

PETERSBURG COMMUNITY CENTER  
USE AGREEMENT

This Agreement is effective upon the date of the last signature below, by and between the Petersburg Borough, Box 329 Petersburg, Alaska 99833 ("the Borough") and Viking Swim Club, Inc., Box 1257, Petersburg, Alaska 99833 ("VSC"). The Borough and VSC are collectively referred to herein as "the parties."

The Borough owns and operates a Community Center located in Petersburg, Alaska (the "Center"), which has an aquatic center with two pools. VSC is an Alaska nonprofit corporation that provides a program of swim team instruction and competition for school age youth, supervised by certified coaches and lifeguards. VSC wishes to utilize the Borough pool facilities during the use times set out below.

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**1. Use of Pool and Other Facilities.** The Borough agrees to make the Leisure Pool, the Lap Pool, and the Aquatic Center lobby area and locker rooms (the "pool facilities") available to VSC on the following dates and hours. The Borough makes no warranty that the facilities are appropriate or fit for any particular purpose or use. VSC understands that it does not have exclusive use of the locker rooms and lobby area when the Center is open to other patrons. VSC also understands that it shares the pool facilities with the Petersburg High School swim team during that team's season.

A. Pool Facilities:

(i) During the months of September through May, inclusive: Monday through Thursday from 3:00 p.m. through 6:00 p.m. and Friday from 12:00 p.m. through 4:00 p.m., except for specified pool closures.

The Borough will consult with VSC prior to making adjustments to this schedule, permitted in the event of adjustments to the Petersburg Schools annual swim schedules, and for overriding scheduling demands for this multi-use facility.

(ii) Borough Holidays when the Center is otherwise closed, except for Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day. Holiday usage is subject to cancellation by the Borough upon two weeks' notice.

(iii) The dates and hours of scheduled invitational swim meets and championship tournaments ("swim meets"). VSC shall provide to the Borough the maximum notice possible of such events; if less than thirty (30) days notice is provided, the Borough cannot guarantee pool availability.

(iv) Other dates and hours, at the discretion of the Borough, for instructional clinics, time trials, and VSC fundraisers (including swim-a-thons and November Rain).

B. Other Facilities:

(v) VSC is also permitted shared use of certain office space, under the terms and conditions set out in paragraph 6(F) below, use of the Center's Activity Room for the VSC annual Mayfest Beer Bits Sales, and shared use of the Aquatic Center lobby for VSC membership sign-ups and swim meet sign-ups.

**2. Term/Renewal Options.**

A. Initial Term. This Agreement shall commence on the effective date and terminate on June 30, 2022, unless renewed under paragraph B below.

B. Renewal Options. VSC shall have the option to extend the term of this Agreement for four (4) renewal terms of one (1) year each (the "renewal options"). The renewal options shall be subject to the following conditions and may be exercised as follows: No later than thirty (30) days immediately preceding the expiration of the then current term, VSC shall give written notice, by US Mail or by email, to the Borough Parks and Recreation Director of its intent to exercise its renewal option for the next renewal term. VSC shall have no right to exercise an option if it is in breach or otherwise in default under this Agreement. If exercised, all terms and conditions of this Agreement shall continue in full force and effect, except that the use fee set out in paragraph 3(A)(i) shall increase by \$25.00 per month over the fee for the immediately preceding term. If VSC fails to timely exercise a renewal option, that renewal option, and all remaining renewal options, shall be void.

C. Center Closure. The Borough reserves the right, at its discretion, to close the Center, or any space within the Center, including the Aquatic Center, in the case of emergency or other contingency (including but not limited to security, maintenance, or health and safety issues). If a temporary closure occurs lasting seven (7) calendar days or less, such that VSC is unable to utilize the facilities on or at a date or time specified for VSC, no refund shall be issued. If the temporary closure lasts in excess of seven (7) calendar day, through no fault of VSC, the Borough shall issue to VSC a pro rata fee refund of any prepaid fees for the period of closure exceeding seven (7) days. If the Center or the Aquatic Center is anticipated to be closed for the remainder of VSC's then current rental term, causing VSC's usage to cease, through no fault of VSC, this Agreement shall terminate and the parties thereafter shall have no further liability or obligation to each other, except for a pro rata fee refund to VSC of any prepaid use fees.

