

**USE AGREEMENT**

**BETWEEN**

**THE CITY OF HAINES CITY**

**AND**

**PEARL NOBLES OUTREACH CENTER, INC.**

**FOR USE OF THE SPACE LOCATED AT  
THE OAKLAND NEIGHBORHOOD CENTER  
915 AVENUE E, HAINES CITY, FLORIDA**

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## USE AGREEMENT

The Use Agreement, made this \_\_\_\_ day of June, 2022, by and between the City of Haines City, a municipal corporation of the State of Florida, (the “City”) and Pearl Nobles Outreach Center, Inc., a Florida corporation, (the “Group”), a not-for profit organization incorporated under the Laws of the State of Florida. The Group consists solely of adult volunteers. The Group has no employees and pays no salary, wages, or compensation for volunteer work.

### WITNESS:

WHEREAS, the Group is a 501(C)(3) non-profit organization which provides community-oriented services and events for the Haines City-area community;

WHEREAS, the City desires to provide space for the Group located in the Oakland Neighborhood Center, located at 915 Ave. E, Bldg. [REDACTED], (Innovation Lab and Office), Haines City, FL 33844, for its meetings (the “Premises), and provide access to other City facilities; and

WHEREAS, the Group is willing and able to provide present and perform community-oriented services and events at the Premises; and

WHEREAS, the City Commission of the City has determined that it is a valid public purpose to provide the Group with the Group Space (as defined below) at the Oakland Neighborhood Center in accordance with the terms and conditions set forth in this Use Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth, to be kept and performed by the parties, it is agreed between the City and Group as follows:

### **SECTION 1. TERMS.**

**1.1. DEFINITIONS OF TERMS.** For the purpose of this Use Agreement, the terms defined in this Article shall have the following meanings:

- (1) “City Manager” means the administrative head of the City’s government who has been appointed by the City Commission of the City of Haines City in accordance with the provisions of the Charter of the City of Haines City, as amended.
- (2) “Use Agreement” shall mean this written agreement.
- (3) “Use Agreement Year” shall mean a consecutive twelve (12) month period during the Term and Additional Term, if exercised, commencing on the Commencement Date, provided that the Concession Agreement Year may be adjusted by City to commence on the first day of a calendar month.

- (4) “Group Space” shall mean (i) the Innovation Lab used during Tuesdays/Wednesdays/Thursdays for three (3) hours (9:00 AM to 12: 00 PM) per day, and (ii) the Office space from Monday through Friday for eight (8) hours (9:00 AM to 5:00 PM) per day, together with certain furniture, fixtures, and equipment set forth in the Inventory.
- (5) “Commencement Date” shall mean the date when all required signatures of both parties are affixed to this agreement.
- (6) “Group Manager” shall mean the Board of Directors authorized by the Group to act fully on behalf of the Group in managing the Group Space.
- (7) “Contract Administrator” shall be the City Manager or his designee authorized by the City to administer the Use Agreement and coordinate the activities of the Group at the Premises.
- (8) “Group Services” shall mean all services necessary for furnishing and operating the Group Space at the Premises.
- (9) “Inventory” shall mean furnishings, utility hookups, counter space, furniture, fixtures and equipment provided by City to Group for its use at the Group Space.
- (10) “Termination Date” shall mean the day on which this Use Agreement expires or such earlier date as may be specified in accordance with the provisions of this Use Agreement.

## **SECTION 2. GENERAL DESCRIPTION OF USE.**

**2.1 DESCRIPTION OF USE PRIVILIGES.** The City grants to Group, subject to the exceptions and conditions hereinafter set forth, the non-exclusive privilege to:

- (i) occupy the Group Space for purposes of providing community services and events at the Premises, and
- (ii) occupy the Group Space for purposes of providing charitable services by presenting community services and events for the benefit and enjoyment of area citizens. All such charitable services provided by the Group shall be at no charge to area citizens.

