

RESOLUTION NO.: R-2015-093

Authorizing the City Manager to execute an Equipment Rental Agreement between the City of Columbia and Magic Ice USA, Inc. for the lease of a portable ice skating rink in Boyd Plaza

BE IT RESOLVED by the Mayor and City Council this 20th day of October, that the City Manager is authorized to execute the attached Equipment Rental Agreement, or on a form to be approved by the City Attorney, between the City of Columbia and Magic Ice USA, Inc. for the lease of a portable ice skating rink in Boyd Plaza.

ORIGINAL
STAMPED IN RED

Requested by:

Senior Assistant City Manager



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 10/20/2015
Final Reading: 10/20/2015

EQUIPMENT RENTAL AGREEMENT

Magic Ice USA, Inc., a Florida corporation ("Lessor") and City of Columbia, South Carolina ("Lessee") hereby enter this Equipment Rental Agreement ("Agreement") this 5 day of November, 2015 in Richland County, South Carolina;

WHEREAS, Lessor represents and warrants that it has the expertise and ability to install and remove a portable ice skating rink;

WHEREAS, Lessee represents and warrants that it has the skill, knowledge and ability to safely and reasonably operate and maintain the portable ice skating rink;

THEREFORE, in consideration of the mutual promises and benefits contained herein, the adequacy and receipt of which is acknowledged by both parties to this Agreement, Lessor and Lessee agree as follows:

1. The recitals above-stated are true and correct and incorporated by reference into this Agreement and are an integral part of this Agreement.
2. During the term of this Agreement, Lessor will provide to Lessee, at Columbia South Carolina a turnkey equipment rental, installation and removal of a temporary ice skating rink.
3. The Equipment Rental includes without limitation: (all of which will be collectively referred to as "Equipment")
 - a. A 50'x70' ice rink pumping grid, including all header piping and plumbing transmission piping from the rink to the refrigerator system, which shall not be located more than 50 feet from the rink.
 - b. 100 ton air-cooled refrigeration system and pump; suitable for making ice.
 - c. Ice maintenance tools.
 - d. Insulation and/or vapor barriers.
 - e. Module dasher board and railing system.
 - f. Secondary refrigerant cooling liquid.
 - g. Ice painting equipment and supplies.
 - h. Rental skates in racks
4. Lessor will also provide the following:
 - 1.
 2. Ice Wizard Ice resurfacers
 3. Electric Transformer
 4. Level Surface for ice rink to sit on.
 5. Any required "heavy machinery" such as a fork lift, crane, etc.

5. Lessee, at Lessee's expense, is required to have the following ready at site prior to installation of the Equipment: If the following are not provided prior or at the time of installation, and the failure to provide causes a delay in installation, at Lessor's option and in Lessor's sole and absolute discretion, Lessor can impose on Lessee a delay charge of \$950.00 per day.
- a. Connection to a power source to achieve continuous three-phase, 480-volt, 400amp, electric capacity for connection to refrigeration system.
 - b. Access to 110-volt power for tools etc.
 - c. Electrician at site during installation to make all electrical connections to refrigeration unit.
 - d. Refrigeration system placement in the closest position to the rink possible; however, no more than 50 feet from the rink.
 - e. Graphic or cosmetic enhancement of the ice skating rink, if desired.
 - f. Access to the site suitable for use by tractor and trailer in order to install and remove equipment.
 - g. Adjacent parking for technicians and supervisors during installation and removal periods.
 - h. Water supply adjacent to the site.
 - i. Any local permits and licenses required to install and/or operate the facilities.
 - j. Ticket and skating booth, if desired.
 - k. Any and all warming or convenience tents, if desired.
 - l. Tent sufficient to cover ice skating rink, if desired.
 - m. All appropriate signage.
 - n. All appropriate adjacent amenities to complete the facility including without limitations skate change deck, benches, rubber floor coverings, outdoor carpeting, containment around rink facilities via picket fences, etc.
 - o. Ambient lighting, special effects lighting, if desired, sound system, public address system.
6. The term of the rental is from November 20, 2015 to January 25, 2016, which includes an anticipated period of six (6) days for installation and six (6) days for removal. While Lessor will use reasonable efforts to install and remove within the time period above-stated, unforeseen problems and mechanical difficulties may delay the actual times of installation. Lessor will attempt to correct all delays as quickly as possible; however, will not be liable for any damages for delay in installation and removal. Furthermore, during the period of actual usage of the ice skating rink, temperature and humidity may affect the condition of the ice and mechanical problems may affect the Equipment and usability of the rink.

Lessor will repair as quickly as possible; however, is not liable for delays or for periods of time in which the rink is not suitable for skating.

