

**GRANT AGREEMENT
FOR COMMUNITY FITNESS AND WELLNESS CENTER**

THIS GRANT AGREEMENT FOR COMMUNITY FITNESS AND WELLNESS CENTER (the “Agreement”) is effective as of the _____ day of _____, 2022 (the “Effective Date”), by and between the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “City”), and **EDWARD WATERS UNIVERSITY, INC.**, a Florida not-for-profit corporation whose principal address is 1658 Kings Road, Jacksonville, Florida 32209 (“Recipient”).

RECITALS

WHEREAS, Recipient is the owner of the James Weldon Johnson Building located at 1840 W. 9th Street, Jacksonville, FL 32209 (the “Building”);

WHEREAS, Recipient desires to renovate, reconstruct, and repurpose the cafeteria area located within the Building, which is approximately 6878 square feet of usable space, for a community fitness and wellness center (“Community Fitness Center”) to dually serve the public and Edward Waters University students, faculty, and staff (the “Project”);

WHEREAS, pursuant to Ordinance 2021-849-E (the “Authorizing Ordinance”), the City of Jacksonville City Council has appropriated the sum of \$500,000.00 (the “City Funds”) to Recipient to assist with funding the Community Fitness Center in accordance with the scope of services/project description attached hereto as **Exhibit A** (the “Scope of Services/Project Description” or “Services”); and

WHEREAS, it is in the best interest of the City to enter into an Agreement with Recipient to administer and implement the Services and Project in accordance with the terms and conditions of this Agreement; now therefore

IN CONSIDERATION of the premises, mutual covenants, and agreements hereinafter contained and of other good and valuable consideration acknowledged by the parties to be sufficient, the parties hereto agree as follows:

I. INCORPORATION OF RECITALS

The above-stated recitals are accurate and by this reference made a part of this Agreement.

II. GENERAL CONDITIONS

A. Recipient shall implement the Project in accordance with the Scope of Services/Project Description and the Project Budget attached hereto as **Exhibit B**. Recipient shall perform and complete the Services no later than twelve (12) months following the Effective Date, unless otherwise extended by the City as provided herein (“Project Completion Date”). Recipient and City agree to execute the joint use agreement attached hereto as **Exhibit C** (“Joint Use Agreement”) no later than ten (10) days after the Services are substantially complete. For purposes of this section, “substantially complete” shall mean the date as of which the Recipient

can legally occupy and commence to operate the Community Fitness Center as evidenced by a certificate of occupancy or other appropriate governmental permit. In accordance with the Joint Use Agreement terms, Recipient agrees to make the Community Fitness Center open and available to the public for use a minimum of twenty (20) hours a week and the Community Fitness Center will be open to the public free of charge for an initial five (5) year period. City and its representatives may regularly enter upon the Project premises during construction to inspect the Community Fitness Center and all materials to be used in the construction thereof, including all books and records of Recipient relating to the Community Fitness Center, at reasonable times and in a reasonable manner so as not to interfere with Recipient's construction activities. Nevertheless, it is expressly agreed that City has no duty to inspect the Community Fitness Center, and if City should inspect the Community Fitness Center, City shall have no liability or obligations to Recipient arising out of such inspection. Inspections made by City or its representatives shall be made solely for the protection and benefit of City and neither Recipient, nor any person or party claiming by, through or under Recipient shall be entitled to claim any loss, damage or offset against City for City's inspection of or failure to inspect the Community Fitness Center. The Services performed by Recipient under this Agreement shall only be performed in and for the benefit of individuals in Duval County, Florida. If the Services performed by Recipient under this Agreement are not performed in and for the benefit of individuals in Duval County, Florida, Recipient shall refund the City Funds to the City within fifteen (15) business days of demand, and the City may terminate this Agreement.

B. Recipient agrees to do as follows:

1. To accept the City Funds as appropriated in accordance with the terms of this Agreement and the provisions of the ordinance appropriating the City Funds, Chapter 118 (City Grants), *Ordinance Code*, as amended from time to time, a copy of which can be obtained online at <http://library.municode.com/>, all of which are incorporated into this Agreement by this reference. The City Funds shall be used only for the Services and for no other purpose; and
2. To abide by Chapter 119, Florida Statutes, as amended from time to time, a copy of which can be obtained online at <http://www.leg.state.fl.us/Statutes/>, which by this reference is made a part of this Agreement. All documents not expressly exempt from the Public Records Act relative to this Agreement and the City funding are considered to be public records as defined in said Chapter 119, Florida Statutes; and
3. To obtain permits, as may be required to perform the Services, from the State of Florida and the City of Jacksonville and abide by all applicable state laws and local ordinances, as from time to time amended; and
4. To return to the City within fifteen (15) days of written demand all City Funds paid to Recipient under the terms of this Agreement upon the City's finding that the terms of this Agreement, the provisions of the Authorizing Ordinance, or the provisions of Chapter 118, *Ordinance Code*, as applicable, have been violated by Recipient, including, but not limited to, by making the disallowed expenditures, as specified in Chapter 118, Parts 3 and 4,

Ordinance Code, and for the costs of required audits, which are specifically disallowed by this Agreement.

5. To maintain a separate bank account or, with the approval of the City Council Auditor, a separate budgetary accounting system so that the receipt and disbursement of City Funds can be accurately and adequately determined by reference to the book of accounts of Recipient. In using one of the above-stated methods, if Recipient opts for deposit in an interest-bearing account, Recipient shall report to the City, with all other information provided monthly, the amount of interest earned, the amount of interest received, and the use made of such interest. Any interest earned on City Funds provided pursuant to this Agreement can be spent only on items already in Recipient's approved budget.
6. To obtain and provide to the City an original single independent audit of the Project funds conducted in accordance with both GAAS and Government Auditing Standards ("GAS") issued by the Comptroller General of the United States and, if applicable, the provisions of Office of Management and Budget Circular A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions, of its financial affairs for its fiscal year ending with the current City fiscal year. Such audit shall be made by an independent certified public accountant. Such audit shall be due within 120 days of the close of Recipient's fiscal year; in addition to the information described above, such report shall present information regarding its use of City funding based upon the City's fiscal year commencing October 1, 2021, and ending September 30, 2022. The independent certified public accountant's audit shall include separate statements of source and status of funds received from the City and Project costs showing the expenditure of City Funds as compared to the authorized budget for those funds from the City. The audit shall include the detailed budget included in Recipient's Application and approved by the Council and shall be adjusted by any budget changes approved during the term of this Agreement. Recipient's contracts with its contractors used in the performance of this Agreement, shall also include a provision under which Recipient's contractors agree to file the reports as required by Sections V.A. and B., and VII.B. of this Agreement and allow the City, through its authorized representatives, to audit all books, accounts, and other documentation relative to the receipt and expenditure of City Funds.
7. Recipient's violation of any of the provisions contained in this Agreement, including the failure to adhere to the auditing or reporting requirements of this Agreement or any applicable code or statutory provision, whether or not incorporated into this Agreement, shall be a material breach and may result in immediate termination of this Agreement and Recipient's return of all City Funds granted by this Agreement in accordance with Section II.B.4. of this Agreement.

