

**MANAGEMENT AGREEMENT  
BETWEEN THE CITY OF SANTA CLARA  
AND THE SANTA CLARA SWIM CLUB**

**PREAMBLE**

This agreement (“Agreement”) is entered into by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 (“City”), and The Santa Clara Swim Club, a California domestic nonprofit corporation with its principal place of business located at 2625 Patricia Drive, Santa Clara, CA 95051, (“Swim Club”). City and Swim Club may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**WHEREAS, IT IS AGREED:**

**BACKGROUND:**

- A. City owns real estate located at 651 Bucher Avenue in the City of Santa Clara, commonly known as “Mary Gomez Pool” (the “Property”);
- B. Swim Club has operated the Property for five (5) years, and provides the following programs: Recreational Swim, Lap Swim, Learn to Swim, and Santa Clara Swim Club training practices for the benefit of the City and neighboring communities;
- C. Swim Club desires to continue to operate the Property for the purpose of continuing to provide the aforementioned programs and other swimming related recreational activities for residents of the City;
- D. City desires that Swim Club continue to provide the management, operation, and other services that are necessary for the operation of the Property in a professional manner.

**AGREEMENT PROVISIONS**

**1. DESCRIPTION OF PROPERTY**

In order to provide swimming related recreational activities to Santa Clara residents at Mary Gomez Pool, and in consideration of the faithful performance by Swim Club of the terms and conditions of this Agreement, City hereby agrees grants to Swim Club the right to manage and operate Mary Gomez Pool, located at 651 Bucher Avenue in Santa Clara, CA (the “Property”).

**2. INTENT**

- A. This Agreement supersedes all prior Agreements, if any, between the Parties and their predecessors in interest regarding the use of the Property.
- B. The City Manager serves as Contract Administrator for this Agreement on behalf of the City Council.

C. This Agreement is for the non-exclusive use of the Property for the swimming related recreational activities that are more fully defined in Section 3.D. of this Agreement. Swim Club represents that they are qualified to operate the Property. The fulfillment of this Agreement is in the best interest of the City and the health, safety, and welfare of its residents and is in accordance with the public purpose provisions of applicable federal, state, and local laws and requirements. This Agreement does not convey any interest in real property possessory or otherwise.

### **3. RESPONSIBILITIES OF CITY**

- A. Inspection of the Property. City Parks & Recreation Department staff shall inspect the Property on an annual and/or more frequent basis to assure Swim Club Use of the Property is in conformance with the terms of the agreement.
- B. Convene Annual Meeting. City shall meet with Swim Club Site Manager a minimum of once per year to review and discuss the Swim Club's prior year's programs and activities, maintenance and Property condition and the proposed programs and activities in the Property for the upcoming year. City shall review and approve plans to address any issues and adjustments to the program to respond to facility condition, community and patron concerns.
- C. Financial. Provide billing invoices for materials, supplies, and utilities used by the Swim Club, and annual statements of revenues received from the Swim Club for Use of the Property.
- D. Improvements. City shall review, subject to limitations, any proposed building plans and issue permits related to the necessary preventative maintenance, repair, or improvement of the Property.

### **4. RESPONSIBILITIES OF SWIM CLUB**

- A. Management Fee. Swim Club shall pay to City an annual management fee as set forth in Exhibit B "Rent Schedule," attached hereto and incorporated by reference.
- B. Utilities. Swim Club agrees to pay the cost of all utilities furnished in connection with its use and management of the Property to the City. Utilities include electric usage, water usage, and pool chemicals. If City does pay for any utilities, Swim Club shall reimburse the City any payment the City made no later than the first business day of the calendar month following Swim Club's receipt from the City of a billing statement for said reimbursement. Any and all other utility services required by Swim Club shall be provided by Swim Club at its expense.
- C. Use of Property. Swim Club shall provide only the following at the Property: recreational swimming, lap swimming, aquatic recreational instruction, swim lessons, and swim training. A calendar of competitive events will be proposed and approved on an annual basis by the Swim Club to the City. Swim Club shall not use or permit the Property, or any part thereof, to be used in whole or in part for any purpose other than as set forth in this Agreement except with the prior written

consent of the City by resolution of the City, nor for any use in violation of any present or future laws, ordinances, rules or regulations at any time applicable thereto of any public or governmental entity, including the City of Santa Clara.

