City of Glendale
Council Special Meeting Agenda

July 2, 2013 – 7:00 p.m.

Welcome!
We are glad you have chosen to attend this City Council meeting. We welcome your interest and encourage you to attend again.

Form of Government
The City of Glendale has a Council-Manager form of government. Policy is set by the elected Council and administered by the Council-appointed City Manager. The City Council consists of a Mayor and six Councilmembers. The Mayor is elected every four years by voters city-wide. Councilmembers hold four-year terms with three seats decided every two years. Each of the six Councilmembers represent one of six electoral districts and are elected by the voters of their respective districts (see map on back).

Council Meeting and Workshop Schedule
Council meetings to take official action are held two times each month. These meetings are held on the second and fourth Tuesday of each month at 7:00 p.m. Council workshops are generally held two times each month. Workshops provide Council with an opportunity to hear a presentation by staff on topics that may come before Council for official action. These meetings are held on the first and third Tuesday of each month at 1:30 p.m. The City Council does not take official action during workshop sessions. All meetings are held in the Council Chambers, Glendale Municipal Office Complex, 5850 W. Glendale Avenue.

Executive Session Schedule
Council may convene in "Executive Session" to receive legal advice and discuss land acquisitions, personnel issues, and appointments to boards and commissions. Executive Sessions will be held in Room B3 of the Council Chambers. As provided by state statute, this session is closed to the public.

Regular City Council meetings are telecast live. Repeat broadcasts are telecast the second and fourth week of the month – Wednesday at 2:30 p.m., Thursday at 8:00 a.m., Friday at 8:00 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 1:30 p.m. on Glendale Channel 11.

Meeting Agendas
Agendas may be obtained after 4:00 p.m. on the Friday before a Council meeting, at the City Clerk's Office in the Municipal Complex. The agenda and supporting documents are posted to the city's Internet web site, ***www.glendaleaz.com***

Public Rules of Conduct
The presiding officer shall keep control of the meeting and require the speakers and audience to refrain from abusive or profane remarks, disruptive outbursts, applause, protests, or other conduct which disrupts or interferes with the orderly conduct of the business of the meeting. Personal attacks on Councilmembers, city staff, or members of the public are not allowed. It is inappropriate to utilize the public hearing or other agenda item for purposes of making political speeches, including threats of political action. Engaging in such conduct, and failing to cease such conduct upon request of the presiding officer will be grounds for ending a speaker's time at the podium or for removal of any disruptive person from the meeting room, at the direction of the presiding officer.

How to Participate
Council Meeting - The Glendale City Council values citizen comments and input. If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a blue Citizen Comments Card. Public hearings are also held on certain agenda items. If you wish to speak on a particular item listed on the agenda, please fill out a gold Public Hearing Speakers Card. Your name will be called when the Public Hearing on the item has been opened or Citizen Comments portion of the agenda is reached. **When speaking at the Podium,** please state your name and the city in which you reside. If you reside in the City of Glendale, please state the Council District you live in and present your comments in five minutes or less.

Workshop Meeting - There is no Citizen Comments portion on the workshop agenda.

Regular Workshop meetings are telecast live. Repeat broadcasts are telecast the first and third week of the month – Wednesday at 3:00 p.m., Thursday at 1:00 p.m., Friday at 8:30 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 2:00 p.m. on Glendale Channel 11.

If you have any questions about the agenda, please call the City Manager's Office at (623)930-2870. If you have a concern you would like to discuss with your District Councilmember, please call the City Council Office at (623)930-2249

For special accommodations or interpreter assistance, please contact the City Manager's Office at (623)930-2870 at least one business day prior to this meeting. TDD (623)930-2197.

Para acomodacion especial o traductor de español, por favor llame a la oficina del adminsitrador del ayuntamiento de Glendale, al (623) 930-2870 un día hábil antes de la fecha de la junta.

Councilmembers

Cactus District – Ian Hugh
Cholla District – Manuel D. Martinez
Ocotillo District – Norma S. Alvarez
Sahuaro District – Gary D. Sherwood
Yucca District – Samuel U. Chavira

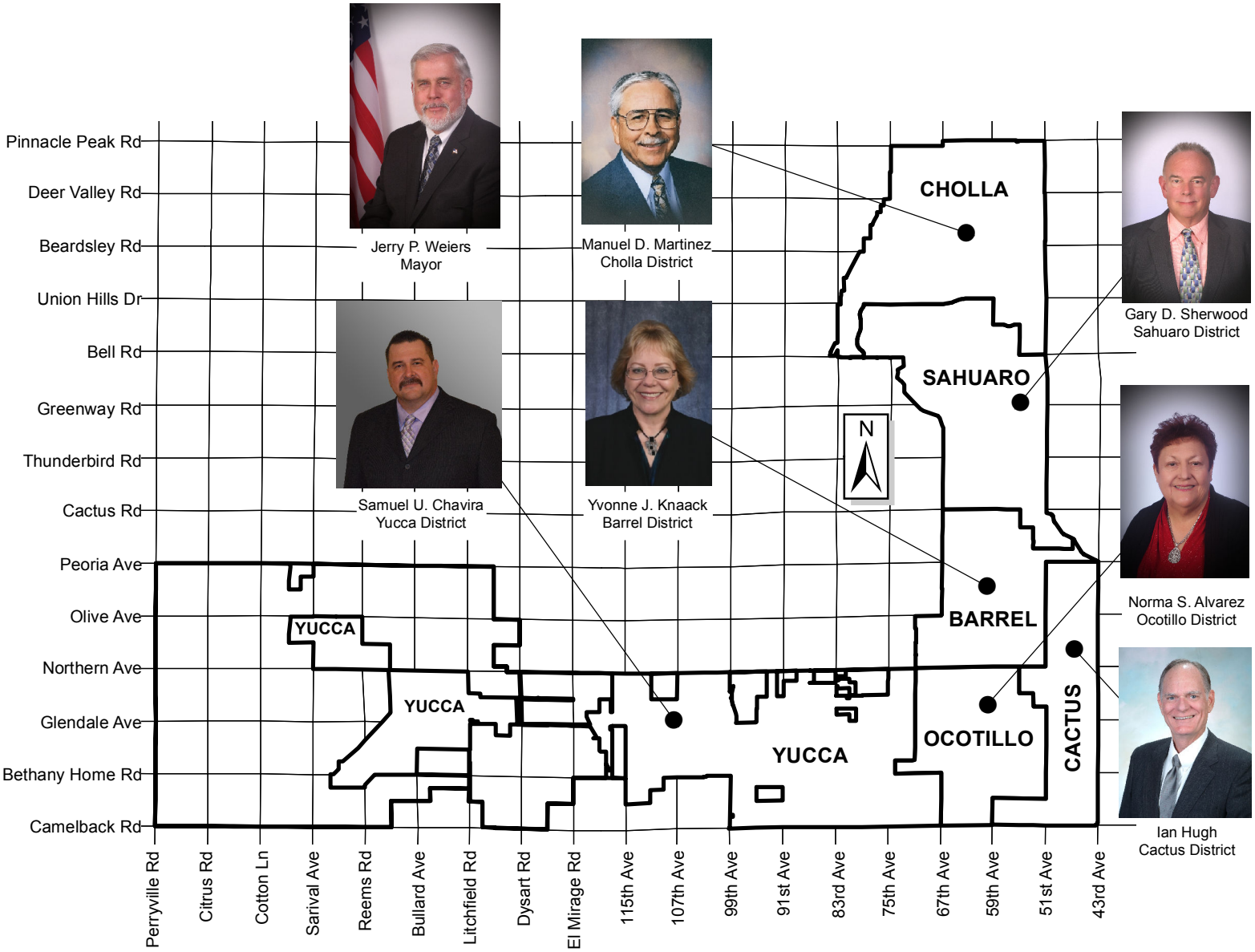
GLENDALE

MAYOR JERRY P. WEIERS
Vice Mayor Yvonne J. Knaack – Barrel District

Appointed City Staff

Richard Bowers – Acting City Manager
Nicholas DiPiazza – Acting City Attorney
Pamela Hanna – City Clerk
Elizabeth Finn – City Judge

Council District Boundaries



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GLENDALE

GLENDALE CITY COUNCIL SPECIAL MEETING
Council Chambers
5850 West Glendale Avenue
July 2, 2013
7:00 p.m.

One or more members of the City Council may be unable to attend the Council Meeting in person and may participate telephonically, pursuant to A.R.S. § 38-431(4).

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

ORDINANCES

1. SERVICE AGREEMENT WITH SW GENERAL, INC. FOR EMERGENCY MEDICAL TRANSPORTATION

PRESENTED BY: Mark Burdick, Fire Chief
ORDINANCE: 2854

2. PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT WITH ICEARIZONA MANAGER CO., LLC AND ICEARIZONA HOCKEY CO., LLC

PRESENTED BY: Richard A. Bowers, Acting City Manager
ORDINANCE: 2855

RESOLUTIONS

3. PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT AND NONCOMPETITION AND NON-RELOCATION AGREEMENT WITH ICEARIZONA MANAGER CO., LLC AND ICEARIZONA HOCKEY CO., LLC

PRESENTED BY: Richard A. Bowers, Acting City Manager
RESOLUTION: 4703

4. LAMAR OUTDOOR LICENSE AGREEMENT FOR 7691 NORTH 99TH AVENUE

PRESENTED BY: Jon M. Froke, AICP, Planning Director
RESOLUTION: 4704

5. LAMAR OUTDOOR LICENSE AGREEMENT FOR 9802 WEST BETHANY HOME ROAD
PRESENTED BY: Jon M. Froke, AICP, Planning Director
RESOLUTION: 4705

NEW BUSINESS

6. COUNCIL APPOINTMENT OF CITY MANAGER
PRESENTED BY: Mayor and Council

CITIZEN COMMENTS

If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a Citizen Comments Card located in the back of the Council Chambers and give it to the City Clerk before the meeting starts. The City Council can only act on matters that are on the printed agenda, but may refer the matter to the City Manager for follow up. Once your name is called by the Mayor, proceed to the podium, state your name and address for the record and limit your comments to a period of five minutes or less.

COUNCIL COMMENTS AND SUGGESTIONS

ADJOURNMENT

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

(i) discussion or consideration of personnel matters (A.R.S. § 38-431.03(A)(1));
(ii) discussion or consideration of records exempt by law from public inspection (A.R.S. § 38-431.03(A)(2));
(iii) discussion or consultation for legal advice with the city's attorneys (A.R.S. § 38-431.03(A)(3));
(iv) discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. § 38-431.03(A)(4));
(v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. § 38-431.03(A)(5)); or
(vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.03(A)(7)).

Items Respectfully Submitted,

Horatio Skeete for

Richard A. Bowers
Acting City Manager

CITY COUNCIL REPORT

Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**
Title:	**SERVICE AGREEMENT WITH SW GENERAL, INC. FOR EMERGENCY MEDICAL TRANSPORTATION**
Staff Contact:	**Mark Burdick, Fire Chief**

Purpose and Recommended Action

This is a request for Council to waive reading beyond the title and adopt an ordinance authorizing the City Manager to enter into a service agreement with SW General, Inc., dba Southwest Ambulance (Southwest Ambulance), for the purpose of emergency medical transportation.

Background Summary

Southwest Ambulance has been Glendale's ambulance service provider for over 20 years. This agreement will enhance the level of service provided and generate additional revenue for the Glendale Fire Department (Fire Department) to provide emergency medical services in the city.

This agreement will provide four ambulances that will respond from Glendale fire stations, co-staffed with one Fire Department employee and one Southwest Ambulance employee. The Fire Department employees will be paid overtime to staff the units and this cost is covered by the agreement, including an escalator for any future increases.

Southwest Ambulance will pay rent for use of four stations that the co-staffed units will be deployed from. The Fire Department currently owns three ambulances that will be leased by Southwest Ambulance for $108,000 annually and the funding will be used for operations and maintenance expense of the vehicles.

Previous Related Council Action

On July 27, 2004, Council approved the agreement with Southwest Ambulance for emergency ambulance transportation for a three year term, and was extended for two additional terms of three years.

Community Benefit

The addition of these units will provide decreased response times for ambulance transport while also providing increased reliability of fire engines and ladder trucks for emergency medical service treatment.

The electronic patient care reporting that will be initiated and maintained by Southwest Ambulance will enable the Fire Department to document all responses on a computer and transfer the information to the hospital prior to arrival of the patient. This reporting will also enable the Fire Department to enhance public health care through the analysis of disease and injury and provide increased billing capability for Southwest Ambulance.

Budget and Financial Impacts

There are no negative fiscal impacts of this agreement. The first year funding that will be captured from the agreement will cover expenses and revenue created by the previous agreement. The funding categories include:

Overtime reimbursement	$2,062,000
Fire station rent	$1,322,000
Fire ambulance rent	$108,000

Attachments

Staff Report

Ordinance

Agreement

STAFF REPORT

To:	**Richard A. Bowers, Acting City Manager**
From:	**Mark Burdick, Fire Chief**
Item Title:	**SERVICE AGREEMENT WITH SW GENERAL, INC. FOR EMERGENCY MEDICAL TRANSPORTATION**
Requested Council Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**

PURPOSE

This report contains information on a proposed agreement with SW General, Inc., dba Southwest Ambulance (Southwest Ambulance), for emergency medical transportation. The purpose of this report is to request the City Manager forward this item to Council for their consideration and approval.

BACKGROUND

The City of Glendale is able to provide ambulance transportation service through a service agreement with a private company. Southwest Ambulance has been Glendale's ambulance service provider for over 20 years. This agreement will enhance the level of service provided and generate additional revenue for the Glendale Fire Department (Fire Department) to provide emergency medical services in the city. The term of this agreement is for three years, with the option to extend an additional three years.

ANALYSIS

This agreement will provide four ambulances that will respond from Glendale fire stations. Each ambulance will be co-staffed with one Fire Department employee and one Southwest Ambulance employee. Three of the co-staffed units will include an emergency medical technician from Southwest Ambulance and a paramedic from the Fire Department. The fourth unit will include an emergency medical technician from the Fire Department and a paramedic from Southwest Ambulance. Addition of these units will provide decreased response times for ambulance transport while also providing increased reliability of fire engines and ladder trucks for emergency medical service treatment. The Fire Department employees will be paid overtime to staff the units and this cost is covered by the agreement, including an escalator for any future increases.

Southwest Ambulance will pay rent for use of four stations that the co-staffed units will be deployed from. The fire station rent will replace funding negotiated in the previous agreement that will not be approved by the Arizona Department of Health Services. The Fire Department currently owns three ambulances that will be leased by Southwest Ambulance for $108,000

annually and the funding will be used for operations and maintenance expense of the vehicles. Electronic patient care reporting is also identified in the agreement and Southwest Ambulance will cover the costs for initiation and maintenance of the system. The electronic patient care reporting will enable the Fire Department to document all responses on a computer and transfer the information to the hospital prior to arrival of the patient. This reporting will also enable the Fire Department to enhance public health care through the analysis of disease and injury and provide increased billing capability for Southwest Ambulance.

FISCAL IMPACTS

There are no negative fiscal impacts of this agreement. The first year funding that will be captured from the agreement will cover expenses and revenue created by the previous agreement. The funding categories include:

Overtime reimbursement	$2,062,000
Fire station rent	$1,322,000
Fire ambulance rent	$108,000

ORDINANCE NO. 2854 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AN EMERGENCY MEDICAL TRANSPORTATION SERVICES AGREEMENT WITH SW GENERAL, INC., dba SOUTHWEST AMBULANCE, FOR EMERGENCY MEDICAL TRANSPORTATION SERVICES; THE LEASE OF SPACE AT FOUR FIRE DEPARTMENT STATIONS; THE LEASE OF THREE CITY-OWNED AMBULANCES; AND THE DEDICATION OF CITY-EMPLOYED PERSONNEL TO JOINTLY STAFF FOUR AMBULANCES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager is hereby authorized and directed to execute on behalf of the City of Glendale an Emergency Medical Transportation Services Agreement with SW General, Inc. dba Southwest Ambulance for Emergency Medical Transportation Services, lease of space at four Fire Department stations, lease of three City-owned ambulances, and the dedication of city-employed personnel for joint EMT and Paramedic staffing for four ambulances, all within the City of Glendale, Arizona. A copy of said Emergency Medical Transportation Services Agreement is on file in the office of the City Clerk.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2013.

_____
M A Y O R

ATTEST:

_____
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

REVIEWED BY:

_____
Acting City Manager

l__fire_swa

C-_____

EMERGENCY MEDICAL TRANSPORTATION SERVICES AGREEMENT BETWEEN THE CITY OF GLENDALE AND SW GENERAL, INC.

This Emergency Medical Transportation Services Agreement between the City of Glendale and SW General, Inc. ("Agreement") is made and entered into this _____ day of _____, 2013 by and between the CITY OF GLENDALE, an Arizona municipal corporation ("City") and SW GENERAL, INC., dba SOUTHWEST AMBULANCE, an Arizona corporation ("Contractor").

RECITALS

A. The City desires to provide for the health, safety and general welfare of its citizens, residents and visitors with respect to emergency medical transportation services;

B. The Contractor is the holder of a Certificate of Necessity (CON) with the Arizona Department of Health Services, CON No. 86, and is in good standing with DHS;

C. Pursuant to a Request for Proposal, the Contractor submitted its Proposal for providing emergency medical transportation services to the City of Glendale;

D. Upon completion of its evaluation process, the City determined that SW General, Inc.'s Proposal most closely meets the assessment needs and desires of the City;

E. Contractor hereby certifies that, based on its thorough review of the terms of this Agreement, Contractor believes that it can provide ambulance services pursuant to the terms of this Agreement, without violation of any applicable law, including any applicable order, decision, statute or rule of Arizona Department of Health Services ("ADHS") under present economic conditions, and will comply with ADHS requests to document same through the submission of reports pursuant to A.A.C. R9-25-910 to the extent necessary to receive ADHS approval of this Agreement pursuant to A.R.S. §36-2234;

F. The City Council desires to award the contract for emergency medical transportation services within the City of Glendale to SW General, Inc.; and

G. The City and Contractor wish to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. DEFINITIONS.

1.1 "*Affiliate"* of a specified Person means a Person who (a) controls, is directly or indirectly Controlled by, or is under common Control with, the specified Person; (b) owns, directly or indirectly ten percent (10%) or more of the equity interest of the specified Person; or (c) is a general partner (if the specified Person is a partnership), managing member or manager (if the specified Person is a limited liability company), officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in clause (a) or (b); or (d) is a member of the Immediate Family of the specified Person or the Person described in clauses (a) through (c) above. A Person shall be deemed to Control another Person for the purposes of this definition if the first Person possesses, directly or indirectly the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

1.2 "*Ambulance"* shall have the meaning set forth in and meeting the requirements of A.R.S. § 36-2201 and shall meet the additional requirements set forth in this Agreement and, where indicated in the text, also meet the requirements set forth in *Appendices A and B* to this Agreement.

1.3 *"Ambulance Crew"* means any or all persons who staff the Ambulances providing Services under this Agreement, including the Emergency Medical Technician ("EMT") and Paramedic positions.

1.4 "*Ambulance Fleet"* means all Dedicated Ambulances, and any additional Ambulances (Substitute or Backup Ambulances) the Contractor provides in order to provide services required by this Agreement.

1.5 *"Advanced Life Support*" or "*ALS*" means those medical treatments, procedures (including assessment), and techniques, established by A.R.S. § 36-2201 et seq., which may be administered or performed by Paramedics.

1.6 "*Arizona Department of Health Services" or "ADHS"* means the department of the State of Arizona responsible for regulating health services**.**

1.7 **"***AVL"* means automatic vehicle locator.

1.8 *"Backup Ambulance"* means a Contractor's Ambulance equipped the same or substantially the same as a Dedicated Ambulance, which is housed within the Primary Service Area twenty-four hours a day, seven days a week and is available to be dedicated to service in place of a Dedicated Ambulance that becomes unavailable to use to provide Services under this Agreement.

1.9 "*Basic Life Support*" or "*BLS"* means those medical treatments, procedures (including assessment) and techniques, established pursuant to A.R.S. §36-2201 et seq., which may be administered or performed by EMTs.

1.10 *"Business Day"* means the day of the week, excluding Saturdays, Sundays or holidays observed by the State of Arizona.

1.11 "*CAD"* means computer assisted dispatch.

1.12 "*Captain"* means a member of the Fire Department serving in the position of Captain.

1.13 "*Certificate of Necessity" or "CON"* shall have the meaning set forth in A.R.S. § 36-2201.

1.14 "*City Procurement Officer"* shall mean the City's Purchasing and Materials Control Manager (and any successor appointed by the Financial Services Executive Director), located at 5850 West Glendale Avenue, Glendale, AZ 85301.

1.15 "*Code 3 Call"* means a call for which the use of red lights and sirens are requested by PFDRDC for Ambulance Response to the scene of an incident.

1.16 *"Code 2 Call"* means any of the following:

a. A call for which the use of red lights and sirens is not requested by PFDRDC for Ambulance Response to the scene of an incident.

b. A call in which the initial request by PFDRDC was for a Code 3 Call, but was downgraded by PFDRDC to a Code 2 Call prior to arrival of the Ambulance on the scene of an incident.

c. A call in which the initial request by PFDRDC was for a Code 2 Call, but was upgraded by PFDRDC to a Code 3 Call prior to arrival of the Ambulance on the scene of an incident.

1.17 "*Commencement Date"* is the date Contractor begins performance of Services, which shall be 30 days after execution of the Agreement by the City and Contractor.

1.18 "*Contract Administrator"* shall mean the EMS Deputy Chief and his/her designee.

1.19 "*Contractor's Station"* means the physical building or facility that is owned or otherwise under the control of the Contractor that provides parking and living quarters for Ambulances and Ambulance Crew that are required to be available twenty-four (24) hours a day, seven (7) days a week to provide Services under this Agreement.

1.20 "*Control"* shall mean the power directly or indirectly to direct the management or policies of an entity whether through the ownership of voting securities, other equity interests, by contract or otherwise. Without limiting the generality of the preceding, Control includes actual working or effective Control of an entity

however exercised; and an agreement among the holders of voting stock or rights of an entity which effectively assigns voting Control and/or decision making to any person or entity other than the entity in question.

1.21 **"***Control of Scene"* means the Fire Department current protocol for control of the scene (including incident scene command structure and patient transfer process) to which an Ambulance has been dispatched and is known as the current Volume II of the Phoenix Fire Department Regional Operations Manual.

1.22 "Core Personnel" means employees of the Contractor that have been jointly determined by the Fire Department and Contractor as being qualified to serve as Ambulance Crew under this Agreement.

1.23 *"Day"* means calendar day, without regard to whether it is a Saturday, Sunday or holiday.

1.24 "*Dedicated Ambulance"* means an ambulance equipped to provide Advanced Life Support, including at least the equipment set forth in Appendix A, and is required to be available twenty-four (24) hours a day, 7 days a week to provide Services within the City's Primary Service area.

1.25 "*EMS"* shall mean emergency medical services as described in A.R.S. § 36-2201.

1.26 "*EMS Deputy Chief"* shall mean the Deputy Chief of the Fire Department responsible for EMS.

1.27 "*EMS System"* shall mean the system, in which the City participates, describing certain emergency medical services and ambulance transportation services for the City and other participating cities, agencies, etc. in the Greater Metropolitan Phoenix Area or Areas.

1.28 "*EMT"* shall mean emergency medical technician.

1.29 *"Extended Patient Transfer Time" or "EPT"* shall mean an allotment of time that exceeds thirty (30) minutes between Ambulance arrival time at the hospital and transfer of patient care from the Ambulance Crew to the receiving hospital personnel.

1.30 "*Fire Department"* shall mean the City of Glendale Fire Department.

1.31 *"Fire Department Station"* means a physical building owned or under the control of the City that provides living quarters and other amenities for Fire Department employees and equipment.

1.32 "*Fire Chief"* shall mean the department head for the City Fire Department.

1.33 "*Firefighter"* shall mean a member of the Fire Department with the firefighter employment designation.

1.34 "*Firefighter Paramedic"* shall mean a Firefighter with the employment designation of Firefighter Paramedic.

1.35 *"Force Majeure"* means any of the following that prohibits, delays or materially interferes with the performance of an obligation under the Agreement: acts of the public enemy; acts of the federal or state governments or any agency or department thereof the precludes performance under this Agreement; fires; floods; epidemics; acts of God; volcanic eruptions; quarantine restrictions; strikes; freight embargoes; landslides; earthquakes; fires; and other similar causes that are not within the control of the party claiming the right to delay or postpone performance on account of such occurrence, but specifically excluding any financial condition, lack of funds, lack of financing, insolvency or bankruptcy of such party.

1.36 "*Immediate Family"* shall mean any spouse, son, daughter or parent of any individual (by blood or by marriage), or any trust, estate, partnership, joint venture, limited liability company, corporation, operation or any other legal entity or business or investment enterprise directly or indirectly controlled by such spouse, son, daughter or parent.

1.37 *"Inter-facility Transfers"* means non-911 Emergency Medical Services based ambulance transports between medical facilities.

1.38 *"Key Personnel"* means the key personnel of Contractor identified by job position and personal information in Contractor's Offer in response to the City of Glendale's Solicitation No. 11-05.

1.39 *"Leased Ambulance"* means an Ambulance owned by the City and made available to Contractor under the terms described in this Agreement.

1.40 "*Mobile Computer Terminal* (*MCT)"* shall mean the mobile computer located in Ambulances and other response vehicles that are part of the PFDRDC dispatch system.

1.41 "Notice" means a written memorandum, delivered either by hand delivery or certified mail, return receipt requested, to persons designated by the City and Contractor to receive Notices. Facsimile or electronic e-mail communications shall not be considered Notice.

1.42 "Paramedic" shall mean a person who has been trained in a paramedic program and who is certified pursuant to A.R.S. § 36-2205.

1.43 "*Peak Times"* shall mean times of anticipated increased caller volume in the Primary Service Area as established by the Fire Department.

1.44 "*Person"* means an individual, general or limited partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company, governmental authority or other entity.

1.45 "*Phoenix Fire Department Regional Dispatch Center (PFDRDC or the Dispatch Center)"* shall mean the Dispatch Center at the City of Phoenix Fire Department.

1.46 *"Primary Service Area"* shall mean the incorporated areas of the City of Glendale, automatic aid response areas and surrounding hospitals, emergency care facilities or other appropriate destinations as indicated for patient management as requested by the City, so long as it is within the area of the Contractor's CON.

1.47 "*Procurement Administrator"* shall mean the City Procurement Officer designated to administer the procurement aspects of the Agreement.

1.48 *"Response Time"* means the calculation of time beginning at the time PFDPDC dispatches the 911 call to Contractor and the City and ends when the Contractor physically arrives on the scene of the incident and reports via radio or via MCT to the PFDRDC that Contractor is on scene and ready to deliver Services.

1.49 *"Service(s)"* means 911 emergency medical transportation services, including BLS and ALS, provided within the Primary Service Area.

1.50 "*Services Default*" means an inability of the contractor to meet the requirements set forth in this Agreement in order to deliver emergency medical transportation Services.

1.51 "*Special Events*" shall mean any event that the Glendale Fire Department has been contracted with to provide Emergency Medical Services, including but not limited to events at the University of Phoenix Stadium, Jobing.com Arena, Camelback Ranch, and City of Glendale Signature events, and any other events subsequently identified by the city as a signature event. Glendale's signature events include:

a. Glendale Glitters Spectacular Weekend;
b. Glendale Glitter & Glow Block Party; and
c. The Chocolate Affair.

1.52 *"Specifications"* shall mean those requirements for Ambulance equipment and Ambulance materials and supplies as to quality (including brand names) and features as set forth in *Appendices A and B.*

1.53 **"***Substitute Ambulance"* means an Ambulance used in place of a Dedicated Ambulance that is temporarily unavailable due to such reasons as maintenance or repair.

2. SCOPE OF WORK. The Contractor shall furnish, within the Primary Service Area, any and all labor, materials, equipment, transportation, utilities, supplies, disposables and facilities required to perform all work, in accordance with the terms of this Agreement, described in the Scope of Work attached as Exhibit 1 to this Agreement and by reference made a part hereof, and any other Exhibits attached hereto and by reference made a part hereof, together with the requirements of ADHS under Contractor's Certificate of Necessity No. 86.

3. TERM OF AGREEMENT.

3.1 Initial Term. The term of this Agreement shall be for a period of three (3) years, beginning on the Commencement Date.

3.2 Extensions. The City may, at the City's option and with the concurrence of the Contractor, extend the term of this Agreement an additional three (3) years. The City Procurement Officer shall notify the Contractor of the City's intention to extend the contract period at least one hundred eighty (180) days prior to the expiration of the initial contract period. Any extension will be subject to review and approval by ADHS.

4. PRECONDITIONS TO COMMENCEMENT DATE. Prior to the Commencement Date and start of Service, the Contractor, at its own expense, shall have each of Contractor's employees who will be assigned to work on Dedicated Ambulances attend and successfully complete a forty (40) hour training course approved by the EMS Deputy Chief.

5. CERTIFICATE OF NECESSITY.

5.1 The Contractor is a holder of a Certificate of Necessity ("CON") No. 86, issued by the Arizona Department of Health Services (ADHS), a copy of which is set forth in Exhibit 2. The Contractor shall maintain exclusive control of its ambulance service, ambulances and ambulance staff. Nothing contained in this Agreement shall imply or be construed in any way as relinquishment of control or the ceding of the Contractor's ambulance service, ambulances, or ambulance staff, to any third party. In cooperation with the City, Contractor, under the authority of its CON, shall use its expertise to develop and implement operational policies, procedures, standards, and plans in order to operate its ambulance service, ambulances and ambulance staff, and maximize the EMS system resources specific to the City, to ensure the highest standard of care for the general public. The Contractor shall be solely responsible for ensuring that all operational procedures, standards and plans comply with its CON and all applicable State and federal laws.

5.2 As of the Commencement Date of this Agreement, operational procedures, standards and plans shall not cause ADHS approved fixed rates or charges to the general public to be adversely affected.

5.3 Contractor and City shall establish and maintain an EMS Working Group as more fully described in the Scope of Work, attached hereto as Exhibit 1.

6. NO SUBSIDY OR PAYMENT BY CITY. The City will provide no financial subsidy or payment of any kind. The ADHS sets rates that may be charged by ambulance companies having a CON. The division of responsibility within the EMS System, or as otherwise required and assigned by this Agreement, is intended to achieve the best combination of public/private expertise and Services for the public health and safety.

7. EMS SYSTEM. The City and the Fire Department participate with other cities and their fire departments in the greater metropolitan Phoenix area in the EMS System. Through their participation, the City and the Fire Department have agreed to the roles assigned to the City and the Fire Department within such EMS System and the City has thus adopted the EMS System as its system for the provision of Services. Contractor acknowledges that it is fully aware of the responsibilities of the City and the Fire Department within the EMS System. The City does not guarantee any minimum number of instances that will require Services or dispatches for Services under the EMS System for any period of time.

8. CONFLICT OF INTEREST. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

9. DRUG FREE WORKPLACE PROGRAM**.** Contractor is required to maintain a drug free workplace in compliance with federal law. To ensure that Contractor maintains a drug free workplace, Contractor is required to implement a program that provides for drug testing of all newly hired Ambulance Crew member employees of Dedicated Ambulances and direct support personnel for the Dedicated Ambulances.

10. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND RULES. All Services furnished by Contractor under the Agreement shall be rendered in full compliance with all applicable federal and state laws, regulations, rules, and other governances, including, but not limited to, the Immigration Reform and Control Act of 1986 (IRCA), OSHA Regulations, including Title 29, Section 1910.1200 "Hazard Communication", and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor warrants it understands and is fully familiar with all such laws, regulations, rules, and other governances, including those enumerated in the preceding sentence, that apply to Services to be provided by Contractor and agrees to comply therewith at all times. Contractor also agrees to comply with and perform the Agreement in accordance with the provisions of any applicable ordinance, regulation, rule, written guideline, protocol and written policy established by the City and any other local jurisdiction(s) having authority in the matters covered by the Agreement.

Each party shall comply with the Federal Health Care Programs' Anti-Kickback Statute (42 U.S.C. § 1320a-7b) and any applicable regulations promulgated thereunder. The parties further recognize that this Agreement shall be subject to amendments of the Anti-Kickback Statute or any of its applicable regulations. In the event any applicable provisions of the Anti-Kickback Statute or its regulations invalidate, or are otherwise

inconsistent with the terms of this Agreement, or would cause one or both the parties to be in violation of the law, the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of the Statute and its applicable regulations.

This Agreement has been negotiated at arm's length and in good faith by the parties. Nothing contained in this Agreement, including any compensation paid or payable, is intended or shall be construed: (i) to require, influence or otherwise induce or solicit either party regarding referrals of business or patients, or recommending the ordering of any items or services of any kind whatsoever to the other party or any of its affiliates, or to any other person, or otherwise generate business between the parties to be reimbursed in whole or in part by any Federal Health Care Program, or (ii) to interfere with a patient's right to choose his or her own health care provider.

11. PERMITS, LICENSES AND CERTIFICATES OF NECESSITY. Contractor is required to obtain and hold any and all federal, state and local permits, licenses and CON required to fully perform the Agreement. Contractor will make all necessary payments for such permits, licenses and CON. Contractor will assure that all such permits, licenses and CON are kept current during the Term, and any extension of the Term, of the Agreement. Contractor will be responsible for assuring that all of its personnel hold valid federal, state and local permits, licenses and certificates as required in order for Contractor to meet its responsibilities under the Agreement.

12. FIREARMS AND EXPLOSIVES. Within the Primary Service Area, except to the extent permitted for certified peace officers, no firearms (including concealed weapons) or explosives shall be carried or used while providing the Services contemplated by the Agreement. All persons conducting business on City property is prohibited from carrying a firearm or explosive of any type. Contractor is to comply with this requirement at all times. Contractor personnel carrying a firearm or explosive device in the Primary Service Area will be subject to police and legal action.

13. INTERPRETATION AND JURISDICTION.

    13.1 The Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

    13.2 The jurisdiction for any dispute resolution concerning this Agreement or the work performed hereunder will be the State of Arizona, Maricopa County, unless otherwise agreed to by the parties.

14. AUDITS AND INSPECTIONS.

    14.1 City representatives will be permitted at any time, and without notification, to observe Contractor's operations, including the operators of its offices, maintenance facilities, stations, Ambulances and any other facility, location or activity utilized and/or conducted in the performance of the Agreement.

Contractor's records related to this Agreement or the services provided under this Agreement (hard copy, as well as computer readable data), and any other material deemed necessary by the City to determine compliance with and/or to establish performance of the Agreement will be open to inspection and subject to audit and/or reproduction by the City's representatives to the extent necessary to adequately permit evaluation and verification of matters. All of Contractor's records concerning the Agreement must be maintained for a period of six (6) years after termination of the Agreement. The City's representatives shall be afforded access, at reasonable times and places, to all of Contractor's personnel throughout the term(s) of the Agreement. City representatives and/or medical direction representatives may ride as observers on any Contractor Ambulance at any time upon execution of any appropriate Business Associate Agreement. City and medical direction representatives shall conduct themselves professionally and shall not interfere with the duties of Contractor's employees, and shall at all times be respectful of Contractor's relationships. City medical direction representatives, financial and audit representatives shall have the right to audit relevant reports and data that Contractor is required to have, maintain and/or provide to any authority.

14.2 Contractor will require each Subcontractor(s), insure to permit City audit and inspection of their records, etc. in the same manner as the City may proceed with Contractor and Contractor's records. The actual cost of any City audit and inspection shall be reimbursed to the City by Contractor if substantial failures to perform or deficiencies are established. Contractor shall pay such reimbursement to the City within ten (10) business days of receipt of an invoice from the City.

15. RETURN OF CITY EQUIPMENT AND MATERIALS. Contractor agrees to return any City equipment and material in good working order, normal wear and tear excepted, at the termination of the Agreement or when and where required by the City. For any City equipment and material not so returned or for any equipment and material returned damaged or unusable, the City may repair or replace, at the City's option, the same at Contractor's expense.

16. RELATIONSHIP OF THE PARTIES. Nothing in the Agreement will be construed to create a relationship between the City and Contractor, including contractor's employees or agents, of employer and employee, principal and agent, partnership, joint venture, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Agreement. Nothing in the Agreement will create any rights or remedies in any third party, it being solely for the benefit of the City and Contractor.

17. END TERM PROVISIONS. Contractor shall have ninety (90) days after termination of the Agreement in which to provide requested financial statements and all other documentation necessary to facilitate the close out of the Agreement.

18. NOTICE OF LITIGATION, CLAIMS, AND DISPUTES. Prior to providing Services under this Agreement, Contractor shall notify the City of any current or potential litigation or claims, regardless of the jurisdiction, that concern the same subject matter as the scope of services under this Agreement, including but not limited to actions concerning any allegations of failure to perform, any Securities and Exchange Commission notifications, and any complaints or actions from the Arizona State Department of Health Services of which Contractor knows. During the term of the Agreement, Contractor will disclose in writing to the City no later than ten (10) business days after notification or knowledge of any current or future litigation or claims, regardless of the jurisdiction, that concern the same subject matter as the scope of services under this Agreement, including but not limited to actions concerning any allegations of failure to perform, any Securities and Exchange Commission notifications, and any complaints or actions from the Arizona State Department of Health Services Further, Contractor shall notify the City of such claims or actions concerning the same subject matter as the scope of services under this Agreement, involving Contractor's related organization(s), owners of Contractor (having a 10 percent or greater interest in Contractor), and Key Personnel.

19. CONTRACT MODIFICATION. Any amendments or modifications to the Agreement shall be in writing and will be effective only after the written approval of all parties to the Agreement, and review and approval by ADHS.

20. EQUAL EMPLOYMENT OPPORTUNITY MATTERS. Contractor is required to follow applicable affirmative action guidelines and applicable laws, regulations, rules, etc. in order to assure that employees and applicants applying for employment will not be discriminated against because of race, color, religion, sex, sexual orientation or national origin. Contractor shall comply with the Americans with Disabilities Act and similar state and local laws and will not discriminate against disabled persons in accordance with applicable laws, regulations and rules.

21. NOTICES. All notices, requests, demands, consents, approvals, and other communications which may be or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

21.1 If intended for the City, to:

City of Glendale Materials Management Office
Attn: Purchasing and Materials Control Manager
5850 West Glendale Avenue
Glendale, AZ 85301

with a copy to:

Fire Chief
City of Glendale
5800 West Glenn Drive, Suite 350
Glendale, AZ 85301

and

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

21.2 If intended for the Contractor, to:

Rural/Metro Corporation
Attn: General Counsel
9221 East Via de Ventura
Scottsdale, AZ 85258

With a copy to:

Southwest Ambulance
Attn: Division General Manager
708 West Baseline Road
Mesa, AZ 85210

or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

22. CONTRACT ADMINISTRATOR. The EMS Deputy Chief shall oversee performance of Services, including by not limited all matters included in the Scope of Work, attached hereto as Exhibit 1. The City Procurement Administrator shall oversee the general administration of the Agreement. Contractor may communicate appropriate matters concerning the Agreement with the City through these administrators.

23. STANDARDS FOR EQUIPMENT, MATERIALS AND SUPPLIES. Any specifications for equipment, materials and supplies set forth in the Agreement must be acceptable in accordance with City standards. Equipment, materials and supplies provided by Contractor shall meet or exceed Agreement requirements. The City may sample and test equipment, materials and supplies and the city shall have sole authority to reject supplies not meeting City needs and standards.

24. PRODUCT ENDORSEMENT/ADVERTISING. Contractor (and any supplier or Subcontractor, or anyone on Contractor's behalf) will not be permitted to use the name of the City for any endorsement without the expressed written permission of the City.

25. FORCE MAJEURE. Failure in performance by any party hereunder shall not be deemed an Event of Default, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided, when such failure or non-occurrence is due to Force Majeure. The extension of time for the performance by any party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be deemed to commence from the time of the commencement of the Force Majeure. Notwithstanding the foregoing, however, no Force Majeure shall excuse any party from timely paying any money as provided in this Agreement.

26. INTELLECTUAL PROPERTY, PATENTS, COPYRIGHT. Contractor assumes full responsibility for the defense of itself and the City with respect to any patents, copyrights, claims of unfair competition and intellectual property related to this Agreement, unless caused by the City. The City may be represented by and actively participate through its own attorneys, with all such costs and related costs to be paid by the Contractor.

27. FUNDS APPROPRIATION. If funds are not appropriated to permit continuation of the Agreement, the City may terminate the Agreement at the end of the then current fiscal period. The City agrees to give written notice of such termination to Contractor at least thirty (30) days prior to the end of its then current fiscal period.

28. CONTINUOUS SERVICE DELIVERY. In the event of default by Contractor, Contractor will work with the City to assure continuous delivery of Services regardless of the underlying cause or consequence of such default(s). Contractor agrees that there is a public health and safety obligation that requires that the City provide uninterrupted Services in the event of default, even if Contractor disagrees concerning such default. In order to protect the public and to assure continuous delivery of Services, the Contractor agrees that, if necessary, the City may deliver Services and/or arrange for the delivery of Services by another contractor. Further, Contractor agrees that if notified by the City of termination due to Contractor's default(s), the City will have the contractual right to execute an emergency takeover of the Contractor's Dedicated Ambulances and associated equipment. Contractor agrees to cooperate fully with such takeover and will challenge or appeal the matter only after such takeover has been completed. This cooperation includes allowing the City to directly operate Contractor's Dedicated Ambulances for a period of up to twelve (12) months following the termination of the Agreement following an asserted default(s), without liability or other damages due or owing by City to the Contractor. Any takeover or alteration in the method of service delivery as described in this section shall be subject to the statutory authority and approval of ADHS as provided in A.R.S. § 36-2242.

29. STANDBY LEASE. Contractor, lenders and any other party in interest with respect to the Dedicated Ambulances will execute a standby lease, in form and substance acceptable to the City, which will provide the City immediate possession of such Dedicated

Ambulances and related equipment for the continuous provision of Services should Contractor be unable to perform the Services for any reason, including, but not limited to, default(s), labor dispute, or Force Majeure. Any alteration in the method or nature of service delivery as described in this section shall be subject to the statutory authority and approval of ADHS as provided in A.R.S. § 36-2242.

30. SURETY BOND.

30.1 Contractor shall furnish a performance surety in the form of a bond, money order or certified or cashier's check, in the amount of one million dollars ($1,000,000) guaranteeing the execution and faithful performance of the Agreement. Letters of credit and individual sureties are not acceptable.

30.2 If a bond is submitted, it shall be written on the form provided by the City as an attachment to the Solicitation No. 11-05 proposal documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. The bond must be written by a surety with a Best Rating no less than an A and must be authorized and licensed to do business in this State by the Arizona Department of Insurance.

