

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

Rev. 9/16

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (“Agreement”) is made as of the date of the last signature below (the “Effective Date”) by and between **The City of Hendersonville**, a North Carolina Municipal Corporation, (“City”) and **Hendersonville Bridge Center**, (“HBC”). City and HBC may be referenced collectively in this Agreement as the “Parties” or each individually as a “Party.”

WHEREAS, City operates and controls the property described herein; and

WHEREAS, HBC desires to use City’s property for the limited times and purposes set forth herein; and

WHEREAS, City desires to permit HBC’s use of City’s property pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Permitted Use.** This Agreement permits HBC the use of property specified herein for the sole purpose of conducting an activity (the “Activity”) as follows:

a. Location (description):

Those portions of Whitmire Center, located at 310 Lily Pond Drive as described in Exhibit A, attached hereto and incorporated by reference (collectively, the “Facility”).

b. Term of this Agreement: June 3, 2021 through June 3, 2024

c. Permitted Activities: As described in Exhibit A, attached hereto and incorporated by reference.

2. **Use Fee and Additional Expenses.**

a. HBC shall pay the sum of Fifteen Hundred Dollars (\$ 1500.00) per month for use of the Facility (the “Use Fee”), with the exception that for the month of September each year, the sum due shall be reduced by \$500.00. In addition to the sum of \$1500.00 per month (\$1,000 for each September), as consideration for the use of the Facility in accordance with this Agreement, HBC shall offer recreational activities to adults of the City at the Facility on a nondiscriminatory basis, in accordance with HBC’s program guidelines.

b. The Use Fee shall include the following:

- i. Use of the Facility as described in Exhibit A.
- ii. Any services to be provided by the City as described in Exhibit A.

c. In addition to the Use Fee, HBC shall be responsible for any and all expenses incurred by City in

support of or as a result of HBC’s use of the Facility (“Additional Expenses”). Such Additional Expenses may include, but are not limited to, cleaning costs, security costs, parking fees, and setup and takedown costs, unless otherwise indicated in subsection (ii) above. HBC shall remit payment for all Additional Expenses within thirty (30) days of receipt of an invoice from City.

3. HBC’s Obligations.

- a. **Facility Rules.** HBC shall at all times comply with the rules for activities and HBC’s use of the Facility, as amended from time to time. A current copy of such Facility rules, as well as additional rules applicable to this specific Activity, if any, will be provided to HBC.
- b. **Compliance With Applicable Law.** HBC shall conduct the Activity in an orderly manner in full compliance with all City policies, regulations, rules, and practices and with all applicable federal, state and local laws.
- c. **Activity With Minor Participants.** If Activity involves the participation of minors, HBC shall perform a criminal background check on all adult supervisors. Adult supervisors shall remain at the Facility for the duration of the Activity, and the following minimum adult supervisor to minor participant ratio based upon the majority of participants’ ages shall be observed at all times:

<u>Participant Age</u>	<u>Supervisors</u>	<u>Participants</u>
4-5 years	1	5
6-8 years	1	6
9-14 years	1	8
15-17 years	1	10

- d. **Obstructions.** All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the Facility shall be kept unobstructed by HBC and shall not be used by HBC for any purpose other than ingress to or egress from the Facility.
- e. **Alterations.** HBC shall not make alterations or modifications to the Facility or any equipment contained therein without the prior written approval of City.
- f. **Logos and Marks.** HBC shall not use the logos, marks, or names of City for any purpose without the prior written approval of City, except to indicate location of the Activity.
- g. **Activity Conclusion.** The Activity and all use of the Facility shall terminate and the Facility be vacated no later than the time and dates specified in this Agreement.
- h. **Reimbursement.** HBC shall be solely responsible for all damages to buildings, grounds, and equipment, arising out of the conduct of the Activity or use of the Facility, including the actions of Activity participants and attendees, and shall promptly reimburse City the actual cost of repairing or replacing any such damaged property.
- i. **Abandoned Property.** Any property left at the Facility shall, after a period of ten (10) days from the end of the term of this Agreement, be deemed abandoned and shall become property of City to be disposed of or utilized at City’s sole discretion. H B C shall be responsible for any disposal costs incurred by City.