D. Recreational Activities. Swim Club shall provide the following benefits and programs in a manner as set forth herein:

1. Swim Club shall meet with City staff at a minimum of once a year in February for the purpose of informing City about its directors, staff, programs, services and facility operations.
2. City residents shall receive a 25% discount on any fees charged for recreational aquatic programs provided by Swim Club at the Property.
3. Swim Club shall provide a high quality Learn To Swim Program for the community. Ratios for swim classes shall not exceed a participant to teacher ratio of 4:1. Swim Club shall offer swim lessons a minimum of June through August and, based on program participant interest, from September through May.
4. Life Guard Supervision: Swim Club shall provide all necessary certified lifeguarding supervision during recreational swim, lap swim, swim lessons and all other of its activities, as well as exercising reasonable precautions for the safety of others participating in and attending events under sponsorship by Swim Club.
5. Keys: Swim Club shall be issued keys by City upon appropriate written request and documentation. City shall update records on key assignments on a quarterly basis with Swim Club. Keys maybe revoked at any time. Swim Club shall be responsible for all costs incurred to re-key facilities if keys are lost, stolen or if a person is found to have keys that were not issued to him/her by the City's Recreation Supervisor. A key deposit of \$500 will be paid to the City and maintained during the life of this Agreement.
6. Coach Certification: Swim Club shall maintain current U.S.A. Swimming and/or American Red Cross safety trained coaches on deck at all times when recreational users or competitors are present. Coaching staff must maintain and post, prominently displayed in lobby at the Property, a current valid copy of certification of Safety Training for coaches.
7. Instructional staff shall be trained in Santa Clara Swim Club's Learn To Swim Training Program including CPR/AED and First Aid. Site manager and lifeguards shall have current American Red Cross Lifeguard certification.
8. Swim Club's Recreational Swim program shall be offered to the general public a minimum of three (3) hours per day, Monday-Friday, and four (4) hours on Saturdays for no less than eight (8) weeks from June through August of each year.
9. The Adult Lap Swim program shall be provided year round for a minimum of ten (10) hours per week. This program will be reviewed by Swim Club

and City two (2) times a year to see if the needs of the community and Lessee are being met.

10. In the event the George F. Haines International Swim Center is closed due to competition or exhibition, Swim Club shall honor City recreation and lap swim passes at the Property, and allow for City Camps (up to 60 campers) per day to enter the Property at no charge.
11. Practice Schedules: Swim Club shall program the pool to accommodate swim team training practices. This program will be reviewed by Swim Club and City two (2) times a year to clarify use of the pool.
12. Swim Club shall maintain pool lane lines, pool covers, and other equipment necessary for the provision of recreational aquatic programs and swim training.
13. Swim Club shall maintain the office space and any other facility or equipment necessary for the operation of the Property.
14. Swim Club shall maintain the shared onsite parking in a clean and respectful manner, and work with neighbors and City to ensure impacts to the surrounding neighborhood from on-street parking, increased traffic, or noise are reasonably mitigated.
15. Swim Club shall at all times faithfully obey and comply with all federal, state, local laws, rules, and regulations applicable to Mary Gomez Pool.
16. Swim Club shall have all of its representatives, sub-contractor(s), employees and volunteers that teach classes or are placed in the supervision of youth, seniors and/or vulnerable populations pre-screened for suitability and have a LiveScan record on file with the City of Santa Clara prior to the start of class or supervision assignment. The Swim Club is required to supply an updated list of representatives, sub-contractors, employees and volunteers to the City each change in session of new classes, swim activities, or change in Swim Club personnel (staff, board, or volunteers) in order to monitor compliance.
17. The Swim Club will meet its obligations to provide health insurance coverage, if so required, to its employees pursuant to the Affordable Care Act and/or any other similar federal or state law, and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act and/or any other similar federal or state law.

