

**EXHIBIT - 2**

**MANAGEMENT AGREEMENT**

**BETWEEN**

**PASADENA ICE SKATING CENTER LLC,  
a California limited liability company**

**AND**

**THE CITY OF PASADENA**

**TABLE OF CONTENTS**

**PAGE**

**RECITALS**

1.0 IDENTIFICATION OF FACILITY ..... 1

2.0 PISC OPERATIONAL RESPONSIBILITY ..... 2

    2.1 Operating Manager ..... 2

    2.2 Agreement Subject to Bond Covenants ..... 3

    2.3 Procurement ..... 3

    2.4 Limitations on Authority of PISC ..... 4

    2.5 Pasadena Living Wage Ordinance ..... 4

    2.6 Public Benefit Programs ..... 5

3.0 PISC STANDARDS OF PERFORMANCE ..... 5

    3.1 Operating Standard ..... 5

    3.2 Maintenance Standard ..... 5

    3.3 Furniture, Fixtures, and Equipment (FF&E) ..... 6

    3.4 Revenue Collection Standards ..... 7

    3.5 Payment Standards ..... 7

4.0 MANAGEMENT FEE ..... 8

    4.1 Payment of Management Fee to PISC ..... 8

    4.2 Base Management Fee ..... 8

    4.3 Bonus Payment ..... 8

5.0 PISC OFFSET ..... 9

6.0 MISCELLANEOUS PERFORMANCE OBLIGATIONS ..... 9

    6.1 Punctual Payment ..... 9

    6.2 Mutual Cooperation ..... 9

    6.3 Discharge Claims ..... 9

    6.4 Reporting of Defects ..... 9

    6.5 Non-Discrimination in Access ..... 9

    6.6 Accessibility - General Standards ..... 9

    6.7 Oversight ..... 10

    6.8 Delegation to City Manager ..... 10

    6.9 PISC Representative ..... 10

7.0 FEES AND CHARGES ..... 10

8.0 BUDGET ..... 11

9.0 REVENUE AND EXPENSE MILESTONES ..... 11

10.0 ENTRY RIGHTS ..... 12

11.0 CONSTRUCTION AND IMPROVEMENTS ..... 12

## TABLE OF CONTENTS

	<u>PAGE</u>
12.0 INDEMNITY .....	12
13.0 INSURANCE.....	12
14.0 TERM OF AGREEMENT.....	14
14.1 Initial Term .....	14
14.2 Extension.....	14
15.0 NOTICE.....	14
16.0 GENERAL TERMS AND CONDITIONS .....	15
16.1 Independent Contractor.....	15
16.2 Parties Not Agents .....	15
16.3 Ownership of Work.....	15
16.4 Correction of Work.....	15
16.5 Waiver.....	16
16.6 Successors .....	16
16.7 No Assignment.....	16
16.8 Compliance With Laws.....	16
16.9 Attorney’s Fees .....	16
16.10 Interpretation.....	16
16.11 Time of Essence.....	17
16.12 Equal Opportunity Employment Practices Provisions.....	17
16.13 Financial Interest.....	18
16.14 No Estate.....	18
16.15 Possessory Interest Tax.....	18
16.16 Pasadena Business License.....	18
16.17 Maintenance and Inspection of Records.....	18
16.18 Arbitration of Disputes .....	18
16.19 Defaults - General .....	19
16.20 Termination.....	19
17.0 FORCE MAJEURE .....	20
18.0 ESTOPPEL CERTIFICATES .....	20
19.0 ENTIRE AGREEMENT.....	20

## ICE RINK MANAGEMENT AGREEMENT

This Ice Rink Management Agreement (hereinafter, "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the CITY OF PASADENA, a California municipal corporation (hereafter "City"), and PASADENA ICE SKATING CENTER LLC, a California limited liability company (hereafter, "PISC"), as follows:

### RECITALS:

#### WHEREAS,

A. City has caused to be constructed a new, state of the art Ice Rink facility (the "Facility") on City-owned land located between the flood control channel and the Southern California Edison right-of-way, and between Foothill Boulevard and Orange Grove Boulevard, commonly known as 3051 W. Foothill Boulevard, in the City of Pasadena (the "Property"). The Property is depicted on Exhibit "A", attached hereto and incorporated herein by this reference. The Facility is owned by the City;

B. PISC's predecessor in interest formerly operated the Pasadena Center Ice Rink (the "Former Ice Rink") on property leased from the City adjoining the Pasadena Civic Auditorium, and desires to manage the new Facility;

C. City and PISC have previously entered into that certain Memorandum of Understanding ("MOU") dated \_\_\_\_\_, 2006, pursuant to which PISC was consulted during the design and construction of the Facility, and pursuant to which City and PISC agreed to certain releases regarding the Former Ice Rink, including but not limited to termination of PISC's leasehold interest in the Former Ice Rink, and agreement by PISC that it is not entitled to any relocation benefits arising from that termination;

D. City desires to engage PISC to manage the Facility, on the terms and conditions set forth in this Agreement;

E. PISC acknowledges that its rights and responsibilities under this Agreement are not assignable, except as expressly set forth herein;

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference and of their mutual covenants and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### 1.0 IDENTIFICATION OF FACILITY

The Facility consists of two ice rinks with approximately 175 and 125 seats respectively, and includes such other amenities as a kitchen, offices, skate rental, locker rooms, restrooms with showers, lobby/waiting area, small retail shop, a food concession area, all located within an approximately 62,000 square foot structure, and adjacent surface parking. This Agreement assigns the responsibility for operation and management of the entire Facility, including the parking spaces located on the Property.

## 2.0 PISC OPERATIONAL RESPONSIBILITY

2.1 Operating Manager. Subject to the terms of this Agreement and all applicable law, City hereby appoints PISC to serve as manager of the Facility, and PISC hereby accepts the appointment to serve as manager of the Facility. It is the intention of the parties that PISC will have the maximum authority permitted by law over the operation and day-to-day management of the Facility, subject to compliance with applicable laws, and as otherwise specifically provided in this Agreement. PISC understands and agrees that its responsibilities for management of this public asset shall include providing all of the supplies and services necessary to operate a first class Ice Rink facility, including but without limitation, collecting and accounting for fees, charges, and other revenue, scheduling and booking of the facility for special events, rental of skates and other equipment, public relations, complaint resolution, security, interaction with City personnel, enforcement of Facility regulations, posting of regular, special and emergency signage, emergency planning, cleaning and maintenance. City shall cooperate with and, to the maximum extent permitted by law, shall not impede or impair the ability of PISC to soundly manage and operate the Facility; however, nothing in this Agreement shall be construed as an attempted delegation by City of any non-delegable duties or as a restriction on any legislative authority of City.

