

ORDINANCE NO. 7335-16

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, ONE LEASE AND THREE LICENSE AGREEMENTS BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND HAMPTON ROADS COMMUNITY ACTION PROGRAM, INC.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Lease for 392 Maple Avenue by and between the City of Newport News, Virginia, and Hampton Roads Community Action Program, Inc., dated the 13th day of December, 2016, a copy of which is attached hereto and made a part hereof.

2. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain License Agreement for a portion of 14302 Old Courthouse Way by and between the City of Newport News, Virginia, and Hampton Roads Community Action Program, Inc., dated the 13th day of December, 2016, a copy of which is attached hereto and made a part hereof.

3. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain License Agreement for a portion of 2410 Wickham Avenue by and between the City of Newport News, Virginia, and Hampton Roads Community Action Program, Inc., dated the 13th day of December, 2016, a copy of which is attached hereto and made a part hereof.

4. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain License Agreement for a portion of 328 - 30th Street by and between the City of Newport News, Virginia, and Hampton Roads Community Action Program, Inc., dated the 13th day of December, 2016, a copy of which is attached hereto and made a part hereof.

5. That this ordinance shall be in effect on and after the date of its adoption, December 13, 2016.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON DECEMBER 13, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

Hampton Roads Community Action Program
Clark Center - 392 Maple Avenue

LEASE AGREEMENT

THIS LEASE is made this 13th day of December, 2016, by and between the City of Newport News, Virginia, a municipal corporation of the Commonwealth of Virginia (hereafter referred to as "City" or "Lessor"), and Hampton Roads Community Action Program, Inc., a Virginia nonstock corporation, (hereafter referred to as "HRCAP" or "Lessee").

WITNESSETH

1. **DEMISED PREMISES**

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, Lessor hereby leases and demises unto Lessee the following described improved real property (the "demised premises"): 392 MAPLE AVENUE, NEWPORT NEWS, VA 23607, also known as the Clark Center, consisting of a one-story building (the "building") and the grounds thereof.

2. **TERM**

The demised premises are leased to HRCAP for a period of five (5) years, beginning on the 1st day of January, 2017, and terminating on the 31st day of December, 2021.

3. **RENT**

Lessee covenants to pay Lessor the sum of One Dollar (\$1.00) as rent for the first year of the Lease and each subsequent year of the term. Rent shall be made payable to the City of Newport News, Virginia and mailed to the Director of Development at 2400 Washington Avenue, 3rd Floor, Newport News, VA 23607.

4. **N/A**

5. **TERMINATION**

During any term, for any reason, City or HRCAP may cancel this Lease by giving written notice to the other of cancellation at least ninety (90) days prior to the effective date of said cancellation.

6. **PURPOSE AND USE OF DEMISED PREMISES**

All property and facilities at 392 Maple Avenue are property of the City of Newport News, Virginia. The use and availability of the property and facilities are primarily for the benefit of the citizens of Newport News. HRCAP is given the right to operate the center to provide Housing and Community Service programs administered by HRCAP.

Lessee, during the term of this Lease, agrees not to use or keep or allow the demised premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the demised premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the demised premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the demised premises.

7. **TAXES**

During the term of this Lease, Lessee shall pay and discharge any taxes, assessments, duties, or impositions assessed, charged or imposed upon the property constituting the demised premises or Lessee's leasehold interest in the demised premises and all improvements and equipment installed or constructed by Lessee thereon. Lessee shall not be required to pay any portion of any taxes, assessments, duties or impositions resulting from the value of the land adjacent to the demises premises, or from the value of new buildings or improvements constructed on the demised premises or on adjacent lands by Lessor or by any other party which are not owned or used by Lessee.

8. **LIENS OR ENCUMBRANCES**

Lessee shall not suffer the demised premises or any improvements thereon to become subject to lien, charge or encumbrance, and shall defend, indemnify, and hold harmless Lessor against all such liens, charges or encumbrances. Lessee shall, within thirty (30) days after written notice thereof from Lessor, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against demised premises as the result of the act or omission of Lessee.

9. **DELIVERY OF POSSESSION**

(A) Lessor covenants to deliver quiet possession of the demised premises at the commencement of the initial term.

(B) Due to Lessee's payment of nominal rent, Lessor shall deliver the demised premises to Lessee at the commencement of the initial term in "As Is" condition. Notwithstanding the above, Lessor warrants that all plumbing, heating, air conditioning, and electrical systems located upon or serving the demised premises shall be in good repair, condition and working order as of the commencement of the initial term.

10. **SERVICE AND MAINTENANCE**

(A) Lessor covenants to keep, repair and maintain in working order and good condition, at Lessor's expense, the following building components and building systems: the roof, plumbing (excluding damage to, and any stoppage or articles lost in, pipes, fixtures, or appurtenances caused by Lessee's actions), heating and air conditioning ("HVAC"), electrical, and fire alarm and suppression systems, suitable to the purpose and use for which Lessee has leased same, during the term. If Lessee is furnished additional services, or if Lessee's use of the demised premises causes additional expense, Lessee will pay the additional expense. Notwithstanding the above, Lessor shall have no responsibility for any new equipment, additions, or modifications to the aforementioned building systems (including plumbing, electrical, and HVAC) made or installed by or for Lessee.

(B) Lessee covenants to keep, repair and maintain, at Lessee's expense, all other components of the interior and exterior of the building and grounds of the demised premises, including but not limited to flooring, carpentry, carpet, painting, exterior and interior glass and doors, and will repair and be responsible for all incidents of vandalism.

(C) Lessee will be responsible for Lessee's telephone and computer systems, glass cleaning, exterminating, janitorial and trash disposal. Lessee will also be responsible for providing a fire alarm monitoring service with point of contact information in the event of alarms. All of the above items shall be provided at Lessee's expense.

(D) If Lessee wishes to install electrical equipment, such as electrical heating or refrigeration equipment or electronic data processing machines, using current which exceeds that usually furnished for use in general office space, Lessee will obtain prior written approval of Lessor and will pay any additional cost involved, including any necessary upgrades to the building and building systems. Lessor may request copies of plans and construction documents related thereto which will be provided by Lessee.

(E) If Lessee wishes to install sinks, pipes, or other plumbing fixtures, appurtenances, or equipment, Lessee will obtain prior written approval of Lessor and will pay any additional cost involved, including any necessary upgrades to the building and building systems. Lessor

may request copies of plans and construction documents related thereto which will be provided by Lessee.

(F) Lessee will be responsible for providing building security services.

11. **UTILITIES**

Lessee shall be responsible for payment of all utility expenses, including but not limited to gas, electricity, water, sewage, telephone, internet, trash disposal, and janitorial services to and for the demised premises during the initial term and any additional term.

12. **ALTERATIONS BY LESSEE**

Lessee may make such alterations, modifications, additions and/or improvements upon or to the demised premises and may install or remove such fixtures and partitions as Lessee may deem proper; provided, however, that any structural alterations or penetrations of the roof, foundation or interior or exterior walls shall require the prior written consent of Lessor. Lessor may request copies of plans and construction documents related thereto which will be provided by Lessee. All material used in such alterations, modifications, additions or improvements, and all fixtures made or installed by Lessee shall remain the property of Lessor upon termination of this Lease, unless otherwise agreed in writing by Lessor. All partitions and furniture that is not affixed to the building, and installed by Lessee, shall remain the property of Lessee and, upon termination of this Lease be removed by Lessee unless otherwise agreed in writing by the parties.

13. **DAMAGE OR DESTRUCTION OF DEMISED PREMISES**

(A) If the demised premises are damaged by fire or other casualty so as to render the same, in the opinion of Lessee, untenable for the purpose or use for which Lessee has leased same, this Lease, and all obligations hereunder, shall immediately terminate upon Lessee's giving notice of that fact to Lessor by certified or registered mail, return receipt requested, as hereinafter provided. Lessor's obligations under the Lease shall end upon termination.

(B) If the demised premises are damaged by fire or other casualty, but not so as to render same untenable, in the opinion of Lessee, for the purpose or use for which Lessee has leased the demised premises, upon being notified by Lessee by certified or registered mail, return receipt requested, Lessor may repair and restore within a reasonable time, at Lessor's sole option, the demised premises to its former condition. If Lessor decides not to repair and restore the demised premises, Lessor shall notify Lessee by certified or registered mail, return receipt requested, and the Lease shall terminate, and Lessor's obligations under the Lease shall end.

(C) If Lessor fails to make or fails to complete repair and restoration of the demised premises within a reasonable time after Lessee provides notice pursuant to sub-paragraph 13(B), then Lessee, at its option, may either (a) immediately terminate this Lease and all obligations of both parties hereunder, or (b) proceed to make, or cause to be made, such repair and restoration, at Lessee's sole expense.

14. **INSURANCE**

Lessee will, at its sole cost and expense, obtain and keep in force during the term combined single limit bodily injury and property damage liability insurance in an amount not less than \$1,000,000 any one occurrence, insuring Lessee against liability arising out of Lessee's use or occupancy of the demised premises. Such policy shall name the City of Newport News as an "additional insured." The policy shall be a primary policy not contributing with and not in excess of coverage which Lessor may carry. If Lessee fails to obtain or maintain this insurance, Lessor may do so at Lessee's expense. Lessee will also keep in force during the term replacement value property insurance insuring Lessee. Lessee shall not occupy the demised property unless all the required insurance is obtained. Lessee will notify Lessor immediately of any policy expiration, lapse, or termination.

