City Council Agenda
February 3, 2016

Date: January 21, 2016

To: Mayor and City Council

From: Patty Lorick, Recreation Supervisor

Subject: 2016 Martinez Community Swim Team Rankin Aquatic Center Use Agreement

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Recommendation
Motion authorizing the Interim City Manager to sign the agreement between the City of Martinez and the Martinez Community Swim Team.

Background
The Parks, Recreation, Marina and Cultural Commission recommended approval of the 2016 Rankin Aquatic Center Use Agreement with the Martinez Community Swim Team discussed at the Commission's January 19th meeting.

The Martinez Community Swim Team (MCST) is a recreational swim team that has called the Martinez Municipal Pool and now the Rankin Aquatic Center home for twenty-seven years.

Attached is the agreement City staff negotiated with the Martinez Community Swim Team in January. The agreement will allow the MCST to use the Rankin Aquatic Center from May through August for practices and meets. The agreement also includes the rental of a storage area and a coaches' office. All other aspects of the Agreement are the same as the 2015 Agreement.

Fiscal Impact
No fiscal impact

Attachment
- Agreement

APPROVED BY:
Interim City Manager

RANKIN AQUATIC CENTER
USE AGREEMENT

This agreement is entered on TBA by and between the City of Martinez, a Municipal Corporation (hereinafter called "City") and the Martinez Community Swim Team, a nonprofit mutual benefit corporation (hereinafter called "MCST").

RECITALS

The City of Martinez owns and operates the Rankin Aquatic Center, 100 Buckley Street (hereinafter called “RAC”). The City is desirous of permitting MCST to have use of the RAC for the specified times during the term of this agreement.

The MCST organizes and supervises youth swimming activities and is desirous of having the right to use of said RAC for its program during the hours set forth below.

NOW, THEREFORE, FOR THE FOLLOWING PROMISES, CONSIDERATIONS AND COVENANTS THE PARTIES AGREE AS FOLLOWS:

A. **TERM**

The term of this Agreement is through February 1, 2017 following the date specified above.

1. This Agreement may be terminated by any party for any reason by giving the other party advance, thirty (30) calendar days written notice for the intention to terminate this Agreement. Parties agree that official notice for the upcoming season must be provided by May3.
2. There shall be no liability of any sort inuring to the detriment of any party which terminates this agreement under Paragraph A1.
3. MCST must obtain from all of its coaches and participants, a signed waiver/hold harmless agreement naming the City of Martinez as a pre-requisite to participation**.**
4. MCST will provide a roster of all team members and coaches to the City.

B. POOL USE

1. **Preseason Use**

MCST preseason use of the RAC will be May 3– June 12, 2016 Monday - Thursday, 4:30 – 8:30 p.m. and Saturday and Sunday by arrangement with the City. Fee for preseason use is $2500.

2. **Season Use**

a. MCST shall have the use of the pool from Tuesday, June 1 through Friday, August 12, 2016 (this time period shall be referred to hereafter as the "Season") in accordance with the following schedule:

Tuesday, Wednesday, Thursday, Friday 6:45 – 10:30 a.m.

Wednesday 5:00 – 8:15 p.m. and Saturdays 6:30 – 11:45 a.m. for meets.

b. MCST may use the pool during said times only for team purpose, activities and programs. MCST may not vary from the Preseason and Season schedule without formal written approval of the City The City Manager is herby delegated the authority to determine whether such approval shall be given or not.

c. At all other times, the City will have sole use of the RAC.

d. MCST must check-in with the City staff on duty before entering the facility. A City staff member must remain at the facility while MCST is in the facility. City staff is responsible for opening and closing the facility. However, it is the responsibility of the coaches to make sure all members of the team, especially those under the age of 18, have left the fenced pool area before the coaches leave the facility.

C. FACILITY USE FEE

1. MCST agrees to compensate the City of Martinez for the costs of a lifeguard for any and all MCST functions.

2. MCST also agrees to compensate the City $32 for each member of MCST that uses the RAC during the Season, as defined in paragraph B2 of this agreement. For the purposes of this paragraph, and in the interests of convenience for both parties, each person who is a member of the MCST, including Little Otters, at any time during the Season will be deemed to have used the RAC during the Season, and therefore be included in the calculation of this fee. MCST membership roster will be used to verify swimmers (i.e., 100 x $32 = $3200). Fees negotiations are held annually in January.

