

RESOLUTION NO. 2012-193

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
DISPENSING WITH THE FORMAL REQUEST FOR PROPOSAL PROCEDURES
AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH
ICE UNLIMITED, LLC, AND AMENDING THE FISCAL YEAR 2012-13 BUDGET**

WHEREAS, the City Council of the City of Elk Grove desires to promote local businesses as well as new family-friendly entertainment venues for the residents of Elk Grove; and

WHEREAS, the development of a temporary ice rink in Old Town Elk Grove would attract additional visitors to the area; and

WHEREAS, the additional flow of visitors to Old Town Elk Grove will provide businesses in that area a unique opportunity to increase sales; and

WHEREAS, the City has an opportunity to contract with an experienced ice rink operator; and

WHEREAS, in order for the ice rink to open in time for the start of the holiday season, various aspects of the project need to commence immediately, thus there is not sufficient time to solicit and thoroughly review bids; and

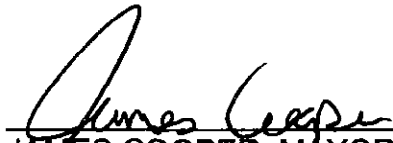
WHEREAS, the City has identified a property at 0 Elk Grove Boulevard (Union Pacific Railroad site) that is ideally suited to host a temporary ice rink in Old Town Elk Grove.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove finds that it is in the best interest of the City to dispense with the formal request for proposal procedures and hereby authorizes the City Manager, or designee, to execute a contract with Ice Unlimited, LLC, in a form substantially similar to the contract included herewith as Exhibit A, and the City Manager is further authorized to execute such further documents and take such further actions as may be necessary or appropriate to carry out the City's obligations pursuant to the contract.

BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove hereby amends the Fiscal Year 2012-13 budget as follows:

	Current Budget	Amendment	Resulting Budget
Source of Funds			
Program Revenue	-	\$110,000	\$110,000
Contingency Fund	100,000	50,000	50,000
Use of Funds			
Economic Development	316,850	160,000	476,850

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 24th day of October 2012.



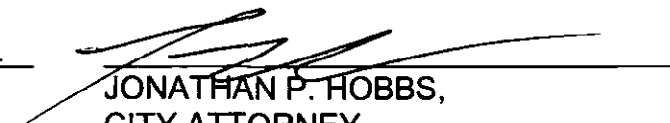
JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

CITY OF ELK GROVE



CONSULTANT CONTRACT FOR
ICE UNLIMITED, LLC
Temporary Outdoor Ice Rink

CONTRACT FOR SERVICES

THIS CONTRACT is made on _____, 20____, by and between the City of Elk Grove, a municipal corporation (the "City") and Ice Unlimited, LLC, a California limited liability company (the "Consultant"), collectively referred to as the "Parties."

WITNESSETH

WHEREAS, the Consultant has presented a proposal to provide temporary outdoor ice rink services, which services are identified in the Scope of Work attached hereto and incorporated herein as **Exhibit A**, and by reason of its qualifications, experience, and facilities, is duly authorized to perform the type of services contemplated herein; and,

WHEREAS, the City desires to hire a Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Consultant agree to as follows:

1. SCOPE OF SERVICES

A. This Contract is contingent upon the City obtaining a satisfactory and feasible location, in City's sole discretion, to locate the Ice Rink and its related facilities, including meeting parking requirements. In the event the City does not obtain a satisfactory location, then this Contract shall be terminated without penalty or cost to either Party. Consultant acknowledges that, as of the date of this Contract, the City has not secured a location and this Contract is strictly contingent upon that event. Any costs incurred by Consultant in anticipation of City obtaining a satisfactory location for the Ice Rink prior to receiving a Notice to Proceed as set forth in Section 13 of this Contract shall be at Consultant's sole cost and expense. This Contract is also contingent upon Consultant providing, prior to execution of this Contract, documentation, to City's satisfaction, from the California Secretary of State stating that it is validly registered to do business in the State of California.

B. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the Scope of Work, attached hereto and incorporated herein by reference. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any exhibits shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control.

C. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.



2. TERM OF CONTRACT

A. This Contract shall be effective as of the date executed by the Parties and approved as to form by the City Attorney and shall continue until all services provided for in this Contract have been performed, unless earlier terminated pursuant to Section 11 of this Contract.

3. SCHEDULE FOR PERFORMANCE

City and Consultant agree that time is of the essence and Consultant agrees that services shall be undertaken and completed in accordance with the schedule of performance (the "Schedule of Performance"), attached hereto and incorporated herein by reference as **Exhibit B**. Deviations from the time schedule stated in the Schedule of Performance may be made with the written approval of the City Manager, or his/her authorized representative. Consultant's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 4.

4. COMPENSATION

A. The Consultant shall be paid as set forth in **Exhibit C**, "Compensation and Method of Payment," attached hereto and incorporated herein by reference, but in no event shall total compensation under this Contract exceed Eighty-five Thousand Dollars (\$85,000.00), without City's prior written approval in writing signed by the City Manager.

B. If Consultant's performance is not in conformity with the Scope of Work or Schedule of Performance, payments may be delayed or denied, unless otherwise agreed to by the City in writing.

C. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 11.

5. NOTICES

A. Consultant shall transmit invoices and any notices, with copy to City Attorney, required by this Contract, to City as follows:

City of Elk Grove
Attn: Finance Department
8401 Laguna Palms Way
Elk Grove, California 95758

B. City shall transmit payments on invoiced amounts, and any notices required by this Contract to Consultant as follows:



Ice Unlimited, LLC
Attn: Rob Porter, President & Owner
1411 Lochbrae Road
Sacramento, CA 95815
Telephone: (916) 716-3658
rob@iceunlimited.net

6. PROFESSIONAL SERVICES

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Contract, make public any reports or articles, or disclose to any third party any information, confidential or otherwise, relative to the work of City or the operations or procedures of City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Contract, take any action that would affect its impartiality or professionalism due to the City whether perceived or actual.

7. INDEPENDENT CONTRACTOR

A. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

B. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third party person(s) employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract.



8. AUTHORITY OF CONSULTANT

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

9. CONFLICT OF INTEREST

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Contract. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

10. AMENDMENTS, CHANGES OR MODIFICATIONS

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the Parties hereto and shall be signed by the persons authorized to bind the Parties.

11. TERMINATION

A. This Contract may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

D. In the event of termination, Consultant shall be compensated as provided for in this Contract, except as provided in Section 11C. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings



and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

12. FUNDING

Consultant agrees and understands that renewal of this Agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII B of the California Constitution and that the City Council may determine not to fund this Agreement in subsequent years.

13. NOTICE TO PROCEED

Prior to commencing work under this Agreement, Consultant shall receive a written "Notice to Proceed" from City. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay Consultant for any services prior to issuance of the Notice to Proceed.

14. EXTENSIONS OF TIME

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions must be authorized in advance by City, in writing, and at City's sole discretion. Such extensions, if authorized, shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 10.

15. PROPERTY OF CITY

A. It is mutually agreed that all materials prepared by Consultant under this Contract shall become the property of City, and Consultant shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and Consultant shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by the City.



C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

16. COMPLIANCE WITH LAW

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

Consultant shall pay prevailing wage for any construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. Prevailing wage shall be paid by Consultant at the rates set by the California Department of Industrial Relations (<http://www.dir.ca.gov/OPRL/dprevwagedetermination.htm>).

17. REPRESENTATIONS

A. Consultant agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of City, is no longer employed by Consultant, or is replaced with the written approval of City, which approval shall not be unreasonably withheld.