III. ASSIGNMENT AND SUBCONTRACTS

- A. Recipient shall not assign any rights or duties under this Agreement to any other party without the prior written permission of the City. If Recipient attempts to assign any rights or duties without securing prior written permission, this Agreement shall be void and Recipient shall return to the City within fifteen (15) days of demand all City Funds that are unspent by

Recipient at the time of the assignment or that were spent by Recipient or Recipient's assignee after the assignment.

- B. Except for Recipient's contractors and subcontractors used to perform the Services, Recipient shall not enter into any subcontracts for performance of the Services without obtaining the prior written approval of the City and subject to the conditions and provisions as the City may deem necessary; provided, however, prior written approval shall not be required for the purchase by Recipient of such articles, supplies, equipment, and services that are both necessary and incidental to the performance of the Services required under this Agreement; and provided further, that no provision of this Agreement and no approval by the City of any subcontracts shall obligate the City beyond its duty to pay the City Funds on the terms and conditions provided in this Agreement.

IV. EFFECTIVE DATE/TERM OF AGREEMENT

This Agreement is effective as of the Effective Date and shall continue in effect as to all its provisions, terms, and conditions until twelve (12) months thereafter, unless otherwise expressly stated or sooner terminated as provided herein. This Agreement may be extended by the City, in its sole discretion, for one (1) six (6) month period.

V. PAYMENT

- A. As required by Section 106.431, *Ordinance Code*, the City's maximum indebtedness for the Services to be provided by Recipient during the Term shall not exceed **Five Hundred Thousand and 00/100 Dollars (\$500,000.00)**. Subject to the payment requirements provided herein, Recipient shall be paid in accordance with the draw schedule outlined below. Draw payments shall commence as set forth below or as soon thereafter as can practicably be achieved by City.

<u>Draw Amount</u>	<u>Payment Due On or Near</u>
\$ 130,600 (advance for equipment purchases only)	10 business days after the Effective Date
\$92,350 (1 st Draw)	25% of Project completion
\$92,350 (2 nd Draw)	50% of Project completion
\$92,350 (3 rd Draw)	75% of Project completion
\$92,350 (4 th Draw)	100% of Project completion

- B. All payment requests shall provide accounting backup (invoices and/or receipts) and other documentation satisfactory to the City. All payment requests shall be made by Recipient on or before the 15th of the month immediately preceding the draw payment as scheduled in Section V.A., above, and shall be accompanied by invoices or receipts and a narrative progress report satisfactory to the City to demonstrate the Services performed by Recipient meet the requirements of this Agreement and that provision of the Services is on track for timely completion as required by this Agreement. Recipient draw payment requests shall be submitted on a City approved draw payment request form signed by the Recipient and its contractor. Upon receipt and approval of Recipient's documentation of expenses, narrative progress report, and any other reports then due pursuant to this Agreement, the City shall process Recipient's payment request with the City's Accounting Division. Nothing in this

section obviates Recipient's duty to submit the financial reports required by Section VII.B. of this Agreement. There shall be absolutely no release of funding pursuant to this Agreement in the absence of documentation of expenses and a narrative report sufficiently demonstrating successful provision of the Services to the date of the request. Each payment request shall also include the total amount of the Services provided and expenses incurred from inception to date, and any other information the City may deem reasonable and necessary to secure the written approval of the invoice by the City. Recipient shall sign a statement certifying that the expense and narrative progress reports and any other financial reports then due do not include any information that would constitute a false official statement as defined in § 837.06, Florida Statutes. If approved, the City shall make payments in the amounts and at the times set forth in subsection A.

- C. Except for the limited exception in Section XXVIII of this Agreement, any costs of the Services paid for under any other agreement or from any other funding source are not eligible for payment under this Agreement. Violation of this provision is a material breach of this Agreement and City may withhold funds from any source under this Agreement or any other agreement and, notwithstanding any provision in this Agreement or in any other agreement to the contrary, immediately terminate this Agreement upon 24 hours' written notice, and require the immediate return upon demand of all City Funds paid to Recipient. A violation shall also be reported to any federal, state, or other funding sources for investigation.
- D. If Recipient comes under investigation by any government or funding agency (including a City Recipient) for activities, including, for example, but not limited to misuse of grant funds, improper accounting for grant funds, multiple billing of the Services or clients to one or more funding sources, or any other improper activities, all City Funds under this Agreement may be suspended in the sole discretion of the City until the investigation has been resolved in Recipient's favor or the alleged misuses have been satisfactorily explained to the Council Auditors.
 1. If the investigation has been resolved favorably to Recipient or if, prior to such resolution, Recipient's explanation of the circumstances has been accepted by the Council Auditor as satisfactory, then all suspended City Funds will be paid, as appropriate.
 2. If the investigation has been resolved adversely to Recipient or if prior to such resolution, Recipient's explanation has been found unacceptable by the Council Auditors, then this Agreement shall immediately terminate and all suspended funds shall become disencumbered and shall be returned to the general fund of the City. Furthermore, in the event of an adverse resolution, Recipient shall return to the City all misused funds, all improperly accounted for funds, and all funds subject to multiple billings.
 3. If the investigation extends beyond the expiration date of this Agreement, the City will seek legislation to avoid lapsing of funds and this Agreement will continue on a month to month basis, only with respect to the suspended funds, in order that such funds will not be disencumbered and returned to the City's general fund by the passage of time.

VI. TECHNICAL ASSISTANCE

- A. Recipient agrees to accept technical assistance from the City related to reporting and to make any reasonable changes in its reporting procedures to better facilitate the documentation of Project efficiency and effectiveness.
- B. Recipient agrees to accept technical assistance from the City related to programmatic and administrative issues concerning the provision of the Services.
- C. Recipient shall notify the City if sufficient staff, facilities, or equipment necessary to deliver the Services for the Project cannot be maintained. Failure to notify the City of any such deficiencies or to adequately maintain sufficient staff, facilities, or equipment necessary to provide the Services after notice and a five (5) day cure period shall be a material breach of this Agreement and grounds for termination upon 24 hours' written notice.
- D. Recipient agrees to participate in meetings or other community activities reasonably requested by the City.
- E. Recipient shall attend any grant orientation workshop to be scheduled during the grant fiscal year by the City. Should monitoring reports determine administrative or programmatic deficiencies, Recipient shall be required by the City's Contract Administrator (defined below) to successfully complete any recommended educational courses to remedy the deficiency.

VII. PROGRESS REPORTS/ FINANCIAL REPORTS/PROJECT MONITORING

- A. The City's Contract Administrator will be responsible for monitoring the administrative and programmatic functions of the Project. The City's Contract Administrator for this Agreement will be Kendra Mervin of the City's Office of Grants and Contract Compliance or his/her appointed designee.
- B. Recipient agrees to provide the City's Contract Administrator or his/her designee with a narrative progress report on the Project together with each draw request. Distribution of each draw request after the initial two requests to Recipient shall be contingent upon prior receipt by the City of the required narrative program report that is due for all other subsequent draw requests. Recipient shall provide the Contract Administrator with a financial report each month following the first month during the term of this Agreement by the 15th of each month that shall include a statement of expenditures made in each budget category and line item identified in Recipient's budget set forth in **Exhibit B**. Failure to submit required reports and documents shall result in a temporary hold on financial draws until reporting is current.
- C. Pursuant to the provisions in Chapter 118, *Ordinance Code*, and except for the City's exercise of its discretion to terminate this Agreement and demand refund of public funding under Section II.B.7 of this Agreement, failure to provide reports (i.e. annual report or independent audit) as required herein shall result in a certification from the Council Auditor that no further funds shall be disbursed until such reports are provided, received, and approved by the Council Auditor and the Council Auditor certifies a restoration of entitlement.

