

STATE OF TEXAS	§	AGREEMENT FOR INSTALLATION
	§	OF HEAT FLOOR SYSTEM
COUNTY OF COLLIN	§	AT ALLEN COMMUNITY ICE RINK

This Agreement ("Agreement") is made by and between the City of Allen, Texas, a Texas home-rule municipality ("City"), and Golden State Hockey Rush, LLC, a California limited liability company, d/b/a GS Ice Sports ("Contractor") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, City owns the Allen Community Ice Rink located at 200 E. Stacy Road, #1350, in Allen, Texas (the "Community Ice Rink"), with existing sub-floor heating and cooling systems that maintain the ice surface; and

**WHEREAS**, the existing sub-floor heating system at the Allen Community Ice Rink is damaged to the degree that immediate repairs are needed to avoid damage to the sub-floor cooling system; and

**WHEREAS**, City desires to install a new heat floor system under the existing failed system utilizing a directional boring method from the exterior of the building; 144 new 2 3/4" Poly Piping pairs ("Earth Loops") that will connect to an internal header system to be located under the concrete walk way on the player's bench side of the ice rink; and a stand-alone pump, heater and expansion tank in the existing mechanical room dedicated to the new heat floor system (the "Project"); and

**WHEREAS**, City desires to enter this Agreement with Contractor for the purpose of providing specialized installation services necessary to complete the Project, as set forth in Exhibit "A" ("Scope of Work"); and

**WHEREAS**, pursuant to Section 252.022 of the Texas Local Government Code, the City Council of the City has determined that an emergency exists to preserve equipment and other property at the Community Ice Rink and to contract for the necessary repairs to the provision of the work is necessary to avoid further damage to the sub-floor heating system and the currently undamaged equipment of the Community Ice Rink;

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **Article I Term**

This Agreement shall commence on the last date of execution hereof ("Effective Date") and continue until completion of the work and services set forth in the Scope of Work, unless sooner terminated as provided herein.

## **II. Scope of Work**

Contractor shall perform the work for the Project pursuant to this Agreement as specified in the Scope of Work.

## **Article III Devotion of Time; Personnel; and Equipment**

3.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of work required under this Agreement, and shall be compensated for such additional services on a time and materials basis at a cost agreed between the Parties prior to the commencement of such additional work.

3.2 To the extent reasonably necessary for Contractor to perform the work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that Contractor may deem proper to aid or assist in the performance of the services under this Agreement. Contractor shall provide written notice to and approval from City prior to engaging services not referenced in this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder, and shall not otherwise be reimbursed by City unless otherwise provided herein.

3.3 Contractor shall furnish the labor, materials, equipment and personnel necessary to perform the work required under this Agreement unless otherwise provided herein.

3.4 Contractor shall submit monthly progress reports and attend progress meetings as may be required by City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the work during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

## **Article V Schedule of Work**

Contractor shall cause the Scope of Work to be completed within forty-five (45) days after receipt of the written Notice to Proceed from City.

## **Article VI Compensation and Method of Payment**

Contractor will be compensated in a total amount not to exceed Forty-Nine Thousand One Hundred Dollars (\$49,100.00) to be paid in four (4) installments, as set forth herein. City shall pay Contractor a sum of Twelve Thousand Two Hundred Seventy-Five Dollars (\$12,275.00) upon execution of this Agreement for Phase 1 as set forth in the Scope of Work. City shall pay the Contractor an additional sum of Twelve Thousand Two Hundred Seventy-Five Dollars (\$12,275.00) to complete Phase 2 of the Scope of Services within thirty (30) days after receipt of a detailed, itemized invoice and City verification of the work and costs following Contractor's completion of Phase 2 of the Scope of Services. City shall pay the Contractor an additional sum of Twelve Thousand Two Hundred Seventy-Five Dollars (\$12,275.00) to complete Phase 3 of the Scope of Services within thirty (30) days after receipt of a detailed, itemized invoice and City verification of the work and costs following Contractor's completion of Phase 3 of the Scope of Services. City shall pay the Contractor an additional sum of Twelve Thousand Two Hundred Seventy-Five Dollars (\$12,275.00) to complete Phase 4 of the Scope of Work within thirty (30) days after receipt of a detailed, itemized invoice and City verification of the work and costs following Contractor's completion of Phase 4 of the Scope of Services.