7. Lessee further understands that in the event repair to the equipment is needed, that Lessor would be sending repair people from a different location, which can cause additional delay. If the repair is the responsibility of Lessee, Lessee is responsible to provide lodging in close proximity to site for technicians during repair periods.
8. Removal of the equipment shall be completed by January 25, 2016, however, in the event removal is delayed through no fault of the Lessor, additional time may be requested with permission not unreasonably withheld. In no event shall removal of the Equipment take longer than thirty (30) days from the term of rental without Lessor incurring a delay charge of \$950.00 per day.
9. The charges for the Equipment rental and all services to be performed hereunder during the rental term specified herein is \$125,895.00 together with all applicable sales use and other taxes, payable as follows:
 - a. 25% of the rental charges together with all applicable taxes are due and payable upon the execution of this Rental Agreement.
 - b. 25% of the rental charges together with all applicable taxes are due and payable upon delivery of all of the Equipment at the ice rink site, prior to the commencement of installation.
 - c. 50% balance of the rental charges shall be due and payable in full upon completion of installation, but prior to any public use.
10. The first two (2) deposits (50% of the rental) are non-refundable deposits.
11. In the event that Lessee desires to utilize the ice skating rink for a period of time greater than the term contained in this Agreement, the same will be subject to the sole and absolute discretion of Lessor, for a rental of \$11,745.00 per week, plus all applicable taxes and subject to all of the terms and conditions of this Agreement.
12. In the event that Lessee fails to provide access to the site at time of removal, or otherwise fails to honor its responsibilities at times of removal, Lessee will be liable for all delays at the cost of \$950.00 per day.
13. In the event that Lessee fails to timely remit any payments due under this Agreement, or fails to timely perform any of its obligations under this Agreement, the same will be considered a material default of this Agreement, which will entitle the Lessor to stop all work, remove from the site all of its Equipment, and the full rental charges will be immediately due and payable.

14. Lessee acknowledges the Equipment being leased pursuant to this Agreement may be used Equipment
15. Lessee shall provide manpower, as specified in this Agreement, for unloading Equipment, positioning Equipment at site and loading Equipment for removal; and for providing all equipment necessary to accomplish the same, excepting "heavy equipment" as mentioned in paragraph 4 above.
16. Lessee shall not use, maintain or store Equipment improperly, carelessly or in violation of any applicable law or regulation or for any purpose other than for the operation of an ice skating rink on the premise designated in this Agreement.
17. Lessee shall not move the Equipment without the consent of Lessor, which consent could be withheld for any or no reason. .
18. Lessee acknowledges that ice-skating is a sport, which involves certain degrees of risk and injury. Lessee also acknowledges that to lessen or minimize the injury, the rink must be properly maintained, properly supervised and that an adequate number of trained personnel must be available to operate the rink and the Equipment. Lessee acknowledges that, even with all reasonable diligence and safeguards, that injuries and falls may occur. Lessee acknowledges that the operation of the ice skating rink is Lessee's sole and absolute responsibility. Lessee agrees that it will not hold Lessor responsible or liable for any damages, including without limitation defense costs and indemnification claims arising out of, or related to the operation of the ice skating rink.
19. Lessor shall indemnify, defend and hold Lessee harmless against any and all claims, lawsuits, losses, damages, expense, liabilities or penalties which arise from, or relate to the negligence or willful acts or omissions of Lessor, Lessor's employees, agents, assigns, or subcontractors arising out of the installation and removal of the Equipment.
20. Lessee agrees, at its own expense, to secure and maintain a commercial general liability insurance policy in an aggregate amount of not less than two million dollars (\$1,000,000), one million dollars (\$1,000,000) per occurrence, insuring against any and all liability arising out of the operation and use of the Equipment and/or property on which the equipment is located. Said insurance shall be written on an occurrence basis, with an insurance company duly licensed in the state in which the Equipment is to be located and acceptable to Lessor. Lessor shall be named as an additional insured on the policy of insurance. The policy shall contain an endorsement that it cannot be cancelled without providing

Lessor at least ten days prior notice of cancellation. Lessee shall provide Lessor evidence of insurance prior to shipment of Equipment. A breach of Lessee's obligation to furnish insurance pursuant to this Agreement is a material breach.

