

**EXHIBIT - 2**

**MANAGEMENT AGREEMENT**

**BETWEEN**

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

**AND**

**THE CITY OF PASADENA**

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## 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]**