

**BOARD OF PUBLIC WORKS AND SAFETY**  
**Agenda Request Form**

(Form B-01-2012)

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.*

<b>Date Submitted:</b>	<b>03.01.2023</b>	<b>Meeting Date:</b>	<b>03.06.2023</b>
<b>Contact Information:</b>			
<b>Requested by:</b>	<b>Lynnette Gray</b>		
<b>On Behalf of Organization or Individual:</b>		<b>City of Franklin</b>	
<b>Telephone:</b>	<b>317-738-3365</b>		
<b>Email address:</b>	<b><a href="mailto:lynng@igmlawfirm.com">lynng@igmlawfirm.com</a></b>		
<b>Mailing Address:</b>	<b>63 E. Court St., P.O. Box 160, Franklin, IN 46131</b>		
<b>Describe Request:</b>			
Approval of Festival Country Sponsorship Agreement Ice Skating Rink and Anytime Ice Skating Professional Services and Event Agreement			
<b>List Supporting Documentation Provided:</b>			
Festival Country Sponsorship Agreement Ice Skating Rink with Exhibit A			
Anytime Ice Skating Professional Services and Event Agreement with Exhibit A & B			
<b>Who will present the request?</b>			
<b>Name:</b>	<b>Lynnette Gray, City Attorney</b> <b>Chip Orner, Park and Rec.</b>	<b>Telephone:</b>	<b>317-738-3365</b>

*In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.*

## **PROFESSIONAL SERVICES AND EVENT AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated this \_\_\_\_ day of February, 2023, is made by and between the **City of Franklin**, acting by and through its Board of Public Works and Safety ("CITY") and **Anytime Ice Skating**, ("ANYTIME") an Indiana corporation organized under the laws of the State of Indiana.

**Product Description:** ANYTIME agrees to provide and operate one (1) iceless skating rink and provide all equipment and staff necessary to conduct 14 public skating events at the City of Franklin Amphitheater as agreed to herein.

### **RECITALS**

WHEREAS, CITY wishes to hire ANYTIME to provide certain professional services, provide equipment and operate the events with respect to the Project; and

WHEREAS, ANYTIME has extensive experience, knowledge and expertise relating to these services and has expressed a willingness to furnish the services in connection therewith, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **Section I – Services by ANYTIME**

ANYTIME agrees that it shall provide one (1) iceless skating rink per its proposal; six (6) folding benches for use by skaters; all skating equipment necessary for public rental of skates; all set up of the rink the day before the event and take down of the rink the day following the event weather permitting. Under no circumstances shall set up be more than three (3) days prior and take down more than three (3) days after the event.

Additionally, ANYTIME shall provide at a minimum two (2) qualified and responsible personnel to act as ice marshal/skate up attendant; one (1) qualified and responsible person to serve as skate shop/shoe attendant and one (1) qualified and responsible person to act as waiver/ticket taker and provide all staff necessary to operate all activities. In consideration of the payment agreed to in Section IV, ANYTIME shall conduct no fewer than fourteen (14) skating events on the days and times agreed to by the parties in Section III herein or alternate dates agreed to by the parties in writing.

### **Section II – Information or Services to be furnished by CITY**

The CITY shall make available to ANYTIME a portion of the City Amphitheater facilities to permit set up, operation and take down of the ice skating rink; provide a water source available within 75 feet of set up; a power source; provide required entrance and parking passes and provide a designated parks or City representative during set up, take down

and operation of the activities. Additionally, the CITY may market the use of the skating rink during the Monday through Wednesday prior to scheduled events and the CITY will provide a responsible, qualified staff to conduct those additional events, if any.

