

**SERVICES AGREEMENT
FOR
FESTIVAL OF LIGHTS**

ICE COLD ENTERTAINMENT, INC.

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2017, by the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and ICE COLD ENTERTAINMENT, INC., a California corporation (“Contractor”). City and Contractor mutually agree as follows:

1. Scope of Work: Contractor shall perform the work and Services in accordance with the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference.

2. Term. The term of the Agreement shall begin on the date first written above and terminate on January 30, 2018. The City may terminate the agreement upon 30 days written notice to Contractor. The Agreement may be extended for an additional one (1) year period upon mutual consent of City and Contractor.

3. Compensation. Contractor shall perform the Services under this Agreement for the total sum not to exceed One Hundred Ninety Four Thousand Dollars (\$194,000) (“Contract Price”). Payments shall be made in accordance with City’s usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 13 hereof.

4. Extra Materials. Contractor shall not be compensated for any extra materials used or time expended over and above the Contract Price, unless prior written approval for the same has been granted by City

5. Business Tax Certificate. As a condition of this Agreement, Contractor shall secure a business tax certificate to operate in the City of Riverside, pursuant to Chapter 5.04 of the Riverside Municipal Code, and shall also secure any other licenses or permits which may be required.

6. Termination/Default. City shall have the right to terminate any or all of Contractor’s Services and work covered by this Agreement at any time upon fifteen (15) calendar day’s written notice to Contractor. In the event of such termination, Contractor shall submit Contractor’s final written statement of the amount of services provided as of the date of such termination for payment by the City.

a. Notwithstanding the foregoing, the City may terminate Contractor’s performance of this Agreement upon five (5) calendar day’s written notice if:

i. Contractor fails to promptly begin performance of the Services; or

- ii. Contractor fails to perform the Services in accordance with Exhibit "A"; or
- iii. Contractor discontinues performance of the Services; or
- iv. Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- v. Contractor otherwise is guilty of breach of a provision of this Agreement; or
- vi. Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

7. Insurance.

7.1 General Provisions. Prior to the City's execution of this Agreement, Consultant shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

7.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations under Section 11 hereof.

7.1.2 Ratings. Any insurance policy or coverage provided by Consultant as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

7.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

7.1.4 Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage as Consultant deems adequate, at Consultant's sole expense.

7.2 Workers' Compensation Insurance. By executing this Agreement, Consultant certifies that Consultant is aware of and will comply with Section 3700 of the Labor

Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Consultant shall carry the insurance or provide for self-insurance required by California law to protect said Consultant from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Consultant shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or 2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

7.3 Commercial General Liability and Automobile Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Consultant against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Consultant. The City, and its officers, employees and agents, shall be named as additional insureds under the Consultant's insurance policies.

7.3.1 Consultant's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

7.3.2 Consultant's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant owned vehicles and hired vehicles.

7.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

7.3.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

8. Indemnification. Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with, the performance of Work, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

9. Duty to Defend. Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: 1) the Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees

to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

10. Non-Discrimination. During Contractor's performance of this Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, genetic information, gender, gender identity, gender expression, sex or sexual orientation, in the selection and retention of employees and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

11. Prevailing Wage. If applicable, Consultant is required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

12. Notices. Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

City of Riverside
Attn: Art & Cultural Affairs
3900 Main Street
Riverside, CA 92522

Contractor

Ice Cold Entertainment, Inc.
Attn: Lenny Davis
4 Gleneagles Dr.
Newport Beach, CA 92660

13. Venue. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

14. General Compliance With Laws. The Contractor warrants that in the performance of this Agreement, it shall comply with all Federal, State and local laws and ordinances and all lawful orders, rules and regulations.

15. Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be

severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

16. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

17. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

18. Government Code Claims Procedures. Contractor acknowledges and agrees that its failure to submit any claim arising under this Contract shall constitute a waiver of Contractor's right to additional compensation and/or extension of time. Contractor further acknowledges that it must comply with the claims procedures set forth in Government Code sections 900 set seq. prior to filing a lawsuit against the City for any such claim. Failure to submit a Government Code claim shall bar Contractor from bringing and maintaining a valid lawsuit against the City.

19. No Estoppel or Waiver by City. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by Contractor or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF RIVERSIDE, a California charter
City and municipal corporation

By: _____
City Manager

Attest:

By: _____
City Clerk

Certified as to Availability of Funds

By: _____
Chief Financial Officer

Approved as to form:

By: _____
Chief Assistant City Attorney

ICE COLD ENTERTAINMENT, INC.,
a California corporation

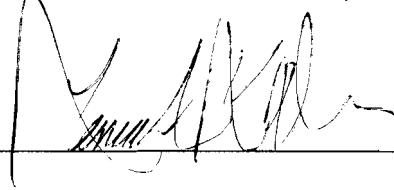
By: _____
Printed Name: Leonard G. Davis
Title: President

By: _____
Printed Name: Jill M. Davis
Title: Secretary

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

ICE COLD ENTERTAINMENT, INC.

