

MERGER AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2009, by and between ALL-OF-US EXPRESS CHILDREN’S THEATRE, a Michigan nonprofit corporation, with its registered office at 3222 S. M.L.K. Jr. Blvd., Suite 18, Lansing, MI 48910 (“AECT”), and the CITY OF EAST LANSING, a Michigan municipal corporation, with its principal offices located at 410 Abbot Road, East Lansing, MI 48823 (“City”), acting through its Department of Parks, Recreation and Arts (“Department”).

RECITALS:

WHEREAS, AECT has for 20 years served the youth of the greater Lansing area by providing education and the opportunity to produce and perform in all aspects of drama and the theatrical and performing arts utilizing the talents and resources of its many volunteers and community members; and

WHEREAS, AECT, through its strategic planning process, has identified five principal goals which include maintaining revenues and a physical plant to support its programs and activities, to remain a model for cultural, social, economic, and multi-generational diversity, to expand its programs and activities and increase participation and attendance at all activities, and to maintain its position in the region as a premier youth arts organization; and

WHEREAS, the City, through the Department, owns and operates the East Lansing Hannah Community Center (“HCC”), including the Albert A. White Performing Arts Theatre, which has served AECT well as a venue for its programs and performances; and

WHEREAS, the HCC is also suitable for the annual summer program, including camps, workshops, and summer show programs historically conducted by AECT. The City also has

available through the HCC the administrative personnel, services, and additional physical plant necessary to maintain, support, and expand the educational and artistic activities of AECT; and

WHEREAS, the City and AECT believe it would be in the best interests of each party and the respective communities served by them if AECT were merged with the City to become a separate activity of the Department of Parks, Recreation and Arts (the “Children’s Theater Program”);

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

1. The program and activities of AECT are merged with the City to become a separate activity of the Department effective as of September ____, 2009 (the “Effective Date”).

Upon merger, the following transfers of interest shall occur:

- A. The AECT Artistic Director shall become a regular part-time employee of the City and, as such, will be entitled to participate in the City’s deferred contribution employee benefit plan, receive paid time off according to the City’s Personnel Policy, and participate in the City’s health insurance program offered for the City’s regular part-time employees and otherwise be entitled to the rights and responsibilities for such employees according to the City’s established employment and personnel policies. The terms of such employment shall be negotiated separately by the City and the AECT Artistic Director. Following the Effective Date, AECT shall have no further responsibility or liability for the employment of The AECT Artistic Director.
- B. AECT will license to the City use and possession of its tangible personal property used in connection with its productions, pursuant to the terms of this Agreement. (the “Personal Property”)(A schedule of the “Personal Property” is attached as Exhibit B). The “Personal Property” will be moved from its current location, stored and maintained by the City at the HCC for use in the programs and activities of the Children’s Theater Program at the City’s sole cost and Expense. During the pendency of this Agreement, the City shall not sell or dispose of any of the Personal Property without the written consent of AECT.
- C. The City will assume liability on any continuing equipment leases, service agreements, or contracts of insurance held by AECT from the Effective

Date forward (A schedule of such equipment leases, service agreements, or contracts of insurance is attached as Exhibit B). AECT shall pay all other liabilities, taxes and expenses owed or accrued by it as of the date of the Effective Date and shall indemnify and hold the City harmless from any liability thereon.

- D. The City, through the AECT Artistic Director, will hire and supervise all such contract and seasonal employees as shall be necessary from time to time to conduct the programs, activities, and performances to be offered through the Children's Theatre Program.
- E. All participation fees, admission fees, and other revenue generated by the programs, activities, and performances to be offered by the Children's Theater Program shall be the income and property of the City.
- F. All membership fees, grant money received by AECT, and merchandising fees from AECT sales activities shall remain the property of AECT.

2. AECT grants to the City as of the Effective Date a license, pursuant to the terms of this Agreement, to use the name, trademark, copyrights, logos, and good will related to the activities of AECT so long as the City offers the programs and activities described in this Agreement.

