

**ATTACHMENT G**

**MANAGEMENT AGREEMENT**

**BETWEEN**

**POLAR ICE ENTERPRISES PASADENA, LLC**  
**A California Limited Liability Company**

**AND**

**THE CITY OF PASADENA**  
**a California charter city**

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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 Polar Ice Enterprises Pasadena, LLC, a California limited liability company (hercafter, "POLAR ICE"), 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 Foothill Blvd. (the "Property"). The Property is depicted on Exhibit A, attached hereto and incorporated herein by this reference; and

B. City seeks an experienced manager to manage the Facility, in accordance with the terms and conditions set forth in this Agreement; and

C. POLAR ICE represents that it is a qualified manager, and that it or its related entities owns and/or operates ice rink facilities in various locations, including New York, California, Texas and North Carolina; and

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

E. A significant inducement to City in engaging POLAR ICE to manage the Facility is the involvement of the LOS ANGELES KINGS HOCKEY CLUB (the "KINGS") in the operation of the Facility; and

F. POLAR ICE 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 400 and 100 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 65,000 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 POLAR ICE OPERATIONAL RESPONSIBILITY

### 2.1 Operating Manager.

2.1.1. Subject to the terms of this Agreement and all applicable law, City hereby appoints POLAR ICE to serve as manager of the Facility, and POLAR ICE hereby accepts the appointment to serve as manager of the Facility. It is the intention of the parties that POLAR ICE 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. POLAR ICE 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 POLAR ICE 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.

2.1.2. The day-to-day management duties of POLAR ICE include, but are not limited to, ensuring that:

- (a) All revenues are accounted for and acceptable accounting procedures are in place and carried out as approved by City;
- (b) Accounts payables are handled in a timely manner and all accounting is sent to and performed by City's Finance Department;
- (c) Staffing schedules are prepared;
- (d) Regular maintenance is performed;
- (e) Janitorial procedures are in place and kept up;
- (f) Hiring of all staff, instructors and coaches is carried out in compliance with all applicable local, state, and federal laws, including but not limited to City's First Source Employment Ordinance (See Section 2.6);
- (g) Training sessions are in place for both current and new employees;
- (h) The Public Benefit Programs required by Section 2.8 are implemented;
- (i) The Marketing Plan required by Section 2.9 is being implemented;
- (j) The Community Outreach Program required by Section 2.10 is implemented;

(k) All reports requested by City are provided to City upon (10) ten days written notice to POLAR ICE; and

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

2.1.3. POLAR ICE shall make reasonable good faith efforts to hire or contract with the coaches, instructors, and referees formerly engaged at the ice rink that was located in the Pasadena Convention Center.

2.2 Agreement Subject to Bond Covenants. City contemplates issuing bonds to finance some or all of the Facility, which bonds will be subject to covenants addressing certain federal income tax issues ("Bond Covenants"). Attached hereto as Exhibit B, and incorporated herein by this reference, is an outline of standard Bond Covenants. POLAR ICE 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 POLAR ICE aware of any pertinent requirements of the Bond Covenants as it relates to the management of the Facility.

2.3 Contracts for Services at the Facility.

2.3.1. To the extent practicable, every vendor that POLAR ICE contracts with for services at the Facility for an amount in excess of \$3,000 per month shall be selected through a competitive process. POLAR ICE shall obtain at least three proposals or bids prior to entering into any such contract. POLAR ICE is not required to select the vendor offering the lowest price if other factors, such as qualifications of the vendor and quality of the services being offered, outweigh the benefits offered by the lowest priced bid or proposal. POLAR ICE shall document all of its procurements in a manner sufficient to document compliance with the provisions of this section.

2.3.2. POLAR ICE shall use commercially reasonable efforts to obtain in every contract that POLAR ICE enters into with third-party vendors for services at the Facility: (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, POLAR ICE agrees to use commercially reasonable efforts 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's Director of Finance.

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 POLAR ICE. POLAR ICE 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; or

2.4.5. Permit any team or organization to refer to the Facility as its "home rink", other than teams and organizations that are based in the City of Pasadena and are comprised primarily of residents of the City of Pasadena.