The day-to-day management duties of PISC include, but are not limited to, insuring that:

- (a) All revenues are accounted for and acceptable accounting procedures are in place and carried out;
- (b) Accounts payables are handled in a timely manner and all accounting is sent to an outside accounting firm approved by City;
- (c) Staffing schedules are prepared;
- (d) Regular maintenance is performed, consistent with Exhibit "D";
- (e) Janitorial procedures are in place and kept up;
- (f) Training sessions are in place for both current and new employees;
- (g) A program for public relations, marketing, advertising, and in-house programming, acceptable to City, is being followed;
- (h) Hiring of all staff, instructors and coaches is carried out in compliance with all applicable local, State, and Federal laws;
- (i) Provide to City all reports requested by City;
- (j) The Public Benefit Programs required by Section 2.6 are implemented; and

- (k) Programming of all types of sessions including, but not limited to, public, hockey, figure skating, broomball, fund raising, ice shows, seminars and exhibitions, hockey tournaments and clinics.

2.2 Agreement Subject to Bond Covenants. Attached hereto as Exhibit B, and incorporated herein by this reference, is a letter to \_\_\_\_\_, Director of Finance, City of Pasadena, from \_\_\_\_\_, dated \_\_\_\_\_, 2006 which outlines certain federal income tax issues arising from the covenants in the certificates of participation (“COPs”) bond mechanisms used to finance some or all of the Facility (“Bond Covenants”). PISC understands and agrees that this Agreement is subject to the Bond Covenants and agrees that it shall not knowingly take any action that is inconsistent with any obligation imposed by the Bond Covenants. City will use its best efforts to make PISC aware of any pertinent requirements of the Bond Covenants as it relates to the management of the Facility.

2.3 Procurement. Every vendor that PISC contracts with for services or supplies and equipment at the Facility shall be selected through a competitive process, in accordance with the procedures set forth in Chapter 4.08 of the Pasadena Municipal Code. PISC shall maintain records of all of its procurements in a manner sufficient to document compliance with the provisions of this section. Notwithstanding Section 4.08 of the Municipal Code, however, all contracts for services or supplies and equipment that are to be paid from funds within the annual budget approved by the City Council and otherwise comply with the requirements of this Section 2.3, may be entered into by PISC without further action by the City Council or City Manager. Notwithstanding the foregoing, a contract with Michael Paikin and/or Bert Blanchette (two of the owners of PISC, for the day-to-day management of the Facility, subject to the requirements of Section 4.1, shall not be subject to the procedures set forth in Chapter 4.08 of the Pasadena Municipal Code.

2.3.1. Every contract that PISC enters into with third-party vendors for services at the Facility shall have: (a) a termination for convenience provision that allows its termination on 30 days written notice with no penalty, payment or amortized buyout; and (b) a provision authorizing assignment of the contract to the City upon termination or expiration of this Agreement. In addition to any other indemnity obligations created by this Agreement, PISC agrees to require any third-party contractors to insure and to indemnify the City at levels and in a form approved, in writing, by the City Attorney.

2.3.2. PISC will use forms of contract, license and permit reviewed by the Office of the City Attorney and PISC agrees to comply with the City’s contracting policies and procedures, including but not limited to Section 16.12 herein regarding fair employment practices, and compliance with all insurance and bonding requirements. PISC’s contracts, license agreements and permits will, to the extent reasonably feasible, transfer risk to contractors and require Facility users to provide indemnity and insurance for events unless City agrees to an exception.

2.3.3. The contract with the food concessionaire shall require that the concessionaire provide and install (or cause the installation of) all fixtures necessary for operation of the food concession area.

2.4 Limitations on Authority of PISC. PISC shall not have the authority to:

2.4.1. Delegate its authority under this Agreement;

2.4.2. Charge fees or rates outside the parameters established by the City Council;

2.4.3. Operate the Facility or any part thereof in any manner or for any purpose other than as set forth herein;

2.4.4. Contract for services at the Facility in a manner that binds or obligates the City beyond the term of this Agreement.

2.5 Pasadena Living Wage Ordinance.

2.5.1. This Agreement, as well as any third-party contracts for services at the Facility, is subject to the City of Pasadena's Living Wage Ordinance, Pasadena Municipal Code Chapter 4.11. PISC shall comply with the provisions of the Ordinance, which include: **[NOTE: THE RATES IN THIS SECTION TO BE UPDATED AT TIME OF EXECUTION].**

(a) Pay no less than nine dollars and sixteen cents (\$9.16) per hour plus medical benefits of no less than one dollar and fifty-seven cents (\$1.57) per hour, or ten dollars and seventy-three cents (\$10.73) per hour without medical benefits to all employees who spend any of their time providing labor or delivering services to the Facility for the period January 1, 2006 to December 31, 2006. Beginning January 1, 2007, and each January 1 thereafter, the Living Wage rate shall be adjusted by the change in the Consumer Price Index, for the Los Angeles-Riverside Orange County area, all urban consumers, for the most recent 12-month period for which data is available.

(b) Notifying employees who spend any of their time providing labor or delivering services to the Facility who make less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit (EITC) under Internal Revenue Code, 26 U.S.C. § 32, and making available to such employees forms required to secure advance EITC payments.

2.5.2. Failure to comply with the provisions of the Pasadena Living Wage Ordinance is grounds for termination of this Agreement and a basis for penalties stated in Pasadena Municipal Code Chapter 4.11. PISC will be given 15 days from the date of discovery to cure any non-compliance with the City's Living Wage Ordinance with any of its contractors providing services under this Agreement prior to the imposition of penalties; the cure provisions of Section 16.20.1 of this Agreement shall not prevent the imposition of penalties after such 15-day period.



2.5.3. Section 4.11.010 of the Pasadena Living Wage Ordinance excludes from coverage part-time employees. The parties agree that, for purposes of this Agreement, part-time employees are those who work less than 30 hours per week.

2.6 Public Benefit Programs. PISC shall establish public benefit programs, including but not limited to making the Facility available to area schools, Pasadena City College and other non-profit organizations, to maximize participation in rink programs by persons unable to afford such opportunities. PISC will offer programs and access to all levels of facility programs to individuals who meet income standards as established by the City. Program assistance will be provided to participants in activities appropriate to individual needs and available funds based on criteria established by the City and PISC.

PISC at a minimum will provide the programs identified in Exhibit C, attached hereto and incorporated herein by this reference. PISC shall coordinate the public benefit programs with the City's Human Services and Recreation Department. On or before the date that is six month after the date of this Agreement, and each year thereafter, PISC shall submit to the City's Director of Human Services and Recreation a plan detailing proposed public benefits for the forthcoming year. Beginning with the second plan submittal, PISC shall also submit a report detailing the extent of public benefit programs offered the prior year, including whatever information may reasonably be required by the Director of Human Services and Recreation. In implementing the public benefit programs, priority shall be granted to Pasadena residents, and to groups, leagues, and teams based in the City of Pasadena.

