

# Intergovernmental Agreement

## Between the Town of Concord and Concord-Carlisle Regional School District

This Agreement is entered into pursuant to Sections 3 and 4A of Chapter 40 of the General Laws of Massachusetts, as amended, and pursuant to the vote under Article 39 of the 1999 Annual Concord Town Meeting. This Agreement is entered into between the Town of Concord ("the Town"), acting by and through its Town Manager, and the Concord-Carlisle Regional School District ("the District"), acting by and through its Regional School Committee, to be referred to hereinafter as "the parties".

In consideration of the mutual promises herein contained, and in recognition of the donor's intent to gift to the Town of Concord a community Swim & Health Facility, it is hereby agreed as follows:

### INTRODUCTION

C.C. Pools, Inc, a not-for-profit entity (the "Donor") has offered to design and construct a health and swim facility for the Town which would be used by the Town and the District. The parties have identified a parcel of land, hereafter referred to as the Premises, owned by the District on which such a facility could be located. The parties have agreed to enter into this Agreement and the District has agreed to allow the Town in compliance with applicable law to permit the Donor to develop such a facility and, if a facility is constructed, to provide for joint use of the facility by the Town and the District.

### SECTION 1 GENERAL PROVISIONS

1. DATE OF AGREEMENT: January 30, 2004
2. DISTRICT'S ADDRESS: School Administration Building  
Merriam Road  
Concord, MA 01742
3. TOWN'S ADDRESS: 22 Monument Square  
Concord, MA 01742
4. PREMISES: Approximately forty-thousand (40,000) square feet of land located on the Concord-Carlisle Regional High School campus on Walden Street, between the existing High School structure and Walden Street, as shown as "Parcel A" on the plan attached hereto as **Exhibit A** and made a part hereof (the "Plan").
5. SITE: The campus of the Concord-Carlisle Regional High School is shown on the plan attached hereto as **Exhibit B** and made a part hereof.
6. TERM OF AGREEMENT: Twenty-five (25) Years.
7. TERM COMMENCEMENT DATE: January 30, 2004.

8. TERMINATION DATE: December January 30, 2029.
9. PERMITTED USE: The Premises are to be used by the Town for operation of a Swim & Health facility, if constructed, or other active recreational use approved by the District, and for uses normal and accessory thereto only and for no other purposes, unless the District otherwise explicitly agrees in writing.
10. PERMITS: The Donor or the Town shall be responsible to obtain and maintain all necessary permits, licenses and approvals (including, without limitation, any special permits, variances or other zoning relief, any subdivision approval and any other building code or land use matters) required to allow the Permitted Use on the Premises and the design and construction of the Swim & Heath Facility (collectively, "Permits").
11. USE OF PREMISES: The Town shall be permitted in compliance with applicable law to grant to the Donor the right to enter the Premises for the purposes of enabling said entity to construct and equip a Swim & Health Facility on the Premises. It is anticipated that the Town, through its Recreation Department or other Town agency, shall operate and maintain the Facility upon its completion. The District shall have rights to use the facility as provided in Exhibit C. Any change in this anticipated arrangement shall be subject to the approval of the Town and the District.
12. CONSTRUCTION ACTIVITY: The Town shall have the right in compliance with applicable law, but no obligation, for itself and the Donor and its contractors, to construct improvements on the Premises, including a Swim & Health facility together with access ways, parking, utilities, and other related improvements (collectively, a "Swim & Health Facility"). If construction is undertaken on the Premises, such construction shall be prosecuted diligently through to completion, in order to minimize, to the extent feasible, disruption to the District's activities on the Site. All construction activity on the Premises shall be in accordance with detailed plans which shall be submitted to the District for review and comment prior to the initiation of any work. Construction activity shall be subject to site coordination and other requirements agreed to by the District, the Town and the Donor. All construction activity shall be in accordance with applicable building and land use codes and regulations. Nothing contained in this Agreement shall be interpreted to require construction of a Swim & Health Facility or other improvements on the Premises.

If the Donor elects not to develop a Swim Facility on the Premises, or if for any reason a Swim & Health Facility is not constructed on the Premises and opened for the use of the Town and the District by January 30, 2009, this Agreement shall become void without recourse to the parties, and neither the Town nor the Donor nor anyone claiming under them shall have any further right to control or possession of the Premises, and the Town and the Donor shall be responsible for restoration of the Premises as nearly as practicable to its condition as of the Date of this Agreement including, if necessary, the demolition and removal of any incomplete portions of the Swimming & Health Facility. Such demolition, removal and restoration shall be the sole obligation of the Town in such event.

