

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") by and between the **CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia, ("City" or "Licensor") and **DOWNTOWN HAMPTON DEVELOPMENT PARTNERSHIP, INC.**, a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia ("DHDP" or "Licensee"), collectively the "Parties."

RECITALS

- A. The City owns real property in the downtown area of Hampton, Virginia designated as LRSN 2002990, and commonly referred to as the "Carousel Park" Site (the "Property").
- B. Licensee, a non-profit established in 1995, is a business association that promotes economic development, supports common business interests, and creates a positive image in the City's Downtown Hampton Business Improvement District.
- C. Licensee desires to activate for use by Downtown Hampton residents, visitors, and employees certain portions of the Property, as further set forth on the site plan attached hereto as **EXHIBIT A** and incorporated herein (the "Licensed Areas").
- D. Licensee desires to create a user-friendly experience and attraction for Downtown Hampton residents, visitors, and employees in the Licensed Areas, to include an urban beach area, a dog activity area, and storage ("Licensed Activities").
- E. The City finds that Licensee's use of the Property as set forth in this Agreement will enhance the quality of the experience of residents, visitors, and employees in Downtown Hampton, and that it is therefore in the interest of the citizens of Hampton to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the Parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. **Recitals.** The recitals are incorporated herein and deemed part of this Agreement.
- 2. **Grant of License.** The City hereby grants a non-exclusive revocable license to Licensee, at no cost to Licensee, to enter upon and use the Licensed Areas for the Licensed Activities, subject to all other terms of this Agreement. The Licensed Areas are more particularly

shown on the attached **EXHIBIT A**. The location of the Dog Park Area, Urban Beach Area, and City-Provided Storage Shed, as those terms are further defined herein, shall be in substantial conformance with **EXHIBIT A**.

3. **Initial Term.** The term of this Agreement shall commence at 12:01 a.m. on January 1, 2023 and shall continue for one (1) year ending at 12:00 p.m. December 31, 2023 (the “**Initial Term**”), unless sooner terminated as provided in this Agreement.

4. **Renewal Term.** Provided Licensee is in full compliance with this Agreement upon the end of the Initial Term, this Agreement may be extended upon mutual agreement of both Parties for four (4) optional, one (1) year extensions (each year a “**Renewal Term**”) upon the same terms and conditions as set forth in this Agreement. The Renewal Term(s) shall occur automatically unless written notice is given by either Party to the other no later than 30 days before the expiration of the then applicable Initial Term or Renewal Term. Notice shall be given pursuant to the Paragraph 16 of this Agreement.

The renewal provisions stated herein are conditioned and limited against both parties to the extent that the cumulative term of this Agreement, including any and all Renewal Terms, shall not extend beyond five (5) full 12-month periods.

5. **Use of Licensed Areas and Licensee Responsibilities.**

a. Licensee, at Licensee’s sole cost and expense, shall obtain site plan approval pursuant to Chapter 35.1 of the City Code and all other required permits prior to commencing any improvements or alterations in, on, or to the Licensed Areas.

b. Licensee acknowledges that portions of the Property and Licensed Areas are subject to deed restrictions, which are enforced by the Commonwealth of Virginia under the Land and Water Conservation Fund Act, and which require “public outdoor recreation use” to be maintained in perpetuity on the Property. Accordingly, Licensee shall ensure that its use of the Licensed Areas does not preclude accessibility of same by the general public for public outdoor recreation use during the Carousel Hours as defined in this Agreement. The portions of the Property encumbered by the above-described deed restrictions are shown on the attached **EXHIBIT B**.

c. Licensee shall be responsible for and bear the costs of the following:

(i) Maintenance of a dog activity area (the “Dog Activity Area”),

which shall include: 4' tall black wrought iron fencing around the entire dog activity area; dispensers for waste bags and continuing supply of bags or other like products for waste disposal; and waste pick-up and replenishment of waste bags, the frequency of which shall be no less than one (1) time daily. Licensee shall be responsible for removal of all pet waste from the ground of the Dog Activity Area to allow for City grass mowing.

(ii) Maintenance of an urban beach area (the "Urban Beach Area"), which shall be constituted primarily of sand; and raked not less than one (1) time daily.

d. Licensee shall be responsible and bear the costs of obtaining any permits and authorizations that may be required by federal, state, or local law, now in effect or hereafter adopted, for use of the Licensed Areas as described herein, which shall include but not be limited to conformance with the City's Special Events regulations in section 2-311 *et seq.* of the Hampton City Code. Licensee shall have one (1) or more employees present during the hours of all authorized special events.

e. Licensee is permitted, at its sole and absolute discretion, to place in the Licensed Areas furniture, equipment, games, or other tangible property ("Licensee-Provided Assets"). Licensee shall submit to the City's Director of Parks, Recreation, and Leisure Services ("PRLS Director") an itemized list of all Licensee-Provided Assets to be placed in the Licensed Areas no later than seven (7) calendar days before any such placement. In addition, Licensee shall thereafter amend that list to report any subsequent additions or removals of Licensee-Provided Assets within one (1) business day of each such addition or removal.