- D. The City shall have the absolute right, at all times during Recipient's normal business hours, with or without notice, to enter the Project for the purpose of conducting on-site evaluations of the administrative and programmatic functioning of the Project and Recipient's operation of the Project. Failure of Recipient to allow the City or its authorized representatives to enter its premises shall be a material breach of this Agreement and grounds for withholding funds from any source under this Agreement or any other agreement, and for termination of this Agreement and return to the City of all City Funds paid to Recipient under the terms of this Agreement.

VIII. INTEREST OF CITY OFFICERS/EMPLOYEES AND OTHERS

No officer or employee of the City, no members of its governing body, and no other public official of the governing body of the locality in which the Project is situated and being carried out who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of this Project shall participate in any decision relating to this Agreement which affects such person's personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

IX. INTEREST OF THE RECIPIENT

Recipient covenants that neither it nor any of its officers, board members, or employees presently have any interest and shall not acquire any interest, direct or indirect, in conflict with the performance of the Services. Recipient further covenants that no person with a conflicting interest will be employed or contracted for the performance of this Agreement.

X. PERSONNEL

The Services shall be performed by Recipient or its contractors, and the work shall be fully qualified and shall be authorized or licensed under appropriate state and local law as necessary to perform the Services.

XI. RECORDS

- A. By the acceptance of the City Funds, Recipient agrees to adhere to all provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) with respect to the receipt, expenditure, and use of public funds from the City. Therefore, except to the extent prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a copy of which can be obtained online at <http://www.cms.gov/HIPAAGenInfo/>, and the regulations of which are incorporated herein by reference, as applicable, all the financial, business, and membership records of the person, corporation, foundation, trust, association, group, or organization relative to the grant shall be public records and subject to the provisions of the Public Records Law. Recipient's failure to comply with this requirement will constitute a breach of this Agreement and may result in cancellation of this Agreement and refund to City of the City Funds.
- B. Recipient shall maintain financial and accounting records and conduct transactions in accordance with generally accepted accounting principles, the Florida Statutes, and the

requirements of the City's Ordinance Code. These financial records shall be maintained in a manner permitting positive and ready identification of any City Funds received by Recipient from the City from the time such funds are actually received by Recipient until the time they are actually expended or disbursed by Recipient according to the terms of this Agreement.

- C. In addition to other requirements specified in this Agreement, Office of Management and Budget (OMB) Circulars, including A-102, A-87, A-110, A-122, A-133, and A-21, may be used as a guide concerning records to be maintained. The aforesaid records shall be made available for audit, copying, or inspection purposes at any time during normal business hours and as often as the City or the City of Jacksonville Council Auditor may deem necessary.
- D. Recipient shall retain for such inspection all of its records and supporting documentation applicable to this Agreement for five (5) years after receipt of final payment of City Funds from the City.

XII. AUDIT

- A. In accordance with Section II.B.6 of this Agreement, Recipient, at its sole cost, shall provide the City annually with an original copy of a single independent audit of the Program funds prepared by an independent certified public accountant not associated with Recipient or the Project and the audit or audits covering the period specified in Section II.B.6., above, no later than 120 days after the expiration of Recipient's fiscal year.
- B. Recipient's failure to provide a copy of a duly executed audit performed in accordance with the preceding guidelines (Section II.B.6) shall constitute a material breach of this Agreement and, notwithstanding any provision of this Agreement to the contrary, be grounds for the City to withhold funds from any source from this Agreement or from any other agreement, and for termination of this Agreement and return to the City of the City Funds.
- C. If OMB Circular A-133 applies to the City Funds granted by this Agreement, the City Funds shall not be used to pay for the audit if the grant includes federal funds of less than \$500,000.
- D. The following audit requirements are in addition and supplemental to other audit requirements in this Agreement:
 - 1. Recipient shall establish and maintain books, records, contracts, subcontracts, papers, financial records, supporting documents, statistical records, goods, services, and all other documents (the "Records") in a format sufficient to reflect all receipts and expenditures of City Funds.
 - 2. Recipient shall retain all Project Records pertinent to this Agreement for a period of five (5) years after completion of the Project. If an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the Records shall be retained, at no cost to the City, until resolution of the audit findings or any litigation based on the terms of this Agreement. Records shall be retained for longer periods when any retention period required by law exceeds the time frames required in this paragraph.

3. Upon demand, at no additional cost to the City, Recipient shall facilitate the duplication and transfer of any Records during the applicable retention period.
4. Recipient shall provide the Project Records at all reasonable times for inspection, review, copying, or audit by the City.
5. At all reasonable times for as long as the Records are maintained by Recipient, Recipient shall allow persons authorized by the City to have full access to and the right to examine any of the Records, regardless of the form in which kept.
6. Recipient at its cost shall provide audits or reports as requested by the City and shall ensure that all related party transactions are disclosed to the auditor.
7. Recipient shall comply and cooperate immediately with any inspections, reviews, or investigations deemed necessary by the City's Contract Administrator.
8. Recipient shall permit the City to interview any of Recipient's employees, subcontractors, and subcontractors' employees to assure the City of the satisfactory performance of this Agreement. Following such review, if Recipient's performance is, in the opinion of the City, deficient, the City will deliver to Recipient a written report of the deficiencies and request for development by Recipient of a corrective action plan. Recipient agrees to prepare and submit to the City a corrective action plan within five (5) business days of receiving the City's written report. Recipient shall correct all deficiencies in the corrective action plan within five (5) business days from the City's receipt of the corrective action plan.
9. All reports, audits, and other information provided by Recipient pursuant to this section shall contain the following statement: "*The information provided to the City of Jacksonville in this submittal is submitted under penalties of perjury, under Section 837.06, Florida Statutes.*"
10. If Recipient uses any contractors or subcontractors in the performance of the Services or properly assigns this Agreement, Recipient shall include the audit, inspections, investigations, and record keeping requirements of this Agreement in all such subcontracts and assignments.

XIII. BUDGET CHANGES

The approved budget for Recipient, included in **Exhibit B**, and any changes in the budget that would affect expenditure of City Funds shall be approved in writing by the Contract Administrator or his/her designee prior to the expenditure of the City Funds; provided, nothing in this Agreement authorizes any expenditure or obligation of City Funds in excess of the total sum of the approved budget pursuant to Section V.A. City Funds may be transferred from line item to line item within the budget line items only with prior written approval of the City, provided that no expenditure shall exceed the maximum indebtedness of this Agreement.