21. Lessee shall also provide property insurance insuring the Equipment against loss or damage from fire, theft, vandalism, malicious mischief, and other risks of loss, customarily insured against in such policies. Said policies shall be for full replacement value and written on an occurrence basis with an insurance company located in the state in which the Equipment is being located and acceptable to Lessor. Lessor shall be named as both a loss payee and an additional insured on such policy. Lessee shall provide Lessor evidence of insurance prior to shipment of Equipment. A breach of Lessee's obligation to furnish insurance pursuant to this Agreement is a material breach entitling Lessor to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and services to be provided pursuant to this Agreement are considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full.
22. Lessee acknowledges that it has duties and responsibilities regarding the preparation and clearance of the site necessary for the installation of the Equipment and, if required, for the erection of the tent. Any delays by the Lessee could cause a delay in the installation of the Equipment which subjects Lessee to the charges specified in this Agreement.
23. If any provision of this Agreement is deemed unenforceable, this Agreement shall survive absent said unenforceable provision.
24. Any waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any further breach of such provision or of any other provision of this Agreement, nor shall any failure to enforce any provision of this Agreement operate as a waiver of such provision or any other provision of this Agreement.
25. The Lessor and Lessee acknowledge that this Agreement was entered into in Richland County, South Carolina and that Lessor performs numerous of its obligations in Richland County, South Carolina. Additionally, all monies that are required to be paid under this Agreement are payable to Lessor at 10364 SW 128 Terrace, Miami, FL 33176. Lessor and Lessee acknowledge the substantial relation of this Rental Agreement to Miami-Dade County, Florida.
26. Lessor and Lessee agree that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of South Carolina, without giving effect to any conflicts of law principles.


27. Except for an action limited to possession of the Equipment, any action arising out of or under this Agreement shall only be filed in a court of competent jurisdiction in either state or federal court in South Carolina.
28. All parties waive any objection to venue in Richland County, South Carolina and grounds for transferring the case outside of Richland County, South Carolina, including but not limited to "*Forum Non Conveniens*".
29. It is understood and agreed by Lessor and Lessee that each is independent from the other and that the only relationship is between Lessor and Lessee.
30. Neither Lessor nor Lessee shall be considered an agent or employee of the other party for any purpose whatsoever.
31. No agreement varying or extending the warranties, remedies, or obligations contained in this Agreement will be binding upon the Lessor unless in writing and signed by a duly authorized officer of the Lessor.
32. Under no circumstances shall the Lessor be held liable for any special, indirect, incidental or consequential damages.
33. The contract price shall be the limit of Lessor's liability whether found in contract, statute or tort arising out of or resulting from (1) this Agreement or the performance or a breach thereof; (2) the design, manufacturer, delivery, sale, repair, replacement, installation, removal or use of the Equipment, or (3) the furnishing of any service under this Agreement.
34. The Lessor hereby informs Lessee that acts of God, power failures, acts of terrorism and/or vandalism, as well as temperature and humidity may cause the melting of the ice surface or portions thereof, and Lessor shall not be responsible for any such conditions or loss of use of the ice skating rink or Equipment.
35. Lessee shall pay all sales and use tax, personal property taxes, license fees, registration fees, which may now or hereinafter be imposed upon the possession, lease or use of the Equipment.
36. Title to and ownership of the Equipment is and shall at all times remain with the Lessor and Lessee shall have no right, title or interest therein or thereto except the right of possession and use of the Equipment pursuant to the terms of this Agreement.
37. Lessee shall not remove or deface any of the Equipment nor remove any marking or serial number on the Equipment.
38. Lessee shall keep the Equipment free and clear of all levies, liens, security interests and encumbrance of any nature or kind and shall promptly

remove the same. Failure to immediately remove any such levy, liens, security interests or encumbrance, shall constitute a material breach of this Agreement giving the Lessor the right to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and services to be provided pursuant to this Agreement shall be considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full.

39. In the event Lessor hires an attorney to enforce any of its rights under this Agreement or institutes litigation arising under or pursuant to this Agreement, Lessee shall be responsible for all Lessor's costs, including attorney's fees.
40. No change, modification, amendment or waiver of any of the terms or conditions of this Agreement shall be binding unless made in writing and duly executed by all parties.
41. This Agreement constitutes the entire understanding and final agreement between the parties. This Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous statements, purchase orders, agreements, negotiations and representations between the parties are expressly merged into and superceded by this Agreement.
42. This Agreement shall be binding and inure to the benefit of the Lessor, Lessee, their successors and assignees.
43. This Agreement may be signed in counterparts, with facsimile transmitted signatures being deemed an original, and all of which when signed by the respective parties when taken together will constitute the full and final agreement of the parties hereto.

Dated this 5 day of November, 2015 in Richland County, South Carolina.

LESSOR:
MAGIC ICE USA, INC.
By: 
Byron J. Sharp, President

LESSEE:
CITY OF COLUMBIA, SC
By: 

APPROVED AS TO FORM

Legal Department City of Columbia, SC