E. Improvements. City shall conduct a facility condition assessment of the Property and will provide Swim Club with an itemized list of necessary capital repairs and improvements to be completed at the Swim Club's own expense. Any such capital repairs and improvements constitute a "public work" as defined in California Labor Code section 1720 et seq and any agreements entered into pursuant to this section shall be subject to prevailing wage requirements. Prior to having any work done pursuant to this section, Swim Club shall coordinate with the City to ensure compliance with all applicable provisions of Labor Code sections 1720 through 1784 and California Code of Regulations title 8, section 16000 et seq.

F. Replacement. Throughout the term of this Agreement, Swim Club shall ensure that all furniture, fixtures, equipment, materials, general pool and facility maintenance, and supplies incurred in replacement of such items shall be the sole responsibility of Swim Club. Any such replacement may constitute a “public work” as defined in California Labor Code section 1720 et seq and any agreements entered into pursuant to this section shall be subject to prevailing wage requirements. Prior to having any work done pursuant to this section, Swim Club shall coordinate with the City to ensure compliance with all applicable provisions of Labor Code sections 1720 through 1784 and California Code of Regulations title 8, section 16000 et seq.

G. Safety and Security. Site Manager shall be the first person in the facility and the last person out of the facility. Upon entering the facility, Site Manager shall conduct a safety check and report any immediate and/or potential hazards to the City’s Recreation Supervisor. Safety checks shall include, but is not limited to, all gates, pool, pool deck, locker rooms, safety equipment, AED, training equipment, ladders, skimmer baskets, and taking and recording chemical & temperature readings.. Site Manager shall immediately contact City to report any safety issues. Site Manager entering facility shall also unlock AED cabinet. Upon leaving facility, Site Manager shall check all spaces, locker rooms, pools and office spaces and confirm everyone has exited the facility. Site Manager shall then be responsible for locking all doors and gates used during facility use. This includes locking the AED cabinet. Swim Club must supervise deck and pool at all times when gate is unlocked. Site manager entering and leaving facility shall lock gates when swimmers are not in the facility. Swim Club shall keep the appearance of the pool and pool building locker areas in a safe, clean and sanitary condition and reasonably free from rubbish and City reserves the right to inspect the pool and pool building at any time.

H. Prohibitions and Limitations. Swim Club shall not:

1. Significantly disturb the surface of the Property
2. Alter the property
3. Offer any special events
4. Make use of Property on Wednesday mornings from 6 am to 12 pm weekly, year round.
5. Cause or contribute in any way to the contamination of all or any portion of the Property, by any substance, especially Hazardous Materials as that term is defined in Section 7 of this Agreement.

## **5. TERM OF THE AGREEMENT**

Unless sooner revoked or extended by City in writing, City grants this Agreement for management and operation of the Property to Swim Club for a time period commencing on the Effective date of the Agreement and ending on March, 30, 2023. Upon prior written approval by the City Manager or designee, two five (5) year extensions of the

term of this Agreement may be granted after Swim Club submits a written request to City which justifies the extension.

## **6. DELINQUENCY CHARGE**

Any payment of fees due pursuant to this Agreement that remains due and unpaid under the terms of this Agreement after it becomes due and payable shall be subject to a delinquency charge for violation of this Agreement and for damages, of a sum equal to one-tenth of one percent (0.1%) of such required payment amount per day for each day from the date such required payment amount became due and payable until payment of said required payment amount has been received by the City. Unpaid delinquency charges shall accrue retroactively from the first day of the month in which such required payment amounts were first due and payable and shall be compounded monthly. The City shall apply any monies received from Swim Club first to any accrued delinquency charges and then to any other rental or other sums then due hereunder. The delinquency charges provided by this Section 5 are in addition to all other remedies the City may have that are provided by this Agreement or otherwise by law to enforce payment of any rental or other sum that has become due and has not been paid.

## **7. RETURN PROPERTY TO EXISTING CONDITION**

Immediately upon termination as set forth in Section 12 or expiration of the Agreement as set forth in Section 4, Swim Club shall restore Mary Gomez Pool to substantially the same condition as it existed prior to Swim Club's operation, as determined by City representatives. At that time, Swim Club shall remove any and all equipment or materials used in conducting the permitted activities. Swim Club expressly acknowledges its financial obligation to fulfill this condition promptly. Swim Club shall repair any damage caused to the existing underground electric ducts, storm sewer and water lines, manholes and/or appurtenances located on, above or under the surface of the Property.

