

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
Dept.: City Manager
Subject: POWER PLAY SPORTS
LICENSE AGREEMENT

From: Kimberly Huy
Dept.: Community Services
Date: May 25, 2010

OBJECTIVE

To request that the City Council approve the attached License Agreement between the City of Garden Grove and Frank D'Alessandro, doing business as Power Play Sports for the operation of the hockey rink at Pioneer Park.

BACKGROUND/ANALYSIS

In 2004, the City entered into a License Agreement with Power Play Sports (PPS) for the operation of the hockey rink at Pioneer Park. Since then, PPS has operated and delivered quality programs to the community.

DISCUSSION

The City of Garden Grove entered into a License Agreement with Power Play Sports in 2004. The current Agreement has expired, and the Lessee has requested a renewal of said License Agreement. After reviewing the License Agreement, City staff and Frank D'Alessandro, doing business as Power Play Sports, agreed that a new License Agreement needed to be created that outlined terms and conditions applicable to the current operations at this facility.

FINANCIAL IMPACT

The approval of said License Agreement has no financial impact to the City's current fiscal budget. The City would continue to receive the greater of the minimum yearly rent or a percentage of gross revenues based on the established formula outlined in the Agreement.

RECOMMENDATION

It is recommended that the City Council:

- Approve the License Agreement between the City and Frank D'Alessandro, doing business as Power Play Sports, and
- Authorize the City Manager to execute the Agreement.


KIMBERLY HUY
Director


By: Janet Pelayo
Administrative Analyst

Attachment: License Agreement

Recommended for Approval


Matthew Feral
City Manager

AGREEMENT

This AGREEMENT is made this ____ day of May 2010, by and between the City of Garden Grove (hereinafter "CITY"), and Frank D'Alessandro, doing business as Power Play Sports (PPS), (hereinafter "LICENSEE").

RECITALS

The following recitals are a substantive part of this Agreement:

1. PIONEER PARK is designated as a park facility for active and passive recreational activities, located on Chapman Avenue and Harbor Boulevard, Garden Grove, California, which the open space areas are available to the CITY pursuant to a use agreement and through which the CITY maintains community recreational usage.
2. CITY desires to receive assistance from LICENSEE in establishing outdoor hockey activities at a park facility in Garden Grove. LICENSEE desires to organize and conduct hockey and other recreational activities.
3. Subject to the terms contained herein, LICENSEE desires to operate an outdoor hockey facility and to retail accessory goods in an area of Pioneer Park. The purpose of the outdoor hockey rink is to provide a playing area for both league play and general public use at PIONEER PARK. The facility will be open to the public, subject to reasonable fees.

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. TERM OF AGREEMENT. The term of this License shall be for four (4) years effective on the date of execution of this license, and shall terminate on _____, 2014, unless terminated as provided herein. The CITY may, at its sole option and sole discretion, renew this License for additional periods of time each upon the same terms and conditions herein if LICENSEE, six calendar months before the expiration date of this Agreement, files with the Community Services Director a written request for the renewal and the City Council approves the renewal. It is the intent of the CITY and LICENSEE to make this facility both a public service and commercial success. Approval of renewal of this License shall be based on performance of LICENSEE in providing the desired public service. CITY shall not withhold its approval due to the commercial success of the operation.
2. POWER PLAY SPORTS (PPS). LICENSEE, represented by and through Frank D'Alessandro, desires to and shall provide recreational opportunities at the hockey rink, for use by LICENSEE and other members of the public; and maintain the equipment and improvements for the duration of this Agreement, all without obligation or compensation by CITY.
3. OPERATION OF FACILITY.
 - 3.1 LICENSEE shall manage, operate and maintain the facility at Pioneer Park for conducting of hockey-related activities; provide league and tournament play for both youth and adults as agreed upon by LICENSEE and CITY; maintain the facility in a clean and safe condition for the operation of hockey activities; ensure that the facility is adequately staffed, including officials and a site manager present at all times that the facility is open; also have the ability to

operate and maintain a concession area and pro shop-related to equipment and merchandise involving hockey activities; and provide those activities and other responsibilities as outlined in their proposal to CITY dated _____, 20_____.

