

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 immediately upon Substantial Completion of the Community Fitness Center and ending on such date as the City notifies Recipient that City elects to terminate this Agreement.
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: _____, 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 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 may not charge any use fees to the public for use of the Community Fitness Center after the Initial Use Period, unless such use fees are approved by the Jacksonville City Council by written amendment to this Agreement.

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, except in the event of any termination hereof by the City as set forth in Section 1, 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. 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.