D. Consultant shall provide immediate corrective services without charge to City for services which fail to meet the above professional and legal standards. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

18. APPROVAL OF STAFF MEMBERS

A. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this contract and shall obtain the approval of the city manager of a list of all proposed staff members who are to be assigned to perform services under this contract prior to any such performance.



19. ASSIGNMENT AND SUBCONTRACTING:

A. Except as expressly authorized herein, Consultant's obligations under this Contract are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the City. However, claims for money due or which become due to Consultant from City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.

B. Consultant shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by Consultant.

20. MATERIALS CONFIDENTIAL

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City, except by court order. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

21. LIABILITY OF CONSULTANT—NEGLIGENCE

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

22. INDEMNITY AND LITIGATION COSTS

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Contract on the part of Consultant, except such loss or damage which was



caused by the sole negligence, or willful misconduct of the City. The provisions of this section shall survive termination or suspension of this Contract.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in Section 22 applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as Consultant. Consultant's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

23. EVIDENCE OF INSURANCE COVERAGE

Prior to commencement of any work under this Contract, Consultant shall provide and maintain in effect during the term of this Contract evidence of insurance coverage as set forth in **Exhibit D**, attached hereto and incorporated herein by reference. These insurance requirements are summarized as follows:

TYPE	SINGLE LIMIT / OCCURRENCE	AGGREGATE	ENDORSEMENTS***
General Liability (1D)	\$1,000,000	\$5,000,000	Additional Insured Waiver of Subrogation Primary Non-Contributory
Auto Liability (2D)	\$1,000,000 Scheduled, Hired, and Non-Owned		Additional Insured Waiver of Subrogation
Work Comp (3A) Employer's Liability	Statutory \$1,000,000 each		Waiver of Subrogation

*****Must be actual endorsements. Typed statements on Certificates of Liability are unacceptable. This is a summary only. Please refer to the insurance section and/or exhibit of this contract for specific requirements.**

Furthermore, Consultant shall certify its compliance with Labor Code Section 3700 in the form attached hereto and incorporated by reference, as **Exhibit E**.

24. EVIDENCE OF INSURANCE COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance,

City of Elk Grove
Ice Unlimited, LLC
Re: Temporary Outdoor Ice Rink



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's representative Ebix BPO (Ebix) as set forth below prior to execution of this Contract. Upon City's or Ebix's request, Consultant shall submit copies of the actual insurance policies or renewals or replacements to Ebix. Unless otherwise required by the terms of this Contract, all certificates, endorsements, coverage verifications and other items required pursuant to this Contract shall be provided to:

By MAIL

Certificate Holder: The City of Elk Grove
c/o Ebix BPO
PO Box 257, Ref. # (Z362300)
Portland, MI 48875-0257

By FAX

(517)647-7900

By E-MAIL

CertsOnly@periculum.com

All certificates and endorsements shall include the EBIX reference number (Z362300).

25. SECURITY ACCESS POLICY.

Consultant, its employers, agents, and anyone working on their behalf in the operation of the ice rink, shall at all times strictly comply with the City's Security Access Policy, which is attached hereto and incorporated herein by reference as **Exhibit F**. Consultant's failure to comply with this Security Access Policy shall constitute a material breach of this Contract.

26. EMPLOYMENT PRACTICES

Consultant, by execution of this Contract, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

27. UNAUTHORIZED ALIENS

Consultant hereby promises and agrees to comply with all of the provisions of the federal immigration and nationality act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should the federal



government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

28. LICENSES, PERMITS, AND OTHER APPROVALS

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Consultant to practice its profession and perform the work described herein. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

29. RECORDS AND INSPECTION

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Contract in accordance with generally accepted accounting principles and practices. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

30. MISCELLANEOUS PROVISIONS

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

B. Venue: This Contract shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Contract governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Contract shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Contract is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Contract shall remain binding.

D. Time: All times stated herein or in any other Contract Documents are of the essence.

E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.