## SECTION 2 SPECIAL PROVISIONS

13. ACCESS TO SITE: The Town and Donor shall have access to the site effective January 30, 2004.

14. PREMISES. The Town shall have possession and control of the Premises during the term of this Agreement, subject to the terms and conditions hereof. Wherever in this Agreement the term "Premises" is used, said term encompasses the parcel shown as "Parcel A" on Exhibit A, including any and all existing and future structures, parking facilities, and the like built or to be built thereon, as the same may from time to time be altered, reduced, enlarged or increased by the addition of other lands, together with structures and the like thereon which may have been or may from time to time be so designated by the District and the Town. Any alterations shall be done in a good and workmanlike manner and in compliance with all applicable federal, state and local laws, codes, ordinances, regulations and policies.
15. UTILITIES. The Town shall have the right to maintain, repair, and replace in the Premises, and other premises of the District, utility lines, pipes, conduits and the like, to serve the Premises and/or other premises of the District, provided that any such work affecting other premises of the District shall require prior written approval of the District, which shall not be unreasonably withheld. All such activities shall be performed pursuant to applicable federal, state and local laws, codes, ordinances, regulations and policies.
16. EASEMENTS AND COVENANTS. The Town's rights to control and possession of the Premises are subject to and with the benefit of all covenants, restrictions, easements, encumbrances, rights, and agreements of record to the extent in force and applicable, and subject to zoning, environmental and building laws, ordinances and regulations and such other laws, ordinances and regulations as may from time to time be applicable to the Premises and facilities constructed thereon.
17. APPURTENANT RIGHTS. The Town shall also have the nonexclusive right for the Donor (in compliance with applicable law) and the Town (and all persons claiming under the Town, including the Town's contractors, employees, agents, vendors, guests, and other Town invitees) to use roadways, driveways, curbs, curb cuts, and all other similar facilities and areas of the Site necessary for access to and from the Premises.
18. NO ENCUMBRANCES. The District covenants that, at the time of execution and delivery of this Agreement, the District is the owner in fee simple of the Premises. The District covenants that it will not encumber or lien the title of the Premises or cause or permit said title to be encumbered or liened in any manner whatsoever during the Term of this Agreement.
19. TERM OF AGREEMENT. This Agreement shall remain in effect for the Term of Agreement stated above, commencing on the Term Commencement Date and ending on the Termination Date, unless sooner terminated or extended as herein set forth. The parties intend to extend the Term, except as hereafter provided, subject to compliance with applicable law. Upon completion of the initial Term, provided that the Town is still in possession of the Premises and the Town is not in default of the terms of the Agreement, the Term hereof shall be extended for an additional period of twenty-five (25) years, unless either party gives written notice to the other, in accordance with the notice requirements described below, that it does not intend to extend the Term. If the District determines that it has a pressing need to use the Premises for expansion of its campus facilities and therefore is unable to extend the Term, the District shall give written notice to the Town, at least three (3) years prior to the expiration of the initial Term or renewal Term then in effect, of such determination and that the District does not

intend to extend. The need must be demonstrable and over-riding from an educational standpoint, in order to warrant the discontinuance of a functioning Swim & Health facility. Under such circumstances, the District shall be responsible for the removal of the Swim & Health facility and the restoration of the site.

The Town shall have the right at any time to terminate this Agreement or to suspend operation of the Swim & Health Facility or a portion thereof, or to close the Swim & Health Facility or a portion thereof, if the Town determines that continued operation of the Swim & Health Facility or portion thereof is not financially viable or is otherwise impracticable. The Town shall give the District at least thirty (30) days' written notice of any suspension of operations or closure (except in case of accident, equipment failure or other emergency), and at least one (1) year written notice of termination or non-renewal of this Agreement. If the Town closes the Swim & Health Facility for a period exceeding one (1) year, the District shall have the right to terminate this Agreement by giving written notice of termination to the Town, provided such notice is given within six (6) months after expiration of such one-year period, and in such event this Agreement shall terminate as of the date sixty (60) days after the date of the Town's receipt of such notice, unless the Town re-opens the Swim & Health Facility within such sixty-day period. If this Agreement is terminated for any of the reasons provided in this paragraph, the Town shall surrender possession of the Premises to the District as provided in Section 27 below, and the Town shall be responsible for the removal of the facility and restoration of the Premises as closely as practicable to its original condition.

