

**University of New Hampshire Outdoor Swimming Pool Use Agreement.**

Between

**TOWN OF DURHAM**

And

**UNIVERSITY SYSTEM OF NEW HAMPSHIRE**

This agreement is entered into this 1st day of August, 2006 by and between the **Town of Durham** ("Town"), a New Hampshire municipal corporation, and the **University System of New Hampshire** ("USNH"), a State-supported university system established by the State of New Hampshire operating through its component institution, the **University of New Hampshire** ("UNH").

**WHEREAS**, the Town and UNH (the Parties) have agreed to work cooperatively for their collective well-being and future; and,

**WHEREAS**, the Town recognizes that UNH is part of the University System of New Hampshire (USNH), a tax-exempt entity under the laws of the State of New Hampshire, and further is aware of USNH Board of Trustee (BOT) policy governing payments for municipal services; and,

**WHEREAS**, UNH acknowledges that its presence in the community generates additional incremental demand for certain municipal services for which the Town and its taxpayers should be fairly compensated; and,

**WHEREAS**, the Town acknowledges certain economic, educational, recreational, and cultural benefits of having the University as part of the community; and,

**WHEREAS**, UNH acknowledges the importance of being located in an attractive and economically viable community; and,

**WHEREAS**, the Parties recognize the mutual benefits of having an outdoor swimming pool facility (Pool).

**NOW THEREFORE IN CONSIDERATION** of the foregoing preamble and mutual covenants herein contained, the parties hereto agree as follows:

1. The current UNH Master Plan and the Strategic Plan of the UNH Department of Campus Recreation (Recreation) provide for the Pool to remain operational in its current location;
2. UNH agrees to provide the Town with Pool user rates by October 31<sup>st</sup> of each year preceding the next season for use as data for the Town's budgeting considerations;
3. The Town has established a voucher system which subsidizes certain residents of the Town who use the Pool. The Town will pay \$15,000 annually for the right to issue vouchers up to that total value. The face value of the voucher, as determined by the Town, will be the discount UNH grants to the holder when he or she purchases a Pool Pass. UNH maintains the



sole right to establish the price of the Pool Pass but agrees to share its pricing plans and rationale with the Town prior to making any change.

4. The Town agrees to pay UNH the sum due for the vouchers on or before October 15<sup>th</sup> of each agreement year for the immediate past season; it is agreed by both parties that the Town may increase the amount it pays UNH for vouchers on an annual basis and thus increase the number of vouchers available to its residents or the discount value or both at its discretion.

5. In exchange for the privilege of parking UNH crew trailers at Jackson's Landing during the active rowing season, UNH shall grant residents of the Town who hold Pool Passes the privilege of summer parking at no charge in the UNH Woodside Lot until such time as the residents of Woodside Apartments return to attend classes (normally the last week in August).

6. If the annual operating expenses of the pool, when computed on a three-year rolling average basis, materially exceed the annual revenues, UNH will determine its best financial course of action to address the operating deficit and will discuss with the Town options under consideration prior to taking any action. The Town may elect to make an annual financial contribution if the operating expenses exceed revenues. If discussions between the parties do not result in a timely solution that both UNH and the Town deem in their fiscal best interest, it is understood that UNH reserves the right to close the Pool. UNH will inform the Town of a decision to close for fiscal reasons no later than March 1 for the then upcoming season.

7. The Town and UNH acknowledge that UNH is solely responsible for the operation and maintenance of the Pool. However, UNH acknowledges and appreciates that the Town, in an effort to help defray costs, has contributed services to help open the pool each spring and intends to continue that practice whenever feasible.

8. The Town and UNH acknowledge that the State of New Hampshire DES is responsible for the enforcement of all current and future codes and safety requirements for swimming pools throughout the state. In addition to NH DES oversight, and in consideration of the age of the Pool and the nature of its construction, UNH shall have an independent third party conduct a safety review of the Pool on an annual basis beginning at the end of the 2006 pool season. Should New Hampshire DES issue an administrative notice, or the current mechanical and/or operational systems fail, or the safety review reveals any issues which must be addressed thus requiring material capital investment for regulatory or other reasons, UNH will enter into consultative discussions with the Town about the disposition of the Pool. If those discussions do not result in a solution that both UNH and the Town deem affordable, it is understood that UNH reserves the right to close the Pool with as much notice as possible depending upon the circumstances.

9. UNH agrees to inform the Town of any NH.DES updates or requirements.

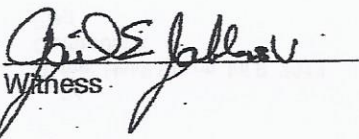
10. This Agreement shall be binding upon and insure to the benefit of the parties and their respective legal representatives and successors.

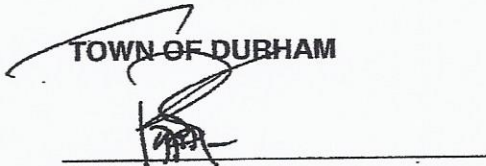
11. This agreement shall commence on or about August 1, 2006 and expire on December 31, 2015 for an effective period of nine years and five months. The Town and University enter into this agreement understanding that changes may occur over the life of the agreement. To the extent possible, the terms and conditions anticipate reasonably foreseeable growth and development. However, in the event that either the University or Town experience changes that materially affect the overall equity or fairness of this agreement, or if new information becomes

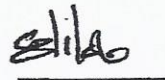


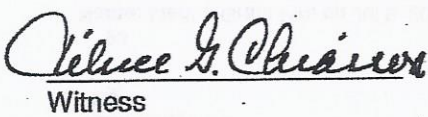
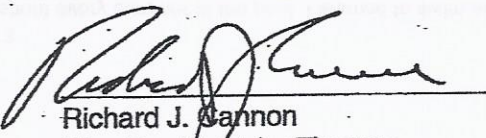
available, the affected party may initiate, and the other party agrees to participate in, discussion of amended terms and conditions to this agreement so as to preserve equity and fairness in the allocation of cost and responsibility. Any modification or amendment shall be made by written mutual agreement and shall become effective only when signed by both parties. Either party may terminate this agreement by giving written notice to the other party one year in advance of when the termination is to take effect, or with less notice if required by order of the State of NH DES.

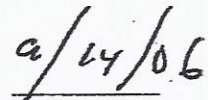
IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year indicated above.

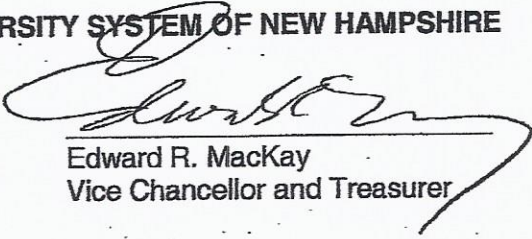
  
Witness

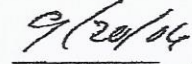
**TOWN OF DURHAM**  
  
Todd I. Selig  
Town Administrator

  
Date

**UNIVERSITY OF NEW HAMPSHIRE**  
  
Witness  
  
Richard J. Cannon  
Vice President for Finance  
and Administration

  
Date

**UNIVERSITY SYSTEM OF NEW HAMPSHIRE**  
  
Edward R. MacKay  
Vice Chancellor and Treasurer

  
Date