

## **Contract for Consultant Services Temporary Outdoor Ice Rink**

**THIS CONTRACT** is made as of the last date set forth below, by and between the Town of Westfield, a municipal corporation (the "Town") and Arena Realty Partners, LLC, a New Jersey limited liability company (the "Consultant"), collectively referred to as the "Parties."

**WHEREAS**, the Town desires to use public property located at Gumbert Park for the advancement of recreation purposes in compliance with N.J.A.C. 7:36, *et seq.*, and specifically for a temporary, public outdoor ice skating rink; and,

**WHEREAS**, consistent with applicable law, the Town desires, and the Consultant agrees, to make the temporary, public outdoor ice skating rink generally available and open to the public, to provide reasonable public access consistent with N.J.A.C. 7:36-25.13(b)(3), and to schedule the use of the temporary, public outdoor ice skating rink in such a way that it does not prevent reasonable public access at any time; and,

**WHEREAS**, the Consultant has presented a proposal to provide temporary outdoor ice rink services, 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 Town desires to hire the Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein; and,

**WHEREAS**, this Contract has been awarded in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.*, and/or the Local Public Buildings Law, N.J.S.A. 13:12-1, *et seq.*

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

### **1. SCOPE OF SERVICES**

This Contract is for the annual construction, maintenance, and removal of a temporary, public outdoor ice skating rink located in Gumbert Park, in the Town of Westfield, in the County of Union, in the State of New Jersey.

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 as Exhibit A and incorporated herein by reference; and the Term Sheet, attached hereto as Exhibit B 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.

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

## **2. TERM OF CONTRACT**

This Contract shall be effective as of the last date set forth below, as executed by the Parties and approved as to form by the Town Attorney and, except for the financial reporting obligations, which shall survive the termination of this Contract, shall continue until March 31, 2021, unless terminated pursuant to Section 10 of this Contract.

## **3. SCHEDULE FOR PERFORMANCE**

A. The Town and the 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**.

B. Deviations from the time schedule stated in the Schedule of Performance may be made with the written approval of the Town Attorney or his authorized representative.

## **4. NOTICES**

Consultant shall transmit any notices, with copy to the Town Attorney, that are required by this Contract, to the Town as follows:

**Town of Westfield**  
Attn: Town Administrator  
425 E. Broad Street  
Westfield, NJ 07090

Town shall transmit any notices that are required by this Contract to Consultant as follows:

**Arena Realty Partners, LLC**  
Attn: Kenneth G. Anderson, Jr.  
2441-A US-22 West  
Union, NJ 07083

## **5. PROFESSIONAL SERVICES**

A. 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.

B. The Consultant and the Town agree that a temporary, public outdoor ice skating

rink provides a benefit in the form of additional recreational activities in Gumbert Park. In order to ensure that this benefit does not unduly negatively impact the neighboring commercial and residential areas in the general vicinity of Gumbert Park, the Consultant shall, either in the form of a monetary contribution or in kind, pay to the Town no less than \$30,000 per annum for such temporary and permanent improvements (e.g., rink aesthetics, general park aesthetics) to Gumbert Park to further the public's enjoyment of the Park generally and the ice rink specifically, or such other Green Acres-funded parks in the Town of Westfield. Consultant agrees that it shall not, during the term of this Contract, take any action that would affect its obligations, impartiality, or professionalism due to the Town, whether perceived or actual.

C. The area in which the temporary, public outdoor ice skating rink will be constructed, as well as all other areas used in connection with the operation of the temporary, public outdoor ice skating rink, shall be restored to their prior condition or better, to the Town's satisfaction, after each skating season for the years 2019-2020, and 2020-2021. For the 2019-2020 skating season, the area shall be fully restored by March 31, 2020. For the 2020-2021 season, the area shall be fully restored by March 31, 2021.

D. The parties agree that either party may initiate a request to meet at any time after March 31, 2020, and prior to June 30, 2020, for the purpose of reopening this

Agreement as it relates to the financial terms as set forth in this Section 5, and Section 12 below.

