

RESOLUTION NO. 1396

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF CANBY AND THE CANBY SWIM CLUB, INC. AND REPEALING RESOLUTIONS 1147, 1160, AND 1296.

WHEREAS, the City of Canby and the Canby Swim Club, Inc., previously entered into an Interagency Agreement for the purpose of establishing terms and conditions between the two entities to provide to Canby area competitive swimmers a service utilizing the Canby Swim Center, a City owned facility, and

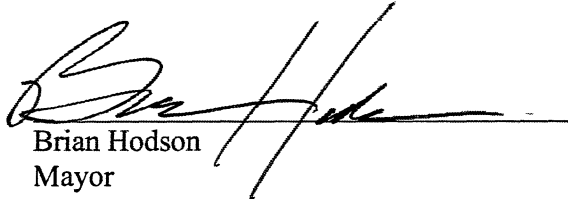
WHEREAS, the current agreement has expired and the Canby City Council believes it is in the best interest of the citizens of Canby to enter into another Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:


1. That the attached Agreement, marked as Exhibit "A" and by this reference incorporated herein, by and between the City of Canby and the Canby Swim Club, Inc. is approved.
2. Resolutions 1147, 1160, and 1296 are hereby repealed.

This resolution shall take effect immediately upon its adoption.

ADOPTED this 18th day of October, by the Canby City Council.


Brian Hodson
Mayor

ATTEST:


Maya Benham
City Recorder

ATTACHMENT "A"
CITY OF CANBY AGREEMENT
CANBY SWIM CLUB, INC.

I. For the year commencing September 1, 2023 and ending August 31, 2028 the SERVICE AGENCY will be charged \$15,885 for use of the Canby Swim Center as scheduled:

A. The SERVICE AGENCY is entitled to six (6) lanes for two and one-half hours (2 ½) hours each PM, Monday-Friday.

B. The SERVICE AGENCY has use of one (1) lane for two (2) hours during the facility's normal Monday-Friday AM lap swim.

C. The SERVICE AGENCY may conduct eight (8) full-day events each year that will affect the Swim Center public schedule. The cost for running swim meets will be the cost of two lifeguards and any resulting clean-up costs. All events must be scheduled with Swim Center management staff sixty (60) days in advance.

II. The base fee of \$15,885 will be due in three equal payments December 15; February 15; and May 15 of each year.

III. Any and all pool time beyond the above schedule will be purchased by the SERVICE AGENCY.

IV. The Canby Swim Club will pay \$200.00 annually to offset the annual copier maintenance contract and paper use.

V. The current charge for lifeguards is \$18.00 per hour.

VI. Storage and Display:

A. The CITY will provide the following storage space for the SERVICE AGENCY:

1. The CITY will offer a storage shed of approximately 200 square feet located outside the Swim Center building.

2. The CITY will allow the locked cabinet at the northwest Corner of the facility.

3. The CITY will allow the use of the base cabinet in the staff changing room at the southwest corner of the building.
 4. The CITY will allow the touch pad caddy and Announcer and Timing Podiums at northeast corner of Facility.
 5. All storage areas will be kept neat and orderly by the SERVICE AGENCY. Nothing flammable or of an unsafe nature will be stored.
 6. No structural changes can be made to the storage facility, cabinets, or podiums without permission of the CITY.
8. The CITY will provide display space for the SERVICE AGENCY as follows:
1. The CITY will allow those portions of the north and west walls currently covered w/ bulletin board and record boards.
 2. The SERVICE AGENCY will maintain these spaces to a presentable standard.
 3. No structural modifications to these boards can be made without the consent of the CITY.
 4. The CITY will allow the hanging of sponsor banners along the East air system. Banner design and dimensions must be approved by Swim Center staff.
- C. Should the CITY require the storage or display area for CITY purposes, the SERVICE AGENCY will be notified at least 90 days in advance of the change. The CITY will endeavor to work with the SERVICE AGENCY to find alternative storage and display space.