The parties acknowledge and agree that the City shall also utilize the Group Space and Premises during the term of this Agreement for City-related events and that the parties will mutually cooperate to schedule their respective events in a manner that will minimize potential time conflicts and inconvenience to the other party. The parties expressly acknowledge that this Agreement does not create a partnership relationship between the parties.

The City authorizes the Group to utilize the Group Space ((i) the Classroom used during Tuesdays/Wednesdays/Thursdays for three (3) hours (9:00 AM to 12: 00 PM) per day, and (ii) the Office space from Monday through Friday for eight (8) hours (9:00 AM to 5:00 PM) per day) for its activities and events

during the term of this Agreement. The Group shall obtain prior written approval from the City before the Group modifies the days or times of its use of the Group Space.

The Group shall coordinate marketing materials for its events with the City as set forth in Section 2.4 (J) of this Agreement.

The Group shall not sublease the Group Space during the term of this Agreement unless the Group has first obtained written approval from the City.

**2.2 OPERATION OF USE PRIVILIGES.** Starting on the Commencement Date, the Group shall provide community services and events at the Group Space in a first class and reputable manner continuously during the entire term of this Use Agreement. If the Group fails or refuses to satisfy any of the foregoing requirements, then in such event, City shall have the right to invoke remedies provided for in this Use Agreement.

**2.3 SANITATION.** The Group shall, at its sole cost and expense, maintain and keep fixtures, equipment and personal property, whether owned by the Group, the City or third parties, and all areas of the Group Space and other areas designated for its use, in a clean and sanitary condition satisfactory to the City. The Group is responsible for all janitorial related services including the necessary equipment and cleaning supplies to fulfill the janitorial requirements for the cleaning of the Group Space, specifically including cleaning of the Group Space immediately after all pre-production activities, rehearsals and performances to the public.

**2.4 USE RESPONSIBILITIES.** The Group covenants and agrees that Group shall, at its sole cost and expense, operate, manage and maintain the Group Space and provide community services and events required under this Use Agreement and specifically agrees as follows:

- A. The Group shall, at its sole cost and expense:
  - (i) purchase supplies and materials necessary for the operation of its community services and events.
  - (ii) provide and replace cleaning supplies.
  - (iii) provide all cleaning and janitorial services for the Group Space.
- B. The Group shall, at its sole cost and expense, pay all federal, state and local taxes which may be assessed against its operations, equipment, or merchandise while in or upon the Premises.
- C. The Group shall be responsible for security at the Group Space during the hours of operation. The Group shall insure that all appropriate equipment and lights have been turned off and appropriate doors locked at the close of operation of the Group Space and insure that no cash is left on the premises. In the event that the Group makes arrangements to utilize the Premises for its activities and events after the normal operating hours of the Premises or when City staff is not present at the Premises, a Board member of the Group

will obtain a key to the Premises from the Parks and Recreation Department and such Board member shall be responsible for security of the Premises. In addition, the Board member and a representative of the Parks and Recreation Department shall make arrangements to do a walk-through of the Premises both prior to and after the Group's event at the Premises.

- D. The Group shall provide the Contract Administrator with the name, phone number, and cellular phone number of a management individual that will be available at any time to call in the case of emergencies. This individual must be available by phone 24 hours a day, seven days a week.
- E. The Group shall assume all operating costs except as provided herein.
- F. The Group shall provide the community services and events in strict compliance with all applicable Federal, State and local laws and regulations governing this type of operation.
- G. The Group shall maintain its 501(C)(3) status with the Internal Revenue Service during the term of this Agreement and shall provide the City with immediate written notice of any change or modification to its 501(C)(3) status.
- H. The Group shall pay applicable fees in accordance with the then-applicable Reservation Fees, Regulations and Reservation Process Additions and Changes established by the City.
- I. The City shall notify the Group's President and Treasurer of any damages to the Premises or the City's facilities as a result of the Group's event. The Group shall pay City for any damages to the Premises or City's facilities as a result of such event.
- J. The Group shall provide the City with draft versions of its event marketing materials (including requests to utilize the City's logo and ancillary intellectual property assets) at least thirty (30) days prior to the date of a Group event that has previously been confirmed by the City. Upon the receipt of such marketing materials, the City shall have a seven (7) day period in which to review and provide the Group with written confirmation of City's approval of such marketing materials.
- K. The Group shall not prepare or submit any grant applications which relate to or rely upon the Group's use of the City's Group Space or Premises unless the Group has first obtained written approval from the City.

