

## USE AGREEMENT

This **USE AGREEMENT** (the "Agreement") is by and among the City of Hampton, a municipal corporation in the Commonwealth of Virginia (the "City"), Y.H. Thomas Community Center, Inc., a Virginia nonstock corporation (the "Center"), and the Y.H. Thomas Youth Athletic Association, a Virginia nonstock corporation having its registered office at 106 Cherry Acres Drive, Hampton, Virginia 23669 (the "Athletic Association"; the City, the Center, and the Athletic Association collectively referred to as the "Parties").

### Recitals

- A. The City is the record owner of property identified as LRSN 8000281 and more commonly referred to as 1300 Thomas Street (the "Property").
- B. The Property includes an approximately 92,102 square foot structure, with approximately 45,130 square feet of that structure being a community center more commonly referred to as the Y.H. Thomas Community Center (the "Facility").
- C. Realizing the need in our community to focus on youth athletics, Purvis and Barbara Tillery, Irvin Braxton, Leroy Crosby, and Carl and Renee Garner founded the Y.H. Thomas Youth Athletic Association in 1987.
- D. The mission of the Athletic Association is to provide recreational, education, cultural, and inspirational opportunities for young people. The City and the Athletic Association desire to set forth an agreement regarding the Athletic Association's continued utilization of a portion of the Facility.
- E. The services provided by the Athletic Association 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 Parties represent and warrant that the Recitals to this Agreement are accurate and correct. The Recitals stated above are incorporated into this Agreement and made a part hereof.
- 2. Grant of Use: The City, in agreement with the Center, grants the Athletic Association the primary use of a portion of the Facility, identified as the Equipment Room and the Athletics Offices on Exhibit A, which is attached hereto and incorporated herein (the "Premises"), subject to certain conditions contained herein. Further, the City, in agreement with the Center, grants the Athletic Association the shared use of the corridors and restrooms in the Facility, subject to certain conditions contained herein.

3. Term: The term of this Agreement shall be for a period of five (5) years commencing on \_\_\_\_\_, 2024 at 12:00 a.m. EST and ending \_\_\_\_\_, 2029 at 11:59 p.m. EST (the "Term").
4. Permitted Use: The Athletic Association is given the right to use the Premises to provide athletic programs for youth aged six to eighteen years, with standard operating hours of 9:00am to 8:00pm, Monday through Friday, with allowance for off-hour activities upon request. The Athletic Association must receive prior written permission from the Facility's Neighborhood Resource Coordinator to operate any of its programs outside of these days and/or times. For purposes of this written permission, electronic mail is sufficient.

The Athletic Association shall be responsible for the planning, scheduling, and administering of its programs in the Premises. The Athletic Association shall not, at any time, allow the use of any tobacco products or alcoholic beverages in the Premises, Facility, or Property.

5. Athletic Association Staff; Key Control Procedures. The Athletic Association shall provide a contact person(s) name, physical address, email address, and telephone number to the Hampton Police Department and Hampton Fire Department in case of an emergency. The name(s) shall be provided annually or when the contacts are no longer valid. It shall be the responsibility of the contact(s) to respond to emergency situations at the Premises as required at all times of operation and during periods when the Property and Facility are closed.

The Athletic Association shall provide the Facility's Neighborhood Resource Coordinator with a list of persons authorized to access the Premises on behalf of the Athletic Association. Additionally, the Athletic Association shall provide the Facility's Neighborhood Resource Coordinator with a document detailing its key control procedures to ensure that any keys to the Premises are properly accounted for and access to the Premises is handled appropriately. The key control procedures are subject to the review and approval of the City.

6. Rent; Utilities: The Athletic Association shall not be charged rent for use of the Premises.
7. Athletic Association's Maintenance: The Athletic Association shall be responsible for the general upkeep and appearance of the Premises, including any entrance areas, such that the Premises remain in a safe, neat, and clean condition. Such general upkeep and appearance responsibilities include, but are not limited to, mopping up spills, sweeping floors, cleaning interior windows, painting as required, and placing trash in the dumpster. The Athletic Association shall be financially responsible for repairing any and all damage to walls, floors, and ceiling tiles in the Premises due to the Athletic Association's use.
8. Access Maintenance; Hazardous Materials: The Athletic Association 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 Athletic Association and shall not be used for any

purpose other than ingress or egress to and from the Premises by the public. The Athletic Association 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.