20. ACCEPTANCE OF PREMISES. The Town agrees that, except as set forth herein, the Premises are being delivered "as-is" and the District is not required to do anything to prepare the land for the Town's occupancy or contribute funds toward construction of any improvements, that the District shall not be responsible for any costs associated with development of the Premises, and that no representations or warranties, express or implied, respecting the condition of the Premises and no promises to alter, repair or improve the Premises either before or after the execution hereof have been made by the District or its agents to the Town, unless the same are contained herein and made a part hereof. The parties will work together in good faith to resolve any issues that arise in connection with development of the Premises. If the Donor does not comply with any obligation placed upon the Donor herein then, unless otherwise agreed by the parties, the Town shall be responsible to comply with such obligation.
21. REAL PROPERTY TAXES. The Town shall not be subject to any real property taxes with respect to the Premises to the maximum extent permitted by law.
22. UTILITIES. If the Donor constructs a Swim & Health Facility, the Donor will install electricity, gas, water and sewer services to the Premises. The District agrees to provide access to complete the work required to furnish such services. The Town shall pay promptly and in a timely manner for all utilities furnished to the Premises beginning on the Term Commencement Date, including, but not limited to, gas, water, electricity, sewer charges, telephone, transmission of intelligence and the like, including all utilities necessary for heating and air-conditioning the Premises if applicable.
23. ADDITIONAL COVENANTS. The Town further agrees to conform to the following provisions during the entire Term of this Agreement:

- (a) All trash, refuse, and the like, shall be kept in suitable covered containers, within the facilities on the Premises or such places that are designated by the District outside the Premises. The Town shall be responsible for its proportionate share of trash and refuse removal services, if such services are provided by the District, or it shall contract at its own expense for such removal services. The Town shall be permitted by the District to use a dumpster or similar container and the Town agrees to keep the area and vicinity where the dumpster is located in appropriately clean condition. If the Town uses the District's dumpster, the District shall be responsible for keeping the area and vicinity where the dumpster in appropriately clean condition; and
- (b) The Town shall be responsible for internal and external security within the Premises including but not limited to reasonable safety measures for the Town's guests and invitees. The District shall be responsible for safety and security in connection with any use of the facilities on the Premises, including the Swim & Health Facility, parking areas and any other facilities, by the District or its students, employees or other guests and invitees. The District intends, by this Agreement, to grant full custody and control of the Premises to the Town, subject only to the terms of this Agreement.

24. TRANSFER OF RIGHTS. Notwithstanding any other provisions of this Agreement, the Town covenants and agrees that it will not grant rights to possession or control of the Premises to any third party, except that the Town may in compliance with applicable law grant rights to the Donor and its contractors to enter on the Premises to develop and construct a Swim & Health Facility and, if a Swim & Health Facility is constructed, the Town may in compliance with applicable law (1) sell memberships and (2) otherwise grant rights to use the facility to its guests and invitees. Any other transfer of rights to possession or control of the Premises shall require the prior written consent of the District, which may be withheld in its sole discretion; provided that the District shall not unreasonably withhold its consent to a transfer by the Town to an appropriate non-profit entity (with experience in operating similar facilities) of the right and obligation to manage and operate the Swim & Health Facility. In the event the Town transfers its rights to operate the Swim & Health facility, the District shall have the right to require indemnification protection from the third-party operator, and the District's right to use the facility shall in accordance with the terms of this agreement shall be binding on any such third-party operator.

25. MAINTENANCE AND REPAIR

- (a.) The Town agrees that, from and after the date that possession of the Premises is delivered to the Town, and until the Termination Date or sooner termination of the Term, and as of the time of surrender of possession to the District, the Town will maintain in good repair and order all buildings, facilities, structures and landscaping, and all systems (mechanical, electrical and HVAC), utilities and all other improvements to the Premises. The District shall have no obligation to maintain, repair, or replace any part of the Premises or improvements thereto.

(b.) Section 25.2 The Town shall be responsible for the removal of snow and ice from the walkways, driveways and parking areas of the Premises unless the

parties agree to an arrangement whereby this work is performed by the District and a fair and reasonable fee is assessed to the Town.

- (c) The Town further agrees that the Premises shall be maintained by the Town at its cost in accordance with all applicable federal, state and local laws, codes and ordinances, including without limitation laws relating to the use, storage and disposal of hazardous materials, and in accordance with all directions, rules, and regulations of the Health Officer, Fire Marshall, Building Inspector, and other proper officers of the governmental agencies having jurisdiction thereover.

