

CITY CLERK ORIGINAL

C-9567
01/07/2015

City of Glendale Facility Use Agreement

This Facility Use Agreement ("Agreement") entered into as of November 2014 (the "Effective Date"), between the City of Glendale ("City") and Desert Hockey Development (DHD) for the specific use of the Bonsall Park Hockey Rink.

Under this Facility Use Agreement (FUA), the City of Glendale, through its Parks, Recreation and Neighborhood Services Department authorizes DHD to provide services in accordance with the scope of work including free recreation hockey. The primary recipients of these services will be local youth and teens within the general area of Bonsall Park, which is located at 59th Avenue and Bethany Home Road. Services shall be provided on weekends, year round, between the approximate hours of 6:30 am and 9:30 pm.

UNDERSTANDING

1. Facilities. Subject to the terms of this Agreement and the policies established by the City, the City agrees that DHD may use the following Facilities:

All sections of the Facilities during the hockey related activities, and designated sections of Facilities for set-up and clean up of materials and equipment used during hockey clinics and games.

2. Use. DHD may use the Facilities for the following purpose or purposes, and for no other purpose or purposes: Free youth (ages 4-15) hockey games, practices, and clinics to be held weekly, and for the storage of hockey related equipment and materials used for the games, practices, clinics. The City reserves the right to prohibit DHD from storing unrelated equipment items at the Facilities:

a) DHD agrees to conduct its activities in the Facilities in a careful and safe manner and in accordance with the terms of this Agreement;

b) DHD agrees to comply with all laws and regulations, and with the policies and regulations of the City pertaining to the use and occupancy of the Facilities;

c) DHD agrees to exercise due caution and apply good and diligent care in the use of the Facilities and to maintain the Facilities in the same order and condition as it was prior to DHD's use;

d) DHD agrees not to use or allow the Facilities to be used for any unlawful purposes and to not commit or allow to be committed any waste or nuisance in or about the Facilities or subject the Facilities to any use that would damage the Facilities or raise or violate any insurance coverage maintained by DHD or the City;

e) DHD agrees that the City may terminate or preclude any use immediately upon a determination by the City, at its sole discretion and consistent with its police powers, that such a use would endanger the public or be inconsistent with the health, safety and general welfare of the public;

f) DHD agrees that nothing within this Agreement shall be construed to have created a tenancy, lease, or rental of any type or manner;

g) DHD agrees provide the City with an inventory list of all equipment and materials kept at the Facilities, owned by the DHD by December 31 annually.

h) DHD agrees to provide weekly, routine maintenance to the Facilities, including, but not limited to, sweeping rink area after each use, washing bleachers after each use, paint lines, secure fencing, clean player area after each use, raking granite areas after each use, removing litter after each use, and providing assistance with any education and outreach programs held at the Facilities. This includes any future obligations mutually agreed upon by the parties to this Agreement.

i) DHD may conduct adult hockey programs at the Facility at the current adult resident hourly rate.

j) DHD may not sublease, license, or otherwise allow for the use of the Facility to another group for any reason.

3. Use Periods. DHD may use the Facilities and equipment listed above on the following dates and during the following hours ("Use Periods"):

January – December, weekends

The initial term of the agreement shall be for one year and commence upon execution, unless sooner terminated pursuant to the Agreement provisions. This understanding maybe extended one additional year.

DHD will submit event dates to the City by participating in the long-term allocation program (First Monday in May (August to January) and November (February to July).

4. Usage fee. The use of the facility will be free for the DHD when conducting youth programming such as clinics, games, services. All other uses must be approved by the City and regular resident adult rate will be the prevailing rate. Any other uses not related to hockey must be approved by the Director.

5. Concessions. Unless otherwise prohibited by the City, use of the Facilities permits DHD to sell concessions (no allowed tobacco products) at the Facilities during the Use Periods. In order to do so, DHD must acquire all of the necessary permits and licenses to legally sell concessions.

