

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
ICE RENTALS, LLC DBA SPECIAL ICE**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, a chartered California municipal corporation (hereinafter "City") and Ice Rentals, a California Limited Liability Company doing business as Special Ice (hereinafter "Contractor"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the Initial Term of this Agreement shall begin on October 1, 2019 and expire on January 31, 2025.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms through January 31, 2030 ("Option Periods"). City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

## **4. WARRANTY**

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

## **5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

## **6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in

accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Five Hundred Forty-Five Thousand Dollars (\$545,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

## **9. NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

## **10. INDEPENDENT CONTRACTOR**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do

not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

#### **11. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

#### **12. OWNERSHIP OF MATERIAL**

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

#### **13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

#### **14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

#### **15. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

#### **16. WAIVER**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## **17. NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara  
Attention: Parks & Recreation Department  
Kimberly Castro, Recreation Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
kcastro@santaclaraca.gov, and  
manager@santaclaraca.gov

And to Contractor addressed as follows:

Ice Rentals, LLC DBA Special Ice  
Attention: Emery Lykins, President  
6909 Las Positas Road, Suite D2  
Livermore, CA 94551  
(925) 243-8979  
emery@specialice.net

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

## **18. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## **19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

**21. NO USE OF CITY NAME OR EMBLEM**

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

**23. SEVERABILITY CLAUSE**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

**24. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

## 25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**ICE RENTALS, LLC DBA SPECIAL ICE**  
a California Limited Liability Company

Dated: 08/14/19

By (Signature): [Signature]

Name: Emery Lykins

Title: President

Principal Place of Business Address: 6909 Las Positas Road, Suite D2

Livermore, CA 94551

Email Address: emery@specialice.net

Telephone: (925) 243-8979

Fax: (925) 243-8799

"CONTRACTOR"



## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **1. GENERAL**

- 1.1.** Contractor shall provide all labor, materials, and equipment necessary to install, operate, and manage a seasonal outdoor ice rink ("ice rink" or "rink") at Santa Clara Central Park, located at 909 Kiely Blvd., Santa Clara, CA, adjacent to the Community Recreation Center (also referred to as "site").
- 1.2.** Contractor shall always provide excellent customer service to the public and City representatives.
- 1.3.** Contractor shall manage and operate the ice rink during the City's operating season: Approximately mid-November through the end of January each fiscal year.
- 1.4.** Contractor shall coordinate installation of signage and other sponsorship fulfillment requests with the City.
- 1.5.** City and Contractor shall coordinate sponsor event fulfillment without increasing costs to Contractor or interfering in other ice rink operations.
- 1.6.** Contractor shall provide weekly reviews of program operations, and ice rink revenues and expenses. Contractor may also be required to participate in an end-of-season review (audit).
- 1.7.** Contractor shall deconstruct and remove the ice rink upon the conclusion of the operating season.
- 1.8.** Contractor shall comply with all state and local building and fire codes.

#### **2. ICE RINK INSTALLATION**

- 2.1.** Contractor shall install the ice rink and provide any equipment and materials required for the successful operation of the rink.
- 2.2.** Ice rink mat: The rink shall maximize the available space up to 5,500 square feet; final size and shape of ice rink shall be at City's sole discretion.
- 2.3.** Ice Rink Materials and Equipment: Contractor shall provide the following materials and equipment as part of its ice rink package including, but not limited to:
  - 2.3.1.** Ice maintenance tools;
  - 2.3.2.** Vapor barrier;
  - 2.3.3.** Rink wall (dasher boards);
  - 2.3.4.** Ethylene Glycol;

- 2.3.5.** Ice re-surfacer – Zamboni, or similar ice re-surfacer; size based on layout and size of rink;
- 2.3.6.** Ice skates—250 pairs with sizes for children and adults;
- 2.3.7.** Skate sharpener;
- 2.3.8.** Rubber flooring;
- 2.3.9.** Party rental designated space, equipment and supplies;
- 2.3.10.** Ice surface lighting and lighting around rink perimeter;
- 2.3.11.** Ticketing capability;
- 2.3.12.** Purchasing mechanism and secure Wi-Fi;
- 2.3.13.** Sound equipment that projects onto the ice rink (all music must be family-appropriate);
  - 2.3.13.1.** Sound equipment shall include four (4) speakers, truss system, outdoor-rated LED features (20+), amp system, and microphone system.
- 2.3.14.** A public-address system;
- 2.3.15.** 10' x 10' tents;
- 2.3.16.** Skate walkers (10 for public rental); and
- 2.3.17.** Other equipment and supplies mutually agreed upon for programs and activities, subject to budget appropriations.
- 2.4.** Contractor shall provide a chiller system for the ice rink. Contractor shall be responsible for all maintenance and repairs required for the chiller system.
- 2.5.** Contractor shall be responsible for loading and unloading all equipment required for the installation and operation of the ice rink.
- 2.6.** Contractor shall coordinate site planning and layout with City. Final layout decisions will ensure equipment compatibility and coordinated site plan, to the satisfaction of City.
- 2.7.** Contractor shall secure all City permits and inspections required for installation and event operation.
- 2.8.** Contractors shall use electrical cords and hook-ups that are compliant with local building codes.
- 2.9.** Contractor shall coordinate the placement of electrical and chiller lines with the City. Final placement(s) shall be mutually agreed to by the Parties.
- 2.10.** Contractor shall determine placement, in consultation with City, of skate shack, skate change benches, skate storage racks, party tent, concessions, waste receptacles, lighting and sound equipment to be used in daily operations.