**3. Use and Additional Fees.** In consideration for the use provided, VSC agrees to pay the Borough the following fees:

A. Use Fees:

- (i) \$1,000 per month for the months of September through May, inclusive, due on or before the 5th day of the following month; plus
- (ii) \$150 for each swim meet; fees due for all meets held during a calendar month shall be paid in full on or before the 5th day of the following calendar month.

B. Additional Fees:

- (iii) Practice hours, approved at the discretion of the Borough, outside of the dates and times set out in paragraphs 1(A)(i) and (ii) above: \$50 per hour;
- (iv) Mobilization fee for relocating equipment on the mezzanine and activating the bleachers: \$100;
- (v) Janitorial/Cleaning fee: \$40 per hour, in one-hour increments; and
- (vi) Extra Facility staffing charges: \$60 per hour, in one-hour increments; and
- (vii) Extra Lifeguard staffing charges: \$25 per hour, in one-hour increments. Limit of 20 swimmers in pool per lifeguard.

The Borough shall invoice VSC monthly, for that month's Use Fee under paragraph A(i), and for any Additional Fees under paragraph B or Use Fees under paragraph A(ii) incurred during the previous month. Payment shall be due in full on or before the 5th day of the following calendar month. Failure on the Borough's part to provide an invoice does not affect VSC's liability for timely payment of the Fees due.

**4. Care of Facilities.**

A. Compliance with all laws and regulations. VSC shall at all times use the pool and other facilities made available hereunder in accordance with all applicable federal, state and borough laws, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper governmental official. VSC shall not permit use of the facilities under its program by persons in excess of the number permitted by applicable fire or safety codes. VSC certifies that it possesses, or that others possess on its behalf, all permits, licenses and approvals necessary to perform the activities it conducts in the Center.

B. Compliance with Center Policies. VSC shall comply with all rules and policies established by the Community Center, as amended from time to time, and shall ensure compliance by VSC employees, representatives, members, participants, guests, and invitees. No alcoholic beverages are permitted in the Community Center. VSC shall not bring into the Center any hazardous or flammable materials.

C. No Trash. VSC shall ensure that no trash or other litter is present in the facilities used, and that the facilities are neat and clean at the end of each use. If additional cleaning is required to be performed by facility staff in order to return the facilities to a neat and clean condition, VSC will be charged an additional cleaning fee, in the amount in accordance with paragraph 3(B)(v). If VSC finds trash or litter present in, or damage to, the facilities upon commencement of a use, VSC shall immediately notify the front desk staff of the Center prior to commencement of usage. If no such notification is made, it will be presumed that the condition of the facilities was satisfactory. VSC shall not engage in or permit any activity in the facilities that will unreasonably disturb the use of other patrons of the Center.

D. No Waste or Damage. VSC will permit no waste or damage to the facilities, and any waste or damage to the facilities caused by VSC or VSC's employees, representatives, members, participants, guests, or invitees shall be repaired at the sole expense of VSC.

## 5. Equipment and Property.

The following items belonging to the Borough are available for VSC's use in the pool facilities:

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VSC may store onsite property belonging to VSC in the following locations, as designated by the Borough: in totes on pool deck; in the shared office space pursuant to the provisions of paragraph 6(F), and in the shared pool deck and mezzanine storage rooms. The Borough reserves the right to modify or eliminate storage locations. Loss or damage to any VSC property shall be at the sole risk of VSC. The Borough does not provide any insurance coverage for VSC property, and the Borough shall not be liable for any loss of or damage to VSC property, regardless of the cause or causes of such loss or damage, including any defects in the facilities or any negligence of the Borough or its officials or employees.

All equipment or other items used by VSC during VSC's usage must be properly stored or removed from the pool facilities at the end of each use, unless otherwise specifically authorized by the Borough Parks and Recreation Director.

## 6. Responsibilities of VSC.

A. Personnel. VSC shall employ personnel currently certified as lifeguards by the American Red Cross, or other generally accepted certificating agency, to organize, supervise and direct VSC services at the pool facilities. VSC must routinely have a minimum of two certified persons on site at all times when VSC participants are present in the pool facilities. On rare occasions, it may not be possible to have two certified persons on deck (e.g., in the case of illness or swim meet travel) and VSC is solely responsible for making the determination as to whether to hold practice. VSC recognizes that its personnel are solely responsible for supervision of VSC participants while such participants are in the pool facilities, including in all locker rooms,

restrooms, and on the pool deck. Such personnel shall be under the direct supervision of the VSC Board of Directors

B. Participants. VSC will provide to the Borough, and update as needed, a complete listing of VSC participants. The listing shall include the name of each participant and the name and contact number of each participant's parent(s) or legal guardian. Each participant must sign an Acknowledgment and Release form prior to commencing participation in the VSC program at the Center; the form shall be signed by the parent(s) or legal guardian of any participant under eighteen (18) years of age.