6. **City Responsibilities.** The City acquired, for use by Licensee in the operation of the Licensed Areas, the following equipment and furnishings (collectively, the "City-Provided Assets"):

- fifty-six (56) chairs;
- eight (8) umbrellas;
- six (6) stands; and
- eighteen (18) tables; and
- ten (10) folding Adirondack chairs for use in the Urban Beach Area; and
- one (1) 12'x20' storage shed (the "City-Provided Storage Shed").

The City shall further be responsible for and bear the cost of providing all utilities necessary for operation of activities at the Licensed Areas, excluding any additional utility access or service that may be necessary for Licensee-sponsored special events.

Licensee acknowledges that the City, in its sole and absolute discretion, may place near, but not within, the Licensed Areas, to complement Licensee's use of the Licensed Areas, furniture and other assets, including, but not limited to, chairs, tables, umbrellas, and games.

7. **Shared Responsibilities; Maintenance, Storage, and Risk Management.** Licensor and Licensee shall be mutually responsible for maintenance of the Licensed Areas, storage of equipment, and security, as follows:

a. **Grass Mowing and Garbage Collection.** The City shall be responsible and bear the costs of its once-weekly grass mowing and three-times-weekly garbage collection schedule on the Property. Licensee shall be responsible at its own cost and expense for all other lawn maintenance and garbage removal necessary to maintain the Licensed Areas in a habitable condition. In addition, the City shall not at any time be responsible for (i) relocation of any furniture, equipment, or other assets to facilitate grass mowing; or (ii) removal of dog feces from or other maintenance of the Dog Activity Area or other portions of the Licensed Areas.

b. **Daily Furniture and Equipment Storage.** The City shall be responsible for placing and storing City-Provided Assets and Licensee-Provided Assets in the City-Provided Storage Shed or otherwise securing, such as locking the items together, City-Provided Assets and Licensee-Provided Assets on a daily basis. In the event the Licensee desires the City-Provided Assets and the Licensee-Provided Assets to be available at times other than during regular park hours, Licensee shall be solely responsible for the placing, storing, and securing the items. For this purpose, Licensee shall contact, via email, the Executive Director of the Hampton History Museum, Luci Cochran, at lcochran@hampton.gov and Special Events Coordinator, Sunny Deming, at sunny.deming@hampton.gov, at least 24 hours in advance so as to avoid conflicts with City events. In addition, Licensee shall fill out the Carousel Park Equipment Log, attached hereto as **EXHIBIT C**, which shall be kept inside the City-Provided Storage Shed.

c. **Access to the City-Provided Storage Shed.** Licensor shall provide Licensee two (2) keys for the purpose of accessing and securing the City-Provided Storage Shed. Licensee agrees to not reproduce any such keys, to promptly report the loss of any such

keys, and to return all such keys upon the termination of this Agreement.

d. Inspection, Repair & Replacement of Assets. All City-Provided Assets and Licensee-Provided Assets shall be inspected each day they are used by Licensee's staff and City staff, as applicable, to assess any damage and identify and remove any assets determined to need repair or replacement. The City shall be solely responsible for the final determination of the repair, replacement, and disposition of all City-Provided Assets. Licensee shall be solely responsible for the repair, replacement, and disposition of all Licensee-Provided Assets.

e. Risk Management. Licensee shall provide for or perform regular inspections of the Licensed Areas and its facilities for cleanliness, safety and need for repair daily, which shall be in addition to routine inspections conducted by the City Parks, Recreation and Leisure Services ("PRLS") playground inspector. Licensee shall create a system of documentation for the results of those daily inspections. In addition, Licensee shall:

- i. Develop standard operating procedures for emergencies, including procedures for documenting and responding to accidents, injuries and other incidents.
- ii. Train Licensee personnel in taking accident reports and responding to injuries.
- iii. Report any accidents or injuries to PRLS and the Hampton Department of Risk Management within 24 hours of occurrence, except for injuries requiring transport to an emergency facility which shall be reported immediately.

8. Inclement weather. The City has the right limit or prohibit access to the Licensed Areas and require storage of equipment and furniture, 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 Licensee as a result of any such limitation or prohibition to access.

9. Non-exclusive Use. Licensee shall have all rights and privileges to conduct all activities authorized under the terms of this Agreement, provided, however, that this Agreement shall not be construed in any manner to grant Licensee or those claiming under Licensee the

exclusive right to use the Licensed Areas. In addition, the City reserves the right to conduct and/or authorize others to conduct events in the Licensed Areas, upon written notice to Licensee; and Licensee agrees to cooperate with the City as necessary to facilitate any such events.