## **6. INDEPENDENT CONTRACTOR**

A. It is understood and agreed that Consultant, including all such employees of Consultant, is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

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

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

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

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

## **7. AUTHORITY OF CONSULTANT**

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

**8. CONFLICT OF INTEREST**

A. Consultant certifies that it has disclosed to the Town any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract.

B. Consultant agrees to advise the Town of any actual, apparent, or potential conflicts of interest that may develop after the date of execution of this Contract. Consultant further agrees to complete any statements of economic interest if required by either Town ordinance or State law.

**9. AMENDMENTS, CHANGES, OR MODIFICATIONS**

Any amendments, changes, or modifications to the terms of this Agreement may only be made with the express, written approval of the New Jersey Department of Environmental Protection ("NJDEP"), and upon the mutual, written agreement of the parties.

**10. TERMINATION**

A. This Contract may be terminated by the Town in the event of a breach of any of the Consultant's material obligations under this Agreement, including abiding by all of the performance obligations set forth in the Exhibits to this Agreement, and such breach remains uncured for a period of 7 days.

B. Consultant shall not be relieved of liability to the Town for damages sustained

by the Town due to any breach of this Contract by the Consultant.

**11. RENEWAL OF CONTRACT**

Consultant understands and acknowledges that renewal of this Contract after the term of this Contract has expired is contingent upon action by the Town Council and the State of New Jersey, and that the Town Council may determine not to renew this Contract in subsequent years, or may choose to use another consultant for same. Any and all renewals of this Contract are subject to the approval of the New Jersey Department of Environmental Protection. The parties acknowledge and agree, pursuant to N.J.A.C. 7:36-25.13(b)(5), that any renewal term, if any, shall be for a period of no more than five years.

**12. USE OF PROCEEDS**

All payments and proceeds received by Consultant shall first be used to pay all of Consultant's expenses incurred in connection with the operation of the temporary, public, outdoor ice-skating rink, including the restoration obligations set forth in Section 5(c) hereof. To the extent that Consultant receives any payments or proceeds in excess of the Consultant's operating expenses, such excess payments or proceeds will be divided as 50% to the Consultant and 50% to the Town. The Town shall only use such payments or proceeds for the operation, maintenance, and/or capital expenses related to Gumbert Park and/or

other Green Acre-funded parks within the Town.

The Consultant shall provide the Town a monthly and annual financial accounting for each month of the rink's operation. This financial accounting shall be in a form reasonably acceptable to the Town and contain, at a minimum, a detailed profit and loss statement, and the monthly financial accountings shall be provided to the Town within 10 business days of the last date of the preceding month. The Consultant shall also provide a detailed financial accounting at the end of each season, which shall at a minimum include full financial statements, including balance sheet, profit and loss statement and cash flow statement, prepared by an independent accounting firm.

In addition to the information set forth above, the Consultant shall provide to the Town, as of December 31<sup>st</sup> of each season, and again at the close of each season, a summary of attendance by event type and town of residence. In providing this information, the Consultant shall use its best efforts to determine and report to the Town the place of residence of all skaters not part of an organized team hockey use.

### **13. NOTICE TO PROCEED**

Prior to commencing work under this Agreement, Consultant shall receive a written "Notice to Proceed" from the Town. A Notice to Proceed shall not be issued until all necessary bonds and insurances have

been received from the Consultant, and until all approvals are received from the State of New Jersey.

### **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 the Town, in writing, and at the Town'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 9. In no way, however, shall this Section be construed to expand or extend the operation of the ice rink beyond the term as set forth in this Agreement.

### **15. COMPLIANCE WITH LAW**

A. 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.

B. Notwithstanding anything to the contrary contained herein, the Consultant's rights under this Contract shall be subject to, limited by, and exercised in accordance with the Green Acres Restrictions at N.J.S.A. 13:8C-1, *et seq.*, and N.J.A.C. 7:36, *et seq.*, as may be amended and supplemented from time to time. Consultant shall ensure that the premises continue to be operated for recreation and conservation purposes in

accordance with the Green Acres Restrictions.