### **Section III – Commencement of Services and Schedule**

The parties agree that ANYTIME shall be responsible for conducting no less than fourteen (14) skating events on the days and time as follows:

Thursday, November 16<sup>th</sup> 5-9pm

Friday, November 17<sup>th</sup> 5-10pm

Saturday, November 18<sup>th</sup> Noon-10pm

Sunday, November 19<sup>th</sup>, Noon-8pm

Thursday, November 23<sup>rd</sup> Closed for Thanksgiving

Friday, November 24<sup>th</sup> Noon-10pm

Saturday, November 25<sup>th</sup> Noon-10pm

Sunday, November 26<sup>th</sup>, Noon-8pm

Thursday, November 30<sup>th</sup> 5-9pm

Friday, December 1<sup>st</sup> 5-10pm

Saturday, December 2<sup>nd</sup> Noon-10pm

Sunday, December 3<sup>rd</sup>, Noon-8pm

Thursday, December 7<sup>th</sup> 5-9pm

Friday, December 8<sup>th</sup> 5-10pm

Saturday, December 9<sup>th</sup> Noon-10pm

If due to weather or other unforeseen cause beyond the control of either party, an event cannot be conducted on the date or at the times agreed to herein, the parties shall cooperate in selecting an agreeable "make up" date or dates between the November 16<sup>th</sup> start date and the December 9<sup>th</sup> ending date. For example, if rink cannot be open on a Sunday night, then the following Monday maybe selected.

#### **Section IV – Compensation**

For all Services and equipment provided by ANYTIME under this Agreement and in accordance with the terms of this Agreement, CITY shall pay ANYTIME fees and charges totaling the sum of Fifty-One Thousand Five Hundred and Seventy-Five Dollars (\$51,575.00) allocated as follows:

<b>Name:</b>	<b>Quantity:</b>	<b>Total:</b>
1000 square feet iceless skating rink (Set 2)	2	\$33,995.00
6' Folding Bench	6	\$ 120.00
Ice Marshal/Skate Up Attendant	2	\$ 7,350.00
Skate Shop/Shoe Attendant	1	\$ 3,675.00
Waiver/Ticket Taker	1	\$ 3,675.00
Rentals Subtotal		\$48,815.00
Distance Charges	E	\$ 450.00
Distance Fee for Staffed Events	E	\$ 2,310.00
Sales Tax	Exempt 0%	\$ 0.00
<b>Total</b>		<b>\$51,575.00</b>
Deposit Due		\$25,787.50
Amount Paid		\$ 0.00
Balance Due		\$51,575.00

The sum of Twenty Five Thousand Seven Hundred and Eighty Seven Dollars and Fifty Cents (\$25,787.50), will be paid at time of full execution of this Agreement with the remaining balance due on the day of completion of the last event.

#### **Section V – Term and Termination**

- 1. Term**  
This Agreement shall commence upon execution by the parties and shall continue until completion of the Services as set forth in Section III above.
- 2. Termination for Cause**  
If this Agreement is terminated by the CITY due to breach of the terms of this Agreement (for cause), the CITY shall receive full refund of all monies paid less a pro-rata reduction for events that have occurred. If this Agreement is terminated by the CITY without cause, ANYTIME shall retain the deposit paid. Should ANYTIME terminate this Agreement, all monies shall be refunded to CITY.
- 3. Termination by Agreement**  
In the event the Parties shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

## **Section VI – General Provisions**

1. **Subcontracting**  
It is recognized that ANYTIME may engage others to perform a portion of the work or provide the services under this Agreement. The engagement of subcontractors by ANYTIME shall not relieve ANYTIME of any responsibility for the fulfillment of this Agreement. No subcontractor shall subcontract any portion of its work under this Agreement.
2. **Conduct During Events: Inappropriate Behavior and/or Vandalism by Guest Clause:**  
If at any point during the event Anytime Ice Skating Attendant (AISA) feels unsafe or is being harassed by an event guest or guests the AISA will notify CITY or CITY representative. If a guest or guests are vandalizing equipment by misuse, the AISA will notify CITY or CITY's representative. The CITY will assist ANYTIME in removing the guest including but not limited to assistance from the CITY's police force.
3. **Waivers:**  
ANYTIME may request waivers of liability from skaters and individuals using the equipment and facilities. ANYTIME shall include in those waivers and releases the City of Franklin to be released from all liability. Copies of those waivers will be maintained by ANYTIME for a period of at least five (5) years and provided to CITY upon reasonable request.
4. **Liability for Damages**  
ANYTIME assumes all risk of loss, damage or destruction to its equipment, to all of its materials, tools, appliances and property of every description, and for injury to or deaths of its employees or agents arising out of or in connection with the performance of this Agreement, excluding that which occurs due to the acts or failure to act of any third party, and excluding that which is caused by the CITY. The CITY does not provide fencing around the Amphitheater facilities nor 24-hour security. The CITY will endeavor to provide periodic checks by the Franklin Police Department during the overnights when the rink is in place.
5. **General Liability Insurance**
  - a. **Amounts of Coverage.** ANYTIME shall procure and maintain at its expense insurance of the kind and in the amounts set forth in EXHIBIT A by companies authorized to do such business in the State of Indiana covering all Services and related activities performed by ANYTIME.
  - b. **Evidence of Insurance.** Before commencing its Services, ANYTIME shall furnish to CITY a certificate, or certificates, showing that it has complied with this Section VI.5.b, which certificate or certificates, shall also designate CITY as an additional named insured. The policies shall not be changed or canceled unless thirty (30) days prior written notice has been given to CITY.

