

Use Agreement

THIS USE AGREEMENT (“**Agreement**”), effective as of the ____ day of _____, 2019 by and among the City of Hampton, Virginia, a municipal corporation in the Commonwealth of Virginia (“**City**”), Y.H. Thomas Community Y.H. Thomas, Incorporated, (“**Y. H. Thomas**”), The 200 + Men Foundation, Inc., a Virginia non-stock corporation and entity exempt from federal income tax pursuant to Internal Revenue Code §501(c)(3) (the “**Foundation**”), and its affiliate, The Hampton Roads Committee of 200+ Men, Inc., a Virginia non-stock corporation (the “**HR Committee**”); the Foundation and HR Committee collectively the “**Tenant**”).

Recitals

- A. The City is the owner of certain real property and improvements located at the address commonly referred to as 1300 Thomas Street (the “**Property**”), on which is situated a facility managed by Y. H. Thomas and known as the Y.H. Thomas Community Y.H. Thomas (“**Facility**”).
- B. The Tenant is an organization of men that focus on influencing and building better communities by encouraging, inspiring, and enabling African American young people and adults to reach their highest potential.
- C. The City desires to allow the Tenant to utilize a portion of the Facility to fulfill that mission.
- D. The services provided by the Tenant will enhance the Property as a community resource for the benefit of citizens residing within close proximity to the Facility, as well as for the benefit of all City citizens.

Agreement

NOW THEREFORE IN CONSIDERATION of the warranties, covenants and commitments herein, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The Recitals stated above are incorporated into this Agreement.
2. **Non-Exclusive Right.** The City, in agreement with Y.H. Thomas, grants a non-exclusive right to the Tenant to have primary use of certain portions of the Facility, subject to certain terms and conditions.
3. **Use of Facility.** The use and availability of the Property is primarily for the benefit of citizens residing within a two (2) mile radius of the Facility and, secondarily for the benefit of all Hampton citizens. The Tenant is given the right to operate in a portion of the Facility to conduct meetings in furtherance of its mission as set forth in the Recitals. For this purpose, the Tenant shall have primary use of Room “84A,” which is comprised of a 27 x 48 foot main area, and 2

office spaces, each with an area of 11 x 4 foot, with shared use of restrooms and corridors within the area of the Facility, exclusive of the portion of the Facility used by Y. H. Thomas as a community center. The Tenant must obtain prior written consent from Y.H. Thomas to use the gymnasium.

The Tenant is given the right to operate within the designated rooms and corridors of the area of the Facility peacefully and continually subject to reasonable regulation by the City.

It is further understood that if a situation develops concerning use of the Property, the Tenant shall first seek resolution with representatives of the City's Parks, Recreation, & Leisure Services Department and Y.H. Thomas's Space Utilization Committee. If a problem cannot be resolved at that level, the next step is to request intervention from a representative of the City Manager's Office.

The City retains the right to use and/or grant use of such portions of the Property not currently being used, exclusive of the portion used by Y.H. Thomas as a community center. The City retains the right to re-assign any part of the Facility not primarily used by the Tenant for other uses.

The Tenant shall have the responsibility of scheduling and administering the use of its designated portion of the Property. Tenant's permitted hours of operation and access to Tenant's designated portion of the Property and/or the Facility shall be Monday through Friday between the hours of 9:00 A.M. to 6:00 P.M. and on weekends as needed and available (weekends are subject to approval of the City). The grounds and athletic fields at the Property shall remain open to public use. There is no designated parking for the Tenant.

Athletic fields and playing areas will remain under the jurisdiction of the City's Parks, Recreation, & Leisure Services Department.

The adjoining Y.H. Thomas Neighborhood Parks shall remain open to the public and under the jurisdiction of the City's Parks, Recreation & Leisure Services Department. Priority use of the athletic fields shall be given to organized sports sponsored through Y.H. Thomas. The Tenant will be allowed to use portions of the grounds for its programs with prior written consent of the Director of Parks, Recreation, & Leisure Services.