**2.5. FURNISHINGS AND EQUIPMENT.** The City has title to all items listed in the Inventory. The Group may use such Inventory, free of any charge, and the Group hereby accepts the use of such Inventory "as is" and "where is". The Group shall not remove any of the Inventory from the Premises without the prior written consent of the Contract Administrator. The City shall use good faith efforts to replace the equipment and fixtures outlined in the Inventory as necessary, assuming the replacement of such is not caused by any negligence of the Group or its agents. Prior to the beginning of each Use Agreement year, City and the Group shall inspect the equipment as more specifically identified and described in the Inventory and if by mutual agreement they determine that replacement of the equipment is desirable or

necessary, then the City shall, at its sole cost and expense, provide such replacements. Notwithstanding anything to the contrary contained in this section 2.5, the Group may, with the written consent of the City Manager, install additional furnishings or equipment in location(s) approved by the City Manager. Any such additional furnishings or equipment shall remain the property of the Group, shall be maintained and cleaned in accordance with the requirements of this Use Agreement that are applicable to other furnishings or equipment, and shall be removed upon termination of this Use Agreement.

The Group shall, at its sole cost and expense, be responsible for the normal operation, cleaning and reasonable care of all of the equipment and furnishings listed in the Inventory. The Group shall replace or repair, at its sole cost and expense, any of those items and any fixtures or furnishing provided by the City lost, damaged or destroyed due to the acts, omissions or negligence of the Group, its agents, or any attendee at an event of the Group.

**2.6 TRASH REMOVAL AND RECYCLING.** The Group shall, at its sole cost and expense, provide a sufficient number of trash receptacles with the Group Space and other areas designated for its use, and for the use by its customers. The Group shall, at its sole cost and expense, be responsible for the disposal of such receptacles and the removal of trash from the Premises. All trash collected by the Group must be removed at the time of collection and sent to areas designated by the Contract Administrator.

**2.7 UTILITIES.** The City shall pay the cost and expense of furnishing the Premises with utilities including but not limited to air conditioning, heat, hot and cold water, lights, electric current, sewage, and garbage disposal service. The Group must abide by the rules, regulations, schedules and practices of the City in the administration of these services.

The City reserves the right to interrupt, curtail or suspend the provision of any utility service, including but not limited to, heating, ventilating and air conditioning systems and equipment serving the Premises, to which the Group may be entitled hereunder when necessary by reason of accident or emergency, or for repairs, alterations or improvements in the judgment of City desirable or necessary to be made or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the City. The work of such repairs, alterations or improvements shall be prosecuted with reasonable diligence. The City shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to the Group or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of rent or other charges, nor damages, shall be claimed by the Group by reason of the City's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Use Agreement or any of the Group's obligations hereunder be affected or reduced thereby.

**2.8 CITY ACCESS TO FACILITY.** City and its authorized representative shall have at all times access to the Group Space leased to the Group. City will maintain a complete set of keys to the Group Space and the Group shall not change the door or other locks related to the Premises without first obtaining written approval by the Contract Administrator. The Group shall immediately provide keys to the City for any new equipment. In the event that the Group loses any of the keys assigned to it, the Group shall immediately, at its sole cost and expense, provide new locks and keys to the Premises.

**2.9 PERFORMANCE REVIEW MEETINGS.** The Group Manager will schedule formal meetings with Contract Administrator ninety (90) days after the Commencement Date and semi-annually thereafter, to review all aspects of the Group's performance under this Use Agreement.