31. DEFAULT BY CONTRACTOR AND PROVISIONS FOR TERMINATION.

31.1 Conditions and circumstances that will constitute an Event of Default by Contractor include, but are not limited to, the following:

a. Failure by Contractor to operate in a manner that enables the City and/or Contractor to remain in compliance with federal, state and local laws, regulations rules, and other governances.

b. Falsification of information supplied prior or subsequent to execution of this Agreement.

c. Creating or otherwise falsifying Ambulance responses or transports so as to inflate the volume or value of Services.

d. Failure to provide or falsifying data that is reasonably required to be generated in the course of operations, including by way of example, dispatch data, patient report data, Response Time data, financial data, training data, billing and collection data, and other performance data and records.

e. Excessive and unauthorized scaling down of operations to the detriment of performance at any time and during a “lame duck” period.

f. Material or chronic failure to cause its employees to conduct themselves in a professional and courteous manner and present a professional appearance.

g. Failure to consistently maintain Ambulances and equipment in accordance with manufacturer recommended maintenance procedures and as required by applicable laws, regulations and rules and as required in the Agreement.

h. Failure to cooperate with and assist the City if a default(s) warranting termination of the Agreement is asserted by the City.

i. Acceptance by Contractor or Contractor's employees or agents of any bribe, kickback or consideration of any kind that could be reasonably construed as a violation of any federal, state or local law.

j. Payment by Contractor and any of Contractor's employees or agents of any bribe, kickback or consideration of any kind that could be reasonably construed as a violation of any federal, state or local law.

k. Failure to meet the standards of care adopted by the City of Glendale Fire Department.

l. Failure to maintain insurance required by the Agreement.

m. Failure to meet Response Time requirements as set forth in Section 4 of the Agreement.

n. Chronic failure to timely submit reports and information and cooperate fully with audits and inspections.

o. Any other failure of performance required by the Agreement which is reasonably determined by the City to represent a serious default and/or to represent a failure in performance that could or does endanger public health and safety.

p. Any failure to pay any undisputed amounts owed under the Agreement or liquidated damages assessed pursuant to the Agreement on or before the due dates.

q. The dissolution or termination, as a matter of law, of Contractor without the prior consent of City, which shall not unreasonably be withheld.

r. If Contractor files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of Contractor, or any of Contractor's property and/or this Agreement and/or of any and all of the

revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay Contractor's debts generally as they become due.

32. UNCURED EVENTS OF DEFAULT.

32.1 Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Contractor shall have thirty (30) days from written notice from City to Contractor of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in the Agreement.

32.2 Upon the occurrence of an Event of Default by Contractor which cannot be cured by the immediate payment of money to City or a third party, the City shall be immediately entitled to any and all rights and remedies in law or equity, including, but not limited to, an emergency takeover, the imposition of liquidated damages and the termination of the Agreement.

32.3 If any Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in the Agreement.

33. TERMINATION OF AGREEMENT FOR DEFAULT.

33.1 In the event of termination of the Agreement for default(s), the City, consistent with its primary obligation to protect the public health and welfare which may, upon notice of, require immediate action, including an emergency takeover of Contractor's Dedicated Ambulances, shall give Contractor reasonable written notice setting forth the nature of the default(s) and a timeline or deadline by which Contractor must cure such default. Contractor may submit a written plan to cure such default(s), subject to City's approval. Failure to satisfactorily cure (such failure to be determined in the sole discretion of the City), or failure to timely deliver an acceptable cure plan to the City and to perform the cure in a timely and satisfactory manner is grounds for the City to terminate the Agreement. Any takeover or alteration in the method of service delivery as described in this section shall be subject to the statutory authority and approval of ADHS as provided in A.R.S. § 36-2242.

33.2 Contractor may dispute a default(s) asserted by the City; however, such dispute will not delay, in any way, the transfer of operations as required by or to the City. Immediate transfer is required if the interests of the public health and safety cannot be protected without such immediate transfer, as determined by the City in its sole discretion. Contractor agrees that all rights and remedies afforded the City in the event of default(s) and termination are reasonable and necessary for the protection of the public health and safety. Contractor's cooperation with and

support of the City's termination of the Agreement will not be construed as acceptance by Contractor of the finding of a default(s) nor preclude the Contractor from seeking recourse. Any takeover or alteration in the method of service delivery as described in this section shall be subject to the statutory authority and approval of ADHS as provided in A.R.S. § 36-2242.

34. REMEDIES.

34.1 The City shall have all rights and remedies available at law or in equity. The City's remedies shall be cumulative and the exercise of any rights and remedies shall be in addition to the exercise of any other rights and remedies available to the City (including liquidated damages).

34.2 In addition to any other remedies, upon the occurrence of any Uncured Event of Default, City shall be entitled to exercise any and all of the following cumulative remedies:

a. The commencement of an action against Contractor at law for monetary damages;

b. The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions which, as a matter of equity, are specifically enforceable;

c. Draw on the performance surety bond;

d. The assessment and collection of liquidated damages; and

e. For a violation of a material provision of this Agreement, City shall have the right to forfeit and terminate the Agreement and upon the forfeiture and termination thereof this Agreement shall be automatically deemed null and void and have no force or effect. Contractor shall allow the emergency takeover of the Dedicated Ambulances when requested by City and City shall retain any portion of the contract payments and other fees or payments paid to it, or which are due and payable to it, to the date of the forfeiture and termination. City's right to forfeit and terminate the Agreement pursuant to this Section is not a limitation on City's right of revocation. Any takeover or alteration in the method of service delivery as described in this section shall be subject to the statutory authority and approval of ADHS as provided in A.R.S. § 36-2242.

35. MEDIATION/ARBITRATION. The parties hereby agree that in the event of a dispute, the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures as a mediation and arbitration, instead of litigation.

36. "LAME DUCK" PROVISIONS.

36.1 Should current Contractor be unsuccessful in a subsequent emergency medical services and ground ambulance transport services contract award process, Contractor shall, as required by the City, continue to provide services required under the agreement until a new contractor is selected and is performing Services. Under these circumstances, Contractor will serve as a lame duck contractor for a reasonable period of time. To assure continued performance consistent with the requirements of the Agreement for such period, the following will apply:

a. Contractor will continue all Services at the same level of effort and performance that were provided under the Agreement prior to the beginning of a new contract award process.

b. The City recognizes that if a new contractor prevails in a future award process, Contractor may reasonably begin to transition the performance of Services to the new contractor. The City will not unreasonably withhold its approval of Contractor's orderly transition process, including reasonable plans to relocate staff, relocate equipment, etc., but only to the extent that such transitioning does not impair the performance of Services during the period.

c. During any future contract award process conducted by the City, Contractor will permit its non-management personnel to discuss with competing organizations issues related to employment, if Contractor is not a proposer. Contractor may, however, require that its non-management personnel refrain from providing information to a competing organization regarding Contractor's then current operations and Contractor may also prohibit its management personnel from communicating with representatives of competing organizations during such contract award process. However, once the City has made its decision regarding award, and in the event a new contractor is selected, Contractor will permit free discussion between its Glendale based employees and the new contractor without restriction and without consequence to any employee.

37. INDEMNIFICATION BY CONTRACTOR. Contractor will indemnify, defend, and hold harmless the City, its officials, officers, employees, agents, representatives, contractors, subcontractors and volunteers (each a "City Indemnitee"), from, for and against any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney's fees and/or litigation expenses (hereafter collectively referred to as 'claims'), which may be brought or made against or incurred by a City Indemnitee, on account of loss of or damage to any property, for injuries to or death of any person, to the extent such claims are allegedly caused by, arising out of, or contributed to by reasons of any act, or omission, professional error, fault, mistake, or negligence of Contractor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with, alleged to arise in connection with or incident to the performance of the Agreement, or to the extent such claims allege

vicarious or derivative liability of the City or to the extent such claims are alleged to arise out of Workers' Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of Contractor and/or its subcontractors or claims under similar such laws or obligations. The Contractor's indemnity obligations will not be limited by any coverage exclusions or other provisions in any insurance policy maintained or required to be maintained by the Contractor which is intended to respond to such events, and the Contractor will be responsible for paying all deductible or self-insured retention amounts under any insurance policy. Contractor's obligation under this section will not extend to any liability caused by the gross negligence or willful misconduct of any City Indemnitee. These indemnification provisions are for the protection of the City Indemnities only and shall not establish, of themselves, any liability to third parties. The provisions of this section will survive termination of the Agreement. Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed under the Agreement.

38. INDEMNIFICATION BY CITY. The City will indemnify, defend and hold harmless the Contractor, its agents, representatives, officers, directors, officials and employees individually and collectively from and against all liability, caused solely by the negligence or willful misconduct of the City or any of its employees or agents. City's duty to defend, indemnify and hold harmless the Contractor, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense (including but not limited to attorneys' fees and court costs) that is attributable to personal or bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused solely by the negligence or willful misconduct of the City and its employees, or anyone for whose acts the City may be liable, and any and all penalties and damages incurred by Contractor as a result of City's failure to obtain any permit or license required under, or to comply with any applicable laws, ordinances or regulations. The preceding does not apply to permit, license or permission from ADHS. The provisions of this section will survive termination of the Agreement.

39. INSURANCE REQUIREMENTS.

39.1 Prior to commencing any work or Services under this Agreement, Contractor and subcontractors shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons, including personal injury, death, and damages to property, which may arise from or in connection with the performance of the work hereunder by Contractor. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase such additional insurance as may be determined necessary.

39.2 MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below:

a. Commercial General Liability – Occurrence Form with coverage at least as broad as ISO Form CG 00 01.

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate	$10,000,000
Products – Completed Operations Aggregate	$10,000,000
Personal and Advertising Injury	$10,000,000
Combined Single Limit (CSL) per occurrence	$10,000,000

b. The policy shall be endorsed to include the following additional insured language: "The City of Glendale, including its officials, employees, agents and volunteers, shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

c. Professional Medical Malpractice

Combined Single Limit (CSL) per occurrence	$10,000,000
General Aggregate	$10,000,000

If the policy is written on a claims-made basis, the retroactive date must be shown and must be before the date of the contract. Insurance must be maintained for at least two years after termination of this contract. If coverage is canceled or non-renewed and not replaced with another claims made policy with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting coverage” for a minimum of two years after contract termination.

d. Automobile Liability with coverage at least as broad as ISO Form CA 00 01.

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) per accident	$10,000,000

The policy shall contain or be endorsed to include the following additional insured language: "The City of Glendale shall be named as an additional insured with respect to liability arising out of the activities performed by,

or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

e. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

Policy shall contain a waiver of subrogation in favor of the City of Glendale for all work performed by Contractor, its employees, agents, and subcontractors.

f. Crime/Fidelity Coverage

Including but not limited to the perils of employee dishonesty, robbery, theft, and disappearance or destruction of money and securities in performance of their duties under the Agreement. The coverage limit shall be not less than $100,000 per loss.

39.3 ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

a. On insurance policies where the City of Glendale, its officials, employees, agents and volunteers are named as an additional insured, the City of Glendale shall be an additional insured to the full limits required under the Agreement.

b. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

c. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

39.4 NOTICE OF CANCELLATION: Each insurance policy required by this Agreement shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to City of Glendale, Materials Management, Attn: Purchasing and Materials Control Manager, 5850 W. Glendale Avenue, Glendale, Arizona 85301 and shall be sent by certified mail, return receipt requested.

39.5 ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than “A-“. The City in no way warrants that the

above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

39.6 VERIFICATION OF COVERAGE:

a. Contractor shall furnish the City with certificates of insurance utilizing the ACORD form or equivalent approved by the City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

b. All certificates and endorsements are to be received and approved by the City before Contractor commences work. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Term or any extension of the Term. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of Agreement.

c. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

39.7 SUBCONTRACTORS: Contractors' insurance certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

40. CONFIDENTIALITY OF RECORDS. Subject to A.R.S. § 39-121 et seq. and any other applicable law, the Contractor will establish and maintain procedures and controls that are acceptable to the City, including the Fire Department's designated HIPAA officer, for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Agreement will be used by or disclosed by Contractor, its agents, officers, or employees, except as required to perform duties under the Agreement. Persons requesting such information should be referred to the Glendale Fire Department HIPAA privacy officer. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing by the City.

41. CONFLICT OF INTEREST. During the term of the Agreement, Contractor, its owners, and Key Employees will not engage in any conduct or activity described in any applicable provisions of federal, state and local law dealing with conflicts of interest that are applicable to contracts generally and contracts entered into with a governmental entity.

42. NO VIOLATION OF LAWS. No provision of this Agreement shall be applied or interpreted in a manner that requires or will require Contractor to violate or fail to

comply with all applicable laws, regulations, rules, ordinances, policies and guidelines of governmental entities having jurisdiction in the matters covered by the Agreement.

43. CONTRACTS WITH AFFILIATES OR PARENTS. Contractor is prohibited from entering into any agreement or arrangement of any kind for the direct and indirect performance of the Agreement by an Affiliate or parent company of Contractor, without prior written consent by the City.

44. SUCCESSORS AND ASSIGNS.

44.1 The Agreement shall not be sold, assigned, or transferred, either in whole or in part, or leased, sublet nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person without the prior written consent of City, which consent shall not be unreasonably delayed or withheld. The sale, assignment or transfer of the Agreement to an Affiliate or parent company of Contractor does require prior consent by the City if: (i) the sale, assignment or transfer of the existing or newly created interest in the Agreement results, directly or indirectly, in a transfer of Control of the Agreement.

a. Such consent shall not be required for a transfer in trust, mortgage, or other hypothecation in whole or in part to secure an indebtedness.

b. The proposed assignee must show the transfer will not cause any increased risks of nonperformance of the Agreement or any loss to the City of its bargained for consideration. The assignee's showings must at a minimum detail facts sufficient to show the assignee's technical ability, financial capability, legal qualifications, current and past contractual obligations and performances, personnel qualifications and general character qualifications and such other qualifications as reasonably determined by City and the assignee must agree to comply with all provisions of this Agreement.

c. A new entity, if allowed, must assume in writing all of Contractor's obligations and liabilities under this Agreement (including assuming and being responsible for the performance, defaults, noncompliance with applicable law, obligations and liabilities under this Agreement), shall agree in writing to comply with all provisions of this Agreement, and shall become a signatory to the Agreement.

d. In no event shall a transfer of ownership be approved without the successor-in-interest becoming a signatory to this Agreement.

44.2 In addition to Section 44.1 above, Contractor shall provide reasonable notice to the City of any change of majority interest in the ownership of Contractor or of any material change in Key Personnel.

45. TAXES. Contractor shall be responsible for complying with all federal, state and local tax laws, regulations and rules applicable to its performance of the Agreement, including such ordinances, regulations and rules of the City.

46. FOREIGN PROHIBITIONS. Contractor certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

47. IMMIGRATION LAW COMPLIANCE.

47.1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

47.2 Any breach of warranty under Section 47.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

47.3 City retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under Section 47.1 above.

47.4 City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under Section 47.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section 47.

47.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

47.6 Contractor's warranty and obligations under this Section 47 to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

47.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

48. PREVAILING PARTY. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or

default hereof, or to enforce the Dispute Resolution section, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees, costs, and expenses.

49. CAPTIONS. The captions used in the Agreement ARE for the convenience of the parties, do not constitute a part of the Agreement and shall not be used to construe or interpret the Agreement.

50. COUNTERPARTS. The Agreement may be executed in one or more counterparts.

51. SEVERABILITY. If any term or provision of the Agreement is found to be illegal or unenforceable, then, notwithstanding such illegality or unenforceability, the Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

52. ENTIRE AGREEMENT. The Agreement will constitute the entire understanding of the City and Contractor and will supersede all previous representations, written or oral. The course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of the agreement, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

53. EXHIBITS AND APPENDICES. The following Exhibits and Appendices are made part of this Agreement:

Exhibit 1 – Scope of Work
Exhibit 2 – Certificate of Necessity No. 86
Exhibit 3 – Fire Department Station Rent
Appendix A – Ambulance Description
Appendix B – Ambulance Equipment List
Appendix C – Patient Transfer Procedures
Appendix D – Paramedic (Ride-In) Guidelines

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

CITY OF GLENDALE,
an Arizona municipal corporation

_____
Acting City Manager

ATTEST:

_____
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

SW GENERAL, INC.,
dba SOUTHWEST AMBULANCE,
an Arizona corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed before me this _____ day of _____, 2013, by _____, in his/her capacity as _____ for SW General, Inc., dba Southwest Ambulance.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT 1

SCOPE OF WORK

The City is contracting with SW General, Inc. dba SW Ambulance ("Contractor") as a single exclusive provider of emergency ground transportation ambulance services within Primary Service Area, pursuant to the City's and the Fire Department's participation in the EMS System, which has been adopted as the City's system to provide Services. The system design places the responsibility for operational performance, and all the factors of production necessary to cost-effectively achieve that performance, under the Contractor's control. With respect to Sections 10(A)(1), (3) and (4) and Section 11 of this Scope of Work, Contractor shall have up to sixty (60) days from Commencement Date to fully implement such requirements.

Section 1 – Contractor's Responsibilities

In accordance with the EMS System and this Agreement, Contractor will furnish Services in response to appropriate dispatch and field operation directives including, but not limited to the following:

A. Employment of all of Contractor's personnel required for the Services and related functions.

B. Administrative supervision, training and management of Contractor's employees, agents and Subcontractor(s) (if any). The Contractor's employees working out of a Fire Department Station will be supervised for day-to-day operations in the Fire Stations by the respective Fire Department Station Captain.

C. Provide Dedicated Ambulances, whether by purchase or lease, and the equipment, materials and supplies required and necessary to provide Services.

D. Repair and maintenance of Ambulances, except leased Ambulances, which shall be repaired and maintained by City.

E. Accurate completion and timely submission of all required data and reports of every kind, including notices.

F. Compliance with Response Time and other performance requirements established by this Agreement, the EMS System, and applicable laws and regulations, including, but not limited to, those established by the ADHS.

G. Participate and cooperate with the Administrative Medical Director and City representatives in audits, inspections and investigations, with timely responses and completion of requirements.

H. Provide indemnification, insurance, performance guarantees and other security as required by the City.

Section 2 – Administrative Medical Director

The position of Administrative Medical Director for the Fire Department is established by the City in accordance with Arizona Administrative Regulation R9-25-204, which sets forth qualifications and duties of the Administrative Medical Director.

Section 3 – EMS Coordination

A. Contact Person. In order to coordinate with City regarding its operations in the Primary Service Area, Contractor shall identify a senior executive who has an office in the Primary Service Area and who will be available 24/7 in the case of emergencies as its contact person. This contact person shall receive all written correspondence and notices from the City. At least ten (10) days prior to the Commencement Date, Contractor shall provide the EMS Deputy Chief with the following information regarding the contact person:

1. Name and title
2. Reporting relationship
3. Limits of authority
4. Address and telephone number
5. Telephone number(s), including one that provides 24/7 accessibility, for use in case of after-hour emergencies

B. EMS Working Group. The Contractor and the City shall establish and maintain a working EMS Program Management Committee ("Committee") to discuss, evaluate and implement specific, mutually agreed upon, operation policies, procedures, standards and EMS management plans in order to meet the City's EMS needs. The Committee will review the following plans and programs annually: Fleet Management Plan, Fleet Safety Procedures, In-Service Training, Internal Risk Management/Loss Control Program, Community Education Program, Comprehensive Quality Improvement Program, and first responder equipment and supply replenishment plan. The Committee will be made up of management and field personnel from the Fire Department and the Contractor. The foregoing is in no way meant to imply that the City maintains control over the Contractor's ambulance operation, ambulances or ambulance personnel. The intent of the Committee is to ensure the smooth coordination of EMS services within the City. All operational procedures shall be mutually agreed upon.

Section 4 – Response Time Performance

In this performance-based Agreement, the City does not limit the Contractor's flexibility in providing and improving EMS services. Performance that meets or exceeds the Response Time requirements is solely the Contractor's responsibility.

Compliant or superior Response Time performance over any period of time (such as early in a month) does not justify non-compliant Response Time performance over any other period of time. Therefore, Contractor shall use its best efforts to minimize variations or fluctuations in Response Time performance. Notwithstanding the proceeding, the Contractor is required to meet or exceed the following Response Time requirements at all times:

A. Response Time Requirements.

The Contractor shall provide Services so as to achieve Response Time compliance citywide every month. Response times will be evaluated each month on an individual basis and will not be averaged.

Compliance is achieved when 90% or more of responses in each priority (see below) meet the specified Response Time requirement citywide. For example, to be in compliance for First Priority/Code 3 responses, Contractor must place an Ambulance on the scene of each presumptively defined life-threatening emergency within nine (9) minutes on not less than 90% of all First Priority/Code 3 responses.

The Contractor will be required to meet the following Response Time requirements citywide. Chronic failure to meet the Response Time requirements may constitute default of the Agreement. Chronic failure shall mean failure to meet Response Times for three (3) consecutive months or for four (4) months in any twelve (12) month period.

Priority	Maximum Allowable Response Time	Definition
Code 3 Calls (First Priority)	10:00 minutes	Life-Threatening Emergencies
Code 2 Calls (Secondary Priority)	20:00 minutes	Non Life-Threatening Emergencies

In addition, Contractor must, at all times, comply with ADHS CON standards and must place an Ambulance on the scene of all emergencies within twenty (20) minutes. Failure to meet the Response Time requirement of twenty (20) minutes on any call is a material breach of the Agreement and may result in termination of the Agreement.

Response priorities are established according to a priority dispatch protocol approved by the Fire Chief, consistent with ADHS guidelines and PFDRDC's protocols. Currently all dispatches of Ambulances are First Priority/Code 3 or Secondary Priority/Code 2 calls. The City may adopt additional priorities and associated Response Times in the future, upon mutual agreement of the parties and approval by ADHS, and Contractor agrees to comply with Response Time requirements that may be established in the future for those priorities.

B. Reporting Non-Compliant Response Times.

For every call not meeting the specified Response Time requirements, the Contractor will submit a written report, at least monthly no later than the 7th calendar day of the month, in a format approved by the City, to the EMS Deputy Chief, documenting the cause of each late response and the Contractor's efforts to eliminate recurrence.

C. Response Time Measurement.

The Response Time measurement methodology employed will influence operational requirements of the EMS System and the Agreement. The following methodology will be used throughout the Agreement to measure response times:

1. Response Times for First Priority/Code 3 and Second Priority/Code 2.

Response times will be evaluated recognizing the PFDRDC as the official time standard. Response times will be measured beginning at the time PFDPDC dispatches the 911 call to Contractor and the City and ends when the Contractor physically arrives on the scene of the incident and reports via radio or via MCT to the PFDRDC that Contractor is on scene and ready to deliver Services

Arrival of the Ambulance (staffed as required) shall be signaled by a Contractor's transmission to the dispatch center via MCT. Such transmission shall not be made until the Ambulance actually arrives and is stopped at the specific location to which it has been dispatched. In the case of apartment or business complexes, such transmission shall not be made until the Ambulance actually arrives at the point closest to the apartment or business to which it has been dispatched and to which Contractor's Ambulance can be driven. Only arrival at a location by a Contractor's Ambulance is a measurement of Response Time. Arrival on the scene of a Fire Department unit or supervisor's vehicle shall not stop the Response Time clock.

Arrival on scene means the moment an Ambulance Crew member notifies the PFDRDC via MCT that the Ambulance is fully stopped at the location where it is required to be stopped while Ambulance personnel exit to attend those in need of service. Contractor may make this notification via radio only in the event the MCT is not operating. In situations where the Ambulance has been requested to respond to a location other than the scene (e.g. staging areas for hazardous scenes), arrival on scene shall be the time the Ambulance arrives at the designated location.

In instances when an Ambulance Crew fails to report arrival on scene, the time of the next communication by the Ambulance Crew with PFDRDC will be used as the arrival on scene time. However, Contractor may appeal such instances when it can document the actual arrival time through other means, such as Fire Department personnel or PFDRDC CAD system Automated Vehicle Locator (AVL) position reporting.

Contractor must utilize the MCT to make arrival notifications at least 90% of the time. Failure to utilize the MCT for at least 90% of the arrival notifications in any calendar month will result in non-performance liquidated damages as set forth in this Agreement.

2. Upgrades, Downgrades and Reassignments.

a. Upgrades.

If a dispatch is upgraded, prior to the arrival on scene of the first Ambulance (e.g. a Code 2 Call is upgraded to a Code 3 Call), Contractor's

compliance with Agreement standards and responsibility for liquidated damages will be calculated based on the shorter of: (i) time elapsed from call receipt to time of upgrade plus the higher priority Response Time standard; or (ii) the lower priority Response Time standard.

For example:

- An Ambulance is dispatched as a Secondary Priority/Code 2 Call (required Response Time of 20:00) and is upgraded to a First Priority/Code 3 Call (required Response Time of 10:00) after two (2) minutes have elapsed. Because 10:00+ 2:00 = 12:00 is shorter than 20:00, the response is subject to the Response Time requirement set forth in (i) above, and is considered a First Priority/Code 3 Call response.
- By way of further example, an Ambulance is dispatched as a Secondary Priority/Code 2 Call (required Response Time of 20:00) and is upgraded to a First Priority/Code 3 Call (required response time of 10:00) after seven (7) minutes have elapsed. Because 10:00 + 7:00 = 17:00 is shorter than 20:00, the response is subject to the Response Time requirement set forth in (ii) above and is considered a Code 2 Call response.

b. Downgrades.

Downgrades may be initiated by medically trained Fire Department personnel as authorized by the Medical Director and by PFDRDC. If a dispatch is downgraded prior to the arrival on scene of the Ambulance, Contractor's compliance and liquidated damages will be calculated based on (i) the lower priority Response Time requirement, if the Ambulance response is downgraded before it would have been judged late under the higher priority Response Time requirement; or (ii) the higher priority Response Time requirement, if the Ambulance response when downgraded would have been judged late under the higher priority Response Time requirement.

c. Reassignment Enroute.

If an Ambulance is reassigned from a lower priority call to a higher priority call while enroute and prior to arrival on scene, the Contractor's compliance and liquidated damages will be calculated based on the Response Time requirement applicable to the assigned priority of the initial dispatch. The Response Time clock will not stop until the arrival of an ambulance on the scene from which the Ambulance was diverted.

3. Cancelled Enroute.

If an Ambulance is cancelled by an authorized agency, after an assignment has been made but prior to the arrival of the Ambulance at the scene (and no ambulance is required at the scene), the Response Time clock will stop at the moment of cancellation. If the elapsed Response Time at the moment of

cancellation exceeds the Response Time requirement for the assigned priority of the call, the unit will be determined to be late and the appropriate liquidated damages will be assessed.

4. Response Times Outside Primary Service Area or Areas.

Contractor will not be held accountable for emergency or non-emergency Response Time compliance for any response dispatched to a location outside the Primary Service Area or Areas. Responses to requests for service outside of the Primary Service Area or Areas will not be counted in the total number of responses used to determine compliance with the Agreement.

D. Each Incident a Single Response.

Each incident requiring response will be counted as a single response regardless of the number of Ambulances that respond. The dispatch time of the first Ambulance dispatched and the on scene time of the first arriving of Contractor's Ambulances will be used to compute the Response Time for the incident.

E. Response Time Exceptions and Exemption Requests.

Contractor is required to provide for reserve service capacity in order to increase service should temporary EMS System or dispatch overload occur. However, it is understood that from time to time unusual factors beyond Contractor's reasonable control may affect the achievement of the specified Response Time requirement. Unusual factors are limited to unusually severe weather conditions, declared disasters or periods of unusually high demand for Services, including dispatch or ambulance substitution errors caused by PFDRDC. Unusually high demand for Services will be determined by the Fire Department. Equipment failures, traffic congestion, Ambulance failures, dispatch or ambulance substitution errors attributable to Contractor, inability to staff Ambulances and other similar causes will not be grounds for granting an exception to compliance with the Response Time requirements.

F. Appeal Process for Response Time Requirements.

If Contractor thinks that any response or group of responses should be excluded from the compliance calculations due to unusual factors beyond Contractor's reasonable control, Contractor may provide detailed supporting information in writing to the EMS Deputy Chief. Contractor may request that the City exclude a response or group of responses from Response Time calculations and liquidated damages. Any such request must be made in writing and be received by the EMS Deputy Chief within five (5) business days after the end of each month. The EMS Deputy Chief will review the request and issue a written determination. Should Contractor dispute the determination, Contractor may appeal within five (5) business days in writing to the Fire Chief. The Fire Chief's ruling will be final and binding.

G. Response Time Audit Trail.

Contractor will provide a system to assure a complete audit trail for all Response Times and to assure the City access to the response time data at any time to assure compliance and to calculate liquidated damages.

Section 5 – Deviations from Response Time, Performance or Other Standards

The Contractor understands and agrees that the failure to comply with any time, performance or other requirements in this Agreement will result in damage to the City and that it is and will be impracticable to determine the actual amount of such damage whether in the event of delay, nonperformance, failure to meet standards, or any other deviation. Therefore, the Contractor and City agree to the liquidated damages set forth in this Agreement.

It is expressly understood and agreed that the liquidated damages amounts are not to be considered a penalty, but shall be deemed, taken and treated as reasonable liquidated damages. It is also expressly understood and agreed that the City's remedies in the event of the Contractor's default, minor or major breach, or any noncompliance, are not limited to the Agreement's liquidated damages provisions. All liquidated damage amounts will be billed first to the Contractor, and if not paid within thirty (30) days from the date of invoice, then withdrawn from the Letter of Credit.

Upon either retrospective audits of calls or exemption requests, if the City finds that a call was assigned a lower priority by the Contractor than would have been assigned had the Contractor communications personnel properly followed the Medical Priority Dispatch Standards as approved by the Fire Chief or his designee, the City will measure the Response Time against the higher priority, and when applicable, the response will be subject to late Response Time liquidated damages This section shall not apply in the event PFDRDC is responsible for priority assignment.

Section 6 –Non-Performance Liquidated Damages

A. Failure to Meet Response Time or Make MCT Arrival Notification For 90% of Calls.

The following liquidated damages will be assessed when system wide Response Time compliance for First Priority/Code 3 and Secondary Priority/Code 2 transports or MCT arrival notifications fall below 90% for any given calendar month:

89.5-89.9%	3,500
89.0-89.4%	$7,000
88.0-88.9%	$10,000
87.0-87.9%	$12,000
86.0-86.9%	$15,000
85.0-85.9%	$20,000

Failure to meet Code 3 Call or Code 2 Call Response Time requirements for less than eighty-five percent (85%) of calls in one month is a material breach of the contract and may result termination of the Agreement.

B. Failure to meet Code 3 Call or Code 2 Call Response Time requirements for at least ninety percent (90%) of responses each month for three (3) consecutive months or for four (4) months in any contract year is a material breach of the Agreement and may result in termination of the Agreement. Additional Non-Performance Liquidated Damages:

The following additional liquated damages will be assessed:

1. For each First Priority/Code 3 Response Time exceeding twelve (12) minutes - $1,000

2. For each Secondary Priority/Code 2 Response Time exceeding twenty (20) minutes - $500

C. Liquidated Damages for Extended Patient Transfer Times.

Liquidated damages of $10,000 will be assessed when more than fifty-two (52) non-hospital-caused EPT times occur in a calendar year. A calendar year is 52 weeks beginning on January 1st and ending on December 31st. The Contractor will provide a written report for all EPT incidents to the EMS Deputy Chief within the time limits set forth in the "Reporting Requirements" section of this Agreement. If Contractor thinks that an EPT incident should be excluded from non-performance calculations because it was a hospital-caused incident, Contractor may provide detailed supporting information in writing to the EMS Deputy Chief and request that it be excluded. Any such request must be made in writing and be received by the EMS Deputy Chief within five (5) business days after the end of each month. The EMS Deputy Chief will review the request and issue a written determination. Should Contractor dispute the determination, Contractor may appeal within five (5) business days in writing to the Fire Chief. The Fire Chief's ruling will be final and binding. The City will present an invoice for any liquidated damages under this section in the month following the issuance of the final written determination.

Section 7 – Reporting Requirements

Contractor will provide, by the seventh calendar day of each month, written reports to the EMS Deputy Chief detailing its performance during the preceding month as it relates to every performance requirement stipulated herein. After the seventh calendar day, for each day or part of a day that Contractor fails to provide the reports, the City shall assess a late fee of five hundred dollars ($500).

The City will provide to the Contractor, by the fifteenth calendar day of each month, a written report detailing any current or continuing issues identified by the City relating to contract performance or service delivery by the Contractor.

Prior to the twenty-fifth calendar day of each month, the City and Contractor shall meet to review and discuss both the Contractor report and the City report. It shall be the intent of the meeting to identify issues and take actions necessary to cure performance issues prior to escalation and consideration of termination. The parties shall document assignments, specify actions to be taken, establish timelines and set outcome expectations.

Section 8 – Infrastructure Available / Dispatch Center

Unless modified at some later date by the City, Contractor is required to use PFDRDC for all dispatching and reporting functions. Any and all expenses necessary to utilize the PFDRDC on

Dedicated and Backup Ambulances, except Leased Ambulances, and at Contractor's Stations shall be borne solely by Contractor, including any and all expenses to be paid to the City of Phoenix. Contractor shall, at its sole expense, install, operate, upgrade, repair and maintain, for the term of the Agreement and any extension, all equipment and other items necessary to interface with the PFRDC and any City communications center. Required equipment will include, but is not limited to, MCTs and radios. All equipment specifications must be approved by the City.

For services rendered to the Community, the City will provide access to the traffic signal pre-emption system. Contractor is responsible, at its sole cost, for all expenses necessary to achieve the ability to interface with the traffic signal pre-emption system on Dedicated and Backup Ambulances, except Leased Ambulances, including but not limited to reimbursement to the City for all labor and equipment expenses necessary to install, activate, operate and maintain such system. All equipment specifications must be approved by the City.

The Contractor will be invoiced by the City within thirty (60) days of equipment installation and payment is due within twenty (20) days of the invoice date.

Section 9 – Radio System Change

Contractor understands that the communications system may change during the term of this Agreement. Contractor agrees to change to any new communications system and to pay any and all costs, at its sole expense, necessary to operate on such system and meet its obligations under this Agreement. A change in communications system will not excuse the Contractor from meeting performance criteria.

Section 10 – Contractor Provided Equipment

A. Ambulance Resources.

1. Ambulance Fleet Specifications. It shall be the responsibility of the Contractor to assure appropriate certifications from ambulance manufacturers and to assure that all Ambulances are operated within Federal (U.S. Department of Transportation), State (Arizona Department of Health Services and other State of Arizona agencies imposing requirements) and local guidelines (City, Fire Department and all other applicable local guidelines and requirements). Guidelines include all applicable limitations on gross vehicle weight.

a. Dedicated and Backup Ambulances.

All Dedicated and Backup Ambulances shall meet or exceed ADHS requirements for ambulances providing ALS Services. Additionally, each Dedicated and Backup Ambulance must, at all times, meet the minimum specifications set forth in Appendix A.

Each Dedicated and Backup Ambulance shall have a digital cellular telephone pre-programmed with all phone numbers needed for medical communications. Programming shall be updated from time to time to reflect the needs of the City and Contractor, at Contractor's expense.

b. Substitute Ambulances.

Substitute Ambulances in the place of Dedicated Ambulances shall be similarly equipped as the Dedicated Ambulances. Use of Substitute Ambulances for periods greater than twelve (12) hours shall require notification by Contractor to the EMS Deputy Chief via phone call and email.

2. Number of Ambulances Provided.

Contractor hereby commits to provide ten (10) Ambulances to provide Services under this Agreement as follows: Six (6) Dedicated Ambulances from Contractor's fleet; Three (3) Dedicated Ambulances leased from City under the terms provided in this Agreement ("Leased Ambulances"); and One (1) Backup Ambulance from Contractor's fleet.

Contractor may provide such other, additional ambulance resources that it deems necessary to consistently satisfy the Response Time Requirements.

3. Location of Dedicated and Backup Ambulances.

Dedicated and Backup Ambulances must be stationed at all times within the Primary Service Area. Contractor will station the ten (10) Ambulances on a twenty-four (24) hour a day, seven (7) days a week basis at the following locations:

a. One (1) leased ambulance at an assigned south Fire Department Station.

b. One (1) leased ambulance at an assigned central Fire Department Station.

c. One (1) leased ambulance at an assigned north Fire Department Station.

d. One (1) ambulance at an assigned Fire Department Station to be agreed upon between the parties.

e. Five (5) ambulances (including one ambulance with lift capability that may be used in future pilots for advancements in pre-hospital care) at Contractor's Stations located within the Primary Service Area.

f. One (1) Backup Ambulance located within the Primary Service Area.

The Fire Department station locations to be utilized will include at least one location in the north, central and southern sections of the City. Prior to the Commencement Date, the City and Contractor shall discuss and attempt to mutually agree to the specific Fire Department stations that will be utilized. In the event the City and Contractor do not agree, the locations will be determined by the City in its sole discretion. Contractor shall provide at least ninety (90) days prior written notice of any change in Station location, except that the Fire Department Stations may not be re-located. No change in Station location shall impair Contractor's ability to meet Response Time requirements, provide adequate living accommodations, or have the PFDRDC installed. Written notice of a proposed change in the location of a station shall be provided to the Fire Chief at least 90 days prior to Contractor's intended use of the new location.

Contractor's Stations will take all reasonable efforts to accommodate Ambulances indoors or under cover and, at the same location or in immediate proximity

thereto, provide living and sleeping accommodations for Ambulance Crew and other necessary personnel as required and as necessary to provide the Services pursuant to this Agreement. All Stations are subject to inspection by the City.

Contractor shall be entitled to use its ambulance units not stationed at Fire Department Stations outside of the City EMS System, including interfaculty services, if Contractor otherwise complies with the terms of this Agreement.

4. Use of City Fire Stations.

a. Cost for Use of Fire Stations.

Contractor will pay monthly rent to the City for the use of Fire Department Stations for ambulance parking and living quarters for all Ambulance Crew. Rent includes secured parking, furnishings, and all utilities for Contractor's Ambulance Crew. The City will take all reasonable efforts to find covered parking for Contractor's ambulances. City will invoice Contractor quarterly, in advance, for Fire Department Station rent. Payment is due from the Contractor within ten (10) calendar days of the invoice date.

Effective on the Commence Date, the monthly rental for each Fire Department Station is $20,670, or a total monthly rent of $82,680, as further described in Exhibit 3 attached hereto. On each anniversary of the Commence Date, the monthly rent will increase by 3%.

b. Protocol at Fire Stations.

While at any designated Fire Station, Contractor's employees shall participate in all applicable Station activities in the same manner as City Fire Department personnel and shall otherwise conduct themselves in the manner necessary to promote a harmonious work atmosphere. Station activities include cleaning and maintenance of the Station and equipment, preparation and clean-up of meals, educating and interacting with the public during station tours and participation in appropriate physical training activities. Contractor's employees assigned to Fire Department Stations shall not be deemed to be employees of the City. Contractor shall continue to have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation and occupational diseases compensation insurance, unemployment compensation, and other benefits and all taxes and premiums associated therewith and all other appropriate insurance concerning Contractor's employees assigned to Fire Department Stations. Contractor shall indemnify the City for any damage or liability caused by or to Contractor's employees while at a designated Fire Department Station pursuant to this Agreement.

c. Use of City Training Center.

At no cost, Contractor shall have access to the Glendale Regional Public Safety Training Center ("GRPSTC") and the Fire Department Stations in which Contractor personnel are stationed for purposes of joint training of Southwest Ambulance personnel with the City.

5. Cost for Lease of City Ambulances.

The Contractor will lease from the City three (3) ambulances during the Initial Term of the Agreement. Any ambulances leased by Contractor from the City shall be equipped in accordance with Appendix B and registered with ADHS by the Contractor. The annual lease payment for each Ambulance is $36,000, and will include maintenance, tire replacement, and fueling. The City will invoice Contractor annually, in advance, beginning on the Commencement Date and then each year on the anniversary of the Commencement Date. Contractor shall pay City within twenty (20) days of the date of the invoice. The parties agree that upon expiration of the Initial Term of the Agreement, City will transfer all right, title and interest in the three (3) ambulances to Contractor, and Contractor shall thereafter retain the vehicles. The parties will cooperate in the execution of any associated transfer and/or bill of sale.

Following the Initial Term, there may be a need for replacement of vehicles which were leased during the Initial Term, if otherwise required by the maintenance guidelines set forth in Sections 10(A)(1) and 6(B)(3). At such time the parties may agree on a new ambulance lease arrangement or replacement of such vehicles if necessary.

A percentage increase in the annual lease shall not exceed the percent in the United States "Consumer Price Index" for All Urban Consumer West Urban (CPIU) U.S. City Average for the percent change from the year ago as published by the U. S. Department of Labor Bureau of Labor Statistics. Index Base Period 1982-84 = 100.

6. Move-Up Policy.

For purposes of this Agreement, "move-up policy" shall mean a system of ambulance resource allocation designed to place ambulances in geographically strategic locations with the intent of minimizing response times during periods of increased ambulance activity. Contractor agrees to comply with all applicable move-up provisions of the EMS System, the Glendale Fire Department, and PFDRDC.

B. Equipment and Maintenance.

1. Basic Equipment. Contractor shall be solely responsible for equipping all Dedicated and Backup Ambulances, except Leased Ambulances, to support the appropriate life support level as required by the more stringent of requirements set by ADHS or the requirements of this Agreement. The ambulance equipment required by this Agreement is set for in *Appendices A and B.*

2. Additional Equipment. The City reserves the right to require Contractor to carry additional equipment during the term of this Agreement if reasonably necessary and will give Contractor ninety (90) day's notice of such additional equipment requirement. Such additional equipment shall not exceed $1,000 per ambulance annually, unless required to meet the standard of care.

3. Maintenance. Contractor shall monitor and be solely responsible for the condition, safety and reliability, including maintenance, of all Ambulances,

except Leased Ambulances, utilized under this Agreement and for meeting all requirements of the CON issued by ADHS to Contractor. As used herein, maintenance also refers to repair and replacement of the ambulances to be utilized pursuant to this Agreement. Contractor shall maintain all maintenance records and such records shall be available to the City upon request. Dedicated Ambulances, except Leased Ambulances, that accumulate one hundred seventy-five thousand (175,000) miles or reach sixty (60) months in total service time shall be replaced by new ambulances at Contractor's sole expense. Replacement shall occur no later than sixty (60) days from the date of either mileage or age occurrence.

Section 11 – Staffing

A. Basic Staffing Criteria. All Dedicated Ambulances, except Backup Ambulance, shall be assigned one state certified EMT and one state certified Paramedic and such staffing shall be maintained on a 24-hour basis. Contractor shall also meet all ADHS requirements with regard to staffing and the additional staffing provisions set forth elsewhere in this Agreement. All Ambulance Crew assigned to or available to drive Ambulances must complete a comprehensive emergency driver-training program and possess a valid Arizona driver's license in accordance with the Arizona Department of Transportation, Motor Vehicle Division requirements and all certification/licensing required by the Arizona Department of Health Services and the City.

