

Agreement
For
Professional Equipment and Services
Between
The City of Columbia, Missouri
And
EASY ICE, LLC

THIS AGREEMENT (hereinafter called "Agreement") between the **City of Columbia, Missouri**, a municipal corporation (hereinafter called "City") and **Easy Ice, LLC**, a Delaware limited liability company (hereinafter called "Easy Ice"), with the authority to transact business within the State of Missouri, is entered into on the date of the last signatory noted below (hereinafter called "Effective Date"). City and Easy Ice are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, City desires to engage Easy Ice to provide certain equipment and render certain professional services as outlined in this Agreement; and

WHEREAS, Easy Ice represents and warrants that Easy Ice is equipped, competent, and able to provide all of the professional equipment and services necessary or appropriate in accordance with this Agreement.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. "Scope of Equipment". For the purpose of this Agreement, the term "Equipment" shall include any and all materials, equipment, and hardware to be leased by Easy Ice to City for use on-site at City's business locations.
2. "Scope of Services". For the purpose of this Agreement, the term "Services" shall include any and all installations, connections, preventative maintenance, deinstallations, replacement services on labor and parts associated with necessary repairs of Equipment, and any delivery or removal of Equipment from City property.
3. "Pricing Guide". For the purpose of this Agreement, the term "Pricing Guide" shall mean a complete list of rates for Easy Ice's equipment and services and/or other costs set forth in this Agreement.
4. Easy Ice shall provide the requested Equipment and Services at the direction of City. The Scope of Equipment & Services and Pricing Guide are more fully described in **Exhibit A**, attached hereto and made a part of this Agreement.

5. The initial term of this Agreement shall be for one (1) year. The Agreement shall commence on the Effective Date indicated herein. Thereafter, the term of this Agreement shall be renewable for one (1) year terms unless either Party provides written notice to the other Party at least sixty (60) days in advance of the then existing term that it does not wish to renew the term of this Agreement. If either Party provides written notice of the intent not to renew the term, then Easy Ice's employees and agents shall have the right at the end of the sixty (60) day notice period (or such earlier date as the Parties shall agree) to enter upon the premises of City where the Equipment is located to remove the Equipment, with notice to City, during normal business hours and at no additional cost to City.
6. After the initial term, either Party may terminate this Agreement for convenience at any time by providing sixty (60) days written notice of termination. This written notice of termination goes into effect immediately upon receipt of the written notice. In such event, City shall not be liable to Easy Ice except for payment for actual use of Equipment and Services during the sixty (60) day notice period. Anticipatory profits and consequential damages shall not be recoverable by Easy Ice. Should City terminate this Agreement, Easy Ice shall refund any advance payment made and amount due to City within sixty (60) days of the termination date. Easy Ice's employees and agents shall have the right at the end of the sixty (60) day notice period (or such earlier date as the Parties shall agree) to enter upon the premises of City where the Equipment is located to remove the Equipment, with notice to City, during normal business hours and at no additional cost to City.
7. Pursuant to **Exhibit A**, the Parties have established firm fixed pricing for the Equipment and Services outlined in this Agreement. City shall request Equipment and Services with pricing fixed according to the schedule and with total costs within the amount encumbered to the Agreement. For the initial term of this Agreement, both Parties agree the price for Equipment and Services shall be **four thousand five hundred twelve dollars and twenty cents (\$4512.20)**. Thereafter, this Agreement is renewable for successive one (1) year terms upon agreement of both Parties. Easy Ice shall submit proposed pricing changes for the next term at least sixty (60) days before the term begins to provide City an opportunity to review the proposed pricing before the term begins. If Easy Ice does not submit a new proposed pricing, then the pricing of the previous term will control.
8. It is expressly understood by both Parties that in no event shall the cumulative amount of payment from City to Easy Ice for Equipment and Services pursuant to this Agreement exceed the amount appropriated by City for that purpose in a given year. Any costs that will exceed the amount encumbered to the agreement must be agreed to in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
9. Easy Ice shall invoice City in writing on a monthly basis for Equipment and Services that have been rendered and at prices consistent with pricing in effect at the time of City's authorizing purchase order. Easy Ice shall include descriptions, service dates, equipment and services rendered, total cost, and City purchase order number on all written invoices. City shall pay Easy Ice all uncontested amounts of the invoice within thirty (30) days of receipt of a written invoice. Payment is conditions upon City's acceptance of Equipment and Services, and upon

Easy Ice's acceptable performance. Provided Easy Ice performs in the manner set forth in the Agreement, City agrees to pay Easy Ice in accordance with the terms outlined herein, which shall constitute complete compensation for all Equipment and Services provided under this Agreement; provided, that where payments are to be made periodically to Easy Ice for Equipment and Services provided under this Agreement, City expressly reserves the right to disapprove in whole or in part a request for payment where Equipment or Services provided during the period for which payment is claimed are not performed on time and in a satisfactory manner. City shall have fifteen (15) days from the date of receipt of the invoice to register City's disapproval of the work billed on that invoice. Within this written notice, City shall provide the reasoning for City's disapproval. Following Easy Ice's receipt of said disapproval, Easy Ice shall have ten (10) days to either (a) respond to City's notice to contest in writing justifying its position, or (b) exercise due diligence in curing the default. If a cure cannot be reached, then the Parties may mutually reach an agreement as to an acceptable alternative.

