

**AMENDMENT NO. 2
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA SWIM CLUB, INC.**

This agreement ("Amendment No. 2") is made and entered into on this 17th day of August 2010, ("Effective Date") by and between the City of Santa Clara, California ("City"), a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 and the Santa Clara Swim Club, Inc., a California corporation, ("Contractor") with its principal place of business located at 2625 Patricia Drive, Santa Clara, CA 95051. Contractor and City may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 2."

RECITALS

- A. The Parties previously entered into an agreement entitled "Permit for Use of Facilities", dated July 15, 1980 (the "Original Agreement"); and
- B. The Original Agreement was previously amended by Amendment No. 1, dated June 15, 1982, and is again amended by this Amendment No. 2. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and
- C. The Parties entered into the Original Agreement as Amended for the purpose of having Contractor provide swim programs during days and hours which the general public has minimal need for use of the George F. Haines International Swim Center ("Facility") so as to promote the development of exceptional swimming skill and to the development of youth of the community for the benefit of the City of Santa Clara, and the Parties now wish to amend the Original Agreement as Amended to include provision of insurance; indemnification; clarification of current swim activities and responsibilities; and a timeframe for discussion of an updated agreement.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS – ORIGINAL SECTION 8

That paragraph number 8 of the Original Agreement's Terms and Conditions (not its Recitals) (hereafter referred to as "Section 2"), entitled "Permit for Use of Facilities" is hereby amended by deleting the existing paragraph in its entirety and replacing it with the following:

"8. HOLD HARMLESS/INDEMNIFICATION

It is an express condition of this Agreement that the City of Santa Clara shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of Contractor, its agents or employees, or third persons, from any cause or causes whatsoever while at the Facility or any part thereof during the term of this Agreement or occasioned by any occupancy or use of the Facility or any activity carried on by Contractor in connection with this Agreement.

To the extent permitted by law, Contractor hereby covenants and agrees to protect, defend, indemnify and to save harmless the City from all liabilities, charges, expenses, including counsel fees and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses, however occurring, or damages for which Contractor shall become legally liable arising from Contractor's negligent acts, errors or omissions with respect to or in any way connected with this Agreement.

Contractor shall not be liable for damage caused solely by City or its employees, agents or volunteers.

8.5. INSURANCE REQUIREMENTS

A. Contractor agrees to maintain in full force and effect, at Contractor'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 A, attached and incorporated herein by reference. Contractor and City shall be listed as co-insured under all insurance policies required under this Agreement. Upon execution of this Agreement, and before commencing any work hereunder, Contractor shall file with the City Clerk of the City of Santa Clara, and subject to the approval of the City Attorney for adequacy of protection, proper certificates and endorsements for the insurance requirement as set forth in Exhibit A.

B. A certificate or certificates evidencing such insurance coverage shall be filed with the City Clerk of the City of Santa Clara 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 Clerk. 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 Clerk. If such coverage is canceled or reduced, Contractor shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction in coverage, file with the City Clerk 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 and at its option either:

1. Notwithstanding any other provisions of this Agreement, cause this Agreement to be forfeited and exercise such other rights as it may have in the event of Contractor's default, or,

2. Procure such insurance coverage at Contractor's expense and Contractor shall promptly reimburse the City for such expense. If Contractor fails or refuses to procure or maintain insurance as required by this Agreement to be procured and maintained by Contractor, City shall have the right, at City's election, to procure and maintain such insurance for the benefit of Contractor and City. The premiums paid by City shall be treated as additional payment due from Contractor to be paid on the first business day of the month following the date on which the premiums were paid. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s) that shall include Contractor."

2. AMENDMENT PROVISIONS – ORIGINAL SECTIONS 2, 7

That paragraph numbers 2 and 7 of Section 2 of the Original Agreement, entitled "Permit for Use of Facilities" is hereby amended by deleting the existing paragraph numbers 2 and 7 in their entirety and replacing them with the following. The parties agree that no new Section 7 will be inserted.