The Tenant shall not at any time allow the use of any tobacco products or alcoholic beverages on the Property.

All special events involving sales and/or exhibitors offering goods for sale, bands, amplified sound, theatrical performances, additional parking, or extension of operating hours, shall not be permitted on the Property without the prior written consent of the City and may require a Special Events Permit pursuant to Hampton City Code §2-311 et. seq.

4. **Equipment.** The Tenant will provide all the tables, chairs, desks, audio visual equipment, blackboards, instruction materials, supplies, appliances, internet hook-up if needed, telephone service, exercise equipment, games, etc. necessary to operate their programs.

5. **Rent (Utility Payment).** The Tenant will be responsible for paying all utility bills for the portion of the Facility it primarily occupies. Based on the square footage for the use of room "84A" and the shared use of restrooms and corridor totaling \pm 1,384 square feet, the projected cost for primary and shared space for electric, water, and sewer is \$1,218.00 per year (or \$101.50 per month or \$0.88 per square foot). Rent shall begin on **March 1, 2019**. The actual cost is subject to change based on actual consumption or an increase in utility rates. The Tenant will be invoiced monthly by Parks, Recreation, & Leisure Services and payment will be due within 15 days after receipt of invoice. Failure to pay utility bills on time will be considered a breach and may result in termination of this Agreement.

6. **Insurance.** The Tenant, through either the Foundation or HR Committee, shall secure and maintain in full force and effect at all times during the Term of this Agreement, the following policies of insurance:

(a) Workers' compensation insurance as required under Code of Virginia Title 65.2, as it may be amended from time to time.

(b) Comprehensive general liability insurance, including fire legal liability, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL) with two million dollar (\$2,000,000) aggregate. Such insurance shall name the Foundation and the HR Committee as named insureds, and further, such insurance shall name the City and Y. H. Thomas as additional insureds.

(c) THE TENANT SHALL SUBMIT TO THE CITY'S RISK MANAGEMENT ADMINISTRATOR AND THE DIRECTOR OF PARKS, RECREATION, & LEISURE SERVICES CERTIFICATES OF INSURANCE WITH ENDORSEMENTS TO THE POLICY ATTACHED PRIOR TO BEGINNING ACTIVITIES UNDER THIS AGREEMENT AND ANNUALLY THEREAFTER.

(d) THE CERTIFICATES OF INSURANCE SHALL LIST (1) THE CITY OF HAMPTON, 22 LINCOLN STREET, HAMPTON, VIRGINIA 23669; AND (2) Y. H. THOMAS COMMUNITY CENTER, INC., 1300 THOMAS STREET, HAMPTON 23669 AS THE ADDITIONAL INSURED. THE ENDORSEMENT SHALL BE IN THE FORM OF EITHER A DIRECT ENDORSEMENT ATTACHED TO THE POLICY THAT ACTUALLY NAMES THE CITY AND Y. H. THOMAS, OR A BLANKET ENDORSEMENT WITHIN THE POLICY THAT STATES THAT THE INSURER RECOGNIZES AS ADDITIONAL INSURED THOSE NAMED IN CONTRACTUAL AGREEMENTS.

(e) ALL POLICIES OF INSURANCE REQUIRED HEREIN SHALL BE WRITTEN BY INSURANCE COMPANIES LICENSED TO CONDUCT THE BUSINESS OF INSURANCE IN VIRGINIA, AND ACCEPTABLE TO THE CITY, AND SHALL CARRY THE PROVISION THAT THE INSURANCE WILL NOT BE CANCELLED OR MATERIALLY MODIFIED BY THE TENANT WITHOUT 30 DAYS PRIOR WRITTEN

NOTICE TO THE CITY. IT IS THE RESPONSIBILITY OF THE TENANT TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.

If the Property is destroyed by fire, weather, an act of God, or any other similar event, the City is not obligated to renovate, rebuild, or reopen the Facility.

If and when insurance coverage is deemed inadequate by the City, additional coverage requirements may be requested and/or this may be deemed a breach of contract.

