

USE AGREEMENT

THIS USE AGREEMENT (Agreement”) is made this ____ day of _____, 2020, between the **CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia, (the “City”) and **FOX HILL NEIGHBORHOOD CENTER**, a Virginia nonstock corporation, (the "Corporation").

RECITALS:

A. The City is the record owner of property located at 65 Hall Road, Hampton, Virginia, 23664 (the “Property”) and has purchased a building thereon to be known as the Fox Hill Neighborhood Center (the “Facility”);

B. The Facility and the grounds of the Property (the “Premises”) are to be used by the City and the Fox Hill neighborhood, the boundaries of which are the Chesapeake Bay on the east, the Back River on the north, Willow Oaks on the west and Buckroe Beach on the south (the “Service Area”);

C. The Corporation desires to staff and operate a neighborhood center for recreational, educational and cultural enrichment programs to improve the quality of life and safety of residents in the Service Area, as well as all residents of the City of Hampton; and

D. The City desires to grant a non-exclusive right for the proposed use to the Corporation of the Premises including the Facility located thereon. It is the intent of the parties hereto that the Premises shall be made available to the Corporation as set forth herein.

AGREEMENT

In consideration of the mutual promises and undertakings of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Corporation agree as follows:

1. **Incorporation of Recitals.** The Recitals stated above are incorporated into this Agreement and made a part hereof.

2. **Term.** This Use Agreement shall commence on the date signed by the City Manager or authorized designee and shall continue for two (2) years from that date (the “Term”) unless sooner terminated as provided herein. This Agreement may be renewed for an additional two (2) year term (the “Renewal Term”) at the sole option and discretion of the City Representative. Any further use of the Premises shall require a new agreement and shall be subject to City Council approval and §§15.2-1800 and 15.2-2100 of the Code of Virginia of 1950, as amended.

3. **Rent/Use of Facility/Scheduling.**

a.) During the Term of this Agreement and any Renewal Term, the Corporation shall not pay any rent to the City.

b.) The Corporation shall not use the Premises or permit others to use or rent the Premises for any use that is in conflict with the law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted. The Premises are leased by the City to the Corporation "as-is," "where is," and "with all faults."

c.) The Corporation has the right to provide or allow the provision of food and beverages for the programs or activities allowed on the Premises. The Corporation shall not, at any time, sell nor allow the use of any cigarettes, tobacco products, vaping products.

d.) No alcoholic beverages shall be permitted on the premises unless the Corporation or any user of the Facility under section (f) below both obtains a proper Virginia Alcoholic Beverage Control ("VAABC") special event license and/or other applicable license, and obtains the prior approval of the City Representative and the City Risk Manager to consume alcohol on the premises for each event. The license holder serving alcohol shall be required to have general liability insurance in place naming the City as an additional insured and approved by the Risk Manager. Additionally, the license holder shall provide Liquor Liability Insurance in the amount of one million dollars naming the City as an additional insured and approved by the Risk Manager. The license holder and any person serving alcohol at the Facility shall be required to have completed Training for Intervention Procedures ("TIPS") training and shall create a safety plan that ensures no minors will be served any alcoholic beverages.

e.) The Corporation shall comply with all state and local rules, regulations and ordinances at all times, including but not limited to Health Department regulations.

f.) The Corporation shall be responsible for the scheduling of all events and for maintaining the master schedule for the Facility. During the Term of this Use Agreement and any Renewal Term, the City, through its Parks, Recreation, & Leisure Services Department (the "City Representative"), shall have the right to schedule the use of the Facility for the Fox Hill Neighborhood Center at no cost to the City to conduct City-related business and services.

- First priority on the use of the Facility will be given to the scheduling of all Corporation program offerings, with the exception of the use of the Facility as a voting/polling location during elections and for any emergency situation as deemed appropriate by the City which shall take precedence over any other events or activities.

- Second priority will be given to the scheduling of events or activities sponsored by or presented by local community groups and other groups.
- Third priority will be given to the scheduling of the City's programs or activities.