"2. USE OF FACILITY

A. The George F. Haines International Swim Center ("ISC" or "Facility") shall be used by Contractor to provide swimming related recreational activities and competitive events. City does hereby permit Contractor to use the facilities of the ISC, and other swimming facilities related thereto, for purposes of swim training, swim lessons and competition events; provided, however, that each schedule or any amendments to the schedule of training times and competition events shall be first approved by the Director of Parks and Recreation. Inasmuch as competition events must be scheduled far in advance and may include persons from many parts of the world, use of said facility for such scheduled competition events as approved by City shall not be cancelled by City once approval has been granted, unless such use is prevented by acts of God or other events beyond the control of City.

1. Competitive Events Program:

a. Schedule: Contractor shall submit a proposed schedule of requested dates for events and meets to City for review, in writing, no later than October 31 of the current year. Meets and events shall not be changed by Contractor once confirmed and the calendar has been distributed on November 30 of the current year.

b. Promotion and Marketing: Contractor shall submit a request to promote and/or broadcast approved swim meets to the City Manager's Office thirty (30) days prior to each event. Request to broadcast shall be finalized with the City Manager's Office at least ten (10) days prior to each event. Contractor shall submit a request to use City logo according to City policies and have marketing

materials reviewed and approved prior to printing, electronic posting and/or distribution.

c. Equipment: All swim meet timing equipment and other equipment required for each event shall be obtained by Contractor from a professional timing and/or authorized U.S. Swimming organization to meet any course or meet requirements.

d. Additional Space Requests: Any additional City property, other than the ISC identified in this Agreement, which is required for a swim meet or event shall be requested from and approved by City Parks and Recreation Director no less than seven (7) days in advance of the event.

e. Security & Event Monitors: Contractor shall provide necessary security for each event or meet at its own cost and expense to the City's satisfaction. Contractor shall contact the Santa Clara Police Department and Santa Clara Fire Department thirty (30) days in advance to request and complete arrangements in writing for sufficient event security & monitors.

f. Parking: Contractor shall have access to the parking lot adjacent to the facility for swim meets. Contractor shall submit requests in writing to use Central Park Ball Field for swim event or meet parking no less than sixty (60) days in advance of each event or meet. Any damage to the ball field due to Contractor's use permitted shall be charged to Contractor at a reasonable fee to be determined by City. City will provide a written response with any conditions of approval, including but not limited to method of supervising parking and any charges for vehicles.

g. Guest Accommodations: Contractor shall continue to provide community, regional and international competitions while working with and through the City Chamber of Commerce for hotels and meals to guarantee reservations for hotels and meals in the City of Santa Clara.

h. City Expense Cost Recovery: In the event that any swim facility of City is used by Contractor for competitions, Contractor shall pay to City within thirty (30) days immediately following the conclusion of the event, the actual personnel and equipment costs and expenses incurred by City or when presented with an invoice, whichever is sooner.

i. High School Central Coast Section Meet: Contractor shall host the High School Central Coast Section (CCS) "Championship Swimming and Diving Meet" throughout the term of this Agreement. Contractor shall work with City and CCS in scheduling event. City shall charge CCS directly for cost of City personnel required to work such event. Contractor shall bear all costs for equipment and clean up. Clean up shall include deck, buildings, stands, locker rooms, concession stands and any other area approved for use.

2. Instructional Program:

- a. Contractor shall provide the Learn To Swim Program, competitive swim program and Masters program to the community. City of Santa Clara residents shall be entitled to enroll in these programs for an 8% discount. Program rates shall be submitted to City quarterly.
- b. Equipment: Contractor shall maintain pool lane lines, starting blocks and other equipment necessary for lessons and training. Contractor shall provide City with cost estimates of needed equipment that will be placed in or on the facility property. Any new equipment desired to be purchased and/or be used by Contractor on City property must be approved in writing by City and installed by City. Request for new equipment shall be submitted in writing to the City Parks and Recreation Director sixty (60) days in advance. Yearly installation, inspection, take down and maintenance of the training pool enclosure must be done by a professional company specializing in such enclosures according to the current City codes and manufacturer's specifications.

3. New Community Based/Joint Programs:

- a. Program Proposals: Contractor shall work with City to develop program proposals that would expand and/or provide community, fitness, school-age and other swim programs funded through grants and non-governmental resources. Any proposals for times of use not granted in the regularly scheduled competitive or instructional program shall first be reviewed and approved by City prior to submission for foundation or other funding consideration.