7. **Virginia Corporation Status.** The Foundation and H.R. Committee shall each maintain “active” status as a registered Virginia non-stock corporation and shall provide evidence thereof upon request.

8. **Non-Profit Status.** The Foundation must maintain its status as a non-profit, charitable, tax-exempt organization, as described in and subject to Internal Revenue Code Section 501(c)(3), as it may be amended from time to time, and shall provide evidence thereof upon request.

9. **City’s Maintenance.** The City shall maintain the major systems and building structure including heating, air conditioning, plumbing, etc. Grounds maintenance, utilities and building equipment and fixtures shall remain the responsibility of the City. The City shall maintain the building structure to include exterior windows, walls, and roofing. The City shall provide landscape and grounds maintenance for the Facility and surrounding park. The City shall provide a dumpster for trash collection. The City shall maintain all trash containers located in the park.

10. **The Tenant Maintenance.** The Tenant shall perform day-to-day upkeep and appearance of the Property and entrance areas to include:

- a. Mopping up spills;
- b. Sweeping floors;
- c. Cleaning interior windows;
- d. Painting as required; and
- e. Placing trash in the dumpster.

In addition, the Tenant shall monitor thermostats and water consumption to control costs; shall provide its own security system if required and be responsible for its monitoring and cost; and shall be financially responsible for repairing all damage to walls, floors, and ceiling tiles.

11. **Tenant’s Duty to Inspect and Report.** The Tenant shall have the duty to frequently and diligently inspect the portion(s) of the Facility and Property that Tenant, its invitees, its agents, and its guests will be using. Tenant shall immediately report any hazards, damages to Facility/Property, safety issues, and items in need of repair to the City (specifically to the director of the Department of Parks, Recreation and Leisure Services and/or his assigns). Tenant shall mark any hazards, avoid and prevent use of any areas that are hazardous, damaged and/or unsafe for use. Failure to inspect, report and take action as set forth herein shall be deemed a

breach of this Agreement. Tenant shall be liable for damages to property and for the death or injury to person resulting from the Tenant's failure to inspect, failure to take action, and/or failure to report as stated herein. Further, Tenant shall indemnify, defend and hold harmless the City and Y. H. Thomas for any claims made resulting from the Tenant's failure to inspect, failure to take action, and/or failure to report as stated herein.

12. **No Alterations.** No physical renovations, improvements or additions shall be made without the prior written approval of the City. The Tenant shall pay all costs for approved improvements and renovations.

13. **Scheduling.** Y.H. Thomas agrees to coordinate the use of the Property by the other tenants of the Property. Y.H. Thomas has first (1st) priority use of the community center section of the Property, the City has second (2nd) priority, the other tenants have third (3rd) priority, and the residents residing outside the two (2) mile radius of the Facility have fourth (4th) priority. Y.H. Thomas shall, within reason, make every effort to coordinate, schedule and re-schedule activities to resolve any scheduling conflicts.

14. **Term.** This Agreement shall be in force and effect for a period of five (5) years from the date (the "Term") hereof unless terminated by any party upon 90 days written notice or earlier terminated as set forth herein. Any subsequent use agreement must be accomplished in accordance with Code of Virginia§15.2-1800.

15. **Evaluation.** The Tenant operations and program success shall be evaluated on an annual basis using goals and objectives agreed upon by both parties.

16. **Termination.** In the event the Tenant fails or is unable to comply with any terms of this Agreement, it shall be deemed in breach of this Agreement. In the event of breach, the City shall notify the Tenant in writing of the breach and the Tenant shall have a period of not to exceed 30 days to correct the breach. If the Tenant fails to correct the breach, then the City has the right to terminate this Agreement, and the Tenant shall cease operations and remove all personnel and equipment from the Facility. Any rent shall be prorated as of the day of vacation of the Facility.

The failure of the City or the Tenant to take action with respect to any breach of any term, covenant, or condition stated herein shall not be deemed a waiver with respect to any such breach or subsequent breach of the same or any other term, covenant, or condition stated herein.