The Corporation and the City Representative agree to cooperate with each other in good faith to resolve any scheduling conflicts, and further agree to meet a minimum of once every 6 months for the purposes of discussing the Corporation's use of the Facility and any concerns thereunder.

e.) The City reserves the right to review the Corporation's proposed use schedule and, in its sole discretion, has the right to reject and/or restrict any use by the Corporation. The City further reserves the right to remove, in its sole discretion, any person or persons from any portion of the Premises. The City, its agents and employees shall neither be held responsible nor liable to the Corporation, nor to third-parties, for any claims or damages resulting from its exercise of such right of removal.

4. **Use Fees/Services.**

a.) The City (including any events scheduled by the City Representative) shall not be charged any use fees for the use of the Facility and/or Premises. The Corporation may charge use and/or fees for its programs and activities, and for the Facility/Premises use by local community groups, not-for-profit groups, or other similarly situated groups or individuals.

b.) All schedules of use and/or program fees shall be submitted by the Corporation to the City Representative for prior approval.

c.) The schedule of fees together with any other conditions for the use of the Facility will be published in a Facility Use Agreement or similar document to be made available to all prospective users of the Facility. The City as owner of the Facility shall be exempt from any such agreement or similar document.

d.) The City, through its Public Works Facilities Division, shall maintain the major systems and Facility structure, including heating, air conditioning, electrical, plumbing, security systems, building equipment, and building fixtures but exclusive of telephone and cable. The City shall not be responsible to the Corporation or any user of the Facility for any claims for damages in the event that electrical or mechanical failures prohibit the use of the Facility or any portion thereof. The Corporation shall be responsible for any credit of use and/or program fees for any activities or events canceled due to such failures.

e.) The City shall perform maintenance of the structure, including interior maintenance, the maintenance of the exterior appearance of the Facility, and the entrance areas. Grounds maintenance shall also remain the responsibility of the City.

f.) The Corporation shall ensure that the interior of the Facility is kept in a clean and sanitary condition at all times including before and after scheduled events and rentals of the Facility.

g.) The City, to the extent permitted by law and without waiving its defense of sovereign immunity, statutory immunity, and other governmental immunities, agrees to assume responsibility for damages to the Premises/Facility, beyond normal wear and tear, arising out of the City's acts or omissions, whether caused by the acts of the City, its officials, agents, employees or others for whom the City is legally liable (collectively and individually, the "City's Agent"). However, the City shall not be responsible for any such damages caused by anyone who is not the City's Agent, including but not limited to the Corporation, a user of the Facility, other entity, spectator and/or person at a City or Corporation sponsored program or event.

5. **Program/ Event Cancellation.** The City reserves the right, in its sole discretion, to cancel or postpone an event or program (i) if the performance of the event or program would result in excessive damage to the Facility; (ii) in cases of inclement weather or any other event in which such conditions may endanger the safety and well being of the public; (iii) by order of the Governor or the City during a state or local emergency; or (iv) if the Corporation offers a program without the prior approval of the City Representative. The City Representative shall consult with the Corporation's designated representative prior to making the decision to postpone or cancel any event or program.

6. **Staffing of Facility/Access Maintenance.**

a.) The Corporation shall staff the Facility with its own trained volunteers, employees or contracted personnel during its use of the Facility. Corporation shall maintain the appropriate number of trained personnel deemed necessary by Corporation to properly manage any event or activity. However, the City reserves the right to review staffing levels for an event or activity and require additional staff including security personnel to ensure the health, safety and welfare of the public. Minimum staffing levels as determined by the Corporation, with the agreement of the City, must be maintained at all times during Facility use. It is specifically understood by the parties hereto that the employees or personnel of the Corporation are not nor are they deemed to be employees of the City for any purpose whatsoever. Moreover, staffing levels for purposes of this Agreement refer only to Corporation designated staff and personnel.

b.) The Corporation shall maintain a roster of persons authorized to open, operate and secure the Facility during its use. Names, addresses and telephone numbers of at least five (5) individuals shall be submitted to the City of Hampton Police Department, the City of Hampton Fire Department and the City Representative. These aforementioned individuals shall respond to emergency situations at the Facility at all times.

c.) The Corporation agrees to staff the Facility with its own volunteers who have submitted to screening and training by the City Representative, and/or other volunteer training as approved by the City. All Corporation volunteers shall submit to a criminal records investigation and complete training as required by the City.

d.) The Corporation agrees to maintain all portions of the Facility sidewalks, entries, doors, passages, vestibules, hall, corridors, stairways, passageways, and any and all ways of access to public utilities of the Facility free of obstructions and shall not be used for any other purpose other than ingress or egress to and from the Facility by the public. The Corporation agrees not to bring onto the Premises any material, substances, equipment, or object which is likely to endanger the life of, or to cause bodily injury to any person at the Premises or which is likely to constitute a hazard to the Premises without the prior written approval of the City. The City shall have the right to refuse the use or storage of any such materials, substances and equipment, or object and shall further have the right to require its immediate removal if found on the Premises.