3. AECT will continue to operate as a separate Michigan nonprofit, non-stock corporation, with its existing membership and Board of Directors, subject to its Bylaws, qualified under 501(c)(3) of the Internal Revenue Code for purposes of providing financial and community support for the programs, activities, and performances to be offered by the Children's Theater Program. AECT will continue to be responsible for filing all tax returns and annual reports required to maintain its status as a corporation qualified under Section 501(c)(3) and shall hold the City harmless from any responsibility or liability for such reports. AECT shall provide the City with a copy of its annual financial statement, tax returns, and other reports as may be required to be filed by it to maintain its corporate status in good standing and shall

provide such other information as the City or its auditors shall require in connection with the performance of the City's annual audit. To the extent that the City requests or requires information beyond that which AECT is required to compile or maintain under applicable law, AECT will provide such information at the sole cost and expense of the City.

4. AECT, through an individual to be designated by the Board of Directors of AECT, shall meet and consult periodically with the City's Director of Parks, Recreation and Arts (the "Director") to review the programs, activities, and performances to be offered by the Children's Theater Program, and shall meet at least annually with the Director to assist and advise the Department and the Director in the preparation of its annual activity program and the annual budget to support such programs, activities, and performances. AECT will annually, in connection with the City's preparation of its annual city budget, determine, in its sole discretion, what level of support it will make available to the City in the form of cash contributions and in-kind support and services for the next fiscal year to assist in the continuing operation of the Children's Theater Program to be conducted by the City at the HCC.

5. The City shall have the sole and exclusive responsibility for payment of all costs and charges attributable to the Children's Theatre Program to be operated by the City, including commercially reasonable insurance covering losses to the Personal Property licensed to the City under this Agreement. AECT shall be named as an additional named insured and loss payee on such policy. The City shall establish a separate Children's Theatre Division which will be supported as a separate division of the City's Park and Recreation Fund, a special revenue fund of the City. Other than the amount of funds committed annually to the Children's Theatre Program by AECT as determined in connection with the preparation of the City's annual budget

for this division, AECT shall have no liability for any costs or charges attributable to the Children's Theatre Program to be operated by the City.

6. The City and AECT will each be responsible for securing and maintaining general liability insurance, including errors and omissions and officers and directors liability insurance as each party deems necessary and appropriate for the conduct of their business. Each party shall name the other as an additional named insured and loss payee on such policies.

7. The City shall assume full and complete responsibility for the payment of all federal, state, and local taxes or contributions (including retirement and pension contributions) imposed or required by law with regard to the City and City employees engaged in the Children's Theatre Program following this merger and AECT shall be fully and completely responsible for payment of all such taxes and expenses prior to such merger and shall indemnify and hold the City harmless from any liability thereon.

8. AECT will not, directly or indirectly, sponsor, offer, conduct, or support any Children's Theatre Program or activity in any other location other than HCC in the greater Lansing area without the prior written consent of the City, which shall not unreasonably withheld. The City will not, directly or indirectly, sponsor, offer, conduct, or support any Children's Theatre Program activities other than those affiliated with AECT without the prior written consent of AECT, which shall not unreasonably withheld.

9. The licenses granted in this Agreement shall be revocable upon a vote of the majority of the Board of Directors of AECT subject to one year's prior written notice to the City. The licenses shall automatically terminate upon the cessation of the Children's Theater Program or the loss of use of HCC for any reason whatsoever. Upon revocation or termination of the

licenses, AECT at its own cost and expense will remove the Personal Property from City property as quickly as is reasonably practical and all obligations under this Agreement will terminate.

10. The relationship of the City and AECT shall be defined solely by the express terms of this Agreement and neither the cooperation of the parties hereunder nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the City and AECT, nor shall either party or their agent be deemed to be the agent or employee of any other party to this Agreement.

11. This Agreement may be modified or amended only by a written instrument expressly referring hereto and executed by the City and AECT through their duly authorized representatives. The parties shall take such further actions and deliver and execute such additional documents as may be reasonably necessary to effectuate, without undue delay, the terms and intent of this Agreement.

In witness whereof, the parties hereto have executed this Agreement by their duly authorized agents who have signed in their representative capacities as hereinafter indicated on the date set forth following their signatures.

ALL-OF-US EXPRESS CHILDREN'S THEATRE

CITY OF EAST LANSING

By _____

By _____

Its _____

Its _____

Dated: _____, 2009

Dated: _____,
2009

Drafted by and approved as to form:

Dennis E. McGinty (P17407)
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