XIV. CONTRACT, SCOPE OF WORK/SERVICES CHANGES

- A. The City may, from time to time, require changes in the Services to be performed by Recipient under this Agreement. Such changes, including any increases or decreases in the amount of Recipient's compensation that are mutually agreed to by the City and Recipient, shall be incorporated into written amendments to this Agreement signed by both parties' authorized representatives.
- B. Any request for change of service delivery site or the Services provided shall be submitted by Recipient in writing and approved by the City at least thirty (30) days prior to the changes. Failure to properly notify the City is a breach of this Agreement and grounds for termination under Section XVIII.
- C. If lawfully appropriated funds to finance this Agreement become unavailable or if City fails to appropriate funds for this Agreement, the City may terminate this Agreement upon 24 hours' written notice to Recipient. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The City shall be the final authority as to the availability of funds.
- D. Should it become necessary for the City to change the designation of the City's Contract Administrator, the City shall use its best efforts to notify Recipient within 48 hours of such change, and no amendment to this Agreement is required to effect the change.

XV. EQUIPMENT PURCHASES; COMPETITIVE BIDDING REQUIREMENTS

- A. Equipment or other tangible personal property (the "Property") purchased with City Funds shall be non-consumable and consistent with City capitalization requirements or Section 122.801(e), *Ordinance Code*, as amended from time to time. The Property must have a useful life of one (1) year or more and shall be inventoried by Recipient. Recipient shall retain Property inventory records, acquisition documents, and usage records. Upon expiration of Recipient's use of the Property for the Project, the Property may, in the City's sole discretion, be transferred free and clear of all liens and encumbrances to the City by bill of sale or otherwise disposed of as authorized in writing by the City.
- B. Recipient agrees to make all reasonable efforts to adhere to the City's competitive procurement requirements set forth in Chapter 126, *Ordinance Code*, including but not limited to the following City procurement requirements in its purchase of labor, materials, supplies, and equipment that are not deemed sole source:
 - 1. Any purchase up to \$2,500 will require documentation of one (1) written quotation.
 - 2. Any purchase over \$2,500 to \$15,000 will require two (2) written quotations.
 - 3. Any purchase of \$15,000 to \$30,000 will require three (3) written quotations.
 - 4. Any purchase of \$30,000 to \$65,000 will require four (4) written quotations.
 - 5. Any purchase of over \$65,000 will require a formal competitive sealed bid procedure.

- C. Quotations received shall include date, time, vendor, telephone number, and person giving the quote and should include minority vendors whenever possible.
- D. Recipient shall consult as needed with the City Contract Administrator to ensure that Recipient is adhering to City's procurement code requirements.

XVI. RESIDUAL FUNDS AND INTEREST

Recipient agrees that the City Funds, including any interest earned by the City Funds, that are residual funds remaining unspent or unencumbered by any existing (not contingent) legal obligation shall be returned to the City in the form of a negotiable instrument not later than ninety (90) days after the termination or expiration of this Agreement. If Recipient receives a miscellaneous appropriation from the City in the next fiscal year, a limited amount of residual funds may be carried forward from September 30th to October 1st, not to exceed 10% of the current appropriation to Recipient or \$500, whichever is greater. The City appropriation for the next fiscal year will be reduced by the amount of the unencumbered residual funds carried forward. All unencumbered residual funds not carried forward as allowed in this provision shall be returned as provided above.

XVII. REVERSION OF ASSETS

Any real property or tangible assets under Recipient's control that was acquired or improved in whole or in part with City Funds valued in excess of \$2,000 shall be used to meet one of the objectives of the Project for the term of the Joint Use Agreement. If Recipient disposes of the real property prior to the expiration of the Joint Use Agreement term, Recipient shall reimburse the City for the value of the real property or tangible assets attributable to the City Funds used in the acquisition or improvement of the aforesaid real property when Recipient ceases doing business with the City for the purposes described in Exhibit A.

XVIII. BREACH /TERMINATION

- A. If Recipient breaches any term of this Agreement, including the duty to provide the Services within the time specified, and fails to correct the breach within five (5) business days from receipt of written notice of the breach, the City may terminate the whole or any part of this Agreement or exercise any other rights it may have at law or in equity.
- B. Termination of this Agreement shall be upon no less than 24 hours' written notice if the breach has not been corrected within five (5) business days after notice of the breach. The notices shall be delivered by certified mail, return receipt requested, or by hand delivery with a written receipt.
- C. Upon receipt of a notice of termination, except as otherwise directed, Recipient shall:
 - 1. Cease providing Services under this Agreement on the date and to the extent specified in the notice of termination.
 - 2. Place no further orders or subcontracts for the performance of the Services for the Project.

3. Terminate all orders and subcontracts that relate to the performance of the Services for the Project.
 4. Prepare all necessary reports and documents required under the terms of this Agreement up to the date of termination, including the final report, without payment for the Services rendered beyond the termination date to complete the report(s).
- D. All remedies of whatever nature and for whatever cause provided for in this Agreement are not exclusive but are cumulative and supplemental to all remedies available to City at law or in equity.

XIX. NOTICE

Any notice required to be given under this Agreement shall be by certified mail, return receipt requested, or by hand delivery with a written receipt. Notices shall be delivered to:

For the City: Parks, Recreation and Community Services Department
214 North Hogan Street, 4th Floor
Jacksonville, Florida 32202
Attn: Director

For Recipient: Edward Waters University, Inc.
1658 Kings Road
Jacksonville, Florida 32209
Attn: President

Notice shall be effective upon receipt or three (3) days after placement in U.S. Mail as provided for herein, whichever occurs first.

XX. INDEMNIFICATION AND INSURANCE

- A. Recipient shall adhere to the indemnification requirements set forth on **Exhibit D** attached hereto during the Agreement term.
- B. Recipient shall adhere to the insurance requirements set forth on **Exhibit E** attached hereto during the Agreement term.

XXI. CIVIL RIGHTS

- A. There will be no discrimination against any employee or person served on account of race, color, sex, age, religion, ancestry, national origin, handicap, marital status, citizenship status, creed, sexual orientation, gender identity, disability, veteran status, or any other protected status under federal, state, or City law, or under Recipient's corporate policies in the performance of this Agreement.
- B. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) in regard to the persons served.

- C. Recipient shall comply with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e) in regard to employees or applicants for employment.
- D. Recipient shall comply with Section 504 of the Rehabilitation Act of 1973 in regard to employees or applicants for employment and clients served.
- E. Recipient shall comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) in regard to employees and persons served.
- F. If City receives evidence of discrimination in violation of this Agreement, the City may terminate this Agreement.

XXII. EQUAL EMPLOYMENT OPPORTUNITY

Recipient shall not discriminate, directly or indirectly, on the grounds of race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions, and related terms and conditions of employment. Recipient shall post in conspicuous places available to employees and applicants for employment notices as provided by the City setting forth the provisions of this nondiscrimination clause. Recipient shall incorporate this provision into all subcontracts for the Services provided under this Agreement.

XXIII. OTHER CONDITIONS

- A. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by both parties, and attached to the original of this Agreement. The parties agree to amend this Agreement if revisions of any applicable laws or regulations make changes in this Agreement necessary.
- B. Recipient agrees to comply with all applicable requirements and guidelines prescribed by Chapter 118, *Ordinance Code*, as amended from time to time, relating to recipients of general funds appropriated by the City Council.
- C. Recipient agrees to include the statement “*This Project is funded in whole or in part by the City of Jacksonville*” or similar language agreed to in writing by both parties. Recipient is authorized to use a City logo approved in writing for the Project as an aid in identifying the source of funding, but the right granted is a revocable, non-exclusive, non-transferable, limited license solely for the purpose of identifying the source of funding as required by this provision and for no other purpose. Recipient shall have no right or interest in the ownership of, or any goodwill associated with, the City logo. No right to use the City seal is included in the foregoing authority, and use of the City seal is expressly prohibited.