### 3.0 PISC STANDARDS OF PERFORMANCE

3.1 Operating Standard. PISC shall operate the Facility, and shall cause PISC's subcontractors, concessionaires and vendors at the Facility to operate, at a standard of performance and operation that is at least equal in quality and comparable to other first class public Ice Rink facilities, such as Yerba Buena Ice Skating and Bowling Center in San Francisco, CA and Anaheim Ice Arena in Anaheim, CA. The performance standards applicable to PISC's operation of the Facility are set forth in Exhibit D, attached hereto and incorporated herein by this reference (hereinafter, "Applicable Standard"). These standards shall apply without limitation, to all personnel who come in contact with customers and guests of the Facility, and all personnel involved in collecting and accounting for revenue, public relations, complaint resolution, security patrols, interaction with City personnel, enforcement of site regulations, posting of regular, special and emergency signage, emergency planning, cleaning and maintenance.

#### 3.2 Maintenance Standard.

3.2.1. As part of the operating and capital expenses included in PISC's approved budget, PISC shall maintain the Facility, and any improvements thereto, at equal to or exceeding the Applicable Standard. PISC shall undertake and be responsible for general maintenance within the Facility including, but not limited to, care of the surface of the ice rinks, care of the ice making equipment, maintaining signage, day-to-day sweeping, mopping and litter and trash collection and removal. PISC shall undertake and be responsible for maintenance of all furnishings, fixtures and equipment, including, but without limitation, the lighting, electrical service, and plumbing in the Facility, as well as all rental equipment, to the Applicable Standard.

PISC shall maintain the fixtures and equipment at the Facility at not less than maintenance standards and requirements set forth in applicable manuals and specifications provided by equipment manufacturers. In the event that the cost of maintenance necessary meet the Applicable Standard exceeds the budgeted amount, PISC shall so inform the City Representative and apply for an amendment to the approved budget. PISC shall have no obligation to spend more than the amount in the approved budget for required maintenance. Notwithstanding the foregoing, the City shall have the option of electing to undertake and be responsible for maintenance of all furnishings, fixtures and equipment. In that event, appropriate adjustments shall be made to the annual budget.

3.2.2. PISC shall have no obligation to make any capital improvements other than those in a budget approved by the City and funded through revenues designated by the City. For the purposes of this section, a “capital improvement” means an upgrade in quality or performance, a replacement of an existing feature, fixture, or structure, or a repair of a structural nature or a non-routine repair of a permanent nature, but not the maintenance, cleaning or repair of an existing feature, fixture or structure other than a non-routine repair of a permanent nature.

### 3.3 Furniture, Fixtures, and Equipment (FF&E).

3.3.1. PISC has prepared that certain Pre Opening Consideration List for All Inclusive Ice Skating Rink F.F.&E. dated 3/23/2006 (the “FF&E List”). The FF&E List identifies the items of furniture, fixtures, & equipment (FF&E) that in PISC’s opinion are necessary for operation of the Facility, and indicates which items PISC will bring to the Facility from the Former Ice Rink. The resurfacing machine from the Former Ice Rink may only be used as a back up to a new machine. Any transfer of FF&E from the Former Ice Rink to the new Facility shall be performed by PISC at PISC's sole expense; the City has no obligation to relocate any FF&E from the Former Ice Rink to the new Facility. Notwithstanding the previous sentence, City shall reimburse PISC for the cost of moving FF&E from the Former Ice Rink to the new Facility, in an amount not to exceed One Hundred Thousand Dollars (\$100,000). Such amount represents a good faith estimate of fair value of the FF&E and in any case is not intended as compensation for services rendered under this Agreement. In the event that the cost of moving FF&E from the Former Ice Rink to the new Facility is less than \$100,000, the remaining funds may be used for the purpose of purchasing FF&E in accordance with Sections 3.3.2 and 3.3.3.

3.3.2. Certain items on the FF&E List are marked with an “N”, indicating that their purchase is required. Of those items, City agrees to provide items (a) through (j) below. City’s obligation to provide items (a) through (j) below is limited to the expenditure of \$326,000, which is the amount budged by City for the purchase of these items. In the event that the actual cost of providing these items exceeds the sum of \$326,000 (as well as any funds remaining from the \$100,000 allocated for moving expenses in Section 3.3.1), the parties shall meet to prioritize which of the below listed items will be provided by the City. Except as set forth in Section 3.3.3, PISC shall be responsible for purchasing those of the following items that are not purchased by City:

- (a) Zamboni (Resurfacer, electric) machine
- (b) Rental Skates

- (c) Music/Sound System
- (d) Score Board
- (e) Benches
- (f) Cabinets (moveable)
- (g) Electric Message Board
- (h) Refrigerator/Freezer
- (i) Security System/Video
- (j) Coin Locker

3.3.3. PISC shall be responsible for providing the remaining items on the FF&E List that are marked with an “N”, those that are not listed in Section 3.3.2 above. PISC shall be reimbursed from the Revenue Account (which includes the initial deposit by City of cash equal to one month’s budgeted operating expenses into the bank account established by PISC pursuant to Section 3.5.1) for the cost of purchasing any such items. In addition, should there be any proceeds of the COPs referenced in Section 2.2 remaining after payment of all expenses relating to the construction of the Facility, including the provision of the items listed in Section 3.3.2, or any funds remaining from the \$100,000 allocated for moving expenses in Section 3.3.1, such proceeds may be used to acquire any of the items on the FF&E List that are marked with an “N” and are not listed in Section 3.3.2 above.

3.4 Revenue Collection Standards. PISC shall oversee the daily collection of all revenue generated by or at the Facility (“Revenue”), and deposit that Revenue into a City account designated by the City’s Director of Finance (“Revenue Account”). PISC shall follow written procedures approved by the City’s Director of Finance for collection, deposit, reporting, oversight and audit of all Revenue.

3.5 Payment Standards.

3.5.1. PISC shall establish a separate bank account for its operations under this Agreement with the City’s primary banking relationship institution. In addition to the authorized representatives of PISC, the City’s Director of Finance and Treasurer shall be signatories on this account. The City shall deposit cash equal to one month’s budgeted operating expenses in this account as start-up money. On a monthly basis, or more frequently as necessary, PISC shall submit a request to the City, in a format and with supporting documentation acceptable to the City’s Director of Finance in his reasonable business judgment, for payment of operating and capital expenses according to PISC’s approved budget, and the City shall promptly pay, within fifteen (15) calendar days from receipt of same, PISC the full amount of all expenses which were made according to a budget approved by the City or otherwise approved by the City, or made for an emergency as per Section 3.5.2. PISC shall timely pay all sums when and as due to all contractors and vendors associated with PISC’s management of the Facility.