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 Athletic Association shall monitor thermostats and water consumption to control costs. The Athletic Association 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 roofing. The City shall provide landscape and grounds maintenance for the Facility and the Property. The City shall provide a dumpster for trash collection. The City shall maintain all trash containers located on the Property.
10. City's Right of Entry/Right to Inspect. The City, including its agents and representatives, may enter the Premises during reasonable hours with or without notice to the Athletic Association for the purpose of inspections and repairs.
11. Other Portions of the Facility and Property. The Athletic Association is not permitted to use other portions of the Facility or the Property, including, but not limited to the gymnasium, athletic fields, and playing areas, without the prior written permission of the Facility's Neighborhood Resource Coordinator. For purposes of this written permission, electronic mail is sufficient.

It is understood that should a situation develop concerning the use of other portions of the Facility or the Property, the Athletic Association shall first seek resolution with the Department of Parks, Recreation and Leisure Services. If the situation cannot be resolved at that level, the next step would be for the Department of Parks, Recreation and Leisure Services to request intervention from a representative of the City Manager's Office.

12. Financial Records. The Athletic Association shall maintain permanent financial records which are acceptable to the City Representative and the City's Director of Finance, and shall file reports of such records as reasonably requested by the City.
13. Alterations Physical Renovations, Additions or Improvements. No alterations, physical renovations, additions or improvements shall be made to the Premises by the Athletic Association without the prior written approval of the City. Any such alterations, physical renovations, additions, or improvements made to the Premises shall become the property of the City. 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 Premises. This provision is not meant to include the general upkeep and maintenance of the Premises.
14. Decorations and Signage. No decorations, props, banners, or signs shall be placed inside the Facility or about the Property without the prior written consent of the City. The City reserves the right to remove and dispose of any and all unauthorized decorations, props, banners, and signs.

15. Risk of Loss to Athletic Association Property: The City shall not be responsible or liable for the damage, destruction, theft, or other loss of personal property of the Athletic Association, including, but not limited to equipment, materials, and supplies that may be placed or otherwise stored in the Premises.
16. No Liens or Encumbrances. The Athletic Association 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 Athletic Association, upon the written request of the City, the Athletic Association must cause the same to be released of record within ten (10) days after the Athletic Association receives such written request.
17. Nonstock Corporation and Charitable Status. The Athletic Association expressly represents that it is a nonstock corporation that (i) is in good standing in the Commonwealth of Virginia, (ii) is registered to transact business in the Commonwealth of Virginia, if so required by Title 13.1 or Title 50 of the Code of Virginia, and (iii) will remain in good standing throughout the term of this Agreement. The Athletic Association further represents that it is recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt, charitable entity and will maintain this status throughout the term of this Agreement. The City reserves the right to not provide or cease any and all support should any of the conditions described in this provision terminate or lapse.
18. Insurance: During the Term and any renewal thereof, the Athletic Association must obtain and keep in full force and effect at all times the following policies of insurance:
  - a. Comprehensive general liability insurance not less than one million dollars per occurrence with a two million dollars aggregate including fire legal liability insurance to cover damage to the facility and Athletic Association's contents caused by actions of the Athletic Association and its invitees. Such insurance shall name the City as an additional insured.
  - b. Renter's insurance with a sufficient amount to cover Athletic Association's property in the building in the event of vandalism, theft, or storm damage. This is an optional coverage but is recommended for the Athletic Association's protection.
  - c. 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 Athletic Association 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 listing the City as additional insured, 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.

