

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: NEPTUNE SWIM CLUB RENTAL AGREEMENT FOR USE
OF CITY AQUATIC FACILITIES
STAFF PRESENTER: DON HICKS, RECREATION SUPERVISOR
RECREATION AND PARKS DEPARTMENT

AGENDA ACTION: RESOLUTION

ISSUE(S)

Should the Council approve the 2013-2014 Rental Agreement with the Neptune Swim Club (Neptunes) for the use of the City's aquatic facilities?



COUNCIL GOALS/STRATEGIES

Goal 5: This relationship between the Neptune Swim Club and the City's Recreation & Parks Department that has spanned over 50 years. The Neptunes and the City are both committed to providing quality recreational experiences that promote health and wellness in our community, and this partnership embraces that mission.

BACKGROUND

1. This relationship between the Neptune Swim Club and the City has spanned for over 50 years, supporting and nurturing the aquatic youth in our community. The Neptune Swim Club has produced many outstanding swimmers, notably Jenna Johnson who won 3 Olympic medals in 1984, 7 swimmers who went to Olympic trials in 2012, and others that earn swimming scholarships to colleges throughout the country. All of the youth participants have learned self discipline, a commitment to hard work, and a skill that will keep them healthy and fit for life.
2. The proposed Rental Agreement provides the Neptunes with use of the Ridgway and Finley Swim Centers from February 1, 2013 to January 31, 2014. The rental revenue that is produced from this Rental Agreement, over \$46,000 each year, helps to operate the City's aquatic facilities and offer aquatic programming.
3. Many of the youth that swim as part of the Neptune Swim Club apply to work as swim instructors and lifeguards at our two aquatic facilities.

ANALYSIS

1. The relationship between the Neptune Swim Club and the City of Santa Rosa is successful on many fronts, it supports our Council Goals, brings in important revenue to support aquatic facilities and programs, and provides an ongoing group of skilled youth to staff our swim instructor and lifeguard needs.
2. Continuation of the rental agreement will provide hundreds of swimmers with practice and competition space.

RECOMMENDATION

The Recreation and Parks Department recommends that the Council, by resolution, approve the 2013-2014 Rental Agreement for the Neptune Swim Club use of the City's aquatic facilities and authorize the Mayor to sign the agreement.

Author: Don Hicks, Recreation Supervisor

Attachments:

- Rental Agreement

EXHIBIT A

CITY OF SANTA ROSA
RENTAL AGREEMENT
WITH NEPTUNE SWIM CLUB

This "Agreement" is made as of this ____ day of _____, 2013 by and between the City of Santa Rosa, a municipal corporation ("City"), and Neptune Swim Club, a 501(c)(3) Corporation ("Neptune").

RECITALS

- A. City is the owner and operator of the swim facilities, Ridgway Swim Center located at 455 Ridgway Avenue and Finley Swim Center, 2060 West College Avenue, Santa Rosa ("Facilities")
- B. Facilities are for the use and benefit of the general public, but City finds that there may be certain days and hours which may be made available for community groups for recreational use in conjunction with City programs.
- C. Neptune is a non-profit 501(c)(3) corporation devoted to the promotion and development of swimming skills of young people.
- D. Neptune's use of Facilities will benefit the citizens of Santa Rosa by fostering development of swim skills.

AGREEMENT

The parties agree as follows:

- 1. **Permission** City permits the use of Facilities by Neptune as set forth herein.
- 2. **By-Laws and Officers Roster** Neptune shall maintain current By-Laws and roster of its officers and submit both to the City annually after Board of Directors elections.
- 3. **No Conveyance** This Agreement does not constitute the conveyance of any interest in Facilities, nor does it create any lease in any person.
- 4. **Term** The permission granted by this Agreement is non-exclusive and begins **FEBRUARY 1st, 2013 and terminates January 31, 2014**, unless sooner terminated as provided herein.