VII. SHARED EQUIPMENT:

A. The CITY and SERVICE AGENCY share equipment whenever it makes sense to do so. Shared equipment is purchased and maintained on a 50-50 basis. The parties will meet annually during September to discuss the shared equipment and plan for maintenance and replacement so that both parties can budget the needed funds. A list of shared equipment will be maintained by both the CITY and the SERVICE AGENCY and updated annually.

CITY OF CANBY

AGREEMENT WITH CANBY SWIM CLUB, INC.

This Agreement is entered into between the CITY OF CANBY, hereinafter referred to as "CITY", a municipal corporation, and Canby Swim Club, Inc., an Oregon nonprofit corporation, hereinafter called "SERVICE AGENCY". This Agreement is made and entered into between these parties on the date of the latest of the signatures hereto. The parties expressly intend for the Agreement to be retroactively effective beginning September 1, 2023 ("Effective Date").

The purpose of this Agreement is to enable the SERVICE AGENCY to provide services to CITY as described below:

I. SCOPE OF SERVICES:

A. SERVICE AGENCY SHALL:

1. Provide training and coaching of competitive swimming to Canby area youth, utilizing the Canby Swim Center, a CITY owned facility, in accordance with the SERVICE AGENCY by-laws, written policies and this AGREEMENT.
2. Compensate the CITY for use of the Canby Swim Center to offset facility maintenance costs and loss of pool time for other revenue-producing activities according to the addendum "Attachment A". Attachment A is provided annually at the conclusion of the City budget process and may be amended by the City upon sixty (60) days notice only in the event of a serious budget crisis; otherwise, it is in effect unless and until the budget process amends it.
3. Honor all Canby Swim Center written rules and policies regarding the use of the Canby Swim Center office and facility during practices and swim meets.
4. Compensate the CITY for half of the maintenance contract for the copier in the Swim Center office. See "Attachment A" for the current cost.
5. Compensate the CITY for any extra times beyond what is described in this agreement when the SERVICE AGENCY will use the Canby Swim Center. Such extra time will only be available when the Swim Center is not already scheduled for public use. See "Attachment A" for current rates.
6. Provide two lifeguards at every swim meet, either by hiring the guards privately or compensating the CITY for said guards. All lifeguards are subject to approval by Swim Center staff. Wage information for the guards is determined through the annual budget process. See

"Attachment A" for the current wage information.

a) At no time shall SERVICE AGENCY representatives be in the facility without a member of the Swim Center Staff.

7. Provide Canby Swim Center staff with a schedule of SERVICE AGENCY events sixty (60) days in advance.

B. CITY SHALL:

1. Maintain and schedule the Canby Swim Center facility in such a fashion that the broadest spectrum of the community can use and enjoy its programs.

2. Guarantee SERVICE AGENCY use of the facility for practices and competitions as detailed in "Attachment A". The cost for running meets will be the cost of two lifeguards and any resulting clean-up costs. All events must be scheduled with Swim Center management staff sixty (60) days in advance. Any and all pool time beyond the above schedule will be purchased by the SERVICE AGENCY at rates described in "Attachment A", which is updated with each budget year to cover CITY costs.

3. Allow authorized SERVICE AGENCY personnel use of the pool office during Swim Meets only.

4. Provide storage and display space as outlined in "Attachment A".

5. Maintain the facility in a safe, professional, and healthy fashion.

6. Meet monthly with SERVICE AGENCY members to ensure that any problems are resolved quickly, to affect the best possible communication, and to address common concerns and work together to improve the ability of both parties to serve their constituents.

7. Make every effort to schedule Canby Swim Center programs in such a way that the SERVICE AGENCY program can be successful without jeopardizing the financial health of the Canby Swim Center operation or causing undue disruption of the facility's availability to the general public.

II. INDEMNITY: The SERVICE AGENCY shall indemnify, save, and hold harmless the CITY and all of its agents and employees from any and all claims for losses, injuries, damages and liabilities to persons involved in sanctioned SERVICE AGENCY activities occasioned wholly or in part by the acts or omissions of the SERVICE AGENCY, its agents, officers, and employees while using CITY facilities or otherwise while performing its activities in agreement with the CITY.