26. ALTERATIONS AND IMPROVEMENTS . The Town may make alterations and improvements and/or additions to the Premises without first obtaining, in each instance, the written consent of the District, except that any change in the Premises which would require approval of the Zoning Board of Appeals or Planning Board shall require the prior written consent of the District. All alterations shall be done in a good and workmanlike manner, and in compliance with all applicable federal, state and local laws, ordinances, regulations and policies. Any and all alterations, additions, improvements and fixtures made or installed by or on behalf of the Town on the Premises shall remain the property of the Town for the Term of this Agreement. Any equipment, fixtures, furniture and furnishings may be removed by the Town at any time.

27. SURRENDER. Upon the expiration or sooner termination of this Agreement as provided for in Section 19 above, the Town shall surrender to the District the Premises in good order and repair and in good operating condition, except for ordinary wear and tear; provided, however, that at the request of the District the Town shall, within two years unless otherwise mutually agreed, demolish and remove the Swim & Health Facility and restore the Premises at the end of the term of this Agreement.

28. PUBLIC LIABILITY INSURANCE

- (a) The Town shall keep in force from and after the Date of this Agreement set forth in Section 1 above, throughout the Term of this Agreement, and any extensions thereof, (a) a Commercial General Liability insurance policy or policies protecting the Town and the District against liability to the public or to any invitee of the Town or the District arising out of occurrences on or about the Premises, with limits (including excess or umbrella policies) not less than \$5,000,000.00 per occurrence and not less than \$5,000,000.00 in the annual aggregate; (b) insurance protecting against liability under Worker's Compensation Laws with limits at least as required by statute; (c) "All Risk" property insurance covering all building(s) constructed on the Premises, under the blanket property policy maintained by the Town covering the Town and the District.
- (b) The Town and the District hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage, All Risks or other insurance now or hereafter existing for the benefit of the respective party but only to the extent of the net insurance proceeds payable under such policies (i.e., this waiver shall not apply to

losses within the policy deductible or in excess of policy limits). Each party shall obtain any special endorsements required by their insurer to evidence compliance with the aforementioned waiver.

(c) The Town agrees to use and occupy the Premises, as it is herein given the right to use, at its own risk; and the District shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of the Town except for such loss or damage arising out of the negligence or willful misconduct of the District and its students, employees, agents and contractors. The provisions of this Section shall apply during the whole of the term hereof, including all times commencing with the Term Commencement Date.

(d) The Town shall require any and all contractors performing work at or on the Premises or the Site to furnish to the District prior to the commencement of any work by any of said contractors, evidence of liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00), with respect to bodily injury and property damage liability insurance.

29. FIRE AND CASUALTY

In case during the Term hereof, the Premises or any facility thereon shall be partially or substantially damaged by fire or other casualty, neither the Town nor the District shall have the obligation to restore the damaged facilities. If, however, the Town elects not to restore, it shall so notify the District in writing within one hundred eighty days (180) of the damage, and raze the improvements and remove all debris at its expense within one year, or other mutually agreed time frame, giving notice that it will not restore, after which time this Agreement shall terminate and be of no further force or effect. If the Town elects to repair or restore the damaged facilities at its sole cost and expense, this Agreement shall remain in full force and effect.

30. EMINENT DOMAIN

EMINENT DOMAIN. If the Premises, or any portion thereof, as determined by the Town, shall be taken by condemnation or right of eminent domain, the Town shall be entitled to terminate this Agreement, provided that such notice is given not later than thirty (30) days after the Town shall have received written notice that a taking has occurred. With respect to the amount of any award, whether pro tanto or final for any taking, the Town hereby waives all rights in any such awards, except awards to the Town for the value of the Town's rights under this Agreement, the unamortized value to the Town of the Town's fixtures and equipment, and the Town's improvements (including site work), and any separate awards which may be made for the Town's relocation expenses, business interruption and the like.

30. DEFAULT AND REMEDIES: If either party should fail to comply with or breach any of the terms of this Agreement, the parties shall attempt to resolve the issue informally for a period of sixty (60) days. If the issue cannot be resolved informally, the non-breaching party may give notice of default to the breaching party, and if the breaching party does not cure such failure or breach within 60 days or such longer period as may be reasonably necessary if such default cannot reasonably be cured within 60 days after such written notice of default from the non-breaching party, and if the matter involves a

material breach of this Agreement, then the non-breaching party may demand that the matter be referred to an independent arbitrator for resolution. The shall mutually agree to the selection of the arbitrator, shall equally share the cost of the arbitrator, and shall abide by the arbitrator's final decision. In the event either party fails to abide by the arbitrator's decision with 60 days of issuance, the non-breaching party may declare the breaching party in default under this Agreement, terminate this Agreement, or otherwise exercise such rights and remedies as may be available at law and in equity arising from such default. In no event shall either party be liable to the other for indirect or damages of any kind.

