

COUNCIL AGENDA: APRIL 15, 2014

SUBJECT: LICENSE AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND DONALD'S CHILDREN'S AMUSEMENT FOR THE OPERATION OF A TRACKLESS TRAIN

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: Mr. Donald Thulin's proposal to operate a trackless train in City parks was approved by the Parks and Leisure Services Commission and the City Council in August 2012. The train is a golf cart with its speed governed for safety purposes. The seventeen-month license stated that should he intend the license agreement to be extended, he must submit a request at least thirty days prior to the expiration date. Mr. Thulin contacted staff March 20, 2014, inquiring about the steps it would take to renew his license agreement as he had unintentionally let it expire December 31, 2013. His desire is to have a similar license agreement with the term lasting five years. The license does state that the City may terminate the license at its option, thirty days after receipt of written notification of termination.

Mr. Thulin has been prompt in fulfilling his license agreement obligation of paying the City 10% of fees collected, which has resulted in the amount of \$200 over the duration of the agreement. The train would continue to be operated on weekends, holidays, and at special events in Zalud, Murry and Veterans Park. The Parks and Leisure Services Commission on April 3, 2014, recommended a new five year license agreement between the City of Porterville and Donald's Children's Amusement. Mr. Thulin currently possesses a business license with the City of Porterville and has the appropriate liability insurance coverage.

RECOMMENDATION: That the City Council approve the License Agreement between the City of Porterville and Donald's Children's Amusement.

ATTACHMENTS: License Agreement between the City of Porterville and Donald's Children's Amusement.

 Director MB Appropriated/Funded City Manager **ITEM NO.:** 9

**AGREEMENT BETWEEN DONALD'S CHILDREN'S AMUSEMENT
AND
CITY OF PORTERVILLE**

This Agreement is made and entered into this _____ day of April, 2014, by and between the City of Porterville, hereinafter referred to as "CITY", and Donald Thulin owner and operator of Donald's Children's Amusement, hereinafter referred to as "LICENSEE."

PURPOSE OF AGREEMENT

LICENSEE desires to operate its trackless train for the dates herein stated.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

TERMS AND CONDITIONS

1. The term of this License shall be five years commencing April 16, 2014, through April 16, 2019. The LICENSEE shall be required to submit, and have approved by the Parks and Leisure Services Director, a schedule of operations, and any changes thereto, prior to commencing operations.
2. This License is contingent upon LICENSEE obtaining all permits and licenses required by the CITY and State of California.
3. The License Agreement may be extended for an additional five (5) years, during the same five-year period as specified above, upon the same terms and conditions, at the option of the LICENSEE, provided that LICENSEE provides Notice of Intent to extend at least 30 days prior to expiration of the initial period. LICENSEE shall have no right, via this Agreement, to operation or use of the facilities outside the specified five-year period, unless otherwise given permission by the Parks and Leisure Services Director.
4. The LICENSEE shall, at all times during the term of said License, keep and maintain specified amusement ride open for the convenience of patrons at Murry, Zalud and Veterans Parks at the times specified in the schedule approved by Parks and Leisure Services Director, or at any other time the CITY deems the operation of the attraction necessary for special activities. Failure to operate the attraction during the specified periods is a breach of this Agreement and shall constitute grounds for termination of this Agreement.
5. The LICENSEE shall keep and maintain equipment and grounds at and around said attraction in safe condition and repair, and shall operate its trackless train in a safe manner.
6. The LICENSEE shall coordinate the proposed route of the ride with the Parks and Leisure staff.

7. In the event the LICENSEE shall fail, neglect or refuse to abide by and perform the terms, conditions, covenants, and agreements hereof, the CITY may, at its option, terminate and cancel this License. The termination of this License shall be effective immediately upon written Notice by the City if it pertains to patrons' safety; otherwise 30 days after receipt of written notice of termination.

8. If this Agreement is terminated by the CITY without cause prior to the conclusion of the initial License term, and a similar organization enters into an Agreement with the CITY for similar services, the CITY shall reimburse LICENSEE for the documented start-up expenditures for the remaining months of the contract, based on average monthly income received in prior months of the license period.

9. The LICENSEE shall not assign, transfer or convey this License or any of the rights or benefits hereunder to any person, firm or corporation without first securing the written consent of the CITY, and said consent can be withheld for any reason.

10. Nothing herein shall be construed as making the CITY and the LICENSEE partners and/or the parties engaging in joint ventures.

11. The LICENSEE shall pay to the CITY by the 5th day of each month a fee of 10% of fees collected in which the attraction is utilized on CITY property.

12. To the fullest extent permitted by law, the LICENSEE shall and hereby does agree to save, defend and indemnify the CITY, all of its officers, agents and employees of and from all manner of claims, demands, actions or causes of actions of all persons arising from or in any way connected with the use, occupation or employment of said License, or activities engaged in, or carried on, or conducted upon the premises by the LICENSEE, together with costs and attorney's fees and shall secure, at LICENSEE'S expense, liability insurance indemnifying the CITY and the LICENSEE in the sum of one million dollars (\$1,000,000) combined single limit for property damage and injury, including death, to one or more persons, and deposit with the CITY an original certificate of said insurance, and name the CITY, its officers, agents and employees as an additional insured on LICENSEE'S policy. LICENSEE shall require that the users of its Trackless Train attraction, or the parents or legal guardians if applicable, execute valid waivers and releases of liability concerning users' participation and use of the attraction. Said waivers shall include a notification that the attraction is operated by Donald's Children's Amusement and is not operated or affiliated with the City.

13. The LICENSEE shall maintain Workers' Compensation Insurance for all its employees and volunteers who are in any way connected with the performance of LICENSEE'S concessionary interest to the extent as provided by law.

14. The LICENSEE shall maintain a City of Porterville Business License during the term of this Concession License.

15. The LICENSEE shall maintain and keep adequate records of its sales from the Licensed premises and agrees to permit the CITY to examine said records on demand.

16. The LICENSEE shall have the right and privilege, provided it is not in default of the terms and provisions of the License, at the end of the term or sooner termination thereof, to remove from the Licensed premises all personal property belonging to the LICENSEE, without resulting damage to the premises and the LICENSEE hereby acknowledges the premises to be in good condition and repair.

17. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party, with or without cause, by giving the other party thirty (30) days written notice of termination. Notice shall be given by personal delivery or first class mail, return receipt requested.

18. Attorney's Fees. If any litigation is commenced between the parties to the Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation to a reasonable sum as and for its attorneys' fees in the litigation, which shall be determined by the court in the litigation or in a separate action brought for that purpose.

IN WITNESS WHEREOF the parties have executed this License Agreement at Porterville, California this _____ day of April, 2014.

CITY OF PORTERVILLE

LICENSEE

By: _____
Cameron J. Hamilton, Mayor

By: _____
Donald Thulin

ATTEST:
John D. Lollis, City Clerk

BY: Patrice Hildreth, Chief Deputy Clerk

APPROVED AS TO FORM:

Julia M. Lew, City Attorney