Evidence of policies of insurance affording the above coverage shall be submitted to the Department of Development and shall be subject to the review and approval by Lessor upon the commencement of this Lease. Renewals of such insurance during the term of this Lease shall also be subject to review and approval by Lessor.

15. **NO LIABILITY OF LESSOR**

Lessor and its agents shall not be liable to Lessee or its agents for; and Lessee, for itself and its agents, does hereby release Lessor and its agents from; liability for, any damage, compensation or claim arising from (i) the necessity of repairing or maintaining any portion of the demised premises or any structural defects thereto, (ii) any interruption in the use of the demised premises for any reason including any interruption or suspension of utility service, (iii) fire or other casualty or personal or property injury, damage or loss resulting from the use or operation (by Lessor, Lessee, or any other person whomsoever) of the demised premises, (iv) the termination of this Lease, (v) any crime committed on the demised premises, or (vi) any leakage or flooding in or on the demised premises from water, rain, snow, other Acts of God or other cause whatsoever. Any goods, automobiles, equipment, records, personal property or personal effects stored or placed by Lessee and its agents in or about the demised premises shall be at the sole risk of Lessee, and Lessor and its agents shall not in any manner be held responsible thereof. Except to the extent expressly prohibited by law, Lessee hereby waives any claim it might have against Lessor or its agents for any consequential damages sustained by Lessee arising out of the loss or damage to any person or property of Lessee.

16. **INDEMNITY**

Lessee shall defend, as determined in the sole discretion of the Lessor, indemnify and hold Lessor, and its agents harmless from and against any and all damage, claim, liability, cost or expense (including, without limitation, court costs, reasonable attorneys' or other professionals' fees) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against Lessor or its agents, directly or indirectly, as a result of, arising from or in connection with Lessee's or its agents use and occupancy of the demised premises.

17. **SURRENDER OF DEMISED PREMISES**

At the expiration or termination of this Lease, Lessee will surrender the demised premises to Lessor, and remove within thirty (30) days of expiration or termination from the demised premises all of the equipment erected or installed by Lessee on the demised premises during the term of this Lease, unless otherwise agreed in writing. Except as provided in paragraph 13, Lessee shall restore the demised premises to its original condition, normal wear and tear excepted.

18. **REPRESENTATIVES BOUND**

The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of Lessor and the successors and assigns of Lessee.

19. **ASSIGNMENT AND SUBLETTING**

Lessee will not, without the prior written consent of Lessor, assign or sublet all or any part of the demises premises to any other person or entity. Regardless of Lessor's consent, no assignment or subletting will release Lessee of its obligations under the Lease, and Lessee will remain primarily liable hereunder.

20. **COMPLIANCE WITH LAWS AND RULES**

Lessee will comply with all (i) federal, state and local laws, ordinances, and regulations, including, without limitation, all environmental laws, rules, and regulations (collectively, the "environmental laws"), relating to the demised premises or the activities conducted therein, and (ii) any building rules and regulations promulgated by Lessor from time to time. The demised premises will not be used for the treatment, storage, use or disposal of toxic and hazardous wastes or substances, or any other substance, exposure to which is prohibited, limited or regulated by a governmental or quasi-governmental authority or which, even if not so regulated, could or does pose a hazard to the health and safety of the occupants of the building or surrounding property unless authorized by and in accordance with law. Lessee will indemnify and hold Lessor harmless to the extent allowed by law, from and against any expense or liability caused by Lessee's negligence or misconduct arising under the environmental laws resulting

from Lessee's use of the demised premises or any acts and/or omissions of Lessee. This paragraph shall survive termination of the Lease.

21. **GOVERNING LAW; COURTS**

This Lease shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. The parties irrevocably submit themselves to the original jurisdiction, forum, and venue of the state courts located within the City of Newport News, Virginia, with regard to any litigation arising out of, relating to, or in any way concerning this Lease.

22. **AMENDMENTS**

This Lease may be amended or modified only by a writing signed by authorized agents of both Lessor and Lessee. Subject to Section 15.2-2105 of the Virginia Code, as amended, the City Manager is authorized, subject to review and approval of the City Attorney, to approve and sign the amendments to this Lease on behalf of Lessor.

23. **WAIVER**

No failure or delay on the part of either party to exercise any right or privilege hereunder shall operate as a waiver thereof.

24. **DEFAULT**

The following shall be considered events of default or breach by Lessee:

(A) The failure of the Lessee to pay rent;

(B) The failure of Lessee to cure, within thirty (30) days after Lessor gives written notice of any breach of any covenant, undertaking, term or provision of this Lease; or

(C) Abandonment of the demised premises by Lessee. Failure of Lessee to use the demised premises for sixty (60) days shall be considered abandonment. In the event of such default or breach, Lessor shall be entitled, at Lessor's option, to remove all property and equipment of Lessee from the demised premises, without notice and without being guilty or liable in any manner for trespass, thereby terminating this Lease. Cumulatively and in addition to the foregoing, Lessor shall be entitled to enforce all other remedies provided at law or in equity.

25. **RIGHT OF ENTRY**

Lessor shall have access to the demised premises for the purposes of inspection, maintenance and repair and to show the building to prospective tenants, after reasonable notice, except no notice needs to be given in the case of an emergency.

26. **DAMAGES, ATTORNEYS FEES**

If suit shall be brought by Lessor for recovery of possession of the demised premises, for the recovery of any rent or any other amount due under this Lease, or because of the breach of any other covenant by Lessee, or because of Lessee's default, and Lessor prevails in such action or a portion thereof, then Lessee shall pay Lessor all reasonable expenses incurred therefor, including reasonable attorney's fees.

27. **NOTICE**

Any notice or other communication to Lessor or Lessee pursuant hereto shall be deemed validly given, served or delivered if sent by the United States Mail, certified and postage prepaid, addressed as follows:

To HRCAP: Hampton Roads Community Action Program, Inc.
2410 Wickham Avenue
Newport News, VA 23607

To Lessor: City of Newport News
Director, Department of Development
2400 Washington Avenue, 3rd Floor
Newport News, VA 23607

Or to such other addresses as the parties may designate in writing delivered in accordance with the provisions hereof.

28. **RECORDATION OF LEASE**

Either Lessor or Lessee may record this Lease or a Memorandum hereof.

29. **INVALIDITY**

If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid, whether generally or as to specific facts or circumstances, the same shall not affect in any respect whatsoever the validity of the remainder of this Lease, which shall continue in full force and effect. Any provision held invalid as to any particular facts and circumstances shall remain in full force and effect as to all other facts and circumstances.

30. **ENTIRE AGREEMENT**

This Lease represents the entire agreement between the City and the Lessee and supersedes all prior negotiations, representations or agreements, either written or oral. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein.

(Signature Pages Follow)

The undersigned are duly authorized to execute this agreement for the City and HRCAP.

CITY OF NEWPORT NEWS (Lessor)

By: _____
James M. Bourey, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to-wit:

I, _____, a Notary Public for the City and Commonwealth aforesaid, do hereby certify that CITY OF NEWPORT NEWS, by James M. Bourey, City Manager, and Mabel V. Washington, City Clerk, whose names are signed to the foregoing Lease bearing date of the 13th day of December, 2016, have acknowledged the same before me in my City and Commonwealth aforesaid.

Given under my hand this ____ day of _____, _____.

Notary Public

My Commission expires: _____
Registration No.: _____

HAMPTON ROADS COMMUNITY ACTION PROGRAM, INC. (Lessee)

By: _____
Edith White, Executive Director

STATE/Commonwealth of _____
City/County of _____, to-wit:

I, _____, a Notary Public for the City and Commonwealth aforesaid, do hereby certify that Hampton Roads Community Action Program, Inc., by _____, its _____, whose name is signed to the foregoing Lease bearing date of the 13th day of December, 2016, has acknowledged the same before me in my City and Commonwealth aforesaid.

Given under my hand this _____ day of _____, _____.

Notary Public

My Commission expires: _____
Registration No.: _____

Hampton Roads Community Action Program
Courthouse Way Community Center

LICENSE AGREEMENT

THIS AGREEMENT, made this 13th day of December, 2016, by and between the City of Newport News, a municipal corporation in the Commonwealth of Virginia, (hereafter referred to as “City”), and Hampton Roads Community Action Program, Inc., a Virginia nonstock corporation (hereafter referred to as “HRCAP”).

WITNESSETH

1. LICENSED PREMISES

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the City hereby grants unto HRCAP non-exclusive rights to have primary use of four (4) classrooms located inside the Courthouse Way Community Center (CWCC) building, and to share a portion of the CWCC building and outdoor facilities, located at 14302 OLD COURTHOUSE WAY, NEWPORT NEWS, VIRGINIA, 23602.

2. TERM

The initial term of this License shall be for a period of one (1) year, commencing on January 1, 2017 and ending on December 31, 2017. At the termination of the initial term of this License, and any renewal term, the Newport News City Manager (hereinafter referred to as City Manager), in his sole discretion may renew this License at the request of HRCAP for successive additional one (1) year terms, but the total number of renewals shall not exceed four (4). In no event shall this License extend beyond December 31, 2021.