- 3.2 NONEXCLUSIVE USE. Acknowledge that the use of the rink will not be exclusive, but will be made available to the CITY at times when not being utilized by LICENSEE, as approved by CITY.
- 3.3 UTILITIES. Maintain and continue to pay for all utilities at LICENSEE's sole expense (other than water, electric and sewer service).
- 3.4 LICENSEE STAFFING. LICENSEE shall provide trained, competent staffing to manage and operate the facility in a professional and safe manner. LICENSEE shall provide for trained officials for the conducting of League, Tournament and other hockey activities. These hockey officials shall be tested and monitored by LICENSEE management staff. Hockey officials shall wear a prescribed uniform, as mutually agreed, while officiating hockey activities. Hockey officials shall also be encouraged to wear safety equipment to include helmet and eye protection, or shall sign a release form stating that they are aware of the possible hazards and release CITY and LICENSEE of all liability. At any time when the Pioneer Park facility is in operation by LICENSEE, LICENSEE shall provide for site supervision during that time period. This covers all times, including rental of facilities for team practices and other events by outside organizations.
- 3.5 SIGNS AND ADVERTISEMENTS. LICENSEE shall provide and prominently display in locations approved, in writing, by the COMMUNITY SERVICES DIRECTOR, signs identifying the type of service and merchandise available at the premises as well as LICENSEE's name, the operation schedule of the premises, and the items and prices of all products and services available at the premises.

CITY shall approve any signs, advertisements or promotional material provided by LICENSEE in advance, and in writing. CITY shall have the right to require removal or refurbishment of any sign or advertisement previously approved. CITY is not required to provide any signs. However, any signs provided by CITY shall be prominently displayed by LICENSEE in a location to be determined by CITY.

- 3.6 SCHEDULE OF OPERATIONS. The hours shall be 8:00 a.m. through 10:00 p.m. All activities shall cease by 10:00 p.m., and all persons shall vacate the grounds by 10:30 p.m.

Before commencing operation each calendar year under the terms of this License or any renewal thereof, LICENSEE shall submit a written schedule of operation including days and hours to CITY for approval. Schedules may be adjusted, but the permitted hours of operation shall remain as a maximum at 8:00 a.m. through 10:00 p.m.

LICENSEE shall not deviate from the permitted hours of operation without the prior written approval of CITY.

4. MAINTENANCE. LICENSEE shall be responsible for the cleanliness, maintenance and upkeep of all machinery, equipment, and fixtures provided by CITY or LICENSEE. Such structures, machinery, equipment and fixtures shall be maintained in a first class condition and work order. Evaluation of this maintenance standard shall be at the sole discretion of CITY.

4.1. Maintain the area up to twenty (50) feet surrounding the facility, including the area around and underneath the bleachers, in a clean and sanitary condition satisfactory to the CITY at all times. These areas are to be maintained-free of trash, debris, litter, and spills. All graffiti is to be removed immediately and covered as close as possible to the existing color.

4.2. Provide maintenance for the restroom facility. Restrooms are to be cleaned weekly or as often as necessary to maintain them in a clean and sanitary condition. All graffiti is to be removed immediately. CITY personnel will inspect restrooms on at least a weekly basis. CITY will provide keys to these restroom and LICENSEE will be responsible for these keys.

5. EQUIPMENT. LICENSEE shall provide all maintenance on all equipment used in the operations permitted herein whether owned by CITY or LICENSEE. Insofar as sanitation and appearance are concerned, CITY shall have the right to direct LICENSEE to perform necessary repairs and maintenance to equipment and structures owned and/or operated by LICENSEE.

6. STRUCTURE IMPROVEMENTS. LICENSEE will be responsible for maintaining all facilities within the enclosed boundary of the hockey rink. CITY shall maintain, at its expense, all improvements outside the enclosed boundary, with the exception of those noted earlier involving restrooms utilized by LICENSEE.

6.1 Anything constructed, planted, or otherwise created by LICENSEE shall be the responsibility of LICENSEE to maintain and replace as needed, including acts of vandalism and that involving acts of vandalism, LICENSEE will have 24 hours to correct the condition.

6.2 With respect to damage to property, CITY and LICENSEE hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

6.3 Provide adequate insurance and indemnification to cover the use of the structures by LICENSEE in accordance with the terms provided hereinafter in paragraph 15.

7. PAYMENTS BY LICENSEE.

7.1 LICENSEE shall submit monthly revenue reports showing monthly gross receipts from the operations permitted herein. Said report and monthly payments are due on or before the tenth day of the following month during the term or any renewal.

