

EXTENSION AGREEMENT (Version 2– correct version)

THIS EXTENSION AGREEMENT made and entered into effective the ____st day of October, 2017 (the Effective Date), by and between: the City of Ouray, a Colorado home rule municipality (the City); and, Ouray Ice Park, Inc., a Colorado nonprofit corporation (OIPI).

- A. The City and OIPI are parties to an Agreement for Management of the Ouray Ice Park dated November 19, 2012 (the Management Agreement), which terminates by its terms on October 31, 2017.
- B. The City and OIPI are parties to a Water Use Agreement dated November 3, 2009 (the Water Agreement), which terminates upon the expiration or termination of the Operating Agreement for Ouray Ice Park dated November 19, 2012, which is one and the same as the Management Agreement.
- C. The City and OIPI recognize that the continued operation of the Ice Park by OIPI for the 2017/2018 season is in the best interests of the City and OIPI and, therefore, by this Agreement wish to extend the term of the Management Agreement to June 30, 2018.
- D. The City and OIPI recognize the long-term sustainability of the Ice Park is critical to the image and economy of the City of Ouray, and so wish to create an environment for decision-making and development for the future of the ice park in which the only major threat is temperature.
- E. The City and OIPI recognize that in order for the Ice Park to operate optimally, the operator making ice will need a guaranteed resource for water.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, together with other good and valuable consideration the adequacy of which the parties acknowledge and affirm, the City and OIPI hereby agree as follows.

1. **Effect of Recitals.** The above recitals are material to this Agreement.
2. **Extension.** The term of the Management Agreement is hereby extended to June 30, 2018, and now shall include the changes and additions in this Agreement. Terms in this Agreement prevail where they conflict with the Management Agreement.
3. **Water.** Other than during abnormal events involving the safety of the community, the City agrees to supply to the Ice Park no less than 200 GPM each minute between 4PM to 7AM between October 21 and March 15. OIPI will, to the best of its abilities, use the water efficiently.

4. **Planning and Negotiations.** The parties mutually agree to pursue a tracked and timely schedule of development for near-term and far-future strategy. The parties agree to accomplish this by adhering to the following:
- A. Within the first three (3) months of this Agreement, the parties will establish which entity (or combination of entities) will be in control of the Ice Park up until at least 2022 as further defined in paragraph 5. The parties agree that time is of the essence for this process. The parties agree to execute this term 4A with strong feedback and consensus from the community, and agree to do so without exhaustive creation of extra committees, and/or other additional formalities, and/or unjustifiable delays. The parties will seriously consider using a professional facilitator for this process as defined herein and further defined in paragraph 5.
 - B. In order to clearly assess the water supply problems and in order to make intelligent decisions within this Agreement, the City will provide a water-engineering consultant for the term of this agreement and make available all information generated from consultant's services and will also make available any and all internal information related to water supply that may affect the ice park.
 - C. The parties will each diligently explore the operational solution of a long-term agreement as similar as possible to Appendix A: Draft Land Use Agreement, which will provide OIPI day-to-day control with checks and balances from the City and community with a goal of creating an option for passing control to the City in the very long term.
5. **Timeline.** The parties mutually agree to work in good faith towards the following timelines.

No later than:

- A. November 15, 2017 – The parties will meet and begin taking action on this timeline. The parties will decide whether a professional facilitator is required to determine the controlling entity (or combination of entities), as defined in paragraph 4A of this Agreement.
- B. December 1, 2017 – If the parties determine a professional facilitator is required, the parties will formally engage a professional facilitator, and create a schedule with this facilitator in order to meet the remaining timeline goals.
- C. January 1, 2018 – The parties will determine whether the solution illustrated in Appendix A (or something substantially similar) is the primary strategy or whether it should be abandoned. The parties agree to involve the community and stakeholders in the process of this decision.
- D. February 1, 2018 – The parties shall mutually complete a clear definition of the entity (or entities) to be involved and/or in control of the Ice Park and Ice Festival through at least 4 subsequent seasons (June of 2022), with detailed description of the entity's (or combination of entities') respective responsibilities. The parties will issue a formal release of this decision to the public. The parties agree to execute this term with strong feedback and

consensus from the community and to do so without exhaustive creation of extra committees and/or other additional formalities.

