

**LICENSE AGREEMENT FOR ICE RINK OPERATION IN CENTRAL PARK  
CITY OF SAN MATEO, CALIFORNIA**

THIS AGREEMENT is made and entered into on \_\_\_\_\_ (the "Effective Date") by and between the CITY OF SAN MATEO, a California chartered municipal corporation existing under the laws of the State of California ("City"), and On Ice LLC, a limited liability company ("Licensee") (individually, a "Party", and, collectively, the "Parties").

RECITALS:

WHEREAS, the City wishes to continue to license the construction and operation of a seasonal ice rink for entertainment and amusement of the public in Central Park; and

WHEREAS, Licensee wishes to operate the seasonal ice rink in Central Park.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants and promises contained herein, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

1. **LICENSE TO USE PREMISES.** The City grants Licensee a license to operate a seasonal ice rink in Central Park on the infield of the Fitzgerald baseball field, shown on Exhibit A, attached hereto and incorporated by reference, with the specific location and dimensions to be determined by the City, by and through its Landscape Resources Manager.
2. **TERM OF LICENSE.** Licensee shall have access to the Premises in order to set up, take down, and operate the seasonal ice rink for five rink seasons commencing October 25, 2022, and ending January 31, 2027.
3. **PERSONNEL.** Licensee shall be entirely responsible for the operation of the ice rink and the employment of personnel for said purpose. All compensation of such personnel will be paid by Licensee. City may review Licensee's personnel on a periodic basis to determine that such personnel are operating in a safe, efficient and courteous manner. Any complaints to the City regarding reports of unprofessional behavior will be forwarded to the Licensee for investigation and necessary corrective action.
4. **ANNUAL SCHEDULE AND HOURS OF OPERATION.** Licensee shall operate the ice rink for a seasonal period, generally mid-November through mid-January with the final dates determined annually in coordination with the Parks and Landscape Manager and approved by the Parks and Recreation Director. The final dates shall be determined no later than August 1<sup>st</sup> of each year. Licensee may access the Premises for set up and take down starting no earlier than October 25<sup>th</sup> and ending no later than January 31<sup>st</sup> annually. Licensee shall operate such hours daily as shall best serve the convenience of the public. Licensee may adjust the hours of operation within normal park hours to accommodate periods of higher use, such as special events, inclement weather, or problems with equipment. Licensee shall keep posted hours during which the ice rink will operate.
5. **OPERATION.**
  - 5.1. Operation of ice rink shall always be subject to the approval of the Parks and Recreation Director or his or her designee.
  - 5.2. Licensee acknowledges that City's primary purpose in entering into this license is to provide for the convenience and accommodation of the public.
  - 5.3. Licensee agrees to make reasonable efforts to accommodate the needs of persons using and

visiting the Premises. Licensee shall use reasonable diligence to conduct said business so that it shall not become a nuisance or interfere unreasonably with the rights of other persons.