3. COST SHARING COMPONENT

(A) AMOUNT: HRCAP will be responsible for paying all utility bills (electrical, water, sewer, gas, telephone, etc.) for the portion of the CWCC building which they primarily occupy. The Department of Parks, Recreation and Tourism (NNPRT) will invoice HRCAP quarterly and payment will be due within thirty (30) days after receipt of invoice. Failure to submit payment for utility costs will be considered breach of contract. Utility costs will be prorated based on the percentage of square feet of space primarily used by HRCAP in relation to that of the entire facility.

(B) PAYMENT: All reimbursement payments shall be made payable to the “City of Newport News, Virginia,” and sent to: Director, Newport News Parks, Recreation and Tourism, 700 Town Center Drive, Suite 320, Newport News, VA 23606, or to such other party and such

other place as the City may, from time to time, designate in writing as provided herein.

4. **TERMINATION**

During any term, for any reason, City or HRCAP may cancel this Agreement by giving written notice to the other of cancellation at least ninety (90) days prior to the effective date of said cancellation.

5. **PURPOSE AND USE OF LICENSED PREMISES**

All property and facilities at 14302 Old Courthouse Way are property of the City of Newport News, Virginia. The use and availability of the property and facilities are primarily for the benefit of the citizens of Newport News. HRCAP is given the right to operate in a portion of the CWCC to provide Head Start programs administered by HRCAP to assist low-income residents of Newport News.

HRCAP will 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 HRCAP will require that its agents, employees and volunteers likewise so comply. 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.

HRCAP, during the term of this Agreement, agrees not to use or keep or allow the licensed premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the licensed premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the licensed premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the licensed premises.

HRCAP agrees not to 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 licensed premises and the further right to require its immediate removal if found thereon.

HRCAP 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 ways of access to public utilities of the premises shall be kept unobstructed by HRCAP and shall not be used for any purpose other than ingress or egress to and from the premises by the public.

All Special Events involving sales and/or exhibitors offering goods for sale, bands, amplified sound, additional parking, or extension of operating hours, shall not be permitted on the premises without the consent of the City. Display of all items as well as sales materials shall remain in the interior office spaces of HRCAP.

HRCAP shall have responsibility of scheduling and administering the use of their designated portion of the facility.

It is understood that should a dispute develop concerning the use of the premises, HRCAP shall first seek resolution with representatives of the Newport News Department of Parks, Recreation and Tourism. If the problem cannot be resolved at that level, the next step would be to request resolution by a representative of the City Manager's Office.

6. **ADJUSTMENT OF USE/LICENSED PREMISES**

With the prior written approval of the City Manager, the HRCAP permitted use and/or specified location within the building may be adjusted. Any such adjustment which alters the square footage utilized to calculate HRCAP's pro rata share of utility expense, shall be correspondingly adjusted for that purpose.

7. **PARKING**

The grounds and parking lot shall remain open for public use. There is no designated exclusive parking for HRCAP.

8. **LIENS OR ENCUMBRANCES**

HRCAP shall not suffer the licensed premises or any improvements thereon to become subject to lien, charge or encumbrance, and shall defend, indemnify, and hold harmless the City against all such liens, charges or encumbrances. HRCAP shall, within thirty (30) days after written notice thereof from the City, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against the licensed premises as the result of the act or omission of HRCAP.

9. **CONDITION OF PREMISES**

The City shall deliver the use of the licensed premises to HRCAP at the commencement of the initial term in "As Is" condition.

10. **SERVICE AND 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. HRCAP shall monitor thermostats and water consumption to control costs. HRCAP 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 building and parking lot. The City shall provide a dumpster for trash collection. The City shall maintain all exterior trash containers located on the property.

HRCAP shall perform a day-to-day upkeep and appearance of the facility and entrance areas to include picking up paper and debris originating from their programs, mopping up spills, sweeping floors, cleaning interior windows, painting as required, and placing trash in the dumpster.

HRCAP must provide for storage for its program within the dedicated space for its service.

HRCAP shall make requests for service and repair of building systems through CWCC. The City will not be responsible for services initiated through HRCAP.

HRCAP will provide and maintain all tables, chairs, desks, audio-visual equipment, blackboards, instructional material, supplies, appliances, technology access, telephone service, etc. necessary to operate its programs.

11. **UTILITIES**

Prior to quarterly reimbursement, the City shall be responsible for payment of overall utility expenses, including but not limited to gas, electricity, water, sewage, telephone, and internet to and for the licensed premises during the initial term and any additional term.

12. **ALTERATIONS BY HRCAP**

HRCAP may make such alterations, modifications, additions and/or improvements upon or to the licensed premises and may install or remove such fixtures and partitions as HRCAP may deem proper; provided, however, that any structural alterations or penetrations of the roof, foundation, ceiling or interior or exterior walls shall require the prior written consent of the City. The City may request copies of plans and construction documents related thereto which will be provided by HRCAP. All material used in such alterations, modifications, additions or improvements, and all fixtures made or installed by HRCAP shall remain the property of HRCAP upon termination of this Agreement, unless otherwise agreed in writing by the City.

Upon termination of this Agreement, HRCAP shall, at HRCAP's expense, restore the licensed premises to its original condition, normal wear and tear excepted. All partitions, equipment and furniture that are not affixed to the building, and installed by HRCAP, shall remain

the property of HRCAP and, upon termination of this Agreement be removed by HRCAP unless otherwise agreed in writing by the parties.

13. **SIGNS**

HRCAP will not erect signs on the interior or exterior walls of the CWCC building without prior written permission from the City.

14. **DAMAGE OR DESTRUCTION OF LICENSED PREMISES**

(A) If the licensed premises are damaged by fire or other casualty so as to render the same, in the opinion of HRCAP, untenable for the purpose or use for which HRCAP has utilized same, this Agreement, and all obligations hereunder, shall immediately terminate upon HRCAP's giving notice of that fact to the City by certified or registered mail, return receipt requested, as hereinafter provided. The City's obligations under the Agreement shall end upon termination.

(B) If the licensed premises are damaged by fire or other casualty, but not so as to render same reasonably usable, in the opinion of HRCAP, for the purpose or use for which HRCAP has utilized the licensed premises, upon being notified by HRCAP by certified or registered mail, return receipt requested, the City may repair and restore within a reasonable time, at the City's sole option, the licensed premises to its former condition. If the City decides not to repair and restore the licensed premises, the City shall notify HRCAP by certified or registered mail, return receipt requested, and the License Agreement shall terminate, and the City's obligations under the Agreement shall end.

(C) If the City fails to make or fails to complete repair and restoration of the licensed premises within a reasonable time after HRCAP provides notice pursuant to sub-paragraph B, then HRCAP, at its option, may either (a) immediately terminate this Agreement and all obligations of both parties hereunder, or (b) proceed to make, or cause to be made, such repair and restoration, at HRCAP's sole expense.

15. **CONDEMNATION**

If the CWCC building, or such portion thereof as will make the licensed premises unusable for the purposed licensed, is condemned or sold under threat of condemnation, then this Agreement will terminate as of the date of the vesting of title in the public condemning authority.

16. **INSURANCE**

HRCAP will, at its sole cost and expense, obtain and keep in force during the term combined single limit bodily injury and property damage liability insurance in an amount not less than \$1,000,000 any one occurrence, insuring HRCAP against liability arising out of HRCAP's

use or occupancy of the licensed premises. Such policy shall name the City of Newport News as an "additional insured." The policy shall be a primary policy not contributing with and not in excess of coverage which the City may carry. If HRCAP fails to obtain or maintain this insurance, the City may do so at HRCAP's expense. HRCAP will also keep in force during the term replacement value property insurance insuring HRCAP. HRCAP shall not occupy the licensed premises unless all the required insurance is obtained. HRCAP will notify the City immediately of any policy expiration, lapse, or termination.

Evidence of policies of insurance affording the above coverage shall be submitted to the City Attorney's Office and shall be subject to the review and approval by the City upon the commencement of this Agreement. Renewals of such insurance during the term of this Agreement shall also be subject to review and approval by the City.

17. **NO LIABILITY OF THE CITY**

The City and its agents shall not be liable to HRCAP or its agents for; and HRCAP, for itself and its agents, does hereby release the City and its agents from; liability for, any damage, compensation or claim arising from (i) the necessity of repairing or maintaining any portion of the licensed premises or any structural defects thereto, (ii) any interruption in the use of the licensed premises for any reason including any interruption or suspension of utility service, (iii) fire or other casualty or personal or property injury, damage or loss resulting from the use or operation (by the City, HRCAP, or any other person whomsoever) of the licensed premises or the property, (iv) the termination of this Agreement, (v) any crime committed on the licensed premises, or (vi) any leakage or flooding in or on the licensed premises from water, rain, snow, other Acts of God or other cause whatsoever. Any goods, automobiles, equipment, records, personal property or personal effects stored or placed by HRCAP and its agents in or about the licensed premises shall be at the sole risk of HRCAP, and the City and its agents shall not in any manner be held responsible thereof. Except to the extent expressly prohibited by law, HRCAP hereby waives any claim it might have against the City or its agents for any consequential damages sustained by HRCAP arising out of the loss or damage to any person or property of HRCAP.