B. Contractor and City Staffing Obligations. Contractor personnel shall be utilized for all EMT and Paramedic staffing for the non-leased Dedicated Ambulances housed at Contractor's Stations. For the Leased Ambulances housed at Fire Department Stations, Contractor personnel shall be utilized for the EMT staffing and City employees shall be utilized for the Paramedic staffing. For the Dedicated Ambulance housed at a Fire Department Station, City employees shall be utilized for the EMT staffing and Contractor personnel shall be utilized for the Paramedic staffing. Contractor shall maintain operational control of all Ambulances and all Ambulance Crew pursuant to Contractor's CON.

C. Cost Reimbursement for City-Personnel. Pursuant to the preceding paragraph, three (3) City-employed firefighter paramedics and one (1) City-employed firefighter EMT will be utilized on an on-going basis to staff the three (3) leased Dedicated Ambulances and the one (1) non-leased Dedicated Ambulance housed at a Fire Department Station. City shall invoice the Contractor at the rate of $57.75 per hour for such on-duty Fire Department personnel in co-staffed ambulance units on a monthly basis. Contractor shall make such payment within sixty (60) days of invoice.

In addition, if Core Personnel are unavailable to fulfill Contractor's staffing obligations on the Ambulances, Fire Department firefighter employees shall be utilized and Contractor shall reimburse the City at the rate of $57.75 per hour for the time the Fire Department employees are used.

On each anniversary of the Commencement Date, the monthly and hourly rates for Fire Department employees used to staff Ambulances shall increase by the lesser of 5% or the respective annual increase for such personnel as set forth in the Fire Department's

memorandum of understanding agreement with its workforce, and be effective for the succeeding 12 months.

With this Cost Reimbursement model the Contractor will have access to joint training with City Fire Department personnel and the parties will jointly develop clinical excellence programs and pilots that will enhance the emergency service model. This will include Contractor's use of GRPSTC. Additionally, Contractor shall not be responsible for ACL reimbursement to City.

D. Scheduling. Contractor will provide continuity of personnel by scheduling required Ambulance Crew on A, B and C shifts in coordination with the Fire Department's schedule in order to create an efficient and harmonious work atmosphere for optimum patient care and transport. Contractor shall prohibit Ambulance Crew from working more than sixty (60) consecutive hours without a ten (10) hour off-duty rest interval. Scheduling of Fire Department staff assigned to the Dedicated Ambulances at the Fire Department Stations will be the responsibility of the Fire Department. The Fire Department will assist the Contractor in creating an eligibility list Contractor's employees that are qualified and shall serve as Core Personnel for assignment as Ambulance Crew. The parties anticipate that the number of Core Personnel may decrease over time due to changes in Contractor's employees. The Fire Department and Contractor agree to revise the Core Personnel list quarterly.

E. Employee Changes. Contractor shall notify the City of the terminated employment of its Core Personnel (both voluntary and involuntary) and the employment of new personnel (to include direct supervisory and support personnel) within three (3) business days of the termination or new hire date.

F. Staffing Reports. Contractor shall provide to City on a quarterly (every three months) basis information, including employment records upon request by the City, and analysis necessary for the City to evaluate the performance of Contractor's Ambulance personnel (including direct supervision and support personnel) in order for the City to assess compliance with the Agreement.

G. Transfer Policy. To provide for the transfer of responsibility for the care of such person or persons, City and Contractor hereby establish and agree upon the Patient Transfer Procedures attached hereto and incorporated herein as Appendix C, specifically detailing such procedures. The parties and their respective medical directors also hereby establish and agree upon the Paramedic Follow-up (Ride-In) Guidelines, attached hereto and incorporated as Appendix D. Fire department paramedic shall remain in charge of patient care until it is specifically relinquished to ambulance personnel. The patient's condition will determine the need for a City Fire paramedic to accompany the patient in the ambulance in accordance with the Paramedic Follow-up (Ride-in) Guidelines. Other than an incident which is governed by the Paramedic Follow-up (Ride-in) Guidelines, Contractor shall be responsible to assure patient care during transport.

Section 12 – Certification and Training

A. Contractor shall be responsible for all permits, licenses and certifications required of its employees who will perform as Ambulance Crew.

B. City-Provided Training. In addition to the certification and training required by ADHS and other sections of this Agreement, all Ambulance Crew must attend the following training programs provided by the Fire Department at the regularly scheduled dates and times that the Fire Department offers such training: 1) an orientation-training program; and 2) at least three (3) hours EMS training every quarter. Orientation training and six (6) months experience must be completed before a person is assigned as Ambulance Crew. Contractor will be responsible for compensating its employees for attending training and for providing, or otherwise arranging for, transportation for its employees to attend training.

Section 13 – Billing and Collection

Contractor will charge fees for its medical transportation services, including services provided by firefighters Paramedic, as appropriate and permitted. All billing and collection for these services will be the responsibility of Contractor. Fees may only be charged as established by the Arizona Department of Health Services and in accordance with arrangements applicable to each payor (including federal, state and local government payors).

Section 14 – Solicitation of Information/Patients

Contractor shall not attempt to solicit information or to collect any fees from a patient, patient's representatives or any other payor until the patient has been accepted at a receiving medical facility, as applicable. Nothing herein shall be construed to prohibit Contractor from soliciting authorization for transport, but only as long as the solicitation of such authorization does not compromise or detrimentally affect patient care. Contractor shall have the right to solicit information about a patient's accident and/or hospitalization insurance.

Section 15 – Survey of Patients

The Contractor and/or the City may survey patients transported pursuant to this Agreement to determine the level of satisfaction with the service provided by the Contractor. All such survey information shall be shared by the parties, to the extent allowed by law.

Section 16 – Alternative Transportation

As Arizona Statute and ADHS regulations are revised to encompass the implementation of alternative transportation options and destinations for service originated within public safety dispatch, Contractor will work cooperatively with the City to provide equipment, personnel, joint guidelines, and performance criteria in order to provide such alternative transportation. This process may include, but is not limited to stretcher vans, BLS assessment and transportation units, or other vehicles or personnel as necessary to meet future needs.

Section 17 – Electronic Patient Care Reporting

Contractor shall fully implement Electronic Patient Care Reporting system (EPCR) from one vendor selected from the following list and approved by the City: EmergiData Rescue Medic, Zoll rescue Net, Image Trend Emergency Data Systems, and ESO Solutions. Contractor shall comply with any requirements of ADHS with respect to data submission to the state pursuant to CON regulations. Contractor shall pay any and all costs to implement, maintain, repair and upgrade the EPCR system, including all costs for future upgrades to maintain compatibility. Contractor shall reimburse the City for all hardware, software, technical, labor, and per patient

costs incurred by the selected EPCR system. The City will invoice Contractor quarterly and payment is due within twenty (20) calendar days of the invoice date.

Section 18 – Replacement/Reimbursement of Supplies, Materials, and Pharmaceuticals To City

Contractor shall provide supplies, materials and pharmaceuticals to the Fire Department in replacement of supplies, materials and pharmaceuticals utilized by the Fire Department in the course of providing Services to patients (including supplies, materials and pharmaceuticals utilized by the City's Paramedic personnel involved in transport). In lieu of providing such supplies, materials and pharmaceuticals, the Contractor may enter into an arrangement pursuant to the Contract to reimburse to the City its cost of such supplies, materials, pharmaceuticals and related costs. A list of supplies and materials that must be replaced or reimbursed are identified in *Appendix B*. Reimbursement or replacement of supplies, materials and pharmaceuticals by Contractor to City is limited to those supplies used on patients that are transported by Contractor.

Section 19 – Base Hospital.

The City has entered into an Emergency Medical Services Base Hospital contracts with Arrowhead Community Hospital and Banner Thunderbird Medical Center. That contract sets forth hospital responsibilities and identifies hospital personnel for providing medical direction to the City, including direction to Fire Department and Contractor personnel engaged in carrying out the medical ground ambulance transportation Services pursuant to this Agreement. Contractor must at all times utilize the services available pursuant to these contracts and must comply fully with the terms and conditions of such contracts. Specifically, Contractor agrees to require its personnel to utilize, in every indicated circumstance, medical advice and services available pursuant to the Emergency Medical Service Base Contracts. Should the City enter into a Base Hospital contract with any other hospital(s), Contractor agrees to honor that contract in the same manner as the current contract.

EXHIBIT 2

CERTIFICATE OF NECESSITY NO. 86

EXHIBIT 3

FIRE DEPARTMENT STATION RENT PAYMENTS

Station	AMBULANCE TYPE	RENT
North	Leased	$20,670
Central	Leased	20,670
South	Leased	20,670
TBD	Non-Leased	20,670
TOTAL RENT		$82,680

APPENDIX A

AMBULANCE DESCRIPTION

Ambulances to be put in service in the City of Glendale by the contractor shall be Type III, Class I and shall be furnished with a 2-door cutaway chassis. Manufacturer shall be GMC or equal, model shall be Chevrolet/GMC CC4500 or equal and compliant with current Federal Specification KKK-A-1822, and as it may from time to time be changed, at a minimum. Units are also required to have a minimum GVRW of 16,500, be equipped with secondary (auxiliary) air conditioner condensers, and must have a 170" body module.

APPENDIX B

AMBULANCE EQUIPMENT LIST

Contractor is required to supply the following equipment on Dedicated Ambulances, including leased ambulances.

GENERAL USE

1. AMBU Res-Cue replacement canister: AMBU Inc. #276 000 010
2. NAJO Backboard-with ambulNAJO redihold #NM 1070-1 0850
3. Ferno K.E.D. Board: Ferno #IE-1250
4. H.A.R.E. Traction Splint with Aluminum ratchet-Adult Ferno #SP-4440 or equal
5. H.A.R.E. Traction Splint with Aluminum ratchet-Pediatric Ferno #SP 4430 or equal
6. S.T.A.R.T. Triage System Kit: BoundTree #681207 NO EXCEPTIONS
7. Evac-U Splint Mattresses Adapter Hartwell Medical #EV 15 PSA
8. Blood Pressure Cuff-XL Adult
9. Blood Pressure Cuff-Adult
10. Blood Pressure Cuff-Pediatric
11. Autovent 2000 Allied Healthcare Products INC. #L461
12. Stair Chair Femo Model #42 or equal
13. Soft Breakdown or Scoop Stretcher
14. Blood Glucose Monitor Precision Xtra Abbott Laboratories #99837 or equal
15. Stethoscope
16. On board Suction Unit
17. CPAP device; Emergent Technologies Port O2 Vent
18. Pediatric restraint system- Safeguard Transport Ambulance Cot Restraint Boundtree 3250-85705
19. Lucas 2 CPR device or equal

AIRWAY

1. Adult AMBU Bag with Mediport
2. Pediatric AMBU Bag with Medipoli/Infant and Neonate size disposable BVM masks
3. Adult Sylette
4. Pediatric Sylette
5. Endolock Adult
6. Endolock Pediatric
7. Cric Kit with tools 6.5
8. Cric Kit with tools 5.5
9. Uncuffed ET Tubes/Stylette Combo 2.5-5.0
10. Cuffed ET Tubes/Stylette Combo: sizes 5.5-9.5
11. 6.0 Endotrol
12. 7.0 Endotrol
13. Bite Stick
14. B.A.M.M.
15. OPA: sizes 5.5-12
16. NPA: sizes 22fr.-36fr.
17. Combo In-line/handheld SVN setup
18. Pediatric High Flow Oxygen Mask

19. Pediatric Nasal Cannula
20. Adult Non-Rebreather Mask
21. Adult Nasal Cannula
22. CPAP Replacement Circuits
23. CPAP Replacement Masks
24. Green Line Disposable Laryngoscrope Blades Miller 0,1,2,3,4
25. Green Line Disposable Laryngoscope Blades MacIntosh 2,3,4
26. King LTS-D Size 3, 4, & 5 Boundtree 477-KLTSD403EA, 477-KLTSD404EA, 477-KLTSD405EA
27. Autovent Circuit
28. Flex Guide ET Tube Introducer ("Bougie") and Peds Size Flex Guide
29. Suction Tubing
30. Scort Suction Cannister
31. Suction Catheter – 6, 8, 10, 12, 14, 16, 18 Fr.
32. O2 Supply Tubing

INTRAVENOUS SUPPLIES

1. Normal Saline 100 cc Bag
2. Normal Saline 250cc Bag
3. Normal Saline 1000cc Bag
4. Lactated Ringers 1000cc Bag
5. 15ga. Jamshedi 1.0. Needle
6. 3.25" Angiocath Chest Needle: size 12, ga
7. INSYTE Autoguard IV cathethers: size 14-24 Ga
8. Selec-3 IV Administration Set
9. Blood Tubing
10. Veni-Guard Sr.
11. IV start kit Boundtree 351202
12. Sharps Shuttle
13. 2 gallon Sharps container
14. Alcohol Preps
15. Easy 10 drill and needles 15 and 18 Gauge
16. Pediatric Arm Board
17. Subclavian Set
18. 3ml Saline Bullets and 10ml Prefilled
19. EZ IO LD Needle

BANDAGING/TAPE/SPLINTING

1. Medical Tape: sizes .5", 1", 2", 3"
2. Medical "Duct" Tape
3. Trauma Dressing 10" x 30"
4. Trauma Dressing 5 x 9
5. Sterile 4" x 4" Gauze
6. Non-sterile 4" x 4" Gauze
7. Petroleum Gauze 4" x 4"
8. Triangular Bandage
9. Kling 3"
10. Band Aid 1" x 3"
11. Sterile Burn Sheet
12. Sterile Burn Towel
13. Elastic Bandage 3 x 5
14. Emergency Highway Blanket
15. Splint Small

16. Splint Medium
17. Splint Large
18. Nail Polish Remover Pads
19. Elastic bandage 6 x 5
20. Cervical Collar – Adult
21. Cervical Collar – Pediatric
22. Coban
23. Hoover Headblocks boundtree 660400
24. Pelvic Sling
25. C-Spine Straps

MONITORING

1. Philips MRX 75 mm ECG Paper
2. Adult blue Dot Electrodes
3. Pediatric 3/pk Electrodes
4. Philips MRX Adult Quik Combo Pads
5. Philips MRX Pediatric Quik Combo Pads
6. Nasal CO2 Detector
7. Pediatric Nasal CO2 Detector
8. Adult/Pediatric Intubated CO2 Detector
9. Pediatric Oxisensor Pulse Oximeter Probe
10. Infant Oxisensor Pulse Oximeter Probe
11. Precision Xtra Test Strips
12. Safe-T-Pro Lancets
13. Blood Pressure Cuff – Neonate
14. Blood Pressure Cuff – Pediatric
15. Blood Pressure Cuff – Adult
16. Blood Pressure Cuff – Large Adult
17. Q-CPR Patches
18. Pressure infuser cuff, Bulb, Manometer 1000ml Boundtree 87-VC410EA

SYRINGES/NEEDLES

1. 60cc Syringe with luer lock
2. 20cc Syringe with luer lock
3. 10cc-12cc Syringe with luer lock
4. 5cc Syringe with luer lock
5. 3cc Syringe with luer lock
6. 1cc Syringe with luer lock
7. 1 8ga Needle
8. 2 1ga Needle
9. Filter Needle

MISCELLANEOUS

1. Disposable Penlight
2. Ammonia Inhalant
3. Alcohol Prep
4. Cold Pack
5. Heat Pack
6. 500 cc Irrigation Saline
7. Trauma Shears
8. O.B. Kit
9. Foil Baby Bunting

10. Umbilical Scissors
11. Band Aids
12. Glutose 15
13. Surgilube or equivalent water soluble lubricant
14. Nasal Gastric Lavage Tube: 10, 14 and 18 Fr.
15. Disposable Razor
16. Scalpel #11
17. Soft Restraints

PERSONAL PROTECTIVE EQUPMENT

1. Arm Sleeves
2. BioHazard Bags: Small, Medium and Large
3. Emesis Bags
4. Gloves Nitile – Free Form EC Medium, Large, X Large and XX Large
5. N95 Respirator Mask: sizes Medium and Large
6. Vironox Hand Wipes
7. Personal Protection Kit
8. Sharpes Shuttle
9. 1 gallon Sharps Container

Appendix C

PATIENT TRANSFER PROCEDURES

It is the policy of City to provide quality and efficient medical services to all injured or ill patients. The objective of this procedure is intended as a guide to the fire officer, ALS provider, and/or firefighter to act with the patient's wellbeing in mind.

In order to facilitate the most efficient transfer of patient care from Fire Department to Contractor for patient transportation and/or treatment, the following transfer procedures have been adopted.

Upon Ambulance arrival at the scene of a medical emergency where patient care is being provided by Fire Department personnel, the Ambulance crew shall report to the Command Officer of the scene for possible assignments to assist in any additional care. These subsequent arriving personnel must avoid duplicating any patient assessment or treatment already completed and shall work under the direction of the Officer in Command of the incident.

Fire department paramedic personnel shall remain in charge of patient care until it is specifically relinquished to ambulance personnel.

The patient's condition will determine the need for the Fire Department paramedic to accompany the patient in the ambulance and to the hospital in accordance with the Paramedic Follow-up (Ride-in) Guidelines attached hereto as **Appendix D**. Other than an incident which is governed by the Paramedic Follow-up (Ride-in) Guidelines, Contractor shall be responsible to assure patient care during transport.

The base station hospital will maintain control of the patient and will be the final authority regarding patient care once contact with the base station physician has been made. After hospital destination choice has been determined by either: 1) patient choice or 2) base station medical control, the hospital destination will not be changed without consulting the base station physician or the Fire Department medic on scene. The fire department will be notified by Contractor of any changes to hospital destination.

When verbal and/or written reports are required, the following information will be conveyed on the patient condition:

- patient chief complaint
- all pertinent negative/positive physician findings and patient's current condition
- all patient treatment done up to the time of transfer,
- name and location of base station physician consulted and orders received (if applicable), and;
- patient destination

Fire Department shall provide a completed Fire Department EMS incident report signed by the Fire Department Paramedic within a reasonable time after the transfer of patient care to the Contractor or the receiving hospital.

All loading of patients into the Ambulance will be the responsibility of ambulance company personnel however, when requested by Contractor, City personnel shall assist in loading patients into the Ambulance. The Contractor shall assure that all ambulance personnel are physically capable of loading most patients, which does not include extremely large or very obese patients, into the ambulance without assistance. If an ambulance employee is physically unable to complete this task the Contractor will remove the employee from emergency response duties in the City of Glendale.

When requested by the Contractor, and after approval of the fire officer on scene, the fire department will provide additional personnel to assist during transport.

When the Ambulance has arrived on the scene of an EMS incident, prior to the arrival of a fire department unit, the officer in charge of the subsequently arriving fire department unit will seek out the Ambulance attendant in charge for a report on patient care that has already been provided. Following this report, the fire department officer may assume Command of the incident/patient.

It shall be the responsibility of all agencies providing patient care to cooperate and assist in treatment and transportation requirements.

Any modification to this Attachment must be reviewed and approved by DHS prior to implementation.

Appendix D

PARAMEDIC FOLLOW-UP (RIDE-IN) GUIDELINES

PURPOSE
The purpose of this document is to provide guidance in recognizing patient care situations that may require follow-up with a patient by an ALS Provider.

GUIDELINES
This document was developed after careful consideration of the following:

1. The patient's chief complaint and condition.
2. Patient situations that may require the presence of two ALS personnel during transport to a receiving facility.
3. Ensuring the availability of qualified providers and sufficient apparatus to the residents, businesses, and visitors of the region.
4. Location of receiving facilities.
5. Ambulance staffing requirements.

- Each Agency shall establish a quality management (QM) Committee. This QM recognizes that it is ultimately the decision of the ALS members caring for our patients that will determine whether or not it is necessary to accompany the patient (and ambulance paramedic) to a receiving facility. The Committee also recognizes that the decision to accompany a patient should be guided by the patient's presentation including assessment of the patient's mental status, vital signs (including SpO2), lung sounds, skin condition, cardiac rhythm, medical history, and medications.

- An ALS provider is required to follow-up with the patient to the receiving facility in the following situations:
  - A controlled substance used by ALS providers may not be transferred to a different agency or air ambulance providers.
  - Each Agency shall establish its own EMS QM Committee which will regularly monitor compliance with this policy.
  - If an ALS member chooses not to follow-up with the patient in any of the following situations, the member's rationale for that decision must be supported in his or her documentation.

- Recognizing that it is impossible to produce a comprehensive list of all possible patient situations, the following are provided as examples of situations that may involve an unstable patient:
  - Acute Stroke
  - Altered mental status (altered for patient)
  - Cardiac arrest requiring transport
  - Continuous IV medication infusion established
  - Eclampsia / preeclampsia

- Electrical therapy used (e.g., synchronized cardioversion, defibrillation, or transcutaneous pacing)
- Imminent delivery
- Medication given without improvement or relief of symptoms
- Restraints used. (A patient that is in police custody will require a handcuff key inside the ambulance during transport. The paramedic should have immediate access to keys needed to release handcuffs or other restraining devices.)
- Request of ambulance paramedic
- Seizures
- Adult – active seizure or status epilepticus
- Pediatric – first-time seizure, active seizure, unstable febrile seizure, or status epilepticus
- - STEMI
- Trauma - all immediate (by injury) patients
- Vaginal bleeding in pregnant patient with fetus of viable age (24 weeks)

These Paramedic Follow-Up (Ride-In) Guidelines are agreed upon and approved by the parties' authorized representatives below:

Contractor Administrative Medical Director	City Fire Department Administrative Medical Director
_____	_____
Name: _____	Name:_____
Title: _____	Title:_____
Date: _____	Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__, by _____, in his/her capacity as _____ for _____.

_____
Notary Public

My Commission Expires:

_____

CITY COUNCIL REPORT

Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**
Title:	**PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT WITH ICEARIZONA MANAGER CO., LLC AND ICEARIZONA HOCKEY CO., LLC**
Staff Contact:	**Richard A. Bowers, Acting City Manager**

Purpose and Recommended Action

This is a request for City Council to vote to adopt an ordinance authorizing and directing the City Manager to enter into a Professional Management Services and Arena Lease Agreement with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

Background Summary

In 2001, the City of Glendale entered into an Arena Development Agreement, an Arena Management and Use Agreement (AMULA), and a Mixed-Use Development Agreement (MUDA) with Arena Management Group, LLC, Coyotes Hockey, LLC, Glendale 101 Development, LLC, and Coyote Center Development, LLC. The purpose of these actions was to create a high-quality major economic center in Glendale, consisting of offices, hotels, entertainment, retail and restaurants.

Unexpectedly, in May of 2009, the former team owner Coyotes Hockey, LLC and its affiliated entity, Arena Management Group, LLC (collectively referred to as the "Coyotes") filed for federal bankruptcy protection. The city's investment was meeting financial projections and attracting economic development to the area until the Coyotes were thrust into bankruptcy. During the bankruptcy proceedings, the National Hockey League (NHL) purchased the assets of the Coyotes but did not assume the Arena Management, Use and Lease Agreement.

For the past four years, under the direction of Council, the city has been actively working with the NHL and potential buyers of the Coyotes to structure a deal that would keep the team in Glendale.

Council established criteria for negotiations with potential buyers of the Phoenix Coyotes including:

Keep team in Glendale for the full length of lease
Keep current arena revenues in tact
Provide opportunity to share in revenue streams, when feasible

The loss of the team as an anchor tenant would result in a loss of 44 major events each year at Jobing.com Arena.

Previous Related Council Action

On June 28, 2013, a Council special workshop was held to discuss the status of negotiations and review the draft proposed arena management agreement with RSE.

On March 26, 2013, Council voted to ratify the entering into of an agreement with Beacon Sports Capital Partners, LLC to provide representation for Glendale, assist the city in soliciting and reviewing offers, and negotiate a new Arena Management Agreement for the future lease and management of the city-owned Jobing.com Arena. A Request for Proposal was let on April 16, 2013 with a deadline of May 24, 2013 for Venue Management of Jobing.com Arena. At the direction of City Council, an extension was approved until May 31, 2013.

On February 5, 2013, the Acting City Manager presented a review of the options regarding the city-owned Jobing.com Arena and the impact of the unfulfilled sale of the Phoenix Coyotes. The deadline for prospective Phoenix Coyotes' owner, Greg Jamison of Arizona Hockey Arena Partners, LLC and the Arizona Hockey Partners, LLC, to purchase the Phoenix Coyotes' team was Thursday, January 31, 2013 at midnight. Mr. Jamison was required under terms of the finalized Arena Lease and Management Agreement and Noncompetition and Non-relocation Agreement to purchase the team from the National Hockey League by the deadline date and time to secure the 20 year deal with the city to use and manage the city-owned Jobing.com Arena. Mr. Jamison was not able to complete the purchase of the Phoenix Coyotes and did not sign the agreement by the deadline on January 31, 2013.

On November 27, 2012, Council voted and approved an ordinance with an emergency clause, authorizing and directing the City Manager to enter into an Arena Lease and Management Agreement with Arizona Hockey Arena Partners, LLC and Arizona Hockey Partners, LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

On November 20, 2012, the Acting City Manager presented a comprehensive review of the finalized Arena Lease and Management Agreement and Noncompetition and Non-Relocation Agreement with Arizona Hockey Arena Partners, LLC, and Arizona Hockey Partners, LLC, for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

On October 2, 2012, city staff sought guidance from City Council on proposed modifications to the Arena Lease and Management Agreement with Arizona Hockey Arena Partners LLC and Arizona Hockey Partners for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes. Council provided direction to proceed with negotiations with Arizona Hockey Arena Partners and Arizona Hockey Partners.

In August 2012, Council directed the Acting City Manager to renegotiate the payment terms of the approved agreement with a stated objective of reducing the payments made in the early years of the agreement to better meet the city's cash flow needs.

On June 8, 2012, Council adopted a resolution authorizing the entering into of the following agreements with Arizona Hockey Arena Partners, LLC and Arizona Hockey Partners, LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes: (1) Arena Lease and Management Agreement and (2) Noncompetition and Non-Relocation Agreement.

On May 10, 2011, Council adopted a resolution extending the management agreement between the City of Glendale and the NHL, to satisfy the NHL's requirements in order for the NHL Phoenix Coyotes to remain in Glendale during the NHL 2011-12 hockey season. In May 2011, the city agreed to pay $25 million for the NHL to operate the arena for FY 2011-12.

On December 14, 2010, staff brought forward an Arena Lease and Management Agreement and a Use and Non-Relocation Agreement with Arizona Hockey Arena Holdings, LLC and Coyotes Newco, LLC. The potential buyer did not move forward with plans to purchase the team.

Staff brought forward an MOU to Council for potential buyers of the Phoenix Coyotes on April 13, 2010 and June 8, 2010. Neither potential buyer moved forward with viable plans to purchase the team. Thus, on May 11, 2010, Council authorized an agreement with the NHL to retain the team in Glendale for the 2010-11 season while city staff completed the necessary negotiations with potential new owners.

Attachments

Ordinance

Agreement

ORDINANCE NO. 2855 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF THE LEASEHOLD INTEREST WITHIN THE PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT WITH ICEARIZONA MANAGER CO., LLC, AND ICEARIZONA HOCKEY CO., LLC.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof to grant a leasehold interest within the Professional Management Services and Arena Lease Agreement ("Agreement") with IceArizona Manager Co., LLC, and IceArizona Hockey Co., LLC. The Agreement, in substantial final form, is now on file in the office of the City Clerk of the City of Glendale and relates to the Exclusive Team Space, which is defined in § 1.2 of the Arena Lease and Management Agreement as "the portions of the Arena Facility designed and constructed for the exclusive use by the Team Owner, including the team locker room (the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas), the Team Owner's office, the Team's storage areas, and the Team Retail Stores."

SECTION 2. That the City's proposal to enter into the Agreement with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC must be accepted by those parties before 2:00 p.m. Arizona time (5:00 p.m. EDT) by their execution of the Agreement or the offer to enter into the Agreement shall expire and be null and void.

SECTION 3. That if IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC accept the City's offer to enter into the Agreement in the time prescribed, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver said Agreement and any ancillary documents or agreements and to do all such acts required to implement the purpose and intent of the leasehold interest therein on behalf of the City of Glendale, and to approve the substantial final form of the leasehold interest consistent with the forms now on file and the understanding of the parties, such approval to be evidenced by execution of such documents by the City Manager and the City Clerk.

SECTION 4. That the City and its residents will benefit from the management, use, and lease of the Arena under the Professional Management Services and Arena Lease Agreement, including the leasehold interest, by assuring a substantial, regular, and continuing utilization of the Arena, providing additional employment opportunities within the City, increasing the City's tax base, and stimulating additional development on properties in the vicinity of the Arena Facility; and, therefore, this Council finds that the Professional Management Services and Arena Lease Agreement provides a substantial public benefit.

SECTION 5. That, upon execution of the Agreement, the City Clerk is hereby directed to forward a memorandum of agreement that reflects the existence of Professional Management Services and Arena Lease Agreement with IceArizona Manager Co., LLC to the Maricopa County Recorder's Office for recording.

SECTION 6. The City Manager and the City Attorney are authorized to make changes to the Agreement of a grammatical, form, technical or similar nature so long as there is no material increase in the obligations or exposure to the City of Glendale.

SECTION 7. Neither the members of the City Council of the City of Glendale nor any officer, employee or agent of the City shall be subject to any personal liability or accountability by reason of the execution of the Agreement.

SECTION 8. Notice of A.R.S. § 38-511 is hereby given.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2013.

_____
M A Y O R

ATTEST:

_____
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

REVIEWED BY:

_____
Acting City Manager

PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT

by and among

CITY OF GLENDALE,

an Arizona municipal corporation (the "City")

and

ICEARIZONA MANAGER CO., LLC,

a Delaware limited liability company (the "Arena Manager")

and

ICEARIZONA HOCKEY CO., LLC,

a Delaware limited liability company (the "Team Owner")

Dated as of _____, 2013

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PROFESSIONAL MANAGEMENT SERVICES AND

ARENA LEASE AGREEMENT

THIS PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT (this **"Agreement"**) is dated as of _____ __, 2013 (the **"Effective Date"**), and is entered into by and among the City of Glendale, an Arizona municipal corporation (the **"City"**); IceArizona Manager Co., LLC, a Delaware limited liability company (the **"Arena Manager"**), and IceArizona Hockey Co., LLC, a Delaware limited liability company (the **"Team Owner"**). Each of City, Arena Manager and Team Owner may be referred to in this Agreement individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

As background to this Agreement, the Parties recite, state and acknowledge the following, each of which Recitals is fully incorporated into this Agreement and expressly made a material term and condition of this Agreement. The following Recitals shall constitute joint representation of the Parties, except where a statement or funding is specifically attributed to one Party:

A. The City is the owner of a sports and entertainment arena presently known as Jobing.com Arena (the "**Arena**") which has been the home to the Phoenix Coyotes (the "**Team**") National Hockey League ("NHL") franchise since the opening of the Arena on December 26, 2003.

B. As a result of the bankruptcy of a previous owner of the Team (the "**Previous Owner**"), the Team and its assets were acquired by certain NHL-owned entities. However, the two NHL-owned entities did not assume the obligations of the Previous Owner arising under that certain "Amended and Restated Arena Management, Use and Lease Agreement" dated November 29, 2001, between the City and the Previous Owner, filed with the Glendale City Clerk as Document No. C-4416 (the **"Former AMULA"**), and the Former AMULA has since been terminated by the City.

C. The City has informed the other parties that, in the City's judgment, it has not waived any of its rights against the Previous Owner with respect to the Former AMULA, including the Previous Owner's covenant to cause the Team to play all of the Team's home games at the Arena in accordance with Section 9.5 of the Former AMULA.

D. The NHL has notified the City and all interested entities that, if the Coyotes franchise is not sold to a new ownership group that is committed to keeping the team in Glendale, the NHL will allow the franchise to be sold to a group that will be permitted to relocate the team to another city. The NHL has also notified the City that it will not continue as the manager of the Arena.

E. The Team Owner has informed the City that Team Owner has negotiated an agreement with the NHL dated _____, 2013 (the **"NHL Purchase Agreement"**) for the purchase of the player contracts, the NHL franchise for the operation of the Team (the **"Franchise"**), and other assets relating to the Team, along with an express agreement to keep the team in Glendale, Arizona, on a going-forward basis. Upon the closing of the NHL Purchase Agreement, the Team Owner will be a member of the NHL and will hold the Franchise for the operation of the Team as an NHL hockey team bearing the designation "Phoenix Coyotes." Accordingly, Team Owner is the only person that can assure the continued use of the Arena by a NHL hockey team.

F. Subject to the closing of the NHL Purchase Agreement, the City and the Team Owner desire that the Team will play all of its home games, commencing on the Closing Date and continuing for the term specified in this Agreement (together with any additional complete NHL hockey seasons as may occur during any extension of the Term pursuant to this Agreement), at the Arena subject to the terms and conditions set forth in this Agreement and the terms of the Non-Relocation Agreement, executed contemporaneously with this Agreement.

G. The Team Owner has an exclusive agreement with Arena Manager requiring Team Owner to maintain the Team in Glendale for a period of years coincident with the Term of this Agreement, and requiring Arena Manager to make the Arena available to the Team as its "home" ice facility for the purpose of playing the Team's exhibition, regular and post-season games, guaranteeing the City the additional revenue associated with having an NHL hockey team use the Arena as its home ice facility.

H. As a result of the use of the Arena by the Team as its "home" ice facility, the City will realize the direct financial benefits associated with having, at a minimum, forty-one (41) home hockey games at the Arena, which benefits the City would not receive if any Person other than the Arena Manager (as a result of its express, contractual obligations to the Team Owner) was to be is selected to manage the Arena for the City.

I. The City, acting through its City Council and Staff, has determined that the services to be provided by Arena Manager pursuant to this Agreement are "professional services." This Agreement requires the Arena Manager to provide professional management and consulting services, in accordance with the City's Code of Ordinances (Part II, Chapter 2, Article V, Division 2, Section 2-138)

J. The City, acting through its City Council and Staff, further has determined that Arena Manager is the only Person that has the ability not only to provide the professional management and consulting services and expertise required by the City in connection with the City's ownership of the Arena, but to also assure the continued use of the Arena by the Coyotes. As such, engagement of Arena Manager through a sole source procurement is appropriate as no other potential vendor could provide the same services, benefits and assurances to the City. Such a sole source procurement is authorized by the City's Code of Ordinances (Part II, Chapter 2, Article V, Division 2, Section 2-148), if the procurement provisions of the Code of Ordinances are applicable to this Agreement notwithstanding the professional nature of the management and consulting services to be provided to the City by Arena Manager pursuant to this Agreement. The City's determination in this regard is supported by the written findings of the City Procurement Officer and City Manager as provided in the City's Code of Ordinances and in City Manager Directive No. 30 (3-19-01).

K. The City, acting through its City Council and Staff, further has determined that the professional management and consulting services and other benefits (including but not limited to the maintenance of the Coyotes franchise in the City and playing at the Arena, the periodic use of the Arena for City Sponsored Events, the opportunity to receive additional revenues as a result of City Revenue Sources and the City's avoidance of certain losses anticipated if no NHL team played its home games at the Arena) to be received by the City as a result of its entering into this Agreement and Arena Manager's and Team Owner's performance pursuant to and under the terms and conditions of this Agreement, have a value in excess of, equivalent to or, at a minimum, not grossly disproportionate to, the benefits conferred upon or provided to Arena Manager and Team Owner by the City pursuant to this Agreement.

L. The City has determined that it is in the best interest of the City and its residents to provide for the lease, professional management, and use of the Arena Facility, and to provide for

professional consulting services to be provided by the Arena Manager, in the manner described in this Agreement. Such lease, professional management, management consultation and use will benefit the City and its residents by providing a substantial, regular, and continuing utilization of the Arena Facility by the Team Owner, by providing additional employment opportunities within the City, by increasing the City's tax base, by stimulating additional development on properties in the vicinity of the Arena Facility, and otherwise.

M. The respective obligations of each of the Arena Manager and the Team Owner under this Agreement and the Related Agreements, including the Team Owner's obligation to play all of the Team's home games at the Arena Facility, are unique and are important to the development and operation of properties in the vicinity of the Arena Facility and to the well-being of the City and its residents generally, and, with respect to the Team Owner, are personal to the Team Owner and may be discharged only by the Team Owner.

N. In reliance upon and in consideration of the City's obligations under this Agreement and the Related Agreements, subject to the closing of the NHL Purchase Agreement on or before August 5, 2013, (i) the Arena Manager will require the Team Owner to agree, pursuant to the Non-Relocation Agreement, to play all of its home games at the Arena Facility, and (ii) the Arena Manager and the Team Owner have undertaken their respective obligations under this Agreement and the Related Agreements.

AGREEMENT

NOW THEREFORE, in consideration of the premises, covenants, agreements and obligations contained herein, the Parties enter into this Agreement and agree as follows:

1. STATEMENT OF INTENT; DEFINITIONS; INTERPRETATION.

1.1 STATEMENT OF INTENT

The Parties agree that the following Statement of Intent reflects the objectives and certain of the principal economic terms of this Agreement. Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to such terms in Section 1.2 of this Agreement, or otherwise parenthetically in this Agreement.

1.1.1 Subject to an early termination right exercisable after five (5) years (and on specified terms and conditions) and only upon the occurrence of substantial post-Closing Date operating losses (see Section 3.3) the Phoenix Coyotes NHL Team shall play all of its Home Games in the Arena Facility (see Section 8.3.1(a)).

1.1.2 With respect to the Arena Facility and Arena Parking, professional management and consulting services shall be provided by the Arena Manager (see Section 8.1 and 8.2).

1.1.3 Except for capital expenditures to maintain and improve the Arena (see Section 11.3), all Operating Expenses shall be the responsibility of, and shall be paid by the Arena Manager (see Section 8.1).

1.1.4 The City shall pay the Management Fee to the Arena Manager during the Term (see Section 10.1).

1.1.5 The City shall receive (or, where noted, share in) certain anticipated revenues. The revenues to be received by the City include revenues derived from the following sources and activities:

(a) A City Surcharge of not less than $3.00 on each Qualified Ticket for a Hockey Event at the Arena Facility, with increases in the City Surcharge based upon attendance (see Section 9.1.2(a)(i));

(b) A City Surcharge of $5.00 on each qualified Ticket for a non-Hockey event (see Section 9.1.2(b));

(c) A Supplemental Surcharge of $1.50 per Qualified Ticket throughout the Term applicable to all Events to be placed in an escrow account which may be drawn upon by City to fund certain revenue deficits on a Fiscal Year basis (see Section 9.1.3);

(d) Parking revenues of $10 per car for each Hockey Event (above a $20,000 per-Event base payable to the Arena Manager) (see Section 8.2.1(e));

(e) Seventy five percent (75%) of parking revenues of $15 per car for each non-Hockey Event) (see Section 8.2.1(e));

(f) Rent-free use of the Arena for certain City Sponsored Events and Community Events (see Sections 8.9.2 and 8.9.3);

(g) All revenues (net only of Event-specific operating expenses) for City Sponsored Events and Community Events (see Sections 8.9.2(e) and 8.9.3(c));

(h) Twenty percent (20%) of all income earned by Arena Manager or Team Owner, on or after the Effective Date, from the past and/or future from the sale of Naming Rights (see Section 8.6.4(b)(i));

(i) All income received from the sale of naming rights for a new, smaller stage/theatre venue that may be constructed and used within the bowl (main seating area) of the Arena Facility (see Section 8.6.4(b)(ii)); and

(j) Annual fixed rent to be paid to the City in connection with the use by the Arena Manager and/or Team Owner of the use of the Arena Facility and Arena Parking in an initial amount of $500,000 per year (see Section 6.6.1).

The foregoing revenues are in addition to sales/transaction privilege taxes received on admissions, concessions, construction, etc., relating to the Arena, as well as additional sales/transaction privilege taxes and "bed taxes" generated by Westgate area businesses or other businesses within the City and enhanced employment opportunities.

1.2 Definitions. As used in this Agreement, the following terms shall have the meanings indicated unless a different meaning is provided parenthetically or otherwise in the Agreement, or unless the context otherwise requires:

"**Account Records**" means accurate records relating to the management and operation of the Arena, including records establishing all amounts received by the Arena Manager (whether as Operating Revenues or otherwise) and all amounts paid by the Arena Manager (whether as Operating Expenses or otherwise) and records relating to the Arena Accounts, including any records maintained by any Arena Sub-Manager and including records of all sums payable and/or paid to the City.

"**Additional Arena Manager Event Block**" means Events, which are not Hockey Events or City Sponsored Events, the Arena Manager causes to occur in a given Fiscal Year.

"**Advertising**" means all permanent and temporary announcements, acknowledgments, banners, liquid electronic displays, monument and other signs, show bills and other audio or visual commercial messages of any nature displayed, announced, delivered (for example, by Wi-Fi or similar transmissions to phones, tablets or other portable devices) or otherwise presented at, in or on the Arena or any portion thereof, provided that Advertising shall not include (a) any Advertising contained in the broadcasts, reproductions or transmittals of Team games in any medium or any Advertising of the broadcasts, reproductions or transmittals of Team games in any medium, (b) the Naming Rights, (c) Arena announcements during the course of Coyotes games, or (d) the City's program advertisements. For clarity, (i) under this Agreement Advertising does not include any advertising relating to the Team or the events occurring in the Arena Facility which are published, displayed, announced or transmitted in any medium other than by display, announcement or presentation at, in or on the Arena or any portion thereof and (ii) any Advertising content transmitted on computers or other electronic communication devices owned by the Team Owner or Arena Manager shall not, by virtue of the fact that such computers or devices are Personal Property, be deemed to Advertising "displayed, announced or otherwise presented at, in or on the Arena Facility or any portion thereof" for purposes of this definition.

"**Advertising Agreement**" means any contract or agreement entered into by or on behalf of the Arena Manager for Advertising.

"**Affiliate**" of a specified Person means a Person who (a) controls, is directly or indirectly controlled by, or is under common control with, the specified Person; (b) owns, directly or indirectly, 10% or more of the equity interests of the specified Person; (c) is a general partner (if the specified Person is a partnership), managing member or manager (if the specified Person is a limited liability company), officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in clause (a) or (b) above; or (d) is a member of the Immediate Family (e.g., any spouse, son, daughter or parent of any individual (by blood, adoption or by marriage), or any trust, estate, partnership, joint venture, limited liability company, corporation, or any other legal entity directly or indirectly controlled by such spouse, son, daughter or parent) of the specified Person or the Person described in clauses (a) through (c) above. A Person shall be deemed to control another Person for the purposes of this definition if the first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, equitable interests, common directors, trustees or officers, by contract or otherwise.

"**Annual Budget**" means an annual budget (prepared by the Arena Manager in the form provided in Exhibit "G" and submitted to the City and the Team Owner for their reasonable approval as stated herein) for a given Fiscal Year or partial Fiscal Year, as applicable, projecting in reasonable detail for such Fiscal Year (i) the Operating Revenues and Operating Expenses estimated in good faith by the Arena

Manager; (ii) expenditures for Capital Improvements estimated in good faith by the Arena Manager; (iii) cash flows and timing of cash flows estimated in good faith by the Arena Manager; (iv) projected revenues to be distributed to the City, and (v) such other amounts or information as may from time to time be reasonably required by the City within reasonable time limits while any Management Fee is payable hereunder.