### **SECTION 3. PERSONNEL.**

**3.1 PERSONNEL.** The Group shall, at its own expense, provide its own staff for the provision of the Group community services and events. Such staff shall provide courteous and efficient service to the customers. The staff consists solely of adult volunteers.

Each of the Group's volunteers shall be subject to a background investigation by the City. The Group agrees that it shall not employ any person to work at the Premises or participate in the Group's activities at the Premises who cannot satisfy said background investigation.

### **SECTION 4. TERM.**

**4.1 TERM.** The term of this Use Agreement shall be for a period of time from the date of execution of this Use Agreement through June 16, 2023, unless sooner terminated as provided herein (the "Term"). This Use Agreement may be extended by mutual consent of \_\_\_\_\_ ( ) additional one-month periods commencing on June \_\_\_\_\_, 2023, upon the same terms and conditions contained herein (the "Additional Terms"). In order to exercise this extension, the Group must deliver written notice of its intent to the City two (2) weeks in advance of expiration of the Term. Upon receipt of such notice, City shall conduct an audit of the Group's compliance with the provisions of the Use Agreement and notify the Group within one (1) week from receipt of the request of its intent to grant or deny the request for extension. The City Manager has the right to extend this Use Agreement for the additional terms stated in the Use Agreement.

**4.2 HOLDING OVER.** If the Group shall be occupying the Group Space after the Termination Date or the termination of Additional Term, with the expressed or implied consent of the City the use granted under this Use Agreement shall become one from month-to-month terminable by either party on thirty (30) days prior written notice. Such occupancy shall be subject to all terms, conditions, provisions and obligations of this Use

Agreement including the payment of all fees and charges. The provisions of this Section shall be in addition to any liability the Group may have to City in respect of its holdover.

In the event that the Group fails to peacefully surrender the Premises at the expiration of the notice period required above for cancellation of this Agreement, then the City shall, in addition to all other remedies, be entitled to collect from the Group, and the Group shall pay to the City a fifty percent (50%) increase to the Use Fee (“Increased Fee”) then in effect. Acceptance of the Increased Fee by City shall, in no event, constitute a waiver of the City’s rights under this Agreement and shall not prevent the City from pursuing all other remedies to which it is entitled including but not limited to the right to seek injunctive relief to eject the Group from the Premises. The Group shall also reimburse the City for and indemnify the City against all damages incurred by the City from any delay by the Group in vacating the Premises.

**SECTION 5. PAYMENTS.**

**5.1. USE FEE.** The Group agrees to pay City an annual Use Fee of One Dollar (\$1.00) upon execution of this contract by all parties.

**SECTION 6. TERMINATION OF USE AGREEMENT**

**6.1. TERMINATION BY CITY FOR CAUSE.** In the event the Group defaults or fails to observe the terms and condition of this Use Agreement in any material aspect, City shall have the right to do any one of the following:

- (A) give the Group notice of the default, specify required corrective action, and the time period within which corrective action is required to avoid immediate termination of this Use Agreement;
- (B) give the Group thirty (30) days written notice of its intention to terminate the Use Agreement for cause. Thirty (30) days thereafter, this Use Agreement and the Group’s occupation of the Premises will end regardless of any corrective action by the Group; and/or
- (C) immediately terminate this Use Agreement, if in the sole discretion of the City, the default or failure to observe terms and conditions is so egregious as to warrant immediate termination. Upon such termination, the Group’s rights to occupy the Premises will end forthwith.

**6.2 TERMINATION BY CITY FOR CONVENIENCE.** The City shall have the right to terminate this Use Agreement at its sole option, for any reason whatsoever, upon at least thirty (30) days written notice to the Group. Upon such termination, the occupancy of the Premises will end and the Group agrees to waive any claims for damages, including loss of anticipated fees and profits.

**6.3 TERMINATION BY THE GROUP WITHOUT CAUSE.** The Group may terminate this Use Agreement at its sole option, for any reason whatsoever,



upon at least thirty (30) days written notice to the City. Upon such termination, the occupancy of the Premises will end and the Group agrees to waive any claims for damages, including loss of anticipated fees and profits.