III. INSURANCE: If required by the CITY, the SERVICE AGENCY shall provide a public liability insurance policy naming the CITY as an additional insured in an amount of one million dollars (\$2,000,000), combined single limit including bodily injury and property

damage. Such insurance provided by the SERVICE AGENCY, and naming the CITY as an additional insured, is for coverage during SERVICE AGENCY activities, occasioned wholly or in part by the acts or omission of the SERVICE AGENCY, its agents, officers, participants, and employees while using CITY facilities or otherwise performing its activities in agreement with the CITY. The liability insurance carried by SERVICE AGENCY will be primary and any insurance the CITY carries will be excess.

IV. BREACH OF CONTRACT: In the event of any breach of any of the terms or provisions of this AGREEMENT, the CITY will notify the SERVICE AGENCY of the breach. The SERVICE AGENCY will be given thirty (30) days to remedy the breach. If the breach is not remedied within thirty (30) days the CITY shall have the right, in addition to any other recourse or remedy available to CITY under law, to immediately terminate this AGREEMENT, to enter and obtain possession of any CITY owned facilities being utilized by the SERVICE AGENCY under this AGREEMENT, to remove and exclude any and all persons from said facilities and to remove and exclude all property of the SERVICE AGENCY therefrom, all without service of notice or resort to legal process and without any legal liability on its part.

V. In the event the breach of the AGREEMENT creates a risk of serious harm to either persons or property, the CITY may immediately terminate this AGREEMENT and enter and take possession of any CITY owned facilities being utilized by the SERVICE AGENCY under this AGREEMENT, remove and exclude any and all persons from said facilities and remove and exclude all property of the SERVICE AGENCY therefrom.

VI. INSPECTION BY CITY: The CITY shall have the right to make inspections of its facilities and equipment at any reasonable time with prior reasonable notice to ensure compliance with this AGREEMENT.

VII. SAVINGS: Should any provision of this AGREEMENT be found to be in conflict with any Federal law, State statute, or final decision of any court of competent jurisdiction, said provision shall be modified to comply with said law or decision to the fullest extent possible, and all other provisions of this AGREEMENT shall remain in full force and effect.

VIII. AMENDMENT BY MUTUAL AGREEMENT: The parties hereto may, upon mutual agreement, amend the terms and conditions herein in a written instrument that both parties execute.

IX. TERMINATION: Either party may terminate this AGREEMENT upon ninety (90) days prior written notice, with or without cause. The SERVICE AGENCY agrees that it will deliver any CITY facilities or property including any permanently attached accessories or improvements to the CITY at the termination of this AGREEMENT in as good a condition and state of repair as when received, except for ordinary wear and tear or loss or damage caused by an act of God. CITY acknowledges that the timing system display is the property of the SERVICE AGENCY.

X. TERM: This AGREEMENT will remain in full force and effect for a period of five

years from the Effective Date, unless terminated earlier in accordance with the provisions of this AGREEMENT.

XI. **GOVERNING LAW:** The laws of the State of Oregon govern this Agreement, without respect to conflict of laws principles.

XII. **VENUE:** Any dispute between the parties that cannot be resolved to their mutual satisfaction is subject to resolution exclusively in the Circuit Court of the State of Oregon, Clackamas County. The parties consent to the personal jurisdiction of the court.

XIII. **COUNTERPARTS:** The parties may execute this Agreement in one or more counterparts and the executed counterparts will each be deemed to be an original but all such counterparts will together constitute one and the same instrument.

XIV. **NO THIRD PARTIES.** The only parties to this Agreement are those expressly identified as parties: the City of Canby and the Canby Swim Club. There are no third-parties, intended or otherwise, who are beneficiaries of this Agreement.

XV. **INTEGRATION.** This instrument contains the entire agreement between the parties hereto and supersedes any and all prior written and/or oral agreements.

SIGNED:

For SERVICE AGENCY:

Shannon Keinonen
Name Canby Swim Club
Canby Board President
Title
10.25.23
Date

For CITY OF CANBY

[Signature]
Mayor
10-24-2023
Date
[Signature]
Interim City Administrator
10-23-23
Date