

**REPORT**

**To the Honorable Mayor and City Council  
From the City Manager**

October 13, 2003

**Subject**

Revocable Permit for Use of Herkner Pool by Menlo Masters/Team Sheeper

**Recommendation**

Staff recommends that City Council approve by motion the revocable permit with the Menlo Masters/Team Sheeper for the use of Herkner Pool.

**Background**

Menlo Masters Swim Team has been based out of the Menlo Park area, and is one of several teams under the guise of Team Sheeper, the corporate entity. Teams also include a triathlon team and a women's running team.

Menlo Masters/Team Sheeper approached the Parks, Recreation and Community Services Department, because their lease at Sacred Heart School was running out and they were looking for a new pool to host their programs. As part of the Department's budget reduction for FY 03-04, we were to have the pools shut down in the off-season. For it to be possible that Herkner Pool is open other than during the summer months, Menlo Masters/Team Sheeper has agreed to pay for all costs associated with running the pool based on monthly invoices. On top of that, they have agreed to pay up to 15% over the total invoices as rent back to the City. Use would begin on October 14<sup>th</sup>, 2003 and run through December 31<sup>st</sup>, 2004, Monday through Friday, from 5:30 AM to 8:00 PM, and on Saturdays from 6:30 AM to 5:00 PM. The City would regain the use of the pool and programs during the summer season. The approval of this request will enable Menlo Masters/Team Sheeper to provide off-season swim programs for the community, and will provide additional revenue to the City.

**Alternative**

Not approve the agreement.

**Fiscal Impact**

The City would fully recover all costs associated with the usage of the pool including: gas, electricity, chemicals, custodial staff time and supplies, routine pool maintenance costs, alarm services, etc. Menlo Masters/Team Sheeper has also agreed to pay 5% rent back (off of all invoices) to the City for the first month, 10% for the second month, and 15% for the third month and until the end of this agreement.

  
Christopher Beth  
Parks, Recreation & Community  
Services Manager

  
Corinne Centeno  
Parks, Recreation & Community  
Services Director

  
Ed Everett  
City Manager

**GRANT OF REVOCABLE PERMIT  
FOR  
(HERKNER SWIM POOL)**

This Permit, effective as of \_\_\_\_\_, 2003, grants permission to the Menlo Masters/Team Sheepher, ("Permittee"), to use certain facilities at the property known as 1315 Madison Avenue, Redwood City, California, and also known as the Herkner Swim Pool (the "Facilities"), owned by the City of Redwood City ("City"), under the terms and conditions set forth below.

This revocable permit (the "Permit") is granted subject to the following terms and conditions:

**1. Use; Services.**

**(a) Permittee's Duties:**

(i) Permittee shall have the exclusive use of the Facilities from October 13<sup>th</sup>, 2003 to December 31<sup>st</sup>, 2004; with the exception of use between June 7<sup>th</sup>, 2004 and August 31<sup>st</sup>, 2004 due to City's summer swim programs. The City will reserve the right for final decisions on time of use during that period, and will be discussed and finalized with Permittee at an agreed upon date. Additionally, the City must have use of Herkner Pool for its annual Lifeguard training classes on consecutive weekends in March and April. Times for the Lifeguard classes are to be determined and will be discussed with Permittee.

(ii) Permittee shall staff the Facilities with Menlo Masters/Team Sheepher approved coaches, as determined by the Director of Parks and Recreation.

(iii) Permittee shall be responsible for opening and closing the Facilities.

(iv) Permittee shall pay for all utilities, chemicals, cleaning/custodial, supplies, pool vacuuming, alarm service, pest abatement, first aid supplies, staff maintenance costs, and any overtime callouts that are required to maintain the facility in a safe and healthy manner for Herkner Pool and building upon presentation of an invoice by the City on a monthly basis, "the monthly invoice". The utilities will include, but shall not be limited to, the cost of all Water Quality Supplies, the cost of heating the swimming pool and building, and the water bill. Permittee shall also pay City for the electricity usage any amount due City to its electricity supplier, as evidenced by the invoice received by City from its supplier.