7. **Corporation Budget/Reporting.** The Corporation agrees to develop an annual operating budget and submit same to the City Representative as requested for inclusion in the City's annual budget process. The Corporation shall maintain permanent financial and program account records of activities, participation, demographics, costs, etc. which are acceptable to the City Representative and its Director of Finance and shall file reports as reasonably requested by the City.

8. **City's Right to Inspect/Right of Entry.** The City or its agents and representatives may enter the Premises during normal business hours with or without notice to the Corporation for the purpose of inspections and repairs so long as such inspection or repair does not unreasonably interfere with the operation of the Facility.

9. **No Alterations.**

a.) No alterations, physical renovations, additions or improvements shall be made to the Facility by the Corporation without the prior written approval of the City Manager and the City Representative (in conjunction with Public Works). Nothing in this Agreement shall imply any duty or obligation upon the part of the City to make any alterations, physical renovations, additions or improvements of any kind whatsoever to the Facility.

b.) The Corporation or any user of the Facility shall not mar or deface any portion of the Facility, Premises, or equipment contained thereon. The use of nails, hooks, tacks, screws, staples or similar fastening devices on any Facility structure or equipment are prohibited without the prior consent of the City.

c.) The Corporation has been made aware of the presence of asbestos within the Facility. The Corporation is required to exercise all due care for safety when working in the areas containing asbestos. The Corporation shall consult the City prior to disturbing any areas containing asbestos.

10. **No Assignment.** The Corporation shall not assign or transfer any rights in this Agreement without the prior written approval of the City.

11. **Indemnification of City.** The Corporation 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 Premises or arising in conjunction with the use and/or occupancy of the Premises by the Corporation or others claiming under the Corporation, or (ii) the breach, violation or nonperformance of any covenant, condition, or term in this Agreement set forth herein on the part of the Corporation 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 Corporation, 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 Corporation and any and all property under the control or custody of the Corporation included in this Agreement. The Corporation's indemnity includes, but is not limited to any Claims as defined in this Paragraph 10, but also resulting from the Corporation'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 or Renewal 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 Corporation's tenancy under this Agreement.

12. **Insurance.** During the Term and any renewal thereof, the Corporation must obtain and keep in full force and effect at all times the following policies of insurance:

(i) Comprehensive general liability insurance not less than one million dollars per incident and two million dollars aggregate including fire legal liability insurance to cover damage to the facility and Corporation's contents caused by actions of the Corporation and its invitees. Such insurance shall name the City as an additional insured.

(ii) Renter's insurance in sufficient amount to cover Corporation's property in the building in the event of vandalism, theft, or storm damage. This is an optional coverage but is recommended for the Corporation's protection.

(iii) Worker's Compensation Insurance as required under Virginia Code Title 65.2

All policies of insurance required herein must be written by insurance companies licensed to conduct business of insurance in Virginia, and/or acceptable to the City, and must carry the provision that the insurance will not be canceled or materially modified without thirty

(30) days prior written notice to the City. The Corporation must provide a certificate of insurance (COI) evidencing the existence of insurance to the City's Director of Risk Management. In addition to the COI an actual endorsement to the insurance policy must be presented that names the City as an additional insured. The endorsement is a document that becomes a part of the policy that states that the insuring company recognizes the City of Hampton as an Additional Insured. Many policies already have provisions within them that states that the insurance company recognizes contractual obligations requiring their policy owner to name a third party (the City) as an Additional Insured. Providing that section of the insurance policy will be acceptable as the Endorsement.

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

14. **Corporation's Personal Property.** The Corporation shall be responsible for the payment of all shipping, handling and storage costs related to the disposition of its property and materials. The City shall in no way be liable or responsible for any claims regarding loss or damage to any of the Corporation's property or materials housed inside or on the Premises, however caused.