"Applicable Law" means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, or any recorded restrictive covenant or deed restriction, affecting the Arena, including those applicable to environmental, zoning, building code, health and safety and other similar matters, as the same may be amended from time-to-time.

"Arena" means, collectively, the Arena Facility, Arena Parking Areas and the Personal Property.

"Arena Account" means any one or more of the accounts described in Section 8.10.

"Arena Facility" shall mean the building in the City currently known as "Jobing.com Arena" and all foundations, structural elements, interior areas, all improvements, furnishings, fixtures and equipment (excluding all Personal Property and all furnishings and equipment owned by suite holders and temporary furnishings owned by Persons staging Events at the Arena) of whatever nature located therein or thereon and all exterior areas, including the plaza and other exterior area adjacent to the Arena Facility, and located on Lot 9 of Westgate, and exclusively serving patrons attending Events at the Arena Facility, all as shown on Exhibit "A" and Exhibit "B" to this Agreement. The cooling plant serving the Arena is specifically included as part of the Arena Facility.

"Arena Maintenance Standard" means a standard of maintenance that, as of the time of application, meets or exceeds the quality of the maintenance of (i) the multi-purpose facility currently known as "US Airways Arena" in Phoenix, Arizona (to the extent that personal observations and/or records are available to the Parties for the purpose of determining the quality of maintenance; to the extent not available, any other comparable multi-purpose arena for which such records are available); or (ii) such other multi-purpose arena to which the Parties may from time to time, in their respective sole discretion, agree in writing. In the event of a conflict between the Management Performance Standards set forth on Exhibit "C" to this Agreement and any Arena Maintenance Standard, Exhibit "C" shall control.

"Arena Management Fee" means the amount paid by the City to the Arena Manager for the management of the Arena in accordance with Section 10 and the terms and conditions set forth herein.

"Arena Manager Affiliate Contract" means any contract or agreement relating to the Arena to which both the Arena Manager and an Affiliate of the Arena Manager or the Team Owner are parties, other than this Agreement, the Non-Relocation Agreement and the Related Agreements. For clarity, agreements on the contributions of capital by owners, allocations of distributions among owners, the allocations of internal rights and control among the managers and owners with respect to the Arena Manager or the Team Owner shall not be Arena Manager Affiliate Contracts, and no payments by Arena Manager pursuant to such agreements or contracts shall be deemed Operating Expenses.

"Arena Manager Default" means the occurrence of any of the following events:

a. If the Arena Manager fails to make any payment or distribution to be made by the Arena Manager hereunder at the time and in the manner required by this Agreement, and such failure is not cured within 30 days after the Arena Manager's receipt of notice of such failure from any other Party to this Agreement;

b. If any representation or warranty made by the Arena Manager in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Arena Manager fails to cause such representation or warranty to become correct within 30 days after the Arena Manager's receipt of notice from any other Party to this Agreement that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for a period of time not to exceed 180 days so long as the Arena Manager (i) commences to cause such representation or warranty to become correct within 30 days after the Arena Manager's receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct; or

c. If the Arena Manager materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the Arena Manager's receipt from any other Party to this Agreement of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for a period of time not to exceed 180 days so long as the Arena Manager (i) commences to cure such breach within 30 days after the Arena Manager's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

"**Arena Manager Event**" means an Event other than a Hockey Event or a City Sponsored Event that the Arena Manager secures for the Arena.

"**Arena Manager Withdrawal**" means any of the following events

a. The Arena Manager resigns;

b. The Arena Manager is dissolved;

c. An Arena Manager Default or Team Owner Default exists under this Agreement or a Team Default exists under the Non-Relocation Agreement, and the City elects to secure a Replacement Arena Manager or the City elects to act as Replacement Arena Manager, subject to the Team Owner's first right to secure a Replacement Arena Manager as set forth under Section 19.3.3;

d. The Arena Manager commences, or has commenced against it, any case, proceeding or other action under the United States Bankruptcy Code, or any other Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking (i) to have an order for relief entered with respect to the Arena Manager; (ii) to adjudicate the Arena Manager bankrupt or insolvent or seeking reorganization, winding up, liquidation, dissolution, discharge, composition, or other relief with respect to the Arena Manager or the debts of the Arena Manager; or (iii) the appointment of a receiver, trustee, custodian, or similar official for the Arena Manager and such action is not discharged within one-hundred twenty(120) days of having been filed; provided, however, such action shall not constitute an Arena Manager Withdrawal for so long as Arena Manager is paying the Base Rent and other sums required to be paid under this Agreement and is performing all of its other covenants, agreements, obligations, liabilities and duties under this Agreement; or

e. The Arena Manager is determined by a court order to be insolvent.

"**Arena Parking Area**" means the areas shown on Exhibit "A" and Exhibit "B" to this Agreement, which shall include no less than 5,500 parking spaces located within 2,640 feet of any point on the exterior of the Arena Facility which shall be used for parking of the vehicles of Arena patrons for

each Event during the Term.

"**Arena Parking Area Revenue**" means as described in Section 8.2(1)(e).

"**Arena Parking Rights**" means (i) the right to directly charge for parking in any space or area which is a part of the Arena Parking Area; (ii) the right to negotiate and enter into agreements for the sale or license of Parking Advertising the Arena Parking Area; and (iii) the right to negotiate and enter into agreements for the sale or license of naming rights in connection with all or part of that portion of the Arena Parking Area.

"**Arena Revenue Bonds**" means the 2003 Arena Revenue Bonds designated "Series 2003A" and "Series 2003B" and any other bonds issued to refinance these bonds to the extent the principal maturity date is not extended.

"**Arena Sub-Manager**" means a qualified arena manager acceptable to and approved by the City in its reasonable discretion, to whom the Arena Manager may, from time to time, delegate all or a portion of its duties and responsibilities under this Agreement.

"**Arena Theater**" means as defined in Section 8.6.4(b).

"**Business Day**" means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks under the laws of the State of Arizona or observed by the City of Glendale. Use of the word "day", as opposed to "Business Day", means a calendar day.

"**Capital Improvements**" means any or all installations, alterations or improvements of or to, and all purchases of additional or replacement furniture, fixtures, machinery or equipment for, the Arena Facility, the depreciable life of which, according to GAAP, is in excess of one (1) year.

"**City Default**" means the occurrence of any of the following events:

a. If the City fails to pay when due, for any reason, any amount payable by the City hereunder, including any portion of the Management Fee, and such failure is not cured within 30 days after the City's receipt of notice of such failure from any other Party to this Agreement;

b. If any representation or warranty made by the City herein at any time proves to have been incorrect in any material respect as of the time made, and if the City fails to cause such representation or warranty to become correct within 30 days after the City's receipt of notice from any other Party to this Agreement that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the City (i) commences to cause such representation or warranty to become correct within 30 days after the City's receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct;

c. If the City commences a proceeding under Chapter 9 of the United States Bankruptcy Code; or

d. If the City materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the City's receipt from any other Party to this Agreement of notice of such breach; provided, however, that if it is reasonably possible to cure such breach (excluding

any failure to pay any portion of the Management Fees, which shall only be subject to subpart a. above) but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the City (i) commences to cure such breach within 30 days after the City's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

"City Revenue Event" shall have the meaning set forth in Section 7.6.

"**City Revenue Sources**" means (i) the receipts from the City Surcharge, (ii) the receipts from the Supplemental Surcharge amounts to which City is entitled pursuant to the terms of this Agreement, (iii) the City's share of Arena Parking Area Revenue, (iv) the City's portion of revenues received by the Arena Manager with respect to the sale or license of Naming Rights pursuant to Section 8.6.4 and Section; and (v) revenues derived from City Sponsored Events.

"City Sponsored Event" shall mean a City Revenue Event or a Community Event.

"City Surcharge" shall have the meaning set forth in Section 9.1.

"City Surcharge Account" means an account established and maintained for the benefit of the City as one or more trust accounts that require the signature of only the City for withdrawals at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of City Surcharge.

"City's Knowledge" means the actual knowledge of the City Manager, the Acting City Manager (if applicable), or the Glendale City Council as a whole.

"Claim or Loss" means any claim, cost damage, demand, judgment, award, expense, loss, obligation or other liability (including reasonable attorneys' fees), including those relating to property, injury to or death of persons, loss of income and losses under workers' compensation laws and benefits.

"Closing" and "Closing Date" means the consummation of the transaction involving Team Owner's purchase of the Team and Franchise(and the date of consummation) contemplated by this Agreement upon the satisfaction or waiver of all conditions set forth in Section 17.2.

"Community Event" means an Event at the Arena Facility (i) which is sponsored or co-sponsored by the City; (ii) which is conducted or presented as a service to the City, its residents, or a non-profit organization; or (iii) which does not feature performers or performances normally booked in arenas comparable to the Arena Facility; or (iv) which the financial benefits (if any) of which are received or distributed to the City or to a non-profit, civic or other community organization or to the City for community-oriented programs or purposes; and (v) which in all cases are reasonably approved by the Arena Manager.

"Community Event Expenses" means those expenses that are directly attributable to the use of the Arena Facility for a Community Event, *i.e.*, those that would not have been incurred but for the Community Event, including the cost and expense of utilities, insurance, cleaning, repairs and personnel. For clarity, only payments or other considerations to be made or provided by the Arena Manager that (i) are calculated solely on the basis of sales made or transactions completed during a Community Event directly relating to such Community Event or (ii) are payable solely because a given Community Event is held shall be "directly attributable" to such Community Event.

"Concessions" means the sale, furnishing or renting of foods, beverages (including alcoholic beverages), apparel, souvenirs, programs (excluding program Advertising) or other goods or merchandise by a Person (other than the Team Owner at the Team Retail Stores) in, at, from or in connection with the operation of the Arena, whether sold, furnished or rented from shops, kiosks or by individual vendors circulating in or about the Arena, including any restaurant (whether open to the public or restricted to members thereof), club, membership dining room or other facility for the sale of food and beverages, and including sales to fill orders for any such items by any Person other than the Team Owner at the Arena Facility (whether received by mail, facsimile, telephone or other medium of communication).

"Concessions Agreement" means any agreement or contract for the right to engage in or conduct one or more Concessions.

"Emergency" means any condition or situation that presents an imminent and significant threat (or if not immediately acted upon will present an imminent and significant threat) to the health or safety of users of the Arena or to the structural integrity of the Arena Facility.

"Event" means any revenue or non-revenue producing sports, entertainment, cultural or civic event or other activity (including related event set-up and take-down) which is either (i) presented or held in the bowl (main seating) portion of the Arena Facility or any part thereof, or (ii) presented or held in any other portion of the Arena Facility in a manner that precludes the use of the bowl (main seating) portion of the Arena Facility for other events or activities; or (iii) held within any portion of the Arena and which involves a Fee activity, any form of entry (*i.e.*, ticket sales, admissions), the sale of goods, displays or gatherings (such as conventions, trade shows, etc.) even if they do not involve use of the bowl area. If such event or activity is presented in its entirety more than once during a given day, all such presentations during such day shall be deemed one Event. If such event or activity is presented in its entirety on more than one consecutive day, each day on which such event or activity is presented shall be deemed a separate Event. For purposes of this paragraph, any event or activity that commences on a given day and is completed within the four hours immediately following the end of such day shall be deemed to have been presented in its entirety on the day such event or activity commenced.

"Event of Default" means a Team Owner Default, Arena Manager Default, or City Default and refers to an event that exists after the expiration of all applicable notice and cure periods and periods of Force Majeure.

"Exclusive Arena Manager Revenues" means revenues that are not Exclusive City Revenues or derived from City Revenue Sources, and that are (i) revenues from or in connection with Concessions at Hockey Events and, as applicable, other Events, (ii) revenues from or in connection with food and beverage services provided by Arena Manager at Hockey Events and, as applicable, other Events, (iii) revenues from or in connection with Naming Rights other than revenues distributed to the City from Naming Rights sales or licenses; (iv) revenues from or in connection with any Advertising, (v) Suite License Revenues and revenues from the licensing of Premium Seats, including any "premium," "premium fee," or "personal seat license fee", (vi) but are not Exclusive Team Revenues or Exclusive City Revenues.

"Exclusive City Revenues" means (i) all Impositions of the City, (ii) City Surcharge, (iii) the Supplemental Surcharge receipts to which City is entitled pursuant to the terms of this Agreement, and (iv) interest or other income derived from the investment of any of the foregoing.

"Exclusive Team Revenues" means all (i) Hockey Ticket Receipts (minus City Surcharge and Impositions); (ii) revenues from or in connection with the operation of Team Sales generated by Team

Retail Stores; and (iii) sponsorship revenues and receipts, including television and radio broadcasting, promotional and other sponsorship fees received or collected in connection with the conduct of Hockey Events (excluding, for clarity, the Naming Rights); all of which shall be excluded from Operating Revenues.

"Exclusive Team Spaces" means the portions of the Arena Facility designed and constructed for the exclusive use by the Team Owner, including the team locker room (the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas), the Team Owner's office, the Team's storage areas, and the Team Retail Stores, as described on Exhibit "A".

"Exculpatory Language" means the following language:

> [Insert name of exculpating Person] acknowledges and agrees that (i) this [insert title of contract or agreement] imposes no contractual obligation on the City of Glendale; (ii) in the event of a default under this [insert title of contract or agreement], of any kind or nature whatsoever, [insert name of exculpating Person] shall look solely to [insert name of the Arena Manager or the Team Owner, as applicable] at the time of the default for remedy or relief; and (iii) no elected official, officer, employee, agent, independent contractor or consultant of the City of Glendale shall be liable to [insert name of exculpating Person], or any successor in interest to [insert name of exculpating Person], with respect to this [insert title of contract or agreement].

"Fee Activity" means any Event or other activity at the Arena Facility, the admission to which is controlled by a Ticket.

"Fiscal Quarter" means a three month period commencing on the first day of January, April, July or October, and ending on the last day of March, June, September or December, respectively.

"Fiscal Year" means a 12 month period commencing on July 1 and ending on June 30.

"Force Majeure" means any of the following that prohibits, materially interferes with or delays the occupancy of the Arena Facility or prohibits or materially interferes with the occupancy, operation or use of the Arena Facility or any material portion thereof or the performance of any applicable duty of a Party under this Agreement after the Effective Date: NHL Players strikes and labor disputes; lock-outs; acts of the public enemy; the enactment, imposition or modification of any Applicable Law which occurs after the Effective Date; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, initiative or referendum action, wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; unusual or extraordinary governmental restrictions; epidemics; landslides; earthquakes; fires; hurricanes; floods; wash-outs; explosions; failure of major equipment or machinery (other than that cause by ordinary wear and tear or failure of adequate maintenance and repair); or shortages of material or labor (excluding those caused by lack of funds), where such equipment or machinery, material or labor is critical to the occupancy, operation or use of the Arena Facility for its intended purposes; nuclear reaction or radiation; radioactive contamination; or any other cause, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the Party claiming the right to alter, delay or postpone performance on account of such occurrence, but specifically excluding any financial condition, lack of funds, lack of financing, insolvency or bankruptcy of such Party.

"**GAAP**" means Generally Accepted Accounting Principles as determined by the Financial Accounting Standards Board and the Governmental Accounting Standards Board.

"**Governmental Authority**" means any federal, state, and local agency, department, commission, board, bureau, administrative or regulatory body or other governmental instrumentality having jurisdiction over the Arena Facility (or any portion thereof) and the transactions contemplated by this Agreement.

"**Hazardous Material**" means any chemical, element, compound, mixture, solution, or other substance that is prohibited, limited, governed, or regulated by any applicable federal, state or county, municipal, local or other statute, law, ordinance or regulation that related to or deals with the protection of human health, safety or the environment, and any rules, regulations or guidelines adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced as of the Effective Date or the Closing Date, including by way of example and not limitation substances designated as "hazardous" or "toxic" under Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act; any hazardous substance or toxic pollutant designated under Section 311(b)(2)(a) or Section 307(a) of the Clean Water Act; and any imminently hazardous chemical substance or mixture with respect to which the Environmental Protection Agency Administrator has "taken action under" Section 7 of the Toxic Substances Control Act.

"**Hockey Event**" means any of the following when played or conducted at the Arena Facility: (i) any Home Game (including any related warm-up sessions); (ii) any All-Star Game (including any related warm-up sessions); or (iii) any Hockey-Related Event, including pre-season games, exhibitions, games between two visiting teams, playoff games, other post-season hockey games.

"**Hockey Event Permitted Uses**" include the following:

a. Hockey Events;

b. The use by the media for watching, broadcasting, and reporting on Hockey Events and other Team Owner activities; and

c. The sale and distribution of Hockey Tickets.

"**Hockey Event Spaces**" means all portions of the Arena Facility, other than the Exclusive Team Spaces.

"**Hockey-Related Event**" means any Event (other than a Pre-season Game, Regular Season Game, Play-off Game or All-Star Game) conducted, authorized, permitted, sponsored or co-sponsored by the Team Owner, including any award ceremony, championship celebration, promotional performance or festival, breakfast, luncheon, dinner, ball, demonstration, exhibition, instruction or workshop. Notwithstanding the foregoing, the Hockey-Related Events described in this definition shall not exceed four (4) such Hockey-Related Events in any Fiscal Year without the consent of the City (which consent may not be unreasonably withheld), and shall be subject to the Scheduling Procedures.

"**Hockey Rules**" means all then applicable NHL policies, procedures, provisions, rules, regulations, by-laws, contracts and directives that govern the rights, duties, privileges and obligations of members of the NHL.

"Hockey Season" means a period beginning on the date officially promulgated by the NHL as the first day of training camp for a given NHL hockey season and ending on the date on which the last NHL Play-off Game is played for such season.

"Hockey Ticket" means a Ticket for a Hockey Event.

"Hockey Ticket Receipts" means the gross amount of money received by the Team Owner from the sale of Hockey Tickets, including Hockey Tickets for Suites and for Premium Seats and any City Surcharge assessed on or charged with respect to any Hockey Ticket.

"Home Game" means an NHL Pre-season Game, an NHL Regular Season Game or an NHL Play-off Game in which the Team is designated as the "home team".

"Imposition(s)" means all governmental assessments, franchise fees, transaction privilege and use taxes, excise taxes, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever (irrespective of the nature thereof, including all such charges based on the fact of a transaction, irrespective of how measured) which at any time during the Term may be assessed, levied, confirmed or imposed upon: (a) the Arena or any portion thereof; and (b) any payments received by the Arena Manager or the Team Owner from any Person using or occupying the Arena or any portion thereof.

"Interest Rate" means the annual interest rate that is announced from time to time by Wells Fargo Bank, N.A. or its successor as its "prime" lending rate, plus 2%. If, at any time during the Term, Wells Fargo Bank, N.A. or its successor no longer announces a "prime" lending rate, then the Interest Rate shall be the annual interest rate that is announced by a national bank reasonably selected by the Parties and having an office in Phoenix, Arizona as such national bank's "prime" lending rate, plus 2%. The Interest Rate shall change and be adjusted upon each announcement by Wells Fargo Bank, N.A. or its successor (or any substitute national bank selected by the Parties pursuant to this definition) of each change in the "prime rate" used to determine the Interest Rate in the manner described in this definition. Except as otherwise expressly required by the terms of this Agreement, all interest to be paid pursuant to this Agreement shall be paid at the Interest Rate and shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each and the actual number of days in any partial month.

"Land" shall mean the land parcels on which any portion of the Arena Facility and Arena Parking Area are located.

"License" means any agreement or contract (other than Tickets) entered into by the Arena Manager pursuant to the terms of this Agreement for the use of the Arena Facility (or any portion thereof) with any Party (other than the Team Owner with respect to Hockey Events and the City with respect to City Sponsored Events) for a limited period of time (no more than 14 consecutive days), including any agreement or contract with a promoter or sponsor for Events or other activities at the Arena (other than Hockey Events and City Sponsored Events), but excluding the following: (i) this Agreement; (ii) Concessions Agreements; (iii) Suite License Agreements; (iv) Premium Seat Agreements; (v) Advertising Agreements; and (vi) Naming Rights Agreements. **"Licensee"** means a Person entitled to use the Arena or a portion thereof pursuant to a License.

"Management Fee" shall have the meaning set forth in Section 10.

"Management Performance Standards" shall mean the performance standards for the Arena Manager and any Arena Sub-Manager, as set forth and described in Exhibit "C" attached to this Agreement.

"Mediation" means the process by which a mediation takes place under this Agreement, as provided in Section 21 below.

"Mediation Dispute" means any dispute among the Parties to this Agreement (or between any two of them) and arising out of or related to this Agreement.

"Mediator" means the individual selected by the Parties in accordance with the Mediation procedures established herein to attempt to resolve a dispute.

"Naming Rights" means the exclusive rights to designate or assign a brand, company, product or other name to, or have a name association with or sponsorship of, the following: one or more portions (or all) of the Arena Facility and Arena Parking Area including the Arena Facility and Arena Parking Area; concourses within the Arena Facility; the rink in the Arena Facility; panels, walls; media boards; scoreboards; equipment; entrances; exits; landscaping; pavilions; theaters, stages, attractions; service areas; Team Owner Retail Stores; clubs; seating; communication systems; audio and video systems; Team mascots; Zambonis®; Team performers; Team ticket stock; and directional signage.

"Naming Rights Agreement" means any contract or agreement entered into by or on behalf of the Arena Manager for Naming Rights.

"NHL" means the National Hockey League, and any successor or assignee of the National Hockey League, or, if there is no National Hockey League or successor or assignee then operating, any other hockey-related association, league or other group or entity with which the Team Owner is affiliated.

"Non-Relocation Agreement" means the Non-Relocation Agreement, dated as of the Effective Date, by and among the City, the Arena Manager and the Team Owner.

"Non-Hockey Events" means Events other than Hockey Events.

"Notice of Team Assignment" shall have the meaning set forth in Section 12.1.3.

"Operating Account" means one or more depository accounts established and maintained for the benefit of the Arena Manager, the Team Owner, and the City at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Operating Revenues.

"Operating Expenses" means all expenses or obligations paid directly or incurred by or on behalf of the Arena or the Arena Manager with respect to, or which are reasonably allocated to, the management and operation of the Arena during the Term (all of which shall be the responsibility of the Arena Manager except to the extent specifically otherwise set forth herein), including: costs incurred in performing agreements and contracts pertaining to the management and operation of the Arena; Impositions; all expenses incurred to obtain Operating Revenues; salaries, wages and benefits of all personnel engaged in connection with the operation of the Arena , including event staff and temporary staff; human resource support services and training and development expenses; contract labor expenses; maintenance and repair expenses; utility costs and expenses; deposits for utilities; common area maintenance expenses payable pursuant to any covenants, conditions or restrictions applicable to the land upon which the Arena is located (as described in Exhibit "B") or any portion thereof; the Arena Parking

Area or any portion thereof; telephone expenses; expenses incurred under Licenses; telescreen, video or scoreboard operation expenses; dues, membership and subscription expenses; security expenses (including expenses incurred under the Safety and Security Agreement); management fees; audit fees; legal fees; other professional fees; refuse removal expenses; cleaning expenses; sales taxes; costs of office and other materials, supplies and equipment; Ticket commissions (other than Ticket commissions for Hockey Events and City Sponsored Events); insurance premiums and bond charges (including premiums and charges for fidelity/employee dishonesty bonds); data and information processing and storage expenses; advertising, marketing and public relations expenses; expenses and costs incurred in the production and promotion of Events and other activities at the Arena (other than expenses and costs incurred in the promotion of Hockey Events and City Sponsored Events); pest control expenses; Arena related entertainment expenses; employment fees; freight and delivery expenses; expenses for leasing, maintaining and repairing equipment; credit and debit facility costs and expenses and telecheck fees and expenses; travel, lodging and related out-of-pocket expenses properly allocable to the operation of the Arena, including promotion of the Arena, conferences, facility management seminars and classes; and any Claim or Loss (other than as expressly set forth in this Agreement) relating to the Arena; provided, however, that amounts on account of the Exclusive City Revenues or Exclusive Team Revenues that are received for and paid to the City or the Team Owner respectively by the Arena Manager shall not be included as Operating Expenses; further provided that expenses or obligations, to the extent incurred or paid on behalf of Team Owner or to the extent reasonably allocable to the operation of the Team Owner's business, shall not be included as Operating Expenses. Operating Expenses do not include expenses allocable to the Team Owner under Generally Accepted Accounting Principles or other reasonable allocation principles, including but not limited to allocations pursuant to the NHL's Collective Bargaining Agreement.

Any Operating Expenses that relate to a period of time after the Termination Date shall be prorated between the City and the Arena Manager so that the City shall pay the portion of the Operating Expenses applicable to the period after the Termination Date, and the Arena Manager shall pay, pursuant to this Agreement, the portion of the Operating Expenses applicable to the period during the Term.

"Operating Revenues" means all revenues collected or otherwise received by the Arena Manager from the management and operation of the Arena (including all Exclusive Arena Manager Revenues, but excluding amounts received on account of the Exclusive City Revenues and Exclusive Team Revenues and any interest earned on any of the foregoing), as determined on an accrual basis in accordance with GAAP. Operating Revenues do not include revenues allocable to the Team Owner under GAAP or other reasonable allocation principles, including but not limited to allocations pursuant to the NHL's Collective Bargaining Agreement.

"Parking Advertising" means advertising on all or part of the Arena Parking Area.

"Parking Profits" means the gross revenue received by Arena Manager from the Arena Parking Areas from all revenue sources other than Parking Advertising and Area Naming Rights governed by Section 8.6.4(b) of this agreement.

"Permitted Exceptions" means the permitted exceptions to title to the Arena, Arena Facility and Arena Parking Area set forth in Exhibit "D" attached to this Agreement.

"Person" means an individual, general or limited partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company, Governmental Authority or other entity.

"Personal Property" means all movable items (not fixtures) owned by the Arena Manager, the Team Owner, any Affiliate of the Arena Manager or Team Owner, or the Team Owner's players located within or on any portion of the Arena Facility or Arena Parking Areas.

"Play-off Game" means any ice hockey game (i) in which the Team is a participant; (ii) which, under the Hockey Rules, is classified as a "play-off game for the NHL (Stanley Cup) championship; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including, in the Team Owner's sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

"Premium Seat" means any seat (excluding any seat in a Suite, but including restaurant, bar and similar seating) in the Arena Facility that has services or amenities that are not available to general seating in the Arena Facility and for which the licensee thereof pays a premium over the price for general seating pursuant to a Premium Seat License Agreement.

"Premium Seat Agreement" means written contracts or agreements for (i) the use of Premium Seat(s) for Hockey Events, and (ii) the first right to purchase the use of such Premium Seat(s) for all other Events except Community Events, during the Term.

"Pre-season Game" means any ice hockey game (i) in which the Team is a participant; (ii) which is scheduled to be played prior to the portion of the Hockey Season promulgated by the NHL as the regular season; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including, in the Team Owner's sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

"Qualified Ticket" means a Ticket to a Fee Activity for which (i) the Team Owner, with respect to Hockey Events; (ii) the Arena Manager or sponsor or promoter, with respect to Team Revenue Events, City Revenue Events and other Fee Activities that are not Events; or (iii) the City, with respect to City Sponsored Events, receives valuable consideration (whether in money, services, goods or other value). Any Ticket for which (i) the Team Owner, with respect to Hockey Events; (ii) the Arena Manager or the sponsor or promoter with respect to Team Revenue Events, City Revenue Events and other Fee Activities that are not Events; or (iii) the City with respect to City Sponsored Events, (a) receives no value, or (b) receives money (but not any other services, goods or other value) for such Ticket in an amount less than 25% of the retail price stated on the face of such Ticket, shall not be a "Qualified Ticket"; provided, however, that, if the average number of Tickets described in the immediately preceding clauses (a) and (b) that are distributed by the Team Owner for each Hockey Event (other than Hockey-Related Events) in a given Hockey Season exceeds 1,000, then the number of Tickets by which the average number of Tickets described in the immediately preceding clauses (a) and (b) distributed by the Team Owner for each Hockey Event in such Hockey Season exceeds the average of 1,000 Tickets per Hockey Event in such Hockey Season shall be deemed "Qualified Tickets", unless the City and the Team Owner mutually agree otherwise.

"Regular Season Game" means any ice hockey game (i) in which the Team is a participant; (ii) which is scheduled to be played during the portion of the Hockey Season promulgated by the NHL as the regular season; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

"Related Agreements" means the Non-Relocation Agreement, the Safety and Security Agreement, and any agreement that is included as an Exhibit to this Agreement or otherwise specifically contemplated by this Agreement.

"Renewal and Replacement Account" means one or more accounts, requiring the signatures of the Arena Manager and the City for withdrawals, maintained at a federally insured institution(s) having offices in the State of Arizona for the deposit of Capital Improvement Contributions and disbursement of Capital Improvement Expenditures as defined in Section 11.

"Replacement Arena Manager" means, in the event of an Arena Manager Withdrawal, a qualified arena manager designated by the Team Owner or the City, as applicable under Section 19.3.3, that agrees to assume the obligations of the Arena Manager under this Agreement.

"Safety and Security Agreement" means that certain Safety and Security Agreement in the form attached to this Agreement as Exhibit "E", to be entered into as of the Effective Date by and among the City, the Arena Manager and the Team Owner.

"Scheduling Procedures" means the scheduling procedures for the Arena Facility attached to this Agreement as Exhibit "F", as the same may be amended, from time to time, by agreement among the City, the Arena Manager and the Team Owner.

"Substantial Taking" means a Taking of the Arena Facility that, in the reasonable estimation of Arena Manager, will render the Arena Facility unsuitable for the Arena Manager's operations as contemplated by this Agreement.

"Suite" means any portion of the Arena Facility that is constructed as a "suite" within the Arena Facility and designated by the Team Owner as a "suite", including specialty suites, such as opera suites, party suites and "under stands" suites.

"Suite License Agreement" means written contracts or agreements for the license or use of Suites.

"Suite License Revenues" means the revenues received by the Arena Manager in connection with the licensing or rental of Suites.

"**Supplemental Surcharge**" means as defined in Section 9.1.3.

"Taking" means the exercise of the right of eminent domain, with or without litigation, or the transfer in lieu or under the threat of eminent domain.

"Team Assignee" means a Person to which the Team Owner intends to make an assignment in accordance with the terms and conditions of this Agreement.

"Team Owner Default" means the occurrence of any of the following events:

a. If the Team Owner fails to pay when due any amount payable by the Team Owner hereunder, and such failure is not cured within 30 days after the Team Owner's receipt of notice of such failure from any other Party to this Agreement;

b. If any representation or warranty made by the Team Owner in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Team

Owner fails to cause such representation or warranty to become correct within 30 days after the Team Owner's receipt of notice from any other Party to this Agreement that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for a period of time (not to exceed 180 days), so long as the Team Owner (i) commences to cause such representation or warranty to become correct within 30 days after the Team Owner's receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct; or

c. If the Team Owner is determined by a court order to be insolvent; or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of a receiver or trustee for it or for a substantial part of its property or business, provided, however, such action shall not constitute a Team Owner Default for so long as Team Owner is timely paying any sums required to be paid under this Agreement and is performing all of its other covenants, agreements, obligations, liabilities and duties under this Agreement;

d. If the Team Owner materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the Team Owner's receipt from any other Party to this Agreement of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for a period of time (not to exceed 180 days), so long as the Team Owner (i) commences to cure such breach within 30 days after the Team Owner's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

"Team Locker Room" means the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas.

"Team Revenue Event" means a revenue-producing Event, other than Hockey Events, Community Events, or City Sponsored Events, that is sponsored or co-sponsored by the Team Owner or that is conducted under, with, or in the Team's name.

"Team Retail Stores" means any the area or areas in the Arena facility designed and exclusive use by the Team Owner for Team Sales, as described on Exhibit "A".

"Team Sales" means sales by the Team Owner which result in Exclusive Team Revenues only.

"Term" means the period commencing on the Closing Date and ending on the Termination Date or, if earlier, the date on which this Agreement otherwise is terminated on the terms set forth herein.

"Termination Date" means the 30th day after the last day of the NHL hockey season commencing in 2028.

"Third Party" means a third party that is not the Team Owner, the Arena Manager or an Affiliate of the Team Owner or the Arena Manager.

"Ticket" means the ticket or other indicia by which admission to the Arena Facility for an Event or other activity at the Arena Facility is permitted and controlled.

1.3 Terms. Whenever the context shall so require, all words herein in any gender shall be deemed to include the masculine, feminine or neuter gender, and all singular words shall include the plural, and all plural words shall include the singular.

1.3.1 The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall mean and include this Agreement and all amendments to this Agreement and supplements to this Agreement, unless the context clearly indicates or requires otherwise.

1.3.2 The words "include," "including," and other similar references, shall mean "include, without limitation," and "including, without limitation," respectively.

1.3.3 The words "sole discretion" and other similar references shall mean "sole, absolute and unfettered discretion."

1.3.4 Exhibits. Each exhibit referred to herein shall be considered a part of this Agreement as fully, and with the same force and effect, as if such exhibit had been included herein in full.

1.3.5 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

2. PARTY REPRESENTATIVES.

2.1 City Representative. The City Manager shall be the City's authorized representative who shall act as liaison and contact person among the City and the other Parties in administering and implementing the provisions of this Agreement. The City shall have the right to designate a substitute City Representative by providing notice of such designation to the other Parties. The City Representative, or his authorized designee, shall respond to a request for the City Representative's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the Parties. Except as expressly stated otherwise in this Agreement, the City Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the City's denial of such request.

2.2 Arena Manager Representative. The Arena Manager's then current general manager of Arena Facility operations shall be the Arena Manager's authorized representative who shall act as liaison and contact person among the Arena Manager and the other Parties in administering and implementing the provisions of this Agreement. The Arena Manager shall have the right to designate a substitute Arena Manager Representative by providing notice of such designation to the other Parties. The Arena Manager Representative, or his authorized designee, shall respond to a request for the Arena Manager's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the Parties. Except as expressly stated otherwise in this Agreement, the Arena Manager Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the Arena Manager's denial of such request.

2.3 Team Owner Representative. The Team Owner's then current chief operating officer shall be the Team Owner's authorized representative who shall act as liaison and contact person among the Team Owner and the other Parties in administering and implementing the provisions of this Agreement. The Team Owner shall have the right to designate a substitute Team Owner Representative by providing notice of such designation to the other Parties. The Team Owner Representative, or his

authorized designee, shall respond to a request for the Team Owner's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the Parties. Except as expressly stated otherwise in this Agreement, the Team Owner Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the Team Owner's denial of such request.

3. TERM.

3.1 Binding Effect; Closing Date. This Agreement shall be binding on the Parties as of the Effective Date, but the obligations of the Parties to perform under this Agreement are subject to the conditions set forth in Section 17.2. Specifically but without limitation, the provisions of this Agreement pertaining to the commencement of the demise and lease to the Arena Manager of the leasehold interest in the Arena pursuant to Section 5 and the commencement of the grant of the subleasehold to the Team Owner pursuant to Section 6 and the commencement of all rights and obligations associated with such leasehold and subleasehold, do not commence until the Closing Date. This Agreement shall terminate on the Termination Date, unless earlier terminated pursuant to the terms and conditions set forth in this Agreement.

3.2 Renewal. If this Agreement has not been earlier terminated, after the end of the 2026-2027 NHL hockey season, the Arena Manager, the Team Owner, and the City will begin discussions to extend upon mutual agreement this Agreement for five years beyond the Termination Date, which discussions shall include the terms and conditions of the renewal; provided however, there shall be no renewal or extension of the Term unless there is a corresponding renewal or extension of the Non-Relocation Agreement, and unless and until renewal is approved by the City Council, which renewal may be denied or conditioned in the sole, absolute and unfettered discretion of the City Council.

3.3 Early Termination by Arena Manager/Team Owner. Notwithstanding the other terms and provisions of this Agreement, Team Owner and Arena Manager jointly shall have the right to terminate this Agreement without penalty or cost by delivery of written notice to the City at any time within 180 days following the end of the fifth (5th) hockey season year after the execution date if (a) neither terminating Party is in material default of any term or condition of this Agreement, and (b) Team Owner has incurred a cumulative Operating Loss of $50,000,000 or more, calculated as the sum of Team Owner's operating income/loss for each of the Fiscal Year periods then ended, provided that if such notice is given during any NHL hockey season, the termination shall not be effective until the end of the applicable hockey season, including all Home Games associated with the season. In this regard, Team Owner shall deliver to the City, not later than ninety (90) days following the end of each Fiscal Year, a statement (certified to the City by the Team Owner's chief financial officer or the Team Owner's certified public accountants, at the option of Team Owner) of the Team Owner's claimed operating income or loss for such Fiscal Year, which statement shall be subject to audit by the City and the result of such audit shall thereafter be conclusive upon Team Owner with respect to the determination of Operating Losses.

3.4 Early Termination by the City. Notwithstanding the other terms and provisions of this Agreement, the City shall have the right to terminate this Agreement without penalty or cost by delivery of written notice to Team Owner and Arena Manager jointly at any time within 180 days following the end of the fifth (5th) hockey season year after the execution date if (a) the City is not in material default of any term or condition of this agreement, and (b) the City has incurred a cumulative loss of $50,000,000 or more, calculated as the sum of all City Arena-Related expenditures (including, but not limited to management fee payments) minus all revenues received from City Revenue Sources under this Agreement. In this regard, the City shall deliver to Team Owner and Arena Manager, not later than ninety

(90) days following the end of each Fiscal Year, a statement (certified by the City's Chief Financial Officer or the City's Certified Public Accountant, at the option of the City) of the City's claimed loss for such fiscal year.

4. ARENA MANAGER.

4.1 Engagement of Arena Manager. The City and the Team Owner hereby engage the Arena Manager to be the sole and exclusive manager of the Arena Facility during the Term, with the responsibility for the operation, direction, management and supervision of the Arena Facility and its staff, subject to, and as more fully described in, this Agreement.

4.2 Compliance with Management Performance Standards.

4.2.1 Arena Manager shall manage the Arena during the Term in a manner that is consistent with the Arena Management Performance Standards.

(a) If the City notifies the Arena Manager that it has failed to comply with the Management Performance Standards (which claim shall be in writing and describe the bases therefor in reasonable detail), the Arena Manager shall, within 30 days after the Arena Manager's receipt of the City's notice of such breach, (i) cure the failure claimed by the City, or (ii) if it is reasonably possible to cure but it is not reasonably possible to cure within such thirty-day period, then such cure period shall be for an a period of time not to exceed 180 days so long as the Arena Manager (a) commences to cure within 30 days after the Arena Manager's receipt of such notice, and (b) thereafter diligently continues to complete such cure a soon as practicable thereafter, (iii) retain an Arena Sub-Manager, subject to the reasonable approval of the City, for the duties and responsibilities of the Arena Manager for which the City claims the Arena Manager has failed to comply with the Management Performance Standards, or (iv) notifies the City that it disputes the alleged breach and describing the basis for its dispute of the allegations.

(b) In the event that the Arena Manager disputes such breach, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

4.2.2 The Arena Manager and the City acknowledge that a material consideration for this Agreement is the Arena Manager's ability to ensure that an NHL franchise shall be a primary tenant of the Arena during the Term; therefore, the Arena will be maintained and managed in a manner that facilitates that tenant's operations and is consistent with the Hockey Rules.

4.2.3 Arena Sub-Manager. The Arena Manager may, from time to time, delegate all or a portion of its duties and responsibilities to an Arena Sub-Manager that shall comply with all of the Arena Manager's obligations under this Agreement with respect to the duties and responsibilities delegated.

4.2.4 Delegation. Any delegation of the Arena Manager's duties under this Section:

(a) Shall not release or discharge the Arena Manager from any of its duties or responsibilities under this Agreement;

(b) Shall not increase the amount of the Management Fees; and

(c) Shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed; and

(d) Shall be to a Person with experience in providing professional management services to facilities similar to the Arena Facility.

(e) The Arena Manager shall cause any Arena Sub-Manager to perform the duties and responsibilities of the Arena Manager that are delegated to such Arena Sub-Manager in compliance with the Management Performance Standards.

(f) If the City claims that the Arena Sub-Manager has failed to comply with the Management Performance Standards, the City shall give the Arena Manager and the Team Owner notice of such claim.

(g) The Arena Manager shall, within 30 days after the Arena Manager's receipt of the City's notice, (i) cause the Arena Sub-Manager to cure the failure claimed by the City, or if incapable of cure within 30 days, commence cure within such period and use good faith efforts to complete such cure a soon as practicable thereafter, or (ii) discharge the Arena Sub-Manager and assume responsibility for the duties and responsibilities of the Arena Manager that had been delegated to the discharged Arena Sub-Manager.

5. DEMISE OF ARENA AND USE RIGHTS.

5.1 Demise of Arena. The City hereby demises and lets to the Arena Manager, and the Arena Manager hereby takes and leases from the City, effective on the Closing Date, for the Term and upon the provisions (i) The Arena Facility, and further leases to the Arena Manager (pursuant to Section 6 of this agreement) certain parking rights, subject to hereinafter specified, and in accordance with and subject to the terms and conditions set forth in this Agreement, the Arena, subject to the Team Owner's exclusive use of the Exclusive Team Spaces as provided herein; and (ii) all pre-existing commitments of the City identified on Exhibit "M" to this Agreement. Further, use of the Arena Parking by Arena Manager shall be limited to use for Arena-related events with all other rights of use expressly reserved to the City.

5.2 Grant of Use Rights. In addition to the rights granted by the City to the Arena Manager in the other provisions of this Agreement, the City hereby grants to the Arena Manager, and approves the right of the Arena Manager to grant to the Team Owner, during the Term, the exclusive right and obligation to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses, in accordance with and subject to the terms and conditions set forth in this Agreement.

5.2.1 The Arena Manager shall have the exclusive right (subject to the Arena Manager's grant to the Team Owner as set forth in Section 6.2 below) to use the Hockey Event Spaces for Hockey Event Permitted Uses for a reasonable time before, during, and for a reasonable time after the Hockey Event.

5.2.2 Subject to the rights of the Team Owner under this Agreement, the Arena Manager shall retain possession and control of all portions of the Hockey Event Spaces; provided, however, in exercising its control over the Hockey Event Spaces, the Arena Manager (i) shall not interfere in any material respect with Hockey Event Permitted Uses; and (ii) shall not allow any Person to enter the Hockey Event Spaces during any Hockey Event without a Hockey Ticket.

5.3 Compliance with Law. Neither the Arena Manager nor the Team Owner shall knowingly cause or permit the use of the Arena Facility in a manner that violates Applicable Law.

6. LEASEHOLD INTEREST.

6.1 Lease of Exclusive Team Spaces. In addition to the rights granted by the City to the Arena Manager in the other provisions of this Agreement, effective as of the Closing Date, but subject in all events to the provisions of Section 5.1, (i) the City hereby leases the Arena to the Arena Manager, and the Arena Manager leases the Arena from the City, subject to the Permitted Exceptions, and (ii) the City hereby grants to the Arena Manager the exclusive right to use the common areas at the Arena Facility for all purposes reasonably necessary and convenient for the exercise of the Arena Manager's and the Team Owner's reasonable exercise of rights and performance of obligations under this Agreement, including without limitation for reasonably convenient access to and from the Exclusive Team Spaces, all for the duration of the Term, and in accordance with and subject to the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, or anything in this Agreement to the contrary, this Agreement is fully contingent on the continued existence of, and performance of the parties under, the Non-Relocation Agreement; and the termination or expiration of the Non-Relocation Agreement for any reason shall automatically, and without further act or notice required, terminate this Agreement and subleases described in this Section 6, subject only to (i) payments then owing to the City or, (ii) any payments then owing to Arena Manager by City that have not then been made, and (iii) any obligations of indemnity that are stated in this Agreement to survive the termination of this Agreement.