D. STORAGE AREA AND COACHES OFFICE

1 The storage area consists of 209 square feet of locked, heated and air conditioned space for storage, hereinafter referred to as "Storage Area" as depicted in Exhibit "A" attached hereto and incorporated herein by reference.

2 The Coaches Office consists of 110 square feet of locked, heated and air conditioned space for use by the MCST Coaching staff, hereinafter referred to as "Coaches Office" as depicted on Exhibit A.

3. TERM. The Term of this Agreement is for twelve (12) months, effective February 1, 2016 to February 1, 2017.

4. RENT. In consideration of this Agreement, the MCST shall pay to the City the amount of $120 per month, (storage area $80 and Coaches Office $40), prorated to account for any partial months. In addition to monthly Rent, MCST shall reimburse the City for all costs of City personnel who are required to be present for MSCT to access the Storage Area during any time that the RAC is not otherwise open to the public.

5. USE OF THE STORAGE AREA/ COACHES OFFICE ACCESS AND ACCESS; KEY CONTROL. MCST may not be present at RAC at any time without the presence of a City staff member. MCST must make arrangements with City staff to enter the RAC. A City staff member must remain at the RAC at all times while MCST is present at the RAC. Upon request, City staff will open and close the RAC to permit MCST access to the Storage Area/Coaches Office. MCST is responsible for ensuring that all persons requesting access to the RAC for purposes of accessing the Storage Area/Coaches Office are authorized by MCST. All such persons must be 18 years of age or older. MCST was issued three (3) keys by the City for access to the Storage Area/Coaches Office. Said keys will only be issued to members of the Board of Directors of MCST and coaches. Unauthorized transfer of said keys to other persons and duplication of keys is prohibited. In the event of unauthorized transfer or duplication of keys MCST shall reimburse the City for the Cost to have all locks on the Storage Area/Coaches Office replaced and new keys made. The City has the right to revoke access to the RAC and the Storage Area/Coaches Office or use of keys at any time it deems necessary. In the event of loss of any key issued to MCST, its board members or coaches, MCST shall pay to the City $75.00 per lost key. In the event that re-keying is required due to a lost key, MCST will reimburse the City for all costs associated with re-keying. MCST shall pay to the City any and all such charges within thirty (30) days of receipt of an invoice therefore from the City.

6. MISCELLANEOUS. The Storage Area/Coaches Office shall be for the exclusive use of MCST and shall not be opened or entered by the City unless MCST staff is present or if an emergency requires such entry. The existence of an emergency will be at the sole determination of the City.

7. HAZARDOUS MATERIAL. MCST agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the RAC and/or Storage Area/Coaches Office in violation of any law, rule or regulation and MCST shall defend, indemnify and hold harmless City, its officials, officers, agents and employees (City Indemnittees) from and against any and all losses, liabilities, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) arising from or as a result of a breach of this warranty and representation or as a result of the, disposal, storage, generation or release on the RAC at any time during the term of this Agreement of any Hazardous Materials, except to the extent caused by the gross negligence or willful misconduct of City, or any City Indemnitee, regardless of whether such liability, cost or expense arises during or after the Agreement Term. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the RAC and/or Storage Area/Coaches Office due to MCST's use and occupancy thereof, MCST, at MCST's expense, shall clean all property affected thereby to the to the reasonable satisfaction of City and to the level required by any applicable statute, ordinance, regulation or any governmental body having jurisdiction there over.

As used in this paragraph, "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous material, hazardous substance, hazardous waste or toxic substance in any federal, state or local law or regulation. MCST acknowledges that MCST is not looking to or relying upon City to disclose any matters which City might be required to disclose under California Health and Safety Code Section 25359.7 and that all such matters have been investigated by MCST to MCST's satisfaction. In this regard, MCST specifically waives any and all rights it may have pursuant to the provisions of California Health and Safety Code Section 25359.7.