3.5.2. PISC shall be solely liable for any costs and expenses outside of or beyond its approved budget that are not otherwise approved by the City, except for reasonable expenses, to a maximum of \$25,000 in any single occurrence, incurred because of an actual emergency requiring immediate purchase of labor or services where the emergency is not caused by the act or neglect of PISC. PISC may submit a written request to the City for the approval of an expense not included in the approved budget. The City shall promptly process the request, including any required consideration and approval by the City Manager or City Council. Requests for payment from PISC to the City will be paid within forty-five (45) days from receipt of the request.

#### 4.0 MANAGEMENT FEE

4.1 Payment of Management Fee to PISC. The City will pay to PISC a management fee consisting of two parts: a base management fee calculated pursuant to Section 4.2, and an additional Bonus Payment calculated pursuant to Section 4.3 (the “Bonus Payment”; together with the Base Management Fee, the “Management Fee”). The Management Fee shall be the sole compensation to PISC officers and directors for activities and services relating to the Facility. Notwithstanding the foregoing, the parties agree and acknowledge that PISC intends to contract with Michael Paikin and Bert Blanchette, two of the owners of PISC, for the day-to-day management of the Facility. Subject to the provisions of this Agreement, including but not limited to Section 3.5 (Payment Standards) and Section 8.0 (Budget), City hereby authorizes PISC to contract with Michael Paikin and Bert Blanchette for the day-to-day management of the Facility. A contract with Fred Culick, Frederica Culick, or Nancy Simile may be authorized by City in the future, subject to the provisions of this Agreement, including but not limited to Section 2.3 (Procurement), Section 3.5 (Payment Standards), and Section 8.0 (Budget), but only if City is satisfied at that time that any such contract is reasonable and warranted.

4.2 Base Management Fee. One-Twelfth (1/12th) of the annual Base Management Fee will be paid on a monthly basis to PISC on the first of every month. The initial annual Base Management Fee shall be the sum of \$100,000. Commencing on the first day of the month that is twelve months after the date of this Agreement, and annually thereafter, the amount of the annual Base Management Fee will increase by the percentage change in the Consumer Price Index (CPI) – All Urban Consumers for the Los Angeles-Anaheim-Riverside, base period 1982-84=100, for the most recent twelve month period for which such data is available.

#### 4.3 Bonus Payment.

4.3.1. PISC shall receive a bonus or additional incentive payment if both (a) the Project Gross Revenues for the fiscal year (July 1- June 30) exceed the Base Gross Revenues by 10%, and (b) PISC has provided the public benefit programs required by Section 2.6. The parties agree that the initial Base Gross Revenues shall be the sum of \$2,000,000. The amount of Base Gross Revenues shall be adjusted annually by the percentage change in the CPI, on a compounded basis, on the same date as the Base Management Fee is adjusted in accordance with Section 4.2. The amount of the Bonus Payment shall be equal to twenty percent (20%) of the Base Management Fee for the year for which the Bonus Payment is earned.

4.3.2. PISC shall not be entitled to any Bonus Payment for any fiscal year in which a default occurs, whether or not the default is cured.

4.3.3. For purposes of this Section 4.3, "Project Gross Revenues" means all income from Facility operations, including parking and interior signage, minus: (a) any Pass-Through Payments (exclusive of mark-up) and (b) income generated from the sale of "Naming Rights" or from advertising on exterior signage. "Pass-Through Payments" means fees collected by PISC (such as fees for a referee or judge), the full amount of which are in turn paid by PISC directly to the referee or judge (or to an independent third party organization that supplies the referee or judge).

## 5.0 PISC OFFSET

All payments to PISC, whether of the Base Management Fee pursuant to Section 4.2, or the reimbursement for the cost of moving FF&E from the Former Ice Rink to the new Facility pursuant to Section 3.3.1, need not be paid to the extent of any obligation of PISC to make payments to the City.

## 6.0 MISCELLANEOUS PERFORMANCE OBLIGATIONS

6.1 Punctual Payment. Each party shall duly and punctually pay or cause to be paid its obligations to the other and its obligations to third parties associated with management of the Facility.

6.2 Mutual Cooperation. Each party shall cooperate with the other as may be reasonably necessary to allow each to carry out their responsibilities under this Agreement.

6.3 Discharge Claims. Each party shall timely discharge or provide for the discharge of all claims which it has authorized or incurred for labor, materials and supplies furnished for or in connection with the Facility, unless it shall in good faith dispute such claims.

6.4 Reporting of Defects. Each party shall have the duty to give notice to the other of any conditions discovered which create a hazard or problem with the operation and maintenance of the Facility.

6.5 Non-Discrimination in Access. PISC shall operate and manage the Facility without discrimination as to race, religious creed, color, national origin, ancestry, handicap, sex, age or any other impermissible classification.

6.6 Accessibility - General Standards. PISC shall maintain the accessibility features of the Facility and equipment on site that promotes equal opportunity for participation by individuals with disabilities, and shall continue to develop and implement procedures for providing an equal opportunity for individuals with disabilities to participate in or benefit from the use of Facility in accord with federal and state law. PISC shall ensure that its employees, contractors and licensees are aware of accessibility features and are prepared to provide assistance as required by individuals with disabilities using or accessing the Facility. PISC is not responsible for capital improvements required to comply with ADA. In connection with ADA, each party shall advise the other of other ADA issues at the Facility that come to their attention.

Responsibility for any third party claims arising out of or related to ADA will be as follows:

- (a) PISC shall be responsible for claims relating to the operation of the Facility and the City shall be responsible for claims relating to the

structure of the Facility, provided that PISC does not make any modifications or improvements to the physical structure of the Facility without the express written consent of the City.

- (b) The responsible party will indemnify, hold harmless and defend the other party and its officers, directors, representatives and employees, and in the case of the City its council members, from all claims, liabilities, damages, costs and expenses (including attorneys' fees) resulting from and in any way related to the claims.

When appropriate, each party will forthwith submit any such claims to its general liability insurance carrier in an attempt to have the claim covered by such insurance.

6.7 Oversight. A joint financial and operations monitoring committee comprised of two representatives from the City, appointed by the City Manager, and two from PISC will be established and will meet quarterly. The primary purpose of this committee is to review operations, including but not limited to maintenance, public benefits, and monitoring the budget, and make recommendations to both PISC and the City Council as appropriate with respect to the implementation of and compliance with this Agreement. This committee will not have binding, decision-making authority.

6.8 Delegation to City Manager. The City Manager, or her designee, is hereby designated as the "City Representative", and will serve as the representative of City in matters relating to this Agreement. The City Representative is authorized to take any and all steps necessary to implement the provisions of this Agreement. The City Representative may grant, in writing, any approval requested by PISC pursuant to this Agreement (except for those matters which specify that approval by the City Council is required) or, in his or her sole discretion, refer such matters to the City Council for its approval or disapproval. The initial City Representative designated by the City Manager is \_\_\_\_\_. The City Manager may change the City Representative, at any time, by written notice provided in accordance with Section 15.0. Except as otherwise provided in this Agreement, all communications from PISC to the City shall be directed to the City Representative.