## **8. HAZARDOUS MATERIALS ON THE PROPERTY**

A. Swim Club shall not use or store Hazardous Materials of any kind on or near the Property which could contaminate the Property, without prior written permission from City. In the event that any Hazardous Material is spilled or leaked or otherwise released on the Property or any area in the vicinity of the Property as a result of Swim Club's use of the Agreement pursuant to this Agreement, Swim Club shall promptly take all steps necessary to remove any contamination resulting from such activities. Swim Club accepts full responsibility for all activities and costs incurred related to cleaning up the Property from the effects of such spill or leak. Swim Club shall be responsible for meeting, and possess the means to satisfy, the requirements of all federal, state and local controlling agencies, such as the Bay Area Water Quality Management District and/or the Environmental Protection Agency, which may have jurisdiction over the region in

which the Property is located or over the substance being used by Swim Club on the Property.

B. **Hazardous Materials Defined.** The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste:

C. **Hazardous Materials Indemnity.** Swim Club shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Property, damages for

the loss or restriction on use of the rentable or usable space or of any amenity of the Property, damages arising from any adverse impact or marketing of the Property and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Agreement Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Property by Swim Club, Swim Club's agents, employees, licensees or invitees or at Swim Club's direction of Hazardous Material, or by Swim Club's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Swim Club's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Property, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Agreement Term. For purposes of the indemnity provided herein, any acts or omissions of Swim Club, or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of Swim Club (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Swim Club.

D. At the City's request, Swim Club shall provide a report within thirty (30) days following the expiration or termination of this Agreement indicating that Swim Club's activities on the Property have not resulted in any spill, leakage or release of any Hazardous Materials on the Property or any area in the vicinity of the Property. Such report shall be provided at Swim Club's cost and be performed by an environmental consultant approved by City.

## **9. AUDIT OF RECORDS AND INCIDENT REPORTING**

A. Swim Club shall maintain records during the term of this Agreement and preserve the same for a period of three (3) years after any termination of Agreement. The records shall include attendance records of Swim Club members at City facilities for other than individual recreational swim privileges enjoyed by the general public, with the names of the members, dates and place of attendance.

B. Swim Club shall provide City with a complete, board approved, auditable financial report of all revenues and expenditures on an annual basis in February of each year for the prior fiscal year. Swim Club shall submit at the annual meeting a current list of its Board of Directors, its Articles of incorporation, Club Bylaws, Federal Determination Letter, City business license, inventory of items that Swim Club stores at the Property, including but not limited to computers, telephones, pool training equipment, and dry land training equipment. Swim Club will make

these records available for inspection by authorized representatives of the City.

- C. In the event of an accident or incident involving damage or harm to person(s) or property, Swim Club shall immediately report all such accident(s) and/or incident(s) occurring during any and all pool use to City's Director of Parks & Recreation and program designee (Recreation Supervisor) in writing.

## **10. HOLD HARMLESS/INDEMNIFICATION.**

- A. Indemnification. To the extent permitted by law, Swim Club agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall become legally liable arising from Swim Club's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Agreement. Swim Club shall give City immediate notice of any claim or liability hereby indemnified against.
- B. Waiver of Claims. Swim Club waives any claims against City for injury to Swim Club's business or any loss of income therefrom, for damage to Swim Club's property, or for injury or death of any person in or about Mary Gomez Pool or any other City Property, from any cause whatsoever, except to the extent caused by City's active negligence or willful misconduct.

## **11. CITY'S RIGHTS**

City reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with the rights granted to Swim Club in this Agreement.