- 5.4. Licensee will not seek any reimbursement or other payment from the City for incurring maintenance and/or repair costs and expenses related to the ice rink.
6. **UTILITIES:** Licensee will be responsible for all utility charges, except for water. At the end of each season, the City will, in good faith, calculate the energy consumption on a pro rata basis and invoice Licensee for consumption and any associated work performed to connect machinery. Payment is due no later than June 30 of each year following the end of ice rink season. Licensee shall not operate in successive years unless prior year invoices have been paid in full.
7. **PARKING AND ACCESS:** Vehicle access into Central Park shall be through the Fifth (5<sup>th</sup>) Avenue gate and shall be limited to vehicles necessary for set up and dismantling. No vehicle may drive past the field entrance into other areas of Central Park. Licensee will be allowed the use of one (1) parking spot inside Central Park for employee parking. Delivery or work vehicles shall not be kept in Central Park for an extended period of time as determined by the Director or his or her designee. Licensee shall ensure that emergency vehicles, pedestrians and other authorized vehicles are provided a safe path of travel into Central Park.
8. **AMPLIFIED MUSIC:** Amplified music is allowed during the hours of ice rink operation and may not exceed the noise levels set forth in the City's Noise Ordinance codified at Chapter 7.30 of the Municipal Code.
9. **LOSS OF DAMAGE TO PROPERTY OR EQUIPMENT.** City shall not be responsible for the loss of or damage to, property and/or equipment used in the operation of the ice rink, by reason of fire, theft, vandalism or otherwise. Licensee will defend, indemnify and hold harmless the City and its officers, agents, employees and volunteers from and against all claims, damages, losses and expenses, arising out of loss of or damage to, property and/or equipment used in the operation of the ice rink for any reason whatsoever.
10. **INSTALLATION, REMOVAL AND CLEAN UP:** Upon completion of each ice rink season, the ice rink and associated structures shall be promptly dismantled by no later than 31<sup>st</sup> January of the ongoing season and the Premises shall be restored to their original state and left in a clean and presentable condition as determined by the Director of Parks and Recreation or his or her designee.
11. **SAFETY AND EMERGENCIES.** The City shall have the right, but not the obligation, to enter the Premises occupied by the Licensee for the purposes of safety, emergency, health, maintenance, or any other lawful purpose. The City shall not interfere in the Licensee's activities generally but retains the rights to temporarily restrict or halt the Licensee's activities if necessary and solely in the event of an emergency.
12. **OTHER PERMITS AND LICENSES:** Licensee shall obtain all permits and licenses required by the laws of any federal, state, local or other governmental agency that may be required in order for the Licensee to operate an ice rink in accordance with this License.
13. **APPLICABLE LAWS.** Licensee shall not use or permit the Premises, or any part thereof, to be used in whole or in part for any purpose other than as hereinabove set forth. Licensee shall at all times obey and comply with all applicable laws, rules and regulations, including any orders and guidelines issued by the San Mateo County Health Department and the City related to COVID-19 (collectively referred to as "Applicable Laws"), and further agrees to indemnify and save harmless the City and its officers, agents, employees and volunteers from any penalties or charges imposed on the City for any violation by Licensee or others under its control or invitees, of any and all Applicable Laws.

14. **TAXES:** Licensee recognizes and understands that, in the event that the County of San Mateo interprets this Agreement to create any real property possessory interests subject to the County's possessory interest tax, Licensee is responsible for payment of those taxes.
15. **DAMAGE TO PREMISES:** Any damage to Premises or to adjacent areas caused by Licensee or others under its control or invitees shall be immediately reported to the Parks and Landscape Manager or his/her designee. Unless otherwise agreed to, City shall make the repair at Licensee's expense.
16. **HOLD HARMLESS AND INDEMNITY PROVISION.** Licensee agrees to hold harmless and indemnify City, its elected and appointed officials, employees, and volunteers from and against any and all claims, loss, liability, damage, and expense arising out of or related to the Licensee's activities pursuant to this License, except for those claims arising out of City's sole negligence or willful misconduct. Licensee agrees to defend City, its elected and appointed officials, employees, and volunteers, against any such claims.
17. **INSURANCE.** Licensee shall procure and maintain for the duration of the contract the insurance specified in Exhibit A to this Agreement.
18. **DESTRUCTION OF PREMISES:** In the event that during the term of this License, the Premises are damaged or destroyed by fire or other calamity that prevents the occupancy of the whole or substantial portion of the Premises, this License may be terminated at the option of either the City or the Licensee, provided that the Premises cannot be restored to a reasonable occupancy level within a reasonable time after such destruction or damage.
19. **USE AND DISPOSAL OF TOXIC OR HAZARDOUS SUBSTANCES.** Licensee shall only use, store, and dispose of toxic or hazardous substances on the Premises in conformance with governing federal and state laws and regulations. A copy of all notifications of the presence of such substance on the Premises shall be provided to the City before such substances are used or stored on or brought to the Premises, and the City shall have the right to order that any such substance be removed from the Premises. In addition, Licensee shall not bring any such substance on City property unless it is to be used on the Premises.
20. **SUCCESSORS.** The terms and conditions of this License shall, subject to the restrictions on subleasing and assignment contained in this License, apply to and bind the successors, heirs, and assigns to the Licensee.
21. **EQUAL EMPLOYMENT AND ACCESS.** Licensee warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither Licensee nor any of its officers, agents, employees, or contractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Neither Licensee nor any of its officers, agents, employees, or contractors shall discriminate in the use of the Premises by any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, or age, and at all times, Licensee shall ensure that the Premises conform to the requirements of the Americans with Disabilities Act (ADA) and Federal regulations promulgated pursuant to the ADA.
22. **TERMINATION.** This License may be terminated on 180 days' written notice by either party to the other. In addition, City may terminate this License immediately upon the happening of any of the following:
  - A) Filing a petition, voluntarily or involuntarily, for the adjudication of Licensee as a bankrupt;