2.5 Pasadena Living Wage Ordinance. 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. POLAR ICE shall comply with the provisions of the Ordinance, which include:

2.5.1. Pay no less than ten dollars and fourteen (\$10.14) per hour plus medical benefits of no less than one dollar and seventy-four (\$1.74) per hour, or ten dollars and twenty-eight cents (\$11.88) 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, 2009 to December 31, 2009. Beginning January 1, 2010, 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.

2.5.2. 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.

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. POLAR ICE will be given 30 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 15.19.1 of this Agreement shall not prevent the imposition of penalties after such 30-day period.

2.6 Pasadena First Source Employment Ordinance. POLAR ICE agrees to recruit Pasadena residents and to give them preference, if all other factors are equal for any new positions which result from the performance of this Agreement and which are performed within the City. POLAR ICE must comply with City's First Source Employment Ordinance, Chapter 14.80 of the Pasadena Municipal Code.

2.7 Programming. POLAR ICE shall provide a variety of recreational and instructional programming at the facility, including but not limited to hockey, free skating, and



figure skating. The programming shall provide opportunities for first-time skaters through skilled competitors. The programming shall include the involvement of the KINGS to the greatest extent possible, as more particularly described in Section 2.11.

2.8 Public Benefit Programs. POLAR ICE shall establish public benefit programs, including but not limited to making the Facility available to Pasadena Unified School District and other local area schools, Pasadena City College and local non-profit organizations serving the Pasadena community, to maximize participation in rink programs by persons unable to afford such opportunities. POLAR ICE 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 POLAR ICE.

POLAR ICE at a minimum will provide the programs identified in Exhibit C, attached hereto and incorporated herein by this reference. POLAR ICE 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, POLAR ICE 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, POLAR ICE shall also submit a report detailing the extent of public benefit programs offered the prior year, including whatever information available to POLAR ICE that 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 with at least 60% membership who live or work in Pasadena or attend Pasadena Unified School District schools.

2.9 Marketing Plan. POLAR ICE shall implement a marketing plan for the Facility (the "Marketing Plan"), to maximize the use and financial success of the Facility, while taking into consideration certain goals of the City as set forth herein. On or before the Commencement Date (defined in Section 13.1), and annually thereafter, POLAR ICE shall submit to the City Manager its proposed Marketing Plan for the forthcoming year. The Marketing Plan shall include, for example, public relations efforts and advertising. Among other things, the Marketing Plan shall address the extent to which the KINGS, including players and coaches, will be involved in proposed marketing activities. Beginning with the second plan submittal, POLAR ICE shall also submit a report detailing the success of the Marketing Plan that was implemented during the prior year. Examples of the media and techniques that should be included in Marketing Plan are set forth in Exhibit D, attached hereto and incorporated herein by this reference. The City Manager shall review and approve or disapprove the draft Marketing Plan within fifteen (15) business days after receipt. Any notice of disapproval shall specify the actions POLAR ICE must take in order for the Marketing Plan to be acceptable. POLAR ICE shall revise any disapproved draft Marketing Plan and re-submit it to the City Manager for approval within fifteen (15) business days after receipt. of the notice of disapproval.

2.10 Community Outreach Program. POLAR ICE shall conduct various local recruitment and outreach efforts to promote the Facility to Pasadena residents throughout the local community (the "Community Outreach Program"). Such outreach efforts will provide information about priority for local residents and promote opportunities to participate in Facility

activities to limited income Pasadena households and other local residents who might not otherwise have access to the Facility. Sample outreach programs might include the distribution of printed information through Pasadena community organizations, neighborhood schools and associations, City community centers and libraries, resource directories, etc; the distribution of printed information via direct mail to appropriate Pasadena-based individuals and/or groups; and the distribution of information via email blasts to appropriate Pasadena-based individuals and/or groups. On or before the Commencement Date (defined in Section 13.1), and annually thereafter, POLAR ICE shall submit to the City Manager its proposed Community Outreach Program for the forthcoming year. Beginning with the second plan submittal, POLAR ICE shall also submit a report detailing the success of the Community Outreach Program that was implemented during the prior year.