6.9 PISC Representative. PISC shall designate an individual as the "PISC Representative", who will serve as the representative of PISC in matters relating to this Agreement. The PISC Representative is authorized to take any and all steps necessary to implement the provisions of this Agreement on behalf of PISC, and may grant, in writing, any approval requested by City pursuant to this Agreement. City shall be entitled to rely upon the written communications of the PISC Representative. The initial PISC Representative is \_\_\_\_\_. PISC may change its designated representative at any time, by written notice provided in accordance with Section 15.0. Except as otherwise provided in this Agreement, all communications from the City to PISC shall be directed to the PISC Representative.

## 7.0 FEES AND CHARGES

PISC may recommend a schedule of maximum and minimum fees, prices, use or other charges, including cost reimbursement, to be charged persons and organizations for skating and

other permitted activity within the Facility including any special or discounted rates for City or not-for-profit sponsored events. The setting of rates for the use of public property is a non-delegable duty of government, and the City reserves the right to adopt the rates recommended by PISC, to reject any or all rates recommended by PISC and to revise the rates in any respect including, in consultation with PISC, any special programs for discounted or free use of the Facility. Such schedule, and subsequent changes thereto, shall be filed with City for its approval by resolution. PISC fees, charges and rates shall be within the limits of the schedule as approved by City (hereinafter, the "General Fee Schedule"). The initial General Fee Schedule is attached hereto as Exhibit E and incorporated herein by this reference. PISC agrees to honor all special fee arrangements previously established by the City as of the date of this Agreement, such as discounted or free rate agreements, as are specified in the General Fee Schedule. PISC may recommend a special rate for a limited duration at the Facility tied to a specific promotional event and the City Manager or her designee may accept or reject the proposal on behalf of the City on a case-by-case basis consistent with the General Fee Schedule.

## 8.0 BUDGET

The annual operating and capital budget for the Facility will be prepared by PISC and will be subject to City review and City Council approval, consistent with the City's operating and capital budget processes and timetable. The budget shall provide for regular contributions to a reserve account for the replacement of FF&E. The initial budget is attached hereto as Exhibit F, and incorporated herein by this reference. PISC shall submit the proposed annual budget to City's Director of Finance on or before March 1st of each year. City staff shall review the draft budget and propose changes, if any, to PISC, within forty-five (45) days of initial receipt of the budget. PISC shall either revise the budget as requested by City's Finance Director or provide a written explanation in support of its refusal to make any change requested by the Finance Director. City's Finance Director shall present the revised budget and written explanation (if any) to the City Council, and the City Council shall act on the proposed budget as part of the City's budget process, prior to June 30. The failure of the City Council to approve the proposed budget shall not be a default under this Agreement. In that event, however, either party may exercise the right of termination pursuant to Section 16.20.3.

All net income generated from the sale of "Naming Rights" or from advertising on exterior signage shall go to the City, and shall not be reflected in the budget. All other net income generated by PISC, including but not limited to revenues from interior advertising (within the Facility) and concessions, will go to the operating budget of the Facility.

## 9.0 REVENUE AND EXPENSE MILESTONES

The City and PISC have agreed to net income and cash flow targets and milestones to be achieved by PISC while the Facility operations are under its management, all of which are set forth in Exhibit G, incorporated herein by this reference. These milestones shall be updated annually, concurrently with approval of the annual budget pursuant to Section 8.0. The parties acknowledge, however, that compensation under this Agreement is in no way based on or measured by net income.

## 10.0 ENTRY RIGHTS

The City reserves the right to enter upon the Facility at any reasonable time and for any legitimate reason, and its agents, employees, officers, contractors and representatives may enter upon the Facility, if in performance of their public duties, without providing any notice to, or obtaining the permission of, PISC. Should the City declare a state of emergency, PISC will relinquish management responsibility of the Facility to the City, at City request, for the duration of the emergency. PISC will cooperate with the City with regard to any contractors and users during the emergency.

## 11.0 CONSTRUCTION AND IMPROVEMENTS

11.1 PISC shall not alter the existing Facility or structures on the Property, nor construct any additional structures, temporary or permanent, on the Property, without the prior, written approval of the City Manager, which approval the City Manager may grant or deny, in her sole and absolute discretion.

11.2 All construction and improvements (if any) shall be undertaken in full conformance to, and compliance with all local, state and federal laws and regulations. All improvements shall be the property of the City.

## 12.0 INDEMNITY

To the maximum extent permitted by law, PISC agrees to defend, hold harmless and indemnify City, the City Council, Council Members, Officers, Directors, representatives and employees, from all claims, liabilities, damages, costs and expenses, indemnity, attorneys' fees, resulting from or in any way related to this Agreement, the management services provided hereunder, the Facility or the operation thereof, any act or omission relating to Facility, any event or contract; involving the Facility, and any personal injury (including death)

PISC will cause the City of Pasadena, its City Council, Council Members, officers, representatives and employees, to be included as an additional insured on policies of liability insurance as may be procured, from time to time, by PISC, or which is obtained from any contractor hired by PISC or on behalf of PISC. PISC agrees to adopt practices and procedures that conform to City policy on reporting/investigating accidents, as stated in the City of Pasadena Personnel Practice and Procedure Manual.

Notwithstanding any other provision of this Agreement to the contrary, PISC's obligations under this indemnity clause will not apply to any liabilities, damages, costs or losses caused by the solely wrongful or negligent acts of the City alone, or the City and another person (other than PISC), or any of the City's officers, employees or agents (other than PISC) nor will PISC's obligations apply to any liability imposed for matters not related to performance under this Agreement.

## 13.0 INSURANCE

13.1 The City will retain ownership of the Facility and except as noted below will maintain the necessary insurance coverage. Except as noted below, any premiums and deductible portion of any such policy will be the responsibility of the City, and reimbursed to City out of the Revenue Account.



13.2 (a) City shall purchase all risk property insurance on the Facility, and shall be reimbursed from the Revenue Account for the cost of all premiums and deductibles.

(b) To the extent required by applicable law, PISC shall cause its employees and subcontractors to be fully covered by workers' compensation insurance meeting State of California Labor Code requirements. The premium for such workers' compensation insurance shall be paid for out of the Revenue Account.

(c) City shall add PISC as an insured on its Fidelity and Faithful Performance (crime coverage) insurance. City shall be reimbursed from the Revenue Account for the cost of all premiums and deductibles.

(d) PISC shall purchase Comprehensive Liability Insurance with limits of not less than \$1,000,000 combined single limits and \$2,000,000 aggregate with City endorsed as additional named insured. Should coverage at these limits become unavailable, PISC and City may agree to reduce the limits. PISC or City may purchase excess insurance on behalf of PISC and City, payable from the Revenue Account, when available at a reasonable price. Any payment of any liability claim by City's self-insurance program will be charged back to PISC as part of the burden rate under terms negotiated by the City Finance Director and PISC (See Section 13.3).