6. **Worker's Compensation**  
ANYTIME shall be responsible for providing all necessary unemployment and Worker's Compensation Insurance for its employees. ANYTIME shall provide the CITY with a certificate of insurance indicating that it has complied with this requirement.
7. **Changes in Scope of Agreement**
  - a. Prior Approval. ANYTIME shall not commence any additional services or change the scope of services unless authorized by CITY.
8. **Non-Discrimination**  
ANYTIME and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Services under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement. For all federal aid projects, where applicable, ANYTIME shall comply with the provisions relative to non-discrimination in federally assisted programs.
9. **Safety**
  - a. Responsibility. ANYTIME shall be directly responsible for the safety requirements and programs applicable to its own employees, its subcontractors and other parties with whom it has contracted to perform Services with respect to the Event.
  - b. Compliance. ANYTIME's safety program shall comply with applicable federal, state and local statutes, rules, regulations and ordinances. ANYTIME shall report to CITY, in writing, any injury or accident at the Event site involving its employees, its subcontractors or other parties for which it is responsible, within forty-eight (48) hours or a shorter period of time if required by law.
  - c. Notification. ANYTIME shall not be responsible for the safety requirements or programs applicable to any other person or entity involved with the Event other than ANYTIME and its subcontractors.
10. **Independent Contractor**  
CITY and ANYTIME are acting in an individual capacity in the performance of this Agreement and will not act as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Neither party will assume any liability for any injury (including death) to any persons, nor damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party. ANYTIME shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

11. Indemnification

The services provided by ANYTIME shall be at the risk of ANYTIME exclusively. To the fullest extent permitted by law, ANYTIME shall indemnify and hold harmless the City of Franklin and its employees, officers and officials ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damages to property, demands, damages, action, cause of action, suits, losses, judgments, obligations and any liabilities, costs and expenses, including but not limited to investigative and repair costs, reasonable attorneys' fees and costs ("claims") to the extent caused by negligent performance of services provided under this Agreement by ANYTIME or its agents. These indemnity obligations shall apply to any negligent acts or omissions, or willful misconduct of ANYTIME, its employees or agents, whether active or passive. ANYTIME'S indemnification obligations hereunder shall extend to claims occurring after this Agreement is concluded or terminated as well as while it is in force. CITY shall not provide such indemnification to the ANYTIME.

12. Notice

All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third (3<sup>rd</sup>) day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 12; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Parcel Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 12 as follows:

CITY:

City of Franklin  
Park & Recreation Department  
396 Branigin Blvd  
Franklin, Indiana 46131

With copy to:  
Lynnette Gray  
City Attorney  
Johnson, Gray and Johnson  
63 East Court Street  
Franklin, IN 46131

ANYTIME:

Anytime Ice Skating  
3583 E. State Rd 240  
Greencastle, IN 46135  
Attn:

13. **Authority to Bind ANYTIME**  
ANYTIME warrants that it has the necessary authority to enter into this Agreement. The signatory for ANYTIME represents that he/she has been duly authorized to execute this Agreement on behalf of ANYTIME and has obtained all necessary or applicable approval to make this Agreement fully binding upon ANYTIME when his/her signature is affixed hereto.
14. **Successors and Assignees**  
This Agreement is binding upon and shall inure to the benefit of CITY and ANYTIME and their respective successors and permitted assigns. ANYTIME shall not assign this Agreement without the written consent of CITY.
15. **Entire Agreement; Amendments**  
This Agreement and its Appendices, each of which is incorporated herein by reference and made a part of this Agreement, constitutes the entire Agreement of the parties with regard to the subject matter hereof and supersedes all prior discussions or agreements concerning any subject matter related hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.
16. **Governing Law**  
This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to principles respecting conflicts of laws. Subject to Section 19, any action pursuant to this Agreement shall be brought and tried in a court of competent jurisdiction in Johnson County, Indiana, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of any such court and waives any objection to such jurisdiction and venue.
17. **Non-Waiver**  
It is agreed and acknowledged that no action or failure to act by CITY or ANYTIME as to a breach, act or omission of the other shall constitute a waiver of any right or duty afforded either of them under this Agreement, as to any subsequent breach, act or omission of the other nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused unless such a waiver or excuse shall be in writing and signed by the party claimed to have waived such right.
18. **Invalid Provisions**  
If any part of this Agreement is later found to be contrary to, prohibited by, or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect insofar as possible.



**19. Dispute Resolution**

Any dispute arising out of this Agreement that cannot be resolved through informal discussions between the parties, shall be subject to this Section.

- a. The parties agree that the existence of a dispute notwithstanding, the parties shall continue without delay to carry out all of their respective responsibilities under this Agreement.
- b. Should any dispute arise with respect to this Agreement that cannot be resolved through informal discussions between the parties, a party shall serve written notice to the other party outlining the details of the dispute and demanding mediation. No later than twenty (20) days from the date of the notice demanding mediation, the parties shall confer to discuss the selection of the mediator and agree upon other mediation procedures.
- c. Submission of a dispute under this Agreement to a mediation procedure shall be a condition precedent to filing litigation. No litigation shall be initiated by either party unless the mediation has been completed (unsuccessfully) or a party has failed to participate in a mediation procedure.

**20. Employment Eligibility Verification**

ANYTIME affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

ANYTIME shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. ANYTIME is not required to participate should the E-Verify program cease to exist. Additionally, ANYTIME is not required to participate if ANYTIME is self-employed and does not employ any employees.

ANYTIME shall not knowingly employ or contract with an unauthorized alien. ANYTIME shall not retain an employee or contract with a person that ANYTIME subsequently learns is an unauthorized alien.

ANYTIME shall require its subcontractors, who perform work under this Agreement, to certify to ANYTIME that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. ANYTIME agrees to maintain this certification throughout the duration of the term of an agreement with a subcontractor.

CITY may terminate for default if ANYTIME fails to cure a breach of this provision no later than thirty (30) days after being notified by CITY.

21. **No Investment in Iran**  
As required by IC 5-22-16.5, ANYTIME certifies that it is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Agreement and denial of future agreements, as well as an imposition of a civil penalty.
22. **Certification of Compliance with Applicable Law**  
In consideration of entering into this Agreement, ANYTIME agrees to the terms and conditions of the Certificate of Compliance with Applicable Law as set forth on EXHIBIT B and all attachments thereto and said terms and conditions are specifically incorporated herein.
23. **Force Majeure**  
Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as result of Force Majeure; then: (a) the Party asserting Force Majeure shall deliver written notice to the other Party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The Parties acknowledge the ongoing COVID-19 pandemic, and agree: (a) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services and /or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (b) that, notwithstanding that the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable Party fails to comply with the foregoing requirement.
24. **Counterparts**  
This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one Agreement.

(Signature page follows)

**Non-Collusion.**

The undersigned attests, subject to the penalties for perjury, he/she is the properly authorized representative, agent, member or officer of ANYTIME, that he/she has not, nor has any other member, employee, representative, agent or officer of ANYTIME, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears within this Agreement.

