ED KENLEY AMPHITHEATER RENTAL TERMS OF USE POLICIES

The Mission of the Ed Kenley Amphitheater is "To provide a quality venue sustained by excellence and community values. This is done by maintaining a safe, professional, and welcoming environment." It is to serve as an outdoor venue for concerts and festivals, for private functions, as well as for frequent use by the community arts organizations and others, to benefit all and enhance the quality of life.

POLICIES

1. Labor: All Contractors are required to have their own ticket takers, laborers, and/or ushers. All loading and unloading is the responsibility of the Contractor. Contractors must be cognizant of signage, flowers, sod and trees, and see that they are not damaged during the performance. The City will provide sufficient personnel to operate the City's equipment at the expense of the Contractor.

2. Cleaning: The City will provide a clean amphitheater with empty trash cans and liners. Additional liners will be furnished at no cost. Clean up after each performance is the responsibility of the Contractor. All decorations, signage, and equipment must be removed from the facility immediately after the event is over.

3. Rental Rate: Contractor agrees to pay the City the required rental fee no later than one week prior to the first scheduled rental date.

4. Warranties:
   a. Suitability of Space: The City makes no representation, warranty or agreement that the facilities as they are at the date of the execution of this agreement will be suitable for all events.
   b. Program Content: Contractor agrees that nothing contained in the program performances or in any way connected with the Contractor's activities under the agreement does or shall (1) violate or infringe upon any copyright, right of privacy or other statutory or common law right of any person, firm or corporation, or (2) if the same is authorized under this agreement to be broadcast by radio or television, violate the code of good practice of the National Association of Broadcasters, or (3) defame or be harmful to the reputation of any person, group or corporation, including, without limitation, Layton City Government or any of the entities thereof or therein. Contractor acknowledges that he acts under this agreement as an independent contractor charged with the responsibility, in his sole discretion for selection, performance, reproduction and use of such musical, literary and artistic works as he deems appropriate and that he undertake strict compliance with all of the laws respecting copyrights, and the performance, reproduction and use of musical, literary and artistic works. Contractor will indemnify, save and hold harmless Layton City Corporation and its officers, agents, employees, and volunteers from and against all claims, costs and expenses (including attorney fees), demands, actions and liability of every kind and character whatsoever with respect to copyright and the performance, reproduction and use of musical, literary, and artistic works, or (4) violate the community family friendly standards and values of this City.

5. Liability/Damages/Insurance:
   A. Contractor.
      (1) Public Safety. Contractor agrees to conduct its activities upon the premises so as not to endanger any person lawfully thereon; and to indemnify, defend and hold harmless Layton City Corporation, its officers, agents, employees, and volunteers from all demands, claims, suits, actions, or liabilities resulting from injuries or theft to any persons or property damage or loss by Layton City Corporation or any persons, howsoever caused, during the period in which this agreement covers the use of the Amphitheater, or occurring as a result of the use of such space during the agreed period.
      (2) Damage to the Premises. Contractor shall be responsible for the payment of all damages to premises, including the building, furnishings, fixtures, or equipment whether caused by Contractor or its patrons, normal wear and tear excluded.
Default. Should the Contractor default in the performance of any of the terms and conditions of this agreement, the City, at its option, may terminate the agreement. Any deposit made by the Contractor to the City shall be retained.

Insurance. City reserves the right to require public liability insurance coverage in such amounts and limits as determined by the City in its sole discretion. Such factors which the City shall consider are: type of activity and past history of Contractor in use of facility. LAYTON CITY shall be named as an additional insured on such policy. If needed, provide proof of insurance as listed on the attached document.

Release of Liability, Indemnification, and Hold Harmless Agreement. In consideration of the use of the City’s property and other good and valuable consideration, which the undersigned agrees is sufficient consideration, the Contractor, hereby agrees to release, indemnify and hold harmless Layton City, its officers, employees, agents, and volunteers from any and all liability, claims or causes of action, known or unknown, foreseen or unforeseen, that may accrue during, or as a direct or indirect result of the Contractor’s activities, including the use of any and all equipment brought to City property, by Contractor or any of its agents, employees, participants, or guests, with or without Contractor’s knowledge or authorization. This includes, but is not limited to, a claim or cause of action from Contractor’s employees, family members, officials, agents, or volunteers invited or authorized by Contractor to participate in these activities or use any equipment brought to City property. It further includes any third parties whose involvement or participation was the result of at least the simple negligence of Contractor or any of its agents, employees, participants or guests, as Contractor acknowledges that this property is easily accessible by third parties. Furthermore, Contractor will limit the use of any equipment to those invited and authorized by the Contractor.

It is contemplated that this Agreement will survive through the statute of limitations for any cause of action, including those that may be tolled or delayed by the age of the person who may have a cause of action resulting from these activities. Contractor agrees that this is binding upon all heirs, successors and assigns.

Contractor agrees to cover any of the court costs or attorney fees the City may expend in defending any claim or cause of action arising out of the activities contemplated in this Agreement.

The City does not hereby waive any of its immunity defenses.

Upon receiving notice of any claim contemplated by this Agreement, the City agrees to notify the Contractor within a reasonable period of time of said claim, and provide a copy thereof to Contractor. The City agrees to cooperate with Contractor in the defense of any such claim. This cooperation does not contemplate any financial expenditures by the City.

B. City

Theft. The City shall not be responsible for losses by the Contractor, its agents, employees, or ticket holders occasioned by theft or disappearance of contractor’s equipment or other personal property.