SEASON DATES

- 5. **Practices** City shall schedule Neptune for practice use at the Ridgway Swim Center at the following times:

- a. **High School Season - February 4, 2013, through June 2, 2013.**

Days	Times	Lane Space
Tuesday & Thursday	6:00 am- 7:00 am	3 Lanes
Wednesday & Friday	5:45 am-7:00 am	3 Lanes
Monday - Friday	5:00 pm - 8:00 pm	All Lanes
Saturday	7:00 am - 9:30 am	All Lanes

- b. **Swim Season (Summer) June 4, 2013 to August 17, 2013.**

Days	Times	Lane Space
Monday - Friday	7:00 am - 9:00 am	All Lanes
Monday - Friday	4:15 pm - 7:30 pm	All Lanes
Saturday	7:00 am - 9:30 am	All Lanes

c. **Fall/Winter Season – August 26, 2013 to February 1, 2014.**

Days	Times	Lane Space
Tuesday & Thursday	6:00 am - 7:15 am	3 Lanes
Wednesday & Friday	5:45 am-7:00 am	3 Lanes
Monday - Friday	4:00 pm - 7:30 pm	All Lanes
Saturday	7:00 am - 9:30 am	All Lanes

d. **School Vacation Schedule (Winter and Spring Break)**

Spring Break - Ridgway March 18, 2013 to March 22, 2013

Days	Times	Lane Space
Monday - Friday	7:00 am - 9:30 am	All Lanes
Monday - Friday	2:00 pm-6:00 pm	All Lanes

Winter Break - Ridgway December 23, 2013 - January 3, 2014.

Days	Times	Lane Space
Monday - Friday	7:00 am - 9:30 am	All Lanes
Monday - Friday	2:00pm – 6:00pm	All Lanes

6. **Holidays/Pool Closures** The Facilities will not be available for use by Neptune on the following dates:

Days	Event
Monday, May 27, 2013	Memorial Day
Thursday, July 4, 2013	July 4th
Monday – Friday August 19-23, 2013	Maintenance Closedown
Monday, September 2, 2013	Labor Day
Thursday & Friday, Nov. 28-29, 2013	Thanksgiving
Wednesday, December 25, 2013	Christmas Day
Wednesday, January 1, 2014	New Years Day

7. **Swim Meets/Special Events** City shall allow Neptune to conduct swim meets and special events pursuant to the terms of this Agreement. Neptune shall be accommodated for up to **three** Invitational Swim Meets and **three** Dual Meets per year based on pool availability and mutual consent by the Neptune and City. Neptune shall obtain an approved City of Santa Rosa Fire Permit at least one week prior to Invitational Swim Meet or Special Event.

2013 MEET SCHEDULE

Date	Event
Saturday & Sunday Oct 19 & 20 2013	#1 Invitational Swim Meet
NONE	#2 Invitational Swim Meet
NONE	#3 Invitational Swim Meet
TBD	#1 Dual Swim Meet
TBD	#2 Dual Swim Meet
TBD	#3 Dual Swim Meet

8. **Food and Beverage** During Neptune's use of Facilities for practices, swim meets and/or special events, the consumption and/or sale of food or beverages must have prior approval from City.

9. **Clean-up** Neptune shall clean Facilities and shall pay any staff and maintenance costs

incurred by City associated with cleaning Facilities after all swim meets and practices at the rate of \$12.00 per hour.

10. Locker Room and Front Lobby Supervision Neptune shall have on duty at Facilities during all swim meets and practices, responsible adults who shall monitor and supervise both the men's and women's locker rooms and the front lobby, maintaining these areas in a safe, incident/damage free condition. The locker facilities at the Finley Swim Center and Ridgway Swim Center are not to be used as permanent lockers at any time. Day use of lockers is permitted. All personal equipment or swim bags should be secured in a locker, stored beneath locker room benches, or taken on deck during all NEPTUNE use.