**6.4 TERMINATION BY THE GROUP WITH CAUSE.** In the event the City defaults or fails to observe the terms and conditions of this Use Agreement in any material aspect, the Group shall have the right to terminate the Use Agreement after notifying City in writing of the action required to correct the problem and giving City thirty (30) days from receipt of said notice to correct the problem.

**6.5 SURRENDER OF THE GROUP OF PREMISES.** At the expiration of the term or earlier termination of this Use Agreement, the Group shall promptly surrender possession and shall deliver to the City all keys that it has to any part of the Group Space or the Premises. The Group shall return all facilities, equipment and other items furnished by City in the condition in which received, reasonable wear and tear excepted.

Additionally, at the expiration of the term or earlier termination of this Use Agreement, if the City desires, it may purchase all or any part of the equipment, furnishings and trade fixtures owned and used by the Group under this Use Agreement at prices equal to the lower of either the depreciated cost or fair market value. This provision shall not apply to fixtures, which become part of the Group Space and are owned by the City under Section 7.1 hereof.

The Group will be responsible for all losses and damages to the Group Space and the Premises resulting from its default, failure or negligence during the term of this Use Agreement. If within thirty (30) days of termination of this Use Agreement the City determines that any part of the Group Space or the Premises are damaged, and that such condition was not readily evident at the time the Group surrendered possession of the Group Space, City reserves the right to have the Group pay for the repairs to said damaged facilities and/or equipment. This clause shall survive the expiration of this Use Agreement.

## **SECTION 7. ALTERATIONS AND IMPROVEMENTS.**

**7.1. ALTERATIONS AND IMPROVEMENTS.** The Group shall not make or permit to be made any construction, repairs, alterations, additions, partitions or changes to the Group Space (hereinafter collectively called “Alterations”) without the prior written consent of the Contract Administrator. If Contract Administrator grants consent:

(i) the Alterations shall be performed by a licensed and insured general contractor and sub-contractor(s). All such general contractors and/or sub-contractor shall maintain worker’s compensation insurance for their respective employees. Prior to the commencement of any Alterations, the Group shall provide the City with documentary evidence confirming that all general

contractors and sub-contractors are licensed, insured, and maintain valid worker's compensation insurance for the duration of the time period necessary to complete the Alterations.

(ii) the Alterations shall be performed in a good and workmanlike manner in accordance with all applicable Federal, State and local statutes, laws, ordinances and regulations, as they presently exist and as they may be amended hereafter.

(iii) all Alterations shall be provided at the Group's sole cost and expense

(iv) the Group shall pay for and obtain the necessary and applicable permits in compliance with all Federal, State and local laws, rules and regulations in connection with an Alterations made by the Group to the Premises.

(v) Alterations (other than movable trade fixtures, which can be moved without injury to the Group Space) shall at once become a part of the Premises, the property of the City and shall be included in the Inventory.

The Group shall have the right to remove any movable personal property and trade fixtures that it places in or at the Premises. If any part of the Premises is in any way damaged by the removal of such items, said damage shall be repaired by the Group at its sole cost and expense. Should the Group fail to repair any damage caused to the Premises within ten (10) days after receipt of written notice from City directing the required repairs, City shall cause the Premises to be repaired at the sole cost and expense of the Group. The Group shall pay City the full cost of such repairs within ten (10) days of receipt of an invoice indicating the cost of such required repairs. Failure to pay such invoice shall be sufficient cause to terminate this Use Agreement as provided in Section 6.1 herein. Notwithstanding the above, this Use Agreement may be terminated due to the Group's failure to repair the Premises as directed without the necessity of City repairing the Premises.

**7.2 LIENS AND ENCUMBRANCES.** The Group shall keep the Premises free and clear of any liens and encumbrances. Nothing in this Use Agreement shall be construed as constituting the consent or request of the City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or the furnishing of any materials for any specific Alterations, or repair of or to the Premises nor as giving the Group the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics liens or other encumbrance against the City's interest in the Premises.