C. Supervision of Participants.

(i) VSC is solely responsible for VSC participants during all use times. All VSC participants will be under the direct supervision of either a parent/legal guardian or VSC personnel while in the Aquatic Center. No VSC participant is allowed in the pool facilities, including the pool deck, or in the locker rooms until the required supervision is present. VSC should instruct participants that if they arrive prior to a use time, that they are required to wait in the Aquatic Center lobby area until they are under direct supervision. VSC participants who are Community Center members are permitted to wait in and use other areas of the Center while they are waiting to be escorted to the pool facilities, in accordance with Center policies.

(ii) If VSC participants are witnessed acting in an unsafe manner, or violating Center rules, on-site VSC personnel will be notified. If the unsafe or violative activities continue, it is the parties' intent to work together to address those activities. Borough staff will follow Center conduct policies in regard to those activities. If this does not permanently rectify the issue, the Borough reserves the right, at its discretion, to prohibit an offending participant's presence at the Center, or to impose additional staffing charges necessary to monitor the conduct of VSC participants, in accordance with paragraph 3(B)(vi).

(iii) VSC shall ensure that all participants leave the Center at the end of each use, excepting a participant's use of the Center for personal use in accordance with the facility's membership rules.

(iv) VSC is solely responsible for the collection of any VSC fees from participants, guests or invitees.

D. Building security. VSC is solely responsible for building security at the Center while using the facilities at times when the Center it is not otherwise open for use by its members. During such times, VSC shall ensure that all exterior doors remain locked at all times, so that non-participants cannot access the Center. Immediately prior to their departure from the Center at the end of such use, VSC personnel shall perform an inspection of the unlocked accessible areas of the Center to ensure that no persons remain. Should VSC lose a key provided to it by the Borough under this Agreement, VSC shall pay a reasonable replacement fee.

E. Swim Meets: VSC is solely responsible for providing all needed personnel for swim meets, including certified lifeguards. While borough staff will open all needed restrooms, it is the responsibility of VSC to provide needed surface cleaning upon completion of the event (see attached description of required cleaning process) and any necessary restocking during and at the conclusion of the event. A borough staff member will be appointed for each swim meet to answer questions and help resolve issues. If a swim meet occurs at a date or time when the Center is not otherwise open for use by its members, additional staffing charges will be assessed for opening the restrooms and having a staff member available.

F. Office Space. The Center has an Aquatic Center office, located behind the Center front desk, adjacent to the pool deck. VSC's use of a portion of this office is upon the following terms and conditions: The office may be used only during swim meets, for VSC Board of Directors meetings, and for storage. Only coaches, board members, and other volunteers are permitted in the office. The space used by VSC must remain clean and orderly. Borough Computers are for Borough use only, and may not be used by VSC. The Borough Parks and Recreation Administrative Office is not available for VSC use. VSC may negotiate directly with the Petersburg School District for the use of the "Swim Coach Office", located on the second floor of the Aquatic Center.

G. Compliance with Applicable Policies. VSC is solely responsible for ensuring that its activities at the Center, and use of the pool facilities by its participants and personnel, are in compliance with all applicable USA Swimming policies, including but not limited to MAAPP, as well as the applicable policies of any other governing agency or entity.

## **7. Insurance and Indemnification.**

A. Insurance. During the term of this Agreement, VSC, at its sole expense, agrees to obtain and maintain (i) commercial general liability insurance covering bodily injury, death and property damage for the activities to be conducted under or pursuant to this Agreement, in an amount as required or recommended by the U.S. Swimming Association, but in no event less than of \$1,000,000 per person, \$2,000,000 in the aggregate, and (ii) workers' compensation insurance as required under Alaska law. VSC liability policies shall be written as primary policies; they shall not be contributing with, or in excess of, any insurance coverage that the Borough may otherwise carry. The required insurance shall be placed with an insurance carrier or carriers satisfactory to the Borough. All liability policies shall name the Borough as an additional insured, and any workers' compensation insurer providing coverage to VSC shall waive any rights of subrogation that the company may have against the Borough. VSC shall furnish the Borough certificate(s) indicating that the required insurance coverage is in full force and effect, and that coverage may not be canceled except upon thirty (30) days prior written notice of the proposed cancellation to the Borough.