11. Pool Covers At the end of all Monday through Friday swim practices, Neptune agrees to assist City Lifeguards in covering the entire pool, including the Instructional/Splash Pool area. If Neptune fails to provide this service, it agrees that Neptune shall pay to the City the staffing costs incurred by the City to provide this service.

12. Access to Facilities The portions of Facilities approved for use under this Agreement are:

Ridgway Swim Center: Competition Pool, Instructional Pool, coaches office, men's and women's shower facilities, bleacher area and authorized storage space.
Finley Aquatic Center: Competition pool, men's and women's shower facilities, and bleacher area.

13. Coaches During Neptune's use of Facilities for practices and swim meets, Neptune shall have on deck at Facilities, at its own expense, one person, approved by City, possessing the following current certifications: Current USA Swimming non-athlete membership card, Standard First Aid, Community CPR and Safety Training for Swim Coaches or Lifeguard Training. All Neptune personnel on duty at the Facilities are required to possess the above referenced certificates. Prior to use of any such personnel at Facilities, Neptune shall supply City, in writing, with their names, and copies of certifications of such personnel. City shall have the right to reject any person whom City reasonably believes does not possess the necessary skills or qualifications to assure the safe use of Facilities. Neptune coaches shall cooperate with City staff regarding the supervision and appropriate use of the Facilities.

14. Background Check Neptune agrees to conduct a background investigation, through the USA Swimming Association Background Checking Program, of every employee, coach, official and volunteer who may have direct contact with minors in a supervisory or disciplinary capacity at the Facilities. Enforcement and expense of this provision is the sole responsibility of Neptune.

15. Lifeguards City shall employ lifeguards to monitor and supervise the safe use of Facilities during all normal operating hours, including Neptune swim meets and practice times, at City expense. During any hours of use requested, other than normal operating hours, City shall employ one (1) lifeguard to monitor and supervise Facilities at Neptune's expense at the rate of \$12.00 per hour.

16. Rules Neptune and its members, staff and employees shall enforce and obey all posted Facilities' safety rules and other rules that pertain to the use of the Facilities.

17. Correction of Deficiencies Neptune shall immediately correct any deficiency in the manner in which it supervises the use of Facilities, whether or not such deficiencies are brought to Neptune's attention by City staff.

18. Safety Neptune shall exercise reasonable precautions for the safety of persons participating in or attending programs and activities sponsored by Neptune at Facilities. Neptune shall

immediately report to City, any dangerous condition. Neptune acknowledges that its safe use of Facilities during the hours scheduled for Neptune's use shall be its sole responsibility and that its assurances that it will use Facilities in a safe and reasonable manner are a critical inducement to City entering into this Agreement. For the safety of the Neptune swimmers and coaches, and for the safe efficient supervision of the pool and pool deck by the City lifeguard, Neptune parents and spectators are asked to stay in the bleacher and concession areas of the pool during all Neptune program times.

19. Fees Fees are calculated monthly, and are not subject to proration due to any scheduled pool closures or Neptune practice cancellations, as per agreement. For the use of Facilities, Neptune shall pay to City:

- a. **Monthly Rental Fee:**
Mon. – Sat. \$3,850 per month
This base monthly rental fee will be evaluated at the beginning of the calendar year and may be subject to a cost of doing business increase.
- b. **Swim Meets:** No charge for invitational swim meets and dual meets held at Finley or Ridgway. No charge for dual meets which run no more than 4 hours, based on an agreement of the date with City. Time over 4 hours will be charged at a rate of \$90.00 per hour. Neptune shall pay for City staffing costs for dual meets when a meet is scheduled at a time when City staff would not normally be scheduled.
- c. **Special Events:** \$90.00 per hour or \$600.00 per day (8 hours), whichever is less (up to 8 hours). This rate is for exclusive use of Facilities, and includes 1 lifeguard.
- d. **Additional Practice Hours not specified in Agreement:** \$40.00 per hour based on pool availability and consent by City.
- e. **Additional Staff Needs:** Neptune will pay for any additional City staff costs incurred outside of this agreement at the rate of \$12:00 per hour.