- B) Licensee's breach of any term or condition of this License;
- C) The occurrence of any act by Licensee which operates to deprive Licensee permanently of the ability to perform Licensee's obligation; and
- D) Licensee's abandonment or discontinuance of operations at the Premises.
23. **LIMITATION OF LIABILITY.** Under no circumstances shall one party to this agreement be liable to the other party for any special, consequential, indirect or incidental damages, including lost profits, arising out of or in connection with this agreement or any activities performed in connection with this agreement, regardless of whether a claim made by that party is based on contract or tort.
24. **ATTORNEY FEES.** Attorney fees in an amount not exceeding \$5,000 shall be recoverable as costs by the prevailing party in any action or actions to enforce the provisions of this License. The above-mentioned \$5,000 limit is the maximum attorney fees recoverable whether in the trial court, appellate court, both or otherwise, and regardless of the number of attorneys, trials, appeals or actions. It is the intent that neither party to this contract shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions, to enforce the provisions of this License.
25. **ASSIGNMENT AND SUBLEASING.** Licensee shall not assign this license, or any portion thereof, nor sublet or sub-contract the operation without the prior written consent of the City.
26. **NOTICES.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement shall be sent to the parties at the following addresses:

To CITY: Business Manager, Parks and Recreation  
City of San Mateo  
330 West 20<sup>th</sup> Ave.  
San Mateo, CA 94403

To Licensee: On Ice LLC  
Pete Mott, Managing Member  
42 El Nido Drive  
Napa, CA 94559

## 27. GENERAL PROVISIONS

- 27.1 Nothing herein, express or implied, is intended to or shall confer upon any third person, any legal or equitable right, or remedy, nor may any provision hereof be enforced by any third party.
- 27.2 The formation, interpretation and performance of this Agreement shall be governed by and interpreted in accordance with California law. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in County of San Mateo, California.
- 27.3 This Agreement constitutes the entire understanding and agreement of the Parties relating to the License and the rights and obligations of the Parties arising under this Agreement. The Exhibits to this Agreement are incorporated by reference and made a part of this Agreement. This Agreement supersedes any prior written or oral communication between the Parties relating to the License.

- 27.4 The waiver of any breach of a term or condition of this License shall not constitute a waiver of any subsequent breach.
- 27.5 Licensee is responsible for preparing and implementing an emergency and evacuation plan for multiple contingencies such as fire, earthquake, accident, etc. It is recommended that Licensee maintain an emergency supply kit consisting of a first aid, water, flashlight, and other emergency supplies.
- 27.6 During the term of this Agreement and for an additional period of 2 years thereafter, LICENSEE shall maintain accurate records pertaining to the operation of the ice rink.
- 27.7 It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency.
- 27.8 If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not, in any way, impair the enforceability of any other provision of this License Agreement.
- 27.9 This Agreement may be amended, in writing, and signed by the Parties.
- 27.10 This Agreement may be executed in one of more counterparts, which shall together constitute one and the same Agreement.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, CITY OF SAN MATEO and On Ice LLC, a California limited liability corporation have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

On Ice LLC

*Pete Mott*

4/13/2022

Sheila Canzian  
Director of Parks and Recreation

On Ice LLC  
Pete Mott  
Managing Member

APPROVED AS TO FORM

*Gabrielle Whelan*

4/15/2022

Gabrielle Whelan  
Assistant City Attorney



EXHIBIT A



## **EXHIBIT B**

### **Insurance Requirements**

Licensee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Licensee's operation and use of the premises. The cost of such insurance shall be borne by the Licensee.

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2M each occurrence). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for Clubs with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.
4. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

#### **Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### ***Additional Insured Status***

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10.)

#### ***Primary Coverage***

For any claims related to this contract, the Licensee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any



insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

#### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

#### ***Waiver of Subrogation***

Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

#### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

#### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Licensee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Licensee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

#### ***Special Risks or Circumstances***

City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

#### ***Verification of Coverage***

Licensee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.