

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 10/22/07		Item Number: <u>A-1</u>	
AGENDA ITEM: Discussion and Consideration of Continuation of the Agreement between the City of Culver City and Patrick Moran (aka The Edge Swim Team).			
Contact Person/Dept.: Kurt Swanson		Phone Number: (310) 253-6655	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☐	
Public Hearing: ☐		Action Item: ☒	Attachments: ☒
Public Notification: Master Notification List; Edge SwimBiz, Inc.; Parks and Recreation Commission (10/19/07)			
Department Approval: Martin R. Cole (10/19/07)		City Attorney Approval: Carol A. Schwab (10/19/07)	
Fiscal Impact Approval: Martin R. Cole (10/19/07)		City Manager Approval Jerry B. Fulwood (10/19/07)	

RECOMMENDATION:

It is recommended the City Council discuss the continuation of the Agreement and direct staff as deemed appropriate, which direction may include the following options: (1) to continue the Agreement without modification; or (2) to direct staff to return to the City Council with a modified agreement; or (3) direct staff to issue a termination notice under the Agreement's own terms. Staff recommends City Council adopt Option 3 and direct staff to issue a termination notice of the Agreement between the City and Edge Swim Team under the Agreement's own terms.

BACKGROUND:

At the October 15, 2007 City Council meeting, Mayor Alan Corlin requested and received unanimous consensus from the City Council that this item be agendized for consideration by the City Council on October 22, 2007. The item was agendized specifically to allow the City Council to discuss the continuation of the Agreement between the City and Edge. As part of the City Council's action, Staff was directed to bring back all issues related to the use of the Plunge by Edge under the Agreement.

DISCUSSION:

In preparation of this staff report, staff has reviewed over six years of data related to the relationship between Edge and the City. For a significant period of the relationship, Mr. Moran represented himself either as an individual or sole proprietor. At some point, Mr. Moran organized Edge Swim Team and Edge/SwimBiz, Inc. Therefore, during the earlier parts of the relationship, a significant number of

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observations were directly with Mr. Moran as an individual. Later observations relate to Mr. Moran as a representative of Edge and/or Edge/SwimBiz, Inc. The following paragraphs include some general background information since 1999 and a history of the arrangements between the City and Mr. Moran/Edge from 2001 to the present. A list of specific incidents describing difficulties the City has experienced during this time period is attached as Exhibit "A" for the Council's information.

History

In 1999, Recreation staff received requests for the City's Department of Parks, Recreation, and Community Services' Aquatic Section to offer a competitive swim program for children who were not yet in high school. In response to these requests, staff developed the Culver City Aquatic Team (CCAT) and hired an independent contractor, Ben Burdick, to coach the team. Swimmers were charged a monthly fee by the City to participate, similar to enrichment classes. Under City standard procedure with Independent Contractor Instructors, Mr. Burdick received 70% of the fees collected by the City as payment for his coaching services. Under the direction of Mr. Burdick the program grew to sixteen (16) swimmers.

In 2001, Mr. Burdick indicated he would cease offering his services under contract to the City. At that time, Mr. Burdick recommended to the City that Mr. Patrick Moran replace him as the independent contractor coach of the swimmers. In November 2001, Mr. Moran signed an agreement as an independent contractor. In accordance with that agreement and long-standing City practice, Mr. Moran was paid 70% of the registration fees for the CCAT program collected from participants by the City. Sometime after executing the Independent Contractor Agreement, Mr. Moran, without obtaining approval of the City, changed the name of the program from the "Culver City Aquatic Team" to "Competitive Edge." Staff became aware of the name change when it was published in the recreation brochure. After the name change, Mr. Moran informed staff that the Competitive Edge Swim Team was his business and not a City program. While he had unilaterally made this change in a City program, Mr. Moran had never paid a rental fee for the pool and the City continued to advertise the program, collect the registration fee, and pay him 70% of the registration fees for coaching services. As with all other City contract classes, the remaining 30% of collected fees was to remain with the City.

Also in 2001, pool staff requested assistance from the Recreation Manager in order to gain compliance with the City's cash handling policy from Mr. Moran (City collection of fees and City payment of 30% of those fees to Independent Contractor Instructors). In violation of both City procedure and the Independent Contractor Agreement, Mr. Moran was collecting registration fees on the pool deck instead of sending the participants to the City's Recreation Registration Office. A meeting was held in which Mr. Moran brought parents of the swimming program to argue why he

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should collect fees on the pool deck. The Recreation Manager explained that collecting fees was the City's responsibility and he was not authorized to collect the fees. It was shortly after this time that the City relinquished control over the swim team to Mr. Moran and Edge became a renting organization.

On June 30, 2003, Don Rogers, then Parks, Recreation and Community Services (PRCS) Department Director, reported various issues being experienced with Edge. In summary, some of the issues identified at that time include:

- Cash Handling/Accounting Issues
- Continued direct acceptance of fees by Edge
- Inability of Edge staff to cooperate with City standard procedures and provisions of the contract with the City
- Behavioral Issues

Between the time of Mr. Rogers' observations and the present, staff has continued to observe similar behavior contrary to the provisions of the agreements during their various terms of operation.

