

Use Agreement

THIS USE AGREEMENT (“Agreement”), effective as of the 1st day of March, 2017 by and among the City of Hampton, a municipal corporation in the Commonwealth of Virginia (“City”), Y.H. Thomas Community Center, Incorporated, (“Center”) and Girls Incorporated of the Greater Peninsula, a Virginia corporation having its principal place of business at 215 32nd St. Newport News, Virginia 23607 (“Girls Inc.”).

Recitals

- A. The City is the record owner of property located at 1300 Thomas Street (**the “Property”**) known as the Y.H. Thomas Community Center (**“Facility”**).
- B. The mission of Girls Inc. is to provide informal educational, life, and social skill programs for youth (girls and boys ages 4-18 years of age; of which 85% come from single parent homes and have the potential to exhibit at risk behaviors due to lack of supervision during out of school hours) that inspire them to become strong and smart.
- C. The City has established a partnership with Girls Inc. to utilize a portion of the Facility to facilitate its mission since 2012.
- D. The Use Agreement for the use of a portion of the Facility has expired and Girls Inc. desires to continue to utilize the space in the Property to continue its mission.
- E. The services provided by Girls Inc. will enhance the Property as a community resource center primarily for the benefit of citizens residing within a two mile radius of the Facility and, secondarily for the benefit of all Hampton citizens.

Agreement

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

1. **Incorporation of Recitals.** The Recitals stated above are incorporated into this Agreement and made a part hereof.
2. **Non-Exclusive Rights.** The City of Hampton, in agreement with the Center, grants non-exclusive rights to Girls Inc. to have primary use of a portion of the Facility subject to certain conditions contained herein.
3. **Use of Facility.** The use and availability of the Property is primarily for the benefit of citizens residing within a two mile radius of the Facility and, secondarily for the benefit of all Hampton citizens. Girls Inc. is given the right to operate in a portion of the Facility to provide its programs Monday through Friday from 2:00 p.m. to 6:00 p.m. and during the school summer break from 7:00 a.m. to 6:00 p.m. for children ages 4-18 years. Girls Inc. is given the right to

have primary use of Rooms “B” and “C” with shared use of restrooms and corridors totaling ±4,051 square feet.

Girls Inc. is given the right to operate within the designated rooms, offices and corridors of the area defined as the community center peacefully and continually subject to reasonable regulation by the City.

It is further understood that if a situation develops concerning use of the Property that Girls Inc. shall first seek resolution with representatives of Hampton Parks, Recreation & Leisure Services and Y.H. Thomas Space Utilization Committee. If the problem cannot be resolved at that level the next step would be 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 community center portion. The City retains the right to re-assign any part of the Facility that is unused by Girls Inc. for other uses.

Girls Inc. shall have the responsibility of scheduling and administering the use of their designated portion of the Property. The grounds and athletic fields shall remain open to public use. There is no designated parking for Girls Inc.

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

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

Girls Inc. 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 premises without the prior written consent of the City and may require a Special Events Permit.

4. **Equipment.** Girls Inc. 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.** Girls Inc. will be responsible for paying all utility bills for the portion of the Facility they primarily occupy. Based on the square footage for the use of rooms “B” and “C” and the shared use of restrooms and corridor totaling ± 4051 square feet, the projected cost for primary and shared space for electric, water and sewer is \$3,565.00 per year or \$297.00 per

month or **\$0.88** per square foot. Rent shall begin on **April 15, 2017**. The actual cost is subject to change based on actual consumption or an increase in utility rates. Girls Inc. 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 of contract and may result in termination of this Agreement.

6. **Insurance.** Girls Inc. 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 Va. Code Title 65.2.

(b) Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) Tenant combined single limits (CSL) with two million dollar (\$2,000,000) aggregate. Such insurance shall name the City of Hampton as an additional insured.

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

(d) 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 GIRLS INC. WITHOUT 30 DAYS PRIOR WRITTEN NOTICE TO THE CITY. IT IS THE RESPONSIBILITY OF GIRLS INC. TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT.

(e) THE CERTIFICATES OF INSURANCE SHALL LIST THE CITY OF HAMPTON, 22 LINCOLN STREET, HAMPTON, VIRGINIA 23669, AS THE ADDITIONAL INSURED. THE ENDORSEMENT TO THE POLICY WOULD BE THAT WHICH IS ATTACHED TO GIRLS INC.'S LIABILITY POLICY THAT ACKNOWLEDGES THE CITY AS AN ALSO INSURED ON ALL POLICIES THE CITY REQUIRES TO BE ENDORSED. THIS SHALL BE EITHER A DIRECT ENDORSEMENT THAT ACTUALLY NAMES THE CITY OR A BLANKET ENDORSEMENT THAT CONTRACT STATES THAT THE CITY WILL BE NAMED AS AN ALSO INSURED ON THE INSURANCE POLICY.