17. **Surrender of Facility.** At the expiration of the Term, the Tenant shall deliver possession of its rooms to the City in broom clean condition; reasonable wear and tear excepted. This Agreement terminates at the expiration of the Term and no holding over shall be permitted. Any holding over by the tenant after expiration or other termination of this Agreement shall not constitute a renewal or extension of this Agreement or give the Tenant any rights in or to the Property.

18. **Compliance with ADA.** The Tenant agrees to comply with Title VI of the Civil Rights Act of 1964, the 1994 Disabilities Act and all applicable regulations of the Department of Interior, as they may be amended from time to time, and are incorporated herein by reference and any

amendments or supplements thereto shall be deemed incorporated by reference upon enactment. The Tenant agrees not to discriminate against any person because of race, color, sex, religion, national origin, marital status, age, ancestry, or disability relative to admission, services, and employment privileges offered to or enjoyed by the general public.

19. **City's Right to Inspect.** The City and its duly authorized agents and representatives shall have the right to enter into and upon the Property, or any part thereof, with or without notice, at any reasonable hour for the purpose of examinations, repairs, or for safety of the same.

20. **Audit.** The Tenant shall secure an independent audit of its financial records on an annual basis and the audit may be requested by the City as a matter of public record.

21. **Staffing of Facility.** The Tenant shall provide a contact person(s) name, address, and telephone number to the City's Police Department and the City's Fire Department in case of an emergency. The names shall be provided annually or when the contacts are no longer valid. It shall be the responsibility of those contacts to respond to emergency situations at the Facility as required at all times of operation and during periods when the Property is closed.

22. **Access Maintenance.** The Tenant agrees that at all times it will conduct its activities with full regard to public safety, and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with the City to assure such safety. All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the Property shall be kept unobstructed by the Tenant and shall not be used for any purpose other than ingress or egress to and from the premises by the public. The Tenant shall not bring onto the Property any material, substances, equipment or object which is likely to endanger the life of, or to cause bodily injury to any person on the Property or which is likely to constitute a hazard to property thereon without the prior approval of the City. The City shall have the right to refuse to allow any such material, substances, equipment, or object to be brought onto the Property and the further right to require its immediate removal if found thereon.

23. **Signage.** No decorations shall be placed inside the Facility or about the Property without prior written consent of the City. The City reserves the right to remove and dispose of all unauthorized decorations, props, banners and signs.

24. **Compliance with All Laws.** The Tenant shall comply with all laws, ordinances, city codes and regulations adopted or established by federal, state, or local governmental agencies or bodies; and by all rules and regulations as provided by the City and The Tenant will require that its agents, employees and volunteers likewise so comply.

25. **No Modification or Assignment.** All terms and conditions of this Agreement shall be binding upon the parties, their heirs or representatives, and assigns, and cannot be waived by any oral representation or promise of any agent or other representative of the parties hereto unless the same be in writing and signed by the duly authorized agent or agents who executed this Agreement. Such written document must be incorporated by specific reference herein as a part of this Agreement.

The Tenant shall not assign, transfer, sublease, mortgage or otherwise encumber or dispose of this Agreement without the express written permission of the City.

26. **Whole Agreement.** This instrument embodies the whole agreement of the parties. There are no promised, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all other provisions, communications, representations or agreements, either verbal or written, between the parties hereto.

27. **Governing Law and Venue.** This Agreement is executed in the City of Hampton, Commonwealth of Virginia, and any and all questions with respect to any of the provisions herein shall be instituted, maintained and contested in any court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. If any provision of this Agreement is determined by a court of law to be invalid, the remaining provisions shall be enforced as if the invalid provisions were deleted.