Between 2003 and 2006, the City began to receive additional inquiries from other persons and/or organizations that were interested in using the Plunge. As a result, staff presented the City Council with an Agenda item on October 23, 2006 involving use of the Plunge.

City Council Meeting of October 23, 2006

On October 23, 2006, the City Council considered the following item:

"Approve a Three-Year Professional Services Agreement with Royal Swim Team for Competitive Swim Team Services at Culver City Municipal Plunge."

After significant discussion and receiving input from members of the public (including Mr. Moran), the City Council adopted the following motion:

"MOVED BY COUNCILMEMBER ROSE, SECONDED BY COUNCILMEMBER MALSIN AND UNANIMOUSLY CARRIED, THAT THE CITY COUNCIL DIRECT STAFF TO COME UP WITH A TIME-SHARING SYSTEM TO ALLOW BOTH ORGANIZATIONS [Royal Swim Club and Edge] TIME AT THE MUNICIPAL PLUNGE; DEVELOP A CODE OF CONDUCT WITH KNOWN PENALTIES, AND THAT THOSE PENALTIES BE MEASURED IN DAYS, RATHER

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THAN HOURS; AND ONCE COMPLETED, BE SENT TO THE CITY COUNCIL FOR REVIEW AND COMMENT.”

In addition to the City Council's direction provided above, the City Council also directed staff to return to the City Council in the case staff experienced difficulties in implementing this directive.

Pursuant to the Council's direction, in collaboration with both Royal Swim Club and Edge, Staff prepared a Code of Conduct and provided a draft to the City Council, who did not provide additional comments. Staff finalized the Code of Conduct and provided copies to all renters of the Plunge (including Edge). The copy signed by Edge was received on April 17, 2007.

Even though the Code of Conduct was provided to and accepted by Edge, additional incidents continued to be experienced (please see the attached Summary of Incidents for specific details). In general, those instances include:

- Repeated uncooperative nature with the City
- Interactions with City staff that were perceived as hostile
- Interactions with City residents which were perceived as hostile
- Edge use of the pool is inconsistent with Agreement

Current Contract

A License Agreement (City Contract Number 2007-103 – the License Agreement) became effective on July 1, 2007 by and between the City and Patrick Moran (aka Edge Swim Team, a California Business). The License Agreement includes the following clause (Paragraph 15):

“Either party, in its sole discretion may terminate this License at any time, with or without cause, in its sole discretion, with thirty-days’ (30-days’) written notice to the other party.”

Recent Relations

Despite attempts to resolve continuing issues and after numerous meetings between Edge and the City Manager and/or the Director of Parks, Recreation, and Community Services, staff continues to have significant concerns related to Edge's performance under the License Agreement.

Recently, Edge also took the unusual step of requiring the City to discuss items involving Edge only through Edge's attorney (except for certain on deck safety

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matters). This requirement of a City licensee is highly unusual and has placed an additional cost (in both dollars and staff time) on the City to involve the City Attorney's Office in most of the interactions between the City and Edge. Rather than improve relations between the City and Edge, this Edge imposed requirement has negatively impacted the City's ability to manage the Plunge and perform associated duties impacting both City Staff and other renters of the Plunge.

In a final effort to resolve issues prior to scheduling of this item on the City Council Agenda, the Mayor made several attempts to meet directly with Edge. None of the attempts met with success, including a final invitation to meet extended by the City on Wednesday, October 17.

CONCLUSION

Since the execution of the License Agreement with Edge, staff has continued to encounter the following:

- (1) Creation of a difficult work environment at the Plunge for both City Staff and other users of the Plunge;
- (2) Increased operational costs based upon the additional staff time necessary to administer the License Agreement;
- (3) Negative impacts on the operations of the Plunge;
- (4) Ongoing communication issues between the City and Edge;

Staff has vigorously attempted to fairly administer the License Agreement with Edge. Unfortunately, even with the involvement of the City Manager and the City Attorney's Offices, this has not been possible

These types of behaviors at a City facility create a negative operational environment. Further the impacts at the Plunge can also spread to operations at other City facilities and/or impact other users of City facilities (including the Plunge). Therefore, staff recommends the City Council adopt Option (3), thereby directing staff to issue a termination notice under the Agreement's own terms.

FISCAL ANALYSIS:

The staff time needed to address these extraordinary issues has been extensive and involved a number of individual staff members including the Director of Parks, Recreation, and Community Services, the City Manager and the City Attorney. Further, the environment caused by the difficulties discussed in this report increases the City's exposure to liability.

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ATTACHMENTS:

1. Summary of Incidents involving Patrick Moran and Edge (2001-2007)
2. License Agreement (2007)
3. Code of Conduct (executed by Edge on April 17, 2007)

MOTION:

That the City Council:

Discuss the continuation of the Agreement and direct staff as deemed appropriate, which direction may include the following options: (1) to continue the Agreement without modification; or (2) to direct staff to return to the City Council with a modified agreement; or (3) direct staff to issue a termination notice under the Agreement's own terms. Staff recommends option (3).