6.2 Sublease of Exclusive Team Spaces. The Arena Manager hereby subleases the Exclusive Team Spaces to the Team Owner, and the Team Owner subleases the Exclusive Team Spaces from the Arena Manager, and the Arena Manager grants to the Team Owner (i) the exclusive right and obligation to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses; and (ii) the non-exclusive right to use the common areas at the Arena Facility for reasonably convenient access to and from the Exclusive Team Spaces, subject to the Permitted Exceptions and all terms and conditions of this Agreement and the Non-Relocation Agreement, all for the duration of the Term, and in accordance with and subject to the terms and conditions set forth in this Agreement.

6.2.1 The Team Owner, as the approved subtenant, shall pay all expenses of furnishing the Exclusive Team Spaces. The Arena Manager (or the Team Owner as its subtenant) shall have the right to use the Exclusive Team Spaces for any lawful purpose, consistent with and subject to the provisions of this Agreement.

6.2.2 The Arena Manager and City shall have the right to enter the Exclusive Team Spaces only as reasonably necessary to perform its obligations under this Agreement upon at least three days' notice to the Team Owner, except in the case of an Emergency, in which event the Arena Manager or City may enter the Exclusive Team Spaces upon reasonable notice. In exercising its right of entry to the Exclusive Team Spaces, the Arena Manager and City shall not interfere in any material respect with the Team Owner's operations or activities.

6.2.3 Team Equipment.

(a) The Team Owner may, as the approved subtenant, at the Team Owner's expense and risk, place such Team Owner equipment, furniture, fixtures and other moveable and non-moveable equipment owned or leased by the Team Owner and used exclusively by the Team Owner (**"Team Equipment"**), as the Team Owner may from time to time deem necessary or appropriate (i) in the Exclusive Team Spaces at any time, and (ii) , with the prior approval of Arena Manager, in the Hockey Event Spaces at any time during which the Team Owner has the right to use the Hockey Event Spaces.

(b) The City acknowledges the Team Equipment is the property of the Team Owner and may be removed by the Team Owner at any time, provided that Team Owner shall immediately repair any damage resulting from such removal and restore the Arena to the condition existing on the Effective Date.

(c) The Team Owner shall be responsible for obtaining, at the Team Owner's expense, whatever insurance covering the Team Equipment the Team Owner deems appropriate.

(d) The Team Owner acknowledges and agrees that the City shall have no liability or responsibility for any Team Equipment placed within the Arena, and the Team Owner releases the City for and from any and all Claims and Losses in connection with such Team Equipment; provided, however, such release shall not apply to any Claims and Losses made or resulting from the negligence or intentional misconduct of City, its employees, agents or contractors.

6.3 Further Sublease Agreements. Upon the written request of the Team Owner, the Arena Manager or the City, the Team Owner and the Arena Manager shall enter into a written sublease agreement more specifically setting forth the terms and conditions of the sublease of the Exclusive Team Spaces from the Arena Manager to the Team Owner; provided however that such any such written sublease agreement (or amendment or modification thereto) shall be consistent with the terms of this Agreement and shall be subject to the prior written consent of the City, which shall not be unreasonably withheld as to provisions that are consistent with this Agreement. Neither the Arena Manager nor the Team Owner shall (a) further sublease any portion of the Arena Facility, including the Exclusive Team Spaces, to any third party without the City's prior written consent, or (b) purport to grant any rights in excess of the rights granted by the City hereunder.

6.4 Rights and Obligations of Team Owner as Subtenant. The Team Owner, as subtenant of the Arena Manager pursuant to Section 6.2 above, shall be responsible only for those obligations expressly set forth in this Agreement and in the Non-Relocation Agreement as obligations applicable to the Team Owner, and the Team Owner shall not otherwise be responsible for performing any act or obligation, and shall not assume or incur any liability for or in connection with, any act or obligation in this Agreement and in the Non-Relocation Agreement based on the terms of this Agreement and the Non-Relocation Agreement. No Sublease shall relieve, release or limit the Arena Manager of, or with respect to, any of its obligations under this Agreement.

6.5 Team Sales. The Team Owner shall have the sole and exclusive right, at all times during the Term, to engage in and conduct all Team Sales and to receive, as Exclusive Team Revenues, all revenue therefrom. Accordingly, neither the Arena Manager nor the City shall take any action with respect to, or have any authority over, Team Sales other than at the express direction of the Team Owner; provided, however, nothing in this Section shall be construed as a limitation on the City's governmental powers. The Team Owner shall bear and pay, from the Team Owner's own monies, all direct expenses attributable to Team Sales, including vendors and other personnel, equipment, costs of goods sold, advertising and promotional costs and rights fees.

6.6 Base Rent. As part of the consideration for the leasehold interests granted to the Arena Manager under this Agreement, during the Term the Arena Manager shall pay to the City rent in the following amounts, which shall be paid in equal quarterly installments, the first installment due and payable on the commencing on the Closing Date and thereafter each installment due and payable on or before each quarterly (on a three calendar month basis) anniversary of the Closing Date during the Term:

6.6.1 For the five years following the Closing Date, $500,000 per year; provided however, the Base Rent for the first Fiscal Year shall be $500,000 prorated (based on a 365-day year) if the period from the Closing Date to the end of the Fiscal Year on which the Closing occurs is less than 365 days.

6.6.2 Beginning of the sixth anniversary of the Closing Date and continuing until the day before the thirteenth anniversary of the Closing Date, $650,000 per year (prorated for partial years as set forth in Section 6.6.1); and

6.6.3 Beginning of the thirteenth anniversary of the Closing Date and continuing until the day before the fifteenth anniversary of the Closing Date, $800,000 per year.

6.7 Taxes on Arena Manager's Interest. The Parties acknowledge and agree that the Arena Manager's leasehold interest in the Arena under this Agreement is exempt, under A.R.S. §42-6208(4), from the government property lease excise tax imposed under A.R.S. §42-6201 through §42-6210, but if such leasehold interest ceases or is found not to be exempt from such taxation, or is determined for any reason (including, but not limited to, amendments to such statutes from and after the date of this Agreement) to be subject to any other taxation (including, but not limited to, *ad valorem* or real property taxation), the Arena Manager shall pay (or cause to be paid) prior to delinquency all government property lease excise taxes, rental occupancy taxes, transaction privilege taxes, *ad valorem* or other form of real property taxes, and other taxes or fees that may be lawfully imposed on the leasehold interest of the Arena Manager under this Agreement (including any real or personal property taxes and any other taxes imposed with respect to such leasehold interest). Any payment of such taxes shall constitute an Operating Expense hereunder for which Arena Manager shall be solely responsible.

6.8 Quiet Enjoyment. Subject to any limitation on use set forth in this Agreement, so long as the Arena Manager performs all of its obligations under this Agreement, the City shall do nothing (other than the acts permitted or required by this Agreement) that will prevent the Arena Manager or its licensees or subtenants from peaceably and quietly enjoying, using, and occupying the Arena Facility during the Term in the manner described in this Agreement, and shall defend the Arena Manager's quiet enjoyment, use and occupancy of the Arena Facility in the manner described in this Agreement (subject only to the Permitted Exceptions) against the claims of all Persons claiming by, under or through the City.

6.9 City Access.

6.9.1 The City, through appropriate designees, as landlord, reserves the right to enter the portions of the Arena Facility, upon reasonable advance notice to the Arena Manager and, with respect to the Exclusive Team Spaces, the Team Owner, during the Arena Manager's regular business hours or other hours when the Arena Manager is open for business (other than during Events); provided however, that in exercising the City's rights under this Section the City shall not unreasonably interfere with the operations of the Arena Facility.

6.9.2 Notwithstanding any provision of this Agreement, the City does not in any manner limit its governmental rights, authority, responsibilities, or powers, including but not limited to the City's right and obligation to enforce Applicable Law and to fully and timely address public health or safety concerns, and all provisions of this Agreement shall be deemed subject to such rights and obligations of the City.

7. LICENSES.

7.1 Arena Manager's Authority. Effective as of the Closing, the Arena Manager shall have the sole and exclusive right to grant, negotiate, and enter into Licenses during the Term, subject to and in accordance with the provisions of this Agreement and the Scheduling Procedures.

7.2 Negotiations. The Arena Manager shall make commercially reasonable efforts to seek potential Licenses and shall, prior to negotiating the terms and conditions of a given License, determine the proposed manner of providing the Arena Manager with sufficient monies to pay the applicable City Surcharge with respect to the proposed License.

7.3 Requirements.

7.3.1 The Arena Manager shall cause:

(a) The terms, conditions and performance of each License to not, in any event, conflict with any provisions of this Agreement, any other License, or any Concessions Agreement, Suite License Agreement, Premium Seat Agreement, Advertising Agreement or Naming Rights Agreement.

(b) Each License for a Fee Activity to require that the Licensee pay to the Arena Manager an amount not less than the aggregate City Surcharge and Supplemental Surcharge for such Fee Activity.

(c) Each License for any Activity in the Arena Facility to include the Exculpatory Language.

7.3.2 If, under the circumstances contemplated by a given License, it is commercially reasonable to do so in order to attract an Event, the Team Owner shall agree in such License to close or limit the operations of the Team Retail Stores during the Event that is the subject of such License.

7.4 Execution and Performance. The Arena Manager shall (in the name of the Arena Manager and not of the City) execute the License and thereafter perform the licensor's obligations under such License.

7.5 Existing Licenses. The Arena Manager shall use commercially reasonable efforts to comply with and perform the obligations under Licenses or other agreements relating to the Arena assumed under the NHL Purchase Agreement and existing on the Closing Date until such Licenses expire or are terminated in accordance with their respective terms.

7.6 City Revenue Events.

7.6.1 The Arena Manager has the sole discretion under this Agreement to approve or disapprove all License applications for Events that are submitted by prospective Licensees, provided that no License shall be granted to a Licensee or an Event reasonably likely to be deemed by the City to be unacceptable in the community because of explicit adult (sexual) content or otherwise. The Arena Manager shall promptly deliver notice (which notice may be oral) to the City of its disapproval of any completed License application together with the terms and conditions of such proposed License. Subject to the Scheduling Procedures, all Concessions Agreements, all Suite License Agreements, all Premium Seat Agreements, all Advertising Agreements, all Naming Rights Agreements and the requirements set forth in this Section, the City shall have the right, to the extent the prospective Licensee remains willing

to enter into a License upon such terms and conditions as are set forth in the License application, to cause the Arena Manager to enter into such proposed License, notwithstanding the disapproval of such proposed License by the Arena Manager, by giving the Arena Manager notice of the City's agreement to pay to the Arena Manager the amount by which the expenses that are directly attributable to the Event contemplated by the proposed License exceeds the revenues directly attributable to such Event (which shall then be a **"City Revenue Event"**). The Arena Manager shall use commercially reasonable efforts to either approve or disapprove such License application quickly enough to provide the City with a reasonable opportunity to exercise its rights under this Section 7.6.

7.6.2 The City's notice pursuant to Section 7.6.1 shall be given to the Arena Manager within such time as the Arena Manager reasonably designates when the Arena Manager provides notice to the City of its disapproval of a License application pursuant to Section 7.6.1.

7.6.3 The Arena Manager shall maintain separate records of all revenues and all expenses directly attributable to each City Revenue Event, and all amounts received for deposit and deposited into the City Surcharge Account with respect to such City Revenue Event. For clarity, only payments or other considerations to be made or provided that (i) are calculated solely on the basis of sales made or transactions completed during a City Revenue Event directly relating to such City Revenue Event or (ii) are payable solely because a given City Revenue Event is held shall be "directly attributable" to such City Revenue Event.

7.6.4 The Arena Manager, at the time the quarterly financial report for such Fiscal Quarter is submitted to the Parties pursuant to Section 8.15, shall either:

(a) If the aggregate of the expenses directly attributable to the City Revenue Events held during a given Fiscal Quarter exceeds the aggregate of the revenues directly attributable to the City Revenue Events, set-off against any distributions or payments to be made to the City for such Fiscal Quarter the amount by which the aggregate of such expenses exceeds the aggregate of such revenues and submit to the City an invoice for any shortfall for which the City will provide reimbursement within 30 days , or

(b) If the aggregate of the revenues directly attributable to the City Revenue Events exceeds the aggregate of the expenses directly attributable to the City Revenue Events held during a given Fiscal Quarter, remit to the City within 30 days after the end of the Fiscal Quarter the excess of the revenue over the expenses.

7.6.5 In no event shall any License entered into by the Arena Manager pursuant to this Section 7.6 be a Team Revenue Event.

7.6.6 In no event shall any Facility rental or similar use charge be imposed on the City with respect to any City Revenue Event or be included in determining the expenses attributable to that event for purposes of the computations required by Section 7.6.4 of this Agreement.

7.7 Enforcement of Licenses. The Arena Manager shall make commercially reasonable efforts to enforce all Licenses.

7.8 Collection and Allocation of Revenues. The Arena Manager shall make commercially reasonable efforts to collect revenues under and generated by all Licenses.

8. ARENA MANAGEMENT.

8.1 Management and Operations of the Arena Facility. From and after the Closing Date, the Arena Manager shall take all actions necessary for the management of the Arena Facility in accordance with this Agreement, the Management Performance Standards, and the applicable Annual Budget, and the Arena Manager shall perform all of the obligations described in this Agreement without charge to the City, except for the Management Fee provided for in this Agreement. Without limiting the generality of the foregoing, the Arena Manager is authorized to and shall, in a commercially reasonable manner, do the following:

8.1.1 Collect Operating Revenues and pay Operating Expenses in the manner required by this Agreement;

8.1.2 Maintain and furnish, in the manner required by this Agreement, all financial records and information required by this Agreement;

8.1.3 Employ, pay, train and supervise, as employees of the Arena Manager and not of the City or the Team Owner, all personnel (other than fire and police personnel, which are to be provided by and employees of the City) that are necessary for the operation of the Arena Facility; determine all matters with regard to such personnel, including compensation, bonuses, employee benefit plans, hiring, training and replacement; and prepare, on the Arena Manager's behalf, and file when due, all forms, reports and returns required by Applicable Law relating to the employment of such personnel;

8.1.4 Other than security to be provided pursuant to the terms of the Safety and Security Agreement, provide or arrange for security and paramedics for the Arena Facility for the purpose of maintaining public order and safety in and around the Arena Facility, including the enforcement of safety policies and procedures and the determination of appropriate safety and security staffing levels and patterns, the review and approval of security measures and the exclusion or ejection from the Arena Facility of persons or items in the interest of safety or security;

8.1.5 Maintain, repair and replace all materials, tools, machinery, equipment and supplies necessary for the maintenance and operation of the Arena;

8.1.6 Operate and maintain the Arena in good, clean order, condition and repair and in compliance with (i) the Arena Maintenance Standard; (ii) all Applicable Law; (iii) all NHL requirements in effect from time to time; and (iv) the provisions of this Agreement, and provide for, either directly or by reimbursement, cleaning of, and trash removal for, properties in the vicinity of the Arena following Events and other activities at the Arena Facility;

8.1.7 Coordinate and administer a preventative maintenance program for the Arena ;

8.1.8 Coordinate and administer a safety program for the Arena Facility;

8.1.9 Arrange for all utility and other services for the Arena (including electricity for Hockey Events in compliance with applicable NHL requirements and sufficient to light the Arena Facility with the degree of illumination required for color televising and broadcast of Hockey Events), and pay or cause to be paid when due all charges for water, sewer, gas, light, heat, cooling, telephone, electricity and other utilities and services rendered to or used in connection with the operation of the Arena ;

8.1.10 Maintain or cause to be maintained all necessary licenses, permits and authorizations for the Arena Manager's management of the Arena in accordance with this Agreement and Applicable Law;

8.1.11 Furnish to the City the reports and other information regarding the Arena and the management as required herein;

8.1.12 Other than Tickets and credentials issued by the Team Owner or any promoter or sponsor of any Event or other activity at the Arena Facility, or any agent thereof, issue all Tickets and credentials for Events and other activities at the Arena Facility;

8.1.13 Verify (and require certificates with respect thereto) that (i) each Licensee has obtained and is maintaining the insurance required by the applicable License; (ii) each concessionaire under a Concessions Agreement has obtained and is maintaining the insurance required by the applicable Concessions Agreement; (iii) the Arena Manager has obtained or caused to be obtained, and is maintaining or causing to be maintained, the insurance required to be obtained and maintained by the Arena Manager pursuant to this Agreement; (iv) the Team Owner has obtained and is maintaining the insurance required to be obtained and maintained by the Team Owner pursuant to this Agreement; and (v) with respect to each City Sponsored Event, the City has obtained the insurance, or has made adequate arrangements for self-insurance, for such Event as required by this Agreement;

8.1.14 Establish and maintain bookings, calendars and schedules for Events and other activities at the Arena Facility booked or scheduled in accordance with the Scheduling Procedures, and use commercially reasonable efforts to schedule and book such Events and other activities in order to utilize the Arena Facility as much as possible in accordance with this Agreement and the Scheduling Procedures; and

8.1.15 To the extent Home Games are cancelled or a Hockey Season is shortened or cancelled, diligently use further commercially reasonable efforts to schedule and book such Events and other activities in order to utilize the Arena Facility as much as possible in accordance with this Agreement and the Scheduling Procedures.

8.1.16 Manage City Revenue Events and Community Events in accordance with this Agreement.

8.1.17 Take all other actions (and refrain from taking certain actions, when appropriate), and enter into all other agreements reasonably necessary to assure that the Arena is properly, safely and professionally managed and maintained in a manner consistent with the Management Performance Standards, Applicable Law, this Agreement and all Related Agreements.

8.2 Management and Operation of Parking.

8.2.1 Parking Rights. In consideration of the covenants by the Arena Manager in this Agreement and of the execution and delivery of the Non-Relocation Agreement by the Team Owner and Arena Manager, on the Closing Date and subject to any rights reserved to the City within this Agreement, the City will lease and transfer to the Arena Manager all of the City's rights and obligations with respect to the Arena Parking Area, including the Arena Parking Rights. The City shall not take any action to reduce the Arena Parking Area, and will ensure that the Arena Parking Area or other parking areas provided by City (including areas leased by the City or parking spaces provided in parking structures that may be constructed by City or on City-owned or leased land in the Westgate/University of Phoenix

stadium area) provides 5,500 parking spaces for each Event during the Term within the Arena Parking Area.

(a) Except as provided in Section 8.2.1(c), the Arena Manager shall take all actions necessary to provide, manage and operate, for the benefit of the Arena Facility, the Arena Parking Areas and/or for the benefit of the City as provided in this Agreement.

(b) The Arena Manager shall cause the Arena Parking Areas to be available for each Event at a reasonable time prior to the commencement of such Event and continuing until a reasonable time after the completion of such Event.

(c) The Arena Manager shall be responsible for the sweeping and cleaning of the Arena Parking Areas promptly after an Event; however, the Renewal and Replacement Account, Section 11.5, may be used for capital maintenance and repair of the Arena Parking Areas, including but not limited to patching, resurfacing, sealing and striping.

(d) All costs and expenses incurred by the Arena Manager in managing and operating the Arena Parking Area shall be paid by the Arena Manager; provided, however, that all costs and expenses incurred by the City pursuant to its obligations in Section 8.2.1(c) and Section 11 shall be paid by the City.

(e) Arena Manager shall charge for the use of all spaces within the Arena Parking Area for all Hockey Events and Non-Hockey Events (but not City Events where the charges, if any, shall be property of the City and determined by the City except for Supplemental Surcharges which shall not be charged with respect to City Sponsored Events, unless the City advises Arena Manager of its desire to impose such charges on one or more such events at least ten (10) days in advance of any such City Sponsored Event). Commencing with the 2013/2014 NHL hockey season, minimum parking rates shall be $10.00 per vehicle for Hockey Events and $15.00 per vehicle for Non-Hockey Events, with the rates for all Events to be established by Arena Manager in its reasonable discretion. Within fifteen (15) days following each quarter during the Term, Arena Manager shall remit to City and Team Owner their respective shares of the "**Arena Parking Area Revenue**" as provided in this Section 8.2.1(e). Team Owner shall be paid the first $20,000.00 of Parking Profits generated from each NHL Regular Season Home Hockey Game and City shall be paid the balance of Parking Profits generated from each such game. City shall be paid seventy five percent (75%) of the Parking Profits generated from any Pre-season Game, Play-off Game, All-Star Game and Non-Hockey Events. City shall be paid 100% of the Parking revenues associated with any City Event. Other than as provided in this Section 8.2.1(e), the Arena Manager shall not be obligated to remit any revenue from the Arena Parking Areas to the City (subject to remittance of all applicable taxes, and further provided that this Section 8.2.1(e) shall not limit the Arena Manager's obligations to remit amounts to the City pursuant to Sections 7.6.4(b) or 8.8.2(d) or any other provision of this Agreement including those provisions relating to the City Surcharge and Supplemental Surcharges).

(f) As soon as practicable after the Closing, the Arena Manager and the City will develop a set of mutually acceptable policies and procedures for the operation, maintenance and improvement of the Arena Parking Areas including, but not limited to, the process for relocating any portion of the Arena Parking Areas when that is necessary.

8.2.2 Traffic Control and Parking Security. Pursuant to the terms and conditions of the Safety and Security Agreement, the Arena Manager shall cooperate with the City and the Team Owner to

develop, and to from time to time revise, a traffic management and parking security plan to facilitate the ingress and egress of traffic to and from, and the security in Arena Parking Areas for, all Events.

8.3 Event Requirements.

8.3.1 Hockey Events.

(a) Arena Manager and Team Owner shall cause the Team to play all of its home and playoff games, including not fewer than 41 Regular Season Games, at the Arena during each annual Hockey Season, subject, however, to Force Majeure events and Hockey Rules which shall excuse such performance in accordance with this Agreement.

(b) In the event that the Arena Manager and Team Owner do not play 41 Regular Season Games, unless such performance is excused due to Force Majeure events or Hockey Rules (as described in Section 8.3.1 above), the Arena Manager and Team Owner, jointly and severally, will pay to the City, as its sole and exclusive remedy for breach of the provisions of Section 8.3.1(a), an amount equal to $150,000 multiplied by a number equal to the Regular Season Games required by this Section less the Regular Season Games actually played. The payment required by this Section 8.3.1(b) shall be paid within 30 days following the date of the last Regular Season Game during each NHL season of the Term, if applicable.

8.3.2 Arena Manager Events. The Arena Manager is not obligated or required to schedule or provide any events at the Arena other than the Hockey Events; but Arena Manager is required to use diligence and commercially reasonable efforts to maximize use of the Arena and the scheduling of as many revenue-generating events as possible. The anticipation of such Events, based on Arena Manager's projections and management skills, was an inducement to the City to enter into this Agreement as such additional Event-related revenues will reduce the costs, and increase potential revenues, associated with this Agreement to the City.

8.4 Quality Standard.

8.4.1 Standard. In performing its obligations under this Agreement, the Arena Manager shall manage and operate the Arena Facility in a manner consistent with the Management Performance Standards and the Arena Maintenance Standard and with a level of skill and expertise reasonably expected of a professional management organization.

8.4.2 Consultation with the Team Owner. The Arena Manager shall, in managing the Arena Facility pursuant to this Agreement, solicit the Team Owner's input on, and recommendations regarding, maintenance, repairs, safety, staffing and operation and service standards, and shall, consistent with this Agreement, make commercially reasonable efforts to implement such recommendations.

8.4.3 Staffing for Events. The Arena Manager shall furnish trained event staff and personnel sufficient for the operation and maintenance of the Arena Facility and Arena Parking Areas for each Event (and with respect to Hockey Events, in such number and with such qualifications as the Team Owner may reasonably require consistent with Hockey Rules) and other activities at the Arena Facility, including an event coordinator, security personnel, ticket takers, ushers, first aid attendants, janitors, cleaning personnel, plumbers, electricians, carpenters, maintenance crew and supervisors qualified to operate the Arena Facility, which expenses shall be Operating Expenses.

(a) The Arena Manager shall adopt and enforce such grooming, dressing, and identification and cleanliness standards for event staff and other Arena Manager employees who will have contact with guests and patrons during Events and other activities at the Arena Facility as the Team Owner may from time to time reasonably require.

(b) The Arena Manager shall implement such customer service, security and hospitality training for event staff as the Team Owner may from time to time reasonably require.

(c) All expenses incurred by the Arena Manager in connection with the event staff shall be Operating Expenses.

8.5 Concessions.

8.5.1 Concessions Agreements. The Arena Manager has the sole and exclusive right during the Term to negotiate and enter into all Concessions Agreements, and shall assume, to the extent required under the NHL Purchase Agreement, any existing Concessions Agreement entered into prior to the Closing Date to the extent permitted by such Concessions Agreement; provided that, unless prohibited by any License or Concessions Agreement existing as of the Effective Date, any License or Concessions Agreement shall permit City-authorized vendors at City Sponsored Events and Community Events (for example, local vendors and food purveyors at community-oriented events).

(a) Concession Agreements shall be made upon such commercially reasonable terms and conditions as the Arena Manager deems appropriate in its reasonable discretion. Without the consent of the Arena Manager, the Team Owner shall not take any action with respect to, or have any authority over, Concessions and Concessions Agreements.

(b) Arena Manager shall retain as Exclusive Arena Manager Revenues all payments and other consideration to be made to or provided pursuant to a given Concessions Agreement to the extent not directly attributable to a Team Revenue Event or a City Sponsored Event and Community Event (in which case such revenues shall be property of the City).

(c) The Arena Manager shall cause, and shall cause each Concessions Agreement to require that, all payments and other consideration to be made to or provided by the concessionaire under a Concessions Agreement (i) be paid initially to the Arena Manager, as Operating Revenues, to the extent directly attributable to a Team Revenue Event, and (ii) be paid to the City, to the extent directly attributable to a City Sponsored Event or Community Event. For clarity, only payments or other considerations to be made or provided pursuant to a Concessions Agreement that (A) are calculated solely on the basis of sales made or transactions completed during a Team Revenue Event or a City Sponsored Event directly relating to such Team Revenue Event or City Sponsored Event, or (B) are payable solely because a given Team Revenue Event or City Sponsored Event is held shall be "directly attributable" to such Team Revenue Event or City Sponsored Event.

(d) The Arena Manager shall, within 10 days after the execution of a Concessions Agreement, give to the City notice of the execution of the Concessions Agreement, the name of the concessionaire that is a Party to such Concessions Agreement, and the products or services to be offered by such concessionaire under such Concessions Agreement.

(e) The Arena Manager shall cause all Concessions Agreements to contain the Exculpatory Language and a provision requiring that food and beverage service for the City

Suite shall be provided at the same cost and manner as food and beverage service provided to the "Owner's Suite" or any suite licensed to or used by the Arena Manager, the Team Owner, or their respective Affiliates, whichever is lowest.

(f) The Arena Manager shall maintain a copy of each Concessions Agreement during the term of such Concessions Agreement and for a period of six years thereafter (or such longer time as may be required by Applicable Law) and the City shall have the right to inspect a copy of each Concessions Agreement, after reasonable notice to the Arena Manager, at the Arena Manager's office during normal business hours.

8.5.2 Food and Beverage Services. Subject to the terms of any Concessions Agreement, License, Advertising Agreement, Naming Rights Agreement and this Agreement, the Arena Manager shall have the right to offer food and beverage services directly to consumers at the Arena Facility in lieu of, or in addition to, food and beverage services that are offered pursuant to Concessions Agreements.

(a) The Arena Manager shall, if it is commercially reasonable to do so in order to attract a given Event (other than a Hockey Event or a Team Revenue Event), permit the distribution (without charge) of food and beverage samples by a Licensee for such Event during such Event.

(b) All revenues received by the Arena Manager from food and beverage services offered by the Arena Manager pursuant to this Section shall, to the extent not directly attributable to a Team Revenue Event be retained by the Arena Manager as Exclusive Arena Manager Revenues.

(c) The Arena Manager shall cause all revenues received by the Arena Manager from such food and beverage services, (i) to be paid to the Arena Manager, as Operating Revenues, to the extent directly attributable to a Team Revenue Event, and (ii) to be paid to the City, less the variable costs and expenses directly incurred by the Arena Manager in providing such services, to the extent directly attributable to a City Sponsored Event or Community Event. For clarity, only payments or other considerations to be made or provided that (A) are calculated solely on the basis of sales made or transactions completed during a Team Revenue Event or a City Sponsored Event directly relating to such Team Revenue Event or City Sponsored Event, or (B) are payable solely because a given Team Revenue Event or City Sponsored Event is held shall be "directly attributable" to such Team Revenue Event or City Sponsored Event.

(d) Notwithstanding anything to the contrary in this Section, the provisions of this Section shall not apply to Team Sales.

8.5.3 Arena Manager Provision of Food and Beverage Services. If the Arena Manager elects to provide food and beverage services at the Arena, then the benefits to the City from the Arena Manager's offering of such services with respect to City Sponsored Events shall be no less favorable than could be obtained from a Third Party with respect to such Events. In such event, the Arena Manager shall, at least 15 Business Days prior to the commencement of the Arena Manager's provision of any such food or beverage services, give the City notice of the services to be offered by the Arena Manager, together with reasonable evidence that the benefits to the City from the Arena Manager's offering of such services with respect to City Sponsored Events will be no less favorable than could be obtained from a Third Party with respect to such Events.

(a) The City shall have fifteen (15) Business Days after receipt of such notice to give the Arena Manager notice that either (i) the City agrees that the benefits to the City from the Arena Manager's offering of such services with respect to City Sponsored Events are no less favorable than could be obtained from a Third Party, or (ii) the City claims that such benefits are less favorable than could be obtained from a Third Party with respect to such Events.

(b) If the City does not give such notice within such fifteen (15) Business Day period, the City shall be deemed to have agreed that such benefits are no less favorable than could be obtained from a Third Party with respect to such Events.

(c) If the City notifies the Arena Manager that the City claims that the benefits to the City from the Arena Manager's offering of such services are less favorable than could be obtained from a Third Party with respect to such Events, the Arena Manager shall obtain *bona fide* bids for comparable services from not less than two Third Parties and then the City in its reasonable judgment, taking into consideration not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors, shall determine whether the proposed benefits to the City from the Arena Manager's offering of such services are fair and acceptable. .

8.6 Advertising and Media.

8.6.1 Arena Manager Advertising. Except as provided in this Section, the Arena Manager shall have the sole and exclusive rights to post, exhibit, display and otherwise present, and to sell and license, all Advertising during the Term. Accordingly, neither the Team Owner nor the City, except as provided in this Section, shall take any action with respect to, or have any authority over, the posting, exhibition, display, sale or license of Advertising or Advertising Agreements, other than at the express direction of the Arena Manager.

8.6.2 Advertising Revenue. Except as expressly provided in this Section 8, the Arena Manager shall receive all revenue from Advertising at the Arena and shall not be obligated to remit any such revenue to the City (subject to applicable taxes).

8.6.3 City Advertisements. The Team Owner shall cause all printed game programs produced by the Team Owner at Home Games and at All-Star Games (subject to the Hockey Rules) to include a one-page advertisement acknowledging the City's role in providing facilities for the Team and promoting other attributes of the City, in form and content reasonably requested by the City. No advertisement permitted by this Section shall be applicable to programs produced by third parties or increase the cost to the Team of producing the program in which the advertisement is to appear (other than by adding a page to the program). The text and design for each such advertisement shall be prepared by the City, at the City's expense, and shall be provided to the Team Owner with sufficient lead time to allow the Team Owner a commercially reasonable time to arrange for the inclusion of such advertisement in such program.

8.6.4 Arena Facility Naming Rights.

(a) The Arena Manager, in consultation with the Team Owner, shall have the sole and exclusive rights to sell and license all Naming Rights to be effective during the Term; provided, however, that the sale or license of Naming Rights to the Arena (or any portion of the Arena Facility) shall be subject to the approval of the City, which shall not be unreasonably withheld; provided however, the City's rejection of (i) any entity with which the City is currently in litigation or litigation is overtly threatened, or (ii) any name incorporating the name of any other municipality in the State of

Arizona, or (iii) any name likely to subject the City or its Council to ridicule or disopprobrium, or involving any sexual, salacious or other generally objectionable term, shall be deemed reasonable. The Arena Manager shall use commercially reasonable efforts to cause the name "Glendale" (for example: "XXXXXX ARENA in Glendale, Arizona") to be included in the use of name of the Arena Facility or a major component thereof; provided however, Arena Manager shall not be required to incur additional costs as a result of the inclusion of "Glendale" in the use of the Arena's Name.

(b) Naming Rights shall be sold or licensed only for money, and not be bartered or exchanged for any other form of consideration; provided, however, that payments for Naming Rights may be made in periodic equal installments during the term of any agreement under which Naming Rights are sold or licensed as may be agreed by the Arena Manager in its reasonable commercial discretion. The Arena Manager shall receive all revenue from the sale and licensing of Naming Rights, including any unpaid amount under the current Naming Rights Agreement and shall, within fifteen (15) days after receipt of any revenue received from the sale or licensing of Naming Rights for the Arena Facility, remit to the City an amount equal to (i) twenty percent (20%) of the revenue from the sale and/or license of Naming Rights (excluding any revenue from the sale of Naming Rights for any other components of the Arena except as described in (ii) and (iii) herein; (ii) 100% of the revenue from the sale and/or license of Naming Rights that is attributable to signage for any new theater/stage/venue that is constructed by Arena Manager within the Arena Facility ("**Arena Theater**"); and (iii) 100% of the revenue from the sale and/or license of Naming Rights that is attributable to signage for any stage for concert events.

(c) During such time that the Naming Rights have been sold or licensed under this Agreement, the Arena Manager shall use commercially reasonable efforts to cause "Glendale, Arizona" to be included in or after uses of the name of the Arena Facility.

8.6.5 Names, Logo and Schedule.

(a) Team.

(i) At the request of the Team Owner, the Arena Manager shall prominently display the Team's name, logo and schedule in areas around the Arena Facility. The size, location and appearance of such displays shall be developed and mutually agreed upon by the Team Owner and the Arena Manager. No display or any other material prepared or permitted by the Arena Manager or the City shall use the name, any logo or any trade or service mark of the Team without the Team Owner's prior consent, which consent may be given or withheld by the Team Owner in its sole discretion.

(ii) The Team Owner shall use commercially reasonable efforts to have the name of the Team changed to the "Arizona Coyotes" as soon as is commercially feasible.

(b) City. At the request of the City, the Arena Manager shall display the City's name and logo at the Arena Facility in a manner and at locations reasonably acceptable to the Arena Manager and the City; provided however, that no display or any other material prepared or permitted by the Arena Manager or the Team Owner shall use the name, any logo or any trade or service mark of the City without the City's prior consent, which consent may be given or withheld by the City in its sole discretion.

8.6.6 Broadcasts. The Team Owner has and shall retain the sole and exclusive rights to control, and to receive as Exclusive Team Revenues all revenue from, all radio, television and other

media broadcasts, reproductions and transmittals of the pictures, descriptions and accounts of Hockey Events and all other activities of the Team, the Team Owner and the visiting teams incidental to Hockey Events, regardless of the nature of the technology or the medium and whether distributed locally, nationally or otherwise.

(a) The Team Owner's rights shall apply to, without limitation, cable television, pay television, direct broadcast satellite television, subscription television, master antenna and satellite antenna television, closed circuit television, Internet and broadband distribution and any other technology now in existence or hereafter developed.

(b) The Team Owner's rights include the right to, from time to time, enter into agreements or other arrangements with other parties (including agreements with "truck producers") pursuant to which such other parties may exercise any or all of the rights of the Team Owner to control and receive revenue from such broadcasts, reproductions, transmittals and distributions.

8.6.7 Use of Communication Systems. The City shall have the right to use (without charge) the Communication Systems for a reasonable number of times (to be mutually agreed upon by the City and the Team Owner) during each Hockey Event solely for the purpose of making public service announcements, and for a reasonable number of times (to be mutually agreed upon by the City and the Team Owner) during each Hockey Event solely for the purpose of making announcements concerning future City Sponsored Events.

(a) Subject to the terms of any License, the City shall have the right to use (without charge) the Communication Systems for a reasonable number of times (to be mutually agreed upon by the City and the Arena Manager) during each Event (other than a Hockey Event) solely for the purpose of making public service announcements, and for a reasonable number of times (to be mutually agreed upon by the City and the Arena Manager) during each Event (other than a Hockey Event) solely for the purpose of making announcements concerning future City Sponsored Events. The City acknowledges that Licenses for Events (other than Hockey Events) may prohibit the City's use of the Communication Systems during such Events.

(b) No announcement permitted by this Section shall exceed a reasonable time (to be mutually agreed upon by the City and the Team Owner or the Arena Manager, as applicable) in duration. The City shall be responsible, at the City's expense, for the creation of all announcements to be made pursuant to this Section.

(c) For the purposes of this Agreement, **"Communications Systems"** refers to all audio and visual Communication Systems that are owned by the City and that are located at, in or on the Arena Facility, including scoreboards, satellite hook-ups, television and loudspeaker systems, public address systems, outdoor speakers, timers, clocks, message centers and video screens, specifically excluding, however, any Advertising and any Parking Advertising displayed or otherwise presented on, in or by any portion of such audio and visual communication systems.

8.7 Suites.

8.7.1 Suite License Agreements. The Arena Manager shall have the sole and exclusive right to the following:

(a) To enter into Suite License Agreements upon such terms and conditions consistent with this Agreement and as the Arena Manager in its reasonable discretion deems appropriate; and

(b) To receive Suite License Revenues.

(c) The Arena Manager shall cause each Suite License Agreement to include the following:

(i) The Exculpatory Language;

(ii) A commercially reasonable provision requiring that the licensee under such Suite License Agreement execute and deliver, from time to time at the request of the Arena Manager, the Team Owner, or the City, accurate estoppel certificates regarding such Suite License Agreement;

(iii) A commercially reasonable provision requiring that the licensee under such Suite License Agreement obtain and maintain, during the term of such Suite License Agreement, insurance covering any damage to or destruction of the corresponding Suite caused by or attributable to any act or omission of such licensee and any agent, employee, guest or invitee of such licensee;

(iv) A commercially reasonable provision providing that the licensee under such Suite License Agreement shall be liable for any damage to or destruction of the corresponding Suite or any other portion of the Arena Facility caused by or attributable to any act or omission of such licensee and any agent, employee, guest or invitee of such licensee; and

(v) A commercially reasonable provision providing for (A) the waiver by the licensee under such Suite License Agreement of any Claim or Loss arising from or attributable to the use of such Suite by such licensee and its agents, employees, guests and invitees, and (B) such licensee's agreement to indemnify, hold harmless and defend the Arena Manager, the Team Owner, the City and the NHL, and their respective city council members and elected officials (with respect to the City), agents, directors, employees, other officials and officers, against any Claim or Loss arising from or attributable to the use of such Suite by such licensee and its agents, employees, guests and invitees.

(vi) A provision expressly authorizing the City to enter any suite for purposes of exercising its safety, fire prevention, police or other law enforcement responsibilities or otherwise as permitted by Applicable Law.

8.7.2 Services to Suites. The Arena Manager shall provide to each Suite (with the cost thereof being an Operating Expense) (i) heating, ventilation and air-conditioning so as to provide a temperature in the Suite during the use thereof that is reasonably comfortable; (ii) electricity for lighting and use of the appliances and equipment in the Suite; (iii) water; (iv) cleaning after each use and at other times reasonably necessary to keep the Suite in a clean and neat condition; and (v) maintenance and repair of the Suite as required to maintain the Suite in a first-class condition.

8.7.3 City Suite. The City shall have the right to continue to use the existing Suite used by the City (Suite Nos. 1238 and 1239), including Tickets (for seating and standing room in such Suite) to all Events, all at no cost to the City. Food and beverage service for such Suite shall be provided at the same cost and manner as food and beverage service provided to the "Owner's Suite" or any suite

licensed to or used by the Arena Manager, the Team Owner, or their respective Affiliates, whichever is lowest.

8.8 Premium Seat Agreements. The Arena Manager shall have the sole and exclusive right to enter Premium Seat Agreements.

8.8.1 The Arena Manager shall have the sole and exclusive right to receive, as Exclusive Arena Manager Revenues, all Premium Seat revenues.

8.8.2 The Arena Manager shall cause each Premium Seat Agreement to include the following:

(a) The Exculpatory Language;

(b) A commercially reasonable provision requiring that the licensee under such Premium Seat Agreement execute and deliver, from time to time at the request of the Arena Manager, the Team Owner, or the City, accurate estoppel certificates regarding such Premium Seat Agreement;

(c) A commercially reasonable provision providing for (a) the waiver by the licensee under such Premium Seat Agreement of any Claim or Loss arising from or attributable to the use of such Premium Seat by such licensee and its agents, employees, guests and invitees, and (b) such licensee's agreement to pay, indemnify, hold harmless and defend the Arena Manager, the Team Owner, the City and the NHL, and their respective city council members and elected officials (with respect to the City), agents, directors, employees, officials and other officers against any Claim or Loss arising from or attributable to the use of such Premium Seat by such licensee and its agents, employees, guests and invitees; and

(d) A commercially reasonable provision providing that the licensee under such Premium Seat Agreement shall have the right to purchase a Ticket for the Premium Seat described in such Premium Seat Agreement for each Event, other than a Hockey Event, City Sponsored Event or Community Event, at the Ticket price established by and to be paid to the sponsor or promoter of such Event (including any applicable City Surcharge and Supplemental Surcharge), pursuant to the procedures from time to time established by the Arena Manager for the exercise of such right.

8.8.3 Procedures. The Arena Manager shall establish, and from time to time revise, the procedures requiring the licensee under a Premium Seat Agreement to exercise, with respect to each Event other than a Hockey Event, a City Sponsored Event and a Community Event, the licensee's right to purchase a Ticket for the Premium Seat described in such Premium Seat Agreement for such Event sufficiently in advance of such Event so as to provide the sponsor or promoter of such Event with a reasonable opportunity to sell such Ticket if such licensee has not exercised its right to purchase such Ticket within the time period specified by such procedures.

8.9 Scheduling. The Arena Manager shall schedule all events and other activities at the Arena Facility in accordance with the Scheduling Procedures.