In Witness Whereof, ANYTIME and CITY have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

ANYTIME  
("ANYTIME")

CITY OF FRANKLIN  
BOARD OF PUBLIC WORKS AND SAFETY  
FRANKLIN, INDIANA  
("CITY")



\_\_\_\_\_  
Steve Barnett, Mayor

\_\_\_\_\_  
Ken Austin, Member

\_\_\_\_\_  
Tina Gross, Member

Attest:

Attest:

\_\_\_\_\_  
Jayne Rhoades, Clerk-Treasurer

**CITY OF FRANKLIN, INDIANA**  
**CONTRACTOR INDEMNIFICATION & INSURANCE REQUIREMENTS**

The Work performed by the Contractor shall be at the risk of that Contractor exclusively. To the fullest extent permitted by law, Contractor shall indemnify, defend (at their sole expense) and hold harmless the City of Franklin and their employees ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") which arise or are in any way connected with the Work performed, Materials furnished, or Services provided under this Agreement by the Contractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of the Contractor, its employees or agents, whether active or passive. The Contractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

**INSURANCE REQUIREMENTS**

Upon execution of this Agreement, and prior to the Contractor commencing any work or services, the Contractor shall provide the City of Franklin with a Certificate of Insurance as evidence of Commercial General Liability insurance, Workers' Compensation and Automobile Liability for any employees, agents, or Subcontractors of the Contractor. The City of Franklin shall be listed as an Additional Insured on Commercial General Liability, Automobile Liability, and Umbrella as noted below.

The Contractor's liability coverage shall use ISO form CG 00 01 10 01 (or equivalent coverage) and include the City of Franklin as an Additional Insured using ISO Form CG 20 10 11 85 (or equivalent coverage) or on the combination of ISO Forms CG 20 10 10 01 and CG 20 37 10 01 (or equivalent coverage). Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from explosion, collapse, underground property damage or work performed by subcontractors.

The coverage limits shall not be less than the following:

**Commercial General Liability Insurance:**

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury

**Workers' Compensation and Employers' Liability Insurance: (or Exemption)**

\$ 100,000 Bodily Injury by Accident  
\$ 500,000 Bodily Injury by Disease - Policy Limit  
\$ 100,000 Bodily Injury by Disease - Each Employee

**Automobile Liability:**

\$1,000,000 Each Accident

All coverage shall be placed with an insurance company duly admitted in the State of Indiana and have an AM Best rating of "A-" or better. Each Certificate of Insurance shall provide that the insurer must give the City of Franklin at least 30 days' prior written notice of cancellation and termination of the Contractor's coverage.

*(As approved by the Franklin Board of Public Works & Safety: Mayor Joe McGuinness, Stephen Barnett & Bob Swinsham at their meeting held March 18, 2013)*

Addendum to Certification of Compliance with Applicable Law

Exhibit "A"

**CERTIFICATION OF COMPLIANCE WITH APPLICABLE LAW  
AND FEDERAL AID CONTRACT REQUIREMENTS**

The undersigned, in consideration of contracting with and/or entering into agreements with the City of Franklin, a governmental entity, does hereby make the below certifications and acknowledges that said representations and compliance with applicable law is a requirement of doing business with a governmental entity and is deemed valuable consideration in entering into a contract with the City of Franklin. The undersigned agrees to be in full compliance with all applicable laws and shall immediately notify the City of Franklin in the event it has failed to comply with this certification. In such event, the City of Franklin may immediately terminate any and all contracts with the undersigned. Compliance with all applicable State and Federal laws shall include, but is not limited to, the following:

- a. Execution of Non-Collusion Affidavit(s) to be provided and submitted on a form required by the State Board of Accounts;
- b. Applicable contract provisions pursuant to IC § 5-16-13 for Public Works projects awarded after June 30<sup>th</sup>, 2015 the terms of which are specifically incorporated herein by reference and/or as required by law;
- c. Applicable anti-discrimination provisions as required by law;
- d. E-verify affidavit as required by law including but not limited to IC § 22-5-1.7-11.1. Specifically, the undersigned declares under penalty of perjury that as a term of doing business with the City of Franklin that they have enrolled in and verify the work eligibility status of newly hired employees through the E-verify program and that by their signature below they do not knowingly apply unauthorized aliens.
- e. The undersigned certifies that it is not involved in the Iranian Energy Industry and does not do business with Vendors involved in the Iranian Energy Industry.
- f. The undersigned, if applicable, agrees to comply with the terms of IC § 5-16-13-8 and represents that the project or work shall not be structured other than in the "tier" structure as required by law.
- g. The undersigned shall comply with the insurance requirements and hold harmless provisions of the City of Franklin incorporated by reference herein and where applicable shall comply with the requirements of IC § 5-16-13-9 through 12.