C. All signage featured on the premises by Consultant must be in compliance with N.J.A.C. 7:36-25.12.

D. All fees charged by Consultant to individuals for use of the services described herein must be first approved by the Town, and be in compliance with N.J.A.C. 7:36-25.9.

E. 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 wages shall be paid by Consultant at the rates set by the State of New Jersey pursuant to law.

#### **16. REPRESENTATIONS**

A. Consultant 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. Consultant understands and acknowledges that the work performed under this Contract shall be in accordance with applicable federal, State, and local law.

B. Consultant shall designate a project manager who shall, at all times, represent the Consultant before the Town 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 Town, is no longer employed by the Consultant, or is replaced with the

written approval of the Town, which approval shall not be unreasonably withheld.

C. Consultant shall provide immediate corrective services without charge to the Town for services which fail to meet the above professional and legal standards. Should the Consultant fail or refuse to perform promptly its obligations, and said failure or refusal continues after notice by the Town for a period of five business days, the Town may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

#### **17. CONSULTANT'S STAFF MEMBERS**

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.

#### **18. ASSIGNMENT OF CONTRACT**

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 Town.

B. Consultant shall be fully responsible to the Town 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 the Consultant.

#### **19. LIABILITY OF CONSULTANT**

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. The Town 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 the Consultant or its employees, agents, contractors, or subcontractors.

## **20. INDEMNIFICATION**

A. Each party to this Agreement shall indemnify, protect, defend, and hold harmless the other party, its officers, officials, agents, employees, and volunteers, as well as the NJDEP, 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 of that party 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 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 performance of this Contract by either party, except such loss or damage which was

caused by the sole negligence, or willful misconduct of that party.

B. The New Jersey Department of Environmental Protection shall be indemnified such that it receives the same protections and coverages as the Town under this Agreement.

C. The provisions of this Section shall survive either termination or suspension of this Contract.

D. In any contract that the 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 20 herein that is applicable to the subcontractor requiring subcontractor to assume the defense, indemnify, and save harmless the Town and the NJDEP to the same extent as the Consultant. The 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 the Consultant fails to obtain such indemnity obligations from others as required herein, the Consultant agrees to be fully responsible and indemnify, and save harmless the Town and the NJDEP as prescribed under this Section.

## **21. EVIDENCE OF COVERAGE**

A. Prior to commencement of any work under this Contract, the Consultant shall provide and maintain in effect during the term of this Contract evidence of

insurance coverage as set forth in **Exhibit C**, attached hereto and incorporated herein by reference. Insurance requirements are 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 Exhibit C of this Contract for specific requirements. Aggregates to apply per year.

B. The New Jersey Department of Environmental Protection shall be included as additional insured such that it receives the same protections and coverage as the Town under any insurance policies required herein.

**22. EVIDENCE OF COMPLIANCE**

The Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage, and this documentation shall be delivered to the Town as set forth below prior to execution of this Contract. Upon the Town's request, the Consultant shall submit copies of the actual insurance policies, renewals, or replacements. All documents required under this Contract shall be provided by mail,

facsimile, or electronic mail, as requested by the Town.

**23. 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, sexual orientation, disability or marital status in its employment practices.

**24. 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. § 1101, *et seq.*, as amended; and in connection therewith, shall not employ any 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 Town for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse the Town for the cost of all such sanctions imposed, together with any and all costs, including attorney's fees, incurred by the Town therewith.

## **25. LICENSES, PERMITS, APPROVALS**

A. Consultant represents and warrants to the Town that it has all licenses, permits, qualifications, and approvals of whatsoever nature legally required for the Consultant to practice its profession and perform the work described herein.

B. The Consultant represents and warrants to the Town that the 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 the Consultant to practice its profession at the time the services are performed.

## **26. RECORDS AND INSPECTION**

The 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. The Town shall additionally have the right to access and examine such records, without charge, during normal business hours upon reasonable advance notice. The Town shall further have the right to audit such records, to make transcripts therefrom

and to inspect all program data, documents, proceedings, and activities. All Consultant business records and any transcripts therefrom shall be maintained as confidential by the Town, consistent with the New Jersey Open Public Records Act, N.J.S.A. 47:1A-l et seq.

