City of Birmingham
A Walkable Community

MEMORANDUM

Department of Public Services

DATE: **August 4, 2015**

TO: **Joseph A. Valentine, City Manager**

FROM: **Lauren A. Wood, Director of Public Services**

SUBJECT: **Interim Skating Director Contract**

Attached is the proposed contract for an Interim Skating Director for the start of the upcoming season. The season is set to begin very soon, as the ice will be going in on or around August 20, 2015. The language follows the standard contract language format for other such City contracts.

The Skating Director Contract, generally begins annually the end of July and runs through the conclusion of the Ice Show which is after the third week of May. In other words, the contract term is only during the ice skating season. The Ice program operations pertaining to Ice Skating classes and the Ice Show have been reviewed ongoing during this past year. The 2015-2016 ice season is about to start, so I am proposing an Interim Skating Director begin the season effective August 11, 2015 as an Independent Contractor. Jill Kolaitis has served in the capacity of Assistant Skating Director at the Birmingham Ice Arena in the past. A background investigation has been conducted and the Birmingham Police Department found nothing to prohibit entering into such a Contract.

This will afford us the opportunity to conduct a search for a permanent Skating Director going forward.

SUGGESTED RESOLUTION:
To approve the Contract for Interim Skating Director with Jill Kolaitis, as presented. Further, to authorize the Mayor and City Clerk to sign the Contract on behalf of the City of Birmingham upon receipt of all required insurances.

CONTRACT WITH INTERIM SKATING DIRECTOR

This Contract is entered into this 10th day of August, 2015, by and between Jill Kolaitis (hereinafter called the "Contractor") and the **CITY OF BIRMINGHAM,** a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48009 ("City").

RECITALS:

WHEREAS, the City wishes to hire on an interim basis, a Director of the Birmingham Ice Skating Classes and Birmingham Ice Show; and,

WHEREAS, Contractor is willing and able to provide the services and experience for such an Interim Director's position;

NOW, THEREFORE, the parties agree as follows:

1. CONTRACTOR is hereby engaged as the Interim Director of the Birmingham Ice Skating Classes and the Birmingham Ice Show. Director shall not work in excess of 30 hours per week without prior written approval from the Director of Public Services.

ANTICIPATED DATES OF EMPLOYMENT:

Tuesday, August 11, 2015 -	Friday, May 20, 2016
Ice Show:	Friday, May 13, 2016 - Sunday, May 15, 2016
Ice Show Rehearsals:	Monday, April 25, 2016 - Sunday, May 8, 2016
Technical Rehearsals:	Monday, May 9, 2016 - Thursday, May 12, 2016

TERMINATION CLAUSE:

Contractor understands that this contract is on an Interim basis. In the event the City of Birmingham hires a Skating Director, not on an interim basis, the City of Birmingham shall give said Contractor 10 days written notice if termination is to occur before end date listed above.

2. CONTRACTOR further agrees to provide the required services pursuant to the following rate schedule:

ICE SKATING CLASS RATE:

Off/On Ice $24/HR.

Saturday/Sunday $32/HR.

ICE SHOW RATE:

Rate during Ice Show Rehearsals $24/HR.

Rate during Tech./Finale Rehearsals $24/HR.

Rate during Ice Show Weekend $24/HR.

3. In the performance of Director's duties, CONTRACTOR shall have non-exclusive access to an office, telephone, computer and other miscellaneous office equipment (collectively "Equipment"). CONTRACTOR acknowledges and agrees that use of the Equipment is solely for CONTRACTOR'S work associated with the Birmingham Ice Skating Classes and the Birmingham Ice Show. Use of the Equipment for any other purpose is strictly prohibited. CONTRACTOR shall ensure at all times that CONTRACTOR is acting as an independent contractor and shall not use the Equipment in any way to signify, suggest or appear that CONTRACTOR is working in any other capacity.

4. ***Independent Contractor.*** CONTRACTOR and the City of Birmingham ("City") agree that CONTRACTOR is acting as an independent contractor and, as such, shall be liable for CONTRACTOR'S own actions. CONTRACTOR shall not be construed as an employee of the City or the Birmingham Ice Sports Arena. Nothing in this Contract shall be construed to imply a joint venture or partnership and neither party, by virtue of this Contract, shall have right, power or authority to act or create any obligation, express or implied, on behalf of the other party. Neither the City nor the CONTRACTOR shall be construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as may be specifically provided in this Contract, and this Contract shall not be construed as a Contract of agency. The CONTRACTOR shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City. Before any payment is made to CONTRACTOR, a billing must be submitted to the Recreation Coordinator.