## **12. ASSIGNMENT - EXCLUSIVE TO SWIM CLUB**

The rights granted in this Agreement are personal and limited solely to Swim Club and its employees for the stated purpose set forth in this Agreement. Swim Club agrees not to commit waste or to construct, allow or maintain any use, construction or operate any equipment which constitutes a nuisance on the Property or which may in any way interfere with the use, enjoyment or possession of the Property by City, or the City's lessee(s) or licensee(s) on the Property, if any. The Property shall not be used by any person or entity, including Swim Club or its employees, for any purpose other than stated in this Agreement. Neither this Agreement, nor the rights granted to Swim Club within it, shall be assignable or otherwise transferable without the prior written consent of City. Unless specifically stated to the contrary in any written consent to an assignment, no assignment or other transfer will release or discharge the Swim Club from any duty, responsibility or liability under this Agreement.

## **13. TERMINATING THE AGREEMENT**

### **A. City's Right to Terminate.**

The City may declare this Agreement terminated in its entirety in the manner provided in Section 12.C and may exercise all rights of entry and re-entry with or without process of law, into the Property upon the occurrence of any one or more of the following events:

1. If the Management Fee or other money payments which Swim Club agrees to pay, or any part thereof, are unpaid after the date specified for such payments as set forth in Exhibit B;
2. If Swim Club has failed in the performance of any covenant or condition required to be performed by the Swim Club;
3. Upon the occurrence of any act or omission which results in the suspension or revocation of any act, power, license, permit or authority that terminates the conduct and operation of the Property by Swim Club, or suspends it for any time in excess of ninety (90) days;
4. If the levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which does, or as a direct consequence of such process, will interfere with Swim Club's occupancy of the Property and will interfere with its operations under the Agreement, and which attachment, execution, receivership or other process of court is not enjoined, vacated, dismissed or set aside within a period of ninety (90) days;
5. If a petition under any part of the federal bankruptcy laws or an action under present or future insolvency law or statute is filed against Swim Club's operations of the Property or Swim Club is adjudicated as bankrupt unless Swim Club confirms this Agreement in any bankruptcy proceeding;
6. If Swim Club shall voluntarily abandon, desert, vacate or discontinue all or part of its operation of the Property or any other action that results in a failure by the Swim Club to provide the public and others with the service contemplated; and/or,
7. If the time period from the Agreement Date of the Agreement to the initial date of operation and management of the Property exceeds twenty-four (24) calendar months.

B. Swim Club's Right to Terminate.

1. Notwithstanding the foregoing or any provisions to the contrary herein, this Agreement is expressly conditioned upon approval by the appropriate agencies for the appropriate licenses required for the operation and management of the Property.
2. Swim Club, at its option, may declare this Agreement terminated in its entirety, in the manner provided in subsection 12.C herein if City fails in the performance of any material condition of this Agreement.

C. Procedure for Termination or Repossession.

1. No termination declared by either Party shall be effective and, except as provided in this Agreement, the City shall not take possession of the Property unless and until not less than ninety (90) days have elapsed after issuance of a written Notice of Termination by either Party to the other specifying the date upon which such termination shall take effect and the cause for which the Agreement is being terminated or for which the Property is being repossessed to provide for the cure of any such default, and, no such termination shall be effective nor shall the City retake possession of the Property:
  - a. if such default is cured within the ninety (90) day period; or,
  - b. in the event that such default by its nature cannot be cured within such ninety (90) day period if the Party in default promptly commences to correct such default within said ninety (90) days and corrects same as promptly as is reasonably practical.
2. Failure by the City to take any authorized action upon default by Swim Club of any of the terms, covenants or conditions required to be performed, kept and observed by the Swim Club shall not be construed to be or act as a waiver of default or of any subsequent default of any of the terms, covenants and conditions to be performed, kept and observed by Swim Club.
3. The acceptance of payments by the City from Swim Club for any period or periods after a default and conditions required to be performed, kept and observed by the Swim Club shall not be deemed a waiver or stopping of any right on the part of the City to terminate the Agreement for failure by the Swim Club to so perform, keep or observe any of said terms, covenants or conditions.

D. Miscellaneous Rights.

1. On the date set forth in a Notice of Termination issued to Swim Club by the

City, all right, title and interest of Swim Club shall terminate at the discretion of the City except as otherwise provided in Section 12.C above.