## **27. MISCELLANEOUS PROVISIONS**

A. **Attorney's Fees:** In the event an action or proceeding is instituted by either party to this Agreement 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 New Jersey. Any legal action arising out of this Contract shall be filed in and adjudicated by a court of competent jurisdiction in the County of Union, State of New Jersey.

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

D. **Time:** All dates and 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, and successors in interest of Consultant and to the successors in interest of the Town in the same manner as if such parties had been expressly named herein.

F. **Survivorship:** The Consultant's responsibilities to maintain 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. **Interpretation:** The Consultant and the Town agree and acknowledge that the provisions of this Contract have been arrived at after thorough 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 Town and the Consultant. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the Town and the Consultant that any such person or entity, other than the Town or the Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. **Non-Discrimination:** Under 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 federal, State, and local laws relating to nondiscrimination.

L. **Authority to Execute:** The person(s) 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.

**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 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, strikes, 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.


**28. ENTIRE AGREEMENT**



This instrument and any attachments hereto constitute the entire Contract between the Town and the Consultant

concerning the subject matter hereof and supersede all prior oral and written communications between the Parties regarding the subject matter hereof.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

AGREED to by the Parties as follows:

By:   
Kenneth G. Anderson, Jr., President

CONSULTANT   
By:   
OlenderFeldman LLP, Attorney for Consultant,  
signing solely to acknowledge representation of  
Consultant in connection with this Contract

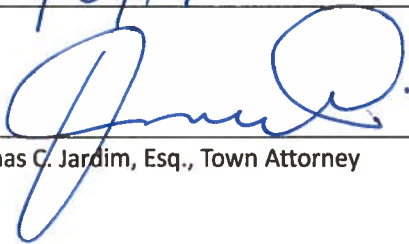
Dated: 9-10-19

By:   
Michelle W. Brindle, Mayor of Westfield

TOWN OF WESTFIELD

By:   
James H. Gildea, Town Administrator

Dated: 9/13/19

By:   
Thomas C. Jardim, Esq., Town Attorney

### Exhibit A — Scope of Work

The Consultant shall provide all equipment, facilities, materials, services, labor, and any other items necessary for the complete setup, operation, and breakdown of a temporary, public, outdoor ice skating rink that shall be capable of servicing skaters and spectators (the “Ice Rink”) through the seasons beginning Friday, November 1, 2019 through and including Sunday, March 1, 2020 (Season One), and Friday, October 30, 2020 through and including Sunday, February 28, 2021.

- A. Consultant’s work shall include, but is not limited to, providing the following:
1. 200’ x 85’ sheet of ice suitable for ice skating by all ages and members of the public.
  2. Ice resurfacing machine that can maintain a reasonably smooth sheet of ice on the Ice Rink. The Consultant must regularly resurface the ice as needed to maintain a reasonably smooth sheet of ice on the Ice Rink.
  3. Sufficient rental skates of all appropriate sizes for maximum capacity. Rental skates must be clean and in good condition. Rental skates must be cleaned and inspected for defects by the Consultant after each use. The Consultant shall not allow skaters to use any clearly defective rental skates.
  4. Rubber mat areas for skaters to change their skates. The rubber mats shall be of suitable size, type and condition to provide a safe environment for skaters and spectators.
  5. Staff in suitable numbers to efficiently and safely complete all components of this Scope of Work. The Consultant’s staff must be knowledgeable, and the Consultant must provide all necessary training to all staff members. The Consultant’s staff shall include, but is not limited to the following positions:
    - a) Rink Monitor available during all hours of operation in which the Ice Rink is open to the general public to assist skaters. At least one Rink Monitor must be in the Ice Rink at all times of operation in which the Ice Rink is open to the general public to monitor skaters and assist as needed.
    - b) Ice Technician or Ice Resurfacers Operator available at all times of operation to maintain the quality of the ice surface.
    - c) Superintendent to manage all aspects of the Ice Rink.