B. Indemnification. In addition to its obligation to insure under paragraph A above, VSC agrees to indemnify, defend and hold the Borough harmless from and against any and all claims, charges, demands, legal actions, losses, liabilities, damages, costs, and expenses (including

but not limited to attorney fees incurred in investigating or defending same), of whatever kind and nature, against or incurred by the Borough arising directly or indirectly out of or resulting from, or in any way connected with or related to, VSC's use of or activities in or at the Community Center, including the Aquatic Center, any act or omission by VSC or VSC's employees or representatives with respect to the facilities, or otherwise relating or pursuant to this Agreement.

C. **Report of Injury or Damage.** VSC shall immediately report to the Borough's Facilities Supervisor any injuries sustained by any VSC personnel, participant, guest, or invitee, and any damage to the facilities, occurring during any use time.

**8. Assignment.** VSC may not assign this Agreement, in whole or in part, without the prior written consent of the Borough.

**9. Notices.** All notices, demands and requests to be given by either party to the other shall be in writing, delivered in person or sent by certified mail, postage prepaid, to the attention of and to the address as specified below. Either party may change its notice address or representative by providing written notification hereunder.

**10. Signs.** Except for the VSC bulletin board, located in the main entrance of the Center, any sign to be placed temporarily upon the facilities by VSC requires the prior written approval of the Borough.

**11. Termination and Default.**

A. **Mutual Consent.** This Agreement may be terminated at any time by mutual consent of the parties.

B. **Upon Default.** If any fee due is not paid within forty-five (45) days of the due date, or if VSC shall continue for a period of forty-five (45) days in violation of any term, condition or requirement of this Agreement after notice of such violation shall have been given, VSC shall be considered in default and in such event, the Borough may declare the Agreement terminated. The Borough may remove from the pool facilities all property belonging to VSC, and store the same at the expense and risk of VSC. The Borough may immediately suspend VSC's usage under the Agreement if the breach consists of VSC's failure to obtain/maintain the insurance requirements in accordance with paragraph 7(A), or if it reasonably determines that safety or health hazards may be present.

**12. Costs and Attorney Fees.** If, by reason of any default on the part of VSC, it becomes necessary for the Borough to employ an attorney or in case the Borough is required to bring suit to recover any fees due or for breach of any provision of this Agreement, the Borough shall be entitled to recover its full reasonable attorney fees and costs from VSC.

**13. Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Borough and VSC. Nothing contained herein or in the parties' course of dealings shall be construed

as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including, without limitation, any employee or representative of VSC or any VSC participant.

**14. Non-Waiver of Breach.** The failure of the Borough to insist upon strict performance of one or more of the terms or provisions of this Agreement shall not be construed to be a waiver or relinquishment of any right to enforce any such term or provision, but such term or provision shall continue and remain in full force and effect.

**15. Venue/Governing Law.** The parties stipulate that the Superior Court for the State of Alaska has jurisdiction over the parties and over the subject matter of any dispute that may arise between them relating to this Agreement. Venue for any action arising under or related to this Agreement shall be in the First Judicial District at Petersburg, Alaska. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

**16. Authorization.** The persons executing this Agreement represent and warrant that each is authorized to execute and enter into this Agreement on behalf of the party for whom s/he has signed and that this Agreement is binding on such party without further action or approval.

**17. Counterparts.** This Agreement may be executed in counterparts, both of which together constitute for all purposes one Agreement, binding on the parties.

**18. No Partnership or Joint Venture.** Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between the parties. VSC understands and agrees that this Agreement does not make it an agent or representative of the Borough for any purpose whatsoever. VSC has no right or authority, by this Agreement or otherwise, to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Borough, or to bind the Borough in any manner whatsoever.

**19. Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding use of the Center facilities by VSC and supersedes any prior agreement, understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only in a writing signed by both parties.

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Borough of Petersburg  
Parks and Recreation Department  
Stephen Giesbrecht, Borough Manager  
P.O. Box 329  
Petersburg, AK 99833

Viking Swim Club, Inc.  
Ben Hinde, Board President  
P.O. Box 1257  
Petersburg, AK 99833

\_\_\_\_\_  
Stephen Giesbrecht  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Ben Hinde  
Dated: \_\_\_\_\_

*[Notary Blocks on following page]*