8. SURRENDER OF STORAGE AREA AND/OR Coaches Office. On the last day of the term, or upon sooner termination of this Agreement, MCST shall peaceably and quietly leave, surrender and yield up to the City the Storage Area and/or Coaches Office with all structures, appurtenances, property, and fixtures in good order, condition, and repair, excepting reasonable use and wear thereof.

D. LIFEGUARDING

1. Two lifeguards, certified by an approved agency such as American Red cross or YMCA are required in the RAC any time MCST is in the facility. One lifeguard must be a city employee. An employee, whose sole job is lifeguarding, may not be on deck for more than 45 minutes at one time. A coach or MCST representative, with the proper lifeguarding certifications can relieve the City staff

person. The MCST coach's sole duty while relieving the City lifeguard is to **LIFEGUARD**. Absolutely no coaching is permitted while lifeguarding. MCST must provide the City with current Certifications in Lifeguarding, CPR for the Professional with AED for each MCST coach or person designated as having lifeguard duties.

2. Before its first use of the pool, MCST shall supply the City a list of names, addresses and qualifications of all persons MCST intends to retain pursuant to paragraph D(1). City shall have the right to reject those persons whom City reasonably believes do not possess the necessary skills or qualifications to assure the safe use of the pool. City will advise MCST of the names of those persons it rejects and MCST shall retain a person to replace those rejected by the City. All replacements are also subject to City approval.

E. MAINTENANCE

The City shall maintain the pool, quality of water and temperature of the pool water in good condition and at levels acceptable to the County Health Department. The City shall also maintain the pool, pool area and pool building in an orderly and clean condition.

1. Each time MCST uses the pool under this Agreement, it shall leave the pool area and pool building in as neat, orderly, sanitary and clean condition as it found said areas.

2. Should MCST leave the facility in a dirty, littered condition the City will bill MCST at a rate of $50 per hour for clean-up. MCST representatives will be advised when the facility is left in a dirty or unsanitary manner.

F. REPAIR AND REPLACEMENT

1. The City agrees to repair or replace, at its sole discretion, any equipment, fixture, the pool, the pool structure or landscaping which is damaged or becomes inoperable due to normal wear and tear. However, whether such repairs or replacements are to occur is left solely within the discretion of the City, based on economic and all other considerations. The parties acknowledge that in the event the City declines to repair or replace necessary pool equipment use of the pool by MCST may have to be discontinued at the City's discretion.

2. <u>MCST DAMAGE TO PREMISES</u>. MCST shall at its own cost repair or replace, at City's sole discretion, any equipment, the pool, pool structure or landscaping, or any other part of the RAC, including, but not limited to the Storage Area/Coaches Office, which is damaged, destroyed, lost or rendered inoperable by the acts, errors or omissions any official, board member, employee, independent contractor, member, agent, representative, contractor, subcontractor,

guest or invitee of MCST at the RAC or Storage Area/Coaches Office.

G. SAFETY

MCST acknowledges that the safe use of the pool during the times specified above its sole responsibility and that MCST is assuring the pool is used in a safe and reasonable manner is a critical inducement to the City for entering into this Agreement.

1. ***MCST shall ensure that all equipment is placed on deck, ready for use before each practice.***

2 MCST and its members, staff and employees shall enforce all posted pool safety rules.

3. ***Diving Boards.*** *Only one diving board may be used at a time. Divers are* ***FORBIDDEN*** *from taking their dive until all participants have exited the dive area of the pool. All divers must* ***IMMEDIATELY*** *exit the pool upon completing their dive.*

4. MCST shall ensure that children are ***supervised at all times***

5. MCST shall immediately correct any deficiencies in the manner in which it supervises the use of the RAC, whether or not such deficiencies are brought to MCST attention by City staff.

6. MCST shall prevent access to any area of the pool, pool building or pool facility which has become a danger to the health or safety of any person and immediately report said dangerous condition to the City.

   (a) If such dangerous conditions represent an immediate threat to the health and safety of any person, MCST shall take those steps reasonably necessary and within MCST's skill and resources to mitigate or remedy the danger, including cessation of the use of the pool, if required.