10. Time is of the essence. Equipment and Services must be provided no later than the time specified by City or within a reasonable period of time, if a specific time is not stated. Easy Ice shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and any other records as deemed necessary by City to assure proper accounting for all funds expended on Equipment and Services. Easy Ice agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

11. Easy Ice agrees to secure at Easy Ice's own expense, all personnel required to provide Equipment and Services called for under this Agreement. Such personnel shall not be employees of or have any contractual relationship with City, except as employees of Easy Ice. All of the Equipment and Services provided hereunder will be provided by Easy Ice or under Easy Ice's direct supervision. All Easy Ice's personnel engaged in the work shall be fully qualified and shall be authorized under federal, state, and local law to perform such services. None of the work covered by this Agreement shall be subcontracted without the prior written approval of City.

12. City shall provide full information as to City's requirements and arrange access to and make all provisions for Easy Ice to enter upon City property, as required, for Easy Ice to provide Equipment and Services under this Agreement.

13. City acknowledges that it will use the Equipment in a manner consistent with all federal, state, and local government agency guidelines and laws and that all employees will operate the Equipment consistent with the manufacturer's guidelines.

14. City agrees that it will provide at its own expense water, electricity, drainages, and operating temperatures as specified by the equipment manufacturer. City acknowledges that ice production of Equipment will vary with operating temperature (i.e., lower output at higher air/water temperatures) and City accepts the manufacturer's published production standards as acceptable performance of the ice making Equipment.

15. City hereby acknowledges and agrees that it shall take normal care of the Equipment as if it owned the Equipment, and it shall keep the Equipment's exterior clean, engage in weekly surface and bin cleanings, and keep the Equipment's air filter clean. City further agrees that it will not relocate the machine nor will it make or authorize anyone else to make repairs, alterations or additions to the Equipment. If City requires Equipment to be moved for any reason (including temporary repositioning for soda fountain or other equipment cleaning/repair), City will engage Easy Ice to perform such work. City acknowledges and agrees that it shall pay Easy Ice for any expenses Easy Ice incurs to repair or replace Equipment that has been lost or damaged due to abusive or non-standard use.

16. Easy Ice will install all Equipment, make all necessary connections, conduct to (2) preventative maintenance service call per year, and provide all service and parts (including replacement water filters) such that the installed Equipment performs according to the manufacturer's production standards under conditions of normal wear and tear at no additional expense to City, provided City provides the conditions noted in Section 13 and grants Easy Ice access to the Equipment during normal business hours. If it is determined that the performance issue is a result of City's failure to provide the conditions described in Section 13, City will be responsible to pay Easy Ice for related service calls on a time and materials basis.

17. If the Equipment fails to perform to the manufacturer's production standards due to normal wear and tear, upon proper notification, Easy Ice will either a) provide standard packaged ice in a quantity consistent with Equipment's production capacity)(i.e. not flaked or cubelet ice) at no charge or b) reimburse City for the purchase of standard packaged ice provided Easy Ice issued written approval (via fax or email) for such reimbursement prior to City's purchase of ice, until the Equipment has been repaired or replaced provided the City has continuously provided the conditions noted in Section 13. If it is determined that the performance issue is a result of the City's failure to provide the conditions described in Section 13, City will be responsible to pay for the packaged ice based on the quantity delivered.

18. City hereby acknowledges and agrees that the Equipment is and shall at all times during the term of this Agreement remain, the property of Easy Ice, and Easy Ice's employees and agents shall have the right to enter upon the premises of City where the Equipment is located to inspect and service the Equipment, with notice to City, during normal business hours.

19. Subject to Easy Ice's obligations set forth in Sections 15 and 16, City acknowledges and agrees that Easy Ice is providing the Equipment "as is" and without warrant. Easy Ice hereby disclaims all warranties with respect to the Equipment, whether express or implied, including but not limited to any implied warranties or merchantability, fitness for a particular purpose, and non-infringement.

20. Easy Ice will maintain General Liability, Workers' Compensation, and Automobile Liability Insurance that meet the City of Columbia, Missouri minimum standards. Upon request, Easy Ice will supply certificates of insurance.

21. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to CITY:

Fire Department
ATTN: **Fire Chief**
P.O. Box 6015
Columbia, MO 65205-6015

With a Copy to:

Law Department
ATTN: **City Counselor**
P.O. Box 6015
Columbia, MO 65205-6015

If to Easy Ice:

CT Corporation System
ATTN: Easy Ice, LLC
120 S. Central Avenue
Clayton, MO 63105

With a Copy to:

Brett Bryant
bbryant@easyice.com
(660) 492-4002

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand and on deposit by the sending party if delivered by courier or U.S. mail.

22. Compliance with Laws. Easy Ice shall comply with all applicable federal, state and local laws, ordinances, rules, and regulations.

23. Employment Of Unauthorized Aliens Prohibited. Easy Ice agrees to comply with Missouri State Statute section 285.530 in that Easy Ice shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Easy Ice shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Easy Ice shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Easy Ice shall require each subcontractor to affirmatively state in its contract with Easy Ice that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. Easy Ice shall also require each subcontractor to provide Easy Ice with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

24. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United

States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of *forum non conveniens*.

25. Easy Ice shall make the services, programs, and activities governed by this Agreement accessible to people with disabilities to the extent required by the provisions of the Americans with Disabilities Act.

26. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any person, so as to constitute any such person a third-party beneficiary under the Agreement.

27. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

28. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

29. To the fullest extent not prohibited by law, Easy Ice shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Easy Ice, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Easy Ice or a subcontractor for part of the services), of anyone directly or indirectly employed by Easy Ice or by any subcontractor, or of anyone for whose acts the Easy Ice or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Easy Ice to indemnify, hold harmless, or defend the City of Columbia from the City of Columbia's own gross negligence.

30. Easy Ice understands and agrees that City has contracted with Easy Ice based upon Easy Ice's representations that Easy Ice is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other indemnification set out in this Agreement, Easy Ice agrees to defend, indemnify and hold and save harmless City from any and all claims, settlements, and judgments whatsoever arising out of City's alleged negligence in hiring or failing to properly supervise Easy Ice.

31. During the performance of this Agreement, Easy Ice shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin. Easy Ice shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia Code of Ordinances.

32. This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that Easy Ice will be an independent contractor and not the City's employee for all purposes.

33. City is subject to the Missouri Sunshine Law. The Parties agree that this Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law as amended and Easy Ice agrees to maintain the confidentiality of information which is not subject to public disclosure under the Sunshine Law.

34. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

35. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

36. The Parties agree that notwithstanding anything stated elsewhere in this Agreement that City will not pay for attorney's fees in the event of litigation.

37. This Agreement includes the following exhibits, which are incorporated herein by reference:

<u>Exhibit</u>	<u>Description</u>
A	Scope of Equipment & Services and Pricing Guide

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement control.

38. This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

CITY OF COLUMBIA, MISSOURI

By: _____

De'Carlon Seewood, City Manager

Date: _____

ATTEST:

By: _____

Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____

Nancy Thompson, City Counselor/MDB

EXHIBIT A

SCOPE OF EQUIPMENT & SERVICES AND PRICING GUIDE

Purpose: To obtain Equipment and Services

Equipment:

1) Columbia Fire Department, Station 8, 2301 E. Nifong, Columbia, MO 65201

- Equipment Model/Description: AM-50BAJ Icemaker per quote Q-31270 dated 8/4/22
- Standard Water Filter Description for above listed equipment model.
- One-time installation fee: \$91.30
- Monthly Equipment and Service fee: \$91.30

2) Columbia Fire Department, Station 9, 201 Blue Ridge Road, Columbia, MO 65202

- Equipment Model/Description: UYF0140A-161B Icemaker per quote Q-30559 dated 7/21/22
- Standard Water Filter Description for above listed equipment model.
- One-time installation fee: \$115.50
- Monthly Equipment and Service fee: \$115.50

3) Columbia Fire Department, Training Academy, 600 Big Bear Boulevard, Columbia, MO 65202

- Equipment Model/Description: UYF0140A-161B Icemaker per quote Q-30559 dated 7/21/22
- Standard Water Filter Description for above listed equipment model.
- One-time installation fee: \$115.50
- Monthly Equipment and Service fee: \$115.50

Services: Installation, complete machine cleaning/sanitation, filter changes two (2) times per year, maintenance, repair and parts required to maintain performance, replacement when unable to perform according to manufacturer's specifications, delivery or reimbursement of preauthorized cubed ice in the event machine is down for extended maintenance or repairs, deinstallation, and future removal of any and all Equipment subject to this Agreement.

Pricing: Four thousand five hundred twelve dollars and twenty cents (\$4512.20), firm fixed price for all associated costs of initial term