18. **INDEMNITY**

HRCAP shall defend, as determined in the sole discretion of the City, indemnify and hold the City, and its agents harmless from and against any and all damage, claim, liability, cost or expense (including, without limitation, court costs, reasonable attorneys' or other professionals' fees) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the City or its agents, directly or indirectly, as a result of, arising from or in connection with HRCAP's or its agents use and occupancy of the licensed premises.

19. **SURRENDER OF LICENSED PREMISES**

At the expiration or termination of this License Agreement, HRCAP will surrender the licensed premises to the City, and remove within thirty (30) days of expiration or termination from

the licensed premises all of the equipment erected or installed by HRCAP on the licensed premises during the term of this License Agreement, unless otherwise agreed in writing. Except as provided in paragraph 12, HRCAP shall restore the licensed premises to its original condition, normal wear and tear excepted.

20. **REPRESENTATIVES BOUND**

The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of the City and the successors and assigns of HRCAP.

21. **ASSIGNMENT AND SUBLICENSING**

HRCAP shall not, without the prior written consent of the City, assign or sublicense all or any part of the licensed premises to any other person or entity. Regardless of the City's consent, no assignment or sublicensing will release HRCAP of its obligations under the License Agreement, and HRCAP will remain primarily liable hereunder.

22. **COMPLIANCE WITH LAWS AND RULES**

HRCAP will comply with all (i) federal, state and local laws, ordinances, and regulations, including, without limitation, all environmental laws, rules, and regulations (collectively, the "environmental laws"), relating to the licensed premises or the activities conducted therein, and (ii) any building rules and regulations promulgated by the City from time to time. The licensed premises will not be used for the treatment, storage, use or disposal of toxic and hazardous wastes or substances, or any other substance, exposure to which is prohibited, limited or regulated by a governmental or quasi-governmental authority or which, even if not so regulated, could or does pose a hazard to the health and safety of the occupants of the building or surrounding property unless authorized by and in accordance with law. HRCAP will indemnify and hold the City harmless to the extent allowed by law, from and against any expense or liability caused by HRCAP's negligence or misconduct arising under the environmental laws resulting from HRCAP's use of the licensed premises or any acts and/or omissions of HRCAP. This paragraph shall survive termination of the Agreement.

HRCAP will 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 HRCAP will require that its agents, employees and volunteers likewise so comply. 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. HRCAP agrees not to discriminate against any person because of race, color, sex, religion, natural origin, marital status, age, ancestry or disability relative to admission, services, employment privileges offered to or enjoyed by the general public.

HRCAP, during the term of this License Agreement, agrees not to use or keep or allow the

licensed premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the licensed premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the licensed premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the licensed premises.

23. **GOVERNING LAW; COURTS**

This License Agreement shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. The parties irrevocably submit themselves to the original jurisdiction, forum, and venue of the state courts located within the City of Newport News, Virginia, with regard to any litigation arising out of, relating to, or in any way concerning this Agreement.

24. **AMENDMENTS**

This License Agreement may be amended or modified only by a writing signed by authorized agents of both the City and HRCAP. Subject to Section 15.2-2105 of the Virginia Code, as amended, the City Manager is authorized, subject to review and approval by the City Attorney, to approve and sign the amendments to this Agreement on behalf of the City.

25. **WAIVER**

No failure or delay on the part of either party to exercise any right or privilege hereunder shall operate as a waiver thereof.

26. **DEFAULT**

The following shall be considered events of default or breach by HRCAP:

- (A) The failure of HRCAP to pay the invoiced pro rata share of utility expenses;
- (B) The failure of HRCAP to cure, within thirty (30) days after the City gives written notice of any breach of any covenant, undertaking, term or provision of this Agreement; or
- (C) Abandonment of the licensed premises by HRCAP. Failure of HRCAP to use the licensed premises for sixty (60) days shall be considered abandonment. In the event of such default or breach, the City shall be entitled, at the City's option, to remove all property and equipment of HRCAP from the licensed premises, without notice and without being guilty or liable in any manner for trespass, thereby terminating this Agreement. Cumulatively and in addition to the foregoing, the City shall be entitled to enforce all other remedies provided at law or in equity.

27. **RIGHT OF ENTRY**

The City and its duly authorized agents and representatives shall have the right to enter into and upon the premises, or any part thereof, at any reasonable hour for the purpose of examinations, repairs, or for safety of same. The City retains the right to re-enter any part of the premises covered by this Agreement should such part become vacant and to determine that such unused portion may be offered for other use.

28. **DAMAGES, ATTORNEYS FEES**

If suit shall be brought by the City for recovery of possession of the licensed premises, for the recovery of any amount due under this Agreement, or because of the breach of any other covenant by HRCAP, or because of HRCAP's default, and the City prevails in such action or a portion thereof, then HRCAP shall pay the City all reasonable expenses incurred therefor, including reasonable attorney's fees.

29. **NOTICE**

Any notice or other communication to the City or HRCAP pursuant hereto shall be deemed validly given, served or delivered if sent by the United States Mail, certified and postage prepaid, addressed as follows:

To HRCAP: Hampton Roads Community Action Program, Inc.
2410 Wickham Avenue
Newport News, VA 23607

To the City: City of Newport News, Virginia
City Manager
2400 Washington Avenue, 10th Floor
Newport News, VA 23607

With Copy to: City of Newport News, Virginia
City Attorney
2400 Washington Avenue, 9th Floor
Newport News, VA 23607

and:

City of Newport News, Virginia
Director - Newport News Parks, Recreation and Tourism
700 Town Center Drive, Suite 320
Newport News, VA 23606

Or to such other addresses as the parties may designate in writing delivered in accordance with the provisions hereof.

HRCAP shall also provide a contact(s) person's name, address, and telephone number to the Newport News Department of Parks, Recreation and Tourism and the Newport News Fire Department in case of an emergency on an annual basis or when the designated 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.

30. **INVALIDITY**

If any provision of this License Agreement shall be held by a court of competent jurisdiction to be invalid, whether generally or as to specific facts or circumstances, the same shall not affect in any respect whatsoever the validity of the remainder of this License Agreement, which shall continue in full force and effect. Any provision held invalid as to any particular facts and circumstances shall remain in full force and effect as to all other facts and circumstances.

31. **ENTIRE AGREEMENT**

This License Agreement contains the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein.

[Signature Page Follows]

The undersigned are duly authorized to execute this agreement for the City and HRCAP.

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
James M. Bourey, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

HAMPTON ROADS COMMUNITY ACTION PROGRAM, INC.

By: _____
Edith White, Executive Director

Hampton Roads Community Action Program
Downing-Gross Cultural Arts Center

LICENSE AGREEMENT

THIS AGREEMENT, made this 13th day of December, 2016, by and between the City of Newport News, a municipal corporation in the Commonwealth of Virginia, (hereafter referred to as "City"), and Hampton Roads Community Action Program, Inc., a Virginia nonstock corporation (hereafter referred to as "HRCAP").

WITNESSETH

1. **LICENSED PREMISES**

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the City hereby grants unto HRCAP non-exclusive rights to have primary use of a portion of the first floor of the Downing-Gross Cultural Arts Center (DGCAC) building (*See Attachment 1 - OHA*), and to share a portion of the first floor of the DGCAC building (*See Attachment 1 - Common Areas*), located at 2410 WICKHAM AVENUE, NEWPORT NEWS, VIRGINIA, 23607.

2. **TERM**

The initial term of this License shall be for a period of one (1) year, commencing on January 1, 2017 and ending on December 31, 2017. At the termination of the initial term of this License, and any renewal term, the Newport News City Manager (hereinafter referred to as City Manager), in his sole discretion may renew this License at the request of HRCAP for successive additional one (1) year terms, but the total number of renewals shall not exceed four (4). In no event shall this License extend beyond December 31, 2021.

3. **COST SHARING COMPONENT**

(A) **AMOUNT**: HRCAP will be responsible for paying all utility bills (electrical, water, sewer, gas, telephone, etc.) for the portion of the DGCAC building which they primarily occupy. The Department of Parks, Recreation and Tourism (NNPRT) will invoice HRCAP quarterly and payment will be due within thirty (30) days after receipt of invoice. Failure to submit payment for utility costs will be considered breach of contract and this License Agreement. Utility costs will be prorated based on the percentage of square feet of space primarily used by HRCAP in relation to that of the entire facility.

(B) **PAYMENT**: All cost-sharing payments shall be made payable to the "City of Newport News, Virginia," and sent to: Director, Newport News Parks, Recreation and Tourism, 700 Town Center Drive, Suite 320, Newport News, VA 23606, or to such other party and such

other place as the City may, from time to time, designate in writing as provided herein.

4. N/A

5. TERMINATION

During any term, for any reason, City or HRCAP may cancel this Agreement by giving written notice to the other of cancellation at least ninety (90) days prior to the effective date of said cancellation.

6. PURPOSE AND USE OF LICENSED PREMISES

All property and facilities at 2410 Wickham Avenue are property of the City of Newport News, Virginia. The use and availability of the property and facilities are primarily for the benefit of the citizens of Newport News. HRCAP is given the right to operate in the licensed portion of the DGCAC building to provide programs administered by HRCAP. The licensed premises are to be used and occupied by HRCAP for the sole purpose of providing the administration of diversified service programs designed to assist low-income residents of Newport News to include Head Start and Early Head Start, Children's Services, Community Services, and Housing Services.