4. **Termination.**

a. **Termination by HBC.**

- i. HBC may terminate this Agreement without cause upon 90 days prior written notice of such termination date to City. All outstanding amounts due for User Fees or Reimbursements, and any other fees and charges due from HBC, if any, through the date of termination shall be due and payable to the City on or before the date of termination.
- ii. HBC may terminate this Agreement for a material breach of this Agreement by the City, and shall have all remedies provided at law or in equity, provided however prior to exercising its rights to terminate for cause, HBC shall be required to provide written notice to the City outlining the City's alleged material breach and the City shall have thirty (30) days to cure such breach. All outstanding amounts due for User Fees or Reimbursements, and any other fees and charges due from HBC, if any, through the date of termination shall be due and payable to the City on or before the date of termination.

b. **Termination by City.**

- i. City may terminate this Agreement without cause upon 90 days prior written notice of such termination date to City. All outstanding amounts due for User Fees or Reimbursements, and any other fees and charges due from HBC, if any, through the date of termination shall be due and payable to the City on or before the date of termination.
- ii. The City may terminate this Agreement for a material breach of this Agreement by HBC, and shall have all remedies provided at law or in equity, provided however prior to exercising its rights to terminate for cause, the City shall be required to provide written notice to the HBC outlining HBC's alleged material breach and the HBC shall have thirty (30) days to cure such breach. All outstanding amounts due for User Fees or Reimbursements, and any other fees and charges due from HBC, if any, through the date of termination shall be due and payable to the City on or before the date of termination.

c. **Survival of Terms Upon Termination.** All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or terminate date of this Agreement unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitations.

5. **Force Majeure.** If the Facility is rendered unsuitable for the conduct of the Activity or if the Activity itself must be cancelled by reason of fire, earthquake, hurricane, flood, act of God, strikes, work stoppage or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, governmental agency or authority, or any other cause which is beyond the control of City or HBC, the Parties are released from their obligations under this Agreement.

6. **Release.** HBC releases and discharges City from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the use of the Facility under this Agreement.

7. **Indemnification.** HBC shall indemnify, defend and save harmless the City along with its trustees, officers, employees and agents, from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses and costs of every kind and nature incurred, asserted or imposed against the City by reason of any accident, injury (including death), or damage to any person or property howsoever caused, arising from or connected with the Activity or HBC's use of the Facility. This representation and warranty shall

survive the termination or expiration of this Agreement.

8. Insurance.

- a. At all times during its use of the Facility, HBC, at its sole cost and expense, shall purchase and maintain the following policies:
 - i. Commercial General Liability insurance, using form ISO CG 00 01 or equivalent, covering the Activity contemplated by this Agreement, including coverage for public liability, bodily injury and property damage, with combined single coverage limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate; and,
 - ii. Worker’s compensation insurance, where required by North Carolina law; and,
 - iii. Such insurance as required by federal, state or local laws, codes or regulations.
- b. All insurance policies required to be purchased under this Agreement shall be issued by insurance companies with an A.M. Best rating of “A” or better, and shall be issued by companies qualified to do business in the State of North Carolina. Such insurance shall be issued in the name of HBC with City named as an additional insured, using ISO FormCG 2026 or equivalent. HBC agrees that their insurance shall be primary coverage and shall contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity insofar as said person or entity may have claims against City. The certificate of insurance shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without reasonable prior written notice to City. HBC shall provide to City each policy or certificate of insurance evidencing such policy issued on Accord Form 25 or equivalent, at least five (5) business days prior to the start of the Term of this Agreement, and annually on the anniversary of the date of this Agreement during the Term.

9. **Assignment.** This Agreement is personal and HBC shall not assign this Agreement or any privileges granted hereunder, nor allow any other person, group, or entity to use the Facility during the time of the Activity without the prior written consent of City.

10. **Relationship of the Parties.** HBC and its representatives, agents, contractors, and employees have no employment relationship, no joint venture nor partnership with City with respect to the subject matter of this Agreement.

11. **Notices.** All notices shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail and addressed to the Party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

If to City:	Tom Wooten, Public Works Director for the City 305 Williams Street, Hendersonville, NC 28792
If to HBC:	Harry N. (Nick) Weedman 130 Berry Creek Dr., Flat Rock, NC 28731

12. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.