2. It is to be understood that the rights and remedies of the City and Swim Club specified in this Agreement are not intended to be, and shall not be, exclusive of one another or exclusive of any common law or statutory right of either of the parties hereto.

#### **14. TITLE TO IMPROVEMENTS**

- A. All improvements constructed, erected or installed upon the Property shall become the property of the City upon termination of this Agreement.
- B. Title to all equipment, furniture and furnishings placed by Swim Club in or upon the Project shall remain with Swim Club, and replacements, substitutions and modifications thereof may be made by Swim Club throughout the term of this Agreement and Swim Club may remove same upon termination of this Agreement if Swim Club is not then in default under this Agreement; provided, that Swim Club shall repair to the satisfaction of City any damage to the Property and improvements caused by such removal; and provided further that usual and customary lighting, electrical, plumbing and heating fixtures shall remain upon the Property and shall be surrendered therewith upon termination of this Agreement.

#### **15. STATE AND LOCAL LICENSES AND LAWS**

- A. Swim Club shall, at all times, comply with all applicable laws, rules and regulations and orders of the Federal government, State of California, County of Santa Clara and City of Santa Clara.
- B. Swim Club, at its sole expense and cost, shall be responsible for procuring the necessary City of Santa Clara licenses and other appropriate licenses from the County or State. Swim Club shall observe and comply with the requirements of all applicable federal, state and local statutes, ordinances and regulations regarding the Property. Swim Club shall, at its sole expense and cost, procure and keep in force, during the entire term of this Agreement and any extension thereof, all permits and licenses required by such statutes, ordinances or regulations.

#### **16. SIGNS**

Swim Club shall not install, paint, inscribe or place any signs or placards upon the exterior of the Property or upon the interior of the Property if intended to be viewed from the exterior thereof, without the prior written consent of the City and concurrence by the Director of Community Development Department or designee that the signs are in conformance with all City of Santa Clara ordinances. Swim Club agrees, at its own expense, to remove or paint over to the satisfaction of City promptly upon termination of this Agreement any and all

signs or placards installed, painted, inscribed or placed by it in or upon the interior or exterior of the Property and to restore the surface thereof; and should Swim Club fail to so remove or paint over such signs or placards, and restore the surface, the City may do so at the expense of Swim Club and Swim Club shall reimburse the City for the cost thereof upon demand.

**17. INSURANCE REQUIREMENTS**

- A. Swim Club agrees to maintain in full force and effect, at Swim Club's own cost and expense, at all times for the term of this Agreement or any authorized extension thereof, insurance coverage in amounts and with the endorsements herein indicated and set forth in Exhibit C, attached and incorporated herein by reference. Swim Club and City shall be listed as co-insured under all insurance policies required under this Agreement.
- B. A certificate or certificates evidencing such insurance coverage shall be filed with the City's insurance compliance contractor prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the City. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is canceled or reduced, Swim Club shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may without further notice cause this Agreement to be forfeited and exercise such other rights as it may have in the event of Swim Club's default.

**18. RIGHT TO INSPECT PREMISES**

The City or its duly authorized representatives or agents and other persons for it, may enter into or upon the Project at any and all reasonable times during the term of this Agreement for the purpose of determining whether or not Swim Club is complying with the terms and conditions hereof or for any other purpose incidental to rights of the City.

**19. NOTICES**

All notices to the Parties to this Agreement shall, unless otherwise requested in writing, be sent by mail, facsimile or personally delivered to the addresses listed in this Section. The notices shall be deemed served and delivered three (3) days after deposited in the United States mail by first class mail or personal delivery or upon receipt of a facsimile transmission. Any notice permitted or required to be served upon the City may be served upon:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
or by facsimile at (408) 241-6771

Any notice permitted or required to be served on the Swim Club may be served upon:

John Bitter  
2625 Patricia Dr. Santa Clara, CA 95051  
(408) 512-2091  
or by facsimile at (408)246-5055