6. 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. All lighting for areas other than the Ice Rink itself shall be subject to the review and approval of the Rink Aesthetics Committee, as described below and as appointed by the Mayor of the Town of Westfield.
  7. All portable restroom facilities, including portable sinks, to accommodate the capacity of skaters and spectators. These amenities must be cleaned by the Consultant at least daily and serviced as often as necessary to ensure they are maintained in a clean and sanitary condition. The Consultant must have at least one restroom facility that meets accessibility requirements consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* ("ADA"). Portable restrooms must have appropriate sinks or portable sanitary facilities.
  8. The Consultant shall provide fully accessible facilities that are fully compliant with the Americans with Disabilities Act and New Jersey disability laws, including wheelchair accessible rink accommodations.
- B. The Consultant shall be responsible for all group reservations.
  - C. The Consultant shall monitor the number of skaters on the Ice Rink at all times and not admit skaters at a capacity that does not allow a safe skating environment.
  - D. Utilities shall be paid for and provided by the Consultant. The Town shall, to the best of its ability, work with the Consultant to coordinate utilities with all utility providers. To the extent the Town is required to order and pay for utility services as they apply to the Ice Rink, the Consultant shall reimburse the Town for all costs associated with obtaining and using the service.
  - E. As set forth in Section 12 of the Contract, The Consultant shall provide the Town a monthly and annual financial accounting for each month of the rink's operation in a form satisfactory to the Town. This financial accounting shall contain, at a minimum, a detailed profit and loss statement, and it shall be provided to the Town within 10 business days of the last date of the preceding month. The Consultant shall also provide a detailed financial accounting at the end of each season, which shall at a minimum include full financial statements, including balance sheet, profit and loss statement and cash flow statement, prepared by an independent accounting firm.

In addition to the information set forth above, the Consultant shall provide to the Town, as of December 31st of each season, and again at the close of each season, a summary of

attendance by event type and town of residence. In providing this information, the Consultant shall use its best efforts to determine and report to the Town the town of residence of all skaters not part of an organized team hockey use.

- F. Removal of all equipment, materials, facilities, trash, debris, etc., related to the Ice Rink operation shall be completed, to Town's satisfaction, by no later than March 31 at the end of each season.
- G. Restoration of the area in which the temporary, public outdoor ice skating rink will be constructed, as well as all other areas used in connection with the operation of the temporary, public outdoor ice skating rink, to their prior condition or better, to the Town's satisfaction.



## Exhibit B — Schedule of Performance

1. The temporary, public outdoor ice skating rink must be fully operational for the seasons November 1, 2019 through and including March 1, 2020 and October 30, 2020 through and including February 28, 2021, providing approximately 820-850 hours of ice time during each of these seasons for a variety of public skating uses and activities.

2. Subject to the Town's sole right to modify these hours, which right shall be exercised reasonably and in consultation with the Consultant for such reasons as (1) accommodating special events (e.g., skating following Christmas Tree lighting), (2) adjusting the schedule as a result of lack of use (i.e., if usage patterns show that there is insufficient public interest in a particular activity) and such other, similar reasons the normal hours of operation shall be:

Monday to Friday, 3:00 p.m. to 9:10 p.m.

Saturday, 8:00 a.m. to 9:10 p.m.

Sunday, 8:00 a.m. to 8:00 p.m.

Holiday dates (designated below), 8:00 am to 9:10 p.m.

During this period, Consultant shall be required to offer Public Access Activities to the general public, without regard to the location of their residence. Planned public access schedule shall be:

### Non-Holiday Dates:

1 weekday TBD – 12:30-2:00 pm – Public Skating (18 sessions @ 1.5 hr. each)

Fridays – 7:30-9:00 pm – Public Skating (19 sessions @ 1.5 hr. each)

Thursdays (in December, January and February – 6:20-7:50 pm – Public Skating (12 sessions @ 1.5 hr. each)

Saturdays – 2:30-3:00 pm – Learn To Skate (18 sessions @ 0.5 hrs. each)

Saturdays – 3:00-4:30 pm – Public Skating (18 sessions @ 1.5 hrs. each)

Saturdays – 4:40-5:40 pm – Family Hockey (18 sessions @ 1.0 hr. each)