4. General Operating Requirements:

- a. Life guard Supervision: Contractor shall provide necessary life-guarding supervision during all of its activities, as well as exercising reasonable precautions for the safety of others participating in and attending events under sponsorship by Contractor. Lifeguards must be chosen from a preferred staff list provided by the City's Aquatics Supervisor or otherwise approved by the City's hiring process.
- b. Keys: Contractor shall be issued keys by City upon appropriate written request and documentation. City shall update records on key assignments on a quarterly basis with Contractor. Keys may be revoked at any time. Contractor 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 them by the City's Aquatics Supervisor. A key deposit of \$500 will be paid to CITY and maintained during the life of this agreement.
- c. Coach Certification: Contractor shall maintain current U.S. 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 a current valid copy at the ISC current certification of Safety Training for coaches.

d. Coach Responsibilities: Contractor's certified coach shall be the first person in the facility and the last person out of the facility. Upon entering the facility, coach shall conduct a safety check and report any immediate and/or potential hazards to the City's Aquatics Supervisor. Safety checks shall include all gates, pool deck, locker rooms, safety equipment, AED, training equipment, ladders and pool. Coach shall immediately contact City to report any safety issues. First coach entering facility shall also unlock AED cabinet. Upon leaving facility, closing coach shall check all spaces, locker rooms, pools, and office spaces and confirm everyone has exited the facility. Coach shall then be responsible for locking all doors and gates used during facility use. This includes locking the AED cabinet. Contractor must have direct deck supervision at all times when gate is unlocked. Coaches entering and leaving facility shall lock gates when swimmers are not in the facility.

e. Practice Schedules: Contractor shall submit in writing a request for practice schedules for the months of June, July and August to City Aquatic's Supervisor by May 1 of current year. Practice schedules for September-May shall be submitted on August 1 of the current year. Once approved by City, schedules will be maintained by City and at which time a copy of the facility use permit will be issued to the Contractor's head coach to sign. Contractor and City shall maintain a signed copy of facility use permit.

f. Shared office space & equipment: Contractor shall maintain shared office space and any equipment necessary for their operation at the facility. Contractor shall provide City with annual equipment inventory and maintain adequate insurance to cover any needed equipment that will be placed in or on the facility property. Any new equipment desired to be purchased and/or be used by Contractor on City property must be approved in writing by City and submitted on an updated inventory to City.

g. Signage: Contractor shall not install, paint, inscribe or place any new signs or placards without the prior written consent of the City that the signs are in conformance with all City of Santa Clara ordinances. Contractor agrees that future modifications to any previously installed existing signs or placards will be subject to review. Contractor 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 Facility and to restore the surface thereof; and should Contractor fail to so remove or paint over such signs or placards, and restore the surface, the City may do so at the expense of Contractor and Contractor shall reimburse the City for the cost thereof upon demand.

h. Cleanliness: Contractor hereby expressly agrees at all times during the term of this Agreement, at its own cost, to maintain and operate the Facility in a clean and sanitary condition and in compliance with any present or future laws, ordinances and rules or regulations of any public or governmental authority now or at any time during the term of this Agreement in force relating to sanitation, public health or safety. Contractor shall at all times faithfully obey and comply

with all laws, rules and regulations applicable to the ISC adopted by federal, state, local or other governmental bodies or departments or officers thereof.

i. Contractor shall not use or permit the ISC, or any part thereof, to be used in whole or in part for any purpose other than as set forth above except with the prior written consent of the City evidenced 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.

j. Annual Facility Use Communication Meeting: Contractor shall meet with City staff at a minimum of once a year in February for the purpose of informing City of its staff, directors, and programs. Additional meetings shall be scheduled as deemed necessary by City or Contractor. Contractor shall submit at the annual meeting a current list of its Board of Directors, its Articles of Incorporation, Club bylaws, Federal Determination Letter, Annual Tax information, City Business License and inventory of items that Contractor stores at the Facility, including but not limited to computers, telephones, pool training equipment, and dry land training equipment. Communication regarding the day to day operation of Contractor's programs and City's ISC facility shall be accomplished by Contractor's Head Coach and the City's Aquatics Supervisor.

k. The City reserves all rights not stated and may permit facility use by other organizations, may enter into an arrangement with a third party to operate the facility, teach public swim lessons, or otherwise use the facility for swimming, diving programs and /or other programs. City may require that such third parties name Contractor as an additional insured on any insurance policies required by the City to the same extent as City is named regarding such operation and/or uses."