F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

G. Construction and Interpretation: Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. Waiver: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. Severability: The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

J. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and Consultant. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the Consultant that any such person or entity, other than the City or Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

L. Authority to Execute: The person or persons executing this Contract on behalf of the Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

M. Dispute Resolution: Prior to either party commencing any legal action under this Contract, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

N. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Contract if such failure arises out of causes beyond its reasonable control. Such

City of Elk Grove
Ice Unlimited, LLC
Re: Temporary Outdoor Ice Rink



causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

31. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Contract between City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

AGREED to this _____ day of _____, 20 ____, by the Parties as follows:

Approved to as form:

CONSULTANT

By: _____
Attorney for Consultant

By: _____
Rob Porter, President & Owner

Approved to as form:

CITY OF ELK GROVE

By: _____
Jonathan P. Hobbs, City Attorney

By: _____
Laura S. Gill, City Manager

Attest to:

By: _____
Jason Lindgren, City Clerk



EXHIBIT A

Scope of Work

Consultant shall provide all equipment, facilities, materials, services, labor and any other items necessary for the complete set up, operation, and break down of a temporary outdoor ice skating rink that shall be capable of servicing approximately 25,000 skaters and spectators ("Ice Rink") through the season (November 17, 2012 through and including January 21, 2013).

A. Consultant's work shall include, but is not limited to, providing the following:

1. 60 'x 80' sheet of ice suitable for ice skating by all ages.
2. Seating for skaters and spectators around the Ice Rink.
3. A Zamboni ice resurfacing machine that is capable of maintaining a smooth sheet of ice on the Ice Rink. Consultant must regularly resurface the ice as needed in order to maintain a smooth sheet of ice on the Ice Rink.
4. A minimum of 400 pairs of rental skates of all sizes. Rental skates must be clean and in good condition. Rental skates must be cleaned and inspected for defects by Consultant after each use. Consultant shall not allow skaters to use any defective skates.
5. Lockers suitable to accommodate the number of skaters at any given time. Lockers must be secured, clean and in good condition. Consultant shall post a sign that reads "The City of Elk Grove is not responsible for lost or stolen property."
6. Personnel to inspect skates and to remove defective skates from use at the Ice Rink.
7. Rubber mat areas for skaters to change their skates and purchase refreshments. The rubber mats shall be of suitable size, type and condition to provide a safe environment for skaters and spectators.
8. Staff in suitable numbers to efficiently and safely complete all components of this Scope of Work. Consultant's Staff must be knowledgeable and Consultant must provide all necessary training to all staff members. All staff members, except for staff used solely for the set up or removal of the Ice Rink, shall comply with the Security Access Policy attached hereto and must successfully clear a Live Scan check prior to commencing work. Consultant's staff shall include, but is not limited to the following positions:
 - a. Skate Guards available during all hours of operation to assist skaters. At least one Skate Guard must be in the Ice Rink at all times to monitor skaters and assist as needed.
 - b. Cashiers