HRCAP will 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 HRCAP will require that its agents, employees and volunteers likewise so comply.

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.

HRCAP, during the term of this Agreement, agrees not to use or keep or allow the licensed premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the licensed premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the licensed premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the licensed premises.

HRCAP agrees not to bring onto the DGCAC any material, substances, equipment or object which is likely to endanger the life of, or to cause bodily injury to any person on the premises or which is likely to constitute a hazard to property thereon without the prior written approval of the City. The City shall have the right to refuse to allow any material, substances,

equipment, or object to be brought onto the licensed premises and the further right to require its immediate removal if found thereon.

HRCAP 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 ways of access to public utilities of the premises shall be kept unobstructed by HRCAP and shall not be used for any purpose other than ingress or egress to and from the licensed premises by the public.

All Special Events involving sales and/or exhibitors offering goods for sale, bands, amplified sound, additional parking, or extension of operating hours, shall not be permitted on the premises without the written consent of the City. Display of items as well as sales materials shall remain in the interior office spaces of HRCAP in the licensed premises.

HRCAP shall have responsibility of scheduling and administering the use of their designated portion of the licensed premises.

HRCAP agrees to coordinate the use of the break room (*See Attachment 1 - Break Room*) with DGCAC.

It is understood that should any dispute develop concerning the use of the premises, HRCAP shall first seek resolution with representatives of the Newport News Department of Parks, Recreation and Tourism. If the problem cannot be resolved at that level, the next step would be to request resolution by a representative of the City Manager's Office.

7. **ADJUSTMENT OF USE/LICENSED PREMISES**

With the prior written approval of the City Manager, the HRCAP permitted use and/or specified location within the building may be adjusted. Any such adjustment which alters the square footage utilized to calculate HRCAP's pro rata share of utility expense, shall be correspondingly adjusted for that purpose.

8. **PARKING**

The grounds and parking lot shall remain open for public use. There is no designated parking for HRCAP. HRCAP shall not store vehicles or any personal property in the public parking area. Special events and other uses of the lot should be coordinated through DGCAC.

9. **LIENS OR ENCUMBRANCES**

HRCAP shall not suffer the licensed premises or any improvements thereon to become subject to lien, charge or encumbrance, and shall defend, indemnify, and hold harmless the City against all such liens, charges or encumbrances. HRCAP shall, within thirty (30) days after

written notice thereof from the City, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against the licensed premises as the result of the act or omission of HRCAP.

10. **CONDITION OF PREMISES**

The City shall deliver the use of the licensed premises to HRCAP at the commencement of the initial term in "As Is" condition. Notwithstanding the above, the City warrants that all plumbing, heating, air conditioning, and electrical systems located upon or serving the licensed premises shall be in good repair, condition and working order as of the commencement of the term.

11. **SERVICE AND 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. HRCAP shall monitor thermostats and water consumption to control costs. HRCAP 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 building and parking lot. The City shall provide a dumpster for trash collection. The City shall maintain all exterior trash containers located on the premises.

HRCAP shall perform a day-to-day upkeep and appearance of the DGCAC facility and entrance areas to include picking up paper and debris originating from their programs, mopping up spills, sweeping floors, cleaning interior windows, painting as required and placing trash in the dumpster.

HRCAP must provide for storage for its program within the dedicated space for its service.

HRCAP shall make requests for service and repair of building systems through DGCAC. The City will not be responsible for services initiated through HRCAP.

HRCAP will provide and maintain all tables, chairs, desks, audio-visual equipment, blackboards, instructional material, supplies, appliances, technology access, telephone service, etc. necessary to operate their programs.

12. **UTILITIES**

Prior to quarterly reimbursement, the City shall be responsible for payment of overall utility expenses, including but not limited to gas, electricity, water, sewage, telephone, and internet to and for the licensed premises during the initial term and any additional term.

13. **ALTERATIONS BY LESSEE**

HRCAP may make such alterations, modifications, additions and/or improvements upon or to the licensed premises and may install or remove such fixtures and partitions as HRCAP may deem proper; provided, however, that any structural alterations or penetrations of the roof, foundation, ceiling or interior or exterior walls shall require the prior written consent of the City. The City may request copies of plans and construction documents related thereto which will be provided by HRCAP. All material used in such alterations, modifications, additions or improvements, and all fixtures made or installed by HRCAP shall remain the property of HRCAP upon termination of this Agreement, unless otherwise agreed in writing by the City.

Upon termination of Agreement, HRCAP shall, at HRCAP's expense, restore the licensed premises to its original condition, normal wear and tear excepted. All partitions, equipment and furniture that are not affixed to the building and installed by HRCAP, shall remain the property of HRCAP and, upon termination of this Agreement be removed by HRCAP unless otherwise agreed in writing by the parties.

14. **SIGNS**

HRCAP will not erect signs on the interior or exterior walls of the DGCAC facility without prior written permission from the City.

15. **DAMAGE OR DESTRUCTION OF LICENSED PREMISES**

(A) If the licensed premises are damaged by fire or other casualty so as to render the same, in the opinion of HRCAP, reasonably unusable for the purpose or use for which HRCAP has utilized same, this Agreement, and all obligations hereunder, shall immediately terminate upon HRCAP's giving notice of that fact to the City by certified or registered mail, return receipt requested, as hereinafter provided. The City's obligations under the Agreement shall end upon termination.

(B) If the licensed premises are damaged by fire or other casualty, but not so as to render same reasonably unusable, in the opinion of HRCAP, for the purpose or use for which HRCAP has utilized the licensed premises, upon being notified by HRCAP by certified or registered mail, return receipt requested, the City may repair and restore within a reasonable time, at the City's sole option, the licensed premises to its former condition. If the City decides not to repair and restore the licensed premises, the City shall notify HRCAP by certified or registered mail, return receipt requested, and the Agreement shall terminate, and the City's obligations under the Agreement shall end.

(C) If the City fails to make or fails to complete repair and restoration of the licensed premises within a reasonable time after HRCAP provides notice pursuant to sub-paragraph B, then HRCAP, at its option, may either (a) immediately terminate this Agreement and all obligations of both parties hereunder, or (b) proceed to make, or cause to be made, such repair and restoration, at HRCAP's sole expense.

16. **CONDEMNATION**

If the DGCAC, or such portion thereof as will make the licensed premises unusable for the purposed use, is condemned or sold under threat of condemnation, then this Agreement will terminate as of the date of the vesting of title in the public condemning authority.

17. **INSURANCE**

HRCAP will, at its sole cost and expense, obtain and keep in force during the term combined single limit bodily injury and property damage liability insurance in an amount not less than \$1,000,000 any one occurrence, insuring HRCAP against liability arising out of HRCAP's use or occupancy of the licensed premises. Such policy shall name the City of Newport News as an "additional insured." The policy shall be a primary policy not contributing with and not in excess of coverage which the City may carry. If HRCAP fails to obtain or maintain this insurance, the City may do so at HRCAP's expense. HRCAP will also keep in force during the term replacement value property insurance insuring HRCAP. HRCAP shall not occupy the licensed premises unless all the required insurance is obtained. HRCAP will notify the City immediately of any policy expiration, lapse, or termination.

Evidence of policies of insurance affording the above coverage shall be submitted to the City Attorney's Office and shall be subject to the review and approval by the City upon the commencement of this Agreement. Renewals of such insurance during the term of this Agreement shall also be subject to review and approval by the City.

18. **NO LIABILITY OF THE CITY**

The City and its agents shall not be liable to HRCAP or its agents for; and HRCAP, for itself and its agents, does hereby release the City and its agents from; liability for, any damage, compensation or claim arising from (i) the necessity of repairing or maintaining any portion of the licensed premises or any structural defects thereto, (ii) any interruption in the use of the licensed premises for any reason including any interruption or suspension of utility service, (iii) fire or other casualty or personal or property injury, damage or loss resulting from the use or operation (by the City, HRCAP, or any other person whomsoever) of the licensed premises, (iv) the termination of this Agreement, (v) any crime committed on the licensed premises, or (vi) any leakage or flooding in or on the licensed premises from water, rain, snow, other Acts of God or other cause whatsoever. Any goods, automobiles, equipment, records, personal property or personal effects stored or placed by HRCAP and its agents in or about the licensed premises shall be at the sole risk of HRCAP, and the City and its agents shall not in any manner be held

responsible thereof. Except to the extent expressly prohibited by law, HRCAP hereby waives any claim it might have against the City or its agents for any consequential damages sustained by HRCAP arising out of the loss or damage to any person or property of HRCAP.

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HRCAP shall defend, as determined in the sole discretion of the City, indemnify and hold the City, and its agents harmless from and against any and all damage, claim, liability, cost or expense (including, without limitation, court costs, reasonable attorneys' or other professionals' fees) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the City or its agents, directly or indirectly, as a result of, arising from or in connection with HRCAP's or its agents' use and occupancy of the licensed premises.