(e) PISC may purchase Directors and Officers (D&O) coverage. The premium for D&O coverage with a \$1,000,000 limit may be charged to the Revenue Account; the premium for D&O coverage in excess of \$1,000,000 limit is the responsibility of PISC, and may not be charged to the Revenue Account.

13.3 The City Finance Director will establish a "burden rate" for risk management services (including insurance premiums, payment of self-insured claims, claims/legal costs/expenses, and operations costs). The burden rate shall be paid to City through City's annual accounting procedures, and charged against the Revenue Account. Unless otherwise agreed, the City shall be responsible for all self-insured retention and deductible amounts for all policies purchased by the City, subject to certain of those amounts being charged against the Revenue Account pursuant to this Section 13. PISC shall be responsible for all premiums, self-insured retention and deductible amounts for all policies purchased by PISC; except as authorized by this Section 13.3, any such amounts shall not be paid for out of Facility revenues or counted as a Operating Expense.

13.4 PISC waives subrogation against City for any insured loss or self-insured loss in PISC's Worker's Compensation policy.

13.4 PISC may purchase supplemental insurance coverage to that required or provided by the City using its own funds provided that such coverage does not prejudice any coverage under policies purchased by the City and is in compliance with all laws and labor agreements.

13.5 Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, PISC shall immediately notify City and cease all performance under this Agreement until further directed by the City. In the absence of satisfactory insurance coverage, City may, at its option: (a) procure insurance with collection rights for premiums, attorney's fees and costs against PISC by way of set-off or recoupment from sums due PISC, at City's option; (b) immediately terminate this Agreement; or (c) self-insure the risk, with all

damages and costs incurred, by judgment, settlement or otherwise, including attorney's fees and costs, being collectible from PISC, by way of set-off or recoupment from any funds due PISC.

#### 14.0 TERM OF AGREEMENT

14.1 Initial Term. The Agreement shall commence on \_\_\_\_\_, 200\_\_ and shall continue for a period of ten years, ending on \_\_\_\_\_.

14.2 Extension. At the end of the initial term, the parties may mutually agree to extend the term, or renegotiate this Management Agreement, to the extent permitted by applicable State and Federal laws, including but not limited to Internal Revenue Service Regulations and other pronouncements.

#### 15.0 NOTICE

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage pre paid, return receipt requested, or by Federal Express or other courier service which provides a written receipt of delivery, or delivered or sent by telecopy, or facsimile to the addresses set forth in this Section 15.0, with a copy to designated legal counsel. The notices or other communications shall be deemed received and effective upon: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, the date of delivery or refusal to accept delivery indicated in the certified or registered mail receipt; (iii) if given by courier service, on the date of delivery evidenced by the receipt for delivery provided by the courier service; or (iv) if given by telecopy, or faxed, when sent. Any notice, request, demand, direction or other communication sent by telecopy or fax must be confirmed within forty eight (48) hours by letter mailed or delivered in accordance with the foregoing.

To City: City of Pasadena  
117 E. Colorado Blvd.  
Pasadena, California 91106  
Attention: \_\_\_\_\_ **[INSERT NAME OF INITIAL  
CITY REPRESENTATIVE PER SECTION 6.9]**  
626-744-4350  
626-744-7093 (facsimile)

With a Copy to: City Attorney  
1215 N. Marengo Ave., Ste. 100  
Pasadena, CA 91101  
626-744-4141  
626-744-4190 (facsimile)

To PISC: Pasadena Ice Skating Center, LLC  
**[FILL IN ADDRESS OF NEW FACILITY WHEN  
AVAILABLE]**

Attention: \_\_\_\_\_ **[INSERT NAME OF INITIAL  
PISC REPRESENTATIVE PER SECTION 6.9]**

With a Copy to: Jobe & Stoterau  
500 N. Brand, Suite 250  
Glendale, 91203  
Attention: Peter Stoterau  
818-246-7413  
818-246-7414 (facsimile)

Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party in accordance with this Section.

## 16.0 GENERAL TERMS AND CONDITIONS

16.1 Independent Contractor. It is understood that in the performance of the services herein provided for, PISC shall be, and is, an independent contractor, and is not an agent or employee of City and shall furnish such services in its own manner and method except as required by this Agreement. Further, PISC has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by PISC in the performance of the services hereunder. PISC shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

PISC acknowledges that PISC and any subcontractors, agents or employees employed by PISC shall not, under any circumstances, be considered employees of the City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

16.2 Parties Not Agents. Except as the City may authorize to writing, PISC and its subcontractors shall have no authority, express or implied, to act on behalf of or bind the City in any capacity whatsoever as agents or otherwise.

16.3 Ownership of Work. All reports, drawings, plans, specifications, computer tapes, floppy disks and printouts, studies, memoranda, computation sheets and other documents prepared by PISC in furtherance of its management of the Facility shall be the sole property of City and shall be delivered to City whenever requested. PISC shall keep such documents and materials on file and available for audit by the City for at least three (3) years after completion or earlier termination of this Agreement. PISC may make duplicate copies of such materials and documents for its own files or for such other purposes as may be authorized in writing by the City.

16.4 Correction of Work. PISC shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, services and other work, without additional cost to the

City. The performance or acceptance of services furnished by PISC shall not relieve PISC from the obligation to correct subsequently discovered defects, inaccuracy or incompleteness.

16.5 Waiver. Neither party's waiver of any term, condition, breach or default of this Agreement shall be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.

16.6 Successors. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors and/or assigns.

16.7 No Assignment. PISC shall not assign or transfer this Agreement or any rights hereunder without the prior written consent of the City and approval by the City Attorney, which may be withheld in the City's sole discretion. Any unauthorized assignment or transfer shall be null and void and shall constitute a material breach by PISC of its obligations under this Agreement. No assignment shall release the original parties or otherwise constitute a novation. The City hereby approves an assignment of this Agreement to a California limited liability company that is wholly owned and controlled by the owners of PISC; any such assignment shall be effective only upon the delivery of the following fully executed documents to the City Representative: assignment agreement, certificate of good standing, certificate of limited liability company filed with the Secretary of State, and operating agreement of the limited liability company.

16.8 Compliance With Laws. PISC shall comply with all Federal, State, County and City laws, ordinances, rules and regulations, which are, as amended from time-to-time, incorporated herein and applicable to the performance hereof, including but without limitation the Pasadena Living Wage Ordinance.

16.9 Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

16.10 Interpretation.

16.10.1. Applicable Law. This Agreement, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California.

16.10.2. Written Amendment. This Agreement may only be changed by written amendment signed by an authorized representative of PISC and the City Manager or other authorized representative of the City, subject to any requisite authorization by the City Council. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

16.10.3. Severability. If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

16.10.4. Order of Precedence. In case of conflict between the terms of this Agreement and the terms contained in any document attached as an Exhibit or otherwise incorporated, by reference, the terms of this Agreement shall strictly prevail.