8.9.1 Hockey Event Responsibilities.

(a) Condition of Arena Facility for Hockey Events. The Arena Manager shall cause, not later than a reasonable time prior to the commencement of a given Hockey

Event, the Arena Facility to be in a condition suitable for the Team's use of the Arena Facility for such Hockey Event, including, to the extent applicable:

(i) furnishing of the ice playing surface in accordance with all NHL requirements for Hockey Events; and

(ii) furnishing in good operating order, condition and repair, in accordance with all NHL requirements, all required goals and backup goals, nets, lines and striping, dasher boards, protective glass systems, replacement glass, photographers and media areas, time keeper areas, player penalty boxes, on-ice officials box, goal judge boxes, goal lights, ice surfacing equipment, signs and markers, team benches, tables and chairs, lighting, the Arena Communication Systems, remote broadcast systems, coach phone hookups and all other special equipment and facilities necessary or desirable for the Hockey Event.

(b) Ice Surface.

(i) The Arena Manager shall, at the request of the Team and subject to scheduling of other Events, remove and replace the ice surface in the Arena Facility, as an Operating Expense, if such surface does not meet any NHL requirement or requirement of the Hockey Rules.

(ii) In addition, the Arena Manager, as an Operating Expense, shall (A) remove and replace (or cover) the ice surface in the Arena Facility as necessary to accommodate the preparation for, or conduct of, Events other than Hockey Events, and (B) restore the ice surface to meet NHL requirements and all of the Hockey Rules prior to each Hockey Event.

(c) Hockey Tickets. Subject to the imposition of the City Surcharge and Supplemental Surcharge, the Team Owner (i) shall control the pricing, the advertising of and on, and the distribution (including the distribution for no charge) of Hockey Tickets, whether Hockey Tickets are issued directly by the Team Owner, through agencies, or other designees authorized by the Team Owner; and (ii) shall receive and retain, as Exclusive Team Revenues, all Hockey Ticket Receipts (other than any such revenues constituting Exclusive City Revenues). Neither the City nor the Arena Manager shall issue any Hockey Ticket or authorize anyone else to do so or admit any Person to a Hockey Event without a valid Hockey Ticket.

8.9.2 City Sponsored Events. Subject to the Scheduling Procedures, all Concessions Agreements, all Suite License Agreements, all Premium Seat Agreements, all Advertising Agreements and all Naming Rights Agreements, the City shall have the non-assignable right to use the Arena Facility, except for the Exclusive Team Spaces, for not more than four City Sponsored Events each Fiscal Year.

(a) Prior to the scheduling of a City Sponsored Event that is a Fee Activity, the City shall give the Arena Manager notice of whether the City elects to waive the City Surcharge and/or Supplemental Surcharge with respect to such City Sponsored Event, and if such notice is not provided it shall be deemed an election by the City not to waive such Surcharges with respect to that City Sponsored Event.

(b) The City shall take such actions as are required to cause the payment to the Arena Manager of an amount not less than the aggregate amount of City Surcharge and Supplemental Surcharge for each such City Sponsored Event, except to the extent that the City has waived, pursuant to this Agreement, either or both of such Surcharges. Arena Manager, in turn, shall pay the City Surcharge and Supplemental Surcharge to the City as required by this Agreement.

(c) The Arena Manager shall maintain separate records of all revenues and all expenses directly attributable to each City Sponsored Event, and all amounts received for deposit and deposited into the City Surcharge Account with respect to each City Sponsored Event. For clarity, only payments or other considerations to be made or provided that (A) are calculated solely on the basis of sales made or transactions completed during a City Sponsored Event directly relating to such City Sponsored Event or (ii) are payable solely because a given City Sponsored Event is held shall be "directly attributable" to such City Sponsored Event.

(d) The Arena Manager shall, at the time the quarterly financial report for such Fiscal Quarter is submitted to the Parties pursuant to Section 8.15:

(i) If the aggregate of the expenses directly attributable to all City Sponsored Events held during a given Fiscal Quarter exceeds the aggregate of the revenue directly attributable to City Sponsored Events, set-off against any distributions or payments to be made to the City for such Fiscal Quarter the amount by which the aggregate of such expenses exceeds the aggregate of such revenues and submit an invoice for the shortfall to the City for reimbursement within 30 days (any such set-off and/or reimbursed amounts constituting Operating Revenues), or

(ii) If the aggregate of the revenues directly attributable to City Sponsored Events held during a given Fiscal Quarter exceeds the aggregate of the expenses directly attributable to City Sponsored Events held during a given Fiscal Quarter, remit to the City the amount by which the aggregate of such revenues exceeds the aggregate of such expenses within 30 days after the end of the Fiscal Quarter.

(e) In no event shall any rent or facility use charge for a City Sponsored Event be charged to the City or included as an expense item directly attributable to such events. Use of the Arena for such events is to be without charge to the City and all associated revenues shall be property of the City subject only to charges for event-specific variable operating expenses.

8.9.3 Community Events. Subject to the Scheduling Procedures, all Concessions Agreements, all Advertising Agreements and all Naming Rights Agreements, the City shall have the non-assignable right to use the Arena Facility, except for the Exclusive Team Spaces, for Community Events up to six times per Fiscal Year.

(a) The Arena Manager and the City shall take such actions as are required to cause all revenues generated by Community Events to be paid directly to the City, and such revenues shall not be Operating Revenues.

(b) Prior to the scheduling of a Community Event that is a Fee Activity, the City shall give the Arena Manager notice of whether the City elects to waive the City Surcharge and/or the Supplemental Surcharge with respect to such Community Event, and if such notice is not provided it shall be deemed an election by the City not to waive such Surcharges with respect to that Community Event.

(c) The City shall take such actions as are required to cause the payment to the Arena Manager of an amount not less than the aggregate amount of City Surcharge and Supplemental Surcharge for each such Community Event, except to the extent that the City has waived, pursuant to this Agreement, either or both of such Surcharges. Arena Manager, in turn, shall pay the City Surcharge and Supplemental Surcharge to the City as required by this Agreement.

(d) In no event shall any rent or facility use charge for a Community Event be charged to the City or included as an expense item directly attributable to such events. Use of the Arena for such events is to be without charge to the City and all associated revenues shall be property of the City subject only to charges for event-specific variable operating expenses.

8.10 Arena Accounts.

8.10.1 Operating Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the Operating Account and make commercially reasonable efforts to collect Operating Revenues and, upon collection, deposit all Operating Revenues collected into the Operating Account not later than two Business Days after receipt.

8.10.2 Application of Monies in Operating Account. The Arena Manager shall cause the monies in the Operating Account to be applied to the payment of Operating Expenses as and when they become due and payable; such monies shall otherwise be available to the Arena Manager and the Team Owner as needed from time to time.

8.10.3 City Surcharge Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the City Surcharge Account, and shall make deposits into the City Surcharge Account of all City Surcharge not later than two Business Days after the date on which such City Surcharge was deemed to have been earned. For purposes of this Agreement, the date on which a City Surcharge is deemed to have been earned shall be the date of the Fee Activity actually occurs, in which case there was no cancellation or postponement of the Fee Activity.

(a) Interest and other income earned on amounts held in the City Surcharge Account shall not be Operating Revenues and shall be the property of the City.

(b) The City shall make withdrawals from the City Surcharge Account at any time and from time to time in the City's sole discretion.

8.11 Impositions.

8.11.1 The Arena Manager shall pay or cause to be paid, as Operating Expenses, any and all Impositions that accrue after the Closing Date and during the Term, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the nonpayment thereof, except for Impositions being contested in good faith by appropriate proceedings diligently pursued and for which the Arena Manager has made adequate reserves for the Imposition and any additional fees, interest, or penalties.

8.11.2 Subject to Section 8.11.1 above, the Arena Manager may contest the legal validity or amount of any Imposition to be paid by the Arena Manager hereunder, and may institute such proceedings as the Arena Manager considers necessary therefor.

8.11.3 The City may require the Arena Manager to contest any Imposition; provided, however, that the Arena Manager shall not be required to proceed with any such contest that would cause the Arena Manager to suffer undue financial burden.

8.11.4 All costs and expenses incurred by the Arena Manager under this Section shall be Operating Expenses.

8.12 Contracts and Agreements.

8.12.1 Exculpatory Language. The Arena Manager shall cause all contracts or agreements entered into by the Arena Manager or the Team Owner and relating in any way to the Arena Facility (including Licenses, Concessions Agreements, Suite License Agreements, Premium Seat Agreements, Advertising Agreements, Naming Rights Agreements and vendor contracts) to contain the Exculpatory Language.

8.12.2 Assignment and Transfer. The Arena Manager shall cause every contract or agreement to which the Arena Manager or the Arena Sub-Manager is a Party that (a) pertains to the management, operation and use of the Arena Facility, (b) provides for consideration in excess of $100,000, and (c) has a term of more than one (1) year, including any options to renew or extend (excluding this Agreement, any Related Agreement, any agreement between the Arena Manager and the Arena Sub-Manager, and any employment agreements entered into by the Arena Manager or the Arena Sub-Manager), to provide for the following:

(a) The right of the Arena Manager or the Arena Sub-Manager (as applicable), in connection with a replacement of the Arena Manager or the Arena Sub-Manager (as applicable) under this Agreement, to transfer and assign such contract or agreement, or the Arena Manager's or the Arena Sub-Manager's (as applicable) interest in such contract or agreement, to an assignee or transferee approved by the Team Owner and the City, provided that

(i) such transfer or assignment fully assigns all of the rights and delegates all of the duties of the Arena Manager or the Arena Sub-Manager (as applicable) under such contract or agreement to such assignee or transferee, and

(ii) such assignee or transferee assumes (without novation) the Arena Manager's or the Arena Sub-Manager's (as applicable) duties thereunder.

8.12.3 City's Right to Cure.

(a) The Arena Manager shall cause any contract or agreement entered into by the Arena Manager or the Arena Sub-Manager with respect to the management, operation and use of the Arena Facility (other than this Agreement, any Related Agreement, any agreement between the Arena Manager and the Arena Sub-Manager and any employment agreements entered into by the Arena Manager or the Arena Sub-Manager), which agreement or contract provides for consideration in excess of $100,000 and has a non-terminable term of more than one year (including any option to renew or extend), to provide that, if a material default is asserted against the Arena Manager or the Arena Sub-Manager(if any), then the City shall have the right, but not the obligation, to cure such default, as set forth in the immediately following sentence;

(b) The City shall not exercise such right if the Arena Manager or the Arena Sub-Manager is taking action to contest or cure the asserted default unless the City reasonably determines that the actions of Arena Manager or Arena Sub-Manager will not effectively or timely cure the default.

(c) The Arena Manager shall cause each such contract or agreement entered into after the Closing Date to provide that (i) any default asserted against the Arena Manager or the Arena Sub-Manager shall require written notice to the Arena Manager or the Arena Sub-Manager and to the Team Owner and the City; and that (ii) the City has fifteen (15) days after the expiration of the cure

time permitted the Arena Manager or the Arena Sub-Manager to exercise the City's right to cure any asserted default.

(d) If the City fails to timely exercise its right to cure, the City shall be deemed to have waived such right.

(e) If the City elects to cure an asserted default in accordance with this Section, the City shall be entitled to reimbursement by the Arena Manager of all reasonable costs and expenses incurred by the City in curing such default from Operating Revenues without limiting the City's other remedies against the Arena Manager or Arena Sub-Manager.

8.12.4 Arena Manager Affiliate Contracts.

(a) No Arena Manager Affiliate Contract shall be less favorable to Arena Manager than could be obtained from a Third Party, provided that the foregoing requirement and the City's right to demand compliance with subsection (b)-(d) below shall not apply with respect to an Arena Manager Affiliate Contract if the Arena Manager certifies that such contract (i) can have no adverse effect on the performance by the Arena Manager of its obligations under this Agreement, (ii) cannot increase Operating Expenses, and (iii) cannot decrease Operating Revenues. The Arena Manager shall maintain a separate and distinct file with complete copies of all Arena Manager Affiliate Contracts available for inspection by the City (or a representative thereof) at the Arena Facility at any time during normal business hours.

(b) City and the Team Owner separately shall have fifteen (15) Business Days after receipt of such copy to give the Arena Manager (and the other Parties) notice that either (i) the Party giving notice agrees that the terms and conditions of the Arena Manager Affiliate Contract are no less favorable than could be obtained from a Third Party, or (ii) the Party giving notice claims that such terms and conditions are less favorable than could be obtained from a Third Party.

(c) Except in the circumstances where a reasonable determination can be made that the terms and conditions are clearly less favorable, if the City or Team Owner does not give such notice within such 15 Business Day period, then the City or Team Owner shall be deemed to have agreed that such terms and conditions are no less favorable than could be obtained from a Third Party.

(d) If either the City or the Team Owner notifies the Arena Manager that the notifying Party claims that the terms and conditions of an Arena Manager Affiliate Contract do not appear to have been made on a fair market, arms-length equivalent basis, the Arena Manager shall obtain *bona fide* bids for comparable services from not less than two Third Parties, then the City, taking into consideration not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors shall determine, in its reasonable judgment, whether the proposed Affiliate contract is fair and acceptable.

8.13 Accounting Procedures. The Arena Manager shall establish and maintain accounting procedures for the Arena Accounts on an accrual basis, in accordance with GAAP applied on a consistent basis throughout the periods indicated.

8.14 Annual Budget.

8.14.1 Requirement. The Arena Manager shall, not later than May 31 of each year, prepare and submit to the City and the Team Owner for their respective review and approval, a proposed Annual Budget (including expense and revenue projections), for the period beginning on the July 1 following the end of the first full Fiscal Year and ending on June 30 of the following year, and for each Fiscal Year thereafter during the Term.

8.14.2 Initial Period and First Fiscal Year. The Arena Manager will prepare and submit to the City within 30 days of the Closing Date, in consultation with the City and the Team Owner, (i) an Annual Budget for the period commencing on the Closing Date and ending on the last day of the Fiscal Year during which the Closing Date occurs and (ii) an Annual Budget for the first full Fiscal Year of the Term; the form (not content) of such Annual Budgets are attached to this Agreement as Exhibit "G".

8.14.3 Review. Each of the City and the Team Owner shall review each proposed Annual Budget (and any revised proposed Annual Budget submitted to the City and the Team Owner pursuant to this Section) and give a notice of approval or disapproval thereof to the Arena Manager (with a copy to the other of the City or the Team Owner, as applicable).

(a) The City shall review the Annual Budget to assure it is substantially in accord with the obligations of the Parties set forth in this Agreement and is not substantially inconsistent with budget of other similar arena facilities. The Arena and Team shall agree upon the standard of the Team's review of the Annual Budget and provide written notice of that standard to the City.

(b) The City and Team shall provide the Arena Manager its notice of approval or disapproval of the budget within 15 days after receipt of such proposed Annual Budget; provided, however, that the failure by the City or the Team to deliver an approval of the proposed Annual Budget within such time period shall be deemed to be approval thereof.

8.14.4 Disapproval. Any notice of disapproval of a given proposed Annual Budget shall state in detail the basis for such disapproval.

(a) Upon disapproval of a given proposed Annual Budget pursuant to this Section, the Arena Manager shall revise such proposed Annual Budget and submit the revised proposed Annual Budget to the City and the Team Owner for review and approval or disapproval under this Section.

(b) Beginning with the second full Fiscal Year of the Term, if the Annual Budget for a given Fiscal Year is not approved by the City and the Team Owner pursuant to this Section prior to the commencement of such Fiscal Year, then the expenditures in the approved Annual Budget for the immediately preceding Fiscal Year, increased by the greater of (i) 5% and (ii) if positive, the increase in the Consumer Price Index for all Urban Consumers for the prior year, per line item per Fiscal Year, shall remain in effect until a replacement Annual Budget is approved by the City and the Team Owner.

8.15 Revisions and Reallocations.

(a) The Arena Manager may from time to time, after notice to the City and the Team Owner, revise the approved Annual Budget as reasonably necessary to reflect any unanticipated circumstances; and such revised Annual Budget shall be subject to approval or disapproval by the City and Team Owner, as provided in Section 8.14 of this Agreement.

(b) The Arena Manager may from time to time, after notice to the City and the Team Owner, reasonably reallocate all or part of the amounts allocated to one or more expense line items in the then applicable Annual Budget so long as such reallocations do not increase the total aggregate amount of all of the expense items in such Annual Budget or materially change the projected timing of revenues and expenses.

8.15.2 Unbudgeted Expenses.

(a) Circumstances may arise that require, in the reasonable judgment of the Arena Manager, unbudgeted expenses (whether as Operating Expenses or expenditures for Capital Improvements), and in each such case, the Arena Manager shall within a reasonable time provide notice to the City and the Team Owner of such unbudgeted expenses and, if and only if the quarterly variance for such unbudgeted expenses is more than 10% of the amount budgeted for Operating Expenses for such Fiscal Quarter (which, for the avoidance of doubt, will not be cumulative with any prior Fiscal Quarter), the Arena Manager shall provide a reasonably detailed explanation of the circumstances giving rise to such expenses.

(b) If the City refuses to recognize such unbudgeted expenses as Operating Expenses or expenditures for Capital Improvements, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

8.15.3 Emergencies. The Arena Manager shall, promptly after acquiring knowledge that an Emergency exists, give notice to the City and the Team Owner of the existence of such Emergency and a description of the circumstances of such Emergency.

(a) If the Arena Manager reasonably determines that Capital Improvements are required to alleviate such Emergency, the Arena Manager shall promptly notify the City and the Team Owner of the need to make such Capital Improvements and the nature of the same; and

(b) The Arena Manager shall undertake the emergency Capital Improvements, subject, in each case, to the City's responsibility to provide for, and to reimburse the Arena Manager for its incurrence of any reasonable costs relating to, such Capital Improvements.

(c) If the City refuses to recognize such expenditures as Capital Improvements necessary to alleviate an Emergency, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

8.15.4 Monitoring of Budget. The Arena Manager shall, on an ongoing basis during each Fiscal Year, (i) monitor all actual expenses and revenues; (ii) compare such actual revenues and expenses to the corresponding categories of budgeted expenses and projected revenues for such Fiscal Year; and (iii) promptly give notice to the City and the Team Owner of any circumstances that indicate to the Arena Manager that there may be a need to incur unbudgeted expenses.

8.16 Financial Reports.

8.16.1 Periodic Reports. Commencing on the Closing Date and continuing during the Term, the Arena Manager shall provide to the Parties the following financial reports in a format and with a level of detail reasonably acceptable to the Parties:

(a) Monthly Financial Reports. Not later than the last day of each calendar month, (a) a statement setting forth the prior calendar month's Operating Revenues, Operating Expenses, and expenditures for Capital Improvements; and (b) a statement setting forth the end of the month balances for each of the Arena Accounts (other than the City Surcharge Account) and describing the reasons for any transfers between or among accounts (other than withdrawals by the City from the City Surcharge Account) during the prior calendar month.

(b) Quarterly Financial Reports. Not later than 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, a balance sheet relating to Arena Facility operations as of the end of such Fiscal Quarter, and statements of income and cash flows relating to Arena Facility operations for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter.

(c) Annual Financial Reports. Not later than 90 days after the end of each Fiscal Year, provided, that if all necessary information from the NHL related to the following items (a), (b) and (c) shall not have been received by the date which is 30 days after the end of each Fiscal Year, then interim reports shall be provided within the normal time frame and final reports shall be provided within 60 days after the receipt of all necessary information from the NHL related thereto): (a) a balance sheet relating to Arena Facility operations as of the end of such Fiscal Year, (b) a statement of profit or loss for Arena Facility operations during such Fiscal Year, and (c) a statement of changes of financial condition for Arena Facility operations during such Fiscal Year, each prepared in accordance with GAAP as consistently applied (if there are multiple interpretations of the application of GAAP, GAAP as traditionally interpreted by the Arena Manager and the Team Owner shall apply) (collectively, the **"Annual Financial Reports"**), and accompanied by a report containing an opinion of the Arena Manager's accountants, stating that such Annual Financial Reports fairly present, in all material respects, the activities to which such Annual Financial Reports relate, that such Annual Financial Reports have been prepared in accordance with GAAP as consistently applied and that the examination by the Arena Manager's accountants in connection with such financial reports was made in accordance with GAAP.

(d) Accountants. The Arena Manager's independent certified public accounting firm shall be a nationally recognized public accounting firm selected by the Arena Manager. Following not less than a 30-day notice to the other Parties, the Arena Manager may from time to time engage replacement accountants.

(e) GAAP. All financial statements shall be prepared in accordance with GAAP, except that the unaudited financial statements need not contain all footnotes required by generally accepted accounting principles. The financial statements shall fairly present in all material respects the financial condition and operating results as of the dates, and for the periods, indicated therein, subject in the case of the unaudited financial statements to normal year-end audit adjustments.

8.16.2 Inspection.

(a) The Arena Manager shall, for a period of five years after the end of the Fiscal Year to which they pertain (or such longer time as may be required by Applicable Law), keep and maintain complete Account Records.

(b) The Arena Manager shall require any Arena Sub-Manager to comply with the provisions of this Section and the inspection and audit rights of the Parties granted herein.

(c) The Arena Manager shall keep the Account Records separate and identifiable from any other records of the Arena Manager.

(d) Upon not less than five Business Days' notice to the Arena Manager and the other Parties, each of the City and the Team Owner (including their respective accountants and attorneys) shall be entitled to inspect the Account Records, during the period the Arena Manager is required to maintain them, at the Arena Manager's office during normal business hours.

8.17 Audits.

8.17.1 The City shall have the right to conduct an independent audit of the management and operation of the Arena (or any part thereof) and the Account Records (or any part thereof) and the Team Owner Records (or any part thereof) by City Staff or by an independent certified public accounting firm selected by the City.

(a) Any such audit shall be conducted after reasonable notice to the Arena Manager during the Arena Manager's normal business hours and at the City's sole expense.

(b) Notwithstanding any provisions to the contrary in this Agreement, the City's right to conduct such an independent audit after the Termination Date shall survive any termination of this Agreement for a period of 12 months.

8.17.2 Overpayments/Underpayments.

(a) If any such audit reveals an overpayment or an underpayment of any amount to be paid or distributed under this Agreement, then the City shall deliver to the Arena Manager a copy of the report of such audit prepared by the City's Staff or independent certified public accounting firm.

(b) The Arena Manager shall have the right to review such report and provide within 30 days of the receipt of the report information supporting an amount different from that set forth in the report, which different amount may indicate that there has been no overpayment or underpayment; and the Parties shall in that event proceed in good faith to resolve any disagreement regarding such amount.

(c) Within 30 days after the resolution of any such disagreement, if an overpayment or underpayment shall have occurred, in the case of an underpayment, the Arena Manager shall make a payment to rectify such underpayment, or, in the case of an overpayment, the City shall make a payment to rectify such overpayment.

8.17.3 Disputes. In the event of a dispute between or among the Parties regarding the accuracy of the results of an audit conducted pursuant to this Section, the Parties shall attempt to resolve such dispute by Mediation pursuant to this Agreement.

8.17.4 No Limitation on Governmental Powers. Nothing in this Section shall be construed as a limitation on the City's governmental powers to audit and review tax reports and tax returns.

8.18 Litigation.

8.18.1 Litigation Reports.

(a) The Arena Manager shall deliver to the City and the Team Owner each month a report describing any of the following incidents that have occurred during the prior month of which the Arena Manager has knowledge:

(i) Any injury to any Person at the Arena Facility that requires either immediate on site, or subsequent off-set medical attention; or

(ii) Any incident that the Arena Manager reasonably determines is likely to lead to the commencement of one or more legal actions or proceedings by a Person.

(iii) Any incident involving damage to property of Third Persons in which the estimated amount of damage exceeds $5,000.

(b) The Arena Manager shall notify the City no less than one Business Day following any fatality or serious bodily injury to any patrons or employees working at the Arena Facility, assaults or incidents involving five or more individuals, and theft or property damage greater than, in a single instance, $5,000.

8.18.2 Notices and Information. The Arena Manager shall, promptly after acquiring knowledge of the commencement of any legal action or proceeding relating to the Arena Facility, give any insurer and the other Parties' notice of such commencement, and keep the other Parties reasonably advised of the status of, and all significant developments in, any such legal action or proceeding.

8.18.3 Retention of Counsel. In consultation with the other Parties, the Arena Manager shall, in good faith, retain counsel reasonably acceptable to the City (and, where applicable, any appropriate insurer) with respect to the defense, settlement, or tender of defense to an applicable insurer, with respect to all legal actions or proceedings regarding the Arena Facility.

8.18.4 Costs. Unless the costs and expenses are incurred as a result of an intentional breach of this Agreement, the negligence, gross negligence, intentional misconduct or criminal acts of the Arena Manager or the Team Owner or any of their respective agents, employees, officials or other representatives, all costs and expenses incurred by the Arena Manager in defending, settling, or prosecuting such legal actions and proceedings shall be Operating Expenses.

8.18.5 Participation. The City or Team Owner shall have the right to participate, at their own respective expense, and not as an Operating Expense, in any legal action or proceeding described in this Section; unless the City is named as a party to such action solely because of its ownership of the Arena, in which case such expenses shall be paid by the Arena Manager (or its insurer) and shall be deemed subject to the Indemnification Provisions of Section 20 of this Agreement.

8.19 Use by the Team and Occurrence of Home Games. In connection with the Arena Manager's management of the Arena Facility, the Arena Manager shall secure the substantial, regular and continuing use by the Team and the occurrence of Home Games at the Arena Facility during the Term as provided in the Non-Relocation Agreement by causing the Team Owner to the execute and deliver the Non-Relocation Agreement. The Arena Manager shall cause Team Owner to fully comply with the terms of the Non-Relocation Agreement.

9. CHARGES AND FEES.

9.1 City Surcharge.

9.1.1 The Arena Manager shall take the following actions to collect and hold in trust for the City for the purposes of depositing into the City Surcharge Account, and which shall not be Operating Revenue, a surcharge in the amount described in this Section 9.1 for each Qualified Ticket (the **"City Surcharge"**) and an additional surcharge in the amount described in Section 9.13 of this Agreement for each Qualified Ticket (the "**Supplemental Surcharge**"):

9.1.2 Amount of the City Surcharge. The City Surcharges shall be in the following amounts:

(a) For all Hockey Events that are Fee Activities during the 2013-2014 Season, $3.00 per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Surcharge), subject to increase for subsequent seasons during the Term as follows:

(i) If per game attendance averages less than 15,000 in any one season, the City Surcharge during the immediately succeeding season will be $3.00 per Qualified Ticket;

(ii) If per game attendance averages between 15,000 and 15,999 in any one season, the City Surcharge will $3.25 per Qualified Ticket for the immediately succeeding season;

(iii) If per game attendance averages 16,000 and 17,000 in any one season, the City Surcharge will be $3.50 per Qualified Ticket for the immediately succeeding season; and

(iv) If per game attendance averages more than 17,000 in any one season, the City Surcharge will be $3.75 per Qualified Ticket for the immediately succeeding season.

Notwithstanding the foregoing, the City Surcharge per Qualified Ticket will not be decreased in the event that per game attendance in the preceding season decreases or falls below the level used to calculate in any season the City Surcharge amount.

(b) For non-Hockey Events during the Term, $5.00 per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Surcharge).

9.1.3 Supplemental Surcharge. In addition, throughout the Term, a Supplemental Surcharge of $1.50 per Qualified Ticket ("**Supplemental Surcharge**") shall be imposed by the Arena Manager for all Hockey and non-Hockey Events. The Supplemental Surcharge shall be deposited by Arena Manager in an escrow account in the name of Arena Manager and the City, jointly (the "**Supplemental Surcharge Escrow Account**") in accordance with and subject to audit pursuant to the procedures described on Exhibit "N" attached hereto (the "**Supplemental Surcharge Procedures**"). City shall have the right to draw upon the Supplemental Escrow Account within 60 days following the last day of each Fiscal Year, to the extent City received less than $9,000,000 in total revenue from operations at the Arena pursuant to this Agreement during the immediately preceding Fiscal Year (the "**Deficit Amount**"), as further described in the Supplemental Surcharge Procedures and in an amount not to exceed the total funds available in the Supplemental Surcharge Escrow Account at the end of such Fiscal Year. The funds remaining in the Supplemental Surcharge Escrow Account following payment of the

Deficit Amount, if any, to City shall belong to Arena Manager free and clear of all claims of City and shall be disbursed to Arena Manager such that said escrow account is reset to a zero balance following the reconciliation pursuant to the Supplemental Surcharge Procedures at the beginning of each Fiscal Year. The Supplemental Surcharge amounts imposed by the Arena Manager are for all purposes monies owned by the Arena Manager and the City pursuant to the terms of this section 9.1.3, and subject to a first-priority perfected security interest in favor of the City, as more fully described in the Supplemental Surcharge Escrow Agreement. The Supplemental Surcharge Escrow Account shall be held in one or more (FDIC insured) accounts of the Arena Manger and the City jointly, at one or more Third Party Financial Institution agreed to by the City and Arena Manager.

9.1.4 Ownership. All City Surcharge and Supplemental Surcharge revenues shall at all times, be property of the City, free and clear of all claims or interests of any other Party (or any Lender).

9.1.5 Hockey Events. The Arena Manager shall, with respect to each Hockey Event that is a Fee Activity, deposit into the City Surcharge Account all amounts payable as City Surcharge pursuant to this Section with respect to such Hockey Event, within two Business Days after such City Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.6 Team Revenue Events and City Revenue Events. The Arena Manager shall, with respect to each Team Revenue Event and City Revenue Event that is a Fee Activity, deposit into the City Surcharge Account all amounts payable as City Surcharge and Supplemental Surcharge pursuant to this Section with respect to such Team Revenue Event and City Revenue Event, within two Business Days after such City Surcharge and Supplemental Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.7 City Sponsored Events and Community Events. The Arena Manager shall, with respect to each City Sponsored Event that is a Fee Activity and for which the City has not waived the City Surcharge and/or Supplemental Surcharge, deposit into the City Surcharge Account all amounts payable as City Surcharge and Supplemental Surcharge pursuant to this Section with respect to such City Sponsored Event, within two Business Days after such City Surcharge or Supplemental Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.8 Licenses for Other Fee Activities. With respect to a Fee Activity that is not a Hockey Event, Team Revenue Event, City Revenue Event or City Sponsored Event, the Arena Manager shall deposit into the City Surcharge Account all amounts payable as City Surcharge or Supplemental Surcharge pursuant to this Section with respect to such Fee Activity, within two Business Days after such City Surcharge or Supplemental Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.2 Separate Statement of Fees on Tickets. To facilitate the verification of City Surcharge and Supplemental Surcharge:

9.2.1 The Team Owner shall cause the retail price of each Hockey Ticket to be stated on the face of such Hockey Ticket, and shall require that admission for a Hockey Event (including for Suites and Premium Seats) be pursuant to a Hockey Ticket;

9.2.2 The Arena Manager shall cause each License for a Team Revenue Event or a City Revenue Event to require that the retail price of each Ticket for such Event be stated on the face of such Ticket, and that admission for each such Event (including for Suites and Premium Seats) be pursuant to a Ticket;

9.2.3 The Arena Manager and the City (as applicable) shall cause the retail price of each Ticket for a City Sponsored Event to be stated on the face of such Ticket, and shall require that admission for each City Sponsored Event (including for Suites and Premium Seats) be pursuant to a Ticket; and

9.2.4 With respect to a Fee Activity that is not a Hockey Event, Team Revenue Event, City Revenue Event or City Sponsored Event, the Arena Manager shall cause each License for such a Fee Activity to require that the retail price of each Ticket for such Fee Activity be stated on the face of such Ticket, and that admission for each such Fee Activity (including for Suites and Premium Seats) be pursuant to a Ticket.

10. ARENA MANAGEMENT FEE; TAXATION.

10.1 Management Fee. During the Term, in consideration of the Arena Manager's agreement to perform the management and other services set forth in this Agreement and to pay all operating and maintained costs associated with the Arena (other than capital costs as provided herein), provided there is no breach by the Team Owner of the obligations under the Non-Relocation Agreement or a material breach by the Arena Manager of its obligations under this Agreement, the City shall pay to the Arena Manager, by wire transfer of immediately available funds to an account specified by the Arena Manager, a Management Fee, paid in quarterly (on a three calendar month basis) installments in arrears on or before each October 1st, January 1st, April 1st and July 1st during the Term the following amounts or a pro-rata portion of such amounts based upon the number of days in such quarter:

10.1.1 For the period beginning on the Closing Date and ending on the last day of the calendar quarter in which the Closing Date occurs, an amount equal to $15,000,000.00 multiplied by a factor equal to the number of days from the Closing Date to the end of such quarter divided by 365, which for the purposes of clarity shall be calculated as follows:

$$\$15{,}000{,}000 \text{ X } \left(\frac{\text{Number of Days from Closing Date to June 30, 2013}}{365}\right)$$

10.1.2 In no event shall the Management Fee exceed $15,000,000.00 per year.

10.1.3 The City may, by written notice to Arena Manager, require that any revenues owed to the City, and/or any amount in the Surcharge Account, be applied to the City's obligation to pay the Management Fee.

10.2 Taxation of Transactions and Activities at Arena. The Parties acknowledge and agree that transactions and activities at the Arena Facility (including without limitation Arena Manager revenues described in Sections 8.2.1(d) and 8.5.2) (i) are, and shall continue during the Term to be, subject to taxes imposed by the City under Applicable Law, (ii) will be subject to such City-wide taxes as apply to retail and entertainment activities conducted in the City, and (iii) will be subject to future changes in the tax rates that apply under Applicable Law.

11. CAPITAL IMPROVEMENTS.

11.1 Arena Manager's Obligation. The Arena Manager shall, in addition to the Arena Manager's obligation for on-going repair and maintenance of the Arena Facility, have the obligation to make necessary and prudent Capital Improvements to the Arena Facility in accordance with this Section,

provided however, that the Arena Manager's obligation to undertake and complete Capital Improvement projects under this Section is limited by the availability of funds in the Renewal and Replacement Account or, in the event funds are not available in the Renewal and Replacement Account, additional assured funding provided by the City. Notwithstanding the foregoing, capital expenses for construction of the Arena Theater in the Arena shall be paid by the Arena Manager.

11.2 Renewal and Replacement Schedule. The current Renewal and Replacement Schedule for the Arena is attached to this Agreement as Exhibit "L" and reflects project capital expenditures (but not routine repair and maintenance which remains the obligation of the Arena Manager) that are anticipated for the Arena Facility.

11.2.1 The City and Arena Manager shall meet and confer within the first six months following the Closing Date to make any adjustments to the Renewal and Replacement Schedule that the Parties mutual agree to be necessary or reasonable prudent and advisable.

11.2.2 In the event the City and Arena Manager cannot agree upon adjustments, if any, to the Renewal and Replacement Schedules that are necessary or reasonable prudent and advisable, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

11.3 Funding of Capital Improvements. In order to fund the Renewal and Replacement Schedule, the City shall provide the following amounts (collectively, the **"Capital Improvement Contributions"**), which shall be paid into and held in the Renewal and Replacement Account on the first day of the applicable Fiscal Year (and for the first year of the Term, on the Closing Date):

11.3.1 $500,000 during each Fiscal Year of the Term through June 30, 2019, prorated as provided in Section 6.6.1 for Partial Years; and

11.3.2 $1,000,000 during each Fiscal Year beginning July 1, 2020 and ending June 30, 2027.

11.3.3 Any portion of the Capital Improvement Contribution made in a given Fiscal Year that is not utilized for Capital Improvement Expenditures in such Fiscal Year shall be retained in the Renewal and Replacement Account and may be utilized by the Arena Manager for Capital Improvement Expenditures in subsequent Fiscal Years. Such unused Capital Improvement Contribution shall not be credited towards the Capital Improvement Contribution for any subsequent Fiscal Year.

11.4 Budgeting for Capital Improvements. The Arena Manager shall in each Annual Budget identify all Capital Improvement expenditures (**"Capital Improvement Expenditures"**), including those that will require Capital Improvement Contributions, that are: (a) necessary to comply with mandatory governmental requirements; (b) necessary or appropriate for the safe operation of the Arena Facility or its maintenance or repair; (c) reasonably required by any License, Concessions Agreement, Suite License Agreement or Premium Seat Agreement (it being understood that these Capital Improvement Expenditures shall not be an expense chargeable to the City); or (d) in the Arena Manager's reasonable opinion, will materially improve the Arena Facility, increase Operating Revenues or reduce Operating Expenses or which are reasonably expected to ensure the economic competitiveness of the Arena Facility. Upon installation, any modifications or installations funded by the Capital Improvement Contributions shall become a part of the Arena Facility and the property of the City.

11.5 Renewal and Replacement Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the Renewal and Replacement Account which shall at all times remain the property of the City until disbursed in accordance with this Section.

11.5.1 Interest earned on the Renewal and Replacement Account shall not be Operating Revenues and shall be considered part of the Renewal and Replacement Account.

11.5.2 Monies shall be disbursed from the Renewal and Replacement Account for Capital Improvement Expenditures pursuant to the provisions of this Agreement.

11.5.3 The City shall take such actions as are required to cause such disbursements to be made as and when required by the provisions of this Agreement.

11.5.4 The amounts on deposit in the Renewal and Replacement Account pursuant to this Section shall not be Operating Revenues.

11.5.5 The City shall provide Capital Improvements Contributions subject to and in accordance with the City's capital improvements budget process.

11.6 Emergencies. In the event of an Emergency:

11.6.1 The Arena Manager shall make the repairs necessary to alleviate such Emergency, in which event the Arena Manager shall pay for or be reimbursed for the cost of the work from the Renewal and Replacement Account or such other City funds that may be legally expended. Such payment or reimbursement shall be made to the Arena Manager within seven business days from the Arena Manager's submission of appropriate documentation.

11.6.2 The City and the Arena Manager will meet immediately to determine the extent of the work necessary and the funding for such work.

11.6.3 The Arena Manager shall comply with all of the governmental requirements pertaining to the work performed.

11.6.4 The Arena Manager may use monies from any Arena Account (other than the Renewal and Replacement Account) to pay for Capital Improvement Expenditures in the event of an Emergency requiring Capital Improvements.

11.7 City Rights.

11.7.1 The City shall have the right, without the prior consent of the Team Owner, but with the prior consent of the Arena Manager which shall be properly and reasonably provided (and not unreasonably withheld, conditioned or delayed), to make Capital Improvements or other repairs to the Arena Facility (other than the Exclusive Team Spaces) using the Renewal and Replacement Account if the Capital Improvements or other repairs are in the City's estimation reasonable and necessary and improve the structural integrity of the Arena Facility and do not fundamentally alter the character or suitability of the Arena Facility for use as a multi-purpose arena facility in compliance with all applicable NHL requirements and Applicable Law, and are done in a manner as to not unreasonably interfere with the operation of the Arena Facility.

11.7.2 The City shall provide the Arena Manager with not less than 30-day notice of, and a schedule for, any such Capital Improvements or other repairs.

11.7.3 All work shall be performed pursuant to a schedule reasonably approved in advance by Arena Manager to minimize any interference with operations of the Arena Facility. The location of any staging area shall be subject to approval by Arena Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

11.7.4 The City's design and construction contractors and subcontractors shall comply with reasonable security and identification procedures established by Arena Manager for access to the Arena.

11.7.5 The City will prevent any type of encumbrance, security interest, pledge, claim, mechanics' or other lien arising out of work performed for, materials furnished to, or obligations incurred by the City in the construction of any permitted Capital Improvements or repairs and will cause any such encumbrance, security interest, pledge, claim, mechanics' or other lien to be removed or bonded over within 15 days after receipt of notice thereof.

11.7.6 Upon installation, any such Capital Improvement shall become a part of the Arena Facility and the property of the City, subject to the Arena Manager's and the Team's use rights under this Agreement.

11.7.7 The City shall maintain and require all contractors and subcontractors to maintain insurance and bond coverages during construction as described on Exhibit "H".

11.7.8 The City shall defend, indemnify and hold the Arena Manager and Arena Sub-Manager, and their agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the performance of such Capital Improvements or repairs by or on behalf of the City in accordance with Section 20.1. Any and all costs and expenses incurred by the Arena Manager to discharge its obligations under this Section shall be included as Operating Expenses.

11.8 Exclusive Team Spaces. Subject to the City's reasonably, prior written approval, The Team Owner shall have the right to make, or cause to be made, certain nonstructural alterations, installations, decorations, additions and improvements to the Exclusive Team Spaces, provided that all such alterations, installations, decorations, additions and improvements, including the preparation of plans, specifications and engineering reports therefore, shall be done solely at the Team Owner's expense, in a good and workmanlike manner, shall not weaken or impair the structural integrity of the Arena Facility or fundamentally alter the character or suitability of the Arena Facility for use as a multipurpose arena facility, shall be in compliance with all applicable NHL requirements and Applicable Law and shall be done in a manner as to not unreasonably interfere with the operation of the Arena Facility.

11.9 Non-Budgeted Capital Improvements.

11.9.1 In addition to the Capital Improvements detailed in the Renewal and Replacement Schedule and approved in the Annual Budget, the Arena Manager shall further have the right to make Capital Improvements if necessary to comply with governmental requirements appropriate for the safe operation of the Arena Facility or its maintenance or repair.

11.10 Ownership of the Capital Improvements. Upon installation, and notwithstanding the source of payment, any capital improvement shall automatically be and become a part of the Arena Facility and shall be the sole and exclusive property of the City, subject to the Arena Manager's or the Team Owner's use rights under this Agreement.

11.11 Compliance with City Code; Procurement. Nothing in this Agreement with respect to any work performed on the Arena Facility by the Arena Manager or the Team Owner limits, restricts, or waives any requirement of law with respect to construction on public buildings or limits, restricts, or waives the City's building safety requirements, including, but not limited to, permitting, inspections, and plan review. To the extent that any Capital Improvements are undertaken by or on behalf of Arena Manager, Arena Manager shall comply with all procurement requirements of the State of Arizona and the City that are applicable to such Capital Improvements.

11.12 Arena Manager or Team Owner-Caused Lien.

11.12.1 The Arena Manager and the Team Owner shall, prior to any work being performed, inform any entity performing work on the Arena Facility that the Arena Facility is a public facility and that Arizona law prohibits any lien being placed against the Arena Facility.

11.12.2 The Arena Manager and the Team Owner will prevent any type of encumbrance, security interest, pledge, claim, mechanics' or other lien arising out of work performed for, materials furnished to, or obligations incurred by the Arena Manager or Team Owner in the construction of any permitted Capital Improvements or other alterations, installations, decorations, additions and improvements and will immediately cause any such encumbrance, security interest, pledge, claim, mechanics' or other lien to be removed. Further, the Arena Manager and Team Owner shall pay, defend, indemnify and hold harmless the City against any Loss, Claim or expense arising from or relating to any lien or claim asserted against the City or the Arena by a Third Party, if such Loss, Claim or expense is the result of any action by the Arena Manager or Team Owner.