- 2.11. Contractor shall be responsible for the removal of all debris due to the construction and removal of the ice rink, including any equipment. Contractor shall not dump debris in any City dumpsters.
- 2.12. Contractor shall be responsible for all maintenance and repair of the ice rink and related equipment.
- 2.13. Contractor will be responsible for any damage to City property related to the installation, operation, and removal of the ice rink and equipment caused by its employees or subcontractor(s).
- 2.14. Contractor shall install the ice rink and complete final inspections at least one day prior to the start of each operating season.

### **3. ICE RINK OPERATION AND MANAGEMENT SERVICES**

- 3.1. Contractor shall operate and manage the ice rink during the operating season.
- 3.2. Contractor shall manage day-to-day operations of the ice rink, including ticketing, supplies, rink entry area, and rink activities and concessions.
- 3.3. Contractor shall keep the ice rink and surrounding area clean and orderly.
- 3.4. Contractor shall be responsible for the décor of the ice rink and surrounding area. The City reserves the right to approve Contractor's decorations, and to provide its own decorations and other optional equipment. City will not unreasonably withhold approval.
- 3.5. Contractor shall maintain a website, social media presence and online program registration system.
- 3.6. Contractor shall market to business and organizations in advance of the operating season to secure private parties and ice rentals.
- 3.7. Contractor shall facilitate consistent and reliable hours of operation subject to permitting, use and safety conditions. Contractor shall submit a draft schedule to the City for review and approval; the schedule shall include weekday, weekend and holiday hours of operation. Approval shall not be unreasonably withheld.
- 3.8. Contractor may add additional hours as directed by City for pre-scheduled public and/or private events, such as, open skate sessions, sponsor supported events.
- 3.9. Contractor shall have the authority to modify hours of operation based on volume of customers, as well as weather or other safety considerations. Contractor will inform City of any schedule or operational changes immediately.
- 3.10. Contractor shall maintain fully stocked First Aid Kits on-site at the ice rink and staff shall respond appropriately to emergency situations.

- 3.11. Contractor shall operate programs and activities at the ice rink, including, but not limited to:
  - 3.11.1. Public Learn-to-Skate Program;
  - 3.11.2. Programs for beginning, intermediate and advanced skaters;
  - 3.11.3. Private skate lessons;
  - 3.11.4. Group programs; and
  - 3.11.5. Special events and private parties.
- 3.12. Contractor may operate a concession stand for snacks, beverages, skating equipment, and other incidental items.
  - 3.12.1. Food concessions will comply with Santa Clara County Department of Environmental Health requirements, and any other applicable state or local laws or regulations.
- 3.13. Contractor shall adhere to safe opening and closing procedures of the ice rink facility.
- 3.14. City and Contractor shall monitor the financial status of the operation through weekly financial and attendance updates and written communications.

#### **4. CITY RESPONSIBILITIES**

- 4.1. City will provide designated staff to coordinate and communicate with Contractor's General Manager, or designee regarding day-to-day operations, City programs, and special events.
- 4.2. City will coordinate site planning and layout with Contractor. Final layout decisions will be jointly agreed upon to ensure equipment compatibility and coordinated site plan.
- 4.3. **Foundational Level Surface (Sandbox)**
  - 4.3.1. The City shall provide a foundational level surface (sandbox) upon which the Contractor's ice rink shall be built.
    - 4.3.1.1. Assuming an ice rink that is 60' x70' in diameter, the surface shall level to no more than 1/2" of slope from one side to the other.
    - 4.3.1.2. The surface shall be hardened (or compacted if using a sand box) to at least 90% compaction and/or to a point where when walking on the surface no foot print or compression will occur.
    - 4.3.1.3. Surface should have lateral strength to support: a dynamic ("moving") weight of up to 7,000 lbs.; and static weight of 150 lbs. per square foot to be placed on top of the surface or to any higher engineering standard to building codes.