In the event that the billing cycle used by City's electricity supplier is not on a calendar month, the parties shall, in good faith, make the necessary adjustment for presentation of the invoice and payment.

It is also understood that the Permittee will be charged rent on the use of the facilities at the rate of 5% of the total costs of the monthly invoice for the first month of operation, 10% of the total costs of the monthly invoice for the second month of operation, 15% of the total costs of the monthly invoice for the third month of operation, and 15% of the total costs of the monthly invoice for each month thereafter for the remainder of this Agreement ending December 31<sup>st</sup>, 2004.

(v) Permittee will pay for all keys that need to be issued during the term of the agreement; and pay for any lost keys and rekeying of the facility if deemed necessary to regain security of the building. All keys issued to Permittee will be returned at the close of the agreement and if the agreement is not renewed, or costs will be incurred to address missing keys.

7.1-D4

(vi) Permittee will not be responsible for any costs not in the normal operating expenses of the pool, including, but not limited to equipment repairs, pool repairs, and facility repairs.

(vii) The hours of operation of the Facilities by Permittee shall be restricted to: 5:30am to 8:00pm, Monday through Friday and 6:30am to 5:00pm on Saturdays.

(viii) It is understood that the Permittee must not use any amplified sound, whistles, bullhorns, music, etc. between the hours of 5:30am and 8:00am and past 8:00pm at any day during the week.

(ix) Permittee will offer swim programs to Redwood City employees 50% off of regular rates.

(x) Permittee agrees to ensure patrons will not park in the Veterans Memorial Senior Center Parking lot during their hours of operation. Parking should be at the Myrtle Street Parking Lot and on street parking as much as possible.

(xi) Permittee agrees not to access pool mechanical room unless for the purpose of an emergency shut-off. All facilities related failures (be it mechanical, electrical, or plumbing), Permittee is to notify City's Building Maintenance and Repair section and instructions will be provided.

(xii) Permittee agrees to strictly adhere to City's daily checklist and pre-event checklist of items before the pool is opened and ready for each day of use. The City will provide this to Permittee. All records are to be maintained on binders/clipboards in the basketroom at all times.

**(b) City's Duties:**

- (i) City agrees to maintain the swimming pool to meet water quality standards.
- (ii) City shall provide a telephone for emergency use.
- (iii) City shall deliver the Facility in a clean and safe condition to Permittee.
- (iv) City agrees not to run competing Masters swim program or Triathlon program for kids or adults in Redwood City during the term of this permit.
- (v) City agrees to allow Permittee to post signage within the facilities without limitations. Permittee will have to abide by City's sign policy/City Code for any signage located outside of the facility.
- (vi) City agrees to include Menlo Masters and Team Sheeper programs in City of Redwood City brochure three times a year, but space is at the City's discretion.
- (vii) City agrees to allow Permittee to store pool equipment including paddles, buoys, timing clocks, kickboards, fins and spin trainers in an agreed upon location at the pool facility. Spin trainers are allowed on the pool deck during workouts; however no power cords (per County Health requirement) are allowed on the pool deck.

2. **Occupancy; Permit Revocable**. Subject to City's right to revoke this Permit as specified herein, Permittee will use the Facilities and provide the services described herein subject to the terms and conditions herein stated. Notwithstanding the foregoing, this Permit does not constitute a deed, grant of easement, lease, conveyance, or transfer of any property interest or any employer-employee relationship between the City and Permittee and is revocable without cause at any time at the will of the Director of Parks and Recreation, effective upon giving not less than thirty (30) days' prior written notice of such revocation addressed to Permittee as follows: Tim Sheeper, Menlo

7.1-D6

Masters/Team Sheeper, P.O. Box 546, Menlo Park, CA 94026 and mailed or delivered to Permittee at said address. This Permit can be terminated by City, for cause, immediately upon written notice by the Director of Parks and Recreation.