   (b) If such dangerous conditions do not represent an immediate threat, MCST shall report it to the City departments described above and MCST is not under any obligation to mitigate or remedy the danger, including cessation of the use of the pool, if required

H. CONCESSIONS

MCST should comply with all and assure that any food concessions follow the Contra Costa County Environmental Health Department guidelines, including but not limited to securing a permit, and proper food handling.

I. INSURANCE

MCST, at their sole cost and expense, maintain in full force and effect Comprehensive General Liability Insurance: combined single limit of not less than two million dollars ($2,000,000) per occurrence, with participant injury liability coverage. MCST shall take out and maintain the General Liability Insurance before the first day of practice.

MCST shall furnish the City of Martinez with **ORIGINAL** certificates confirming proof of compliance with the insurance required. MCST will also provide original additional insured endorsements designating the City of Martinez, its agents, officers, employees and volunteers as additionally insured. "Acceptable Additional Insured Endorsement Forms include CG 20 11 01 96 The insurance is to be placed with an insurance company acceptable to the City of Martinez. Any deductibles or self-insured retention shall be declared and approved by the City. MCST's insurance coverage shall be primary with respect to the City.

J. MISCELLANEOUS

The parties may lend equipment to each other at the sole discretion of the party owning the equipment.

K. INDEMINTY

MCST agrees to indemnify, defend, release and save harmless, City, its officers, agents, and employees from and against any and all claims, demands, losses, defense costs, or liability of any kind or nature by any reason, including MCST, which City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of person, or damage to property as a result of, arising out of, or in any manner connected with MCST's activities under the terms of this Agreement excepting only liability out of the sole negligence or willful misconduct of the City.

Except as provided herein, MCST shall retain the exclusive authority to determine its policies, programs and rules.

MCST must obtain a completed copy of the attached Aquatic Waiver and Release of Liability for each program participant who makes use of the RAC. This form must be obtained, by MCST, prior to any official team workout or competition. The wording on the form may not be altered or modified. MCST must keep these forms on file and available for inspection and use by the City of Martinez, for a period of three years following participation by each individual.

M. PROPERTY TAXES

MCST recognizes that this permit may create a possessory interest subject to property taxation under Cal. Revenue and Taxation Code §107, et. seq., and that MCST may be subject to the payment of property taxes levied on such interest. MCST shall pay, before delinquency, all taxes, assessments, license fee and other charges (hereinafter referred to as "taxes") that are levied or assessed during the term hereof against the MCST interest in the real property or improvements installed or located in or upon the permitted property.

N. WASTE AND QUIET CONDUCT

MCST shall not commit, or suffer to be committed, any waste upon the Center or the Storage Area, or any nuisance which may disturb the quiet enjoyment or use of the Center or the surrounding property.

O. DEFAULT

If MCST defaults in performing any promise or condition herein, City may at its option immediately cancel this Agreement and terminate all MCST's rights hereunder, and MCST shall immediately and peaceably surrender the Storage Area/Coaches Office to the City. No waiver of default in any of the terms, covenants, or conditions in this Agreement shall be a waiver of any subsequent default of the same or any other terms, covenants, or conditions herein contained.

P. WARRANTIES

MCST warrants it possesses or will possess the financial resources to discharge each and every condition and covenant it has agreed to perform herein, and further warrants it has, by duly adopted resolutions, authorized the entering into of this Agreement and the signing of same by the person named below.

Q. NOTICES

Written notices for the City of Martinez should be sent to c/o Patty Lorick, 525 Henrietta Street, Martinez. Written notices for the Martinez Community Swim Team should be mail to Rebecca Frisbie, President, P.O. Box 2098, Martinez, CA 94553

R PAYMENT

The City will bill MCST in November 2016 for

1. Preseason Use of $2500

2. Per swimmer fee of $32
3. Reimbursement for Lifeguard Services
4. Rental of the Storage/Coaches Office $1440 (12 months x $120)
5. Any use in September and October that may be negotiated and approved.

MCST shall pay to the City any and all such charge within thirty (30) days of receipt of an invoice therefore from the City.

MARTINEZ COMMUNITY SWIM TEAM

_____

Rebecca Frisbie, MCST President Date

CITY OF MARTINEZ

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Jim Jakel, Interim City Manager Date