The City Manager shall review and approve or disapprove the draft Community Outreach Program within fifteen (15) business days after receipt. Any notice of disapproval shall specify the actions POLAR ICE must take in order for the Community Outreach Program to be acceptable. POLAR ICE shall revise any disapproved draft Community Outreach Program and re-submit it to the City Manager for approval within fifteen (15) business days after receipt. of the notice of disapproval.

#### 2.11 Los Angeles Kings Hockey Club.

2.11.1. POLAR ICE acknowledges that a significant inducement to City in engaging POLAR ICE to manage the Facility is the involvement of the KINGS in the operation of the Facility. POLAR ICE has entered into a license agreement with the KINGS, a copy of which is attached hereto as Exhibit E (the "License Agreement"). Pursuant to the License Agreement, (a) POLAR ICE has the non-exclusive right "to use the name, emblem, insignias, colors and other indicia of Kings and all registered, recorded and other trademark, trade names, service marks and other proprietary rights pertaining thereto ("Kings Marks") for the sole purpose of advertising and promoting the Facility", (b) the KINGS are granted the exclusive right to sell Sponsorship Rights, as that term is defined in the License Agreement, and (c) the KINGS agree to provide certain services and promotional activities for the Facility. The expiration or termination of the License Agreement, or any modification of the License Agreement without the prior written approval of City, shall be an event of default under this Agreement, enabling City to terminate this Agreement pursuant to Section 15.19.1.

2.11.2. POLAR ICE shall cause the KINGS to provide the following activities:

- a. The KINGS will conduct a minimum of two (2) clinics per calendar year, which clinics shall involve active or alumni KINGS or other players as determined by the KINGS; two (2) clinics by KINGS coaching staff per calendar year; and a three (3) day summer hockey camp organized by the KINGS. The exact dates and times of clinics and camps to be mutually agreed upon by the Parties. KINGS shall be permitted to charge a reasonable fee for clinic and camps participants in order to offset costs associated with such camps and clinics.

- b. The KINGS will provide to the Facility at least one promotional announcement during a home game at the STAPLES Center, exposure on KINGS website (as agreed by the parties) including a link to Facility website.

2.11.3. POLAR ICE shall cause the KINGS to agree NOT to allow any other ice rink within a twelve-mile radius of the Facility to use the Kings Marks or otherwise be designated as being affiliated with the KINGS.

2.11.4. The failure of the KINGS to annually conduct the activities described in Section 2.11.2, or authorization by the KINGS of the use of the Kings Marks by any other ice rink within a twelve-mile radius of the Facility, shall be an event of default under this Agreement, enabling City to terminate this Agreement pursuant to Section 15.19.1.

### 3.0 POLAR ICE STANDARDS OF PERFORMANCE

3.1 Operating Standard. POLAR ICE shall operate the Facility, and shall cause POLAR ICE's subcontractors, concessionaires and vendors at the Facility to operate, at a standard of performance and operation that is comparable to other first class public Ice Rink facilities. The performance standards applicable to POLAR ICE's operation of the Facility are set forth in Exhibit F, attached hereto and incorporated herein by this reference (hereinafter, "Applicable Standard"). The Applicable Standard shall apply to, without limitation, 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. As part of the operating and capital expenses included in POLAR ICE's approved budget, POLAR ICE shall maintain the Facility, and any improvements thereto, at equal to or exceeding the Applicable Standard. POLAR ICE 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. POLAR ICE 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. POLAR ICE shall maintain the fixtures and equipment at the Facility at not less than the maintenance standards and requirements set forth in applicable manuals and specifications provided by equipment manufacturers. POLAR ICE 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). POLAR ICE shall be responsible for providing all furniture, fixtures, & equipment (FF&E) necessary for operation of the Facility,

including but not limited to that set forth in Exhibit G. POLAR ICE acknowledges that it has reviewed the specifications for the Facility, and is aware of the FF&E that will be needed to make the Facility fully operational.