- E. March 1, 2018 – Regardless of which entity (or combination of entities) is chosen to be in control, the City shall submit a formal and detailed water supply plan to include at minimum; inflow numbers, outflow numbers and a detailed solution for providing sufficiently reliable water for at least the next four seasons (June of 2022)
 - F. May 1, 2018 – All respective legal documents to be executed
 - G. June 1, 2018 – Whichever entity, or combination of entities has been deemed responsible for the subsequent (at minimum) 4 seasons shall provide a tentative action plan in formal presentation format for the purpose of review by the community, stakeholders, the City, etc. and other affected entities. This shall include at minimum: Financing solutions; process for the development of a fee structure, if any; and long-term strategy & development plan for the Ice Park.
 - H. July 1, 2018 – Responsible entity (or combination of entities) takes control
6. **2019 and 2020 Ice Festivals.** Regardless of the outcome of planning and negotiations, the City grants to OIPI the right and authority to conduct, manage, and host, at minimum the 2019 and 2020 Ouray Ice Festivals. In the event that OIPI does not control the Ice Park during these years, OIPI will maintain all income from Ice Festivals to be used only for supporting the Ouray Ice Park for funding a variety of needs such as operations costs, capital improvements, outreach, etc.
7. **Obligations of City for 2019 and 2020 Ice Festivals.** At no additional cost to OIPI, the City shall provide the following services and facilities:
- A. Snow removal of horizontal common areas such as parking and sponsor area
 - B. Use of the Ouray Community Center for Festival related activities or events
 - C. Security for evening festival events, excluding overnight security
8. **Obligations of OIPI for 2019 and 2020 Ouray Ice Festival.** OIPI shall:
- A. Recruit and enter into appropriate agreements with vendors and sponsors consistent with the recruitment of vendors for the Ice Festivals in 2016 and 2017.
 - B. Prepare, undertake and bear the expense of advertising consistent with advertising of the Ice Festivals in 2016 and 2017.
 - C. Engage in fund raising efforts for support of the Ice Festivals consistent with fund raising efforts in 2016 and 2017.
 - D. Provide for a kick-off party on the Thursday evening prior to commencement of other Festival activities.
 - E. Provide for live and silent auctions consistent with previous years.

- F. Provide for clinics during the Ice Festival, on Friday, Saturday, and Sunday, consistent with clinics offered in 2016 and 2017.
- G. Provide for outdoor gear expositions consistent with previous years.
- H. Provide for climbing competitions on Saturday and Sunday during the Ice Festival, similar to those that were staged in 2016 and 2017.

9. **Effect of this Agreement.** This Agreement modifies and amends the Management Agreement in all respects as may be necessary and appropriate for the extended term.

IN WITNESS WHEREOF, the parties have made this agreement effective the day and year first written above.

City of Ouray:

Ouray Ice Park, Inc.:

Pamela J. Larson, Mayor

Lora Slawitschka, President

DRAFT

Please note; it is very important to read the entire extension agreement before Appendix A
This appendix relates directly to term 4(c) of the extension agreement

APPENDIX A

DRAFT “LAND USE AGREEMENT”

