

AGREEMENT FOR USE OF SWIMMING POOL

This agreement made this _____ day of _____, ~~2008~~ 2009, by and between VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY (hereinafter, "VT"), and the TOWN OF CHRISTIANSBURG, VIRGINIA (hereinafter the "Town").

WITNESSETH:

WHEREAS, the Town is constructing an indoor pool complex (hereinafter, the "pool") that will contain facilities conducive to hosting and holding intercollegiate and other training and swimming and diving meets; and

WHEREAS, VT desires to use the Town's pool (*hereinafter, the "pool"*) for training and meets for its intercollegiate swimming and diving teams.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

- Term. This agreement is for a term of twenty-five (25) years beginning ~~April~~ *September* 1, 2009 (the "Commencement Date") and ending ~~March~~ *August* 31, 2034 (the "Termination Date"). In the event the pool is not ready for occupancy by ~~April~~ *September* 1, 2009, the Commencement Date shall be adjusted to be the date VT is notified in writing of the completion of the pool, VT has been provided a copy of the Certificate of Occupancy, and the pool is ready to be utilized for its intended purpose. The Termination Date shall be adjusted to be the date at the end of twenty-five (25) years from the Commencement Date.
- Consideration. VT will pay the Town Two Hundred Fifty Thousand Dollars (\$250,000) per year for twenty (20) years for use of the pool as set forth hereafter with the first payment due ~~April~~ *September* 1, 2009 and on ~~April~~ *September* 1st every year thereafter for the first 20 years of the agreement. The remaining five (5) years of the agreement will be at no charge. If the Commencement Date is a date other than ~~April~~ *September* 1, the first payment shall be due on the Commencement Date and on that same date every year thereafter for the first 20 years of the agreement.
- Training. The Town will make the pool available to VT for team training. ~~In general, the parties agree that this training will occur five-six (5-6) days per week between the hours of 5:00—10:00 a.m. and 2:00—7:00 p.m.~~ By July 1 of every year, VT will advise the Town of its training

schedule for the period September 1 through April 30. *In general, the parties agree that this training will occur Mondays - Fridays between the hours of 5:30 - 8:00 a.m. and 2:30 - 5:30 p.m. and on Saturdays between the hours of 7:00 - 10:00 a.m.* By March 1 of every year, VT will advise the Town of its training schedule for May 1 through August 31 *and the time for training to be negotiated between the parties, not to exceed 30.5 hours per week. A member of VT coaching staff shall be present during all training hours and meets.*

4. Facilities. The parties agree that the competition pool and immediate environs will be decorated in a manner that clearly identifies the pool as the “home” pool for VT training and meets. The parties further recognize and agree that decoration of the pool must take into account that it will also be the “home” pool for Christiansburg High School swim team. The parties agree that the pool *complex* will include men’s and women’s locker rooms designated for exclusive use by the VT men’s and women’s swimming and diving teams and that VT has full discretion in the *branding*, decoration and refurbishing of the contents of the exclusive locker rooms *but shall have no input in the decoration of the public locker rooms. The public locker rooms will be made available to the other teams participating in the meets.* VT has the right to renovate, refurbish, and upgrade any items provided and exclusively used by VT *at VT's expense.*

5. Meets. VT will have exclusive use of the pool for ten (10) weekends for *scheduled dual and tri* meets *per year.* By August 1 of every year, VT will advise the Town of the weekends *and days* on which it will hold meets. *On the days not scheduled for use by VT during the scheduled weekends, the Town will have access to the pool. A separate contract will be negotiated for any ACC Championship or large invitational meets. The Town shall have concession rights at all events.*

~~6. Design. In addition to being a “long course” pool, the pool will include a diving area with a 10-meter platform and sufficient well to safely hold diving competitions. The 10-meter platform will be off limits to the public and will be secured architecturally from public access.~~

~~7.~~ 6. Maintenance and Operation. The Town will be responsible for the maintenance and operation of the pool and facility *complex.* This includes keeping, repairing and maintaining all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature affixed to or serving the pool and facility *complex* in good repair, condition and working order. The Town will also provide electricity, water, sewage

disposal, ~~and~~ gas utilities, ~~and~~ trash disposal, snow and ice removal (from exterior walkways, stairways, and parking areas), security and lawn care services as well as janitorial services and supplies to the ~~pool and facility~~ *complex*. VT will be responsible for maintenance and operation of personal property provided and exclusively used by VT.

~~8.7.~~ Insurance.

a. Town agrees that it will carry comprehensive general liability insurance for pool operations with a limit of liability of no less than \$1 million. VT agrees that it will carry comprehensive general liability insurance for the actions of its representatives of no less than \$1 million.

b. The Town agrees that it will carry insurance against the hazards of fire, windstorm, and other damage to the complex and surrounding physical improvements.

c. VT agrees it will carry insurance for all VT-owned property, both fixtures and moveable personal property and equipment, at its full replacement cost. The Town agrees that it will carry insurance for all Town-owned property, both fixtures and movable personal property and equipment, at its full replacement cost.