3.4 Revenue Collection Standards. POLAR ICE shall oversee the daily collection of revenues (“Revenue”) at the Facility and deposit that Revenue into a City account designated by the City’s Director of Finance (“Revenue Account”). POLAR ICE 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. POLAR ICE shall establish a separate bank account for its operations under this Agreement with the City’s primary banking relationship institution. 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, POLAR ICE shall submit a request to the City, in a format and with supporting documentation acceptable to the City’s Director of Finance in his or her reasonable business judgment, for the payment of operating and capital expenses of the Facility that are included in POLAR ICE’s approved budget (“Budgeted Expenses”), and the City shall promptly pay, within fifteen (15) calendar days from receipt of same, POLAR ICE the full amount of all such Budgeted Expenses that were made according to a budget approved by the City or otherwise approved by the City, or made for an emergency as provided in Section 3.5.2. POLAR ICE shall timely pay all sums when and as due to all contractors and vendors associated with POLAR ICE’s management of the Facility.

3.5.2. POLAR ICE shall not incur 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 intentional act or gross neglect of POLAR ICE. Requests for payment due and owing from POLAR ICE to the City will be paid within fifteen (15) calendar days from receipt of the request. POLAR ICE 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.

## 4.0 MANAGEMENT FEE

4.1 Payment of Management Fee to POLAR ICE. The City will pay to POLAR ICE a management fee (the “Management Fee”) consisting of the Base Management Fee calculated pursuant to Section 4.2, as adjusted in accordance with Section 4.3. Costs covered by the Management Fee include, but are not limited to, costs incurred by POLAR ICE in the course of this Agreement such as allocated overhead costs of POLAR ICE staff and office, including any salaries and benefits that are not included in the Approved Budget, POLAR ICE staff training, and directors and officers insurance, and a return on the amount POLAR ICE expects to expend on FF&E pursuant to Section 3.3 (collectively, the “Included Costs”). The Management Fee shall be the sole compensation to POLAR ICE for activities and services relating to the Facility,

and the sole vehicle for compensating POLAR ICE for the Included Costs. The Management Fee, however, shall not cover any of the Budgeted Expenses, which are to be paid by the City to POLAR ICE pursuant to Section 3.5.1 above.

4.2 Definitions. For purposes of this Section 4.0, the following definitions apply:

4.2.1. "Base Management Fee" means the sum of \$150,000, as adjusted annually pursuant to Section 4.5.

4.2.2. "Actual Total Revenues" means the Total Revenues actually received for the fiscal year.

4.2.3. "Approved Budget" means the annual budget for the Facility approved by the City Council pursuant to Section 7.0.

4.2.4. "Fiscal Year" means July 1 to June 30, inclusive.

4.2.5. "Management Fee" means the Base Management Fee as adjusted pursuant to Section 4.5.

4.2.6. "Maximum Management Fee" means the sum of \$180,000, as adjusted annually pursuant to Section 4.5.

4.2.7. "Minimum Management Fee" means the sum of \$110,000, as adjusted annually pursuant to Section 4.5.

4.2.8. "Net Off-Ice Revenues" means the revenues from the items shown in the Approved Budget under the category "Net Off-Ice Revenues", which revenues do not include any Pass-Through Costs.

4.2.9. "Net Revenues" means the Total Revenues less the sum of all expenses included in the Budget, but prior to payment of debt service costs.

4.2.10. "On Ice Revenues" means the revenues from the items shown in the Approved Budget under the category "On Ice Revenues".

4.2.11. "Pass-Through Payments" means fees collected by POLAR ICE, the full amount of which are in turn paid by POLAR ICE directly to a third party.

4.2.12. "Projected Total Revenues" means the Total Revenues for the fiscal year that are projected in the Approved Budget.

4.2.13. "Total Revenues" means On Ice Revenues plus Net Off-Ice Revenues. Total Revenues does not include Pass-Through Payments.

4.3 Base Management Fee. One-Twelfth (1/12th) of the annual Base Management Fee shall be paid on a monthly basis to POLAR ICE on the first of every month. In no event, however, shall the monthly payment to POLAR ICE exceed the amount of the Net Revenues for

the preceding month. In the event that the amount of the Net Revenues for the preceding month is not sufficient to pay the full amount of the monthly Base Management Fee, the unpaid amount shall be paid to POLAR ICE out of Net Revenues from subsequent months during that same fiscal year, to the extent that Net Revenues exist in an amount to pay both the monthly Base Management Fee and any unpaid portion of the Base Management Fee for prior months of the same fiscal year.