If any lien shall at any time be filed against the Premises as a result of any Alteration undertaken by the Group, the Group shall cause it to be discharged of record within ten days after the date the Group has knowledge of its filing. If the Group shall fail to discharge a lien within that period, then in addition to any other right or remedy, the City may, but shall not be obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the

discharge of the lien by deposit in court of bonding, or in the event the City shall be entitled, if it so elects, to compel the prosecution of any action for the foreclosure of the lien by the lien or and to pay the amount of the judgment, if any, in favor of the lien or with interest, costs and allowances with the understanding that all amounts paid by the City shall constitute Additional Fee due and payable under this Use Agreement and shall be repaid to the City by the Group immediately upon rendition of an invoice or bill by the City. The Group shall not be required to pay or discharge any lien so long as the Group shall in good faith proceed to contest the lien by appropriate proceedings and if the Group shall have given notice in writing to the City of its intention to contest the validity of the lien and shall furnish and keep in effect a surety bond of a responsible and substantial surety company reasonably acceptable to City or other security reasonably satisfactory to City in an amount sufficient to pay one hundred ten percent (110%) of the amount of the contested lien claim with all interest on it and costs and expenses, including reasonable attorneys' fees, to be incurred in connection with it.

#### **SECTION 8. INSURANCE, INDEMNIFICATION AND HOLD HARMLESS.**

The Group shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to its activities at the Premises with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by the City, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. The City shall be listed as an additional insured on the Group's policy or policies of comprehensive general liability insurance, and the Group shall provide the City with current Certificates of Insurance evidencing the Group's compliance with this section. The Group shall obtain the agreement of the Group's insurers to notify the City that a policy is due to expire at least (10) days prior to such expiration.

The Group shall indemnify, protect, defend and hold harmless the City, its officials and employees, from and against any and all claims, suits, actions, damages or causes of action of whatever nature arising out of the use or operation of the Work Shop and the Premises by the Group, its agents, contractors or volunteers; whether such claim shall be made by a volunteer of the Group, an employee of the City or by any third party, and whether it relates to injury to persons (including death) or damage to property and whether it is alleged that the City or its employees or officials were negligent. The Group shall at its own cost and expense pay and satisfy all costs related to any orders, judgments or decrees which may be entered thereon, and from and against all costs, attorneys' fees, expenses and liabilities incurred in and about the defense of any such claims and the investigation thereof. The Group shall further indemnify, defend, protect and hold City harmless from and against any and all claims arising from any breach or default in performance of any obligation of the Group's part to be performed under the terms of this Use Agreement, or arising from any act, neglect, fault or omission of the Group or its agents, contractors or volunteers and from and against all costs, attorneys' fees, expenses and liability incurred in connection with such claim or any action or proceeding brought thereon. In case any action or proceeding shall be brought against City by reason of any

claim, the Group upon notice from City shall defend the same at the Group's expense by counsel approved in writing by City. City reserves the right to defend itself.

The Group shall immediately notify City, in writing, of any claim or action filed, of whatever nature, arising out of the use or operation of the Premises by the Group, its agents, contractors or volunteers. The Group shall also immediately notify City if the Group knows or has reason to believe a claim or action will be filed, of whatever nature, arising out of the use or operation of the Premises by the Group, its agents, contractors, volunteers or third parties.

## **SECTION 9. DAMAGE OR LOSS TO GROUP'S PROPERTY.**

**9.1 RISK OF LOSS.** City shall not be liable for injury or damage to the property or merchandise of the Group or its volunteers, invitees or patrons occurring in or about the Premises caused by or resulting from anyone or any peril whatsoever which may affect the Premises, including, without limitation, fire, steam, electricity, gas, water, rain, vandalism or theft, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliance, plumbing, air conditioning or lighting fixtures of the Premises, or from hurricane or any act of God or any act of negligence of any use of the facilities or occupants of the Premises or any person whomsoever, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Premises or from other sources.