- h. Pursuant to IC § 36-1-12-24 Contractors and Subcontractors shall drug test employees when the cost of any Public Works project is greater than \$150,000.00.
- i. If applicable, the undersigned shall comply with IC § 5-16-13-13; 14 in all respects including but not limited to document preservation and availability for inspection.
- j. If applicable to the project, the undersigned agrees to comply with, by bound by, and follow all regulations regarding non-discrimination as required by the City of Franklin's Title VI Plan and Non-Discrimination Agreement including the requirements identified on Form FHWA-1273 attached hereto.
- k. The undersigned has been advised of the indemnification and insurance requirements of the City of Franklin on the attached Addendum and agree to be bound by these requirements.

Additionally, the undersigned certifies that they/it are not aware of any relationship between the City of Franklin and the undersigned, its agents, employees or assigns which violates Indiana's anti-nepotism laws.

I HEREBY SWEAR AND AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. ALL OF WHICH IS SWORN TO THIS 28 DAY OF Feb, 2022

  
Duly Authorized Representative of Contracting Party

## **SPONSORSHIP AGREEMENT**

This Sponsorship Agreement ("Agreement"), effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), is made and entered into by and between the City of Franklin, a municipality organized and existing under the laws of the State of Indiana; ("City") and Johnson County Convention, Visitor and Tourism Board d/b/a Festival Country, LLC, a domestic nonprofit corporation organized and existing under the laws of the State of Indiana; ("Festival Country") (City and Festival Country collectively referred to as "Parties").

Based upon the recitals below, and in consideration of the mutual promises and benefits hereunder, the Parties hereto hereby agree as follows:

### **RECITALS**

**WHEREAS**, the City of Franklin, Indiana is wishing to host a seasonal temporary ice-skating rink for the 2023/2024 winter season generally known within the community as the City of Franklin Amphitheater Skating Rink project; ("Project")

**WHEREAS**, the City has afforded opportunities to the public to donate funds to defer the costs of the Project in exchange for certain recognitions as part of the Project;

**WHEREAS**, Festival Country desires to make a charitable gift to the City regarding the Project;

**WHEREAS**, the City desires to accept Festival Country's gift pursuant to the consideration as described in this Agreement;

### **AGREEMENT**

#### **SECTION 1. GIFT**

- 1.1 Festival Country hereby irrevocably gives to the City for the use and benefit of the City regarding the Project the sum of Fifty Thousand Dollars (\$50,000.00). ("Gift")
- 1.2 The Gift shall be paid by Festival Country to the City as follows:
  - (a) Festival Country shall pay to the City Twenty-Five Thousand Dollars (\$25,000.00) within five (5) days of the City formally executing an Agreement with the Skating Rink Service Provider; and
  - (b) Twenty-Five Thousand Dollars (\$25,000.00) one day prior to the first skating event or December 12<sup>th</sup>, 2023, whichever first occurs.
  - (c) Festival Country may elect to accelerate such gift.

## **SECTION 2. USES OF THE GIFT**

- 2.1 The Gift shall be used by the City to offset the costs of the Skating Rink Project.

## **SECTION 3. GIFT CONSIDERATIONS**

- 3.1 In recognition of the Gift the City shall do the following:
- (a) Provide signage acknowledging the sponsorship on the wall of the skating rink and on fliers and posts in the area of the skating rink. The City may also include acknowledgment in marketing of the event.
- 3.2 Festival Country agrees to be bound by the terms and conditions and general guidelines of the City of Franklin Common Council Resolution No. 21-20, which is attached hereto as Exhibit "A".

## **SECTION 4. PUBLICITY**

- 4.1 To honor Festival Country, and to express the appreciation of the City, publicity in the form of news announcements, both internal and external, will be made with the prior permission of Festival Country.

## **SECTION 5. GOVERNING LAW**

- 5.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.
- 5.2 This Agreement has been entered into in Indiana and shall be performable for all purposes in such State.

## **SECTION 6. ENTIRE AGREEMENT AND AUTHORITY**

- 6.1 This Agreement embodies the entire Agreement and understanding between Festival Country and the City with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations, agreements and understandings relative to such subject matter.
- 6.2 The undersigned representatives of the Parties do affirm and represent that they have the authority to bind their organization to the terms of this Agreement and acknowledge, agree and consent that this Agreement shall be binding on the Parties and their representatives.