#### 4.4 Adjusted Management Fee.

4.4.1. The amount of the Management Fee shall be determined annually by City's Finance Director, on or before July 30 of each year, for the prior Fiscal Year. In the event of an increase in the Management Fee pursuant to Section 4.4.3, the extra payment to POLAR ICE for the previous fiscal year shall be paid on or before August 15<sup>th</sup>. In the event of a decrease in the Management Fee pursuant to Section 4.4.2, the amount of the decrease shall be withheld from the monthly payment of the Base Management Fee for the month of August.

4.4.2. The amount of the Management Fee for each Fiscal Year shall be reduced to an amount less than the amount of the Base Management Fee if the Actual Total Revenues for the fiscal year are less than the Projected Total Revenues. The decrease shall be an amount equal to the percentage by which the Actual Total Revenues for the fiscal year are less than the Projected Total Revenues. In no case, however, shall the total Management Fee paid to POLAR ICE for any fiscal year be less than the Minimum Management Fee.

4.4.3. The amount of the Management Fee for each fiscal year shall be increased to an amount greater than the amount of the Base Management Fee if both (a) the Actual Total Revenues for the fiscal year exceed the Projected Total Revenues and (b) no material default has occurred, regardless of whether or not the default is cured within the time set forth herein. The increase shall be an amount equal to the percentage by which the Actual Total Revenues for the fiscal year exceeded the Projected Total Revenues. In no case, however, shall the total Management Fee paid to POLAR ICE for any fiscal year exceed the Maximum Management Fee.

4.5 Annual CPI Adjustment. The amounts of the Base Management Fee, Minimum Management Fee, and Maximum Management Fee shall be increased annually by the percentage change (but in no event less than 3% or more than 5%) 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. The adjustment shall occur concurrently with approval of the annual budget pursuant to Section 7.0, and shall become effective on July 1 of each year. The first such adjustment shall occur for the fiscal year commencing July 1<sup>st</sup> after opening of the Facility.

## 5.0 MISCELLANEOUS PERFORMANCE OBLIGATIONS

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 Non-Discrimination in Access. POLAR ICE 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.

5.6 Accessibility - General Standards. POLAR ICE 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 the Facility in accord with federal and state law. POLAR ICE 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. POLAR ICE is not responsible for capital improvements required to comply with Americans with Disabilities Act ("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. POLAR ICE 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 POLAR ICE 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. Any payments to third parties arising from ADA claims are NOT to be included as an expense in the approved budget.

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.

5.7 Oversight. A joint financial and operations monitoring committee comprised of two representatives from the City, appointed by the City Manager, and two representatives from

POLAR ICE 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 POLAR ICE 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.

5.8 Delegation to City Manager. The City Manager, or his or her designee, is hereby authorized to take any and all steps necessary to implement the provisions of this Agreement. The City Manager may grant, in writing, any approval requested by POLAR ICE 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.

## 6.0 FEES AND CHARGES

POLAR ICE 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 POLAR ICE, to reject any or all rates recommended by POLAR ICE and to revise the rates in any respect including, in consultation with POLAR ICE, 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. POLAR ICE 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 H (see 3.5.1) and incorporated herein by this reference. POLAR ICE 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. POLAR ICE may recommend a special rate for a limited duration at the Facility tied to a specific promotional event and the City Manager or his 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.

## 7.0 BUDGET

The annual operating and capital budget for the Facility will be prepared by POLAR ICE and will be subject to City review and City Council approval, consistent with the City's operating and capital budget processes and timetable. The initial budget is attached hereto as Exhibit I, and incorporated herein by this reference. POLAR ICE shall submit the proposed annual budget to City's Director of Finance on or before March 1st of each year, commencing on the first March 1<sup>st</sup> after the Commencement Date (defined in Section 13.1). City staff shall review the draft budget and propose changes, if any, to POLAR ICE, within forty-five (45) days of initial receipt of the budget. POLAR ICE shall either revise the budget as requested by City's Director of Finance or provide a written explanation in support of its refusal to make any change requested by the Director of Finance. City's Director of Finance 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.