6. Condition of Facilities. The City will make reasonable efforts to construct and maintain the Facilities consistent with their intended uses. Notwithstanding this fact, the City makes no specific representations or warranties that the Facilities are in a condition necessary for DHD's safe use. DHD, therefore, assumes sole and full responsibility to inspect and investigate the Facilities to assure its use can and will be conducted in a safe manner. Any deficiency perceived by DHD shall be brought to the City's attention immediately. The City may, at its sole option, address the condition of concern or cancel this Agreement. Should the City elect not to correct the condition and DHD decides to proceed with the use, DHD assumes full responsibility for the condition and indemnifies the City as set forth below.

7. Insurance. DHD, at its expense, agrees to procure and maintain during the term a policy of commercial general liability insurance in an amount of not less than one million dollars

(\$1,000,000), single limit, against claims for bodily injury, death and property damage occurring in connection with DHD's use of the Facilities. The policy and the insurer shall be acceptable to the City.

- a) This insurance must name the City of Glendale as additional insured;
- b) Insurance must be issued by an insurer authorized to do business in the State of Arizona; and
- c) DHD must provide City with a certificate evidencing this insurance coverage no later than ten days prior to DHD's use of the Facilities.

8. Indemnification. DHD shall indemnify, defend, and save harmless the City from any and all claims, demands, suits, actions, proceedings, losses, costs and damages of every kind and description, including attorneys' fees and litigation expenses, which may be brought or made against or incurred by the City as the result of (i) any injuries to, or death of, a person, (ii) any loss or damage to equipment and materials owned by the DHD stored at Bonsall Park, or (iii) any breach or default in the performance of any obligation on DHD's part, including any claims of a purported third party beneficiary of this Agreement, and which are or asserted to be or have been caused by, arising out of, or contributed to, in whole or in part, by reason of any act, omission, professional error, fault, mistake, or negligence of DHD, its agents, employees, representatives, subcontractors or invitees, in connection with or incidental to any use, authorized or unauthorized, or any occupancy of the Facilities. DHD's obligation hereunder shall not extend to any liability that is the sole negligence of the City (such negligence shall exclude liability arising as a result of a non-delegable duty). DHD's obligation under this provision shall survive the termination or expiration of this Agreement regardless of the purpose of the termination.

9. Prohibitions.

- a) DHD shall not permit any advertising to be displayed in or upon the Facilities without the prior approval of the City, which consent may be granted, withheld or revoked at City's sole discretion;
- b) DHD shall not permit any alcohol to be sold, consumed, stored or transported in, upon or through the Facilities during youth activities;
- c) DHD shall not permit any activity that is not reasonably consistent with conduct or promotion of a City-related event, including the use of tobacco, in, upon, or throughout the Facilities;
- d) DHD shall not permit any firearms, other weapons, or dangerous objects to be possessed in or upon the Facilities;
- e) The City's name shall not be used to suggest co-sponsorship or endorsement of any activity, except with the prior written approval by the City;
- f) DHD shall not sell or cause to be sold any programs or other items in or about the Facilities, except on terms and conditions established by the City;
- g) DHD shall not make audio or video recordings or televise or broadcast the event or any portion thereof without the City's written approval;
- h) DHD shall not as established in City Codes admit a larger number of persons than can safely and freely move about in the Facilities. The City shall notify DHD of the

recommended capacity of the Facilities and the decision of the City concerning questions arising under this paragraph shall be final.

i) DHD shall not injure, mar, or in any way deface the Facilities and shall not cause or permit anything to be done whereby the Facilities shall be in any manner injured, marred, or defaced. DHD will not drive, or permit to be driven, nails, hooks, tacks, or screws into any part of the Facilities and will not make or allow to be made any alterations of any kind therein. DHD is responsible for any costs related to repair of damages caused during usage.

j) DHD shall not use City's equipment, tools or furnishings, located in or about the Facilities, without the prior approval of the City.

k) DHD shall not produce or allow amplified sound, live or recorded music or any other noise that might disturb the neighborhoods surrounding or near the Facilities after 10:00 p.m.