**20. DISPUTE RESOLUTION**

- A. No arbitration or civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement, except for the nonpayment of rent, may be commenced until the matter has been submitted to mediation. The Parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings, said mediation to take place in Santa Clara, California.
- B. Either Party may commence mediation by providing to the other Party a written notice of mediation, setting forth the subject of the dispute and the relief requested. Each Party agrees to participate in up to eight (8) hours of mediation before resorting to litigation in the Santa Clara Superior Court in San Jose, California.
- C. The Parties may agree on one mediator. In the event the Parties are unable to agree upon a mediator within ten (10) days following the date of the written Notice of Mediation, the Parties shall submit the matter to the American Arbitration Association, which shall appoint a mediator. The Parties shall share equally in the costs of mediation. Either Party may seek injunctive relief prior to the mediation to preserve the status quo pending the completion of that process. Except for an action to obtain such injunctive relief, neither Party may commence arbitration or a civil action with respect to the matters submitted to mediation until after the completion of the first mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first.
- D. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement. Mediation may continue after the commencement of arbitration or a civil action, if the Parties so agree.
- E. The costs of the mediator shall be borne by the Parties equally. However, all costs, fees, expenses and any attorney's fees related to such mediation activities are to be paid by the Party having incurred such fees, costs and expenses.
- F. The provisions of this Section may be enforced by any court of competent jurisdiction.

**21. SEVERABILITY CLAUSE.**

If any provision of this Agreement is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

**22. INDEPENDENT CONTRACTOR.**

It is agreed that Swim Club shall act and be an independent contractor and not an agent nor employee of City. Except as herein expressly provided, neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other or to bind the other in any manner or thing whatsoever.

**23. FAIR EMPLOYMENT**

Swim Club shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

**24. AUTHORITY TO GRANT RIGHTS**

City warrants that it is the owner of the Property and that it has the full rights and authority to grant the rights to the Swim Club which are contained in this Agreement.

**25. COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

**26. FACSIMILE SIGNATURE**

The Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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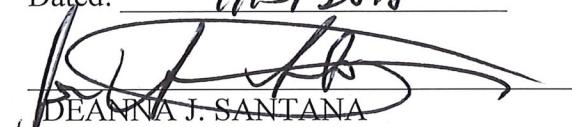
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The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is February 27, 2018. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

APPROVED AS TO FORM:

  
BRIAN DOYLE  
City Attorney

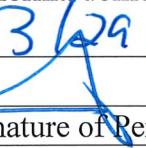
Dated: 4/10/2018  
  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

ATTEST:

  
JENNIFER YAMAGUMA  
Acting City Clerk

“CITY”

**THE SANTA CLARA SWIM CLUB**  
a California domestic nonprofit corporation

Dated: 3/29/18  
By:   
(Signature of Person executing the Agreement)  
Name: John Bitter  
Address: 2625 Patricia Drive  
Santa Clara, CA 95051  
Email: [jbitter@santaclaraswimclub.org](mailto:jbitter@santaclaraswimclub.org)  
Telephone: 408-512-2091  
Fax: 408-246-5055