## 8.0 REVENUE AND EXPENSE MILESTONES

The City and POLAR ICE have agreed to net income and cash flow targets and milestones to be achieved by POLAR ICE while the Facility operations are under its management, all of which are set forth in the thirty year pro-forma attached hereto as Exhibit J and incorporated herein by this reference.

## 9.0 NAMING RIGHTS; ADVERTISING AND SPONSORSHIP SALES

The parties agree that all Sponsorship Rights (as defined below) shall be controlled by and sold by POLAR ICE and shall be included in the calculation of Actual Total Revenues. "Sponsorship Rights" shall mean the rights to authorize any third party, in return for monetary consideration, to display, advertise or publicize, or to have displayed, advertised or publicized, its name, logo or products on, in association with or in connection with the Facility or any game involving the Facility, any broadcast, telecast or other transmission of a game at the Facility. The parties anticipate that such naming rights, advertising and sponsorships will be sold with the aid of third parties. Such third parties shall be entitled to commission and cost of sales payments in connection with such sales, as negotiated by POLAR ICE from time to time, provided that such commissions and payments do not exceed prevailing market rates. Under no circumstances shall POLAR ICE accept in-kind consideration in exchange for Sponsorship Rights, without the prior written approval of the City Manager, which the approval the City Manager may grant or deny in his or her sole discretion.

City agrees to pay to the KINGS a sponsorship commission (the "Commission" or "Commissions") in the amount of: (i) twenty percent (20%) of Gross Sponsorship Revenue (as defined below) for the first \$200,000 of Gross Sponsorship Revenue, plus (ii) fifty percent (50%) of Gross Sponsorship Revenue in excess of \$200,000. The "\$200,000" amount in the preceding sentence shall increase three percent (3%) each year, commencing July 1, 2010. KINGS shall be solely responsible for collecting Gross Sponsorship Revenue and remitting to POLAR ICE, or the City, as designated by City, the remaining amount of the Gross Sponsorship Revenue less the Commission, which Commission KINGS shall be entitled to retain from Gross Sponsorship Revenue collected. "Gross Sponsorship Revenue" shall mean all gross revenue generated and retained from the sale of Sponsorship Rights.

No such naming rights, advertising or sponsorships shall in any way show, feature, or be affiliated with a sexually orientated business, as that term is defined in the Pasadena Municipal Code, tobacco or alcohol products, gambling, or any activity or sponsor that City believes reflects unfavorably on City or its residents.

Notwithstanding what is otherwise provided in this Section 9.0, any potential arrangement for the provision of naming rights shall be reviewed by the City simply to assure that such arrangement will not cause a violation of the Bond Covenants, as set forth in Section 2.2 of this Agreement.

## 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, POLAR ICE. Should the City declare a state of emergency, POLAR ICE will relinquish management responsibility of the Facility to the City, at City request, for the duration of the emergency. POLAR ICE will cooperate with the City with regard to any contractors and users during the emergency.

## 11.0 INSURANCE AND INDEMNITY

POLAR ICE, on its own behalf and for CITY as CITY's property manager with expertise in Ice Rink insurance needs and markets, shall procure and maintain for the duration of this Agreement, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the operation and use of the Facility. Premiums, deductibles and/or self-insured retentions (whether cost, settlement, expense, or payment of verdict) shall be charged as an expense against income or reserves arising from operation of the Facility.

To the maximum extent permitted by law, POLAR ICE 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 the management services provided hereunder.

POLAR ICE will cause 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 POLAR ICE, or which is obtained from any contractor hired by POLAR ICE or on behalf of POLAR ICE. POLAR ICE shall adopt practices and procedures that conform with City's policy on reporting/investigating accidents, as stated in the City of Pasadena Personnel Practice and Procedure Manual. POLAR ICE will use forms of contract, license and permit reviewed by the Office of the City Attorney and POLAR ICE agrees to comply with the City's contracting policies and procedures, including but not limited to Section 15.12 herein regarding fair employment practices, and compliance with all insurance and bonding requirements. POLAR ICE'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. Polar Ice will provide user waiver signage as prescribed by the liability insurance company for non-contracted and or non-licensed users, such as, but not limited to, public skating users, pick up hockey and freestyle skating uses.