20. Insurance Policies Neptune shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the policies of insurance with minimum coverage as indicated in Attachment One ("Insurance Requirements") and issued by insurers with AM Best ratings of no less than A:VI or otherwise acceptable to the City.

21. Indemnity/Liability

Neptune shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") for all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Neptune, its officers, employees, or agents, in connection with this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

22. Default In the event of default on the part of Neptune in any of the terms of this Agreement, which default continues for a period of not less than ten (10) days after written notice from the City to Neptune, City may terminate further use of Facilities under this Agreement and may eject any person who enters by reason of the permission granted in this Agreement.

23. Termination Either party may terminate this Agreement by written notice of not less than one hundred eighty (180) days. Neptune is responsible for all payments which are due at the time of termination.

24. **Facility closure** In the event that City is required to close any part of the Facilities due to equipment failure, budget crisis, or physical deterioration of any kind, City shall give written notice of the closure to Neptune and any right of Neptune to use the Facilities shall be suspended during the time of closure. All monthly fees paid by Neptune to City for the period during which the Facility is closed shall be prorated at the rate of \$85.00 per day.

25. **Entry** Officials & employees of City shall have the right to enter Facilities at all times for the purposes of inspection, maintenance, repair, investigation or survey. Entry by City shall be accomplished in such a manner as to cause minimal interference with the activities of Neptune in its use of Facilities.

26. **Utilities** City shall provide all of the utilities used by Neptune at Facilities.

27. **Maintenance, Waste** City shall maintain Facilities in a safe operational condition. Neptune shall not, during its use, commit or permit any waste or nuisance upon Facilities nor any damage or defacement nor any act or use prohibited by any law or ordinance and Neptune shall, insofar as it is able, act to prevent the waste of any utilities provided by City to Facilities.

28. **Use of Furniture** The permitted uses granted to Neptune by City shall include such furniture and fixtures as are presently at, or may in the future be provided by City to Facilities. Neptune agrees to indemnify City against damages to such furniture and fixtures caused by the acts of Neptune, or its members, in excess of ordinary wear and tear. City shall designate how Facilities are to be used and where the furniture is to be stored.

29. **Storage** City shall provide Neptune with assigned storage space at Ridgway Swim Center. Storage shall be used for non-food items only.

30. **Other Facilities** Neptune shall request the use of other facilities not covered by this agreement through the normal rental permit process of City. All rental fees and charges shall be paid prior to use of other facilities.

31. **Authority** Neptune warrants that it possesses the financial resources to discharge the responsibilities it has assumed under this Agreement.

32. **No Discrimination** Neptune shall not discriminate in its use of Facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation.

33. **No Assignment** Neptune may not assign its rights under this Agreement.

34. **Modification** This Agreement may not be modified except if such modification is in writing and signed by both parties.

35. **Notices** All notices or payments specified in this Agreement shall be delivered to the parties as follows:

CITY: Don J. Hicks
707-543-3740
Finley Aquatic Center
260 West College Ave
Santa Rosa, CA 95401

NEPTUNE: Lisa Banks
707-799-6473
P.O. Box 317
Santa Rosa, CA 95402

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF SANTA ROSA
a Municipal Corporation

NEPTUNE SWIM CLUB
a 501(c)(3) Corporation

By: _____

By _____

Lisa Banks, President

Print Name: _____

Date: _____

Title: _____

APPROVED AS TO FORM:

By _____

Albert Yu, Treasurer

Office of the City Attorney

Date: _____

ATTEST:

City Clerk

Attachments:
Attachment One - Insurance Requirements

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR AGREEMENTS FOR
PROFESSIONAL SERVICES**

A. Insurance Policies: Consultant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 1 million aggregate	Consultant shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Consultant's insurance and shall not contribute with it; and,

- b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Consultant shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Consultant may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.