- D. Recipient agrees to abide by the standards set forth in Chapter 118, Parts 1-5, *Ordinance Code*, as from time to time amended. Recipient's failure to perform in accordance with the Chapter 118 Parts 1-5 is a breach of this Agreement and grounds for the withholding of funds from any City source, including this Agreement or any other agreement, and for termination of this Agreement and return of all City Funds on demand by the Contract Administrator of the Office of Grants and Contract Compliance or his/her designee.
- E. This Agreement applies to the City Funds appropriated hereunder, and the City's rights and Recipient's duties under this Agreement shall continue beyond the Agreement term only as expressly provided herein.
- F. That portion of the cost of automobiles furnished by Recipient relating to personal use, such as transportation to and from work, is not an allowable fringe benefit or indirect cost regardless of whether the cost is reported as taxable income to the person using the automobile for personal use. These costs are allowable as direct costs of the Project when necessary for the performance of Services for the Project and approved by the Contract Administrator.
- G. Recipient shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, as amended from time to time. Such laws, rules, regulations, and ordinances shall include but are not limited to Chapter 119, Florida Statutes (the Florida Public Records Law) and Section 286.011, Florida Statutes (the Florida Open Meetings Law). Such laws, rules, regulations, and ordinances also include, but are not limited to, the applicable requirements for licenses and certifications necessary to perform the Services. If any of the obligations of this Agreement are to be performed by a subcontractor or subrecipient, the provisions of this Section XXIII.G shall be incorporated into and become a part of such subcontract or subrecipient contract.
- H. Failure by either party to insist upon strict performance of any of the provisions of this Agreement, either party's failure or delay in exercising any rights or remedies provided in this Agreement, the City's payment for the Services or any part or combination of Services, or any purported oral modification or rescission of this Agreement by an employee or agent of either party shall not release either party from its obligations under this Agreement, shall not be deemed a waiver of any rights of either party to insist upon strict performance of this Agreement or of either party's rights or remedies under this Agreement or by law, and shall not operate as a waiver of any of the provisions hereof.

XXIV. REPRESENTATIONS/WARRANTIES AND UNAUTHORIZED WORKERS

- A. As a material inducement for City to enter into this Agreement, Recipient warrants (and unless otherwise specified, the warranties shall remain true during the term of this Agreement) that:
 - 1. Recipient is a Florida not-for-profit corporation incorporated and validly existing under the laws of the State of Florida and authorized to conduct business and in good standing in the State of Florida, or Recipient has tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. Recipient has authority to enter into this Agreement and all documents contemplated by this Agreement and to perform its obligations arising under

this Agreement and other documents contemplated by this Agreement. The individuals signing on Recipient's behalf have authority to do so.

2. Recipient's execution of this Agreement and performance of its obligations under this Agreement have been duly authorized and approved by the shareholders, members, partners, or directors of Recipient (as the case may be).
 3. This Agreement and all documents contemplated by this Agreement each constitute a legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms.
 4. This Agreement and all documents contemplated by this Agreement do not and will not contravene any provision of the governing documents of Recipient, any judgment, order, decree, writ, or injunction by which Recipient is bound, or any provision of any applicable law or regulation by which Recipient is bound. The execution of this Agreement and all documents contemplated by this Agreement and the performance of the obligations of this Agreement and other contemplated documents will not result in a breach of or constitute a default under any agreement to which Recipient is a party or require consent from any third party.
 5. Recipient and each of its contractors, subcontractors, suppliers, and other persons performing the Services or any part of the Services hold all necessary licenses, permits, and authorizations required by applicable governmental bodies as a condition to conduct business in the State of Florida and in the City of Jacksonville and to perform the Services.
 6. Recipient has not employed or retained any third party having a relationship with City to solicit or secure this Agreement and has not paid or agreed or promised to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this Agreement.
 7. Recipient has obtained all necessary approvals from governmental or quasi-governmental authorities having jurisdiction over performance of the Services. All governmental approvals are final, unappealed, and unappealable and shall remain in full force and effect without restriction or modification for the duration of this Agreement.
 8. Recipient is not in default under any agreement with City, and Recipient has satisfied all conditions imposed by any governmental authority in connection with provision of the Services.
- B. In accordance with Section 448.095, *Florida Statutes*, Contractor confirms that it does not currently, and will not in the future, employ, contract with, or subcontract with unauthorized aliens and Contractor, including any of its subcontractors, has registered accordingly with the E-Verify platform. Contractor acknowledges that any violation with the aforementioned will result in a default to this Contract and the City shall be entitled to any and all relief available, including but not limited to, consequential damages, rebate of fees, costs and expenses, etc., resulting from the voiding of this Contract.

XXV. FISCAL YEAR OF RECIPIENT

Recipient’s fiscal year ends on June 30th of each year.

XXVI. INCORPORATION OF EXHIBITS

All exhibits attached to this Agreement are, by this reference, incorporated herein and made a part hereof.

XXVII. NEGOTIATED AGREEMENT

The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms, and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the party who prepared this Agreement.

XXVIII. DUAL PAYMENTS PROHIBITION

Recipient shall not apply the City Funds received under this Agreement to Services that are being or have been paid or reimbursed, in whole, from other sources. Partial payment for Services from the City Funds under this Agreement, together with partial payment for the Services from other funding sources, is permissible if the total amount of all funds does not exceed the agreed-upon monetary value for the Service provided. Except as allowed in the immediately preceding sentence, application for and receipt of dual payments is a material breach of this Agreement and may be grounds for immediate termination on 24 hours’ oral notice, and Recipient shall be subject to damages in the amount of the City Funds that were received as dual payment(s).

XIX. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement contains the entire agreement between the parties with respect to the receipt and expenditure of the City Funds. No agreement, understanding, course of action, course of conduct, or statement by either of the parties or their authorized representatives is effective unless it is contained in this Agreement. Except as may otherwise be provided in this Agreement, any revision, amendment, or other change to this Agreement shall be in writing and signed by the parties. This Agreement may be signed in counterparts and by electronic signature, the counterparts and signatures of which when taken together shall constitute but one Agreement.

(The remainder of this page has been intentionally left blank by the parties. Signature pages to immediately follow.)

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement on the day and year first above written.

WITNESS:

EDWARD WATERS UNIVERSITY, INC., a
Florida not-for-profit corporation

By: _____

By: _____

Print/Type Name

Print/Type Name

Print/Type Title

(Signature page for City to Immediately follow)

ATTEST:

CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

Encumbrance and funding information for internal City use:

Account or PO Number: _____

Amount **\$500,000.00**

The above-stated amount is the maximum fixed monetary amount of this Agreement. It shall not be encumbered by this Agreement. It shall be encumbered by one or more subsequently issued purchase orders that must reference this Agreement. All financial examinations and funds control checking will be made at the time such purchase orders are issued.

In accordance with Section 24.103(e), *Ordinance Code*, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover this Agreement; provided, however, that this certification is not nor shall it be interpreted as an encumbrance of funding under this Agreement. Actual encumbrances shall be made by subsequently issued purchase orders.