This Permit can be terminated without cause at any time at the will of Permittee, effective upon giving not less than thirty (30) days' prior written notice. This Permit may be extended in writing by Permittee and by the Director of Parks and Recreation. All written notices to the City shall be addressed to: City Manager, City of Redwood City, P. O. Box 391, Redwood City, CA 94064-0391, with copy to the Director of Parks and Recreation at the same address.

3. **City's Access**. City reserves the right to unlimited access to the Facilities or any part thereof for municipal purposes, including but not limited to, the performance of maintenance and repairs of any and all structures or public improvements, if any, heretofore or hereafter installed and/or constructed in or upon the Facilities, the inspection of the Facilities, the use, maintenance, repair of adjoining areas or for any other purpose in furtherance of City's use of the Facilities. Notwithstanding the foregoing, City shall extend reasonable efforts not to interfere with Permittee's use and occupancy of the Facilities in exercising its rights under this paragraph.

4. **Maintenance**. Permittee agrees to maintain the Facilities and the equipment located thereon in a neat and attractive condition

5. **Hold Harmless**. Permittee hereby agrees to defend, indemnify, and save harmless City, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or

description, which may be brought against, or suffered or sustained by, City, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortious act or omission, or willful misconduct of Permittee, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.

The duty of Permittee to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require Permittee to indemnify City, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of any provision of California law.

6. **Insurance**. Permittee shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability insurance coverage relating to Permittee's Services described and authorized herein covering City's risks in form subject to the approval of the City Attorney. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<b><u>Insurance Category</u></b>	<b><u>Minimum Limits</u></b>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$3,000,000 per occurrence and \$3,000,000 aggregate for bodily injury, personal injury and property damage

7.1-08

Concurrently with the execution of this Permit, Permittee shall furnish City with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after City shall have received written notification of cancellation or reduction in coverage by first class mail;
- (b) Providing that Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement);
- (c) Naming the City of Redwood City, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and
- (d) Providing that Permittee's insurance coverage shall be primary insurance with respect to City, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by City for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of Permittee's insurance and not contributory with it.

7. **Abandonment**. In the event that Permittee abandons or fails to use the Facilities, or shall fail, neglect, or refuse to maintain the Facilities in a neat and attractive condition, or to comply with any of the conditions herein contained, or in the event that this permission shall be revoked, then all rights of Permittee hereunder shall forthwith cease and terminate.

8. **Assignments.** This permit and the privileges granted to Permittee hereunder shall not be assigned by Permittee without the prior written permission of City.

9. **Amerdinent and Modifications.** Supplementary guidance memoranda and information agreements shall be formulated, if necessary, to facilitate attainment of objectives substantially as indicated herein. Any major revisions in the objectives or scope of the program as outlined herein, which either Permittee or City may consider desirable or necessary in the future, will be made, subject to approval of the parties, the subject of supplemental agreements.

10. **Effective Date and Termination.** This Permit becomes effective upon execution of the Permit by City and Permittee, or October 13<sup>th</sup>, 2003, whichever comes last, shall continue in effect until December 31<sup>st</sup>, 2004, unless terminated by either party or extended by mutual agreement, pursuant to paragraph 2, above.

11. **Paragraph Headings.** Paragraph headings, as used herein, are for convenience only and shall not be deemed to alter or modify the meaning of the paragraph headed thereby.

Dated: \_\_\_\_\_, 2003.

CITY OF REDWOOD CITY, a  
charter city and municipal corporation of  
the State of California

By \_\_\_\_\_  
Ed Everett, City Manager

ATTEST:

\_\_\_\_\_  
Patricia Howe, City Clerk  
(SEAL)

Permittee  
Menlo Masters/Team Sheeper

7.1-D10

By: \_\_\_\_\_

By: \_\_\_\_\_