By: 

Date: JULY 27, 2017

Exhibit "A"
Scope of Services

Ice Cold Entertainment, Inc. (ICE) shall construct, maintain and manage a premier quality ice skating rink.

Ice Rink Specifications: Outdoor Ice Rink, to be located in White Park with a rink size of approximately 50' wide x 100' long.

ICE will provide the following services and products:

1. Design and build substructure – The substructure will be constructed of 4'x8' $\frac{3}{4}$ " CDX Plywood attached to 2"x4" studs, with City providing the materials needed.
2. Refrigeration System – A minimum 150-ton chiller package will be used at the site. The chiller will be off-loaded from the trailer to provide the best possible aesthetics. This includes pump, all hoses, and electrical connections.
3. Modular Railing System – The dasherboard (railing) system employed by our company is the highest quality available for any Ice Skating Rink, indoor or outdoor. It is constructed of premium aluminum and meets ASTM B221 and Federal QQA200-9 specifications. The frames are constructed with vertical and horizontal cross supports. It includes (1) 8' wide opening on one side of the rink with a 2" polyethylene threshold /ice dam. It also has (1) gate system directly across from the 8' wide opening and (1) gate system to allow for entrance for the Zamboni Ice Resurfacing machine. Each board includes a Dark Blue $\frac{3}{4}$ " thick 6" wide cap rail and a $\frac{1}{2}$ " thick 10" high kickplate (see accompanying photos of the rink). Each board mounts directly into the substructure with 3 anchors per 8' panel section. (please see included "anchor detail"). The rink features a 10' radius curve at each corner. All dasherboards are made of Plexiglas.
4. Ice Rink Maintenance Equipment – Ice Cold Entertainment utilizes a propane powered Zamboni Model 100 for Ice Resurfacing. Ice Resurfacing is performed after each session and prior to closing each day. This is our most important piece of equipment when it comes to providing the best ice surface for skating. The Zamboni is also efficient in moving any water around the rink that may form due to sun and/or wind. We also utilize a Zamboni Ice Edger that enables us to perform period edging around the rink that is needed due to ice buildup. Additionally, the use of the Zamboni Ice Resurfacing machine allows you the opportunity for ancillary advertising revenue by "wrapping" the Zamboni with an ad.
5. Rental Ice Skates, Sharpening Services – Ice Cold Entertainment will provide NO LESS than 200 pairs of BRAND NEW Reebok/CCM Ice Skates. The skates provided are high quality, comfortable skates for both men and women. The comfort factor is an important ingredient to the overall experience for the skater. Also included would

6. Rental Ice Skates, Sharpening Services – Ice Cold Entertainment will provide NO LESS than 200 pairs of BRAND NEW Reebok/CCM Ice Skates. The skates provided are high quality, comfortable skates for both men and women. The comfort factor is an important ingredient to the overall experience for the skater. Also included would be new double bladed skates for toddlers. Skate sharpening is performed using a Blackstone Turbo Portable Single Head Skate Sharpener. Sharpening is done every two weeks or on an as needed basis, whichever is sooner. Blackstone is the world leader in skate sharpening equipment.
7. Skate Change Deck Area with Rubber Flooring – Rubber $\frac{3}{4}$ " thick black mats will be used inside the “bullpen” area, measuring approximately 84’x12’.
8. Professional Supervision and General Labor for Set Up/Strike – All expert supervision and labor for set-up and strike to be supplied by Ice Cold Entertainment.
9. All Tools, Equipment, and Supplies for Set-Up and Strike – All necessary equipment and supplies needed to build a first class facility provided by Ice Cold Entertainment.
10. Refrigeration Technician On-Call 24-hour Basis During entire Term – Ice Cold Entertainment will utilize the services of 2 refrigeration repair services to provide more than complete coverage. Should a breakdown occur, the integrity of the Ice comes first and everything must be done in an expeditious matter to insure melting does not occur. Initial calls for service will go into our vendor supplying our chiller and generator. If an immediate response is not fulfilled, FJR Pacific Refrigeration will be called as backup. Ice Cold Entertainment has used FJR Pacific for repairs for the last 5 years and operate on a 24-hour basis as well.
11. Provide all Releases and Waivers.
12. Money received from the operation of the ice rink shall be turned over to the City.
13. Sponsorship – ICE will work with the City in identifying and securing sponsorship opportunities at the ice rink. The City must approve all sponsorships. 75% of sponsorship revenue will go to the City and 25% will go to the Contractor.
14. City will provide all security.
15. From Friday, November 24, 2017, through Saturday, January 6, 2018, Contractor is required to be on-site and open for business, unless notified by the City. The City shall determine the exact hours of operation.
16. Contractor agrees to attend, or send a representative, to any pre-Festival of Lights meetings that take place. The City shall arrange a mutually agreeable time.

17. Contractor will not be supplied a parking permit unless otherwise specified by City staff. The City is not responsible for validation or reimbursement of parking fees, tickets, towing or damages to personal property or vehicles. Parking is available in downtown Riverside and is free after 5 p.m. on weekdays and on weekends and holidays.