~~9.8.~~ Liability.

a. VT is a state educational institution and enjoys the sovereign immunity of the Commonwealth of Virginia. Without waiver of this immunity and to the extent permitted by the Constitution and laws of the Commonwealth of Virginia, VT shall be solely responsible where found liable, to the extent covered by insurance, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with this agreement. Nothing herein shall be deemed an express or implied waiver of the sovereign immunity of the Commonwealth.

b. Under Virginia law, the Town enjoys sovereign immunity. Without waiver of this immunity and to the extent permitted by the Constitution and laws of the Commonwealth of Virginia, the Town shall be solely responsible where found liable, to the extent covered by insurance, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with this agreement.

~~10.9.~~ Default by VT. VT shall be deemed to be in default hereunder if:

a. VT shall fail to pay any payment due hereunder or any other costs and expenses for which VT shall be responsible hereunder within ~~thirty to~~ forty five (30-45) days after notice from the Town specifying the item or items alleged to be due and unpaid, unless VT shall in good faith dispute its liability therefor or the propriety of the amount claimed (other than the yearly payment); or

b. VT shall fail or neglect to keep and perform each and every one of the other covenants, conditions, and agreements herein contained *and required* ~~and~~ on the part of VT to be kept and performed, within thirty (30) days after written notice from the Town specifying the items alleged to be in default, unless (1) the curing of such default will take more than thirty (30) days, in which event VT shall be deemed to be in default only if it does not commence the curing of such default within said thirty (30) day period and carry it, in good faith, to prompt completion; or (2) VT shall, in good faith, dispute the existence of any default or the extent of its liability therefore, in which event VT shall be deemed to be in default only if it fails, within thirty (30) days after the agreement or final adjudication, to commence the curing of such default as is adjudged to exist or which the Town and VT shall agree exists, and to carry it, in good faith, to prompt completion.

If a default shall exist, because of any reason set out herein, VT's rights shall thereupon cease. The Town at its sole option may accelerate the unpaid payments for the unexpired portion of the lease giving credit for any proceeds from agreements with others for use similar to VT.

~~11.10.~~ Default by the Town. The Town shall be deemed to be in default under this agreement if it fails to provide the pool and access thereto under the terms and conditions agreed herein or to provide any other obligations undertaken by Town under this agreement.

In case of Town's default, VT shall have each and all of the following remedies: (1) VT shall have the option of canceling this agreement for any substantial default by Town; (2) Town shall reimburse VT on a prorated basis for nonuse pool time based on the number of days remaining in the calendar year; and (3) Town shall pay for all costs associated with VT scheduling swimming and diving meets at another facility during the calendar year.

~~12.11.~~ Force Majeure. Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of their respective obligations hereunder to the extent that such delay or failure is due solely to circumstances beyond the

reasonable control of the party experiencing such delay or failure, including but not limited to acts of God; unusually severe weather conditions; strikes or other labor difficulties; war; riots; acts of terrorism; requirements, actions or failures to act on the part of the governmental authorities preventing performance; inability despite due diligence to obtain, maintain or renew required licenses; accident; fire; damage or breakdown of machinery or equipment; transportation delays or accidents; and/or any other cause beyond the reasonable control of the party whose performance is affected.

13.12. Entire Agreement. This agreement, together with exhibits attached hereto and made a part hereof, represents the entire understanding between the parties and there are no collateral or oral agreements or understandings, and this agreement shall not be modified, changed, or terminated unless in writing of equal dignity signed by both parties.

14.13. Partial Invalidity. If any provision of this agreement or the application thereof to any person or circumstance shall to any extent be held void, unenforceable, or invalid, then the remainder of this agreement or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable, or invalid shall not be affected thereby, and each provision of this agreement shall be valid and enforced to the fullest extent permitted by law.

15.14. Binding Effect. It is agreed that all the terms and conditions of this agreement are binding upon the parties hereto, their administrators, heirs, successors, and assigns, unless otherwise specified herein. All terms and conditions herein are also covenants.

VIRGINIA POLYTECHNIC INSITITUTE AND
STATE UNIVERSITY

By: _____

~~Charles W. Steger~~
President

M. Dwight Shelton, Jr.

Vice President for Finance and Chief Financial Officer

TOWN OF CHRISTIANSBURG, VIRGINIA

By: _____

Name: _____

Its: _____

R. Lance Terpenny

Town Manager

Approved as to legal form and sufficiency

(((signature here in original document)))

Assistant Attorney General

Special Assistant Attorney General