16.10.5. Choice of Forum. The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and is to be performed in the City of Pasadena and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Los Angeles at a place to be determined by the rules of the forum.

16.11 Time of Essence. Time is strictly of the essence of this Agreement and each and every covenant, term and provision hereof.

16.12 Equal Opportunity Employment Practices Provisions.

16.12.1. PISC certifies and represents that, during the performance of this Agreement, PISC and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition or marital status. PISC further certifies that it will not maintain any segregated facilities.

16.12.2. PISC shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of PISC state that PISC is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

16.12.3. PISC shall, if requested to do so by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

16.12.4. If requested to do so by the City, PISC shall provide City with access to and copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

16.12.5. Contractor agrees to recruit Pasadena residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this contract and which are performed within the City.

16.12.6. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act that is prohibited by law.

16.12.7. PISC shall include provisions set forth above in each of its subcontracts under this Agreement.

16.13 Financial Interest. No officer, director or employee of PISC shall have any financial interest in any contract made by PISC that is prohibited by law. No officer, director or employee of PISC shall have any financial interest in any contract made by PISC that relates in any way to the Facility, without the prior written approval of the City Manager, which approval may be granted or withheld in her sole and absolute discretion.

16.14 No Estate. This Agreement provides only the, rights of use and operational management set forth in this Agreement and does not give PISC any added interest, title, leasehold, estate or right of any kind or extent whatsoever, whether legal or equitable, prescriptive or otherwise, no matter how long this Agreement runs. Nothing contained in this Agreement, nor the acts of the parties hereto, nor the acts of any third party shall be deemed or construed to create the relationship of principal and agent, or a partnership, or a joint venture, or of any association between the parties to this Agreement. PISC agrees that it will not claim at any time any title, leasehold, or estate in the Facility by virtue of this Agreement or by virtue of PISC's occupancy, use or expenditures under this Agreement.

16.15 Possessory Interest Tax. To the extent that the interest created by this Agreement may create a possessory interest subject to property taxation, PISC shall be subject to and solely liable for the payment of any such property taxes levied on that interest. Any such tax can be included in the budget as an operating expense.

16.16 Pasadena Business License. PISC shall obtain, and pay any and all costs associated therewith, any Pasadena Business License that may be required by the Pasadena Municipal Code. PISC shall impose this requirement on all of its vendors and subcontractors.

16.17 Maintenance and Inspection of Records. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of PISC's records to the extent the City deems reasonably necessary to insure it is receiving all money to which it is entitled under this Agreement and/or is paying only the amounts to which PISC is properly entitled under this Agreement or for other purposes relating to this Agreement.

PISC shall maintain and preserve all such records for a period of at least 3 years after termination of this Agreement.

PISC shall maintain all such records in the City of Pasadena. If not, PISC shall, upon request, promptly deliver the records to the City of Pasadena or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Pasadena, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

The City will have the right to audit the expenses of PISC relating to this Agreement on a yearly basis and at the City's expense. The audit will be conducted in a manner that does not unreasonably interfere with PISC's operation of the garages. In addition, PISC will have the rights to audit the City's books as to revenues and expenses utilizing PISC's funds at the sole expense of PISC.

16.18 Arbitration of Disputes. Any dispute for under \$100,000 arising out of or relating to the negotiation, construction, performance, non-performance, breach or any other aspect of this Agreement, shall be settled by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association at Los Angeles, California and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The

City does not waive its right to object to the timeliness or sufficiency of any claim filed or required to be filed against the City, and both parties reserve the right to conduct full discovery pertinent to California Code of Civil Procedure, Section 1238.05.

16.19 Defaults - General.

16.19.1. Subject to the extensions of time set forth in Section 17.0, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

16.19.2. The nondefaulting party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

16.19.3. Neither party may exercise any rights or remedies upon a non-monetary default by the other party, unless and until such default continues for a period of thirty (30) days after written notice thereof from the non-defaulting party. Provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if it has commenced a cure within the 30-day period and thereafter diligently prosecutes such cure to completion, and completes such cure within ninety (90) days after receipt of written notice thereof. Provided further that, if the party claiming injury determines in good faith that a delay in seeking judicial relief would cause it irreparable harm not compensable by monetary damages, the party claiming injury need not wait for a period of thirty (30) days after written notice before seeking expedited judicial relief (e.g., temporary restraining order or permanent injunction).

16.19.4. Neither party may exercise any rights or remedies upon a monetary default by the other party, unless and until such default continues for a period of five (5) days after written notice thereof from the non-defaulting party.

16.20 Termination.

16.20.1. Either party may terminate this Agreement for cause if: (i) the other party fails to perform a material obligation hereunder, which failure constitutes an event of default under this Agreement; (ii) the nondefaulting party has delivered to the party in default a notice of default pursuant to Section 16.19, and all pertinent cure periods applicable to the default have expired and such default remains uncured; and (iii) the nondefaulting party is not then in default of this Agreement. The parties agree that, among others, failure by PISC to provide public benefit programs or otherwise to comply with Section 2.0, or to comply with the Standards of Performance set forth in Section 3.0 and Exhibit "D", shall constitute a material default.

16.20.2. The parties agree that, subject to Force Majeure (Section 17.0), City may terminate this Agreement upon thirty (30) days written notice, without any obligation to provide an opportunity to cure, upon the occurrence of operating deficits in two or more years, or

in the event of repeated failure to achieve the Income and Cash Flow Performance Standards set forth in Exhibit "G", as such standards may be updated annually pursuant to Section 9.0.

16.20.3. In accordance with Section 8.0, either party may terminate this Agreement upon thirty (30) days prior notice to the other party, upon the failure of the City Council to approve the proposed budget.

16.20.4. Termination pursuant to this Section shall relieve the terminating party of further liability or responsibility under this Agreement, including the payment of money, except for payment for services satisfactorily and timely performed prior to the service of the notice of termination, and except for reimbursement of (1) any payments made by the City for service not subsequently performed in a timely and satisfactory manner, and (2) costs incurred by the City in obtaining substitute performance.

## 17.0 FORCE MAJEURE

If either party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, terrorism, civil commotion, fire or other casualty, or other causes, except financial, beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform as long as the party who fails to perform gives the other party notice within seven (7) calendar days after the event causing the failure. Despite anything to the contrary in this paragraph, if the cause of a party's failure to perform results from an act by that party, then such cause shall not excuse the performance of the provisions of this Agreement by that party.