10. **Non-discrimination** Licensee agrees that the Licensed Areas, including but not limited to the Dog Activity Area, Urban Beach Area, shall be available to the general public, and that Licensee shall not deny access or use of the Licensed Areas in any manner that violates any law or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

11. **Revocation and Termination.** The City or Licensee may terminate this Agreement for any reason, in writing with thirty (30) days' notice, to the other Party. In addition, the City may terminate this Agreement immediately in the event Licensee fails to perform any responsibilities, as stated herein. At revocation or termination of this Agreement, and upon written request from the City, Licensee shall have sixty (60) days to return the Licensed Areas to their original condition, with normal wear and tear excepted, which shall include, but not be limited to removal and resodding of the Dog Activity Area and Urban Beach Area as those areas are described above in Paragraph 5.

12. **Indemnification.** It is understood and agreed that DHDP hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by any act or omission on the part of DHDP, its subcontractors, agents or employees under or in connection with this Agreement or the performance or failure to perform any work required by this Agreement. DHDP agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all such damages, claims, losses or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of the work by DHDP or those for whom DHDP is legally liable. Upon written demand by the City, DHDP shall assume and defend at DHDP's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

13. **Insurance.** DHDP shall secure and maintain in full force and effect at all times during the period this Agreement is in effect Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages in an amount not less than One Million (\$1,000,000) per occurrence and an aggregate limit of not less than Two Million Dollars (\$2,000,000). Additionally, excess or umbrella coverage must be maintained in the amount of not less than Two Million Dollars (\$2,000,000). DHDP shall submit

to the City's Risk Management Department certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under the Agreement or no later than ten (10) days after the Effective Date of the Agreement, whichever occurs first. 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, insurers must have a rating of "A" (financial strength) and a VII or greater in the latest edition of the A.M.'s Best Company's Insurance reports, and shall carry the provision that the insurance will not be cancelled or materially modified by DHDP without thirty (30) days prior written notice to the City. The certificate of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669 and its elected and appointed officials, agents, employees and volunteers as additional insureds for the specified Project. The Endorsement to the policy would be that which is attached to DHDP's liability policy that acknowledges the City as additional insureds on all policies the City are made additional insured(s). This shall be either a direct Endorsement that actually names the City or a blanket Endorsement within the insurance policy that states that under a contractual agreement the City will be named as an additional insured on the required insurance policy. DHDP's coverage required under this Agreement is primary and, with respect to DHDP's operational relationship with the City of Hampton, DHDP's coverage shall be on a non-contributing basis from the City of Hampton. Under no circumstances shall the City be the primary point of insurance or a contributor to any claims or damages that were not actually and proximately caused by acts or omissions of the City. Claims-made policies require the policy holder to provide evidence of a retroactive date on the policy no later than the beginning of the contractor's or sub-contractor's work under this project. Claims-made commercial general liability or pollution policies must provide an endorsement extending the claim reporting period of up to three (3) years after the agreement. IT IS THE RESPONSIBILITY OF DHDP TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

14. **Sovereign Immunity and Governmental Immunity** No provision in this Agreement shall constitute or be deemed to be a waiver of the sovereign immunity or governmental immunity of the City.

15. **Applicable Law.** 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 suits for any 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, Virginia.

16. **Notice.** A notice, communication, or request under this Agreement by the City to Licensee or by Licensee to the City shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested or (b) 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: Mary Bunting, City Manager
Eighth Floor, City Hall
22 Lincoln Street
Hampton, VA 23669

Copy to: Cheran Cordell Ivery, City Attorney
Eighth Floor, City Hall
22 Lincoln Street
Hampton, VA 23669

As to Licensee: Steve Mallon, Executive Director
Downtown Hampton Development Partnership, Inc.
710 Settlers Landing Road
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 or (b) 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.

17. **Assignment.** Licensee shall not assign its rights and duties under this Agreement without the prior written consent of Licensor.

18. **Modification.** This Agreement represents the entire and integrated agreement between the City and the Licensee and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be modified, except in a writing, executed by the authorized representatives of the City and Licensee.

19. **Authorized Signatures.** 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.

20. **Effective Date.** The effective date of this Agreement shall be the date on which the City Manager or her designee signs the Agreement.

WITNESS the following signatures:

LICENSOR:

CITY OF HAMPTON, VIRGINIA

By: _____
Mary Bunting, City Manager

APPROVED AS TO FORM &
LEGAL SUFFICIENCY:

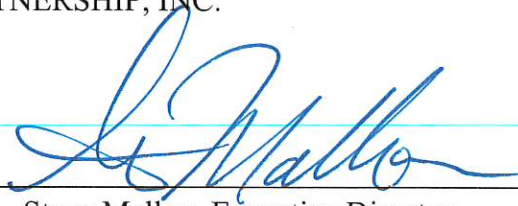
City Attorney's Office

APPROVED AS TO CONTENT:

Department of Parks, Recreation and
Leisure Services

LICENSEE:

DOWNTOWN HAMPTON DEVELOPMENT
PARTNERSHIP, INC.

By: 
Steve Mallon, Executive Director