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- c. Night Security possessing all required licenses and permits; Night Security must be on-site at all times during non-operational hours.
 - d. Superintendent to manage all aspects of the Ice Rink
9. All lighting fixtures and related equipment for the Ice Rink. Lighting must be sufficient to provide a safe and secure environment. Lights must be turned off at the close of each day.
 10. All portable restroom facilities, including portable sinks, to accommodate the capacity of skaters and spectators. These amenities must be cleaned by Consultant at least daily and serviced as often as necessary to ensure they are maintained in a clean and sanitary condition. Portable restrooms must include one wash station, two regular restroom facilities, and one restroom facility meeting accessibility requirements consistent with the ADA.
 11. Music appropriate for the age group and played at suitable volumes not to disturb surrounding neighbors. Consultant shall be responsible for paying any and all fees related to the music (e.g., ASCAP, BMI).
 12. All labor, equipment and materials to grade, smooth or level the location to suit the Ice Rink and related facilities. Consultant shall obtain prior written approval from City before conducting any work under this section. Further, Consultant shall obtain all necessary permits as may be required.
 13. Equipment to allow electronic payment transactions to take place at the Ice Rink (e.g., ATM/Debit transactions).
 14. Consultant shall provide skate equipment that may be used by individuals who are wheelchair-bound, and for those with similar disabilities.
 15. Consultant shall maintain the Ice Rink with suitable ramps and other accommodations to allow the Ice Rink to be accessed by individuals with disabilities, meeting the requirements of the Americans with Disabilities Act of 1990, as amended ("ADA").
- B. Prior to Consultant's set up of the Ice Rink and related facilities, Consultant must provide the City with a detailed site plan laying out the location of the Ice Rink and all facilities. Consultant must modify the site plan as directed by the City. This site plan must be approved by the City Manager in writing, or her designee, prior to commencing set up.
- C. Dates and hours of operation shall be as follows:

Ice Rink must be fully operational commencing November 17, 2012 through and including January 21, 2013.

Hours of operation shall be from 10:00 a.m. to 10:00 p.m., except for New Year's Eve when the hours of operation shall be from 10:00 a.m. on December 31, 2012 to 1:00 a.m. on January 1, 2013.

The Ice Rink shall be closed on Christmas Day (December 25, 2012)



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- D. Consultant shall be responsible for all group reservations.
 - E. Consultant shall monitor the number of skaters on the Ice Rink at all times and not admit skaters at a capacity that does not provide for a safe skating environment.
 - F. City may, at its sole option, sell or otherwise place advertisements on the side of the Ice Rink trailer and internal Ice Rink dashers (boards). The rights to all advertisements are exclusively held by City and Consultant shall direct any person or entity inquiring about advertisement to the City.
 - a. City may provide a banner, of City's design, to be hung by Consultant on Consultant's trailer located at the Ice Rink location. The banner may be up to 45 feet long and 8 feet high.
 - G. No hockey shall be permitted in the Ice Rink.
 - H. Utilities (electrical, water, and garbage) shall be paid for and provided by the City.
 - I. City shall obtain a City of Elk Grove Temporary Use Permit for the Ice Rink operations, if any is required.
 - J. Consultant shall provide City with a weekly report including a listing of all sales and gross revenue generated, as further set forth on Exhibit C (Compensation and Method of Payment).
 - K. Removal of all equipment, materials, facilities, trash, debris, etc., related to the Ice Rink operation shall be completed, to City's satisfaction, by no later than January 31, 2013.
 - L. Consultant shall provide the City with a list of all chemicals to be used on the Ice Rink; the City must provide prior approval of any and all chemicals to be used. Further, Consultant shall not discharge any water (ice) used in the Ice Rink without the City's approval; all water must be discharged by Consultant as directed by the City.
 - M. The City may, in its sole discretion and without additional cost to the City, reserve periods of Ice Rink time for exclusive use of the Ice Rink in time periods not to exceed 30 minutes in duration, up to one time per week during the operational period of the Ice Rink. These time periods shall be used for promotional activities of the Ice Rink, including but not limited to, ice skating performances by local skating groups. The City shall notify the Consultant at least 4 calendar days in advance of any such reservation and Consultant shall ensure that the Ice Rink is available for such use.

City of Elk Grove
Ice Unlimited, LLC
Re: Temporary Outdoor Ice Rink



EXHIBIT B

Schedule of Performance

Ice Rink must be fully operational commencing November 17, 2012 through and including January 21, 2013.

Hours of operation shall be from 10:00 a.m. to 10:00 p.m., except for New Year's Eve when the hours of operation shall be from 10:00 a.m. on December 31, 2012 to 1:00 a.m. on January 1, 2013.

The Ice Rink shall be closed on Christmas Day (December 25, 2012).