5. ***Indemnification.*** To the fullest extent permitted by law, the CONTRACTOR and any entity or person for whom the CONTRACTOR is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the CITY OF BIRMINGHAM, its elected and appointed officials, employees and volunteers and others working on behalf of the CITY OF BIRMINGHAM against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY OF BIRMINGHAM, its elected and appointed officials, employees, volunteers or others working on behalf of the CITY OF BIRMINGHAM, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the CITY OF BIRMINGHAM.

6. ***Insurance.*** Director shall procure and maintain during the life of this Contract, General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,00 per occurrence combined single limit, including General Liability, Personal Injury, Bodily Injury, abuse and property damage acceptable to the City. Said insurance policy shall include an endorsement stating the following shall be Additional Insureds: "The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any coverage that may be available to the additional insured whether any other available coverage is primary, contributing or excess." Said insurance policy shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: City Manager's Office, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012." A certificate of insurance shall be provided to the City at the time this Contract is presented to this City for execution.

A. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, CONTRACTOR shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

B. Maintaining Insurance: Upon failure of the CONTRACTOR to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

7. ***Nepotism.*** Subsequent to entering into this Contract, if any City official, his or her spouse, child or parent shall become directly or indirectly interested in the Contract, the City shall have the right to terminate the Contract without further liability if the disqualification has not been removed within thirty (30) days after the City has given notification of the disqualifying interest.

8. ***Settlement of Disputes.*** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq.,

and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

9. ***Rules and Regulations of the City.*** CONTRACTOR agrees to abide by and obey all rules, regulations, policies and procedures of the City of Birmingham and Ice Arena that may be in force at the time of this contract and which may be amended from time to time that the CONTRACTOR understands that the Director of Public Services or their designee has full authority to enforce said rules. Copies of the rules may be posted throughout the Ice Arena and obtained from the Ice Arena office.

10. ***Background Check.*** A criminal background check is required prior to City approval of the Contract. CONTRACTOR acknowledges and consents to such a criminal background check and authorizes the City to do so. CONTRACTOR agrees to provide the necessary information needed by the Birmingham Police Department to run the background check.

11. In consideration of the acceptance of this Contract with the City through the Birmingham Ice Sports Arena, Director and everyone acting with, by and through CONTRACTOR, do hereby waive, release and forever discharge any and all rights and claims for damages, losses and injuries which CONTRACTOR or CONTRACTOR'S group may have or which may hereafter accrue to them against the City or its officers, Directors, administrators, successors, employees, agents, officials and/or assigns for any and all damages which may be sustained or suffered by CONTRACTOR or its group, organization, in connection with the said association with this Contract.

12. ***No Conflicts with City's Skating Program.*** While CONTRACTOR is able to perform ice skating instruction services outside of this Contract, either individually or through other entities, CONTRACTOR agrees that as consideration for entering into this Contract with the City, CONTRACTOR is prohibited from developing or participating in ice skating programs and events that are competitive to the City's programs and events.

13. ***Subcontracting.*** Contractor shall not subcontract any part of this Contract without the prior written approval of the City.

14. ***Laws.*** This Contract shall be construed in accordance with the laws of the State of Michigan.

15. ***Modification.*** No modification of the Contract shall be binding upon the parties unless in writing and signed by both parties.

16. ***FAIR PROCUREMENT OPPORTUNITY***: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

17. ***CONFORMANCE TO IRAN ECONOMIC SANCTIONS ACT***

A. Pursuant to Michigan law, (the Iran Economic Sanctions Act, 2012 PA 517, MCL 129.311 et seq.), before accepting any bid or proposal, or entering into any contract for goods or services with any prospective Contractor, the CONTRACTOR must first certify that it is not an "IRAN LINKED BUSINESS", as defined by law.

B. Each Contractor submitting a bid on this project shall include a letter with their bid certifying that they have full knowledge of the requirements and possible penalties under the law MCL 129.311 et seq. that the CONTRACTOR is NOT an "IRAN LINKED BUSINESS" as required by MCL 129.311 et seq., and as such that CONTRACTOR is legally eligible to submit a bid and be considered for a possible contract to supply goods and/or services to the City of Birmingham.

IN WITNESS WHEREOF, the parties execute this Contract.

WITNESSES:

_____ By: _____
CONTRACTOR

CITY OF BIRMINGHAM

_____ By: _____
Stuart Lee Sherman
Its: Mayor

_____ By: _____
Laura Pierce
Its: City Clerk

Approved:

Joseph A. Valentine, City Manager (Approved as to substance)	Timothy J. Currier, City Attorney (Approved as to form)
Lauren Wood, Director of Public Services (Approved as to substance)	Mark Gerber, Director of Finance (Approved as to financial obligation)