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At the expiration or termination of this Agreement, HRCAP will surrender the licensed premises to the City, and remove within thirty (30) days of expiration or termination from the licensed premises all of the equipment erected or installed by HRCAP on the licensed premises during the term of this Agreement, unless otherwise agreed in writing. Except as provided in paragraph 13, HRCAP shall restore the licensed premises to its original condition, normal wear and tear excepted.

21. **REPRESENTATIVES BOUND**

The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of the City and the successors and assigns of HRCAP.

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HRCAP shall not, without the prior written consent of the City, assign or sublicense all or any part of the licensed premises to any other person or entity. Regardless of the City's consent, no assignment or sublicensing will release HRCAP of its obligations under the Agreement, and HRCAP will remain primarily liable hereunder.

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HRCAP will comply with all (i) federal, state and local laws, ordinances, and regulations, including, without limitation, all environmental laws, rules, and regulations (collectively, the "environmental laws"), relating to the licensed premises or the activities conducted therein, and (ii) any building rules and regulations promulgated by the City from time to time. The licensed premises will not be used for the treatment, storage, use or disposal of toxic and hazardous wastes or substances, or any other substance, exposure to which is prohibited, limited or regulated by a governmental or quasi-governmental authority or which, even if not so regulated,

could or does pose a hazard to the health and safety of the occupants of the building or surrounding property unless authorized by and in accordance with law. HRCAP will indemnify and hold the City harmless to the extent allowed by law, from and against any expense or liability caused by HRCAP's negligence or misconduct arising under the environmental laws resulting from HRCAP's use of the licensed premises or any acts and/or omissions of HRCAP. This paragraph shall survive termination of the Agreement.

HRCAP will 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 HRCAP will require that its agents, employees and volunteers likewise so comply. 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. HRCAP agrees not to discriminate against any person because of race, color, sex, religion, natural origin, marital status, age, ancestry or disability relative to admission, services, employment privileges offered to or enjoyed by the general public.

HRCAP, during the term of this Agreement, agrees not to use or keep or allow the licensed premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the licensed premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the licensed premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the licensed premises.

24. GOVERNING LAW; COURTS

This Agreement shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. The parties irrevocably submit themselves to the original jurisdiction, forum, and venue of the state courts located within the City of Newport News, Virginia, with regard to any litigation arising out of, relating to, or in any way concerning this Agreement.

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This Agreement may be amended or modified only by a writing signed by authorized agents of both the City and HRCAP. Subject to Section 15.2-2105 of the Virginia Code, as amended, the City Manager, subject to review and approval of the City Attorney, is authorized to approve and sign the amendments to this Agreement on behalf of the City.

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No failure or delay on the part of either party to exercise any right or privilege hereunder shall operate as a waiver thereof.

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- (B) The failure of HRCAP to cure, within thirty (30) days after the City gives written notice of any breach of any covenant, undertaking, term or provision of this Agreement; or
- (C) Abandonment of the licensed premises by HRCAP. Failure of HRCAP to use the licensed premises for sixty (60) days shall be considered abandonment. In the event of such default or breach, the City shall be entitled, at the City's option, to remove all property and equipment of HRCAP from the licensed premises, without notice and without being guilty or liable in any manner for trespass, thereby terminating this Agreement. Cumulatively and in addition to the foregoing, the City shall be entitled to enforce all other remedies provided at law or in equity.

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The City and its duly authorized agents and representatives shall have the right to enter into and upon the licensed premises, or any part thereof, at any reasonable hour for the purpose of examinations, repairs, or for safety of same. The City retains the right to re-enter any part of the licensed premises covered by this Agreement should such part become vacant and to determine that such unused portion may be offered for other use.

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Newport News, VA 23607

To The City: City of Newport News, Virginia

City Manager
2400 Washington Avenue, 10th Floor
Newport News, VA 23607

With Copy to: City of Newport News, Virginia
City Attorney
2400 Washington Avenue, 9th Floor
Newport News, VA 23607

and

City of Newport News, Virginia
Director - Newport News Parks, Recreation and Tourism
700 Town Center Drive, Suite 320
Newport News, VA 23606

Or to such other addresses as the parties may designate in writing delivered in accordance with the provisions hereof.

HRCAP shall also provide a contact(s) person's name, address, and telephone number to the Newport News Department of Parks, Recreation and Tourism and the Newport News Fire Department in case of an emergency on an annual basis or when the designated 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.

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32. **ENTIRE AGREEMENT**

This Agreement, including any agreed upon attachments, contains the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein.

The undersigned are duly authorized to execute this agreement for the City and HRCAP.

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
James M. Bourey, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

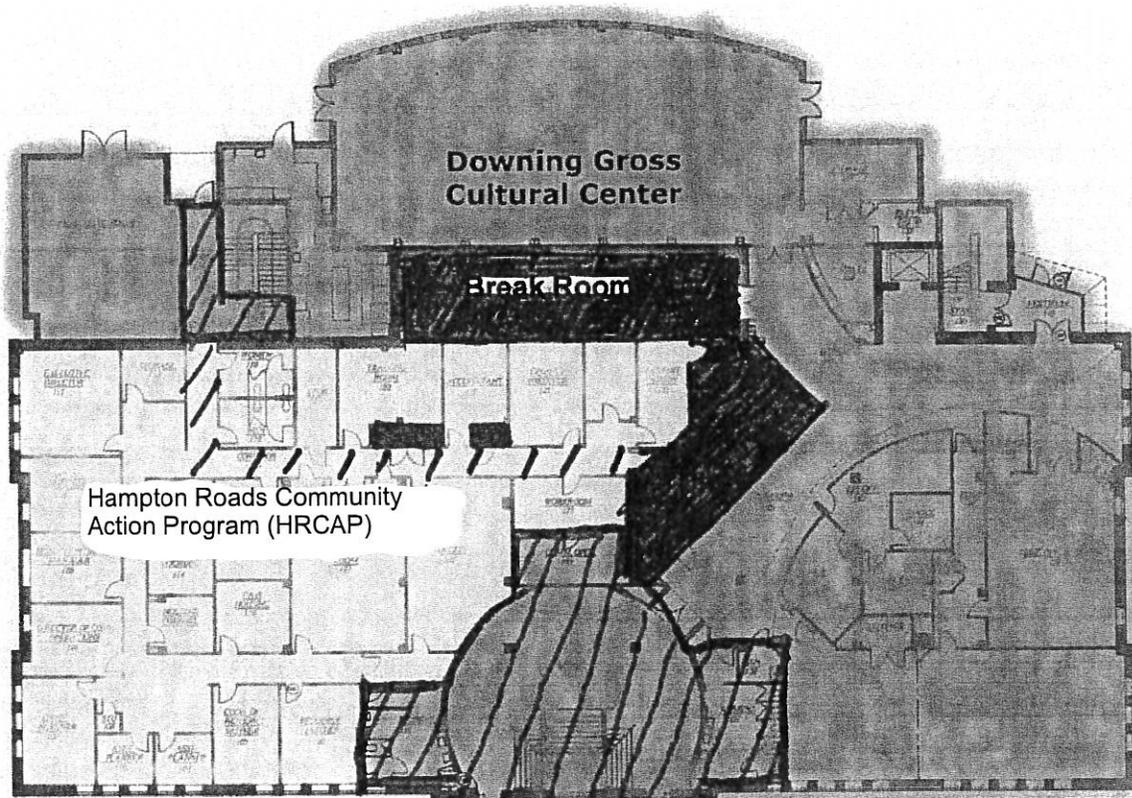
City Attorney

**HAMPTON ROADS COMMUNITY ACTION
PROGRAM, INC.**

By: _____
Edith White, Executive Director

ATTACHMENT 1

— REVISED —



Downing Gross
Common Areas
HRCAP

HRCAP License Agreement

Downing Gross Cultural Arts Center - First Floor
(Not to Scale)

Hampton Roads Community Action Program
Julie Conn Gymnasium

LICENSE AGREEMENT

THIS AGREEMENT, made this 13th day of December, 2016, by and between the City of Newport News, a municipal corporation in the Commonwealth of Virginia, (hereafter referred to as “City”), and Hampton Roads Community Action Program, Inc., a Virginia nonstock corporation, (hereafter referred to as “HRCAP”).

WITNESSETH

1. **LICENSED PREMISES**

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the City hereby grants unto HRCAP non-exclusive rights to have primary use of a portion of the Julie Conn Gymnasium (JCG) building located at 328 30th STREET, NEWPORT NEWS, VIRGINIA, 23607, to provide the service of the *Clean Comfort Program*, a homeless outreach outlet providing basic hygiene and clothing opportunities. The portion of JCG granted to HRCAP for primary use is defined as the 30th Street side of the building, including the locker rooms, shower areas, bathrooms, and storage closets only. Both upstairs and downstairs portions of the 30th Street side of the building will be available for use by HRCAP for the *Clean Comfort Program*.

2. **TERM**

The initial term of this License shall be for a period of one (1) year, commencing on January 1, 2017 and ending on December 31, 2017. At the termination of the initial term of this License, and any renewal term, the Newport News City Manager (hereinafter referred to as City Manager), in his sole discretion may renew this License at the request of HRCAP for successive additional one (1) year terms, but the total number of renewals shall not exceed four (4). In no event shall this License extend beyond December 31, 2021.