## **Article VII Notice to Proceed**

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City.

## **Article VIII Warranties**

8.1 Contractor warrants that all materials and services provided under this Agreement are subject to all warranties arising by operation of law and additionally conform to the specifications imposed by City; all parts and materials are of a good marketable quality, of latest model and current date, exclude surplus remanufactured and used products unless so specified by City and are fit for the known purpose for which they are sold. Said warranty being in addition to any standard warranty or service guarantee given by Contractor to City.

8.2 Contractor shall provide the warranties for the work as set forth in the Scope of Work.

## **Article IX Additional Terms**

9.1 Time of the Essence. Time is of the essence with this Agreement.

9.2 Deliveries. Unless otherwise specified on the face of this order, the F.O.B. point shall be the location designated by City. Transportation of the Equipment is F.O.B. Contractor's location; therefore, Contractor shall bear all risk of loss or damage to the merchandise, and title shall not shift to City, until delivery of the merchandise has arrived to City's designated location. Deliveries will be accepted only during normal working hours on normal working days (8 A.M.-5 P.M., Monday through Friday, except on federal holidays). Unless otherwise indicated, items received must be new and in first class condition and, if type of materials normally packaged for protection and convenience in storage, shall be in proper container. All services performed shall conform to the quality and workmanship of the accepted standards in the industry.

9.3 Freight. All shipments are to be prepaid. In shipments made direct by Contractor's supplier, Contractor is required to notify his supplier to prepay shipments. City shall not be charged for boxing, packing, or crating.

9.4 Risk of Loss. Risk of loss, damage or destruction of the materials covered by this order shall be borne by the Contractor until delivery in good condition of conforming products at the F.O.B. point designated on this order. Any rejected goods shall be at the Contractor's risk until returned to Contractor, at Contractor's expense, or otherwise disposed of as Contractor shall reasonably request.

9.5 Inspections. All merchandise is subject to City's inspection within a reasonable time after arrival at the F.O.B. point. If the merchandise fails to comply with the specifications imposed by City or is otherwise of an unsatisfactory condition, City may return said merchandise to Contractor at Contractor's expense. Payment for material on this order shall not constitute acceptance.

## **Article X Termination**

This Agreement may be terminated by:

- (a) mutual written agreement of the Parties;
- (b) upon written notice by either Party if the other Party breaches any of the terms and conditions of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof;
- (c) upon written notice by City, if Contractor suffers an Event of Bankruptcy or Insolvency. For purposes of this Agreement, "Event of Bankruptcy" shall mean the dissolution or termination (other than a dissolution or termination by reason of Contractor merging with an affiliate of Contractor) of Contractor's existence as a going business, insolvency, appointment of receiver for any part of Contractor's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and in the event such proceeding is not

- voluntarily commenced by the Contractor, such proceeding is not dismissed within ninety (90) business days after the filing thereof; and
- (d) upon written notice by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year.

## **Article XI Miscellaneous**

11.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings, written or oral agreements between the Parties with respect to this subject matter.

11.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of the City Manager of the City.

11.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.4 Governing Law. This Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in a State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

11.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties. The City Manager is authorized to execute any amendments or other instruments related to this Agreement.

11.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

11.7 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

11.8 Recitals. The recitals to this Agreement are incorporated herein.

11.9 Independent Contractor. It is understood and agreed by and between the Parties that the Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an

independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

11.10 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for the City:

City of Allen, Texas  
Attn: Peter H. Vargas  
City Manager  
305 Century Parkway  
Allen, Texas 75013

With Copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

If intended for Contractor:

Golden State Hockey Rush, LLC,  
d/b/a GS Ice Sports  
969 Market Street, Unit 304  
San Diego, California 92101

11.11 Insurance. Contractor shall during the term hereof maintain in full force and effect insurance policies as required in the document attached hereto and incorporated herein as Exhibit "B".