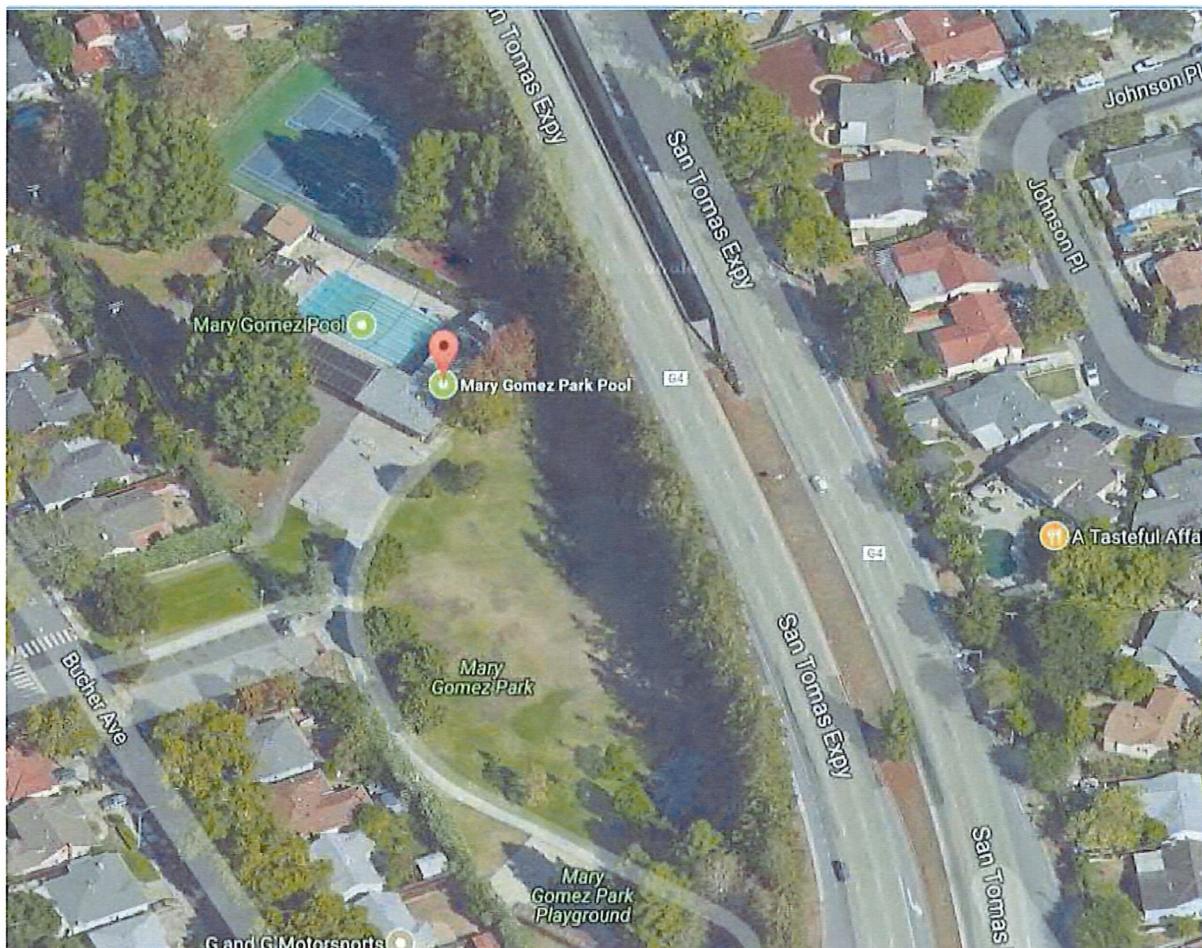
“SWIM CLUB”

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**MANAGEMENT AGREEMENT  
BETWEEN THE CITY OF SANTA CLARA  
AND THE SANTA CLARA SWIM CLUB**

**EXHIBIT A**

The description of the Property which is the subject of this agreement is 6 lanes x 25 yards; locker rooms, pool building, office and pool deck at Mary Gomez Pool



**MANAGEMENT AGREEMENT  
BETWEEN THE CITY OF SANTA CLARA  
AND THE SANTA CLARA SWIM CLUB**

**EXHIBIT B**

**FEE SCHEDULE**

Management Fee to be paid by July 30 shall be as follows:

<b>Fiscal Years</b>	<b>Annual Amount</b>
2018-2019	\$35,000
2019-2020	\$35,000 plus San Francisco-Oakland-San Jose Consumer Price Index (CPI) plus 1%
2020-2021	2019-2020 Fiscal Year Total Fee plus CPI plus 1%
2021-2022	2020-2021 Fiscal Year Total Fee plus CPI plus 1%
2022-2023	2021-2022 Fiscal Year Total Fee plus CPI plus 1%

**MANAGEMENT AGREEMENT  
BETWEEN THE CITY OF SANTA CLARA  
AND THE SANTA CLARA SWIM CLUB**

**EXHIBIT C**

**INSURANCE COVERAGE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence  
\$2,000,000 General aggregate  
\$2,000,000 Products/Completed Operations aggregate  
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million

dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

#### D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered

excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

#### E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this

Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

#### G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [\*insert City department name here]

P.O. Box 100085 – S2	or	1 Ebix Way
Duluth, GA 30096		John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

#### H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.