Director of Finance
City Contract # _____

Form Approved:

By: _____
Office of General Counsel

LIST OF EXHIBITS

Exhibit A Scope of Services/Project Description

Exhibit B Project Budget

Exhibit C Joint Use Agreement

Exhibit D Indemnification

Exhibit E Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES/PROJECT DESCRIPTION

[To immediately follow this page – 2021-849 Exhibit 2]

EWU Community Fitness and Wellness Center

The performance schedule is within one year from the execution of the contract with an optimistic aim to complete the project within six months (by or before July 1, 2022) of the contemplated execution of the contract (January 2022) supply chain challenges and subsequent attendant construction delays notwithstanding.

Edward Waters University (EWU) intends and commits for the EWU Community Fitness and Wellness Center to be available for community/public use through its existing Schell-Sweet Community Resource Center and Center for Health Disparities which has a longstanding years-long history of continued public service to Jacksonville citizens and particularly seniors and families who reside in the New Town and NW Jacksonville community. The Center will also be dually used by EWU students, faculty, and staff. Collectively, New Town and NW Jacksonville citizens as well and members of the EWU community lack proximate access to adequate health and wellness facilities. Accordingly, and as a public service to quell the proliferation of persistent health disparities plaguing this low-income, aging, and largely minority community (i.e., New Town and NW Jacksonville community) as well as to primarily serve its largely minority and low income student community (where nearly 86% of students are pell-eligible—low income), EWU seeks to provide access to a geographically accessible, safe, and modernly equipped fitness and wellness facility to Jacksonville citizens and its students to further advance and augment the aforementioned existing health/wellness education opportunities being offered by the university.

James Weldon Johnson Building is located at 1840 W. 9th street, Jacksonville, FL 32209 on the campus of Edward Waters University. The project contemplates the renovation, construction, and re-purposing through the acquisition of fitness and wellness equipment of what formerly served as a cafeteria space in the former James Weldon Johnson Middle School which is now wholly owned and operated by EWU.

EXHIBIT B
PROJECT BUDGET

[To immediately follow this page]

Edward Waters University
Community Wellness and Fitness Center

Demolition:

Remove all Existing Flooring and tile
Relocate all existing stored material to another onsite location
Demo all existing plumbing, electrical, gas and hood in recovery area
Demo everything else in area except the fridge and freezers - **\$12,500**

Flooring Company:

Install commercial black with purple fleck Rubber floor per rendering
Install indoor pro padded Astor Turf per drawing
Install commercial grade vinyl wood floor per drawing
Install new 6x6 tile in recovery area- - **\$82,000**

Painting:

Prep and paint doors, walls, columns etc. In entire area
Paint existing wall tile with oil base paint - **\$26,000**

Ceiling Tile:

Install new revealed edge smooth sanded ceiling tiles throughout. - **\$38,000**

Electrical:

Remove existing lights and add new LED 2'x4' basket trofter lights
Trench concrete for electrical for new floor plugs
Adjust electrical panel for new power requirements
Run all new electrical for equipment, AC, food prep, recovery room, and all others per drawing - **\$59,000**

Plumbing:

Install new plumbing for juice and recovery areas. - **\$13,500**

HVAC:

Repair 3 HVAC systems to like new condition.
Install 3 New AC commercial window units. - **\$38,000**

All new wall millwork and cabinets per rendering and in juice bar area.
Include quartz countertops in juice area and millwork accent walls per rendering - **\$39,000**

Design all new graphics for interior and exterior of fitness area
Install new vinyl window graphics to all windows
Install new vinyl wall graphics per rendering, (including outside brick) - **\$26,000**

Total - **\$334,000**
Overhead & profit- \$35,400
Total Construction/Renovation Cost - \$369,400

Equipment:

<u>Description</u>	<u># Items</u>	<u>Per Unit Cost</u>	<u>Total Amount</u>
S-TRC Treadmill	4 EA	\$ 4,300.00	\$17,200.00
S-CTX CROSS TRAINER	3 EA	\$ 3,700.00	\$11,100.00
S-RBX RECUMBENT BIKE	2 EA	\$ 2,400.00	\$ 4,800.00
S-UBX UPRIGHT BIKE	2 EA	\$ 1,900.00	\$ 3,800.00
STAIRMASTER HIIT BIKE	1 EA	\$ 1,700.00	\$ 1,700.00
Pro Laser Double Rack	1 EA	\$ 6,400.00	\$ 6,400.00
9 STATION	1 EA	\$ 20,000.00	\$20,000.00
TROY RUBBER GRIP PLATES 45lbs	36 EA	\$ 95.00	\$ 3,420.00
TROY RUBBER GRIP PLATES 35lbs	24 EA	\$ 74.00	\$ 1,776.00
TROY RUBBER GRIP PLATES 25lbs	24 EA	\$ 53.00	\$ 1,272.00
TROY RUBBER GRIP PLATES 10lbs	24 EA	\$ 21.00	\$ 504.00
TROY RUBBER GRIP PLATES 5lbs	24 EA	\$ 10.50	\$ 252.00
TROY RUBBER GRIP PLATES 2.5lbs	24 EA	\$ 5.00	\$ 120.00
12-Sided Rubber Encased Dumbbell 5-50 lbs.	3 EA	\$ 1,180.00	\$ 3,540.00
12-Sided Rubber Encased Dumbbell 55-100	3 EA	\$ 3,300.00	\$ 9,900.00
TROY BLACKWING BAR	9 EA	\$ 400.00	\$ 3,600.00
International Style E-Z Curl Bar - Black	4 EA	\$ 130.00	\$ 520.00
WF - Flat-To-90 Bench w/Transport Wheels	6 EA	\$ 500.00	\$ 3,000.00
WF - 10' - 3 Tier Dumbbell Rack	4 EA	\$ 750.00	\$ 3,000.00
Lock-Jaw PRO 2 Barbell Collar - Black	14 PR	\$ 28.00	\$ 392.00
Supply/ Install 4" wall base in black	306 EA	\$ 3.50	\$ 1,071.00
Supply/ Install Transitions	12 EA	\$ 8.00	\$ 96.00
Sports Mobile Whirlpool, 110 Gallon	4 EA	\$ 6,800.00	\$ 27,200.00
Subtotal: \$124,663			
Freight: \$5,937.00			
Total Equipment Cost: \$130,600			
TOTAL Construction/Renovation and Equipment Cost: \$500,000.00			

EXHIBIT C

JOINT USE AGREEMENT

[To immediately follow this page]

Prepared by and return to:
Lawsikia J. Hodges
Deputy General Counsel
Office of General Counsel
City of Jacksonville
117 West Duval St. Suite 480
Jacksonville, FL 32202

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT (the "Agreement"), dated as of _____, 2022 between **EDWARD WATERS UNIVERSITY, INC.**, a Florida not-for-profit corporation (the "Recipient") with its place of business at 1658 Kings Road, Jacksonville, Florida 32209, and the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the "City"), with its place of business, for purposes of this Agreement, at 801 North Market Street, Jacksonville, Florida 32202.