LICENSEE shall, within thirty (30) days following the expiration or sooner termination of this License, pay to CITY any and all sums due.

In the event LICENSEE fails to submit a monthly payment or monthly report forms by the due date, LICENSEE shall pay to CITY a late charge of ten

percent (10%) on the outstanding unpaid balance, or \$25, whichever is greater. If a due date falls on a non-work day, the late charge will not apply until the next workday. If the LICENSEE offers unusual or extenuating circumstances for not making said payment when due, the Community Services Director, at his discretion, may waive the late charge. If LICENSEE pays with a check returned for insufficient funds, LICENSEE shall also pay a service charge in the sum of twenty-five dollars (\$25) in addition to applicable late charges, and LICENSEE shall thereafter make all payments in cash or money order.

7.2 FORMULA FOR PAYMENTS

The City of Garden Grove will be compensated for the use of the Pioneer Park facility in accordance with the schedule as follows:

- \$300 per month for the first 24 months of payments
- For months 25 and on, the greater of (1) or (2)
 1. 10% of gross revenues, or
 2. \$500 per month

All payments shall be due on the tenth day of the following month.

7.3 Definition of Gross Revenues. Gross Revenues shall be defined as all revenues of any sort received by LICENSEE. It shall include, but not be limited to fees, rental charges, assessments, commissions, and concessions. Gross revenues shall not be subject to deduction of any sort.

7.4 Financial Review. LICENSEE shall submit an annual financial review indicating gross revenues prepared and certified by a CPA by April 15 of each year. CITY shall incur no liability whatsoever for the costs of this review. CITY may review all revenues, at its own expense, at any other time. If the CITY's review reveals a discrepancy in excess of 5%, LICENSEE shall pay for the entire cost of the CITY review.

7.5 Records of Expenses. LICENSEE shall keep complete and accurate records of payroll costs, travel, and incidental expenses. These records will be made available at reasonable times to CITY.

8. PROPERTY OF CITY. During the term of this Agreement or any extension, all facilities utilized pursuant to this Agreement shall remain the property of the CITY. In the event this Agreement is terminated or allowed to expire, CITY shall have the right to retain all facilities.

9. PRIORITY OF USE. LICENSEE shall be offered first priority for use of the hockey rink at Pioneer Park in accordance with LICENSEE schedules submitted to the Community Services Department in advance of requested schedule dates. The use of the hockey rink shall be available to the CITY during the LICENSEE's non-operating hours.

10. NO ALTERATIONS. No alterations, changes, or improvements shall be made by LICENSEE to the structures or improvements at PIONEER PARK without prior written approval by CITY. All alterations and improvements to the structure shall be the property of CITY.

11. CITY USE. Nothing herein shall restrict the right of the CITY to add additional recreational development and equipment to PIONEER PARK; nor restrict either the open space or general park and recreation use of the area by the public.
12. REMOVAL OF STRUCTURES. CITY may require that LICENSEE repair, remove, or replace any improvement or equipment, which, in the opinion of the CITY, is unsafe, or for any other reason determined by CITY, would be of benefit to be removed. In the event CITY desires that any or all equipment, improvements, or development installed be removed, LICENSEE shall, after written notice, remove them and restore the real property to its original condition, within ninety (90) days.
13. RIGHT OF INSPECTION. CITY shall have the right to enter the premises at any and all reasonable times for the purpose of inspection and observation of TENANT's operations. During these inspections, CITY shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place on the premises. Inspections may be made by CITY employees or may be made by independent contractors engaged by CITY.
14. CODE REQUIREMENTS. LICENSEE agrees to abide by and to maintain all rules and regulations as outlined in the *Garden Grove Municipal Code, Title 8, Chapter 40: Regulations Regarding the Use of City of Garden Grove Park Facilities*, unless otherwise waived by authority in the Code by the Director of Community Services.
15. MAILING LIST. LICENSEE shall, during the term of this Agreement, maintain the CITY in the LICENSEE's regular mailing list for all general correspondence. All correspondence shall be addressed to: Community Services Department, P.O. Box 3070, Garden Grove, California 92842, ATTN: Director.
15. OPERATION OF CONCESSION AREA AND PRO SHOP. LICENSEE will be granted permission to operate a concession area and pro shop, subject to CITY's regular rules and regulations pertaining to such operations. LICENSEE shall provide the facilities from which such operations shall be maintained and are totally responsible for all theft and other damage to equipment that is stored on premises. Those items sold from the pro shop shall be hockey-related and all merchandise is subject to approval by the Community Services Director. Any items that are deemed non-hockey related shall be removed immediately, and shall not be restocked at a later time.
16. TERMINATION. CITY and LICENSEE shall have the right to terminate this Agreement, without cause, by giving ninety (90) days written notice of termination.
17. INSURANCE REQUIREMENTS.
 - 17.1 Commencement of Activity. LICENSEE shall not commence work, activities or operation under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
 - 17.2 Workers' Compensation Insurance. For the duration of this Agreement, LICENSEE and all subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law, if applicable.