15. **Evaluation.** The Corporation's operation and program success at the Facility shall be evaluated by the City on an annual basis employing goals and objectives agreed upon by both parties. However, the City reserves the right to terminate this Agreement in the event the evaluation reveals that the Corporation does not meet the aforesaid goals and objectives.

16. **Termination.**

a.) In the event Corporation fails or is unable to comply with any terms of this agreement, Corporation shall be deemed in breach of this agreement. In the event of breach, the City shall notify Corporation in writing of the breach and Corporation shall have a period of not to exceed sixty (60) days to correct the breach. If Corporation fails to correct the breach then the City has the right to terminate this agreement forthwith.

b.) This Agreement may be terminated by either party without cause with a ninety (90) day prior written notice to the other party. Upon termination of the Agreement, the Corporation shall withdraw its personnel and equipment and cease performance of any activities under this Agreement.

c.) Notwithstanding the foregoing, the notice provision shall not be applicable in the event the City must terminate the Agreement due to an emergency or a violation of environmental, health or criminal law by the Corporation requiring the suspension of activities at the Facility.

17. **Compliance with Laws.** The Corporation shall comply with all laws, ordinances or regulations adopted or established by federal, state or local governmental agencies or bodies, including, but not limited to federal and state non-discrimination laws and state drug-free workplace provisions. In addition to the foregoing, the Corporation agrees to comply with Title VI of the Civil Rights Act of 1954, the 1994 Americans with Disabilities Act, all applicable regulations of the Housing & Community Development Acts, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended. The Corporation covenants that it is and will continue to be a corporation in good standing in the Commonwealth of Virginia during the Term of this Agreement and any Renewal Term.

18. **Surrender of Facility.** At the expiration of the Term, the Corporation shall deliver possession of the Facility to the City in a clean and sanitary condition, reasonable wear and tear excepted. All property that the Corporation is not required to surrender, but that the Corporation abandons, at the City's election, will become the City's property or be disposed of by the City. This Agreement terminates without further notice at the expiration of the Term and any Renewal Term and no holding over shall be permitted. Any holding over by the Corporation after expiration or other termination of this Agreement will not constitute a renewal or extension of this Agreement or give the Corporation any rights in or to the Facility.

19. **No Liens or Encumbrances.** The Corporation must keep, or cause to be kept, the Premises free and clear of all liens and encumbrances of every kind whatsoever. If any lien is filed or purportedly filed against the Premises or any other property owned by the City, as a result of any act or omission of the Corporation, upon the written request of the City, the Corporation must cause the same to be released of record within ten (10) days after the Corporation receives such written request.

20. **Notices.** A notice, communication, or request under this Agreement by the City to the Corporation or by the Corporation to the City 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:

As to City: City of Hampton, Virginia
 c/o City Manager
 8th Floor City Hall
 22 Lincoln Street
 Hampton, Virginia 23669

Copy to: Cheran Cordell Ivery, City Attorney
 8th Floor City Hall
 22 Lincoln Street

Hampton, Virginia 23669

And

David McCauley, Director
Parks, Recreation, & Leisure
Services Department
5th Floor City Hall
22 Lincoln Street
Hampton, Virginia 23669

As to the Corporation: James B. Chapman IV
Attn: Registered Agent, Fox Hill Neighborhood Center
204 Lighthouse Drive
Hampton, VA 23664

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.

21. **Governing Law/Venue.** This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Any and all claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton.

22. **Authority to Sign.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

23. **Entire Agreement and Modification.** This Contract represents the entire agreement between the Parties and supersedes all prior negotiations or agreements, either written or oral. This Contract may only be modified by a writing executed by the authorized representatives of the Parties.

As evidence of their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CITY OF HAMPTON

By: _____
City Manager/Authorized Designee

Attest:

Clerk of Council

Approved as to Legal Sufficiency: Approved as to Content:

Assistant City Attorney I _____
Parks, Recreation, & Leisure Services Department

FOX HILL NEIGHBORHOOD CENTER, a Virginia nonstock Corporation

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2020 by _____ (name), _____ (title) of Fox Hill Neighborhood Center, a Virginia nonstock corporation, on its behalf. He/She is known to me personally, or has produced _____ as identification.

Notary Public Signature

My Commission expires: _____

Registration No: _____