Saturdays – 5:50-7:20 pm – Community Group Skating Session (18 sessions @ 1.5 hr. each)

Saturdays – 7:30-9:00 pm – Public Skating (18 sessions @ 1.5 hrs. each)

Sundays – 9:25-10:55 am - Adult Open Hockey (178 sessions @ 1.5 hrs. each)

Sundays – 2:30-4:00 pm – Public Skating (18 sessions @ 1.5 hrs. each)

Planned Total – 217.5 hours per season

### **Holiday Dates**

2019-2020 season - Nov. 7, 8; Nov. 28, 29; Jan. 20; Feb. 14, 17 (7 dates)

2020-2021 season – Nov. 5, 6; Nov. 26, 27; Jan. 18; Feb. 12, 15 (7 dates)

9:30-11:00 am – Youth Open Hockey (1.5 hrs.)

11:10 am-12:40 pm – Public Skating (1.5 hrs.)

12:40-1:40 pm – Family Hockey (1.0 hrs.)

1:50-3:20 pm – Public Skating (1.5 hrs.)

Planned Total – 49 hours per season

2019-2020 season - Dec. 24-27; Dec 30-31; Jan. 1 (7 dates)

2020-2021 season – Dec.24; Dec. 28-31; Jan. 1 (7 dates)

9:45-11:15 am – Public Skating (1.5 hrs.)

12:00-1:30 pm – Community Group Skating Session (1.5 hrs.)

2:30-4:00 pm – Public Skating (1.5 hrs.)

4:30-5:30 pm – Family Hockey (1.0 hrs.)

5:45-7:15 pm – Public Skating (1.5 hrs.)

7:30-9:00 pm – Youth Open Hockey (1.5 hrs.)

Planned Total – 70 hours per season

3. The remaining skating times not otherwise allocated as set forth in paragraph 2 above shall be made generally available and open to the public, including any area school or club hockey teams, and shall not be reserved for the use by the Consultant or its affiliated groups. The intention of the parties to this Agreement with respect to the use of the temporary, public outdoor ice skating rink is to provide reasonable public access consistent with N.J.A.C. 7:36-25.13(b)(3), and thus the parties agree that the scheduling of skating will not prevent reasonable public access at any time. Notwithstanding the scheduling set forth above, if the

Town determines, based upon sufficient and genuine demand, that additional, generally available open public skate times shall be made available, the Consultant shall provide such open public skate times.

4. Consultant shall create and communicate information for the public as to acceptable parking locations. All parking, except for rink employee parking (which shall occur along North Avenue), shall occur at the existing Gumbert Park parking lot. Bus and/or public parking may occur along North Avenue westbound, immediately adjacent to the proposed rink. Consultant shall take all such steps as necessary to ensure that no parking occurs along 4<sup>th</sup> Street and will prohibit any bus idling. Consultant shall designate a bus/car pick-up/drop-off area, in consultation with the Town, and will control all traffic to address both safety and neighboring property concerns as reasonably practicable in it and the Town's discretion.
5. Consultant shall take all reasonable steps necessary to reduce sound from its temporary, public outdoor ice skating rink operation. This shall include, at a minimum, utilizing the quietest commercially-available chiller unit, which shall be within local, county and state noise limits; erection of a north-sided tent over the rink; and the use of loudspeakers, if at all, only upon permission from the Town. Consultant shall comply with all local and County noise ordinances. Additional sound reduction steps to be taken by Consultant shall include, but not be limited to
  - a. Adding sound blankets on the long side of rink facing 4<sup>th</sup> Ave and part of So. Chestnut and such other sound blankets on other rink sides as determined necessary and appropriate through mutual agreement by the parties. .
  - b. Adding insulation and plastic outer boards at the So. Chestnut end of rink, and such other insulation and plastic outer boards as determined necessary and appropriate through mutual agreement by the parties.
  - c. Strategic placement of new sheds on So. Chestnut side of the tent so as to block and/or muffle sound emanating on the So. Chestnut side of the tent.
  - d. Making schedule adjustments to reduce hockey sounds –
    - i. Playing of Boys JV and Girls Varsity/JV games instead of 1 or 2 hockey practice sessions each week.
    - ii. Include a weekday evening Public Session instead of a hockey practice.
    - iii. Replace Youth Open Hockey on Saturday evenings with Public Session.