3. **COST SHARING COMPONENT**

(A) **AMOUNT**: HRCAP will be responsible for paying all utility bills (electrical, water, sewer, gas, telephone, alarm and monitoring, etc.) for the portion of the JCG building which they primarily occupy. The Department of Parks, Recreation and Tourism (NNPRT) will invoice HRCAP quarterly and payment will be due within thirty (30) days after receipt of invoice. Failure to submit payment for utility costs will be considered breach of contract. Utility costs will be prorated based on the percentage of square feet of space primarily used by HRCAP in relation to that of the entire facility.

(B) **PAYMENT**: All reimbursement payments shall be made payable to the “City of

Newport News, Virginia,” and sent to: Director, Newport News Parks, Recreation and Tourism, 700 Town Center Drive, Suite 320, Newport News, VA 23606, or to such other party and such other place as the City may, from time to time, designate in writing as provided herein.

4. **TERMINATION**

During any term, for any reason, City or HRCAP may cancel this Agreement by giving written notice to the other of cancellation at least ninety (90) days prior to the effective date of said cancellation.

5. **PURPOSE AND USE OF LICENSED PREMISES**

All property and facilities at 328 30th Street are property of the City of Newport News, Virginia. The use and availability of the property and facilities are primarily for the benefit of the citizens of Newport News. HRCAP is given the right to operate in a portion of the JCG to provide the *Clean Comfort Program* administered by HRCAP. The basic program shall be provided by HRCAP each Monday-Friday, 9 am-11 am, with additional daily times, if necessary, agreed upon in advance by the NNPRT and HRCAP.

The *Clean Comfort Program* is assigned to the 30th Street side of the facility only. The gymnasium, 29th Street hallway, and bathrooms are not a part of this License or the *Clean Comfort Program* and must be kept clear of daily patrons, supplies, all furniture and any other items. The gymnasium is not available for use by HRCAP at any time. The City reserves the right to have other groups or programs in other parts of the facility at any time.

HRCAP shall have responsibility of scheduling/administering the use of their designated portion of the facility.

It is understood that should a situation develop concerning the use of the premises, HRCAP shall first seek resolution with representatives of NNPRT. If the problem cannot be resolved at that level, the next step would be to request resolution by a representative of the City Manager's Office.

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 HRCAP and shall not be used for any purpose other than ingress or egress to and from the premises by the public. HRCAP agrees not to bring onto the premises any material, substances, equipment or objects which could likely endanger the life of, or to cause bodily injury to, any person on the premises, 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 premises and the further right to require its immediate removal if found thereon. HRCAP must secure their licensed portion of the facility, to include all exterior doors and access ways to the 30th Street side of the facility, after each use.

No deliveries or storage of used/broken/stained furniture is allowed at the facility at any time. Storage closets and office areas are for daily needs of the Program only. Personal storage of any items is not allowed. Broken, damaged, or unusable furniture must be disposed of by HRCAP weekly.

Wall lockers in locker room area may not be used as personal storage by daily patrons or staff for any reason. Old clothes and other items must be disposed of and lockers cleared and cleaned by HRCAP daily. Personal padlocks may not be kept on lockers at any time. Any and all stacks of unused, dirty and old clothing must be removed by HRCAP daily.

The electric circuit panel and hot water heater in the laundry room must be kept clear by HRCAP of clothing and other items to allow unobstructed access at all times. Per City Code and City Building Codes, HRCAP must keep clean all hallways, bathrooms, showers and locker areas of obstructions and clear access ways be available at all times. Dryer vent and washer drainage lines must be cleaned by HRCAP regularly and be kept clear of all obstructions.

All food/drinks in the facility must be stored and disposed of properly by HRCAP. No open containers of food/drinks will be allowed to be stored in closets or refrigerators at any time. Refrigerators must be cleaned regularly and monitored by HRCAP weekly.

Washers, dryers, and refrigerators must be in good working order at all times. Broken, leaking, or inoperable appliances and furniture must be repaired or disposed of immediately and may not be left in the facility for any reason. Appliance repair and maintenance is the responsibility of HRCAP.

No Special Events involving sales and/or exhibitors offering goods for sale, bands, amplified sound, additional parking, or extension of operating hours, shall be permitted on the premises without the written consent of the City. Display of any items as well as sales materials shall remain in the interior office spaces of HRCAP.

The *Clean Comfort Program* and HRCAP are responsible for the safety and security of all patrons and staff under their care at all times. HRCAP staff is also responsible for securing all doors and access ways and ensuring the facility is clear of all patrons daily based on agreed upon hours of operation. HRCAP 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.

6. ADJUSTMENT OF USE/LICENSED PREMISES

With the prior written approval of the City Manager, the HRCAP permitted use and/or specified location within the building may be adjusted. Any such adjustment which alters the square footage utilized to calculate HRCAP's pro rata share of utility expense, shall be correspondingly adjusted for that purpose.

7. **PARKING**

There is no designated parking for HRCAP. The surrounding parking lots are private and street parking is supervised with restrictions.

8. **LIENS OR ENCUMBRANCES**

HRCAP shall not suffer the licensed premises or any improvements thereon to become subject to lien, charge or encumbrance, and shall defend, indemnify, and hold harmless the City against all such liens, charges or encumbrances. HRCAP shall, within thirty (30) days after written notice thereof from the City, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against licensed premises as the result of the act or omission of HRCAP.

9. **CONDITION OF PREMISES**

The City shall deliver the use of the licensed premises to HRCAP at the commencement of the initial term in "As Is" condition.

10. **SERVICE AND MAINTENANCE**

The City shall maintain the major systems and building structure including heating, plumbing, etc. 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. Grounds maintenance, overall utilities and building equipment and fixtures shall remain the responsibility of the City. HRCAP shall monitor thermostats and water consumption to control costs.

HRCAP shall make requests for service and repair of building systems and services through NNPRT. The City will not be responsible for services initiated through HRCAP or any new or additional services requested by HRCAP.

HRCAP shall provide their own security system if required and be responsible for its monitoring and cost.

The City shall provide a dumpster for trash collection. The City shall maintain all exterior trash containers located on the premises. HRCAP must empty trash containers in their designated area into the dumpster at the end of each day.

NNPRT custodial staff will provide general, daily cleaning of the bathrooms and shower areas only. NNPRT will not assign any custodial staff to assist with the program. HRCAP staff will provide daily cleaning and trash removal in hallways, locker rooms, storage closets, laundry room, and 30th Street sidewalks and entrance ways. In the event no NNPRT staff is available during a certain time, shower and bathrooms used by HRCAP must also be cleaned of excessive debris by HRCAP staff.

HRCAP shall perform a day-to-day upkeep and appearance of the facility and entrance areas to include picking up paper and debris originating from their programs, mopping up spills, sweeping floors, cleaning interior windows, painting as required, and placing trash in the dumpster.

HRCAP must provide for storage for its program within the dedicated space for its service. All other supplies and equipment must be disposed of daily.

HRCAP must provide all tables, chairs, desks, audio-visual equipment, blackboards, instructional material, supplies, appliances, technology access, telephone service, etc. necessary to operate its programs.

11. **UTILITIES**

Prior to quarterly reimbursement, the City shall be responsible for payment of overall utility expenses, including but not limited to gas, electricity, water, sewage, telephone, and internet, if applicable, to and for the licensed premises during the initial term and any additional term.

12. **ALTERATIONS BY HRCAP**

HRCAP may make such alterations, modifications, additions and/or improvements upon or to the licensed premises and may install or remove such fixtures and partitions as HRCAP may deem proper; provided, however, that any structural alterations or penetrations of the roof, foundation, ceiling or interior or exterior walls shall require the prior written consent of the City. The City may request copies of plans and construction documents related thereto which will be provided by HRCAP. All material used in such alterations, modifications, additions or improvements, and all fixtures made or installed by HRCAP shall remain the property of HRCAP upon termination of this Agreement, unless otherwise agreed in writing by the City.

Upon termination of Agreement, HRCAP shall, at HRCAP's expense, restore the licensed premises to its original condition, normal wear and tear excepted. All partitions, equipment and furniture that are not affixed to the building and installed by HRCAP, shall remain the property of HRCAP and, upon termination of this Agreement be removed by HRCAP unless otherwise agreed in writing by the parties.

13. **SIGNS**

Proper signs and notifications must be visible and provided to all patrons detailing program hours of operation and stating that the facility is not open or available to program participants at any other time. All rules and regulations for patron usage must also be posted and visible at all times.

14. **DAMAGE OR DESTRUCTION OF LICENSED PREMISES**

(A) If the licensed premises are damaged by fire or other casualty so as to render the same, in the opinion of HRCAP, untenable for the purpose or use for which HRCAP has utilized same, this Agreement, and all obligations hereunder, shall immediately terminate upon HRCAP's giving notice of that fact to the City by certified or registered mail, return receipt requested, as hereinafter provided. The City's obligations under the Agreement shall end upon termination.

(B) If the licensed premises are damaged by fire or other casualty, but not so as to render same reasonably unusable, in the opinion of HRCAP, for the purpose or use for which HRCAP has utilized the licensed premises, upon being notified by HRCAP by certified or registered mail, return receipt requested, the City may repair and restore within a reasonable time, at the City's sole option, the licensed premises to its former condition. If the City decides not to repair and restore the licensed premises, the City shall notify HRCAP by certified or registered mail, return receipt requested, and the Agreement shall terminate, and the City's obligations under the Agreement shall end.