## **SECTION 7. AMENDMENT**

- 7.1 No waiver of or consent to any departure from any provision hereof shall be



1. *Journal of the American Statistical Association*, 1998, 93, 1033-1042.

1. *Journal of the American Statistical Association*, 1998, 93, 1033-1041.

1. *Journal of the American Statistical Association*, 1998, 93, 1033-1042.

1. *Journal of the American Statistical Association*, 1998, 93, 1023-1032.

1. *Journal of the American Statistical Association*, 1998, 93, 1033-1042.

1. *Journal of the American Statistical Association*, 1998, 93, 1033-1042.

1. *Journal of the American Statistical Association*, 1998, 93, 1033-1042.

1. *Journal of the American Statistical Association*, 1998, 93, 1033-1042.

Exhibit "A"

**RESOLUTION NO: 21-20  
OF THE CITY OF FRANKLIN  
COMMON COUNCIL**

**RESOLUTION ESTABLISHING GUIDELINES FOR SPONSORSHIP  
OPPORTUNITIES FOR AMPHITHEATER FACILITIES**

This Resolution adopted the 3 day of May, 2021 by the City of Franklin Common Council establishing guidelines and procedures for the sponsorship and naming of certain facilities in city parks and specifically the City of Franklin Amphitheater as follows:

**WHEREAS**, the City of Franklin, Indiana, is constructing certain facilities including trails, water features, athletic courts and an amphitheater generally known within the community as the City of Franklin Amphitheater project; and

**WHEREAS**, certain community members and/or businesses have the financial resources to sponsor certain of the facilities and defray the costs of said facilities thereby benefiting the taxpayers; and

**WHEREAS**, community members and businesses have indicated an interest in sponsoring the facilities as well as programs that will be conducted in the amphitheater facility; and

**WHEREAS**, the City believes it in the best interest of its citizens and taxpayers to benefit from said sponsorship opportunities; and

**WHEREAS**, the City of Franklin further believes it is in the best interests of its citizens that general guidelines be established to govern sponsorship activities:

**NOW, THEREFORE**, the City of Franklin Common Council does hereby adopt administrative guidelines for naming and/or sponsorship opportunities of City facilities as follows:

1. Rather than establish a set of rigid rules for sponsorship or naming rights of grounds and facilities, the Board of Public Works and Safety and the City Council by separate Resolution prefers that each be considered on a case-by-case basis using the following principles as a guide:
  - a. All agreements between donors and the City will be in writing and signed by both parties before any promises or commitments will be honored. Generally, these written agreements shall be memorandums of understanding (MOU) or letters of understanding (LOU). Advanced promises or commitments regarding the sponsorship of grounds, facilities or programs should be avoided. All terms and conditions will be set forth in the MOU or LOU.
  - b. The donor and/or its principles shall not receive preferential treatment as to any government services as a result of the sponsorship and/or gift to the City. The sponsor and/or donor may receive benefits such as advertising at the facility, signage at the facility as well as admission to certain of the programs within the facility.