19. Indemnification: The Athletic Association 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 Athletic Association or others claiming under the Athletic Association, or (ii) the breach, violation or nonperformance of any covenant, condition, or term in this Agreement set forth herein on the part of the Athletic Association to be fulfilled, kept, observed and performed; provided, however, this indemnification shall not apply to Claims arising as a result of any gross negligence of the City or the City's employees, contractors or agents. The Athletic Association, 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 Athletic Association and any and all property under the control or custody of the Athletic Association included in this Agreement. The Athletic Association's indemnity includes, but is not limited to any Claims as defined in this Paragraph 19, but also resulting from the Athletic Association'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 Urban's Leagues use or occupancy under this Agreement.
20. 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.
21. Assignment: The Athletic Association shall not assign its rights and duties under this Agreement in whole or in part without the prior written consent of the City. Any such assignment without the City's written consent shall be void, and shall, at the option of the City, terminate this Agreement. No assignment of this Agreement, with or without the City's written consent, shall be deemed to release the Athletic Association from any of its obligations under this Agreement, nor shall any assignment be construed as permitting any further assignment except in accordance with this Paragraph 21.
22. Termination: In the event that the Athletic Association fails or is unable to comply with any terms of this Agreement, the Athletic Association shall be deemed in breach of this Agreement. In the event of breach, the City shall notify the Athletic Association in writing of the breach and the Athletic Association shall have 30 days to correct the breach. If the Athletic Association fails to correct the breach within the 30 days provided, then the City has the right to terminate this Agreement. Notwithstanding the foregoing, any Party may terminate this Agreement for any reason in writing with 90 days' notice to the other Party. In addition, the City may suspend or terminate this Agreement immediately in the event of any violation of federal, state, local law, this Agreement, or if the public health, safety, and welfare so require.



the City of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on the account. The City may accept Rent, or other sum payable or other benefits pursuant to this Agreement and acceptance of the same shall not be deemed a waiver of any prior default.

26. Compliance with all Laws: The Athletic Association shall comply with all laws, ordinances, or regulations adopted or established by federal, state, and local governments relating to the terms and conditions of this Agreement, including, but not limited to federal and state non-discrimination laws and state drug-free workplace provisions, 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, and the Age Discrimination Act of 1975, as amended.

This shall include the need for the Athletic Association to secure all necessary permits required by federal, state or local statutes, ordinances and regulations, now in effect or hereafter adopted, including, but not limited to, the City's special event permit required pursuant to Hampton City Code § 2-311 et. seq.

27. Applicable Law: This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters exclusively by the laws of the Commonwealth of Virginia. All suits for any claims or for any breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.
28. Severability: If any section, paragraph, subparagraph, sentence, clause, or phrase of this Agreement shall be declared or judged invalid or unconstitutional, such adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses, or phrases of this Agreement.
29. Effective Date: This Agreement shall become effective upon the full execution of this Agreement by all parties.
30. Entire Agreement: This Agreement, together with any and all exhibits attached hereto, constitutes the entire agreement between the Parties and may be modified only by a writing signed by both Parties.
31. 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.
32. Counterpart Signatures: This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original without production of any other counterpart. Any signature delivered via facsimile or other electronic means shall be deemed an original signature.

[SIGNATURES ON THE FOLLOWING PAGE]

WITNESS the following signatures:

**CITY OF HAMPTON, VIRGINIA**

By \_\_\_\_\_  
City Manager/Authorized Designee

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Department of Parks, Recreation  
& Leisure Services

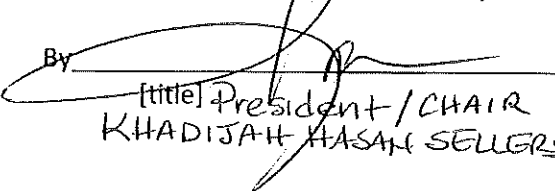
\_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By   
City Attorney's Office

October 28, 2024  
Date

**Y.H. THOMAS COMMUNITY CENTER, INC.**

By   
[title] President / CHAIR  
KHADIJAH HASAN SELLERS

Oct, 15, 2024  
Date

**Y.H. THOMAS YOUTH ATHLETIC ASSOCIATION**

By Ranee L. Danner  
[title] Registered Agent,  
Founder & Treasurer

7/12/24  
Date