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

City shall purchase on the building and contents a policy of All Risk property coverage and a policy of Boiler & Machinery coverage to include underground refrigeration piping, boiler room equipment and machinery. City may purchase Difference in Condition and/or business

interruption (rent or debt service) coverage to comply with existing bond agreements. The cost of premiums and deductibles on such insurance is a charge against revenue of the Ice Rink operations based upon a comparative value of the insured facility times the rate charged to City, as calculated and allocated by the City's Finance Department, and shall be paid upon demand, or handled by a bookkeeping entry, however the accounts are arranged.

POLAR ICE shall cause its employees and require its subcontractors to be covered by workers' compensation insurance meeting State of California Labor Code requirements.

POLAR ICE shall purchase or cause to be purchased, at City's cost, crime, employee theft and fraud insurance for any public money handled by itself or its contractor.

The City shall be reimbursed for Risk Management services (including insurance premiums, payment of self-insured claims, claims/legal costs/expenses, and operations costs) through City's annual accounting procedures establishing a "burden rate" for such services negotiated with the City's Finance Department. Unless otherwise agreed, City shall be responsible for all self-insured retention and deductible amounts for all policies purchased by the City.

POLAR ICE waives subrogation against City for any insured loss or self-insured loss in POLAR ICE's Worker's Compensation policy. POLAR ICE may purchase supplemental insurance coverage to that required or provided by the City using its own operating 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.

## 12.0 CONSTRUCTION AND IMPROVEMENTS

12.1 POLAR ICE 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 his or her sole and absolute discretion.

12.2 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.

## 13.0 TERM OF AGREEMENT

13.1 Initial Term. This Agreement shall commence on \_\_\_\_\_, \_\_\_\_ (the "Commencement Date") and shall continue for a period of ten years, ending on \_\_\_\_\_ (the "Initial Term").

**[FILL IN DATES AT TIME OF EXECUTION. FIRST DATE WILL BE EITHER AT COMPLETION OF CONSTRUCTION AND CERTIFICATE OF OCCUPANCY, OR A MONTH OR SO PRIOR TO THAT DATE, IN ORDER TO ALLOW POLAR ICE TIME TO FIXTURIZE AND GET THE FACILITY READY FOR OPENING. EXPIRATION WILL BE 10 YEARS AFTER COMMENCEMENT.]**

13.2 Extension. At the end of the Initial Term, the parties may mutually agree to extend the term of this Agreement, or renegotiate this Agreement, to the extent permitted by applicable state and federal laws, including but not limited to the Internal Revenue Code, Treasury regulations promulgated thereunder and rulings with respect thereto.

#### 14.0 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 14.0, 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  
100 N. Garfield Avenue, Suite \_\_\_\_  
Pasadena, California 91101  
Attention: Director of Finance  
626-744-4350  
626-744-7093 (facsimile)

With a Copy to: City Attorney  
100 N. Garfield Avenue  
Suite N210  
Pasadena, CA 91101  
626-744-4141  
626-744-4190 (facsimile)

To POLAR ICE:

With a Copy to:

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.

## 15.0 GENERAL TERMS AND CONDITIONS

15.1 Independent Contractor. It is understood that in the performance of the services herein provided for, POLAR ICE 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, POLAR ICE has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by POLAR ICE in the performance of the services hereunder. POLAR ICE 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.

POLAR ICE acknowledges that POLAR ICE and any subcontractors, agents or employees employed by POLAR ICE 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.

15.2 Parties Not Agents. Except as the City may authorize in writing, POLAR ICE 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.

15.3 Ownership of Work. All reports, drawings, plans, specifications, computer tapes, floppy disks and printouts, studies, memoranda, computation sheets and other documents prepared by POLAR ICE exclusively in furtherance of its management of the Facility shall be the sole property of City and shall be delivered to City whenever requested. POLAR ICE shall keep such documents and materials on file and available for audit by the City for at least three (3) years after the first to occur of end of the respective fiscal year or expiration of the term or earlier termination of this Agreement. POLAR ICE 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.

15.4 Correction of Work. POLAR ICE 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 POLAR ICE shall not relieve POLAR ICE from the obligation to correct subsequently discovered defects, inaccuracy or incompleteness.

15.5 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.