**9.2 NOTICE OF DAMAGES OR INJURIES.** The Group shall give City prompt written notice of any fire, damage or injury occurring at the Premises.

**9.3 VANDALISM AND THEFTS.** Where vandalism or theft occurs to the Group's machines, equipment or operation, it shall be the sole responsibility and liability of the Group to insure, repair or replace damaged or stolen equipment at the Group's expense within forty-eight (48) hours. All vandalism and theft shall be reported to the Contract Administrator immediately upon discovery.

**9.4 THEFT AND LOSS LIABILITY.** City will not be responsible for any of the Group's losses or thefts, and any such losses must be borne solely by the Group out of its own funds which may not be used to diminish or be absorbed by payment due the City.

**SECTION 10. ASSIGNMENT AND SUBCONTRACTING.** The Group agrees that the Use Agreement shall not be assignable and the assignments or subcontracts of all or a portion of this Use Agreement are prohibited.

**SECTION 11. SIGNAGE AND ADVERTISING.** The Group shall not install or permit any signs or advertising matter to be placed on any portion of the Premises. Upon receiving prior written approval, the Group may place advertisements or flyers within the City's facilities

**SECTION 12. NOTICE.** All notices or other communications which shall or may be given pursuant to this Use Agreement shall be in writing and shall be delivered by personal service or by certified mail addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by certified mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

**NOTICE TO CITY:**

City of Haines City  
James R. Elensky, City Manager  
620 East Main Street  
Haines City, FL 33844

**NOTICE TO GROUP:**

Pearl Nobles Outreach Center, Inc.  
Alethea Pugh, President  
P. O. Box 2102  
Haines City, FL. 33844

**WITH COPY TO:**

City of Haines City  
Terrell Griffin, Parks and Recreation Director  
620 East Main Street  
Haines City, FL 33844

**SECTION 13. MISCELLANEOUS.**

**13.1. COMPLIANCE WITH LAWS.** The Group shall comply with all applicable federal, state and local laws, regulations, orders, ordinances and codes pertaining to its performance under this Use Agreement.

**13.2. INDEPENDENT CONTRACTOR.** The Group and its agents shall be deemed to be independent contractors, and not agents, employees or representatives of the City and shall not attain rights or benefits under the Civil Service or Pension Ordinances of the City nor any rights generally afforded classified or unclassified employees; further they shall not be entitled to the Florida Workers Compensation benefits as employees of the City.

**13.3. SUCCESSORS AND ASSIGNS.** This Use Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

**13.4. AMENDMENTS.** City and the Group by mutual agreement shall have the right but not the obligation to amend this Use Agreement. The City Manager has the right to execute any amendments to the Use Agreement and shall be effective only when signed by City Manager and the Group and shall be incorporated as a part of this Use Agreement.

**13.5. AWARD OF USE AGREEMENT.** The Group warrants that it has not employed or retained any person employed by City to solicit or secure this Use Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Use Agreement.

**13.6. CONSTRUCTION OF USE AGREEMENT.** This Use Agreement shall be construed and enforced according to the laws of the State of Florida.

**13.6 PRE-SUIT MEDIATION.** Disputes arising under this Use Agreement must first be mediated by a Florida Supreme Court-certified Civil Mediator in accordance with Chapter 44, Florida Statutes. The parties agree that the mediation shall occur within thirty (30) days of the date mediation is requested by either party. The Mediator shall be agreed upon, but if the parties are unwilling or unable to agree, the parties agree that a Civil Mediator from Central Florida Mediation Group, LLC shall be selected by striking names from the mediators in that Group. The parties agree to mediate in good faith, be bound by the Mediation Agreement (if any), pay Mediator fees promptly and share them on an equal basis unless otherwise agreed upon by the parties. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator, or (ii) terminated in writing by one or both of the parties. The confidentiality provisions of the Mediation Confidentiality and Privilege Act (Section 44.403, Florida Statutes) shall apply to any such pre-suit mediation.