CONTRACTOR has executed the Workers' Compensation Certificate for Sole Proprietors, attached hereto as Attachment "A" and incorporated herein by this reference, and represents that it is a sole proprietorship and is not legally required to carry Workers' Compensation Insurance at the time of execution of this Agreement.

17.3 Insurance Amounts. LICENSEE shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in the amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in the amount of \$1,000,000.00 combined single limit; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 15.3 (a) shall designate CITY and DISTRICT and their respective officers, officials, employees, agents, and volunteers as additional insured for liability arising out of work, activities and operations performed or permitted by or on behalf of the LICENSEE. LICENSEE shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 15.3 (b) shall designate CITY and DISTRICT and their respective officers, officials, employees, agents, and volunteers as additional insured for automobiles owned, leased, hired, or borrowed by the LICENSEE. LICENSEE shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

CONTRACTOR has executed the Request for Exemption from Providing Automobile Liability Coverage, attached hereto as Attachment "B" and incorporated herein by this reference, and represents that it does not drive to or from the City of Garden Grove, for any reason, as part of the fulfillment of the services to be provided under this contract.

For any claims related to this Agreement, LICENSEE's insurance coverage shall be primary insurance as respects CITY and DISTRICT and their respective officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY or DISTRICT and their respective officers, officials, employees, agents, or volunteers shall be excess of the LICENSEE's insurance and shall not contribute with it.

18. INDEMNIFICATION. LICENSEE agrees to protect, defend, and hold harmless CITY and DISTRICT and their respective elective or appointive boards, officers, officials, agents, employees and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with the use of property, and any other monetary damage claims arising out of, or in any way connected with work, activities or operations

pursuant to the Agreement by LICENSEE, LICENSEE's agents, officers, employees, subcontractors, or independent contractors and those authorized or permitted by LICENSEE to use the subject street hockey rinks. The only exception to LICENSEE's responsibility to protect, defend and hold harmless CITY is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, employees or volunteers.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by LICENSEE.

19. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY. No official or employee of CITY shall be personally liable to LICENSEE in the event of any default or breach by CITY, or for any amount, which may become due to LICENSEE, or for any obligation under the terms of this Agreement.
20. NON-DISCRIMINATION. LICENSEE covenants there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, disability, national origin or ancestry, in any action or activity pursuant to this Agreement.
21. INDEPENDENT CONTRACTOR. It is agreed to that LICENSEE shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY's employees.
22. COMPLIANCE WITH LAW. LICENSEE shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
23. CONFLICT OF INTEREST AND REPORTING. LICENSEE shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.
24. NOTICES. All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - 24.1 Address of LICENSEE is as follows:
Power Play Sports
17234 Boswell Place
Granada Hills, CA 91544
 - 24.2 Address of CITY is as follows:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
 - (with a copy to):
Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, CA 92840
25. LICENSES, PERMITS, FEES AND ASSESSMENTS. At its sole cost and expense, LICENSEE shall obtain such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement. LICENSEE shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the services required by this Agreement except those which are expressly waived by CITY.
26. TIME OF ESSENCE. Time is of the essence in the performance of this Agreement.

27. LIMITATIONS UPON SUBCONTRACTING AND ASSIGNMENT. The experience, knowledge, capability, and reputation of LICENSEE, its principals and employees were a substantial inducement for CITY to enter into this Agreement. Therefore, LICENSEE shall not contract with any other entity to perform the work, activities or operations required without written approval of CITY. If LICENSEE is permitted to subcontract any part of this Agreement, LICENSEE shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work, activities or operations will be considered employees of LICENSEE. CITY will deal directly with LICENSEE.
28. AUTHORITY TO EXECUTE. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement the parties are formally bound.
29. MODIFICATION. This Agreement constitutes the entire agreement between the parties. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and LICENSEE.
30. WAIVER. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY and LICENSEE.
31. CALIFORNIA LAW. This Agreement shall be construed in accordance with the laws of the State of California.
32. INTERPRETATION. This Agreement shall be interpreted as though prepared by both parties.
33. PRESERVATION OF AGREEMENT. Should any paragraph, provision phrase or word of this Agreement be found invalid or unenforceable, such decision shall affect only the paragraph, provision, phrase or word construed and interpreted, and all remaining provisions shall remain valid and enforceable.