- iv. No adult open hockey shall occur before 9:00 a.m.
    - e. Operation of the ice resurfacer so as to reduce sound.
- 6. Consultant shall work with a Rink Aesthetics Committee, as constituted and appointed by the Mayor of the Town, to take reasonable steps to improve the overall visual look and appeal of the ice rink site, which steps may include, at a minimum and only with the Town's approval:
  - a. Adding custom fence screen on fencing along North Ave, So. Chestnut and rink entrance area.
  - b. Reducing the number of corrugated "storage container" structures through use of paintable residential style "shed" structures.
  - c. Adding large "The Westfield Rink" banners on front and back ends of the tent structure covering the rink.
  - d. Adding "café lights" on-site for better site lighting inside fenced rink area.
- 7. Consultant shall take all reasonable steps necessary to reduce light spill and glare. This shall include, at a minimum, the erection of a tent over the temporary, public outdoor ice skating rink and using glare-free, downward facing, LED bulbs in any uncovered areas. All lighting except safety lighting shall be turned off ½ hour after closing.
- 8. Consultant shall prepare and pay for all facilities to be used in connection with the rink, which shall at a minimum include fencing around the perimeter of the rink operation and tenting of the rink. No facilities shall be erected without Town approval. The area in which the temporary, public outdoor ice skating rink will be constructed, as well as all other areas used in connection with the operation of the temporary, public outdoor ice skating rink, shall be restored to their prior condition or better, to the Town's satisfaction, by the expiration of this Agreement. Additionally, any Park property damaged by the Consultant or its employees or agents, shall be fixed within 10 business days of the Town notifying the Consultant of the damage, or such longer time as is appropriate under the circumstances.
- 9. Consultant shall open the temporary, public outdoor ice-skating rink to all residents of the State of New Jersey, and the Town shall approve of all scheduling.

### **Exhibit C — Insurance Requirements**

Prior to commencement of any work under this Contract, Consultant shall provide to the Town 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 per annum 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 Town, its officers, officials, employees, agents, and volunteers, as well as NJDEP, its officers, officials, employees, agents, and volunteers.
- h. NJDEP shall be listed as an Additional Insured.

#### **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 in connection with the services provide pursuant to this Agreement.
- 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)
- 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 Town, its officers, officials, employees, agents, and volunteers.

**3. Worker’s Compensation and Employer’s Liability**

- a. Worker’s compensation insurance and employer’s liability coverage.
- 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 Town under the provisions of the Acts, for which compensation is claimed from the Town, 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 Town 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. To the extent allowed by law, the insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, and employees for losses arising from work performed by the Consultant.

**4. Other Insurance Provisions**

- a. The general liability and automobile liability coverages shall contain the following provisions and endorsements:

- b. The Town, 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 Town Attorney.
- c. The New Jersey Department of Environmental Protection shall be included as an Additional Insured such that it receives the same protections and coverage as the Town under any insurance policies required herein.
- d. The policy shall contain no special limitations on the scope of coverage afforded to the Town, its officials, employees, agents or volunteers.
- e. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers to the extent the Town is an additional insured. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
- f. 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 Town, its officers, officials, employees, agents or volunteers.
- g. Acceptability of Insurers: Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- h. 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 Town.
- i. The Consultant shall furnish the Town 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 the written request of the Town, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.

- 7
- j. The Town, at its discretion, the exercise of which shall be reasonably necessary under the circumstances, 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. The Consultant shall serve the Town notice, in writing by certified mail, within two (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.
  - k. If the Consultant fails to procure or maintain insurance as required by this Section, and any Supplementary Conditions, or fails to furnish the Town with proof of such insurance, the Town, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the Town shall be deducted and retained from any sums due the Consultant under the contract.
  - l. Failure of the Town to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
  - m. The failure of the Town 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.
  - n. The requirement as to types, limits, and the Town'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.