

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 **Girl Scouts Carolinas Peaks to Piedmont**, a North Carolina nonprofit corporation (“GSP2P”). City and GSP2P 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, GSP2P desires to use City’s property for the limited times and purposes set forth herein; and

WHEREAS, City desires to permit GSP2P’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 GSP2P 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 _____ and Toms Park, located at _____ as described in Exhibit A, attached hereto and incorporated by reference (collectively, the “Facility”).

b. Term of this Agreement: July 1, 2021 through June 30, 2026

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

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

a. GSP2P shall pay the sum of One Dollars (\$ 1.00) per year for use of the Facility (the “Use Fee”). In addition to the sum of \$1.00 per year, as consideration for the use of the Facility in accordance with this Agreement, GSP2P shall offer recreational activities to the youth of the City at the Facility on a nondiscriminatory basis, in accordance with GSP2P’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, GSP2P shall be responsible for any and all expenses incurred by City in

support of or as a result of GSP2P’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. GSP2P shall remit payment for all Additional Expenses within thirty (30) days of receipt of an invoice from City.

3. GSP2P’s Obligations.

- a. **Facility Rules.** GSP2P shall at all times comply with the rules for activities and GSP2Ps 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 GSP2P.
- b. **Compliance With Applicable Law.** GSP2P 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, GSP2P 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 GSP2P and shall not be used by GSP2P for any purpose other than ingress to or egress from the Facility.
- e. **Alterations.** GSP2P 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.** GSP2P 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.** GSP2P 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. GSP2P shall be responsible for any disposal costs incurred by City.

4. Termination.

a. Termination by GSP2P.

- i. GSP2P 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 GSP2P, if any, through the date of termination shall be due and payable to the City on or before the date of termination.
- ii. GSP2P 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, GSP2P 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 GSP2P, 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 GSP2P, 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 GSP2P, 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 GSP2P outlining GSP2P's alleged material breach and the GSP2P 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 GSP2P, 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 GSP2P, the Parties are released from their obligations under this Agreement.
6. **Release.** GSP2P 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.** GSP2P 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 GSP2P'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, GSP2P, 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 GSP2P with City named as an additional insured, using ISO FormCG 2026 or equivalent. GSP2P 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. GSP2P 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 GSP2P 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.** GSP2P 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 GSP2P: _____

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 GSP2P'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 laws 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 GSP2P any right, title or interest of any kind in the Facility or any property of the City.

IN WITNESS WHEREOF, GSP2P and City have executed this Agreement by the signatures of their duly authorized representatives.

GSP2P

**THE CITY OF
HENDERSONVILLE**

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

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

EXHIBIT A

1. The GSCP2P will have exclusive use of the Whitmire Center Small Classroom (right back corner of large room) Monday through Sunday from 9:00 am through 9:00 pm. This agreement will be in effect for a period of five (5) years beginning July 1, 2021 and ending July 1, 2026. The City will change the locks on the interior and exterior doors to this room at the beginning of the agreement. Any future lock changes must be approved by the Public Works Director or designee.
2. The GSCP2P will also have access to areas called the Main Floor, Large Classroom, Kitchen and Restrooms. The Main Floor, Large Classroom and Kitchen may only be used when not in use by other groups or when reserved by GSCP2P 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 GSCP2P will have access to Tom's Park for Girl Scout Activities and events. However, any alterations or plantings in the park area must be approved by the Public Works Director or designee. The GSCP2P shall have the right to place the Girl Scout Hut cornerstone on the Whitmire Center property or Tom's Park upon the approval of the Public Works Director.
4. The GSCP2P shall have the right to decorate, including painting, the small classroom as they see fit if the decorations can be removed without causing damage to walls, floors, ceilings, and doors. The installation of curtains, pictures and similar items will be permitted upon the approval of the Hendersonville Public Works Director or designee. The installation of these items shall be the responsibility of GSCP2P.
5. The City of Hendersonville Public Works Department shall be responsible for general maintenance of the facility. All maintenance issues should be reported to the Hendersonville Public Works Department.
6. The GSCP2P will be responsible for all damages or stolen property during their usage of said facility replacing in full. GSCP2P shall take out all trash and recycling and any other debris generated by activity and place in approved receptacles located outside of building on the Lily Pond Road side of facility. GSCP2P 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.
7. The GSCP2P will be responsible for the conduct and 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. GSCP2P 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.
8. Excluded Dates for GSCP2P facility usage:
 - 1st & 3rd Saturday evening of each month. 5pm-11pm for Southern Lights Square Dance Club
 - Labor Day - Wednesday 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.