3. AMENDMENT PROVISIONS – ORIGINAL SECTION 5

That paragraph number 5 of Section 2 of the Original Agreement, entitled "Permit for Use of Facilities" is hereby amended by deleting the existing paragraph number 5 in Section 2 in its entirety and replacing it with the following:

"5. AUDIT OF CONTRACTOR RECORDS AND INCIDENT REPORTING

A. Contractor shall maintain accurate 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 Contractor's 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. In addition, Contractor shall provide quarterly, a current membership roster with street address and city of residence with a summary of total percentages of City of residence.

B. Contractor shall provide City with a complete, board approved, auditable financial report of all revenues and expenditures and detailed schedules of all categories of revenues and expenditures on an annual basis in April of each year for the prior fiscal year. The records shall include, in addition such records as approved by City's Director of Finance from which a determination can be made of the gross and net receipts received by Contractor for each special event. Contractor 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, Contractor shall immediately report all such accident(s) and/or incident(s) occurring during any and all pool use to City's Parks and Recreation Director in writing."

4. AMENDMENT PROVISIONS – NEW SECTION 18

That the agreement titled "Permit for Use of Facilities" is hereby amended by adding the following paragraph number 18 to Section 2:

"18. COMPLIANCE WITH ETHICAL STANDARDS

Contractor shall:

A. Read Exhibit B, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

B. Execute Exhibit C, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS.""

5. AMENDMENT PROVISIONS – ORIGINAL SECTION 3

That paragraph number 3(a) of Section 2 of the Original Agreement, entitled "Permit for Use of Facilities" is hereby amended by deleting the existing paragraph number 3(a) in Section 2 in its entirety and replacing it with the following:

"3. a) For use of said facility, Contractor shall, within ten (10) days following each calendar quarter, pay to City the sum of five thousand dollars (\$5,000) per calendar quarter. The quarterly rate, in effect since 1992, shall be subject to review by City for an annual adjustment whose rate shall be set in advance in writing and become effective for the calendar quarter beginning in July of each year.

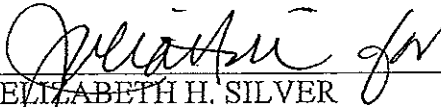
6. TERMS


All other terms of the Original Agreement as Amended which are not in conflict with the provisions of this Amendment No. 2 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.


The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 2 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

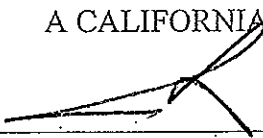

ELIZABETH H. SILVER
Interim City Attorney

ATTEST: 
ROD DIRIDON, JR.
City Clerk


JENNIFER SPARACINO
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SANTA CLARA SWIM CLUB, INC.
A CALIFORNIA CORPORATION

By: 
(Signature of Person executing the Agreement on behalf of Contractor)
Name: JOHN BITTER
Title: HEAD COACH / CEO SANTA CLARA SWIM CLUB
Local Address: 2625 PATRICIA DRIVE
SANTA CLARA, CA 95051
Telephone: (408) 246-5050
Fax: (408) 246-5055

**AMENDMENT NO. 2
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA SWIM CLUB, INC.**

EXHIBIT A

INSURANCE REQUIREMENTS

Contractor shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Santa Clara, California, individually or collectively.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

a. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$2,000,000 each occurrence (combined single limit);
\$2,000,000 for personal injury liability;
\$2,000,000 aggregate for products-completed operations; and,
\$2,000,000 general aggregate applying separately to this project.

b. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

c. WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY ("WC/EL"). (A Workers Compensation Policy is required only if Contractor has employees or volunteers.)

These policies shall include at least the following coverages and policy limits:

1. Workers Compensation insurance as required by the laws of the State of California; and
2. Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Contractor and approved by the City before work is begun pursuant to this Agreement. At the option of the City, Contractor shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. Additional Insureds The City of Santa Clara, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the Project, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- b. 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);
- c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, BAL, WC/EL).

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4. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Contractor to immediately cease all activities with respect to this Agreement if the City determines that Contractor fails to carry, in full force and effect, all

insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Contractor.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Contractor's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Contractor shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
Attention: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050