

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]