l) DHD will not permit any hazardous substance to be used, stored, generated or disposed of on, in, or about, or transported to or from, the Facilities, by DHD, DHD's agents, employees, contractors, invitees, subtenants, or concessionaires without first obtaining City's written consent, which City may give or withhold at its sole discretion, or revoke at any time. If City consents, all hazardous substances must be handled at DHD's sole cost and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. Without limitation, if DHD causes or permits the presence of any hazardous substance on, in or about the Facilities and this results in contamination of any part of the Facilities, DHD will promptly, at its sole cost and expense, take all necessary actions to return the Facilities and any adjacent Facilities to the condition existing prior to the presence of any hazardous substance; provided, however, DHD shall first obtain City's approval for any such remedial action. "Hazardous substance" means any substance regulated by any local government, the State of Arizona or the United States government. Hazardous substance includes any material or substances that are defined as "hazardous material," "hazardous waste," "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local government law. Hazardous substance includes, but is not restricted to, asbestos, polychlorobiphenyls and petroleum.

10. Additional Users. DHD understands and agrees that during the term of this Agreement there may be other events taking place in other parts of the Facilities not covered by this Agreement. DHD shall conduct its activities so as not to interfere with other events.

11. Parking Facilities. Parking facilities at the Facilities are available for the vehicular traffic and parking necessitated by DHD's use on a non-exclusive basis.

12. Violations. If at any time the use of the Facilities by DHD violates this Agreement, any and all applicable laws, rules or regulations of the City of Glendale, County of Maricopa, State of Arizona or the United States of America, DHD shall either cease and desist from continuing such use or shall surrender the Facilities forthwith upon demand of the City.

13. Control of Facilities. In permitting the use of the Facilities described herein, the City does not relinquish control or custody thereof and does hereby specifically retain the right to enforce

any and all laws, rules and regulations applicable thereto. All portions of the Facilities will and at all times be under the charge and control of the City. Employees, officials, agents or other authorized representatives of the City may enter upon the Facilities at any and all times to make inspections to ensure compliance with this Agreement. DHD will be provided keys to facility, storage, power and water.

14. Assignment. DHD does not have the right to assign this Agreement or allow any other person or entity to use or occupy any of the Facilities without the prior written consent of City, which consent may be granted or withheld at City's sole discretion.

15. Default and Termination. If DHD fails to pay any fee or other sum required to be paid by DHD when due, or otherwise fails to comply with or observe any other provision of this Agreement or the City's policies, in addition to any other remedy that may be available to City, whether at law or in equity, City may immediately terminate this Agreement and all rights of DHD. Both parties may terminate for convenience, and the terminating party must give the non-terminating party 90 days notice.

16. Interpretation. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Arizona, the courts of which state shall have jurisdiction over its subject matter.

17. Relationship. Neither DHD nor any personnel of DHD will for any purpose be considered employees or agents of City. DHD assumes full responsibility for the actions of DHD's personnel, and is solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits. DHD is an independent contractor and not the agent or employee of the City.

18. Authority. The individual signing below on behalf of DHD hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of DHD and that this Agreement is binding upon DHD in accordance with its terms.

19. Miscellaneous.

a) DHD agrees to comply with all federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the *Americans with Disabilities Act*, and *affirmative action*.

b) This Agreement is subject to A.R.S. §38-511. This Agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of City is an employee, consultant, or agent of any other party to this Agreement.

c) If City's performance under this Agreement depends upon the appropriation of funds by the City Council, and if the City Council fails to appropriate the funds necessary for performance, then City may provide written notice of this to DHD and cancel this Agreement *without further obligation of City*.

DHD:

DESERT HOCKEY DEVELOPMENT

By: Beatrice Wyatt
Beatrice V Wyatt

Its: Secretary / Treasurer

Date: 12/05/2014

CITY:

CITY OF GLENDALE,
AN ARIZONA MUNICIPAL CORPORATION

By: Erik Strunk
Erik Strunk

Its: Director, Community Services Department

Date: 12.4.14

ATTEST:
[Signature]
City Clerk

Approved as to form

[Signature]
City Attorney