Removal of all equipment, materials, facilities, trash, debris, etc., related to the Ice Rink operation shall be completed, to City's satisfaction, by no later than January 31, 2013.



EXHIBIT C

Compensation and Method of Payment

A. The City shall pay Consultant Eighty-five Thousand Dollars (\$85,000.00), in return, the City shall receive a share of all revenue, as follows:

1. Payment to Consultant: Payment to Consultant shall be made as follows:
 - a. The City shall advance Consultant up to the sum of Eighty Thousand Dollars (\$80,000.00), less any amounts paid by the City to third parties to cover Consultant's costs (e.g., payment to Consultant's insurance carrier on its behalf), immediately upon issuance of the Notice to Proceed (as described in Section 13 (Notice to Proceed) of the Contract) and following receipt of Consultant's invoice for the actual fees, costs and expenses for the time and materials required and expended by Consultant to complete the work required under this Contract for the set up of the Ice Rink, and approved by the City. By no later than December 17, 2012, Consultant must provide the City with all supporting documentation for the time, materials, and other approved costs for the set up of the Ice Rink to support the \$80,000.00 advance; should this documentation for approved costs be less than the \$80,000.000 advance payment to Consultant, then Consultant shall immediately reimburse the City for the difference between the approved operating costs and the \$80,000.00 advance. Consultant must furnish any and all documentation requested by the City to support the invoiced expenditures.
 - b. The City shall pay Consultant Five Thousand Dollars (\$5,000.00) for removal of the Ice Rink and related facilities and for clean-up of the Ice Rink site following close of the Ice Rink. Payment shall be made within 30 days following removal of the Ice Rink, the City's approval of the condition of the site, in its sole discretion, and receipt of Consultant's invoice.
2. Share of Gross Revenues: Gross revenues generated from the sale of Ice Rink admission tickets and skate rentals shall be shared between the City and Consultant in the amount and order as follows:
 - a. Consultant shall receive the first Fifty Thousand Dollars (\$50,000.00) of all gross revenues generated from sales of Ice Rink admission tickets and skate rentals.
 - b. Thereafter, Consultant and the City shall then share all gross revenues generated from sales of Ice Rink admission tickets and skate rentals at the rate of 65% share to Consultant and 35% share to the City; for example, for every \$100.00 of gross revenue generated, Consultant shall receive \$65.00 and the City shall receive \$35.00. This share of gross revenues shall be for the full duration of the Ice Rink's operation, except as stated in section A.2.a of this Exhibit C, and there shall be no cap as to the amount of gross revenue each party is to receive under this share provision.
3. Payment to City: Consultant shall make weekly payments to the City of City's share of the gross revenues for the previous week. Payment shall be remitted to the City along with the weekly accounting set forth herein.



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- B. Ice Rink admission tickets and skate rentals shall be priced by Consultant as follows:
Adults: \$11.00, includes Ice Rink admission and skate rental
Children (17 and under): \$9.50, includes Ice Rink admission and skate rental
Seniors (55 and older) and Veterans (with military I.D.): \$9.00, includes Ice Rink admission and skate rental
Groups of 10 or more: \$9.00 adults and \$7.00 for children, includes Ice Rink admission and skate rental
- C. Consultant shall maintain a ledger detailing all sales of Ice Rink admission tickets and skate rentals, including without limitation cash sales, and debit and credit transactions. Numbered tickets shall be provided with each Ice Rink admission and skate rental sale (e.g., paper tickets, wristbands, system-generated receipt), and Consultant must maintain a record of the tickets sold. Consultant shall provide a weekly accounting to the City of all Ice Rink admission and skate rental sales and the gross revenues generated by date. The Consultant shall provide within three days at the City's request any and all records, daily reports, deposit slips, bank statements that the City determines at the City's own discretion are necessary to confirm or audit any financial transaction at the Ice Rink and/or by Consultant.
- D. Consultant shall provide the City with 50 Ice Rink admission tickets, including skate rentals, at the rate of Ten Dollars (\$10.00) each for a total of Five Hundred Dollars (\$500.00); the City will pay Consultant following removal of the Ice Rink and upon receipt of an invoice.
- E. Consultant is not entitled, and shall not receive, any share of revenues generated by the City for advertisements placed on the Ice Rink's dashers, or any other income generated by the City related to the Ice Rink accept as expressly stated herein.
- F. In the event the Ice Rink is not fully operational during the days set forth herein (e.g., November 17, 2012 through and including January 21, 2013), the compensation paid to Consultant shall be reduced in an amount agreed upon in writing by the City and Consultant, or the City may, in its sole discretion, terminate this Contract without penalty as set forth in Section 11 (Termination) of the Contract.