- 4.4.** City will provide, at its sole cost, electricity, power generation and power distribution to the equipment used in the operation and maintenance of the ice rink. City will supply and facilitate running sufficient electrical capacity for:
  - 4.4.1.** Three-phase, 480-volt, up to 600 amps to run rink equipment on site;
  - 4.4.2.** Single-phase, 110-volt, up to 200 amps to power non-ice rink electrical needs, such as lighting, sound and ticketing operations; and,
  - 4.4.3.** Access to 110-volt power for tools and other operations during set up and teardown.
- 4.5.** City will provide a staging area at Central Park for the installation and removal of equipment. Contractor may use a tractor-trailer or semi-trailer to transport equipment to the site.
- 4.6.** City will provide a space, approximately 50 feet from the ice surface area, to place the chiller trailer.
- 4.7.** City will provide water supply to site (may be reclaimed water for ice).
- 4.8.** City will provide space for the ice re-surfacer and snow operations equipment.
- 4.9.** City will provide safety equipment including, but not limited to, traffic cones; barricades; and temporary fencing.
- 4.10.** City will provide overnight on-site security, as required, during installation, operation, teardown, and when the ice rink is not open to the public.
- 4.11.** City will manage and pay all marketing and advertising expenses associated with the ice rink, including sponsor logos, printing, marketing, and signage.
- 4.12.** City will coordinate all special events and any other additional activities related to the ice rink with the Contractor.
- 4.13.** City will coordinate Parks & Recreation Programs at the Community Recreation Center with Contractor, as needed.
- 4.14.** City will coordinate with Contractor public communications regarding ice rink operations on City channels.

## **5. STAFFING**

- 5.1.** Contractor shall provide sufficient staffing to operate and manage the ice rink. Final staffing levels shall be based on expected attendance levels and efficient program operations.
- 5.2.** Contractor shall hire a General Manager, who shall be the primary contact for the City, other vendors, and the public. The General Manager shall be available during all hours ice rink is open to public.
- 5.3.** Contractor shall provide two Assistant Managers who shall be available if the General Manager is not available.

**5.4. The General Manager will:**

- 5.4.1.** Recruit, train and manage all ice rink staff;
  - 5.4.2.** Provide experienced and professional management and employees, who conduct themselves professionally and courteously and provide quality customer service in compliance with local, state, and federal laws;
  - 5.4.3.** Oversee the installation, operations, management, and removal of equipment and the rink, in coordination with the City;
  - 5.4.4.** Coordinate with City on programs and services that can be reasonably and affordably accomplished with the operations budget;
  - 5.4.5.** Manage and coordinate all staffing, customer service issues or other maintenance issues that arise with the ice rink.
- 5.5.** Contractor shall conduct appropriate background checks for all assigned staff prior to the commencement of work at ice rink. Contractor shall provide background check results to the City upon request.
- 5.6.** The City reserves the right to request the removal of any of Contractor's personnel who do not conduct themselves in a courteous, professional manner, or whose actions endanger the safety of people or property. The Contractor shall promptly respond to requests for replacement personnel.
- 5.7.** Contractor shall be responsible for all human resource compliance, functions, and management, including but not limited to payroll, employment taxes, and workers compensation coverage.
- 5.8.** Contractor may subcontract with a personnel services organization for staffing purposes with prior notification and authorization from City.

**6. SUBCONTRACTORS**

The following subcontractors have been approved to perform services under this Agreement.

- 6.1.** Aggreko Equipment Rental for the provision of a rental chiller unit;
- 6.2.** KR Electric, Inc. for the provision of electrical connections; and
- 6.3.** Special Events Tent and Party Rentals for the provision of tenting and decking.

**7. REVENUE AND EXPENSES**

**7.1. General**

- 7.1.1.** Contractor shall collect and record all revenue associated with ice rink operations, concessions and programs daily.

- 7.1.2. Contractor shall operate the rink, accounting for all revenue and expenses from operations, subject to review by City on weekly basis and end of season audit.
- 7.1.3. The Contractor shall have in place standard operating procedures related to accepting credit card transactions in compliance with current Payment Card Industry (PCI) Compliance standards. The Contractor shall be responsible for ensuring that all their employees are trained and well versed with all PCI compliance standards, and such training is conducted and documented as required by PCI compliance standards on an ongoing basis.

## **7.2. Revenue Collection**

- 7.2.1. Contractor shall accept cash, credit or direct debit as payment.
- 7.2.2. At the end of each shift the cashier and manager on duty shall run a cash register report and perform a physical count of cash. Contractor shall report any differences in the two amounts.
- 7.2.3. Contractor shall remove all cash from the register(s) at the end of each business day and deposit it at Contractor's local bank. Contractor shall keep a written record of all cash deposits and bank receipts.