12. LENDER'S PROTECTION.

12.1 Team Owner Lender's Protection.

12.1.1 City Estoppel Certificates for Team Owner. The City shall from time to time, within 15 Business Days after receipt from the Team Owner of a request, deliver to the Team Owner (or to such other Party as the Team Owner may designate in such request, including any lender providing or considering providing financing to the Team Owner), a certificate, signed by the City Representative designated in accordance with Section 2.1, stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the City Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Team Owner Default and, if so, the nature of such Team Owner Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Team Owner may reasonably request in such request. The Team Owner may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.1.2 Arena Manager Estoppel Certificates for Team Owner. The Arena Manager shall from time to time, within 15 Business Days after receipt from the Team Owner of a request, deliver to the Team Owner (or to such other party as the Team Owner may designate in such request, including any lender providing or considering providing financing to the Team Owner), a certificate, signed by the Arena Manager Representative designated in accordance with Section 2.2, stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Arena Manager Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Team Owner Default by the Team Owner and, if so, the nature of the

Team Owner Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Team Owner may reasonably request in such request. The Team Owner may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.1.3 Assignment of Team Owner Rights. Subject to the terms and conditions of the Non-Relocation Agreement, the Team Owner shall have the right, without any additional consent or approval of the other Parties, to assign, pledge, transfer or sell to any lender providing financing to the Team Owner or any of its Affiliates, as security for such financing, the entirety of the rights of the Team Owner under this Agreement, provided that, if applicable, the NHL has approved or consented to such assignment.

(a) The Team Owner shall, not later than 30 days after such assignment becomes effective, give the other Parties notice (the **"Notice of Team Owner Assignment"**) of such assignment, and the Notice of Team Owner Assignment shall include the name and address of the Team Owner Assignee.

(b) Each of the other Parties agrees, upon request from the Team Owner or the Team Owner Assignee, to deliver to the Team Owner Assignee an acknowledgement, executed by the City Representative and the Arena Manager Representative of receipt of a given Notice of Team Owner Assignment; provided however, nothing in this Section shall alter, amend, reduce or excuse the Team Owner from performing the Team Owner's obligations under this Agreement.

(c) Following receipt of a Notice of Team Owner Assignment, none of the City and the Arena Manager shall enter into or consent to any amendment, waiver, modification or termination of this Agreement by agreement of the Parties to this Agreement without the prior consent of the Team Owner Assignee named in such Notice of Team Owner Assignment.

(d) The Team Owner hereby authorizes and directs each of the other Parties, following such other Party's receipt of (i) a Notice of Team Owner Assignment; (ii) the Team Owner Assignee's notice of a default by the Team Owner under the terms and conditions of the financing secured by the assignment described in such Notice of Team Owner Assignment; and (iii) the Team Owner Assignee's request for payment, to make any payments to be made by such other Party to the Team Owner under this Agreement directly to the Team Owner Assignee. No such other Party shall have any obligation to verify or investigate the existence of any claimed default described in the Team Owner Assignee's notice. City is entitled to rely upon any notice directing payments to a Team Owner Assignee. The Team Owner agrees that any such payment by the City will discharge any obligation to pay such payment to Team Owner; in no event will City be required to pay to any Person (including Team Owner) any sums previously paid to a Team Owner Assignee.

12.1.4 Notices to Team Owner Assignee. Following receipt from the Team Owner of a Notice of Team Owner Assignment, each of the other Parties shall, contemporaneously with giving any notice to the Team Owner under this Agreement, send a copy of such notice to the Team Owner Assignee named in such Notice of Team Owner Assignment and addressed to such Team Owner Assignee at the address of such Team Owner Assignee set forth in such Notice of Team Owner Assignment.

12.1.5 Team Owner Assignee's Right to Cure Team Owner Default. Following the receipt by a Party to this Agreement (other than the Team Owner) from the Team Owner of a Notice of Team Owner Assignment, the Team Owner Assignee named therein shall have the right, but not the obligation, to cure any Team Owner Default, whether then existing or thereafter arising.

(a) No such Party shall exercise any remedy under this Agreement or otherwise with respect to any such Team Owner Default until at least 60 days after such Party has given such Team Owner Assignee notice of the Team Owner Default and the Team Owner Assignee's right to cure the Team Owner Default; provided, however, that if such Team Owner Assignee commences such a cure within such 60 day period, such Party shall not exercise any such remedy with respect to the Team Owner Default so long as such Team Owner Assignee is diligently pursuing such cure.

(b) If a Team Owner Assignee succeeds to the interest of the Team Owner under this Agreement, such Team Owner Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement by agreement of the Parties to this Agreement (entered into after the date on which the Notice of Team Owner Assignment was given) made without such Team Owner Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by the Team Owner to perform any obligation under this Agreement that arose prior to the date on which such Team Owner Assignee succeeded to the interest of the Team Owner under this Agreement (except to the extent such obligation continues after the date on which such Team Owner Assignee succeeded to the interest of the Team Owner under this Agreement) provided, however, that the City is not obligated to approve, accept or acknowledge any assignment at the time of any existing breach or Default by the Arena Manager or Team Owner unless such breach or Default is properly cured and all sums due to the City are paid; or the Assignee assumes responsibility for all such payments and Defaults in a form (and content) of assumption that is acceptable to the City in its sole discretion.

12.2 Arena Manager Lender's Protection.

12.2.1 City Estoppel Certificates for Arena Manager. The City shall from time to time, within 15 Business Days after receipt from the Arena Manager of a request, deliver to the Arena Manager (or to such other party as the Arena Manager may designate in such request, including any lender providing or considering providing financing to the Arena Manager), a certificate, signed by the City Representative designated in accordance with Section 2.1 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the City Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Arena Manager Default and, if so, the nature of the Arena Manager Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Arena Manager may reasonably request in such request. The Arena Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.2.2 Team Owner Estoppel Certificates for Arena Manager. The Team Owner shall from time to time, within 15 Business Days after receipt from the Arena Manager of a request, deliver to the Arena Manager (or to such other party as the Arena Manager may designate in such request, including any lender providing or considering providing financing to the Arena Manager), a certificate, signed by the Team Owner Representative designated in accordance with Section 2.3 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Team Owner Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Arena Manager Default and, if so, the nature of the Arena Manager Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Arena Manager may reasonably request in such request. The Arena Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.3 Assignment of Arena Manager's Rights. Subject to the terms and conditions of the Non-Relocation Agreement, the Arena Manager shall have the right, without any additional consent or approval of the other Parties, to assign, pledge, transfer or sell to any lender providing financing to the Arena Manager or any of its Affiliates, as security for such financing, the entirety of the rights of the Arena Manager under this Agreement,

(a) The Arena Manager shall, not later than 30 days after such assignment becomes effective, give the other Parties notice (the **"Notice of Arena Manager Assignment"**) of such assignment, and the Notice of Arena Manager Assignment shall include the name and address of the Arena Manager Assignee.

(b) Each of the other Parties agrees, upon request from the Arena Manager or the Arena Manager Assignee, to deliver to the Arena Manager Assignee an acknowledgement, executed by the City Representative and the Team Owner Representative of receipt of a given Notice of Arena Manager Assignment; provided however, nothing in this Section shall alter, amend, reduce or excuse the Arena Manager from performing the Arena Manager's obligations under this Agreement.

(c) Following receipt of a Notice of Arena Manager Assignment, none of the City and the Team Owner shall enter into or consent to any amendment, waiver, modification or termination of this Agreement by agreement of the Parties to this Agreement without the prior consent of the Arena Manager Assignee named in such Notice of Arena Manager Assignment.

(d) The Arena Manager hereby authorizes and directs each of the other Parties, following such other Party's receipt of (i) a Notice of Arena Manager Assignment; (ii) the Arena Manager Assignee's notice of a default by the Arena Manager under the terms and conditions of the financing secured by the assignment described in such Notice of Arena Manager Assignment; and (iii) the Arena Manager Assignee's request for payment, to make any payments to be made by such other Party to the Arena Manager under this Agreement directly to the Arena Manager Assignee. No such other Party shall have any obligation to verify or investigate the existence of any claimed default described in the Arena Manager Assignee's notice. City is entitled to rely upon any notice directing payments to an Arena Manager Assignee. The Arena Manager agrees that any such payment by the City will discharge any obligation to pay such payment to Arena Manager; in no event will City be required to pay to any Person (including Arena Manager) any sums previously paid to an Arena Manager Assignee.

12.3.2 Notices to Arena Manager Assignee. Following receipt from the Arena Manager of a Notice of Arena Manager Assignment, each of the other Parties shall, contemporaneously with giving any notice to the Arena Manager under this Agreement, send a copy of such notice to the Arena Manager Assignee named in such Notice of Arena Manager Assignment and addressed to such Arena Manager Assignee at the address of such Arena Manager Assignee set forth in such Notice of Arena Manager Assignment.

12.3.3 Arena Manager Assignee's Right to Cure Arena Manager Default. Following the receipt by a Party to this Agreement (other than the Arena Manager) from the Arena Manager of a Notice of Arena Manager Assignment, the Arena Manager Assignee named therein shall have the right, but not the obligation, to cure any Arena Manager Default, whether then existing or thereafter arising.

(a) No such Party shall exercise any remedy under this Agreement or otherwise with respect to any such Arena Manager Default until at least 60 days after such Party has given such Arena Manager Assignee notice of the Arena Manager Default and the Arena Manager Assignee's right to cure the Arena Manager Default; provided, however, that if such Arena Manager

Assignee commences such a cure within such 60 day period, such Party shall not exercise any such remedy with respect to the Arena Manager Default so long as such Arena Manager Assignee is diligently pursuing such cure.

(b) If an Arena Manager Assignee succeeds to the interest of the Arena Manager under this Agreement, such Arena Manager Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement by agreement of the Parties to this Agreement (entered into after the date on which the Notice of Arena Manager Assignment was given) made without such Arena Manager Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by the Arena Manager to perform any obligation under this Agreement that arose prior to the date on which such Arena Manager Assignee succeeded to the interest of the Arena Manager under this Agreement (except to the extent such obligation continues after the date on which such Arena Manager Assignee succeeded to the interest of the Arena Manager under this Agreement) provided, however, that the City is not obligated to approve, accept or acknowledge any assignment at the time of any existing breach or Default by the Arena Manager or Team Owner unless such breach or Default is properly cured and all sums due to the City are paid; or the Assignee assumes responsibility for all such payments and Defaults in a form (and content) of assumption that is acceptable to the City in its sole discretion.

12.4 Estoppel Certificates for City.

12.4.1 Arena Manager Estoppel Certificates for City. The Arena Manager shall from time to time, within 15 Business Days after receipt from the City of a request, deliver to the City (or to such other party as the City may designate in such request), a certificate, signed by the Arena Manager's Representative designated in accordance with Section 2.1 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Arena Manager's Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any City Default and, if so, the nature of the City Default; and (iv) such other information pertaining to this Agreement and then available to the public as the City may reasonably request in such request. The City may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.4.2 Team Owner Estoppel Certificates for the City. The Team Owner shall from time to time, within 15 Business Days after receipt from the City of a request, deliver to the City (or to such other party as the City may designate in such request), a certificate, signed by the Team Owner Representative designated in accordance with Section 2.3 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Team Owner Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any City Default and, if so, the nature of the City Default; and (iv) such other information pertaining to this Agreement and then available to the public as the City may reasonably request in such request. The City may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.5 Subordination to City Encumbrance. The rights of each of the Arena Manager and the Team Owner under this Agreement shall, at the City's option, be made subordinate to any City Encumbrance. For purposes of this Section, **"City Encumbrance"** shall mean means any ground or other lease, mortgage, deed of trust or other hypothecation for security placed on all or any portion of the City's interest in the Arena, and all advances thereunder, all renewals, modifications, consolidations, replacements and extensions thereof.

12.5.1 Such subordination shall be effective only if the holder of the City Encumbrance agrees, by written subordination, non-disturbance and attornment agreement in form and with substance reasonably satisfactory to the Arena Manager and the Team Owner to be bound by this Agreement and to recognize and not disturb the rights of the Arena Manager or the Team Owner, (or the rights of other users of the Arena Facility) under this Agreement.

12.5.2 The Team Owner and the Arena Manager shall, within a reasonable time after the City's request, and subject to satisfaction of Section 12.5.1 execute any agreement reasonably required to implement or evidence the subordination of this Agreement in the manner described in this Section.

12.5.3 If the holder of any City Encumbrance desires that this Agreement have priority over the lien of such City Encumbrance, such holder shall give notice of such priority to the Arena Manager and the Team Owner and this Agreement shall thereafter be deemed to have priority over such lien.

13. INSURANCE.

13.1 Arena Manager Insurance. The Arena Manager shall, as an Operating Expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance and bond coverages described in Exhibit "H" attached to this Agreement (including the identity of the insurer, types and amounts of coverage, non-cancellation provisions, contractual indemnity provisions, subrogation waiver, and other matters specified in Exhibit "H").

13.2 City Insurance. The City shall, at the City's expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance coverages or elect to self-insure for the amount described in Exhibit "I" attached to this Agreement.

13.3 Team Owner Insurance. The Team Owner shall, at the Team Owner's expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance coverages described in Exhibit "J" attached to this Agreement (including the identity of the insurer, types and amounts of coverage, non-cancellation provisions, contractual indemnity provisions, subrogation waiver, and other matters specified in Exhibit "H").

13.4 Waiver of Recovery. Notwithstanding any provision to the contrary in this Agreement, no Party shall be liable to any other Party to this Agreement, or to any insurance company (by way of subrogation or otherwise) insuring any other Party to this Agreement, for any Claim or Loss, even though such Claim or Loss might have been occasioned by the responsible Party's negligence, or the negligence of its agents or employees, if and to the extent such Claim or Loss is covered by insurance benefiting the Party suffering such Claim or Loss or against whom such Claim or Loss is made.

13.5 Failure to Maintain Insurance.

13.5.1 Arena Manager Failure. If the Arena Manager fails or refuses to procure or maintain the required insurance, after notice by the City or the Team Owner to the Arena Manager of such failure, the City or the Team Owner shall have the right, but not the obligation, to procure and maintain such insurance, and any reasonable premium paid by the City or the Team Owner, plus interest thereon at the Interest Rate computed from the date such premium is paid, shall be due and payable and reimbursed by the Arena Manager to the City or the Team Owner as an Operating Expense, on the first day of the month following the date on which the City or the Team Owner provides to the Arena Manager written evidence of payment of such premium.

13.5.2 City Failure. If the City fails or refuses to procure or maintain the required insurance or maintain an appropriate self-insurance retention, the Arena Manager shall have the right, but not the obligation, to seek equitable relief from a court of competent jurisdiction mandating the required insurance be procured or an appropriate self-insurance retention be established.

13.5.3 Team Owner Failure. If the Team Owner fails or refuses to procure or maintain the required insurance, after notice by the Arena Manager or the City to the Team Owner of such failure, the Arena Manager or the City shall have the right but not the obligation to procure and maintain insurance, in which event, any reasonable premium paid by the Arena Manager or the City, plus interest thereon at the Interest Rate computed from the date such premium is paid, shall:

(a) If paid by the Arena Manager, be an Operating Expense, and (i) the Arena Manager shall make a demand on the Team Owner for reimbursement of such payment by the Team Owner to the Arena Manager; (ii) the Team Owner shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account and include such amount in Operating Revenues; or

(b) If paid by the City be reimbursed by the Arena Manager to the City as an Operating Expense on demand by the City accompanied by evidence of payment of such premium, after which (i) the Arena Manager shall make a demand on the Team Owner for reimbursement of such payment by the Team Owner to the Arena Manager; (ii) the Team Owner shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account and include such amount in Operating Revenues.

13.6 Notice. A Party procuring insurance on behalf of another Party as a result of the failure of the other Party shall promptly give notice of such procurement to each other Party to this Agreement.

13.7 Provisions.

13.7.1 All insurance required hereby shall be by valid and enforceable policies issued by insurance companies rated not lower than A-VII in Best's Rating Guide (most current edition) and authorized to do business in Arizona.

13.7.2 Each such policy of insurance obtained by a Party to this Agreement shall be endorsed: (a) to provide that the coverage shall not be invalid due to any act or omission of any other Party to this Agreement or its agents or employees; (b) except for worker's compensation, to name each other Party to this Agreement as an additional insured; (c) to be primary as to any insurance maintained by each other Party to this Agreement, so that the latter shall be excess and not contributory to insurance provided by the insuring Party; (d) to provide that the waiver of subrogation set forth above shall not invalidate or have any adverse effect on such insurance policy or liability of the insurer under such policy; and (e) to provide that no termination or cancellation may occur, for any reason, absent thirty (30) days' advance written notice to the other Parties to this Agreement as further provided in Section 13.7.3.

13.7.3 The insurance companies issuing such policy shall agree to notify each other Party to this Agreement in writing of any cancellation, alteration or nonrenewal of such policy at least thirty (30) days prior thereto.

13.7.4 Within thirty (30) days before the Closing Date and thereafter before a policy period expires, each Party required to obtain insurance hereunder shall deliver to each other Party to this

Agreement certificates evidencing the insurance coverage (or an appropriate notice of election to self-insured issued by the City) required of the delivering Party and consenting to the waiver of subrogation as herein provided.

13.8 Periodic Review and Adjustment.

13.8.1 The Parties agree that the insurance required by this Section shall be subject to adjustment from time to time at the reasonable request of the Arena Manager, the Team Owner or the City so as to be in such amounts as are customarily provided with respect to comparable multi-purpose sports and entertainment arena facilities.

13.8.2 Further, regardless of whether any such requests have been made, the Parties shall in good faith review the insurance coverages required by this Section no less frequently than every three years during the Term, with such reviews to be conducted concurrently with the preparation and review of the Annual Budget.

14. DAMAGE OR DESTRUCTION.

14.1 Terms: For the purposes of this Section, the following terms shall have the meanings set forth below:

14.1.1 **"Insurance Proceeds"** means all monies paid by an insurer under a casualty insurance policy as a result of a casualty event, the money paid from a Party responsible for the casualty, and any money paid directly by a Party required under this Agreement to maintain insurance and failed to do so.

14.1.2 **"Casualty Deficiency"** means the amount of the difference between (i) the cost to restore the Arena Facility to the Casualty Restoration Standard in the event of damage or destruction, and (ii) the amount available in the Renewal and Replacement Account, after deposit of all available insurance proceeds.

14.1.3 **"Casualty Restoration Standard"** means a condition as nearly the same as the condition of the Arena Facility immediately prior to an event of damage or destruction as is reasonably possible and which is in compliance with all applicable NHL requirements and Applicable Law.

14.2 Adequately Insured Damage. If, on or after the Closing Date and during the Term, any portion of the Arena Facility is damaged or destroyed, and such damage or destruction is covered by a casualty insurance policy maintained hereunder, Insurance Proceeds, which for the purposes of this Section refers to all insurance proceeds paid (or to be paid) under such casualty insurance policy, shall be deposited into the Renewal and Replacement Account.

14.2.1 If the Insurance Proceeds are, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), sufficient to restore the damaged or destroyed portion of the Arena Facility to the Casualty Restoration Standard, such Insurance Proceeds shall be disbursed from the Renewal and Replacement Account to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect without abatement, credit or delay.

14.2.2 Any Insurance Proceeds remaining after the payment of the costs of such restoration in accordance with the Casualty Restoration Standard shall be deposited or remain in the Renewal and Replacement Account.

14.3 Insurance Deficiency and Termination. If, on or after the Closing Date, any portion of the Arena Facility is damaged or destroyed, and such damage or destruction is not covered by a casualty insurance policy maintained hereunder or, if so covered, the Insurance Proceeds are insufficient, in the reasonable estimation of the Arena Manager, to pay the costs of restoration of such damage or destruction in accordance with the Casualty Restoration Standard, and if there are amounts in the Renewal and Replacement Account other than the Insurance Proceeds deposited pursuant to Section 11, in an amount sufficient, in the reasonable estimation of the Arena Manager and the City, to pay the costs of such restoration that exceed the Insurance Proceeds, the Insurance Proceeds and such amount in the Renewal and Replacement Account shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect without abatement; credit or delay.

14.3.1 If the amount in the Renewal and Replacement Account (after the deposit of the Insurance Proceeds) are insufficient to pay the costs of such restoration, then, within 90 days after the date such damage or destruction occurred, the Arena Manager shall give the other Parties notice of the Casualty Deficiency, and the Arena Manager shall, within 30 days after providing such notice, give notice to the other Parties that either (i) the Arena Manager will provide, within 30 days after providing such notice, additional monies in the amount of the Casualty Deficiency, or (ii) the Arena Manager elects to terminate this Agreement and the Non-Relocation Agreement.

14.3.2 If the Arena Manager gives notice that the Arena Manager will provide the amount of the Casualty Deficiency, the Arena Manager shall provide such amount within such thirty-day period. The Arena Manager shall deposit such amount, and the monies shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect without credit, abatement or delay. The Arena Manager shall be reimbursed from amounts in the Renewal and Reimbursement Account for the amounts provided pursuant to this Section (plus interest at the Interest Rate from the date of provision to the date of reimbursement), when, as and if monies become available.

14.3.3 If the Arena Manager gives notice of the Arena Manager's election to terminate this Agreement and the Non-Relocation Agreement, the City shall have the right (within 30 days after the City's receipt of the Arena Manager's notice) to give notice to the other Parties of the City's intent to pay the amount of the Casualty Deficiency, in which event, the City shall deliver, within 30 days after the date of the City's notice, the amount of the Casualty Deficiency to the Arena Manager for deposit. Upon such deposit, the Arena Manager's notice of the Arena Manager's election to terminate shall be deemed rescinded and void, and monies so deposited shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect.

14.3.4 If the City does not give such notice of the City's intent to pay the Casualty Deficiency amount within 30 days after the City's receipt of the Arena Manager's notice of the Arena Manager's election to terminate, or does not deliver the Casualty Deficiency amount to the Arena Manager within the thirty-day period for delivery described above, then the Arena Manager shall, within 15 days after the expiration of the applicable thirty-day period, give notice to the other Parties that either (i) the Arena Manager will provide, within 30 days thereafter, additional monies in the amount of the

Casualty Deficiency, or (ii) this Agreement and the Non-Relocation Agreement shall be terminated as of a date not later than 30 days following such Notice.

14.3.5 If the Arena Manager gives notice that this Agreement and the Non-Relocation Agreement shall be terminated, then this Agreement and the Non-Relocation Agreement shall, without further action or notice by any Party to this Agreement, terminate, and the Insurance Proceeds, if any, shall be distributed to the City. All insurance proceeds relating to casualty, destruction or damage to the Arena shall be utilized for repair as provided herein, or shall be paid to, and be property of, the City, whether deposited in the Renewal and Replacement Account or otherwise.

14.4 Damage or Destruction Near End of Term. If, during the last two Fiscal Years of the Term, the Arena Facility or any portion thereof is destroyed or damaged to the extent that restoration to the Casualty Restoration Standard will, in the Arena Manager's or the City's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Term, then the Arena Manager or the City shall have the right to terminate this Agreement and the Non-Relocation Agreement by giving notice of such termination to the other Parties, and the Insurance Proceeds, if any, shall be distributed to the City. Such termination shall be effective upon the date set forth in the Notice, but in no event more than 30 days after Notice and 60 days after the damage or destruction is sustained.

14.5 Abatement of Certain Team Owner Obligations. If the damage or destruction of the Arena Facility or any portion thereof, or the restoration of such damage or destruction to the Casualty Restoration Standard, prevents or materially interferes with the playing of Home Games at the Arena Facility (including by reason of the inadequacy of parking), then, until the Arena Facility has been restored to the Casualty Restoration Standard, the Team Owner shall not be required pursuant to the Non-Relocation Agreement to play Home Games at the Arena Facility and the City shall not be required to pay the Management Fee due hereunder.

15. EMINENT DOMAIN.

15.1 Terms. For the purposes of this Section, the following terms shall have the meanings set forth below:

15.1.1 **"Condemnation Award"** means the payment or other award to be paid by the condemnor attributable to the value of the Arena Facility.

15.1.2 **"Condemnation Deficiency"** means the amount of the difference between (i) the cost to restore the Arena Facility in the event of condemnation, and (ii) the amount available in the Renewal and Replacement Account, after deposit of all available insurance proceeds.

15.1.3 **"Condemnation Restoration Standard"** means a condition as nearly the same as the condition of the Arena Facility immediately prior to an event of damage or destruction as is reasonably possible and which is in compliance with all applicable NHL requirements and Applicable Law.

15.2 Substantial Taking. If during the Term the Arena Facility is subject to a Taking, and the Taking is a Substantial Taking, the Arena Manager shall have the right, at its option exercisable at any time within 90 days after the date of the Taking to terminate this Agreement and the Non-Relocation Agreement by notice of termination given by the Arena Manager to the other Parties. The Condemnation Award shall be paid in its entirety to, and shall be the property of, the City, free and clear of any claims or

interests of any other Party. Relocation benefits, if any, payable to the Team Owner or Arena Manager shall be property of such entity, free and clear of any claim or interest of the City.

15.3 Partial Taking.

15.3.1 If during the Term the Arena Facility is the subject of a Taking that is not a Substantial Taking, or if a Substantial Taking occurs but this Agreement and the Non-Relocation Agreement are not terminated and the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), sufficient to restore the remainder of the Arena Facility to the Condemnation Restoration Standard, such Condemnation Award shall be deposited in the Renewal and Replacement Account for the benefit of the City or for use in accordance with the Agreement. In such event, the Condemnation Award shall be disbursed from said account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard, as soon as is reasonably possible and this Agreement and the Non-Relocation Agreement shall continue in full force and effect. The City shall not be required to pay any sum or to supplement any condemnation award in connection with such repair or restoration.

15.3.2 If during the Term (a) the Arena Facility is the subject of a Taking that is not a Substantial Taking; (b) the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), insufficient to pay the costs of restoration of the Arena Facility to the Condemnation Restoration Standard; and (c) monies received under Sections 15.3.4 and 15.3.5 below (together with the Condemnation Award), are sufficient in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City) to pay the amount by which the costs of such restoration exceed the Condemnation Award, the Condemnation Award and such monies shall be disbursed from the account into the foregoing account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect.

15.3.3 If the monies in the account specified by Arena Manager (after the deposit of the Condemnation Award therein), are insufficient to pay the costs of such restoration, then, within 90 days after the date of the Taking, the Arena Manager shall give the Team Owner and the City notice of the Condemnation Deficiency, and the Arena Manager shall elect to either (i) provide, within 30 days after providing such notice, additional monies in the amount of the Condemnation Deficiency, or (ii) terminate this Agreement and the Non-Relocation Agreement by notice of termination to the other Parties.

15.3.4 If the Arena Manager elects to provide the amount of the Condemnation Deficiency, the Arena Manager shall deposit such amount in the account specified by Arena Manager, and monies shall be disbursed from said account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect. The Arena Manager shall be reimbursed for the amount provided to the Arena Manager pursuant to this Section (plus interest at the Interest Rate from the date of provision to the date of reimbursement) from the Renewal and Replacement Account, when, as and if, monies become available from such account.

15.3.5 If the Arena Manager is entitled to and does elect to so terminate this Agreement and the Non-Relocation Agreement, the City shall have the right (within 30 days after the City's receipt of notice of the Arena Manager's election to so terminate) to give notice to the other Parties of the City's intent to pay the amount of the Condemnation Deficiency, in which event the City shall deliver, within thirty (30) days after the date of the City's notice, the amount of the Condemnation Deficiency to the

Renewal and Replacement Account. Upon such deposit, the Arena Manager's election to terminate shall be deemed rescinded and void, and monies shall be disbursed from such account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect.

15.3.6 If the City does not give such notice to the City's intent to pay the Condemnation Deficiency amount within 30 days after the City's receipt of the Arena Manager's notice of election to terminate, or does not deliver the Condemnation Deficiency amount to the Arena Manager within the thirty-day period for delivery described above, this Agreement and the Non-Relocation Agreement shall be terminated at the expiration of the applicable thirty-day period, and the Condemnation Award shall be paid to the City.

15.4 Partial Taking Near End of Term. If the Arena Facility is the subject of a Taking during the last two Fiscal Years of the Term that is not a Substantial Taking, and restoration of the Arena Facility to the Condemnation Restoration Standard will, in the Arena Manager's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Term, then the Arena Manager shall have the right to terminate this Agreement and the Non-Relocation Agreement by giving notice not more than thirty (30) days' notice of the effective date of such termination to the other Parties, and the Condemnation Award shall be paid to the City.

15.5 Abatement of Certain Team Owner Obligations. If a Taking, or the restoration of the Arena Facility to the Condemnation Restoration Standard, prevents or materially interferes with the playing of Home Games at the Arena Facility (including by reason of the inadequacy of parking), then, until the Arena Facility has been restored to the Condemnation Restoration Standard, the Team Owner shall not be required pursuant to the Non-Relocation Agreement to play Home Games at the Arena Facility and the City shall not be required to pay the Management Fee due under this Agreement.

16. REPRESENTATIONS, WARRANTIES AND COVENANTS.

All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing. No action taken pursuant to or related to this Agreement shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement herein.

16.1 Arena Manager Representations and Warranties . The Arena Manager represents and warrants to the other Parties that, as of the Effective Date and the Closing Date:

16.1.1 Organization; Authorization. The Arena Manager is a limited liability company, duly organized and validly existing under the laws of the State of Delaware; the Arena Manager has all requisite power and authority to enter into and perform this Agreement; and the execution, delivery and consummation of this Agreement by the Arena Manager have been duly authorized.

16.1.2 No Violation. The execution, delivery and performance of this Agreement by the Arena Manager will not result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree or Applicable Law, to which the Arena Manager is a Party or by which the Arena Manager or its assets may be bound or affected. All consents and approvals of any Person (including members of the Arena Manager) required in connection with the Arena Manager's execution, delivery and performance of this Agreement have been obtained.

16.1.3 Litigation. Other than as disclosed by the Arena Manager to the other Parties, no suit is pending against the Arena Manager which could reasonably have a material adverse effect upon the Arena Manager's performance under this Agreement. There are no outstanding judgments, injunction or restraining orders against the Arena Manager which could reasonably have a material adverse effect upon the Arena Manager's performance under this Agreement.

16.1.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Arena Manager is a party or is otherwise subject.

16.1.5 No Violation of Laws. As of the Closing Date, the Arena Manager has received no notice asserting any noncompliance in any material respect by the Arena Manager with Applicable Law relating to the transactions contemplated hereby; and the Arena Manager is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

16.2 Team Owner Representations and Warranties. The Team Owner represents and warrants to the other Parties that, as of the Effective Date and the Closing Date:

16.2.1 Organization: Authorization. The Team Owner is a limited liability company, duly organized and validly existing under the laws of the State of Delaware, and is duly authorized to do business in Arizona; the Team Owner has all requisite power and authority to enter into and perform this Agreement; and the execution, delivery and consummation of this Agreement by the Team Owner have been duly authorized.

16.2.2 No Violation. The execution, delivery and performance of this Agreement by the Team Owner will not violate the NHL Constitution or Bylaws or any written rule, regulation or policy of the NHL, or result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree or Applicable Law, to which the Team Owner is a party or by which the Team Owner or its assets may be bound or affected. All consents and approvals of any Person (including members of the Team Owner) required in connection with the Team Owner's execution, delivery and performance of this Agreement have been obtained.

16.2.3 Litigation. Other than as disclosed by the Team Owner to the other Parties, no suit is pending against the Team Owner which could reasonably have a material adverse effect upon the Team Owner's performance under this Agreement. There are no outstanding judgments, injunctions or restraining orders against the Team Owner which could reasonably have a material adverse effect upon the Team Owner's performance under this Agreement.

16.2.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Team Owner is a party or is otherwise subject.

16.2.5 No Violation of Laws. As of the Closing Date, the Team Owner has received no notice asserting any noncompliance in any material respect by the Team Owner with Applicable Law relating to the transactions contemplated hereby; and the Team Owner is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

16.2.6 Team Ownership; NHL Good Standing. The Team Owner, has entered into the NHL Purchase Agreement presented concurrently with the closing of the NHL Purchase, shall be a

member in good standing of the NHL Purchase Agreement,, shall hold the Franchise and shall operate the Team.

16.3 City Representations and Warranties. The City represents and warrants to the other Parties that, as of the Effective Date:

16.3.1 Authority. The execution and delivery and performance of this Agreement by the City have been duly authorized by the Glendale City Council, and no additional or further procedural act by any other Governmental Authority is required to authorize such execution and delivery and performance; provided however that the performance of certain obligations under this Agreement shall remain subject to approvals required under Applicable Law (such as the approval of annual budgets by the Glendale City Council for amounts to be paid hereunder and the application of Article 9, Section 7 of the Arizona Constitution to any payments to be made by the City hereunder).

16.3.2 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the City is a party or is otherwise subject. Notwithstanding any provision of this agreement to the contrary, performance by the City is subject to Applicable Law, including the requirement of annual appropriation.

16.3.3 No Violation of Laws. (a) The execution, delivery and performance of this Agreement by the City will not violate the City Charter, the Glendale City Code or any other ordinance or resolution of the City; (b) As of the Closing Date, the City has not received any notice asserting any noncompliance in any material respect by the City with Applicable Law relating to the transactions contemplated hereby; although the City has disclosed to the other Parties, certain litigation and threatened litigation relating to the City's performance of a prior-approved agreement relating to management of the Arena Facility. The City is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority issued to the City or with respect to the Arena Facility which is in any respect material to the transactions contemplated hereby. Notwithstanding the foregoing provisions of 16.3.3 no Party makes any representation or warranty with respect to the compliance of this agreement with any public bidding or procurement provision; both Parties believing that the Agreement complies with all public bidding and procurement requirements and both Parties agreeing that they will jointly defend (through counsel of their own choosing, at their own expense) any challenge to this agreement based upon non-compliance with any public bidding or procurement requirement.

16.3.4 Litigation. Other than as disclosed by the City to the other Parties (and as noted in Section 16.3.3), no suit is pending against the City which could reasonably have a material adverse effect upon the City's performance under this Agreement. There are no outstanding judgments against the City that could reasonably have a material adverse effect upon the City's performance under this Agreement.

16.3.5 Condition of the Arena Facility.

(a) The City has not received notice from any governmental agency or official, whether federal, state or local, that the Arena Facility or any part thereof or any operations conducted thereon, is or may be in violation of any Applicable Law, including without limitation the Americans with Disabilities Act.

(b) The City has not received notice from any official or representative of the NHL that the Arena Facility or any part thereof fails to comply or may not comply with any NHL rule or regulation.

(c) To the City's Knowledge, there is no item of maintenance, repair, or replacement which is or may be required to rectify any non-compliance of the Arena Facility with Applicable Law, including without limitation the Americans with Disabilities Act, or the NHL rules and regulations.

(d) To the City's Knowledge, there are no material defects associated with the condition of the Arena Facility that would materially adversely affect with Arena Manager's intended use thereof.

(e) To the City's Knowledge, no Hazardous Materials have been used, generated, manufactured, stored or disposed of in, on, or under the Arena in violation of Applicable Law, and there are on the Closing Date no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders relating to the use, generation, manufacture, storage or disposal of Hazardous Materials in or on the Arena.

(f) There are no actions, suits, proceedings or investigations pending against the City by any person or entity, including, without limitation, any owner or occupant of property located adjacent to the Arena Facility, with respect to or in any manner affecting ownership or operation of all or any portion of the Arena Facility or any Arena Parking Area.

(g) There are no tenancies or other rights of parties in possession affecting all or any portion of the Arena Facility other than the Permitted Exceptions.

(h) The City is not a party to any concession agreement, service or maintenance contract, or other contract with respect to or affecting the Arena Facility or any Arena Parking Area which will not be terminated prior to the Closing Date.

16.3.6 City's Real Property. The City owns in fee the Arena Facility, and is the owner in fee or the owner of an enforceable leasehold interest in Arena Parking Areas, and has the authority to demise and let to Arena Manager a leasehold interest or subleasehold interest, as applicable, in the Arena Facility and Arena Parking Areas. No consent of any Third Party is required in order for the City to demise and let such leasehold and subleasehold interests, or any required consent has been obtained or will be obtained prior to Closing.

16.4 Team Owner Covenant. The Team Owner covenants with the other Parties that the Team Owner shall maintain the Franchise and Team in good standing with the NHL at all times during the Term.

16.5 City Covenants. The City covenants with the other Parties as follows:

16.5.1 Third Party Warranties. City shall assign to or enforce for the benefit of the City and Arena Manager any construction warranties for the Arena and any manufacturer's warranties for any Arena Facilities which remain in effect on the Closing Date.

16.5.2 Arena Facility Records. City shall make available to Arena Manager throughout the Term during business hours, for inspection and copying, at City's office address or some other

location mutually convenient to the Parties, reasonably requested books, records, and other information relating to the use, ownership or operation of the Arena Facility reasonably within the City's possession or control.

16.6 Other Covenants of the Parties. The Parties covenant and agree as follows:

16.6.1 Notice of Matters. If any of the Parties acquires knowledge of any matter that may constitute a breach of any of its representations, warranties or covenants set forth herein which arises after the Closing Date, it shall promptly give notice of the same to the other Parties.

16.6.2 Compliance With Laws. During the Term, each of the Parties shall, in connection with this Agreement and its respective use of, and the exercise of its respective rights with respect to, the Arena Facility, comply with all Applicable Law.

16.6.3 Defense of Agreement. The Parties will jointly defend the validity and enforceability of this Agreement in the event of any notice, proceeding or litigation challenging its validity or enforceability that names any Party as a party or which challenges the authority of any Party to enter into or perform any of its obligations in this Agreement, with each Party to bear the costs of its own selected attorneys; and each of the Parties will cooperate with the City in connection with any other action by a Third Party in which the City is a party and in which the benefits of this Agreement to the City are challenged.

16.6.4 Consultation with NHL. The NHL currently operates the Team and manages the Arena Facility. Both the Arena Manager and Team Owner warrant and represent that they have had adequate opportunity to confer with the NHL regarding all aspects of the Team and Arena that such Parties deemed, in their sole judgment, to be germane to the decision to enter into this Agreement and the Related Agreements.

17. DUE DILIGENCE; CONDITIONS TO CLOSING.

17.1 Due Diligence.

17.1.1 Due Diligence Review. The Arena Manager and Team Owner shall have until the Closing (the **"Due Diligence Review Period"**) to conclude its due diligence review (the **"Arena Manager Due Diligence Review"**) of all aspects of the Team and the Arena, including without limitation all financial, legal, regulatory, business and operational matters, and to obtain any third party consents required under leases, service or maintenance contracts and agreements or other agreements of the NHL and its Affiliates affecting the Team and the Arena (the **"Key Contracts"**). During the Due Diligence Review Period, the City shall reasonably cooperate with such due diligence as reasonably requested by the Arena Manager, including, but not limited to, permitting the Arena Manager and its agents reasonable access to materially relevant information reasonably requested by the Arena Manager. The Arena Manager shall have the right, in its sole discretion, to terminate this Agreement and the Non-Relocation Agreement by written notice to the City at any time on or before the end of the Due Diligence Review Period if it is not satisfied with the results of its Due Diligence Review, if it is unable to obtain, on reasonable terms, any third party consents required under any Key Contracts, or for any other reason or no reason (a **"Due Diligence Termination Notice"**). Delivery by the Arena Manager of a Due Diligence Termination Notice under this Section 17.1.1 shall terminate all obligations of the Parties under this Agreement and the Non-Relocation Agreement; provided, however, that in no event shall any payment obligation of City hereunder arise or accrue prior to Closing and in no event shall Arena Manager or Team Owner have any interest the Arena or rights under this Agreement prior to Closing. In the event

that the Arena Manager does not provide such Due Diligence Termination Notice by or before the end of the Due Diligence Review Period, the Arena Manager shall be deemed to have waived all rights of termination set forth in this Section 17.1.1 and the Arena Manager shall thereafter have no right to terminate this Agreement or the Non-Relocation Agreement based on the Arena Manager Due Diligence Review; provided however that such waiver of these termination rights shall be without prejudice to the Arena Manager's other termination rights provided for in this Agreement.

17.2 Conditions to Closing. The Closing and Closing Date shall occur upon the satisfaction or waiver of the following conditions to the obligations of the Parties, but in no event later than August 5, 2013 and failure to Close by the date shall render this Agreement and the City's approval hereof null and void and of no further force or effect.:

17.2.1 Conditions to the Obligations of the Arena Manager. The Arena Manager's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of Arena Manager or the waiver thereof by Arena Manager, which waiver shall be binding upon Arena Manager only to the extent made in writing and dated as of the Closing Date:

(a) The City shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by the City to the Arena Manager hereunder shall be true and correct in all material respects as of the Closing Date, except that litigation, notices or other proceedings may have been initiated, in which case the City shall promptly provide the other Parties with notice of such matters.

(c) No condition shall have changed or event shall have occurred which can reasonably be expected to have a Material Adverse Effect on the Arena or the operating, maintenance or other expenses or obligations relating to the operation of the Arena. **"Material Adverse Effect"** means an event, change or occurrence that individually, or together with any other event, change or occurrence, has a material adverse impact on the financial position, business or results of operations of such business; provided, however, that the term "Material Adverse Effect" shall not include (i) changes in the overall industry or markets in which the business operates, (ii) changes in GAAP; (iii) actions or omissions of such business taken with the prior written consent of the other Party to this Agreement, (iv) any change relating to the economy or securities markets in general, or (v) any change, effect, event, occurrence, state of facts or development resulting from any action required to be taken or performed by the Parties to this Agreement after execution of this Agreement.

(d) Arena Manager and Team Owner shall have (a) entered into the NHL Purchase Agreement on terms acceptable to them in their sole discretion for the acquisition of the Team and the Franchise and the assumption of such related agreements as shall be acceptable to them in their sole discretion, and (b) shall have secured financing on terms acceptable to them in their sole discretion sufficient to consummate the transactions set forth under the NHL Purchase Agreement, this Agreement, to pay all related expenses, and to operate the Arena and the Team post-Closing (collectively, the **"NHL Purchase and Financing Condition"**).

(e) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived and

the NHL Purchase Agreement shall have closed, resulting in transfer by the NHL of the rights to the Team and Franchise to Team Owner.

(f) The Related Agreements shall have been executed and delivered by the City and the Team Owner subject only to the terms of such agreements and to the Closing of this Agreement.

(g) The City's ordinance and/or resolution approving this Agreement shall have become operative pursuant to Arizona law; provided, however, that the commencement of litigation, referendum, or any similar proceeding shall not extend the Closing Date set forth in Section 17.2 of this agreement, unless the City, through action of the City Council, agrees in writing to such extension.

17.2.2 Conditions to the Obligations of the Team Owner. The Team Owner's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of Team Owner or the waiver thereof by Team Owner, which waiver shall be binding upon Team Owner only to the extent made in writing and dated as of the Closing Date:

(a) The City shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by the City to the Team Owner hereunder shall be true and correct in all material respects as of the Closing Date, except that litigation, notices or other proceedings may have been initiated, in which case the City shall promptly provide the other Parties with notice of such matters.

(c) No condition shall have changed or event shall have occurred which can reasonably be expected to have a Material Adverse Effect on the Arena or the operating, maintenance or other expenses or obligations relating to the operation of the Arena. **"Material Adverse Effect"** means an event, change or occurrence that individually, or together with any other event, change or occurrence, has a material adverse impact on the financial position, business or results of operations of such business; provided, however, that the term "Material Adverse Effect" shall not include (i) changes in the overall industry or markets in which the business operates, (ii) changes in GAAP; (iii) actions or omissions of such business taken with the prior written consent of the other Party to this Agreement, (iv) any change relating to the economy or securities markets in general, or (v) any change, effect, event, occurrence, state of facts or development resulting from any action required to be taken or performed by the Parties to this Agreement after execution of this Agreement.