- c. Those responsible for accepting sponsorship proposals should be mindful that the City of Franklin endeavors to provide equity across the entire City. It is understood that the City does not and will not discriminate on the basis of race, color, national origin, sex, age, disability or handicap in the designation of its sponsors.
- d. The Parks Department shall maintain a list of sponsorship or naming project opportunities with minimum contribution attainment levels for donors to become eligible for sponsorship and/or naming rights. Attached hereto as Exhibit "A" is the contemplated list for the current Amphitheater project and may be amended from time to time by the Parks and Recreation Superintendent with consent of the Mayor. This list can be shared with prospective donors and organizations and shall be updated on an annual basis.
- e. Acceptance of gifts or sponsorships directly involving obscene or indecent material, gambling, pornography or unauthorized copyrighted material will not be permitted under any condition. Additionally, any use of violence or words which are designed to invoke violence, slanderous materials or deliberate misinformation which may result in harm to any individual will not be permitted under any condition.
- f. Those responsible for accepting gifts and sponsorship proposals should give thoughtful consideration to the reputation and integrity of the donor whose name is proposed. In the written agreement, the City reserves the right to remove the name and/or sponsorship from City grounds and facilities should the reputation and integrity of the donor become questionable after the gift is made. In such a case, the donor shall not be entitled to a refund of any kind nor shall donor be required to fund any unpaid installments.
- g. The term for naming rights and/or sponsorship opportunities can be varying periods but should not exceed ten (10) years without specific approval of the Board of Works. The terms should be explicitly stated in the written agreement.
- h. As a general rule, facilities should not be named for an individual during his/her lifetime. Generally, a five (5) year waiting period is observed before naming a facility after a deceased individual. Sponsorship opportunities may be named for persons during their lifetime.
- i. Careful consideration of the actual signage that the donor expects should be reviewed and approved before accepting the gift or sponsorship and should be referenced in the written agreement. Signage should never be offensive or diminish the function of the grounds, facility or mission of the City; nor should it be a distraction to the mission of the City of providing family friendly activities in its parks and facilities. Ideally, it should be subtle, discreet and in good taste.
- j. The Parks and Recreation Superintendent and Mayor are responsible for the administration of this policy and the Parks and Recreation Superintendent is the primary point of contact for gift or sponsorship proposals. The Mayor and Parks and Recreation Superintendent may delegate the responsibility for initial contacts to other administrators or staff.
- k. If recommended, the Parks Department may engage the City's legal counsel to draft a written agreement or letter of understanding between the donor and the City; obtain the donor's approval of the document and distribute to the Board of Public Works and Safety for a review and approval.
- l. The presentation of the written agreements will be placed on the Agenda of a regularly scheduled Board of Works meeting. The final approval of the gift or sponsorship shall be made by a majority vote of the Board of Public Works at a public

- meeting.
- m. Funds received from sponsorship opportunities shall be placed in the Parks & Recreation Donation Fund (271) of the City of Franklin.
  - n. The City of Franklin advises that it is required to conform to Title VI of the Civil Rights Act of 1964 (Title 6) and related statutes, regulations and directives, which provide that no person shall be subjected to discrimination to any program or activity receiving federal financial assistance from the US Department of Transportation on the grounds of race, color, age, national origin, gender, disability or income status.
  - o. The terms of these guidelines shall be incorporated by reference in any written MOU or LOU.

**BE IT THEREFORE RESOLVED** the City of Franklin, by and through its Common Council, does hereby adopt the aforementioned as findings of fact and establishes the aforementioned as Sponsorship Guidelines for the City of Franklin facilities.

**INTRODUCED & APPROVED** by the Common Council of the City of Franklin, Johnson County, Indiana this 3 day of May, 2021.

**City of Franklin, Indiana, by its Common Council:**

**Voting Affirmative:**

  
Kenneth W. Austin

  
Bob Heuchan,


  
Lisa Jones

  
Daniel Blankenship

  
Anne McGuinness

  
Chris Rynerson

  
Shawn Taylor

Attest:  
  
Jayne Rhoades,  
City Clerk Treasurer

**Voting Opposed:**

\_\_\_\_\_  
Kenneth W. Austin

\_\_\_\_\_  
Bob Heuchan

\_\_\_\_\_  
Lisa Jones

\_\_\_\_\_  
Daniel Blankenship

\_\_\_\_\_  
Anne McGuinness

\_\_\_\_\_  
Chris Rynerson

\_\_\_\_\_  
Shawn Taylor

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana §36-4-6-15, 16 this 3 day of May, 2021 at 7:50 o'clock P.M.

Jayne Rhoades  
Jayne Rhoades,  
City Clerk Treasurer

This Ordinance having been passed by the legislative body and presented to me was Approved by me and duly adopted, pursuant to Indiana Code §36-4-6-16(a)(1) Vetoed pursuant to Indiana Code § 36-4-6-16(a)(2), this 3 day of May, 2021 at 7:50 o'clock P.M.

Steve Barnett  
Steve Barnett, Mayor

Attest:  
Jayne Rhoades  
Jayne Rhoades,  
City Clerk Treasurer

Approved as to Form:

Lynnette Gray  
Lynnette Gray, City Attorney