DATE: _____

CITY OF GARDEN GROVE

ATTEST:

By: _____
City Manager

City Clerk

DATE: _____

LICENSEE
Frank D'Alessandro
dba POWER PLAY SPORTS

APPROVED AS TO FORM:

By: Frank D'Alessandro

City Attorney [Signature]

DATE: 5/13/10

If LICENSEE is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to the CITY.

ATTACHMENT "A"

WORKERS' COMPENSATION CERTIFICATE FOR SOLE PROPRIETORS

Frank D'Alessandro dba Power Play Sports

Contractor by the signature of its authorized representative hereunder represents that it is a sole proprietorship and is not legally required to carry workers' compensation or employers' liability insurance as required under California law. However, if, at any time during the performance of the Work contemplated by the Contract Documents, the Contractor hires an employee or employees, the Contractor will provide the City/Agency/Sanitary District with evidence satisfactory to the City/Agency/Sanitary District that it has secured workers' compensation and employers' liability insurance satisfactory to the City/Agency/Sanitary District prior to any such employee performing any work under the Contract Documents.

I declare under penalty of perjury under the laws of the State California that the foregoing is true, complete, accurate and correct. I also certify that I am authorized to sign on behalf of and bind Power PLAY SPORTS.
Company Name

SIGNATURE OF AUTHORIZED PERSON: Frank D'Alessandro

PRINTED NAME OF AUTHORIZED PERSON: FRANK DALESSANDRO

TITLE OR POSITION OF AUTHORIZED PERSON: OWNER

COMPANY NAME: POWER PLAY SPORTS

DATE: 5/11/10

NOTE: This form shall serve as notification to the City of Garden Grove that Contractor represents that it not legally required to have Workers Compensation or Employers' Liability Insurance under California law.

DO NOT FILL OUT THE BOTTOM PORTION OF THIS REQUEST!
City/Agency/Sanitary District Use Only

RISK MANAGEMENT DIVISION SIGNATURE: _____

DATE: _____

ATTACHMENT "B"

**REQUEST FOR EXEMPTION FROM PROVIDING AUTOMOBILE LIABILITY
COVERAGE**

Frank D'Alessandro dba Power Play Sports

Contractor/Consultant by the signature of its authorized representative hereunder represents that all work performed under this contract does not require the Contractor/Consultant, its employees, representatives, or agents, to drive to and from the City of Garden Grove or engage in any driving related to the contractual obligations. However, if, at any time during the performance of the Work contemplated by the Contract Documents, or arising out of the services provided, the Contractor/Consultant, its employees, representatives, or agents should need to drive to and from the City of Garden Grove or engage in any driving to meet the contractual obligations, the Contractor will be responsible for notifying and providing the City/Agency/Sanitary District with evidence satisfactory to the City/Agency/Sanitary District that it has secured automobile liability coverage satisfactory to the City/Agency/Sanitary District, prior to any such Consultant/Contractor, employee, representative or agent, performing any work under the Contract Documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true, complete, accurate and correct. I also certify that I am authorized to sign this form on behalf of and bind Power Play Sports.

Company Name

SIGNATURE OF AUTHORIZED PERSON: John D. [Signature]

PRINTED NAME OF AUTHORIZED PERSON: Frank D'ALESSANDRO

TITLE OR POSITION OF AUTHORIZED PERSON: OWNER

COMPANY NAME: Power Play Sports

DATE: 5/11/10

NOTE: This form shall serve as a request for exemption from providing proof of Automobile Liability Insurance, unless the approval signature from the City of Garden Grove Risk Management Division is present below.

DO NOT FILL OUT THE BOTTOM PORTION OF THIS REQUEST
City/Agency/Sanitary District Use Only

Denied

Approved

RISK MANAGEMENT DIVISION SIGNATURE: _____

DATE: _____