WITNESSETH:

WHEREAS, pursuant to Ordinance 2021-849-E, the City entered into a Grant Agreement for Community Fitness and Wellness Center dated as of _____, 2022, with Recipient (the "Grant Agreement", that provided for, among other things, the renovation, construction, and repurposing of a cafeteria area consisting of approximately 6878 square feet of usable space within the James Weldon Johnson Building located at 1840 W. 9th Street, Jacksonville, FL 32209, for a Community Fitness and Wellness Center ("Community Fitness Center" or "Project"); and

WHEREAS, in consideration of the City's appropriation to the Recipient, the Recipient and the City have agreed to enter into this Joint Use Agreement in respect to use of the Community Fitness Center; and

WHEREAS, both parties agree that such common use is for the greater public good; now therefore, the parties agree on the following terms and conditions.

1. Recitals. The Recitals above are true and incorporated herein by reference. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Grant Agreement.

2. Term. Upon the terms and conditions hereof, Recipient agrees to jointly use the Community Fitness Center with City for a term beginning on such date that the Community Fitness Center is substantially complete (as defined in the Grant Agreement) ending ten (10) years thereafter.

3. Use and Possession of Community Fitness Center.

(a) Use. The Community Fitness Center shall be open and available for the

public's general use a minimum of twenty (20) hours per week Monday through Friday from 4:00 p.m.-8:00 p.m., except on University game days and days that the University is closed. The Community Fitness Center will be closed on Saturdays and Sundays. The schedule provided in this subsection (a) may be amended with the prior written approval of the Contract Administrator (defined in the Grant Agreement), provided that the Community Fitness Center is open and available for the public's general use a minimum aggregate of twenty (20) hours per week and no less than a minimum aggregate of four (4) days per week.

(b) Non-Discrimination. The Recipient and the City shall not discriminate against any person on the basis of race, creed, color, sex, religion, national origin, age, marital status or disability in its use of the Community Fitness Center.

(c) Security. Recipient shall be solely responsible for providing any security for the Community Fitness Center and City shall have no responsibility or liability therefor.

4. Notices. For the purpose of notice or demand, the respective parties shall be served in writing either by personal delivery, by guaranteed overnight delivery service or by certified mail, return receipt requested, postage prepaid, addressed to the City at: Attn: Director, Parks, Recreation and Community Services Department, 214 N. Hogan Street, 4th Floor, Jacksonville, FL 32202, with a copy to Attn: Corporation Secretary, Office of General Counsel, 117 W. Duval St. Suite 480, Jacksonville, FL 32202; or addressed to the Recipient at: Attn: Randolph Mitchell, Vice President for Finance, Administration, and Business Innovation and Dr. A. Zachary Faison, President, 1658 Kings Road, Jacksonville, Florida 32209. Notice given by personal delivery or guaranteed overnight delivery shall be deemed received when receipt is acknowledged or delivery refused by the intended recipient, or on the third (3rd) business day following depositing of same in the U.S. Mail in the case of notice by certified mail.

5. Laws, Ordinances and Regulations. Recipient shall comply with all Governmental Requirements in its operation of the Community Fitness Center and shall not engage in any unlawful, improper or offensive use of the Community Fitness Center or any use or occupancy thereof contrary to federal, state or local laws now or hereafter made.

6. Maintenance, Etc; Fees. Recipient shall, at Recipient's sole cost and expense, maintain, repair, operate and replace as necessary the Community Fitness Center and every part thereof and such Community Fitness Center shall at all times be in good condition and repair. City shall have no operations, maintenance, repair, replacement or other financial responsibilities with regard to the Community Fitness Center. Recipient shall offer the Community Fitness Center to the public free of charge in accordance with the use restrictions herein for no less than five (5) years from the date of this Agreement ("Initial Use Period"). The Recipient shall not charge any use fees to the public for use of the Community Fitness Center during the Initial Use Period. However, after the Initial Use Period and without the further approval of the Jacksonville City Council, the

Recipient may charge the public nominal and reasonable fees to use the Community Fitness Center. Such use fees shall be used by Recipient to offset and defray the maintenance, repair, and operations costs of the Community Fitness Center.

7. Assignment. Neither Recipient nor City shall transfer, hypothecate, mortgage, pledge, assign or convey its interest in the Community Fitness Center or its usage rights hereunder, without the prior written consent of the other party.

8. Indemnity and Insurance. Recipient shall adhere to the indemnification and insurance requirements attached hereto as Exhibit A and incorporated herein by reference.

9. Right to Terminate. Notwithstanding any contrary provision contained in this Agreement, the City hereby retains an absolute right to terminate this Agreement with or without cause upon giving sixty (60) days written notice to Recipient.

10. Waiver of Defaults. The waiver by either party of any breach of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Agreement.

11. Successors and Assigns. Subject to the provision of Paragraph 6 of this Agreement, this Agreement shall bind and inure to the benefit of the successors, heirs, and assigns of the parties hereto; provided that Recipient shall not assign this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

12. Entire Agreement. It is agreed between the parties that neither Recipient nor City nor any of their agents have made any statements, promises or agreements, verbally or in writing, in conflict with the terms of this Agreement. Any and all representations by either of the parties or their agents made during negotiations prior to the execution of this Agreement and which representations are not contained in the provisions hereof shall not be binding upon either of the parties hereto. It is further agreed that this Agreement contains the entire agreement between the parties regarding the joint use of the Community Fitness Center.

13. Construction of Language. Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural when the sense requires. The paragraph headings and titles are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

14. Independent Contractor. In the performance of this Agreement, the Recipient will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint-venturer or association of the City. The Recipient and its employees or agents or contractors shall be solely responsible for the means method, technique, sequences and procedures utilized by the Recipient in the performance of this Agreement.

15. Modification. No modification, alteration or amendment to this Agreement shall be binding unless in writing and executed by the parties hereto.

16. Provisions Severable. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Law and Venue. This Agreement shall be enforced in accordance with the laws of the State of Florida. The agreed upon venue is Jacksonville, Duval County, Florida.

18. Execution: Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and may be introduced into evidence or used for any purpose without the production of the other counterparts. No modification or amendment of this Agreement shall be binding upon the parties unless such modification or amendment is in writing and signed by Recipient and City.

19. Defaults. For any defaults by Recipient in the performance of any of its obligations hereunder, the City shall provide written notice to Recipient of such default and Recipient will have 30 days after receipt of such notice to cure such default. If Recipient fails to cure any such default within such 30-day period, or if any cured default reoccurs within one year, the default shall constitute an event of default under the Grant Agreement of even date herewith made by Recipient in favor of the City, and, additionally, the City shall be entitled to pursue all of its available legal remedies, including without limitation an action for specific performance and/or damages. Any failure by the City to give notice of any default shall not prevent the City from giving notice of any subsequent default.

20. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and shall pass to and be binding upon the Recipient's assigns and successors in title to the Community Fitness Center; provided, however, that upon the termination of this Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall automatically and without further action expire. Upon such termination, and at the request and expense of Recipient, City agrees to execute and record a termination of this Agreement in the public records of Duval County, Florida. Each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Community Fitness Center, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Land, or Community Fitness Center are conveyed, all of such covenants, reservations and restrictions shall run to each such portion conveyed.

