



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
April 7, 2008**

TO: Mayor and City Council
FROM: Joann Tool – Deputy Director, Parks & Community Services
SUBJECT: Swim Team Agreement
DATE: April 7, 2008

RECOMMENDATION:

Approval of the 2008 Municipal Pool Use Agreement with the Martinez Community Swim Team.

BACKGROUND:

The Martinez Community Swim Team President has signed the new, 2008 use agreement for the municipal pool. The new agreement raises the per swimmer cost by \$2 per swimmer. The new cost is \$20 per swimmer, for the previous two years the cost had been \$18 per swimmer. The pre-season cost has been raised by \$100. The new cost for pre-season use is \$1600; in 2007 the pre-season fee was \$1500.

The Park and Recreation reviewed the agreement at their April 1, 2008 meeting. It is the recommendation of the Park and Recreation Commission that the City Council approve the 2008 with the slight increase of fees.

FISCAL IMPACT:

No new impact.

ACTION:

Authorize the City Manager to sign the 2008 Municipal Pool Use Agreement with the Martinez Community Swim Team.

APPROVED BY:

City Manager

APPROVED BY:

Assistant City Manager Community
& Economic Development

Martinez Municipal Pool USE AGREEMENT

This agreement is entered on January 31, 2008, 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 owns a municipal swimming pool located at 100 Buckley Street in Rankin Park and the City is desirous of permitting MCST to have use of that pool for 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 pool 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 for one year following the date specified above.

1. This Agreement may be terminated by either party for any reason by giving the other party advance, written notice for the intention to terminate this Agreement. Parties agree that official notice for the upcoming season must be provided by April 1.
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 Municipal Pool will be May 1 - June 14, 2008, Monday - Thursday, 4:40 p.m. - 8:15 p.m. Fee for preseason use is \$1600. MCST may use the pool weekends in May by arrangement with the City on an as needed basis at a rate of \$35 per hour. The kiddie pool will remain closed to swimmer use during this period.

2. **Season Use**

- a. MCST shall have the use of the pool from Saturday, June 15 through August 15 (this time period shall be referred to hereafter as the "Season") in accordance with the following schedule:

Tuesday, Wednesday, Thursday, Friday	*6:45 A.M. - 10:30 A.M.
Tuesday & Thursday**	7:06 P.M. - 8:06 P.M.
Wednesday's**	5:00 P.M. - Dusk
Saturday's	7:00 A.M. - Noon

- 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 approval by City staff.
- c. At all other times, the City shall have sole use of the pool.

*The City may in its sole and unfettered discretion change the start time on Tuesday, Wednesday, Thursday, and/or Friday from 6:45 to 7:00 a.m. if residents in the Rankin Park neighborhood complain about the start time on any of these days.

**Due to the numerous complaints by parents of swim lesson children, preparation for practice or meets may not begin before MCST's scheduled hours except with permission of the Martinez Municipal Pool Manager.

- d. Keys - MCST coaches and President may have keys to the pool to access their office for equipment or supplies which is located on site. Unauthorized use of keys is prohibited. Unauthorized duplication of keys is prohibited. The City has the right to revoke access to the pool or the use of keys at anytime they deem necessary.
- e. 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 or the opponent's teams, 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 \$20 for each member of MCST that uses the Municipal Pool 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 at any time during the Season will be deemed to have used the Municipal Pool during

the Season, and therefore be included in the calculation of this fee.. Payment shall be made by September 30 annually. MCST membership roster will be used to verify swimmers (i.e., 100 x \$20 = \$2000). Fees are to be renegotiated annually in January.

D. LIFEGUARDING

Two lifeguards, certified by an approved agency such as American Red cross or YMCA are required in the facility 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 American Red Cross Certifications in Lifeguarding, CPR for the Professional with AED for each MCST coach or person designated as having lifeguard duties.

E. MAINTENANCE

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 shall bill MCST at a rate of \$20 per hour. MCST representatives will be advised when the facility is left in a dirty or unsanitary manner.

F. REPAIR AND REPLACEMENT

1. City agrees to repair or replace, at its sole discretion, any equipment, 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 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 City's discretion.
2. MCST, at its cost shall repair or replace, at City's sole discretion, any equipment, the pool, the pool structure or landscaping which is damaged or other improvement damaged or rendered inoperable by the negligence of MCST members, staff, employees or representatives.

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. Each and every time MCST uses the pool and during the entire time MCST so uses the pool, MCST shall station at the pool, at its cost, at least two persons possessing the minimum requirements set by the State of California for lifeguards and swim coaches. MCST coaches shall know the proper procedure for using all safety equipment provided by the City of Martinez, backboard, shepards crook, ring buoy, and rescue tubes.

**All equipment must be placed on deck ready for use before each practice.*

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 G(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.
3. The Kiddie Pool is not available for use during practices or meets.
4. MCST and it's members, staff and employees shall enforce all posted pool safety rules.
5. *In the dive tank, divers are FORBIDDEN from taking their dive until all participants have exited the pool. All divers must IMMEDIATELY exit the pool upon completing their dive.*
6. Swimmers are **FORBIDDEN** from diving or beginning a racing start from the from the 3 foot 6 inch section of the pool. All starts in the 3 foot 6 inch section of the pool must begin in the water.
7. MCST shall immediately correct any deficiencies in the manner in which it supervises the use of the pool, whether or not such deficiencies are brought to MCST attention by City staff.
8. 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
- (c) MCST shall provide the City Recreation Department access keys to any lockers, storage areas or rooms designated for MCST use in case emergency access is needed.

H. IMPROVEMENTS

1. Any selected improvements (and the design thereof) by MCST shall be approved in advance by City. If MCST retains independent contractor(s), said contractor(s) shall be appropriately licensed and bonded and may be rejected by City upon reasonable grounds. All improvements shall be insured and bonded in amounts and under terms satisfactory to City. All improvements shall be constructed, installed and/or completed in accordance with City standards, and shall not constitute fulfillment of the obligation imposed hereunder unless accepted by City.
2. MCST shall make an annual report of activities, improvements, membership and team status at the conclusion of each season. These reports shall be addressed to the Chairman of the Parks and Recreation Commission.
3. Failure to comply with any provision of this Paragraph H will subject any improvement installed by MCST to removal at MCST's cost.

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.

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.

MCST will ensure that each team competing in a meet at the Martinez Municipal Pool will provide the City with a certificate of insurance for two million dollars (\$2,000,00) with an endorsement designating the City of Martinez, its agents, officers, employees and volunteers are additionally insured.

J. 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.

K. MISCELLANEOUS

The parties may lend equipment to each other at the sole discretion of the party owning the equipment. The area set aside for MCST storage shall be for the exclusive use of MCST and shall not be opened or entered by City unless MCST staff is present or if an emergency requires such entry. The existence of an emergency being within the sole determination of City.

1. Team shall provide City with annual team schedules of events and activities 45 days before the regular season.

L. INDEMNITY

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 or active negligence of 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 City of Martinez Municipal Pool. 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. POSSESSORY TAX

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."

MARTINEZ COMMUNITY SWIM TEAM

Jennifer Chiarelli
MCST President

2/29/08
Date

CITY OF MARTINEZ

Mayor or City Manager

Date