Under no circumstances shall the aggregate amount paid under this Contract exceed the amount specified in Section 4A above and if the Contract is approved by the City Manager, all compensation paid to Consultant each year shall meet the cost limitation set forth in City of Elk Grove Municipal Code Chapter 3.42.



EXHIBIT D

Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:
 - a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
 - b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
 - c. Claims-made coverage is not acceptable.
 - d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
 - e. The minimum general aggregate shall be Five Million Dollars (\$5,000,000).
 - f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
 - g. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.

2. Automobile Liability:
 - a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
 - b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 7, 8, and 9 (scheduled, hired, and non-owned).
 - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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- d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.
 - e. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
3. **Worker's Compensation and Employer's Liability**
- a. Worker's compensation insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and employers liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
 - b. Employer's liability coverage shall not be less than the statutory requirements.
 - c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.
4. **Other Insurance Provisions:** The general liability and automobile liability coverages shall contain the following provisions and endorsements:
- a. The City, its officers, officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the City Attorney.
 - b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
 - c. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not



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- contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
- d. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
5. **Acceptability of Insurers:** Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
6. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
7. The Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At anytime at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
8. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
9. The Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
10. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
11. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.



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12. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
 13. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
 14. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

City of Elk Grove
Ice Unlimited, LLC
Re: Temporary Outdoor Ice Rink



EXHIBIT E

Certificate of Compliance With Labor Code § 3700

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 have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)

CONSULTANT

Rob Porter, President & Owner



EXHIBIT F

SECURITY ACCESS POLICY

Consultant and its employees, contractors and anyone working on their behalf during the operation of the Ice Rink, including but not limited to Skate Guards, Cashiers, Security, and Superintendents, shall be required to complete a security and criminal history check. The Elk Grove Police Department ("Department") will conduct two "Live Scan" fingerprint checks, free of charge. "Live Scan" is a system that completes a criminal history inquiry by checking local, state and national databases. The Department will be provided with a list of any arrests and convictions that have been made. From that date forward the Department will be notified of any subsequent arrests. Any individual with a felony arrest must not have access to the Ice Rink; other arrest history shall be evaluated and must be approved by the City.

In addition to the completing the Live Scan criminal history check, Consultant shall comply with the following:

- a) Consultant agrees to assign primary employees to complete job tasks at the Ice Rink whenever possible.
- b) Consultant and its employees, contractors and anyone working on their behalf must wear identification at all times identifying them as employees or contractors of Consultant.
- c) Two Live Scan checks will be completed free of charge. Subsequent employees may be Live Scanned at the expense of Consultant at the rate charged to the Department. The current rate is \$44.00 but is subject to change.
- d) Consultant must contact the Department in make appointments for the Live Scan checks. Test results are typically returned in 3-5 business days. Contractor and their employees shall be required to bring photo identification. A photograph for the access card will be taken.

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2012-193**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 24, 2012 by the following vote:

AYES : COUNCILMEMBERS: Cooper, Hume, Davis

NOES: COUNCILMEMBERS: Detrick

ABSTAIN : COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Scherman



**Jason Lindgren, City Clerk
City of Elk Grove, California**