## 18.0 ESTOPPEL CERTIFICATES

Any party hereunder may, from time to time, request the other party to execute and acknowledge an estoppel certificate or agreement verifying that this Agreement is in full force and effect and that no default or defaults have occurred and are continuing as of the date of such certificate or agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. The party requesting such certificate or agreement shall provide the form thereof and, provided such certificate or agreement is in form and substance commercially reasonable, the requested party shall execute and return the same within fifteen (15) business days after receipt of the final form thereof, and the requesting party shall be entitled to rely thereon.

## 19.0 ENTIRE AGREEMENT

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties regarding all or any part of the subject matter hereof.



This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes twenty-one (21) pages of text and seven (7) Exhibits, each of which is incorporated herein by reference, as follows:

- |           |   |
|-----------|---|
| Exhibit A | Site Map  |
| Exhibit B | Bond Letter                                       |
| Exhibit C | Public Benefit Programs                           |
| Exhibit D | Operational and Maintenance Performance Standards |
| Exhibit E | Initial General Fee Schedule                      |
| Exhibit F | First Year Budget                                 |
| Exhibit G | Income and Cash Flow Performance Standards        |

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

DATED: \_\_\_\_\_ CITY OF PASADENA

By: \_\_\_\_\_  
Cynthia J. Kurtz  
City Manager

ATTEST:

PASADENA ICE SKATING CENTER, LLC, a  
California limited liability company

\_\_\_\_\_  
Jane Rodriguez, CMC  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_

(typed name)

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

APPROVED AS TO FORM:  
Richards, Watson & Gershon

\_\_\_\_\_  
Michael Estrada, Special Counsel

**Exhibit A**

**Site Map**

[to be added]

**Exhibit B**

**Bond Letter**

[to be added]

## Exhibit C

### Public Benefit Programs

- **School Field Trips** – including tour of ice rink facility & introductory lesson and skating time. Discount price 50% off per student. (Normal admission price is \$10.00)
- **Family Free Nights** – at least 2-3 per year with fun, games, & DJ too!
- **“Family 4-Pack” Admission discount** during Winter School holidays – Buy 3 / Get 1 Free. (25% discount per family of 4)
- **Free Introductory Skating Lessons** for both “Learn to Skate” & “Learn to Play Hockey” – offered several times throughout year.
- Use **Pasadena School District lunch cards to receive 50% discount for group classes.**
- **Boy Scout & Girl Scout discounted group lesson programs** so they can earn their merit badge for ice skating. Discount price per student is 60% off published rate.
- **Special Education students** – special skating course at more than 50% discount – only \$5.00 per lesson. (Normal lesson price is \$12.50 each.)
- Start **“After School” program** – maybe in coordination with YMCA or other non-profit group – students can do homework in party room / then take skating class and public skating.
- **Home School students** – start 25% discounted skating courses during the day throughout the year.
- **Multiple class & multiple skater discounts** for Skating School classes.
- **Themed Holiday parties for discounted admission price** \_\_\_% off during Halloween / Christmas, etc. [FILL IN AT EXECUTION]
- **Free Skate Rental for “A’s” on report cards** – flyers to schools with information.
- **“Start Your Own Group” classes** are available throughout the year at special discounted price set to your own schedule too. Discount price is 15% off published rate for 6 wks.
- Regular **“Cheapskate” Sessions** for discounted admission & free skate rental (30% discount from published rate).

## **Exhibit D**

### **Operational and Maintenance Performance Standards**

#### **APPEARANCE:**

1. PISC shall be responsible for maintenance of the Facility. Such responsibility shall include retaining the services of a qualified maintenance company to keep the Facility clear of litter.
2. Janitorial work including removal of all trash performed daily.
3. Graffiti is removed within 24 hours of identification
4. Minor maintenance painting performed as required to maintain first class appearance.
5. Locker room facilities shall be maintained in a safe and sanitary manner daily.
6. Restaurant/Concession stand shall be maintained in a clean and sanitary manner.
7. Any and all damage to steps, railings, equipment etc. shall be repaired within two weeks of identification.
8. PISC shall insure that the parking area for the patrons of the Facility shall be free of litter and maintained in a safe manner.

#### **CONDITION OF BUILDING**

1. Lighting inside and outside of the building shall be maintained at an appropriate level. Burned out bulbs and tubes shall be replaced within 24 hours of notification.
2. Mechanical problems associated with all ice making equipment shall be repaired within two weeks.
3. Repair and replacement of other equipment due to vandalism shall be repaired in a timely manner.
4. Serious malfunction of any system (i.e. Ventilation, generator, fire signal system, electrical etc.) to be repaired within 24 hours unless long lead parts are involved and in that case the repairs to be completed within 24 hours of receipt of the part.

5. Landscaping to be aesthetically appealing at all times. Improvements and corrective action will be completed within 48 hours of inspection and notification

6. Revenue control equipment within the Facility shall function at optimum level.

### **FISCAL MANAGEMENT**

1. Annual revenues will be maintained at a level not less than \$2.1 million except for the first year of operation.

2. PISC shall provide monthly operating reports by the 10th of each month.

3. PISC shall also provide quarterly and annual operating expenses.

4. Invoices from contractors are paid in a timely manner. 95% of the invoices are paid within 30 days.

5. Hire a third party firm (approved by the City) to conduct a financial audit of the Facility on an annual basis.

### **SECURITY SERVICES**

At a minimum, PISC shall employ the following security measures for the Facility, including the parking area:

1. Closed Circuit Indoor and Outdoor cameras, with recorder.

(a) Indoor cameras covering Ice Surfaces, Lobby, Hallways, Entry Way, Cashier area and Office.

(b) Exterior cameras covering parking lots, Entryway and rear of building.

2. On staff security with Security Uniform patrolling interior and exterior, present and visible at all times while the Facility is in operation.

3. Walkie Talkie communications with Security Personnel, Rink Staff and Office.

4. Staff trained in First Aid and CPR.

5. Special Event Security will be provided by an outside contractor.

6. Any major incident shall be reported to the appropriate City Department within 2 hours of the incident.

7. Security personnel shall maintain records of all incidents that occur within the building and parking area.

## **STAFF**

PISC shall ensure that all staff, including those engaged in providing security, are well trained, and act in a courteous and professional manner at all times.

## **MANAGEMENT REPORTING**

1. Submit monthly management reports on or before the 20th of each month, in a form reasonably acceptable to the City Representative.

2. Each monthly report shall include the following:

- . Revenue and expense accounting with budget variance
- . Total number of patrons daily to the Facility.
- . Total number of participants involved in all ice programs.
- . Detailed report involving any security issues.
- . Statistics for user agreements
- . Statistics for incident reports
- . Conduct physical inspection monthly and complete inspection report; provide corrective actions.
- . Submit annual budget on or before specified date.
- . Facility and equipment maintenance and repair activities.



**Exhibit E**  
**Initial General Fee Schedule**

[to be added]

**Exhibit F**  
**First Year Budget**  
[to be added]

**Exhibit G**

**Income and Cash Flow Performance Standards**

[to be added]