## **7.3. Expenses**

- 7.3.1. Unless otherwise stated in this Agreement, Contractor shall be responsible for all expenses related to the operation and management of the ice rink. Contractor shall pay invoices related to the ice rink operations in a timely manner using revenue received from ice rink operations.
- 7.3.2. Contractor shall be responsible for payment of all United States, State, County, City or other taxes, assessments and duties, including, without limitation, sales taxes, and, employment, unemployment and social security taxes regarding its employees.

## **8. REPORTING**

- 8.1. Contractor shall submit the following reports to the City.
  - 8.1.1. Daily point of sale reports, including revenue, discounts, etc.;
  - 8.1.2. Daily ice resurfacing logs;
  - 8.1.3. Daily chiller logs;
  - 8.1.4. Weekly reports discussing the operating revenues and expenditures;
  - 8.1.5. Skate sharpening logs;
  - 8.1.6. Incident reports as required;

- 8.1.7.** A final revenue & expenditure statement to be submitted upon the end of the operating season; and
- 8.1.8.** Any additional financial reports and bank statements as requested.
- 8.2.** City shall have the right to audit financial records after any season at its own expense.

## 9. REMOVAL OF ICE RINK

- 9.1.** Contractor shall remove equipment and construction debris from Central Park within five (5) weeks after the ice rink is closed to the public.
- 9.2.** Contractor shall ensure appropriate removal of all equipment and supplies.
- 9.3.** Contractor shall be responsible for damages to City property related to the removal of ice rink equipment.



## EXHIBIT B SCHEDULE OF FEES

### 1. Maximum Compensation

The maximum amount of compensation to be paid to Contractor shall not exceed Five Hundred Forty-Five Thousand Dollars (\$545,000).

### 2. Installation Costs

City shall pay Contractor for completed ice rink installation services as set forth in the Scope of Services (Exhibit A) at the rates listed in Table B1- Installation Costs below.

**Table B1 - Installation Costs**

	Cost Year 1	Estimated Cost Year 2*	Estimated Cost Year 3*	Estimated Cost Year 4*	Estimated Cost Year 5*
Ice Rink Installation	\$10,000	\$10,000*	\$10,000*	\$10,000*	\$10,000*
Ice Rink Package	\$55,000	\$55,000*	\$55,000*	\$55,000*	\$55,000*
Materials	\$2,500	\$2,500*	\$2,500*	\$2,500*	\$2,500*
Chiller Rental	\$24,000	\$24,000*	\$24,000*	\$24,000*	\$24,000*
Equipment Rental	\$10,000	\$10,000*	\$10,000*	\$10,000*	\$10,000*
Ice Rink Removal	\$7,500	\$7,500*	\$7,500*	\$7,500*	\$7,500*
Installation Costs Total	\$109,000	\$109,000*	\$109,000*	\$109,000*	\$109,000*
<b>GRAND TOTAL</b>					<b>\$545,000</b>

\*Subject to annual adjustment.

### 3. Revenue Split with the City

**3.1.** Contractor shall pay City a percentage of net operating revenue associated with ice rink operations, concessions and programs. Net operating revenue equals gross revenue minus gross expenditures.

**3.2.** Contractor shall receive forty-five percent (45%) of net operating revenue associated with ice rink operations, concessions and programs. The City

shall retain fifty-five percent (55%) of net operating revenue associated with ice rink operations, concessions and programs.

#### **4. Invoicing**

**4.1.** The Contractor shall invoice the City at the times described below.

**4.1.1.** The Contractor shall invoice the City for one third of the installation costs one month prior to the scheduled construction of the ice rink. Contractor may invoice the City earlier only with City approval.

**4.1.2.** Contractor shall invoice the City for another third of the installation costs at the midpoint of the Operating Season.

**4.1.3.** Contractor shall invoice the City for the final third of the installation costs within five (5) days after the end of the Operating Season.

#### **5. Payment to Contractor**

**5.1.** The City shall review the invoice submitted by Contractor and within ten (10) working days of receipt of the invoice, the City shall notify Contractor of any discrepancies or deficiencies in said invoice.

**5.2.** If there are no discrepancies or deficiencies in the submitted invoice, City shall submit payment to Contractor within thirty (30) days.

#### **6. Price Adjustments**

**6.1.** The Contractor may request adjustments to the compensation rates on each one-year anniversary of the agreement. The Contractor must demonstrate to the satisfaction of the City that a price increase is warranted. Any increases shall not exceed three percent (3%).

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

#### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85

or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

#### F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance

documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara, Parks and Recreation Department

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

## I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.