21. Burden and Benefit. Recipient hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Recipient's legal interests in the Land and the Community Fitness Center are rendered less valuable thereby. The Recipient hereby further declares its understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Community Fitness Center by the students of Recipient and the citizens of the City of Jacksonville, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes of the City of Jacksonville.

IN WITNESS WHEREOF, City and Recipient have caused this Agreement to be duly executed as of the date first above written.

[Remainder of page intentionally left blank and signature pages begin on next page.]

Signed, sealed and delivered in the presence of:

EDWARD WATERS UNIVERSITY, INC.,
a Florida non-profit corporation

By _____
Name: _____
Its: President

[Print or type name]

[Print or type name]

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022, by _____, the President of Edward Waters University, Inc., a Florida non-profit corporation, on behalf of the corporation. Such person did not take an oath and (*notary must check applicable box*) is/are personally known to me; or produced a current Florida driver's license as identification; or produced _____ as identification.

{NOTARY SEAL}

Notary Public, State of Florida
Print Name: _____
Commission No. _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

CITY OF JACKSONVILLE, a
consolidated political subdivision
and municipal corporation existing
under the laws of the State of
Florida

By _____
Lenny Curry
Mayor

[Print or type name]

[Print or type name]

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022, by Lenny Curry, Mayor of the City of Jacksonville, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida, on behalf of said corporation, who is personally known to me.

{NOTARY SEAL}

Notary Public, State of Florida
Print Name: _____
Commission No. _____
My Commission Expires: _____

Form Approved:

Office of General Counsel

GC-#1473237-V2-Edwards_Waters_University_Joint_Use_Agreement_-_Community_Fitness_Center.Docx

Exhibit A

(Insurance and Indemnity Requirements)

A. Recipient's Indemnification. Recipient and its subsidiaries (the “Indemnifying Party(ies)”) shall hold harmless, indemnify, and defend the City of Jacksonville and the City’s members, officers, officials, employees and agents (collectively, the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operations, Project or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Project, any product generated by the Project, or any part of the Project as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Project, any products generated by the Project, or any part of the Project, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days for the Indemnified Parties a license, authorizing the continued use of the disputed part of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the Indemnified Parties so that the Service or product is non-infringing.

If an Indemnified Party exercises its obligations under this Agreement, the Indemnified Party will: (1) provide reasonable notice to the Indemnifying Parties of the applicable claim or liability, and (2) allow the Indemnifying Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08, Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08, Florida Statutes, will be modified to comply with said statutes.

B. Insurance Requirements. Without limiting its liability under this Agreement, prior to commencement of Project, Recipient shall procure at its sole expense, and at all times maintain during the Term of this Agreement (and Recipient shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

<u>Schedule</u>	<u>Limits</u>	
Workers' Compensation	Florida Statutory Coverage	
Employers' Liability	\$ 500,000	Each Accident
	\$ 500,000	Disease Policy Limit
	\$ 500,000	Each Employee/Disease

This insurance shall cover Recipient (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers' Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability \$1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Project)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability \$1,000,000 per Claim
\$2,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the Effective Date of this Agreement and with a three (3) year reporting option beyond the annual expiration date of the policy.

Sexual Molestation \$1,000,000 Per Claim
\$2,000,000 Aggregate

(Only if program includes direct supervision of children, special needs, and/or senior citizens)

Sexual Molestation Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the Effective Date of this Agreement. If provided on a Claim Made Form, the coverages must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Additional Insurance Provisions

- A. **Additional Insured.** All insurance except Workers' Compensation shall be endorsed to name the City of Jacksonville and the City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers, employees and agents.
- C. **Recipient's Insurance Primary.** The insurance provided by Recipient shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City of Jacksonville and/or any of the City's members, officials, officers, employees and agents.
- D. **Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Recipient. Under no circumstances will the City and/or its members, officials, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.

- E. Provider's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Recipient or its contractors, subcontractors, employees or agents to the City or others. Any remedy provided to the City or the City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- F. Waiver/Estoppel. Neither approval by the City nor its failure to disapprove the insurance furnished by Recipient shall relieve Recipient of Recipient's full responsibility to provide insurance as required under this Agreement.
- G. Certificates of Insurance. Recipient shall provide the City with certificates of insurance that show the corresponding City contract number in the description, if known, Additional Insureds, as provided above, and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better.
- I. Notice. Recipient shall provide an endorsement issued by the insurer to provide the City with thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not available, then Recipient, as applicable, shall so provide the City with the requisite thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of Recipient under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an Additional Insured.
- L. Special Provisions. Prior to executing this Agreement, Recipient shall present this Agreement and Paragraph 8 of this Agreement to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of the Agreement, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on Recipient's behalf.

EXHIBIT D INDEMNIFICATION

Recipient and its subsidiaries (the “Indemnifying Party(ies)”) shall hold harmless, indemnify, and defend the City of Jacksonville and the City’s members, officers, officials, employees and agents (collectively, the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operations, Services or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, any products generated by the Services, or any part of the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days for the Indemnified Parties a license, authorizing the continued use of the disputed part of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the Indemnified Parties so that the Service or product is non-infringing.

If an Indemnifying Party exercises its obligations under this Agreement, the Indemnifying Party will: (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow the Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08, Florida Statutes, all other terms of this indemnity shall remain in full force and

effect. Further, any term which offends Section 725.06 or 725.08, Florida Statutes, will be modified to comply with said statutes.

EXHIBIT E

INSURANCE REQUIREMENTS

Without limiting its liability under this Agreement, prior to commencement of Services, Recipient shall procure at its sole expense, and at all times maintain during the Term of this Agreement (and Recipient shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

<u>Schedule</u>	<u>Limits</u>	
Workers' Compensation	Florida Statutory Coverage	
Employers' Liability	\$ 500,000	Each Accident
	\$ 500,000	Disease Policy Limit
	\$ 500,000	Each Employee/Disease

This insurance shall cover Recipient (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers' Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

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	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 100,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability \$1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)

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Professional Liability \$1,000,000 per Claim
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Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the Effective Date of this Agreement and with a three (3) year reporting option beyond the annual expiration date of the policy.

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(Only if program includes direct supervision of children, special needs, and/or senior citizens)

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- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers, employees and agents.
- C. **Recipient's Insurance Primary.** The insurance provided by Recipient shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City of Jacksonville and/or any of the City's members, officials, officers, employees and agents.
- D. **Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole

and exclusive responsibility of the named insured Recipient. Under no circumstances will the City and/or its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.

- E. Provider's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of Recipient or its contractors, subcontractors, employees or agents to the City or others. Any remedy provided to the City or the City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- F. Waiver/Estoppel. Neither approval by the City nor its failure to disapprove the insurance furnished by Recipient shall relieve Recipient of Recipient's full responsibility to provide insurance as required under this Agreement.
- G. Certificates of Insurance. Recipient shall provide the City with certificates of insurance that show the corresponding City contract number in the description, if known, Additional Insureds, as provided above, and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better.
- I. Notice. Recipient shall provide an endorsement issued by the insurer to provide the City with thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not available, then Recipient, as applicable, shall so provide the City with the requisite thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of Recipient under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. The Recipient's obligations under
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an Additional Insured.
- L. Special Provisions. Prior to executing this Agreement, Recipient shall present this Agreement and **Exhibit D** and **Exhibit E** to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of the Agreement, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on Recipient's behalf.