

LICENSE AGREEMENT

This License Agreement (the "Agreement") dated the ____ day of _____, 2023, by and between the **City of Hampton, Virginia**, a municipal corporation of the Commonwealth of Virginia (the "City" as "Licensor"), and **Virginia Polytechnic Institute and State University**, a state agency and an educational institution of the Commonwealth of Virginia (the "University" as "Licensee"), each of which is referred to herein individually as a "Party" and collectively as the "Parties."

1. LICENSE OF PREMISES:

Licensor does hereby grant unto Licensee a non-exclusive license to use approximately 2.5 acres located at Bluebird Gap Farm, 60 Pine Chapel Road, Hampton, Virginia 23666, as identified in the attached Exhibit A, also referred to as the "Licensed Area," for the purposes of gardening, horticulture, maintenance, training, educational programming, and other activities conducted in accordance with the University's Extension Master Gardener Program. Licensee accepts possession to the Licensed Area in its AS-IS condition and Licensor shall have no duty to Licensee to make any improvements to the Licensed Area.

2. AUTHORITY:

Licensor covenants that Licensee is seized of good and sufficient title and interest to the Licensed Area and has full authority to enter into this License Agreement.

3. TERM:

The term of this Agreement shall be for a period of five (5) years, commencing on _____, 2023, and ending on _____, 2028 ("Term"). Any further use of the Licensed Area after the Term shall require a new agreement and shall be subject to City Council approval and §§ 15.2-1800 and 15.2-2100 of the Code of Virginia of 1950, as amended.

4. LICENSE FEE:

The Parties agree there is no fee associated with the Licensee's use of the Licensed Area.

5. PERMITTED USE:

The Licensed Area shall be used by the Licensee solely for the purposes of providing educational programming for the public on horticulture topics in accordance with the goals of the Virginia Cooperative Extension, Hampton City Office, which includes the maintenance of an educational garden for the public, demonstrating native and well-adapted trees, shrubs, and other plants to encourage better horticultural practices in the City of Hampton.

6. RIGHTS OF LICENSOR AND KEYS:

Licensor may enter the Licensed Area at any time without notice to the Licensee for the purpose of inspections and repairs, as well as in relation to any and all actions generally associated with the operation of Bluebird Gap Farm. Licensee shall provide Licensor with a copy of any keys needed to access any structures within the Licensed Area, including the storage shed, identified with two pins on Exhibit A.

Licensor shall have the right to prohibit or otherwise limit access to the Licensed Area, without notice, in situations that threaten the public health, safety, and welfare, which shall be determined at the sole discretion of the Licensor. Such situations include, but are not limited to, hurricanes, tropical storms, and other severe weather events, unruly or violent crowds, crowds in excess of property capacity, downed or dangerous trees, and escaped animals. Licensor shall not be liable for any costs or expenses incurred by Licensee as a result of any such closure or limited access.

7. LICENSEE'S RIGHTS AND ACCESS TO LICENSED AREA:

Licensee shall have access to the Licensed Area at any time Bluebird Gap Farm is open to the general public. Should Licensee desire to use the Licensed Area outside of Bluebird Gap Farm's general operating hours of 9am through 6pm during daylight saving time and 9am through 5pm during all other times, Sunday through Saturday with the exception of times or dates that the City may close Bluebird Gap Farm to the public, such as for event set-up, safety reasons, or holidays, including but not limited to Thanksgiving Day, Christmas Day, and New Year's Day, Licensee shall request written permission from the Farm Manager. For purposes of this written permission, electronic mail is sufficient.

8. PUBLIC'S ACCESS TO THE LICENSED AREA:

The general public shall have access to the gardens and grounds within the Licensed Area during Bluebird Gap Farm's general operating hours. Unless otherwise allowed for purposes of Master Gardener educational programming, at no time shall the general public have access to any structures, such as sheds or greenhouses, within the Licensed Area. Licensee shall ensure that such structures are either locked or occupied by Licensee during Bluebird Gap Farm's general operating hours and Licensee shall post signage at any structure access point to indicate that such structure is not open to the general public.

9. MAINTENANCE OF LICENSED AREA:

During the Term, the Licensee shall be responsible for the general upkeep and maintenance of the Licensed Area, including the gardens, grounds, and any structures, including the greenhouse, potting shed, storage shed, and gazebo, such that the Licensed Area remains in a safe, neat, and clean condition. Such general upkeep and maintenance include, but is not limited to: mowing, weeding, pruning, planting, removal of plants, and basic fence and building maintenance.

During the Term, Licensor shall be responsible for the maintenance and repair of plumbing and electrical associated with the Licensed Area. Such maintenance and repairs shall include the irrigation system.

Should Licensee need additional maintenance assistance, beyond what is provided herein, Licensee shall submit a written maintenance request to the Farm Manager for Licensor consideration. Licensor shall either approve or deny the request in writing within ten (10) days. Licensor may modify or place conditions on any such approvals.

10. TRASH, UTILITIES AND FUEL:

Licensor shall be responsible for the payment of trash and utility charges associated with the Licensed Area. Unless otherwise approved by Licensor, Licensee shall not store fuel in the Licensed Area. Licensor maintains fuel storage at Bluebird Gap Farm and Licensee may contact the Farm Manager to request reasonable use of the fuel, as needed.