15.6 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.

15.7 No Assignment. POLAR ICE 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 POLAR ICE of its obligations under this Agreement. No assignment shall release the original parties or otherwise constitute a novation.

15.8 Compliance With Laws. POLAR ICE 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.

15.9 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.

#### 15.10 Interpretation

15.10.1. 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.

15.10.2. Written Amendment. This Agreement may only be changed by written amendment signed by an authorized representative of POLAR ICE 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.

15.10.3. 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.

15.10.4. 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.

15.10.5. 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.

15.10.6. Computation of Time. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed by excluding the first day and including the last day. If the date for performance falls on a Saturday, Sunday, or legal holiday, the date for performance shall be extended to the next business day.

15.10.7. Calendar Days. All references in this Agreement to a number of days in which either party shall have to consent, approve or perform shall mean calendar days unless specifically stated to be business days. For purposes of this Agreement, “business days” shall mean every day except Saturday, Sunday, or a legal holiday.

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

15.12 Equal Opportunity Employment Practices Provisions

15.12.1. POLAR ICE certifies and represents that, during the performance of this Agreement, POLAR ICE 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, religious creed, color, national origin, ancestry, handicap, sex or age. POLAR ICE further certifies that it will not maintain any segregated facilities.

15.12.2. POLAR ICE shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of POLAR ICE state that POLAR ICE 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, handicap, sex or age.

15.12.3. POLAR ICE 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 membership in a protected class.

15.12.4. If requested to do so by the City through its awarding authority, POLAR ICE 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.

15.12.5. POLAR ICE shall actively recruit and encourage businesses owned and controlled by persons who are members of protected classes to bid subcontracts.

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

15.12.7. POLAR ICE shall include provisions set forth above in each of its subcontracts under this Agreement.

15.13 Financial Interest. No officer, director or employee of POLAR ICE shall have any financial interest in any contract made by POLAR ICE that is prohibited by law. No officer, director or employee of POLAR ICE shall have any financial interest in any contract made by POLAR ICE 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 his or her sole and absolute discretion.

15.14 No Estate. This Agreement provides only the rights of use and operational management set forth in this Agreement and does not give POLAR ICE 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 City and POLAR ICE. POLAR ICE 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 POLAR ICE's occupancy, use or expenditures under this Agreement.

15.15 Possessory Interest Tax. To the extent that the interest created by this Agreement may create a possessory interest subject to property taxation, POLAR ICE 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.

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

15.17 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 POLAR ICE'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 POLAR ICE is properly entitled under this Agreement or for other purposes relating to this Agreement.

POLAR ICE shall maintain and preserve all such records for a period of at least 3 years after the first to occur of end of the respective fiscal year or expiration of the term or earlier termination of this Agreement.

POLAR ICE shall maintain all such records in the City of Pasadena. If not, POLAR ICE 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 shall have the right to audit the expenses of POLAR ICE 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 POLAR ICE's operation of the Facility. In addition, POLAR ICE shall have the right to audit the City's books as to revenues and expenses relating solely to the Facility, at the sole expense of POLAR ICE.

15.18 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 pursuant to California Code of Civil Procedure Sections 1283.05 and 1283.1.

#### 15.19 Termination for Cause.

15.19.1. Subject to Force Majeure (Section 16.0), in the event either party materially defaults in its obligations hereunder, the other party may declare a default and terminate this Agreement by written notice to the defaulting party. The notice shall specify the basis for the default. This Agreement shall terminate unless such default is cured before the effective date of termination stated in such notice, which date shall be no sooner than thirty (30) days after the date of the notice. The parties agree that, among others, failure by POLAR ICE to provide public benefit programs, or otherwise to comply with Section 2.0, or to comply with the Applicable Standard set forth in Section 3.0 and Exhibit F, shall constitute a material default.

15.19.2. The parties agree that, subject to Force Majeure (Section 16.0), 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 successive years (if such operating deficits were not included in the annual budget approved by the City pursuant to Section 7.0), or in the event of repeated failure to achieve the income and cash flow targets and milestones set forth in Exhibit J.

15.19.3. 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 performed prior to the effective date of the notice of termination.

#### 16.0 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.

#### 17.0 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