28. **Indemnification of City.** The Tenant shall indemnify and save harmless the City its officers, employees, and agents against any and all liability, loss, costs, obligations and causes of action, expenses, fines, penalties, claims, suits, demands, reasonable attorney's fees, expenses of litigation, expert witness fees, judgments, administrative proceedings and other incidental expenses (collectively called "Claims"), resulting from (i) injury or death of any person or damage to property occurring on or about the Property and/or the Facility or arising in conjunction with the use and/or occupancy of the Facility and/or the Property by the Tenant or others claiming under The Tenant, or (ii) the breach, violation or nonperformance of any covenant, condition, or agreement in this Agreement set forth and contained on the part of The Tenant to be fulfilled, kept observed and performed; provided, however, this indemnification shall not apply to Claims arising as a result of any gross negligence or willful misconduct of the City or the City's employees, contractors or agents. The Tenant, its agents, officers, servants, volunteers, invitees and employees shall assume all risks of injury or death of person or persons, or damage to or loss of any and all property of the City or The Tenant and any and all property under the control or custody of the Tenant included in this Agreement. The Tenant's indemnity includes, but is not limited to any Claims as defined in this paragraph, but also resulting from The Tenant's accumulation, storage, or release of hazardous substances or any adverse environmental condition which is deemed hazardous to the health or safety of persons entering or occupying the Facility or other violations of applicable environmental laws occurring during the Term of this Agreement. This hold harmless and indemnity provision shall survive and remain in effect notwithstanding any termination, cancellation or expiration of this Agreement or the Tenant's tenancy under this Agreement.

29. **Notice.** A notice, communication, or request under this Agreement by the City or Y.H. Thomas to the Tenant or by the Tenant to the City or Y.H. Thomas shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

The 200+ Men Foundation Inc.
The Hampton Roads Committee of 200+ Men, Inc.
Attention: James A. Gray, Jr.
20 Fields Drive
Hampton, Virginia 23504

Y.H. Thomas Community Center, Inc.
P.O. Box 357
Hampton, Virginia 23669

City of Hampton
C/O City Manager
22 Lincoln Street, 8th Floor
Hampton, Virginia 23669

With Copy to:

Parks, Recreation, & Leisure Services Director
City of Hampton, Virginia
22 Lincoln Street, 5th Floor
Hampton, Virginia 23669

City Attorney
City of Hampton, Virginia
22 Lincoln Street, 8th Floor
Hampton, Virginia 23669

Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent, if sent by nationally recognized express mail service, (b) as of the fifth business day after being sent, if sent by Registered or Certified U.S. Mail or (c) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

30. **Joint and Several Liability of Tenants.** If more than one party is referred to herein as "Tenant," then the said parties shall be jointly and severally liable as to all terms and conditions set forth in this Agreement.

31. **Rights of the City; Health, Safety, and Welfare.** The City has the right to prohibit or otherwise limit access to the Property and/or Facility, without notice, in situations that threaten the public health, safety, and welfare, which shall be determined at the sole discretion of the City. Such situations include, but are not limited to, hurricanes, tropical storms, and other severe weather events, unruly or violent crowds, and crowds in excess of property capacity. The City shall not be liable for any costs or expenses incurred by Tenant as a result of any such closure or limited access.

32. **Termination with or without Cause.** The City may terminate this Agreement without cause so long as written notice is provided to Tenant not less than 90 days prior to the date of such termination. In the event of violations of federal, state, or local law, or safety or health

standards and regulations, this Agreement may be immediately terminated by the City and any provisions for written notice shall not be applicable.

33. **Risk of Loss to Tenant Property.** The City shall not be responsible or liable for the damage, destruction, theft, or other loss of personal property of the Tenant and/or its agents, guests, and invitees, including, but not limited to personal property that may be mounted or otherwise stored in the Facility or on the Property.

34. **Signature.** The undersigned are duly authorized to execute this Agreement.

[Signatures on the Following Page.]

DRAFT

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager/Authorized Designee

Approved as to Form and Legal Sufficiency:

Approved as to Content:

Sr. Deputy City Attorney

David E. McCauley, Director
Parks, Recreation, & Leisure Services

Y. H. THOMAS COMMUNITY Y.H. THOMAS, INC.

By: _____

Its: _____

THE 200 + MEN FOUNDATION, INC.

By: _____

Its: _____

THE HAMPTON ROADS COMMITTEE OF 200 + MEN, INC.

By: _____

Its: _____

[End of Signatures.]