11.12 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, SUB-

CONTRACTORS, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11.13 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

11.14 Exhibits. The exhibits attached hereto are incorporated herein.

*(Signature Page to Follow)*

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF ALLEN, TEXAS

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

ATTEST:

By: \_\_\_\_\_  
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

EXECUTED on this 12 day of MAY, 2017.

GOLDEN STATE HOCKEY RUSH, LLC  
d/b/a GS ICE SPORTS

By:  \_\_\_\_\_  
Rich Cubin, CEO and Managing Partner



## **EXHIBIT A SCOPE OF WORK**

### **Location of Project**

All work shall be performed at the Allen Community Ice Rink located at 200 E. Stacy Road, #1350, in Allen, Texas.

### **Scope of Work**

Contractor shall provide the labor and materials to custom build and install the new heat floor header system which shall be built out of the following materials:

- (44') 4" Schedule 80 PVC
- (288) ¾" Saddle Connections w/ ¾" Nipples
- (576) Stainless Steel Hose Clamps and Miscellaneous Materials

Contractor shall provide labor and materials to install (144) 2-3/4" Earthloop pairs to the new heat floor header system which shall consist of the following materials:

- (144) SDR11 ¾" Poly Pipe x 120'L

Once the new heat floor system is completed and tied into the mechanical components, Contractor will pressure test the entire system, assist in charging the system with the propylene glycol solution and ensure the system is brought online and is operating correctly.

### **Warranty**

Contractor shall warranty all workmanship for a period of 3 years.

### **Project Phases & Terms**

<b>Phase #1:</b>	<b>\$12,275.00</b>	Installation of up to 30 Earthloops <i>Inclusive of Travel &amp; Per diem (lodging by others)</i>	<b>Due with signed Agreement</b>
<b>Phase #2:</b>	<b>\$12,275.00</b>	Installation of up to 38 Earthloops <i>Inclusive of Travel &amp; Per diem (lodging by others)</i>	<b>Net 30 upon completion of Phase #2</b>
<b>Phase #3:</b>	<b>\$12,275.00</b>	Installation of up to 38 Earthloops <i>Inclusive of Travel &amp; Per diem (lodging by others)</i>	<b>Net 30 upon completion of Phase #3</b>

<b>Phase #4:</b>	<b>\$12,275.00</b>	<b>Installation of up to 38 Earthloops <i>Inclusive of Travel &amp; Per diem (lodging by others)</i></b>	<b>Net 30 upon completion of Phase #4</b>
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<b>Project Total</b>	<b>\$49,100.00</b>	<b>All Phases</b>
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**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

A. Contractor shall during the term of the Agreement maintain in full force and effect the following insurance:

- (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate for injury to persons (including death), and for property damage. Said policy must be on an occurrence basis, include a Medical Expense limit of \$10,000, Personal and Advertising Injury limit of \$1,000,000, Products and Completed Operations limit of \$1,000,000 aggregate, and Fire Damage, any one Fire limit of \$1,000,000;
- (ii) policy of automobile liability insurance covering any vehicles owned, scheduled, hired, non-owned, and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;
- (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Contractor's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and
- (iv) Umbrella Liability Insurance Policy with a limit of not less than \$2,000,000 each occurrence. Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employers' liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall be provided on a "following form basis". Contractor waives all rights against the City Indemnitees for recovery of damages. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed Work, including its contractors, sub-contractors, consultants and employees.

B. All policies of insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance, during and until completion of the Services; (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; and (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of

insurance. Contractor shall provide written notice to the City of any material change of or to the insurance required herein.

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

D. A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of the work and upon request by the City.