31. **TERMINATION RIGHTS.** If the Donor is unable to obtain the Permits, the Town shall have the right to terminate this Agreement by giving the District written notice of said termination on or before December 31, 2008. The District shall reasonably cooperate with the Donor and the Town in the Town's and the Donor's efforts to obtain the Permits at the Donor's expense which shall not include the hourly cost of the District's staff cooperation.

32. **MISCELLANEOUS PROVISIONS**

- (a) **Waiver.** Failure on the part of either party to complain of any action or non-action on the part of the other, no matter how long or often the same may continue, shall not be deemed to be a waiver of any rights hereunder. Further, no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof; and a waiver at any time by either party of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the District to or of any action by the Town requiring the District's consent or approval shall not be deemed to waive or render unnecessary the District's consent or approval to or of any subsequent similar act by the Town.
- (b) **Mechanic's Liens.** The Town agrees to require the Donor to pay promptly for any work done (or material or service furnished) by or on behalf of the Donor in or about the Premises or the Site, and the Town shall not permit or suffer any lien to attach to the Premises, the Site, or any other premises owned by the District on account of work performed by or on behalf of the Town. The Town agrees to cause the Donor to immediately discharge (either by payment or by filing of the necessary bond, or otherwise), any mechanic's, materialmen's, or other lien against the Premises or the Site, the District and/or the District's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for the Donor in, upon or about the Premises or the Site.
- (c) **Invalidity of Particular Provisions.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

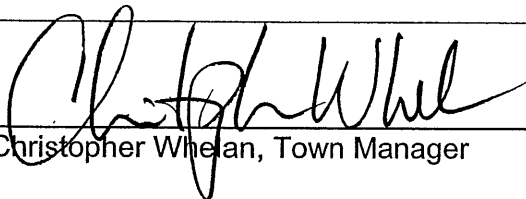


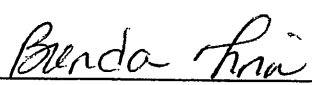
- (d) Governing Law. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the Commonwealth of Massachusetts, as the same may from time to time exist.
- (e) Paragraph Headings. The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

WITNESS the execution hereof, under seal, in any number of counterpart copies, each of which counterpart copies shall be deemed to be an original for all purposes as of the day and year first above written.

**TOWN OF CONCORD, MASSACHUSETTS**

**CONCORD - CARLISLE REGIONAL  
SCHOOL DISTRICT**

By:   
Christopher Whealan, Town Manager

By:   
Brenda Finn, Superintendent of Schools

## EXHIBIT C

FACILITY OPERATION AGREEMENT

The Concord-Carlisle Regional School District and the Town of Concord have agreed on the following terms and conditions with respect to the operation and management of the Swim Facility.

1. Financial Obligations. In consideration of the Concord-Carlisle Regional School District entering into an inter-municipal use agreement with the Town of Concord permitting the construction and Town operation of an indoor health and swim facility, Concord-Carlisle High School will use the swim complex as provided below without incurring a cost obligation to the Town. In recognition of the Town's financial obligations to operate the complex on a self-supporting basis, the Concord-Carlisle Regional School District recognizes the right of the Town to revenues from all activities operated within the facility, except that the District or supporting groups may request permission to conduct fund-raising activities on the Premises or hold fund-raising events.
2. Scheduling. The Town will retain responsibility for all scheduling of the facility. The appropriate Town and School officials will work cooperatively to ensure that each party's needs are met. The use schedule will accommodate, without cost to the District, Concord-Carlisle High School swim team practices and meets for the fall and winter competitive seasons and up to three High School physical education programs or more should the Recreation Director deem it feasible that occur during the school day, and will accommodate the need of the Town to generate revenue sufficient to cover operating costs. It is anticipated that it will be necessary for the Recreation Director or his designee to reserve a portion of the facilities for use by dues-paying members and the public, except during competitive swim meets.
3. Staffing. The District will be responsible for oversight of all Concord-Carlisle High School activities. The District will provide sufficient staff to oversee the activities of students, opposing teams, staff, visitors, and spectators.. The Town shall be responsible for the general public and any members using the pool for non-school activities.
4. Overflow Parking. The parties recognize that swim meets or other events at the Swim Facility or at the High School may require parking in excess of the parking available on the Premises or the other portions of the Site, respectively, and the parties agree to develop equitable, reciprocal arrangements for handling such overflow parking.