- a) **Term.** The term of this new Land Use Agreement (Agreement) will be eight years with the option for Ouray Ice Park Inc. (OIPI) to terminate on notice of not less than twelve (12) months. The City of Ouray (City) will be allowed to terminate only for just cause, and on notice of not less than six (6) months. On an annual basis, if necessary, OIPI must consider any proposal by the City for the City to terminate for any other reason than for just cause. In the case of City’s termination, the City agrees to fully consider OIPI’s finances, and the initial investment that OIPI has undertaken in engaging into the Land Use Agreement.
- b) **Community Feedback.** During the term of Agreement, OIPI will be required, on an ongoing basis no less than annually, to collect quantifiable and meaningful feedback from all stakeholders of the Ouray Ice Park on all material matters, and then will be required to integrate the feedback into its decisions related to development and operations of the park.
- c) **Conduct.** During the term of Agreement, OIPI will conduct all of its development and operational activities professionally and legally, will provide the proper and sufficient liability insurance, will follow all local, State, and Federal laws, and will conduct itself in a professional and benevolent manner for the benefit of evolving the Ice Park into a “turn-key” entity that the City could potentially take over.
- d) **Non-profit Status.** OIPI will remain a non-profit entity for the term of the New Agreement and will be bound by all of the legal limits embodied by a 501C3 non-profit organization. During the term of Agreement, any income generated from OIPI’s operation of the Ice Park and the conduct of the Ice Festival will be devoted to the continued viability of the Ouray Ice Park. The City will be involved with the OIPI annual budget, and can exercise veto powers and effect the budget for just cause such as for negligence or abuse of power.
- e) **Board Members.** OIPI board members must be chosen based on their expertise and their ability to contribute. Each board member must be available to attend most meetings in person, and must be able to spend the allotted and required amount of time in the City of Ouray and in the Ouray Ice Park. If compensated, OIPI board members will be paid no more than standard and normal compensation for the services being provided or position being held.
- f) **Fees.** Until June 31, 2021, neither party will be required to pay fees to the other party. OIPI and the City will each make available their budgets, expenditures and earnings, and based upon annual review of these items, the parties may mutually agree that fees are appropriate in this initial timeframe. Subsequent fees paid to the City are to be expected by OIPI, and will be negotiated in good faith and in consideration of OIPI’s finances, and the services provided by the City.
- g) **OIPI Income.** During the term of Agreement OIPI income will be dedicated solely and strictly to funding the development and operation of the Ice Park. At Agreement termination, all funds available to OIPI will be considered for further use by the Ice Park but only if the City takes direct control of its management. If any other entity takes control at Agreement termination, OIPI will have full and total control over the finances remaining in its coffers.

- h) **Control.** Notwithstanding the control measures herein, OIPI will have day-to-day control and will take full responsibility of all year-round activities in the Ice Park, subject to the City's police powers, including but not limited to: making ice waterfalls, maintenance, safety protocols, creating codes and rules, regulating activities of all users, collecting user fees, managing public outreach and social media platforms, conducting the Ouray Ice Festival, and developing and operating new activities and amenities. All materially long-term changes to the Ice Park and its operations will require strong involvement with the City and community.
- i) **New Amenities.** Any and all new amenities or activities above and beyond ice climbing, mixed climbing, dry-tool climbing, and similar activities, will require the approval of both parties.
- j) **Ice Park User Fees.** OIPI intends to, and will have the authority to, charge fees for all users of the Ice Park in a manner it develops. OIPI will be required to engage the park users, the Ouray community, and the City thoroughly in the process of establishing the fees and fee structure and OIPI will be required to prove its substantial approval from all of those parties. OIPI may have varying rates for various user-types to provide flexibility in its fee structure, but OIPI will be required to establish the fees and fee structure in a consistent manner that is reasonably amenable to all affected parties. OIPI will limit to the best of its ability the changing of fees and fee structure. Subsequent fee and fee structure changes may require the approval of the City.
- k) **Water.** The actual amount of water to be supplied by the City will be determined in the negotiation and will be sufficient to run the Ice Park. The City will be given the opportunity to include exceptions to its obligations to provide water where they are reasonable, such as when safety of citizens depends upon limiting this resource. OIPI understands that future water supplies may be non-potable water.
- l) **Guiding Concessionaire.** The guiding concessionaire(s) will contract directly with OIPI. All guiding activities, fees, compensation, etc. will be negotiated directly between OIPI and the concessionaire(s). Fees and compensation will be considered in recognition of industry norms such as those utilized by the United States Forest Service (USFS), Bureau of Land Management (BLM), and National Park Service (NPS). If necessary, OIPI will work diligently to create a positive situation that would incentivize the current guiding concessionaire to terminate its contract with the City. The proposed new agreement between OIPI and the current guiding concessionaire would, at minimum, recognize and respect the current guiding concessionaires historic commercial use and allocated service days.
- m) **Due Diligence Period.** Upon execution of Agreement, OIPI shall have a period of 120 days in which to perform its due diligence. During this period, OIPI will have an option to terminate Agreement. Termination in the due diligence period will require notice of not less than 6 months.
- n) **Standard Provisions.** The Agreement will include standard provisions consistent with current and previously drafted agreements between the two parties.