

**SERVICES AGREEMENT
FOR
FESTIVAL OF LIGHTS**

ICE COLD ENTERTAINMENT, INC.

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2023, 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 31, 2024. The City may terminate the agreement upon thirty (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 Four Hundred One Thousand Two Hundred Ninety-Five Dollars (\$401,295.00) (“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 thirty (30) calendar days’ 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 days’ 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. 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, military and veteran status, 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	Contractor
City of Riverside CEDD/Arts & Cultural Affairs Attn: Gema Ramirez 3900 Main Street Riverside, CA 92522	Ice Cold Entertainment, Inc. Attn: Lenny Davis 1024 Bayside Drive, #155 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.

20. Digital and Counterpart Signatures. Each party to this Agreement intends and agrees to use of digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (Civil Code §§ 1633.1, et seq.), California Government Code § 16.5, and the California Code of Regulations Title 2 Division 7 Chapter 10, to execute this Agreement. The parties further agree that the digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for purposes of validity, enforceability, and admissibility. For purposes of this section, a "digital signature" is defined in subdivision (d) of Section 16.5 of the Government Code and is a type of "electronic signature" as defined in subdivision (h) of Section 1633.2 of the Civil Code. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each certified or authenticated electronic

copy of an encrypted digital signature shall be deemed a duplicate original, constituting one and the same instrument and shall be binding on the parties hereto.


[SIGNATURES ON FOLLOWING PAGE.]

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

ICE COLD ENTERTAINMENT, INC., a California corporation

By: _____
City Manager

By:  _____
Leonard Davis (Oct 3, 2023 10:22 PDT)

Printed Name: Leonard G. Davis

Title: President

Attest:

By: _____
City Clerk

and

Certified as to Availability of Funds

By: _____

Printed Name: _____

By:  _____
Chief Financial Officer

Title: _____

Approved as to form:

By: Susan Wilson
Susan Wilson (Oct 6, 2023 11:47 PDT)
Assistant City Attorney

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: _____

EXHIBIT “A”
SCOPE OF SERVICES

Contractor constructs, maintains, and manages premier quality ice skating rink with real ice. Contractor provides a turnkey all-inclusive service including as needed, meetings with city staff, ongoing communication with city staff, and application for required permits.

ICE RINK SPECIFICATIONS: Outdoor ice rink, to be located in downtown Riverside at the parking lot at The Cheech Marin Center for Chicano Art & Culture at 3581 Mission Inn Avenue on the corner lot of Mission Inn Avenue and Orange Street with a rink size of 50’ x 120’.

CONTRACTOR MUST PROVIDE THE FOLLOWING SERVICES AND PRODUCTS:

1. **Design and Build Substructure.** Design and build the substructure needed for the ice rink, including all materials.
2. **Refrigeration System.** Must provide a minimum 120 ton with 6” hose supplied for onsite use. The chiller must be able to function if enclosed with fencing to reduce visibility to public. City will provide fencing and fence cover. All pumps, hoses, connections, and required connections must be appropriately secured for safety and not accessible to the public.
3. **Equipment Storage.** Contractor must provide secured storage for all required equipment to reduce access to public. If needed City must be able to wrap or screen storage with Festival of Lights graphic or other city approved graphics.
4. **Modular Dasherboard System.** Dasherboard system must be appropriate for outdoor use and constructed from premium materials to withstand outdoor elements. System must be constructed of premium aluminum with minimum width of 5” with 10” kick plates meeting ASTM standards. Dasherboard must meet City of Riverside Fire Code Requirement. Dasherboard must be clear Plexiglass or better material to allow visibility by public. Dasherboard must allow space to display signage. City will produce signage.
5. **Ice Rink Maintenance Equipment.** Must use Zamboni Model 100 for ice resurfacing. Contractor must perform ice resurfacing after each session and prior to closing. Drivers must be trained to inspect ice for irregularities while driving around ice rink.
6. **Rental Ice Skates, Sharpening Services.** Must provide no less than 250 pairs of industry best skates. The skates must be of high quality, comfortable for all ages. Skate sharpening must be included and done as needed. Regular inspection of ice skates is required. Must provide Skate Helper Ice Skating Training aids.
7. **Skate Change Deck Area with Rubber Flooring.** Rubber $\frac{3}{4}$ ” thick black mats will be used inside the gated area measuring minimum 84’ x 12’.

8. **Professional Supervision and General Labor for Set Up/Strike.** Contractor must supply all expert supervision and labor for set-up and strike.
9. **Tools, Equipment, and Supplies for Set-Up and Strike.** Contractor must provide all necessary equipment and supplies needed to build first class facility.
10. **Refrigeration Technician.** Technician On-Call 24-hour basis during entire event. Contractor must have readily available technical services in the event of chiller failure. City expects immediate response by technician to reduce impacts to service.
11. **Dates of Operation.** Public operation from November 18, 2023 to December 31, 2023. City will determine times of operation prior to event. Event hours are 5:00 pm to 10:00 pm.
12. **Waivers.** Operator is responsible for providing waivers to skaters. The City of Riverside will provide the waivers as required and approved by City of Riverside Attorney's Office.
13. **Revenue.** The City of Riverside will retain all revenue.

TURNKEY MANAGEMENT AND DAILY OPERATIONS:

1. Contractor must provide professional and experienced on-site management during the term of the agreement. Including but not limited to box office operations, skate rental attendants, experienced skate guards, and maintenance personnel.
2. General Manager or designated staff should be in Riverside or within 10 miles for the duration of the event to ensure successful operation and immediate response to emergencies. General Manager must be properly trained and able to respond to emergencies as they arise.
3. All personnel must represent the City of Riverside and provide customer service that aligns with the values of the City.
4. Personnel is required to wear uniforms that identify them as personnel of the contractor. Personnel must wear protective gear and trained to respond to emergencies/contact the City of Riverside Emergency Services.
5. Contractor must provide all box office equipment. Contractor must provide electronic report of all sales on hourly, daily, weekly, and monthly basis. Ticket sale reports must indicate type of ticket sold. Tracking of tickets sold must prevent sale of tickets upon reaching capacity per City or Riverside Fire Code.
6. Contractor must provide payment of all sales (revenue) to the City on a weekly basis. Schedule of payments will be as follows:

Revenue Dates	Payment Due to City
November 18 – November 23, 2023	November 27, 2023
November 24 – November 30, 2023	December 4, 2023
December 1 – December 7, 2023	December 11, 2023
December 8 – December 14, 2023	December 18, 2023
December 15 – December 21, 2023	December 26, 2023
December 22 – December 31, 2023	January 2, 2024

EXHIBIT “B”
COMPENSATION

The amount to be paid for the term of the Agreement shall not exceed Four Hundred One Thousand Two Hundred Ninety-Five Dollars (\$401,295.00). First payment to be processed upon execution of the Agreement in the amount of Two Hundred Thousand Six Hundred Forty-Seven Dollars and Fifty Cents (\$200,647.50). Second payment to be processed January 5, 2024, in the amount of Two Hundred Thousand Six Hundred Forty-Seven Dollars and Fifty Cents (\$200,647.50).

EXHIBIT “C”

KEY PERSONNEL

Lenny Davis
President/Chairman
949-230-9990
lenny@icecoldentertainment.com