13. **No Waiver.** The waiver by City of any agreement, condition, or provision contained in this Agreement will not be deemed a waiver of any subsequent breach or any other agreement, condition, or provision contained in this Agreement, nor will any custom or practice that may develop between the Parties in the administration of the terms of this Agreement be construed to waive or lessen the right of City to insist upon HBC's performance in strict accordance with the terms of this Agreement.

14. **Governing Law.** This Agreement and the rights and obligations of the Parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of North Carolina, without regard for its conflict of law's provisions, which shall be the exclusive venue for any legal proceedings arising from or incident to this Agreement.

15. **Severability.** Should any provision of this Agreement be declared illegal, void, or unenforceable under North Carolina law, or shall be considered severable, the Agreement shall remain in force and be binding upon the Parties hereto as though the said provision had never been included.

16. **No Property Right.** Under no circumstances shall this Agreement be construed as granting to HBC any right, title or interest of any kind in the Facility or any property of the City.

IN WITNESS WHEREOF, HBC and City have executed this Agreement by the signatures of their duly authorized representatives.

HBC

**THE CITY OF
HENDERSONVILLE**

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

EXHIBIT A

1. The HBC will have exclusive use of the Whitmire Center Main Floor, Center Office (next to kitchen), Kitchen and Restrooms Monday through Friday from 9:00 am through 6:00 pm. This agreement will be in effect for a period of five (5) years beginning June 3, 2021 and ending June 3, 2024. Saturday and Sunday usage will have to reserved since other organizations are also using the building.
2. The HBC will also have access to areas called the Main Floor, Center Office (next to kitchen), Kitchen on Saturday and Sunday when not in use by other groups or when reserved by HBC through Hendersonville Public Works Department. Parking for the Whitmire building includes the paved parking lot in front and to the side. Additional parking is available on West Allen Street and South Washington Street.
3. The City of Hendersonville Public Works Department shall be responsible for general cleaning and maintenance of the facility. All cleaning and maintenance issues should be reported to the Hendersonville Public Works Department. HBC will be notified prior to being billed for "additional expenses".
4. The HBC will be responsible for all damages or stolen property during their usage of said facility replacing in full. HBC shall take out all trash and recycling and any other debris generated by activity and placed in approved receptacles located outside of building on the Wash Creek side of facility. HBC will clean the Main Floor and Kitchen after use and prior to another group using the building. The City of Hendersonville provides basic paper products for the facility including paper towels, toilet tissue paper, trash bags for receptacles and some basic cleaning supplies. A floor mop, wet mop and bucket are available and in the Hallway off the kitchen for cleanup of any debris generated by building user. The City of Hendersonville snow removal teams will keep the parking area around the buildings plowed in the event of inclement winter weather. The HBC will need to add rubber feet to the chairs and protective devices to the bottom of the table legs.
5. The HBC will be responsible for the conduct or action of all members, spectators, and staff during all times. The HBC will abide by all City Ordinances, especially those pertaining to No Smoking, No Alcohol, Profanity, and Loud Noise. HBC will notify proper law enforcement and City Officials of any serious violations. The building is a public building and is monitored and accessible to the City of Hendersonville Police Department and/or other City personnel for routine building maintenance and general upkeep and compliance of City Ordinances. Any violation of these rules will result in forfeiture of building usage.
6. Excluded Dates for HBC facility usage:
 - 1st & 3rd Saturday evening of each month. 5pm-11pm for Southern Lights Square Dance Club
 - Labor Day - Tuesday night before through Monday (Labor Day) 24/7 - Gem & Mineral Spectacular
 - Spring Dance - date to be determined - Mountain Bowlers - Dance for Special Needs Adults 5/10pm
 - December - Mountain Bowler - Dance for Special Needs Adults - Date to be determined
 - December - Four Seasons Rotary Club - 10am - 1:00pm - Children's Party, Date to be determined
 - December - City of Hendersonville Holiday Dinner - 7am - 2pm- Date to be determined
 - Stripping and Waxing of the floors. Date to be determined.
 - Elections - Henderson County Board of Elections- Election Day (All day). Occasional Runoff elections may require use of the building. Voting booths are delivered the day before the Elections take place.