

Use Agreement

THIS USE AGREEMENT, effective as of 1st day of March, 2017 by and among the City of Hampton, a municipal corporation in the Commonwealth of Virginia (**the “City”**), Y.H. Thomas Community Center, Incorporated, (**“Center”**) and the Big Brothers Big Sisters of the Greater Virginia Peninsula, a Virginia corporation having its principal place of business at 364 McLaws Circle, Suite 2, Williamsburg Virginia 23185 (**“Big Brothers Big Sisters”**).

Recitals

- A. The City is the record owner of property located at 1300 Thomas Street (**the “Property”**) known as the Y.H. Thomas Neighborhood Center (**the “Facility”**).
- B. The City has established a partnership with the Big Brothers Big Sisters to utilize a portion of the Facility to facilitate its mission to help children reach their potential through one-to-one relationships with mentors that have a measurable impact on youth. For more than 100 years, Big Brothers Big Sisters has operated under the belief that inherent in every child is the ability to succeed and thrive in life.
- C. The Use Agreement for the use of a portion of the Facility has expired and Big Brothers Big Sisters desires to continue to utilize the space in the Property to continue its mission.
- D. The services provided by Big Brothers Big Sisters 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 Big Brothers Big Sisters to have primary use of a portion of the Facility in exchange for certain covenants of Big Brothers Big Sisters.
3. **Use of Facility.** The use and availability of the Property and facilities are primarily for the benefit of citizens residing within a two mile radius of the facility and, secondarily for the benefit of all Hampton citizens. Big Brothers Big Sisters is given the right to operate in a portion of the Facility to conduct participant and organizational interviews, and mentor one on one Monday through Friday from 8:00 p.m. to 5:00 p.m. and occasional evenings for children and adults ages 12 years and older. Big Brothers Big Sisters is given the right to have use of Computer Office “2”.

Big Brothers Big Sisters is given the right to operate the designated rooms, offices, restrooms 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 Facility that Big Brothers Big Sisters 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 this Facility not currently being used, exclusive of the community center portion. The City retains the right to reassign any part of the premises that is unused by Big Brothers Big Sisters for other use.

Big Brothers Big Sisters shall have the responsibility of scheduling and administering the use of their designated portion of the Facility. The grounds and athletic fields shall remain open to public use. There is no designated parking for Big Brothers Big Sisters.

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

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. Big Brothers Big Sisters will be allowed to use portions of the grounds for its programs with written consent of the Parks, Recreation & Leisure Services Department.

Big Brothers Big Sisters shall not, at any time, allow the use of any cigarettes or 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 written consent of the City and may require a Special Events Permit.

4. **Equipment.** Big Brothers Big Sisters 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.** Big Brothers Big Sisters 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 Computer Office 2 and the shared use of restroom and corridor of **1653** square feet, the projected cost for primary and shared space for electric, water and sewage is **\$1,455.00** per year or **\$121.25** per month or **\$0.88** per square foot. The actual cost is subject to change based on actual consumption or an increase in utility rates. Big Brothers Big Sisters will be invoiced monthly by Parks,

Recreation & Leisure Services and payment will be due within 15days 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.** Big Brothers Big Sisters 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) **BIG BROTHERS BIG SISTERS 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 THE URBAN LEAGUE WITHOUT 30 DAYS PRIOR WRITTEN NOTICE TO THE CITY. IT IS THE RESPONSIBILITY OF BIG BROTHERS BIG SISTERS 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 BIG BROTHERS BIG SISTERS' 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.**

7. **Virginia Corporation Status.** Big Brothers Big Sisters shall maintain status as an entity incorporated by the State of Virginia and provide evidence thereof upon request.

8. **Non-Profit Status.** Big Brothers Big Sisters 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. Big Brothers Big Sisters shall monitor thermostats and water consumption to control costs. Big Brothers Big Sisters shall provide their 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 the roof. 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. **Big Brothers Big Sisters Maintenance.** Big Brothers Big Sisters 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. Big Brothers Big Sisters shall pay all costs for approved improvements and renovations to the portions of the building they occupy. Big Brothers Big Sisters 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 facility by the other tenants of 1300 Thomas Street.

The Center has first priority use of the community center section of the facility, 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. Big Brothers Big Sisters 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 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.** Big Brothers Big Sisters 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 Big Brothers Big Sisters fails or is unable to comply with any terms of this agreement, Big Brothers Big Sisters shall be deemed in breach of this agreement. In the event of breach, the City shall notify Big Brothers Big Sisters in writing of the breach and Big Brothers Big Sisters shall have a period of not to exceed 60 days to correct the breach. If Big Brothers Big Sisters fails to correct the breach then the City has the right to terminate this agreement forthwith, and Big Brothers Big Sisters 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 Big Brothers Big Sisters 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, Big Brothers Big Sisters shall deliver possession of its rooms to the City in broom clean condition. Reasonable wear and tear accepted. This Agreement terminates at the expiration of the Term and any Renewal Term and no holding over shall be permitted. Any holding over by Big Brothers Big Sisters after expiration or other termination of this Agreement will not constitute a renewal or extension of this Agreement or give Big Brothers Big Sisters any rights in or to the facility.

17. **Compliance with ADA.** Big Brothers Big Sisters 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. Big Brothers Big Sisters 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.** Big Brothers Big Sisters 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.** Big Brothers Big Sisters 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 center is closed.

21. **Access Maintenance.** Big Brothers Big Sisters 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 premises shall be kept unobstructed by Big Brothers Big Sisters and shall not be used for any purpose other than ingress or egress to and from the premises by the public. Big Brothers Big Sisters 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 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.** Big Brothers Big Sisters will comply with all laws, ordinances, city codes and regulations adopted or established by federal, state, or local governmental agencies of bodies; and by all rules and regulations as provided by the City and Big Brothers Big Sisters 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.

Big Brothers Big Sisters 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.** Big Brothers Big Sisters 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 Big Brothers

Big Sisters or others claiming under Big Brothers Big Sisters, or (ii) the breach, violation or nonperformance of any covenant, condition, or agreement in this Agreement set forth and contained on the part of Big Brothers Big Sisters 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.

Big Brothers Big Sisters, 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 Big Brothers Big Sisters and any and all property under the control or custody of Big Brothers Big Sisters included in this Agreement. Big Brothers Big Sisters indemnity includes, but is not limited to any Claims as defined in this Paragraph, but also resulting from Big Brothers Big Sisters 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 Big Brothers Big Sisters tenancy under this Agreement.

28. **Notice.** A notice, communication, or request under this Agreement by the City or the Center to Big Brothers Big Sisters or by Big Brothers Big Sisters 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:

Big Brothers Big Sisters of the
Greater Virginia Peninsula
Ayanna King, CEO
364 McLaws Circle Suite 2
Williamsburg, VA 23185

Y.H Thomas Neighborhood Center
P.O. Box 357
Hampton, VA 23669

City of Hampton
City Manager
22 Lincoln Street
8th Floor
Hampton, VA
23669

Copy to:

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

City of Hampton
C/O City Attorney
22 Lincoln Street, 8th Floor
Hampton, VA 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

BIG BROTHERS BIG SISTERS OF THE GREATER VIRGINIA PENINSULA

By: _____
Ayanna King, CEO

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