If the Property is destroyed by fire or an act of God, 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.** Girls Inc. shall maintain status as an entity incorporated by the State of Virginia and provide evidence thereof upon request.

8. **Non-Profit Status.** Girls Inc. must maintain its status as a 501(c)3, private, non-profit organization as defined by the United States Government- Internal Revenue Service and 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. Girls Inc. shall monitor thermostats and water consumption to control costs. Girls Inc. shall provide its own security system if required and be responsible for its monitoring and cost. The City shall maintain the building structure to include exterior windows, walls and roofing. The City shall provide landscape and grounds maintenance for the building and park. The City shall provide a dumpster for trash collection. The City shall maintain all trash containers located in the park.

10. **Girls Inc. Maintenance.** Girls Inc. 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
- e. Placing trash in the dumpster

11. **No Alterations.** No physical renovations, improvements or additions shall be made without the written approval of the City. Girls Inc. shall pay all costs for approved improvements and renovations to the portions of the Property it occupies. Girls Inc. shall be financially responsible for repairing all damage to walls, floors and ceiling tiles.

12. **Scheduling.** The Center agrees to coordinate the use of the Property by the other tenants of 1300 Thomas Street.

The Center has first priority use of the community center section of the Property, the City has second priority, the other tenants have third priority and the residents residing outside the two mile radius of the Facility have fourth priority. The Center shall, within reason, make every effort to coordinate, schedule and re-schedule activities to resolve any scheduling conflicts. Girls Inc. must obtain written consent from the Center to use the gymnasium.

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

14. **Evaluation.** Girls Inc. operations and program success shall be evaluated on an annual basis using goals and objectives agreed upon by both parties.

15. **Termination.** In the event Girls Inc. 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 Girls Inc. in writing of the breach and Girls Inc. shall have a period of not to exceed 60 days to correct the breach. If Girls Inc. fails to correct the breach then the City has the right to terminate this Agreement forthwith, and Girls Inc. 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 Girls Inc. to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver with respect to any breach of any term, covenant or condition subsequent breach of the same or any other term, covenant or condition herein contained.

16. **Surrender of Facility.** At the expiration of the Term, Girls Inc. 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 Girls Inc. after expiration or other termination of this Agreement will not constitute a renewal or extension of this Agreement or give Girls Inc. any rights in or to the Property.

17. **Compliance with ADA.** Girls Inc. 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 are incorporated herein by reference and any amendments or supplements thereto shall be deemed incorporated by reference upon enactment. Girls Inc. 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, employment privileges offered to or enjoyed by the general public.

18. **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.

19. **Audit.** Girls Inc. 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.

20. **Staffing of Facility.** Girls Inc. shall provide a contact person(s) name, address, and telephone number to the Hampton Police Department and the Hampton 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 these contacts to respond to emergency situations at the Facility as required at all times of operation and during periods when the Property is closed.

21. **Access Maintenance.** Girls Inc. 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 Girls Inc. and shall not be used for any purpose other than ingress or egress to and from the premises by the public. Girls Inc. 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.

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

23. **Compliance with All Laws.** Girls Inc. 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 Girls Inc. will require that its agents, employees and volunteers likewise so comply.

24. **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.

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

25. **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.

26. **Governing Law and Venue.** This Agreement is executed in the City of Hampton, State 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 State 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.

27. **Indemnification of City.** Girls Inc. 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 Girls Inc. or others claiming under Girls Inc., or (ii) the breach, violation or nonperformance of any covenant, condition, or agreement in this Agreement set forth and contained on the part of Girls Inc. 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. Girls Inc., 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 Girls Inc. and any and all property under the control or custody of the Urban League included in this Agreement. Girls Inc.'s indemnity includes, but is not limited to any Claims as defined in this Paragraph, but also resulting from Girls Inc.'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 Girls Inc.'s tenancy under this Agreement.

28. **Notice.** A notice, communication, or request under this Agreement by the City or the Center to Girls Inc. or by Girls Inc. to the City or the Center 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:

Girls Incorporated of the Greater Peninsula
Dr. Jackie Jackson, Executive Director
1300 Thomas Street, Suite C
Hampton, Virginia 23669

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

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

Copy to:

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

City of Hampton
C/O City Attorney
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.

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

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager/Authorized Designee

GIRLS INCORPORATED OF THE GREATER PENINSULA.

By: _____
Dr. Jackie Jackson, Executive Director

Y. H. THOMAS COMMUNITY CENTER, INC.

By: _____

Approved as to Form and Legal Sufficiency:

Approved as to Content:

City Attorney

Kevin Myers, Director
Parks, Recreation & Leisure Services