(C) If the City fails to make or fails to complete repair and restoration of the licensed premises within a reasonable time after HRCAP provides notice pursuant to sub-paragraph B, then HRCAP, at its option, may either (a) immediately terminate this Agreement and all obligations of both parties hereunder, or (b) proceed to make, or cause to be made, such repair and restoration, at HRCAP's sole expense.

15. **CONDEMNATION**

If the Building, or such portion thereof as will make the licensed premises unusable for the purposed utilized, is condemned or sold under threat of condemnation, then this Agreement will terminate as of the date of the vesting of title in the public condemning authority.

16. **INSURANCE**

HRCAP will, at its sole cost and expense, obtain and keep in force during the term combined single limit bodily injury and property damage liability insurance in an amount not less than \$1,000,000 any one occurrence, insuring HRCAP against liability arising out of HRCAP's use or occupancy of the licensed premises. Such policy shall name the City of Newport News as an "additional insured." The policy shall be a primary policy not contributing with and not in excess of coverage which the City may carry. If HRCAP fails to obtain or maintain this insurance, the City may do so at HRCAP's expense. HRCAP will also keep in force during the term replacement value property insurance insuring HRCAP. HRCAP shall not occupy the licensed premises unless all the required insurance is obtained. HRCAP will notify the City immediately of any policy expiration, lapse, or termination.

Evidence of policies of insurance affording the above coverage shall be submitted to the City Attorney's Office and shall be subject to the review and approval by the City upon the

commencement of this Agreement. Renewals of such insurance during the term of this Agreement shall also be subject to review and approval by the City.

17. **NO LIABILITY OF THE CITY**

The City and its agents shall not be liable to HRCAP or its agents for, and HRCAP, for itself and its agents, does hereby release the City and its agents from liability for, any damage, compensation or claim arising from (i) the necessity of repairing or maintaining any portion of the licensed premises or any structural defects thereto, (ii) any interruption in the use of the licensed premises for any reason including any interruption or suspension of utility service, (iii) fire or other casualty or personal or property injury, damage or loss resulting from the use or operation (by the City, HRCAP, or any other person whomsoever) of the licensed premises, (iv) the termination of this Agreement, (v) any crime committed on the licensed premises, or (vi) any leakage or flooding in or on the licensed premises from water, rain, snow, other Acts of God or other cause whatsoever. Any goods, automobiles, equipment, records, personal property or personal effects stored or placed by HRCAP and its agents in or about the licensed premises shall be at the sole risk of HRCAP, and the City and its agents shall not in any manner be held responsible thereof. Except to the extent expressly prohibited by law, HRCAP hereby waives any claim it might have against the City or its agents for any consequential damages sustained by HRCAP arising out of the loss or damage to any person or property of HRCAP.

18. **INDEMNITY**

HRCAP shall defend, as determined in the sole discretion of the City, indemnify and hold the City, and its agents harmless from and against any and all damage, claim, liability, cost or expense (including, without limitation, court costs, reasonable attorneys' or other professionals' fees) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the City or its agents, directly or indirectly, as a result of, arising from or in connection with HRCAP's or its agents use and occupancy of the licensed premises.

19. **SURRENDER OF LICENSED PREMISES**

At the expiration or termination of this Agreement, HRCAP will surrender the licensed premises to the City, and remove within thirty (30) days of expiration or termination from the licensed premises all of the equipment erected or installed by HRCAP on the licensed premises during the term of this Agreement, unless otherwise agreed in writing. Except as provided in paragraph 12, HRCAP shall restore the licensed premises to its original condition, normal wear and tear excepted.

20. **REPRESENTATIVES BOUND**

The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of the City and the successors and assigns of

HRCAP.

21. **ASSIGNMENT AND SUBLICENSING**

HRCAP shall not, without the prior written consent of the City, assign or sublicense all or any part of the licensed premises to any other person or entity. Regardless of the City's consent, no assignment or sublicensing will release HRCAP of its obligations under the Agreement, and HRCAP will remain primarily liable hereunder.

22. **COMPLIANCE WITH LAWS AND RULES**

HRCAP will comply with all (i) federal, state and local laws, ordinances, and regulations, including, without limitation, all environmental laws, rules, and regulations (collectively, the "environmental laws"), relating to the licensed premises or the activities conducted therein, and (ii) any building rules and regulations promulgated by the City from time to time. The licensed premises will not be used for the treatment, storage, use or disposal of toxic and hazardous wastes or substances, or any other substance, exposure to which is prohibited, limited or regulated by a governmental or quasi-governmental authority or which, even if not so regulated, could or does pose a hazard to the health and safety of the occupants of the building or surrounding property unless authorized by and in accordance with law. HRCAP will indemnify and hold the City harmless to the extent allowed by law, from and against any expense or liability caused by HRCAP's negligence or misconduct arising under the environmental laws resulting from HRCAP's use of the licensed premises or any acts and/or omissions of HRCAP. This paragraph shall survive termination of the Agreement.

HRCAP will 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 HRCAP will require that its agents, employees and volunteers likewise so comply. 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. HRCAP agrees not to discriminate against any person because of race, color, sex, religion, natural origin, marital status, age, ancestry or disability relative to admission, services, employment privileges offered to or enjoyed by the general public.

HRCAP, during the term of this Agreement, agrees not to use or keep or allow the licensed premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the licensed premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the licensed premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the licensed premises.

23. **GOVERNING LAW; COURTS**

This Agreement shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. The parties irrevocably submit themselves to the original jurisdiction, forum, and venue of the state courts located within the City of Newport News, Virginia, with regard to any litigation arising out of, relating to, or in any way concerning this Agreement.

24. **AMENDMENTS**

This Agreement may be amended or modified only by a writing signed by authorized agents of both the City and HRCAP. Subject to Section 15.2-2105 of the Virginia Code, as amended, the City Manager, subject to the review and approval by the City Attorney, is authorized to approve and sign the amendments to this Agreement on behalf of the City.

25. **WAIVER**

No failure or delay on the part of either party to exercise any right or privilege hereunder shall operate as a waiver thereof.

26. **DEFAULT**

The following shall be considered events of default or breach by HRCAP:

- (A) The failure of HRCAP to pay the invoiced pro rata share of utility expenses;
- (B) The failure of HRCAP to cure, within thirty (30) days after the City gives written notice of any breach of any covenant, undertaking, term or provision of this Agreement; or
- (C) Abandonment of the licensed premises by HRCAP. Failure of HRCAP to use the licensed premises for sixty (60) days shall be considered abandonment. In the event of such default or breach, the City shall be entitled, at the City's option, to remove all property and equipment of HRCAP from the licensed premises, without notice and without being guilty or liable in any manner for trespass, thereby terminating this Agreement. Cumulatively and in addition to the foregoing, the City shall be entitled to enforce all other remedies provided at law or in equity.

27. **RIGHT OF ENTRY**

The City and its duly authorized agents and representatives shall have the right to enter into and upon the premises, or any part thereof, at any reasonable hour for the purpose of examinations, repairs, safety or general use of same. The City retains the right to enter any part of the premises covered by this Agreement should such part become vacant and to determine that such unused portion may be offered for other use. NNPRT staff must have keys and access to all areas of the facility at all times.

28. **DAMAGES, ATTORNEYS FEES**

If suit shall be brought by the City for recovery of possession of the licensed premises, for the recovery of any amount due under this Agreement, or because of the breach of any other covenant by HRCAP, or because of HRCAP's default, and the City prevails in such action or a portion thereof, then HRCAP shall pay the City all reasonable expenses incurred therefor, including reasonable attorney's fees.

29. **NOTICE**

Any notice or other communication to the City or HRCAP pursuant hereto shall be deemed validly given, served or delivered if sent by the United States Mail, certified and postage prepaid, addressed as follows:

To HRCAP: Hampton Roads Community Action Program, Inc.
2410 Wickham Avenue
Newport News, VA 23607

To the City: City of Newport News, Virginia
City Manager
2400 Washington Avenue, 10th Floor
Newport News, VA 23607

With Copy to: City of Newport News, Virginia
City Attorney
2400 Washington Avenue, 9th Floor
Newport News, VA 23607
and

City of Newport News, Virginia
Director - Newport News Parks, Recreation and Tourism
700 Town Center Drive, Suite 320
Newport News, VA 23606

Or to such other addresses as the parties may designate in writing delivered in accordance with the provisions hereof.

HRCAP shall also provide a contact(s) person's name, address, and telephone number to the Newport News Department of Parks, Recreation and Tourism and the Newport News Fire Department in case of an emergency on an annual basis or when the designated 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.

30. **INVALIDITY**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, whether generally or as to specific facts or circumstances, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement, which shall continue in full force and effect. Any provision held invalid as to any particular facts and circumstances shall remain in full force and effect as to all other facts and circumstances.

31. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein.

(Signature Page Follows)

The undersigned are duly authorized to execute this agreement for the City and HRCAP.

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
James M. Bourey, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**HAMPTON ROADS COMMUNITY ACTION
PROGRAM, INC.**

By: _____
Edith White, Executive Director