**13.7. COURT COSTS AND ATTORNEYS' FEES.** In the event that it becomes necessary for City to institute legal proceedings to enforce the provisions of this Use Agreement, the Group shall pay City's court costs and attorneys' fees. The Group acknowledges that Florida law provides for mutuality of attorney's fees as a remedy in contract cases and specifically and irrevocably waives its right to collect attorney's fees from the City under applicable laws, including specifically, but not limited to Section 57.105, Florida Statutes. It is the express intent of the parties hereto that in no event will the City be required to pay the Group's attorney's fees and court costs for any action arising out of this Use Agreement. In the event that the Group's waiver under this section is found to be invalid then the Group agrees that the City's liability for the Group's attorney's fees and court costs shall not exceed the sum of \$100.00. In the event that the waiver and limitations contained herein are found to be invalid, or are otherwise not upheld, then the provisions of this Section shall become null and void and each party shall be responsible for its own attorney's fees and costs.

**13.8. WAIVER OF JURY TRIAL.** The parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding or counterclaim based on this Use Agreement, or arising out of, under or in connection with this Use Agreement or any amendment or modification of this Use Agreement, or any other agreement executed by and between the parties in connection with this Use Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This waiver of jury trial provision is a material inducement for the City and the Group entering into the subject transaction.

**13.9. SEVERABILITY.** If any provision of the Use Agreement, or any paragraph, sentence, clause, phrase, or word, or the application thereof, is held invalid, the remainder of the Use Agreement shall be construed as if such invalid part were never included herein and the Use Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**13.10 WAIVER.** No waiver of any provision hereof shall be deemed to have been made unless such waiver is in writing and signed by City and the Group. The failure of either party to insist upon the strict performance of any of the provisions or conditions of this Use Agreement shall not be construed as waiving or relinquishing in the future any such covenants or conditions but the same shall continue and remain in full force and effect.

**SECTION 14. NONDISCRIMINATION.** The Group agrees that there will be no discrimination against any person based upon race, religion, color, sex, ancestry, age, national origin, mental or physical handicap, in the use of the Premises and improvements thereof. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, City shall have the right to terminate this Use Agreement.

**SECTION 15. ENTIRE USE AGREEMENT.** This Use Agreement represents the total Use Agreement between the parties. All other prior Use Agreements between the parties, either verbal or written, are superseded by this Use Agreement and therefore no longer valid.

**SECTION 16. PUBLIC RECORDS.** The parties acknowledge that CITY is a “public agency” and CONSULTANT is a “contractor” as defined in Section 119.0701, Florida Statutes, and that CONSULTANT must comply with public records laws, and specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

IN WITNESS WHEREOF, the parties hereto have individually, through their proper officials, executed this Use Agreement the day and year first herein above written

**CITY OF HAINES CITY, FLORIDA, a  
Municipal Corporation**

\_\_\_\_\_  
Erica Anderson, CMC, City Clerk

\_\_\_\_\_  
Anne Huffman, Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Fred Reilly, City Attorney

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2022, by Anne Huffman on behalf of the City of Haines City, a Florida municipal corporation, who is personally known to me and did not take an oath.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_

\_\_\_\_\_  
Name Typed or Printed



PEARL NOBLES OUTREACH CENTER,  
INC.:  
a not-for-profit corporation authorized to do  
business in the State of Florida

Signed in the presence of:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2022, by  
\_\_\_\_\_ of Pearl Nobles Outreach Center, Inc.,  
a not-for-profit corporation authorized to do business in the State of Florida. He/She is [ ]  
personally known to me or [ ] has produced \_\_\_\_\_ as  
identification and [ ] did/[ ] did not take an oath.

\_\_\_\_\_  
Signature of Person Taking Acknowledgement

\_\_\_\_\_  
Name of Acknowledger Typed, Printed or Stamped

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, if any.