11. STORAGE, ACCESS AND USE OF PESTICIDES:

Licensee is permitted to store pesticides within the structure identified as "Storage Shed" on Exhibit A. The pesticides shall be stored in clearly marked containers and stored in a secure manner, in a well-ventilated room. Licensee shall provide the Farm Manager with a list of persons authorized to access the pesticides, shall update the list as necessary should the persons authorized to access the pesticides changes, and shall prevent all unauthorized persons from having access to the pesticides at all times. Licensee shall be responsible for compliance with all applicable Federal, State, and local laws, ordinances, rules, and guidelines pertaining to the use and storage of the pesticides. Licensee shall immediately and properly clean up any spills and properly dispose of or store any empty storage containers, and shall be responsible for covering the costs of clean up and paying for any damages to Licensor property caused by their use or improper use of the pesticides.

12. DANGEROUS OR HAZARDOUS MATERIALS, SUBSTANCES, EQUIPMENT OR OBJECTS:

Other than as identified in Section 11 of this Agreement, Licensee agrees not to bring into the Licensed Area any material, substance, equipment, or object which is likely to endanger the life of, or to cause bodily injury to, any person in the Licensed Area, or which is likely to constitute a hazard to the Licensed Area without prior written approval of Licensor. Licensor shall have the right to refuse the use or storage of any such materials, substances, equipment or object and shall further have the right to require its immediate removal if found in the Licensed Area.

13. SAFETY:

Licensee shall establish and provide a safety plan for approval by Licensor's Risk Management Department. This plan shall include, at a minimum, procedures related to use

of Licensee equipment, tools, supplies, and materials.

14. ALTERATIONS, PHYSICAL RENOVATIONS, ADDITIONS OR IMPROVEMENTS:

No alterations, physical renovations, additions or improvements shall be made to the Licensed Area by Licensee without the prior written approval of Licensor. Any such alterations, physical renovations, additions, or improvements made to the Licensed Area shall become property of Licensor. Nothing in this Agreement shall imply any duty or obligation upon the part of Licensee or Licensor to make any alterations, physical renovations, additions or improvements of any kind whatsoever to the Licensed Area. This provision is not meant to include the general upkeep and maintenance of the Licensed Area, such as minor repairs to the existing fence or additional plantings with the existing gardens.

15. RISK OF LOSS TO LICENSEE PROPERTY:

Licensor shall not be responsible or liable for the damage, destructions, theft, or other loss of personal property of the Licensee, including, but not limited to: equipment, materials, tools and supplies that may be placed or otherwise stored in the Licensed Area.

16. NO LIENS OR ENCUMBRANCES:

The Licensee must keep, or cause to be kept, the Licensed Area free and clear of all liens and encumbrances of every kind whatsoever. If any lien is filed or purportedly filed against the Licensed Area or any other property owned by Licensor, as a result of any act or omission of the Licensee, upon the written request of Licensor, the Licensee must cause the same to be released of record within ten (10) days after the Licensee receives such written request.

17. FUNDRAISING ACTIVITIES:

Any fundraising activities undertaken by Licensee shall be conducted in accordance with applicable laws and regulations. Contributions resulting from Licensee charitable solicitations shall be received by Licensee, allowing for tax benefits to be provided to donors as part of their charitable contribution, and shall be used only for the purpose(s) for which such funds were solicited. Licensee shall not use Licensor resources to conduct fundraising activities. Fundraising activities may not be conducted on the Licensed Area without prior written approval of the Farm Manager. Licensee may not use the name of the assets of the Licensed Area as a means of donor recognition.

18. INSURANCE:

- a. Licensee acknowledges that Licensor is self-insured. Licensor shall maintain Commercial General Liability Insurance and Property Insurance under its self-insurance program during the Term.
- b. Licensee shall provide liability insurance coverage, limited to and governed by the

Commonwealth of Virginia Public Liability Risk Management Plan, established under § 2.2-1837 of the Code of Virginia (1950), as amended, to include incidental medical payments incurred by and arising from the official activities of any authorized volunteer. Licensee shall also maintain property insurance covering Licensee's fixtures, furnishings, equipment, and business personal property located on the Licensed Premises. Workers' Compensation shall be provided according to state statute.

19. TERMINATION:

At the expiration of the Term, the Licensee shall deliver possession of the Licensed Area to the Licensor in a clean and sanitary condition, reasonable wear and tear expected. All property that the Licensee is not required to surrender, but the Licensee abandons, at the Licensor's election, will become the Licensor's property or be disposed of by the Licensor. This Agreement terminates without further notice at the expiration of the Term and no holdover shall be permitted. Any holding over by the Licensee after expiration or other termination of this Agreement will not constitute a renewal or extension of this Agreement or give the Licensee any rights to the Licensed Area.

Licensor may suspend or terminate this Agreement immediately in the event of any violation of federal, state, local law, this Agreement or if the public health, safety, and welfare so require.