Unforeseen Circumstances. In the event the facilities or any party thereof shall be destroyed or damaged by fire, weather, or in any other case rendering it unfit for use, or if any other casualty or other unforeseen occurrence shall render the fulfillment of this agreement by the City impossible, including (without) limitation any labor dispute, then and thereupon this agreement shall terminate and the contractor shall pay pro-rata rental for said facilities only up to the time of such termination, and the city shall refund all additional monies that shall have been made by deposit. Contractor hereby waives any claim for damages or compensation should this agreement be so terminated.
(3) **Default (Limitation of Liability).** In the event the City should be or become liable to the Contractor under the terms of this agreement or for any act, occurrence of default arising from or related to this agreement, the City's liability shall be limited to the amount of rent and deposit payments made or payable hereunder, and in no event shall the City be liable to pay the Contractor any sum greater than the payments received by the City from the Contractor under this agreement.

6. **Cancellation:**
   a. **By Contractor.** Contractor shall have the right to cancel this agreement, and obtain a refund of rent and deposit payments, only as provided in this paragraph. Contractor shall be entitled to cancel this agreement, in advance of the date of the first performance and obtain a refund of rents and deposits paid, by providing notice in writing to the City as follows: If the Contractor gives at least two weeks (14 days) notice, Contractor is entitled to a rent and deposit refund of one hundred percent; otherwise, the City shall retain all fees and deposits already paid.

   b. **By City.** The City may cancel this rental agreement on six hours written notice with written receipt by Contractor or if City has exhausted all reasonable means to give written notice, shall have the right to give oral notice up to time of performance if the purpose of use is proposed to be changed in any respect from that set forth in this agreement or if the Contractor is in default hereunder and, after written notice by the City Contractor has failed to cure such default within the time specified is said notice.

   c. **Inclement Weather.** In case of cancellation due to inclement weather, alternate dates or a full refund shall be given. The Technical Director will have the final say on cancellations due to weather.

7. **Assignment:** Contractor agrees not to assign, transfer, convey, and sublet or to otherwise dispose of this agreement, or its rights to use the facilities, to any person, company or corporation without the previous written consent of the City.

8. **Advertising:** Contractor shall not advertise any performance or the appearance of any performer prior to the effective date of this agreement. Contractor agrees to sell all tickets at the prices advertised.

9. **Access to the Amphitheater:** The right is reserved at all times for any agent or employee of the City to enter the Amphitheater premises during the course and function of their assigned duties with the City. The Amphitheater Technical Director or assigned staff shall be in charge of the amphitheater at all times. The City also reserves the right to eject any disorderly person or persons from the amphitheater without liability to the contractor for damages incurred by the Contractor as a result of the exercise of the City's right. There is a lane way for loading and unloading. This is not a parking area. Any trucks or cars parked there, without permission, may be subject to a parking ticket and or the vehicle will be towed, without warning, at the expense of the vehicle’s owner.

10. **Noise:** Sound levels at no time shall exceed **95db** at the Amphitheaters Front of House mixing booth. Amplified sound must not continue past 10:30PM.

11. **Alcoholic Beverages or Illegal Drugs:** The use, possession, and/or consumption of any alcoholic beverages or illegal drugs is not permitted by either patrons or performers while on amphitheater property or in Layton Commons Park.

12. **Smoking:** Under the Utah Indoor Clean Air Act no smoking will be allowed in the amphitheater or surrounding park area. This includes E-Cigarettes.

13. **Animals:** No animals or pets will be allowed in the amphitheater except in the case of a certified service animal.

14. **Vehicles and Transportation Devices:** Excluding wheelchairs or other medical devices, no motorized vehicles or human propelled transportation devices are allowed within the facility. This includes bicycles, skate boards, roller skates, in-line skates, and scooters. Cars and trucks are allowed for loading and unloading only in certain areas by permission from the City.
15. **Concessions/Merchandise:** Selling or distributing food and drink items is only allowed by written consent from the City. Contractor must complete a Special Event Application in order to sell or distribute food or merchandise in or around the Amphitheater. County health regulations and City ordinances including proper business licenses must be obtained. Only City approved concessionaires may use the concession booth. All fees to the concessionaire or vendor will be included in the Special Event Application.

16. **Tickets and Pricing:** If Contractor wishes to charge for performances, the Contractor shall provide their own ticket sellers. The Contractor must have approval for the type of ticket booth from the City. Use of the ticket booth in the pavilion is only by written permission from the City.

17. **Set Building:** No set building will be allowed during a rental in the Amphitheater. All sets must be built off site and completed prior to bringing them on stage.

18. **Attorney’s fees:** In the event either party shall enforce the terms of this rental agreement by suit or otherwise, the defaulting party shall pay the costs and expenses incident thereto, whether incurred in litigation or otherwise, and before or after judgement, including a reasonable attorney’s fee.

19. **Interpretation:** This Use and Rental Agreement and these terms and conditions are to be construed and governed by the laws of the State of Utah and Layton City Ordinance. No modifications or amendments to this agreement or the waiver of any of the terms hereof, shall be binding unless made in writing and signed by both the City and the Contractor. Any indication of alteration of this agreement by method of crossing out or adding by typewriter, pen, ball point pen, or whatever, except in blank lines indicating the need for insertion of written words or number to complete the agreement, shall be disregarded.

20. **Third-Party Beneficiaries:** This Agreement is between the City and the Contractor and is not intended to benefit any third-party, and does not grant any right or privilege to any third-party.

21. **Entire Agreement:** This document contains the entire agreement and understanding between the Parties and constitutes their entire agreement and supersedes any and all oral representations and agreements made by either Party prior to the date hereof and is binding upon the successors of the respective Parties.