Notices. Except as may be otherwise provided in this Agreement, all notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when hand delivered to, or when deposited in the United States mail, postage prepaid, addressed to the Parties at the address shown at the end of this Agreement.
- B. Indiana Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and all obligations of the Parties created hereunder are performable in that State.
- C. Parties Bound. This Agreement is binding on and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.
- D. Severability. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect or for any reason, such holding/finding shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- B. Attorney Fees. In the event that Performer breaches any of the terms of this Agreement whereby Park Board employs attorneys to protect or enforce its rights hereunder and prevails, then the Performer agrees to pay Park Board's reasonable attorney fees so incurred.
- F. Waiver. It is expressly agreed that no waiver or apparent waiver, or the failure of Park Board to require strict performance of any condition, covenant or agreement shall estop the Park Board from enforcing such condition, covenant or agreement, nor shall any other condition, covenant or agreement, at any time be implied.
- G. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, be deemed to be an original.
- H. Prior Agreements Superseded. Except as otherwise specifically referred to in this Agreement, this Agreement supersedes any prior understandings, written or oral, among the Parties respecting the within subject matter.

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- I. Entire Agreement. This instrument represents the entire agreement of the Parties and supersedes any and all prior negotiations and agreements of the parties. This Agreement may only be amended in a writing signed by all the Parties hereto. Any amendment to this Agreement, which is attached hereto and made a part hereof, if any, shall control if it is in conflict with any other provision of this Agreement.

- J. Authority of Signatories. The persons executing this Agreement for and on behalf of Battell Center and Performer, respectively, represent that they are the duly authorized officer(s) or agent(s) of each respective entity and are fully empowered to execute this Agreement by and for such entity.

ASSUMPTION OF RISK AND WAIVER OF LIABILITY RELATED TO CORONAVIRUS/COVID-19

The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people. The City of Mishawaka and its Parks Department ("City") have put in place preventative measures to reduce the spread of COVID-19; however, the City cannot guarantee that you will not become infected with COVID-19. Further, attending the City events could increase your risk of contracting COVID-19.

By signing this agreement, I acknowledge the contagious nature of COVID-19 and voluntarily assume the risk that I may be exposed to or infected by COVID-19 by attending the Battell Community Center and that such exposure or infection may result in personal injury, illness, permanent disability, and death. I understand that the risk of becoming exposed to or infected by COVID-19 at the Battell Community Center may result from the actions, omissions, or negligence of myself and others, including, but not limited to, City employees, volunteers, and program participants and their families.

I voluntarily agree to assume all of the foregoing risks and accept sole responsibility for any injury to myself (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that I may experience or incur in connection with my attendance at the City venue or participation in the City programming ("Claims").

On my behalf, I hereby release, covenant not to sue, discharge, and hold harmless the City, its employees, agents, and representatives, of and from the Claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. I understand and agree that this release includes any Claims based on the actions, omissions, or negligence of the City, its employees, agents, and representatives, whether a COVID-19 infection occurs before, during, or after participation in any City program.

Permit Holder's Name: _____

Permit Holder's Signature: _____ Date: _____

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TOTAL RENTAL FEE: \$ _____ (due in full at time of reservation)

Date Paid: _____ Amount: _____ Receipt #: _____

Performer/Authorized Signature

Printed Name

Address: _____

E-mail Address: _____

Telephone: _____

CITY OF MISHAWAKA, INDIANA,
acting by and through its Board of Parks and
Recreation

Authorized Signature

Printed Name

904 North Main Street
Mishawaka, Indiana 46545