In the event that Licensee fails or is unable to comply with any terms of this Agreement, Licensee shall be deemed in breach of this Agreement. In the event of breach, Licensor shall notify Licensee in writing of the breach and Licensee shall have thirty (30) days to correct the breach. If Licensee fails to correct the breach with the thirty (30) days provided, the Licensor has the right to terminate this Agreement.

Notwithstanding the foregoing, either Party may terminate this Agreement for any reason in writing with ninety (90) days' notice to the other Party.

20. NOTICES:

A notice or request under this Agreement by the Licensor to Licensee or by Licensee to the Licensor shall be sufficiently given or delivered if sent by either (a) certified mail, postage prepaid, return receipt requested, or (b) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable Parties as follows:

Licensor's agent shall be: City of Hampton
 Attn: David McCauley, Director of Parks, Recreation,
 & Leisure Services
 22 Lincoln Street, 5th Floor
 Hampton, VA 23669

Copy to: City Attorney
Attn: PRLS Attorney
22 Lincoln Street, 8th Floor
Hampton, VA 23669

Licensee's agent shall be: Real Estate Management
Attn: Executive Director of Real Estate
230 Sterrett Drive (MC0163)
Blacksburg, VA 24061
Email: vtrealstate-g@vt.edu

General, day-to-day communications between the Parties may be accomplished via electronic mail as follows:

As to City: david.mccauley@hampton.gov
adam.newland@hampton.gov

As to Licensee: vtrealstate-g@vt.edu
Gaylynn Callahan gaylynnj@vt.edu for VCE
Deborah Jackson dlynnchandler@msn.com for Master
Gardners

21. DISCLOSURES; NO INDEMNIFICATION:

Licensee is an agency of the Commonwealth of Virginia and Licensor is a political subdivision of the Commonwealth of Virginia. Therefore, with response to tort liability for acts or occurrences on or about the Licensed Area, including product liability, Licensee and Licensor are either (i) immune (or partially immune) from suit, judgment or liability, (ii) insured and/or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

Neither Licensor or Licensee has agreed to provide any indemnification or save harmless agreements for the benefit of the other Party. No provision, covenant or agreement contained in this Agreement shall be deemed to be a waiver of the sovereign immunity or governmental immunity of the Commonwealth of Virginia, or of the Licensee or Licensor, from tort or other liability.

22. LIABILITY:

Each Party shall be responsible for the acts and omissions of its employees and agents in the performance of this Agreement to the extent permitted by applicable law. Nothing contained in the Agreement shall be deemed an express or implied waiver of the sovereign immunity or governmental immunity of the University, the City or the Commonwealth of Virginia.

23. COMPLIANCE WITH ALL LAWS:

Licensee shall comply with all applicable laws, ordinances, or regulations adopted or established by federal, state, and local governments relating to the terms and conditions of this Agreement. This shall include the need for the Licensee to secure all necessary permits required by federal, state or local statutes, ordinances and regulations, now in effect or hereafter adopted, including by not limited to, Licensor special event permit required pursuant to Hampton City Code § 2-311 et. seq.

24. NO WAIVER:

The failure of either Party to this License Agreement to insist upon the performance of any of the terms and conditions of the License Agreement, or the waiver of any breach of any of the terms and conditions of the License Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

25. ASSIGNMENT:

Because this Agreement involves a license, neither Party may assign their rights or delegate their duties under this Agreement.

26. MISCELLANEOUS:

This License Agreement cannot be modified except by a written modification executed by Licensor and Licensee in the same manner as this License Agreement is executed. The headings, captions and number in this License Agreement are solely for convenience and shall not be considered in construing or interpreting any provision of this License Agreement. Wherever appropriate in this License Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable. This License Agreement contains all agreements, promises and understandings between the Licensor and Licensee, and no verbal or oral agreements, promises, statements, assertions or representations by Licensor or Licensee or any employees, agents, contractors or other representations of either, shall be binding upon Licensor or Licensee.

27. GOVERNING LAW:

This License Agreement shall be governed, interpreted by and construed in accordance with the laws of the Commonwealth of Virginia.

28. COUNTERPARTS:

The parties agree this License Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement binding on all Parties, notwithstanding the fact that all the Parties have not signed the original or the same

counterpart.

29. ELECTRONIC TRANSACTIONS:

If this paragraph is initialed by both Parties, to the fullest extent permitted by Code of Virginia, Title 59.1, Chapter 42.1, the Parties do hereby expressly authorize and consent to the use of electronic signatures as an additional method of signing and/or initialing this License Agreement and agree electronic signatures (for example, the delivery of a PDF copy of the signature of either Party via facsimile or electronic mail or signing electronically by utilizing an electronic signature service) are the same as manual executed handwritten signatures for the purposes of validity, enforceability and admissibility.

/_____
(Initials)

IN WITNESS WHEREOF, the Parties have affixed their signatures and seals.

LICENSOR: CITY OF HAMPTON, VIRGINIA

By: _____

Date: _____

LICENSEE: VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

By: _____
Christopher H. Kiwus, PE, PhD
Interim Senior Vice President and Chief Business
Officer

Date: _____

Exhibit A