(d) The NHL Purchase and Financing Condition.

(e) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(f) The Related Agreements shall have been executed and delivered by the City and the Arena Manager, subject only to the terms of such agreements and to the Closing of this Agreement.

(g) The City's ordinance and/or resolution approving this Agreement shall have become operative pursuant to Arizona law; provided, however, that the commencement of litigation, referendum, or any similar proceeding shall not extend the Closing Date set forth in Section 17.2 of this agreement, unless the City, through action of the City Council, agrees in writing to such extension.

17.2.3 Conditions to the Obligations of the City. The City's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of the City or the waiver thereof by the City, which waiver shall be binding upon the City only to the extent made in writing and dated as of the Closing Date:

(a) The Arena Manager and the Team Owner shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by Arena Manager and the Team Owner to the City hereunder shall be true and correct in all material respects as of the Closing Date.

(c) The NHL Purchase and Financing Condition.

(d) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(e) The Related Agreements shall have been executed and delivered by the Arena Manager and the Team Owner.

(f) The Closing Date shall have occurred on or before August 5, 2013 (the **"Outside Closing Date"**), unless extended by the City in its sole discretion.

(g) To the satisfaction of the City, all conditions to Closing have been satisfied or waived, and all required consents or approvals have been received or waived.

(h) The City's ordinance and/or resolution approving this Agreement shall have become operative pursuant to Arizona law; provided, however, that the commencement of litigation, referendum, or any similar proceeding shall not extend the Closing Date set forth in Section 17.2 of this agreement, unless the City, through action of the City Council, agrees in writing to such extension.

18. CHALLENGE(S).

18.1 The Parties shall, in good faith contest any challenge to the validity, authorization, and enforceability of this Agreement (each, a **"Challenge"**).

18.2 Each Party shall bear the costs and expenses of contesting the Challenge on its own behalf that are incurred by that Party using counsel of its own selection.

18.3 Each of the Parties shall take all actions and institute or defend such proceedings necessary or appropriate to remedy any alleged invalidity of, lack or defect in authorization of, or

illegality of, or to cure any other defect of, this Agreement which has been asserted or threatened in any Challenge, provided that no Party shall be obligated to forego, defer, or accept the forfeiture of any substantial economic benefit or legal right that is a part of the bargained-for consideration for the transactions contemplated by this Agreement. The Parties shall jointly defend any Challenge utilizing counsel of their own choosing, at each Party's own expense. Arena Manager and Team Owner shall assist, at the expense of each such party, and the defense of any Challenge that is instituted against the City alone, or against the City and one or more other Parties. The Arena Manager and the Team Owner shall seek to intervene in any court proceeding involving a Challenge.

18.4 Each of the Parties shall promptly give notice to the other Parties of any Challenge of which the Party giving notice acquires knowledge.

18.5 The provisions of this Section 18 are subject to, and do not limit, the obligations of the Parties stated elsewhere in this Agreement, including Section 16.6.3 of this Agreement.

19. REMEDIES.

19.1 Team Owner Remedies.

19.1.1 For City Default. Following a City Default, the Team Owner shall have the right to seek direct, actual compensatory damages, but not indirect, consequential, punitive or multiple damages (which are in any event prohibited against the City under Arizona law), arising out of such City Default.

(a) In furtherance, and not in limitation, of the foregoing, the Team Owner shall have the right to (i) seek an award or order requiring specific performance by the City of the City's obligations under this Agreement and (ii) solely with respect to a "City Default" which occurs under subclause (a) of the definition thereof in this Agreement, terminate this Agreement, upon 60 days' written notice to the City during which time the City shall have the right to cure the alleged City Default. All efforts to cure a City Default will be confirmed in writing and submitted to the Team Owner by the City.

(b) The Team Owner hereby waives, with respect to any City Default, any claim or right to indirect, consequential, or multiple damages or punitive damages (which may not be awarded in any event) and acknowledges that the other Parties are relying upon such waiver in entering into this Agreement. Team Owner acknowledges that its sole and exclusive remedies are to seek specific performance and/or to seek recovery only of direct, actual, compensatory, damages arising from a City Default.

19.1.2 For Arena Manager Default. Following an Arena Manager default, the Team Owner shall have the right to seek direct, actual compensatory, indirect or consequential, but shall not have the ability to recover multiple or punitive damages, arising out of such Arena Manager Default.

(a) In furtherance, and not in limitation, of the foregoing, the Team Owner shall have the right to seek an award or order requiring specific performance by the Arena Manager of the Arena Manager's obligations under this Agreement.

(b) The Team Owner hereby waives, with respect to any Arena Manager Default, any right to terminate this Agreement (or any other agreement among the Parties) or the

rights of the Arena Manager under this Agreement (or under any other agreement among the Parties), and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Team Owner further acknowledges that the Team Owner may seek damages from the Arena Manager only from the Arena Manager's own funds and shall not have any right to recover damages from the Arena Manager from the City or out of Arena Accounts, barring fraud or other improper conduct with regard to any of those other Accounts.

(d) The Team Owner hereby waives, with respect to any Arena Manager Default, any claim or right to multiple or punitive damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

19.2 Arena Manager Remedies.

19.2.1 For Team Owner Default. Following a Team Owner Default, the Arena Manager shall have the right to seek compensatory damages, but not punitive or multiple damages arising out of such a Team Owner Default.

(a) In furtherance, and not in limitation, of the foregoing, the Arena Manager shall have the right to seek an award or order requiring specific performance by the Team Owner of the Team Owner's obligations under this Agreement.

(b) The Arena Manager hereby waives, with respect to any Team Owner Default, any right to terminate this Agreement (or any other agreement among the Parties) or the rights of the Team Owner under this Agreement (or under any other agreement among the Parties), and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Arena Manager hereby waives, with respect to any Team Owner Default, any claim or right to multiple or punitive damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

19.2.2 For City Default. Following a City Default, the Arena Manager shall have the right to seek direct, actual compensatory damages, but not indirect, consequential, punitive or multiple damages (which are in any event prohibited against the City under Arizona law), arising out of such City Default.

(a) In furtherance, and not in limitation, of the foregoing, the Arena Manager shall have the right to (i) seek an award or order requiring specific performance by the City of the City's obligations under this Agreement and (ii) solely with respect to a "City Default" which occurs under subclause (a) of the definition thereof in this Agreement, terminate this Agreement, upon 60 days' written notice to the City during which time the City shall have the right to cure the alleged City Default. All efforts to cure a City Default must be confirmed in writing and submitted to the Arena Manager by the City.

(b) The Arena Manager hereby waives, with respect to any City Default, any claim or right to indirect or consequential damages or multiple or punitive damages (which may not be awarded in any event) and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

19.3 City Remedies.

19.3.1 For Team Owner Default. Following a Team Owner Default, the City shall, in addition to all other remedies available at law, in equity or under this Agreement, have the right to seek compensatory damages, but not punitive or multiple damages arising out of such Team Owner Default.

(a) In furtherance, and not in limitation, of the foregoing, the City shall have the right to seek an award or order requiring specific performance by the Team Owner of the Team Owner's obligations under this Agreement.

(b) The City hereby waives, with respect to any Team Owner Default, any claim or right to punitive or multiple damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Parties acknowledge that in the Event of a Team Owner Default, the City's actual damages may include, but not be limited to, revenues anticipated by the City from Arena Use.

19.3.2 For Arena Manager Default. Following an Arena Manager Default, the City shall, in addition to all other remedies available at law, in equity, or under this Agreement, have the right to seek compensatory damages, but not punitive or multiple damages, arising out of such Arena Manager Default.

(a) In furtherance, and not in limitation, of the foregoing, the City shall have the right to seek an award or order requiring specific performance by the Arena Manager of the Arena Manager's obligations under this Agreement.

(b) The City hereby waives, with respect to any Arena Manager Default, any claim or right to indirect damages or punitive damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Parties acknowledge that in the Event of an Arena Manager Default, the City's actual damages may include, but not be limited to, revenues anticipated by the City from Arena Use.

19.3.3 Replacement Arena Manager.

(a) In the event of an Arena Manager Withdrawal, the City may elect to secure a Replacement Arena Manager and with respect to the Arena Manager's obligation to the Team Owner, provided the Team Owner has not breached its obligations under the Non-Relocation Agreement, this Agreement shall remain in effect in accordance with its terms and subject to Applicable Law, and the Replacement Arena Manager will assume the obligations to the Team Owner of the Arena Manager under this Agreement.

(b) If the City elects to secure a Replacement Arena Manager, the City shall so notify the Team Owner in writing and, if but only if permitted by Applicable Law, grant the Team Owner a first option to secure a Replacement Arena Manager (which may be the Team Owner, an Affiliate of the Team Owner, or a Third Party) within 60 days following such notice; provided however that the City shall not be required to grant a first option to the Team Owner more than three times during the Term. To the extent the Team Owner has waived its first option hereunder, the applicable sixty-day period expires without the securing by the Team Owner of a Replacement Arena Manager or the Team Owner otherwise no longer has a first right under this Section 19.3.3(b), the City shall be entitled to

secure a Replacement Arena Manager. Notwithstanding any other provision of this Section 19.3, any Replacement Arena Manager shall be subject to the reasonable approval of the City; shall assume all obligations of Arena Manager under this Agreement and all Related Agreements, without novation; and shall be experienced in the provision of professional arena management services.

(c) Upon designation of a Replacement Arena Manager pursuant to this Agreement, the Arena Manager shall:

(i) Deliver to the City, the Team Owner and the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of the designation of the Replacement Arena Manager (or such termination), a final accounting reflecting the balance of income and expenses as of the effective date of such designation (or such termination);

(ii) Deliver to the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of such designation (or such termination), all monies in Arena Accounts or otherwise held by the Arena Manager on behalf of the Team Owner or the City, together with an accounting therefor which shall also be delivered to the City;

(iii) Deliver to the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of such designation (or such termination), all keys, security codes, books and records of account, agreements and contracts, Licenses, receipts for deposits, unpaid bills and other papers or documents relating to the Arena Facility and this Agreement; and

(iv) For a reasonable period of time after the effective date of such designation (or such termination), make itself available to consult with and advise the City, the Team Owner, and the Replacement Arena Manager regarding the operation, management and maintenance of the Arena Facility and all transition-related issues, questions and concerns.

(d) The City, the Replacement Arena Manager, and the Team Owner shall thereafter be bound by the terms, conditions and agreements set forth herein, with the same force and effect as if the Replacement Arena Manager were the original Arena Manager hereunder, including the need for any subsequent Replacement Arena Manager as a result of an Arena Manager Withdrawal.

(e) The City, the Arena Manager and the Team Owner shall take such actions, without novation of the Arena Manager, as are required to cause the Replacement Arena Manager to succeed to all rights, and assume all existing contracts of the current Arena Manager under this Agreement all Licenses and all other contracts or agreements entered into by the Arena Manager pursuant to this Agreement.

19.4 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, including the waivers of indirect, consequential, punitive and multiple damages and the waivers of termination rights set forth therein, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies under Applicable Law for the same Event of Default or any other Event of Default.

19.5 Costs, Expenses and Fees. In the event of any litigation, mediation, arbitration or other dispute resolution proceeding (including Mediation proceedings discussed in this Agreement) in connection with this Agreement, involving a claim by any Party to this Agreement against any other Party

to this Agreement (a **"Proceeding"**), (i) no Party shall be entitled to advances from or to be reimbursed from Operating Revenues for any costs or expenses incurred by it in such Proceeding, including reasonable attorneys' fees or costs; (ii) no such costs and expenses shall be treated as Operating Expenses; (iii) the prevailing Party in arbitration or litigation proceeding shall be entitled to recovery from the non-revealing Party or Parties (but not from Operating Revenues) for all costs and expenses incurred in such Proceeding, including reasonable attorneys' fees and costs as may be fixed by the court or the Arbitrator, in such manner and from such Parties as may be directed by such court or Arbitrator; and (iv) any award granted to a Party in such Proceeding shall be treated as the sole property of such Party.

19.6 Acceptance of Legal Process.

19.6.1 Service on the Arena Manager. In the event any legal or equitable action is commenced against the Arena Manager by any other Party to this Agreement, service of process on the Arena Manager may be made by personal service upon the President of the Arena Manager or in such other manner as may be authorized by law.

19.6.2 Service on the Team Owner. In the event any legal or equitable action is commenced against the Team Owner by any other Party to this Agreement, service of process on the Team Owner may be made by personal service upon the Chairman or Chief Executive Officer of the Team Owner or in such other manner as may be authorized by law.

19.6.3 Service on City. In the event that any legal or equitable action is commenced against the City by any other Party to this Agreement, service of process on the City shall be as then required by law.

20. INDEMNIFICATION.

20.1 Arena Manager Indemnification of City. Except to the extent attributable to the negligence or willful misconduct of the City, its officials, representatives, employees, agents or contractors, the Arena Manager shall pay, defend, indemnify and hold the City and its City Council members, elected officials, agents, employees, other officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the Arena Manager's management, operation, use or occupancy of the Arena or any portion thereof or the performance (or failure to perform) and of Arena Manager's responsibilities under this Agreement. No costs and expenses incurred by the Arena Manager to discharge its obligations under this Section shall be included as Operating Expenses.

20.2 Team Owner Indemnification of City. Except to the extent attributable to the negligence or willful misconduct of the City, its officials, representatives, employees, agents or contractors, the Team Owner shall pay, defend, indemnify and hold the City and its City Council members, elected officials, agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the Team Owner's use or occupancy of the Arena or any portion thereof or its ownership or management of the Team or its affiliates.

20.3 City Indemnifications.

20.3.1 Arena Manager. Except to the extent attributable to the negligence or willful misconduct of the Arena Manager or any of its agents, employees, officials, contractors or other representatives, the City shall pay, defend, indemnify and hold the Arena Manager and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that

arises from the City's use or occupancy of the Arena or any part thereof pursuant to the terms of this Agreement.

20.3.2 Team Owner. Except to the extent attributable to the negligence or willful misconduct of the Team Owner or any of its agents, employees, officials, contractors or other representatives, the City shall pay, defend, indemnify and hold the Team Owner and its agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from the City's use or occupancy of the Arena or any portion thereof pursuant to the terms of this Agreement.

21. DISPUTE RESOLUTION.

21.1 Alternative Dispute Resolution—Mediation. Any dispute, including any dispute as to whether a proposed Capital Improvement is necessary to ensure the economic competitiveness of the Arena Facility pursuant to Section 11.9.2, and any dispute related to a challenge of any claim or default or breach of this Agreement, shall be submitted to Mediation in accordance with this Section. If a dispute is not resolved by Mediation, the Parties may, but are not required to, agree that the dispute be submitted to arbitration upon terms to be agreed upon by the Parties.

21.2 Mediation Procedure.

21.2.1 Mediation on Expedited Basis. It is agreed that if any Party to this Agreement determines that there is a dispute that requires resolution under the terms of the Agreement, that they will notify the other relevant Parties of their demand for mediation in writing. The Parties shall, within 10 days of notice of a demand for mediation, exchange a list of at least three mediators who would be acceptable for mediation. The Parties shall then act in good faith to determine a mutually agreeable mediator within five (5) days.

(a) If the Parties are unable to agree on a mediator within five (5) days, than each Party to the dispute will select one name from each of the other Parties' lists and those names will be placed into a blind drawing by an independent party, and the person whose name is drawn shall be the Mediator.

(b) For purposes of this Section 21.2, the Arena Managers and the Team Owner shall be are deemed to be, and shall be treated as, one Party.

21.2.2 Location. The Mediation shall be conducted by the Mediator at a location in Maricopa County, Arizona mutually agreed to by the Parties or as selected by the Mediator.

21.2.3 Mediation Process. The Parties shall endeavor to work with the Mediator to schedule and conduct the Mediation on as expedited a basis as is reasonable under the circumstances. The Parties agree that any Mediation will be conducted in good faith and that each Party shall be represented in person at the Mediation by the highest level decision maker necessary to resolve the Dispute, to the extent practicable. The Mediation shall be conducted and concluded within 40 days of the initial demand for mediation.

21.3 Equitable Litigation. Notwithstanding any other provision of this Section to the contrary, any Party may engage an Equitable Litigation to seek interim equitable relief with respect to any issue that will be subject to Mediation under this Agreement.

21.3.1 Nothing herein shall be construed to suspend or terminate the obligation of any Party to this Agreement to promptly proceed with Mediation concerning the Dispute that is the subject of such Equitable Litigation while such Equitable Litigation (and any appeal therefrom) is pending.

21.3.2 Regardless of whether such interim relief is granted or denied, or whether such Equitable Litigation is pending or any appeal is taken from the grant or denial of such relief, the Parties shall at all times diligently proceed to complete the Mediation.

21.3.3 Subject to the provisions of Section 24.8 of this Agreement, the Parties agree that any Equitable Litigation shall be filed and maintained (without removal or transfer) exclusively in the state or federal courts in Maricopa County, Arizona. The Parties consent and agree to the exclusive jurisdiction and venue in of the courts located in Maricopa County, Arizona for any Equitable Litigation. No Party will argue or contend that it is not subject to the jurisdiction of the courts located in Maricopa County, Arizona or that venue in Maricopa County, Arizona is improper with respect to any Equitable Litigation.

21.3.4 For the purposes of this Section, **"Equitable Litigation"** means an action to secure a temporary restraining order, preliminary injunction or other interim equitable relief concerning a Dispute, including specific performance, provisional remedies, stay of proceedings in connection with special action relief or any similar relief of an interim nature.

22. ASSIGNMENT.

22.1 Arena Manager Assignment.

22.1.1 The Arena Manager may not assign, pledge, transfer, or otherwise attempt to transfer the Arena Manager's duties and obligations under this Agreement, in whole or in part, without the prior consent of each of the City and the Team Owner (which consent may be granted or withheld in each of the City's and Team Owner's sole discretion) and any such transfer or attempted transfer to which the City or the Team Owner does not consent pursuant to this Section is void and not voidable, and the purported assignee, pledgee, or transferee shall acquire no rights as a consequence of that purported transfer.

22.1.2 Nothing in this Section shall be construed or deemed to limit or restrict the rights of the Arena Manager to delegate all or a portion of the Arena Manager's duties hereunder in accordance with the terms of this Agreement.

22.1.3 The Arena Manager may not assign, transfer, convey or encumber all or any portion of the Arena Parking Area or the Arena Parking Rights without the prior written consent of the City, which may be granted or withheld in the City's sole discretion, and any such transfer or attempted transfer to which the City does not consent pursuant to this Section is void and not voidable, and the purported assignee, pledgee, or transferee shall acquire no rights in this Agreement.

22.1.4 No assignment or other permitted transfer by Arena Manager shall constitute a novation or discharge in any respect by obligation of the Arena Manager or Team Owner.

22.2 Team Owner Assignment.

22.2.1 Subject further to the terms and conditions of the Non-Relocation Agreement, the Team Owner shall have the right to assign, pledge and otherwise transfer the rights and obligations of the

Team Owner under this Agreement (in whole or in part), without the consent of the City, to any Person so long as (i) the Franchise is included in such assignment, pledge or transfer; (ii) such assignment, pledge or transfer is approved by the NHL or permitted by the Hockey Rules; and (iii) the assignee assumes all of the rights and obligations of Team Owner in and under this Agreement.

22.2.2 The Team Owner shall give the City and the Arena Manager notice of the submission of any request for the NHL's approval of any such assignment promptly after the Team Owner acquires knowledge of such submission, which notice shall include the name of the proposed transferee.

22.2.3 Immediately upon any such transfer becoming effective, the transferor and the transferee of the Team Owner's obligations under this Agreement shall execute an assignment and assumption agreement evidencing such transferee's assumption of such obligations in such form and content as is reasonably acceptable to the City and the Arena Manager.

22.2.4 Any other transfer of the rights and obligations of the Team Owner under this Agreement shall require the prior consent of the City (which consent may be granted or withheld in the City's sole and absolute discretion), and any such transfer or attempted transfer to which the City does not consent is void and not voidable, and the purported assignee shall acquire no rights in this Agreement.

22.2.5 No assignment or other permitted transfer by Team Owner shall constitute a novation or discharge in any respect by obligation of the Arena Manager or Team Owner.

23. INTENTIONALLY DELETED.

24. MISCELLANEOUS.

24.1 Amendment; Waiver.

24.1.1 No alteration, amendment or modification hereof shall be valid unless evidenced by a written instrument executed by the Parties with the same formality as this Agreement.

24.1.2 The failure of any Party to this Agreement to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect.

24.1.3 No waiver by any Party to this Agreement of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

24.2 Consents and Approvals. Unless otherwise specifically provided herein, no consent or approval by any Party permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the Party by or on whose behalf such consent or approval is given. Unless a higher standard is expressly provided for pursuant to any provision of this Agreement, any consent or approval required to be given or otherwise provided for in this Agreement shall not be unreasonably withheld, delayed or conditioned by the Party giving such consent or approval.

24.3 Additional Documents and Approval. Each of the Parties, whenever and as often as each shall be reasonably requested to do so by any other Party to this Agreement, shall execute or cause to be executed any additional documents, take any additional actions and grant any additional approvals consistent with the provisions of this Agreement as may be necessary or expedient to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

24.4 Limited Severability. Each of the Parties believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement provides essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed. Notwithstanding the foregoing, the obligations of the City to pay the Management Fee and the obligations of the Arena Manager and Team Owner to cause the Team to use the Arena Facility as its home for at least 41 games per season are so material that such obligations shall not be severable and this Agreement shall terminate if any portion or amount of the Management Fee shall be invalid (or avoided or recovered pursuant to A.R.S. § 44-1007) or if for any reason the Arena Manager and/or Team Owner cannot fulfill the obligations to utilize the Arena for the purposes provided herein.

24.5 Binding Effect. Except as may otherwise be provided herein to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the Parties, and their respective permitted successors and assigns.

24.6 Relationship of Parties. No partnership or joint venture is established between or among the Parties under this Agreement, or any other agreement referred to in this Agreement. Neither the Team Owner nor the Arena Manager, nor any of their respective Affiliates, employees, agents, contractors nor guests, shall be considered agents or employees of the City or to have been authorized to incur any expense on behalf of the City or to act for or to bind the City.

24.7 Notices.

24.7.1 All notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to be given under this Agreement shall be in writing, signed by the Party or officer, agent or attorney of the Party giving such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response, or invoice, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) as of the earlier of actual receipt or the second business day after mailing if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Arena Manager:	IceArizona Management Co. LLC c/o IceArizona Acquisition Co. LLC 5709 Cal Verde Street Suite 100 Houston, Texas 77057 Attn: Avik Dey

with copy to:	Snell & Wilmer L.L.P. One Arizona Center Phoenix, Arizona 85004-2202 Attn: Nicholas J. Wood Joyce Kline Wright
To the City:	City Manager City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301
with copy to:	City Attorney City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301
To the Team Owner:	IceArizona Hockey Co. LLC c/o IceArizona Acquisition Co. LLC 5709 Cal Verde Street Suite 100 Houston, Texas 77057 Attn: Avik Dey
with copy to:	Snell & Wilmer L.L.P. One Arizona Center Phoenix, Arizona 85004-2202 Attn: Nicholas J. Wood Joyce Kline Wright

24.7.2 Any Party to this Agreement may from time to time, by notice given to the other Parties pursuant to the terms of this Section 24.7, change the address to which notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to such Party are to be sent or designate one or more additional Persons to whom notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices are to be sent. A Party giving a notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice under this Agreement shall, contemporaneously with the giving of the same, give a copy of such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice to each Party to this Agreement that is not a named recipient thereof.

24.8 Applicable Law; Jurisdiction. This Agreement has been prepared in the State of Arizona and shall be governed in all respects by the laws of the State of Arizona, without regard to principles of conflicts of law. Any claim, action, suit or proceeding between or among the Parties that arises from or relates to this Agreement and that is not subject to an agreed-upon arbitration procedure shall be brought and conducted solely and exclusively in the Superior Court of the State of Arizona in and for the County of Maricopa; and the Parties expressly disclaim any right to bring any action in a Federal forum because of diversity jurisdiction or otherwise, unless required by Applicable Law (e.g., in the case of exclusive jurisdiction in the federal courts, in which case any action shall be filed and maintained in the United States District Court for the District of Arizona). In no event shall this Section 24.8 be construed

as a waiver by City of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. Each of Arena Manager and Team Owner, by its execution and delivery of this Agreement, (i) consents to exclusive, personal jurisdiction and venue in the Maricopa County Superior Court (unless otherwise precluded by Applicable Law) and covenants not to seek remand, transfer or change of venue based on diversity or any other theory, and (ii) acknowledges that the foregoing provisions regarding exclusivity of jurisdiction have been bargained for and constitute material and additional consideration to the City for the City's entering into this Agreement.

24.9 Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder. The Parties agree that a City Default for the failure pay any portion of the Management Fee would be a material breach of this Agreement, and that Arena Manager and Team Owner are expressly relying upon the timely payment of the Management Fee as a material inducement to enter into this Agreement, subject, however, to the Force Majeure (Section 24.17) and Notice and Cure (Section ___) provisions of this Agreement.

24.10 Antidiscrimination Clause. The Arena Manager and the Team Owner shall comply with all applicable state, local and federal laws, rules, regulations, executive orders and agreements pertaining to discrimination in employment and unlawful employment practices.

24.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24.12 Entire Agreement: Conflict. This Agreement and the Related Agreements supersede any prior understanding or written or oral agreements between the Parties respecting the within subject matter and contains the entire understanding among the Parties with respect to this Agreement. In the event of any conflict between any provision in the Recitals to this Agreement and any provision in the Agreement, the provision in the Agreement shall govern.

24.13 Conflicts of Interest.

24.13.1 Each Party, including direct (not remote) each member, official, representative and employee of the City shall, at all times while this Agreement is in effect, be bound by all Applicable Law pertaining to conflicts of interest, and, to the extent prohibited by such laws, no City representative shall have any direct (not remote) personal interest in this Agreement or participate in any decision relating to this Agreement that relates to his or her personal interest or the interest of any entity in which he or she is, directly or indirectly, interested.

24.13.2 A.R.S. § 38-511 provides political subdivisions of the State of Arizona, including the City, with the right to cancel contracts under certain circumstances.

24.13.3 The Parties acknowledge that the provisions of A.R.S. § 38-511, which are hereby incorporated in this Agreement by this reference, may create a situation in which the City might have a right to cancel this Agreement pursuant to A.R.S. §38-511.

24.14 Saturday, Sunday or Holiday. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

24.15 Confidentiality of Proprietary Information.

24.15.1 The Parties acknowledge that certain records and information of or in possession of the Arena Manager and the Team Owner relating to the use, management, and operation of the Arena Facility (including the terms and conditions of Licenses and Concessions Agreements, and any Arena Manager Affiliate Contracts inspected pursuant to Section 8.11.4(a)) and budgets, financial results of operations, and financial projections that are delivered to, audited, examined or inspected by the City pursuant to this Agreement, may be proprietary and may place the Team Owner and the Arena Manager at a competitive disadvantage if disclosed to any third party, including competitors and potential users of the Arena.

24.15.2 The Parties shall, at all times during the Term and subject to Applicable Law, take all precautions reasonably necessary to ensure that the proprietary information of any Party is not released or disclosed to Persons other than the Parties without the prior consent of the Party to which such information pertains.

24.15.3 Each of the Parties further agrees to notify the other Parties upon receipt of a request for disclosure of any such proprietary information so that each Party to this Agreement may take appropriate actions to protect such proprietary information.

24.15.4 In the event of any claim or litigation related to the City's efforts to protect from disclosure the private, propriety information of any other Party to this Agreement, the Party desiring the information be protected will accept the tender of the defense of this claim, defend the City against the claim, and fully indemnify and hold the City and each of its officials harmless from all costs, fees, penalties that may be assessed.

24.16 Attorneys' Fees.

24.16.1 Each Party shall bear its own costs and expenses (including attorneys' fees and costs) incurred with respect to the negotiation, execution, delivery and this Agreement, the Related Agreements and the consummation of the transactions at Closing contemplated hereby and thereby (**"Transaction Costs"**).

24.16.2 In the event of any controversy, claim or dispute between or among the Parties arising from or relating to this Agreement, the prevailing Party or Parties shall be entitled to recover reasonable costs, expenses, court costs, expert witness fees, litigation-related expenses and attorneys' fees.

24.16.3 For all purposes of this Agreement and any other documents relating to this Agreement, the terms "attorneys' fees" or "counsel fees" shall be deemed to include paralegals and legal assistants' fees, and wherever provision is made herein or therein for the payment of attorneys' or counsel fees or expenses, such provision shall include such fees and expenses (and any applicable sales taxes thereon) incurred in any and all Mediations, arbitrations, judicial, bankruptcy, reorganization, administrative or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

24.17 Force Majeure. Failure in performance by any Party hereunder shall not be deemed an Event of Default, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to Force Majeure. To the extent a Party believes any failure or non-occurrence is due to Force Majeure, such Party shall promptly notify the other Parties accordingly. An extension of time for the performance by any Party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be

deemed to commence from the time of the commencement of the Force Majeure. Notwithstanding the foregoing, however, no Force Majeure shall discharge the Arena Manager's obligation to pay the rent at the time required by this Agreement.

24.18 Agreed Extensions. Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the Parties. However, any failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

24.19 Survival. All duties and obligations of each Party that by their terms are to be performed after the Termination Date or which set forth rights or obligations that are effective after the Termination Date shall survive the expiration or other termination of this Agreement.

24.20 Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties express named in this Agreement and not for the benefit of any third person, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any third Person.

24.21 Recordation. The Parties acknowledge that this Agreement is a public record of the City and shall be recorded in the Official Records of Maricopa County, Arizona.

24.22 Provisions That Are Subject to Other Agreements. Various provisions in this Agreement indicate are subject to the provisions of any one or more of the following agreements: Licenses, Concessions Agreements, Suite License Agreements, Premium Seat Agreements, Advertising Agreements, Naming Rights Agreements and Non-Relocation Agreement, the Parties agree not to enter into or extend agreement that inconsistent with any provision of this Agreement or unreasonably interferes with the Arena Manager's performance of its obligations under this Agreement or with the City's rights under this Agreement.

24.23 Immigration Law Compliance.

24.23.1 The Arena Manager and the Team Owner, on behalf of themselves and any subcontractor, warrant, to the extent applicable under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

24.23.2 Any breach of warranty under this Section shall be considered a material breach of this Agreement and will be subject to penalties up to and including termination of this Agreement.

24.23.3 To the extent permitted by Applicable Law, the City retains the legal right to inspect the papers of the Arena Manager and the Team Owner or any employee subcontractor employee who performs work under this Agreement to ensure that the Arena Manager and the Team Owner or any subcontractor is compliant with the warranty under this Section.

(a) The City may conduct random inspections, and upon the request of the City, the Arena Manager and the Team Owner will provide copies of papers and records of the Arena Manager and the Team Owner demonstrating continued compliance with the warranty under this Section.

(b) The Arena Manager and the Team Owner agree to keep papers and records available for inspection by the City during normal business hours and will cooperate with the

City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

24.23.4 The Arena Manager and the Team Owner agree to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Arena Manager and the Team Owner and expressly accrue those obligations directly to the benefit of the City. The Arena Manager and the Team Owner also agree to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations imposed in this Section 24 and expressly accrue those obligations to the benefit of the City.

(a) The Arena Manager and the Team Owner's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

(b) The "E-Verify Program" as used in this Section 24 means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

24.24 Iran and Sudan Prohibitions. The Arena Manager and the Team Owner certify under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, (the **"Act"**) that neither have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined By the Act, in the countries of Sudan or Iran.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the Parties have hereunto set their hands to be effective as of the Effective Date.

ARENA MANAGER:

ICEARIZONA MANAGER CO. LLC, a Delaware limited liability company

By: _____, a
_____

Its: _____

By: _____
Name: _____
Its: _____

TEAM OWNER:

ICEARIZONA HOCKEY CO. LLC, a Delaware limited liability company

By: _____, a
_____

Its: _____

By: _____
Name: _____
Its: _____

CITY:

CITY OF GLENDALE, an Arizona municipal corporation

By: _____
Name: _____
Its: _____

ATTEST:

_____
Pam Hanna, City Clerk

APPROVED AS TO FORM:

_____
Nicholas C. DiPiazza, Acting City Attorney

PROPOSED

EXHIBIT "A"

Arena Facility Description

(See Section 1.1)

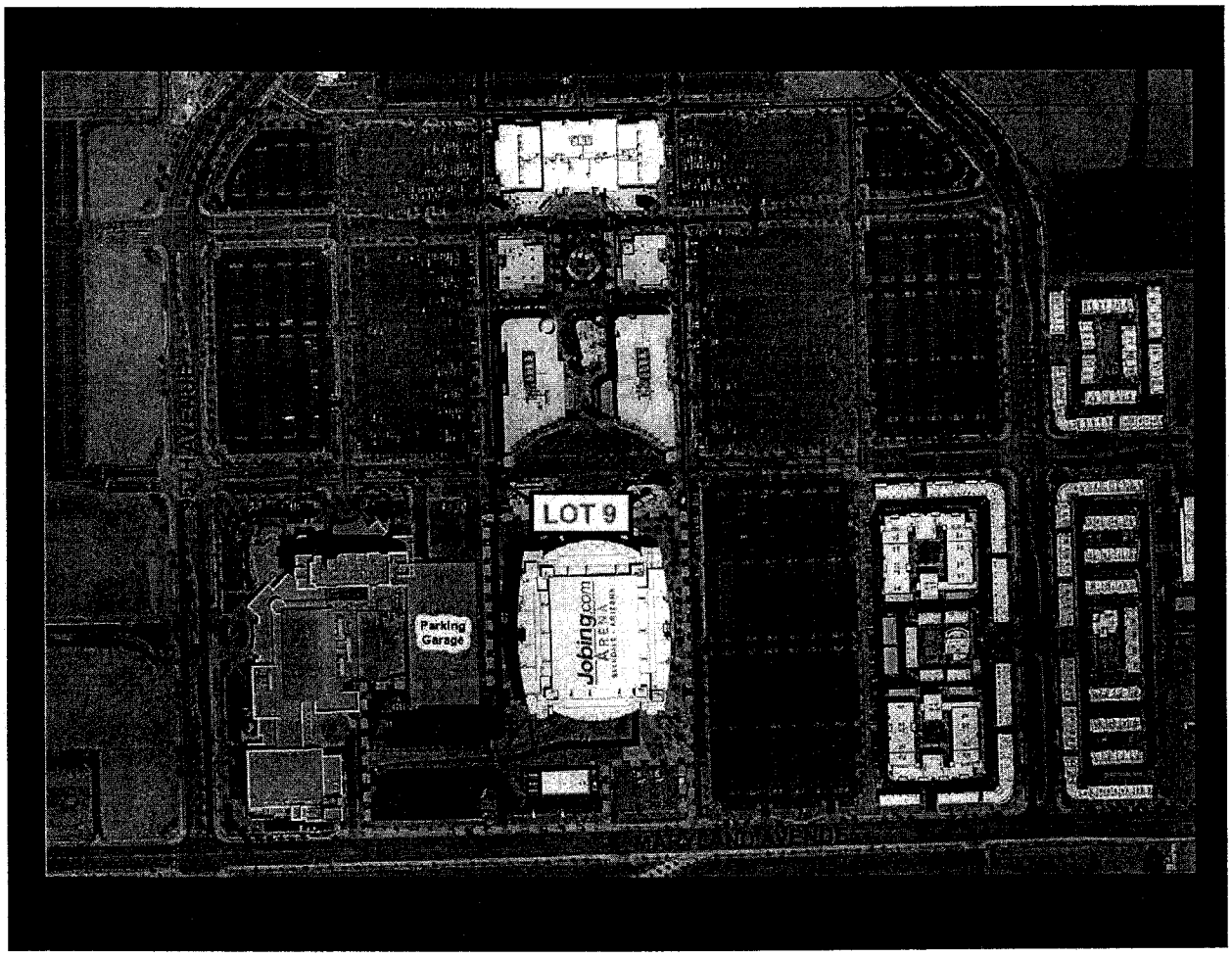

EXHIBIT "B"

Arena Land

(See Section 1.1)

Lot 9, of the Final Plat of Westgate recorded on May 2, 2005 in Book 745, Map 14 of the Official Records of the Office of the Maricopa County Recorder's Office.

EXHIBIT "C"

Management Performance Standards

(See Section __)

The Arena Manager will manage, operate, utilize and maintain the Arena Facility to a standard of quality or performance and practices that is consistent with the performance and practices following arenas considered collectively (collectively, the **"Comparable Facilities"**):

(i) US Airways Center located in Phoenix, AZ;

(ii) Nationwide Arena located in Columbus, OH; and

(iii) Xcel Energy Center located in St. Paul, MN.

In the event that any of the Comparable Facilities:

(a) is closed and not regularly used with a 90 period for events,

(b) permanently ceases to host a national professional sports franchise as a primary tenant or,

(c) ceases to be maintained and operated in accordance with the standards of service and quality generally accepted within the arena/events center industry for first class arenas and events centers, provide the City and Arena Manager agree the condition in (c) exists or, if the City and Arena Manager are unable to agree, the condition in (c) is determined to exist by an Arbitrator (in accordance with the Arena Lease and Management Agreement)

in which case the specific Comparable Facility shall be deleted from the list of Comparable Facilities and the City, the Arena Manager and the Team will agree upon substitute Comparable Facility with appropriate adjustments to reflect newer buildings and technology than that possessed by the Arena Facility. Until such substitution is made, the Comparable facilities not deleted shall constitute the Management Performance Standards.

If the City or the Arena Manager cannot agree on a substitute Comparative Facility, either party to this Arena Lease and Management Agreement may seek arbitration to select the substitute Comparable Facility most consistent with the standard of quality established under this Agreement.

In applying the Management Performance Standards to operation, management and customer service issues, due consideration shall be given to Glendale's unique competitive market conditions, climate, topography and the age of the Arena Facility.

DRAFT

EXHIBIT "E"

Safety and Security Agreement
(See Section 1.1)

SAFETY AND SECURITY AGREEMENT

This Safety and Security Agreement (this **"Agreement"**) is dated as of _____, 2013 (the "**Effective Date**"), and is entered into by and among the City of Glendale, an Arizona municipal corporation (the "**City**"); and IceArizona Manager Co., LLC, a Delaware limited liability company (**"Arena Manager"**).

RECITALS

A. The City and the Arena Manager are parties to that certain Professional Management Services and Arena Lease dated _____, 2013 (the **"Arena Management Agreement"**), which provides for the management and use of the Arena.

B. The City and the Arena Manager desire to enter into this Agreement for the purposes of providing for the safety and security of visitors and patrons to the Arena and traffic control in and around the Arena during Events through the use of the services of police officers, off-duty civilian police assistants, paramedics and similar qualified personnel (each as hereinafter defined and, collectively, the **"Public Safety Personnel"**).

C. During Events, the City is willing to provide Public Safety Personnel on the terms and conditions set forth herein in order to assure public safety in and around the Arena and to respond to incidents requiring the response of Public Safety Personnel.

AGREEMENT

NOW THEREFORE, in consideration of the premises, covenants, agreements and obligations contained herein, the parties enter into this Agreement and agree as follows:

1. Definitions. All capitalized terms shall have the meaning assigned to them in the Arena Management Agreement unless a definition of that term is otherwise specified herein.

2. Term of Agreement. This Agreement shall commence on the Effective Date and shall continue through the term of the Arena Management Agreement.

3. Services.

3.1 Traffic Control.

a. The City, through its Police Department, shall assign an on-duty Sergeant to supervise and coordinate traffic control services by Public Safety Personnel for each Event.

b. The City, through its Police Department and Transportation Department, shall assign Public Safety Personnel to provide traffic control at Events and the police assistants working traffic control shall be under the direction of the police officers assigned to the Event.

(1) The number of police officers and police assistants assigned to an Event and the appropriate intersections will be determined by the City's Transportation Department's traffic and barricade plan for the Arena (the **"Traffic Control Plan"**); provided that Arena Management shall be consulted and advised on a regular basis as to the ongoing Traffic Control Plan.

(2) The police officers and police assistants working an Event shall be responsible for erecting barricades as designated on the Traffic Control Plan.

c. The Arena Manager, with input from the Team Owner for any Hockey Event, may request amendments or temporary modifications to the Traffic Control Plan by submitting a written proposal to the Glendale Police Chief and Transportation Department Director, who may approve or deny the proposal in their sole and reasonable discretion; provided however, the on-duty Sergeant assigned to traffic control under the Traffic Control Plan may make immediate changes in the Traffic Control Plan at the time of or during an Event if, in his or her discretion, traffic conditions or other tactical needs warrant such changes.

3.2 Security.

a. The number of police officers assigned to provide security, including but not limited to liquor control, within the Arena Facility, Arena Parking Area and areas immediately surrounding the Arena Facility and Arena Parking Area during Events will be jointly determined on an event-by-event basis by the Police Department and the Arena Manager; provided however, that the City shall have sole discretion in connection with issues that solely relate to public safety determinations.

b. Nothing herein shall preclude the Arena Manager from employing or engaging private, non-sworn personnel safety employees ("**Private Security Personnel**") at the Arena; provided however, the Private Security Personnel must work in cooperation with the Public Safety Personnel and respond to the responsible and reasonable requests of the Public Safety Personnel.

3.3 Medical Attention.

a. The City, through its Fire Department, will assign on-duty emergency medical services personnel (**"EMS Personnel"**) in order to assure that emergency medical are available to patrons and employees at the Arena Facility and Arena Parking Area during Events.

b. The number of EMS Personnel assigned will be jointly determined on an event-by-event basis by an authorized representative of the City's Fire Department and the Arena Manager; provided however, that the City shall have sole discretion in connection with issues that solely relate to public safety determinations.

4. Assignment of City Safety Personnel. The City shall select the Public Safety Personnel assigned to perform services for Events and assure the provision of appropriate equipment as necessary for their duties within the City's sole discretion.

5. Payment.

5.1 Annual Fee. In consideration for the services to be provided by the City under this Agreement, the Arena Manager will pay the City, on or before the first day of each Fiscal Year, an annual fee in the amount of $_____(the **"Annual Fee"**).

5.2 Hourly Fee. As additional consideration for such services, the Arena Manager will pay the City within 30 days of the receipt of an itemized invoice the base hourly rates (i.e., regular hourly rates, not overtime rates), plus the City's share of any employment, FICA, or similar taxes related thereto, (collectively, the **"Hourly Fee"**) of the Public Safety Personnel for work performed for Events. The City shall timely provide the Arena Manager current information on "regular hourly rates" of its Public Safety Personnel and any changes related thereto.

a. The Hourly Fee shall be a minimum of three hours for each such Public Safety Personnel working at each Event.

b. At the request of the Arena Manager, the City shall submit an invoice to the Arena Manager at the time of an Event when the Arena Manager requires such invoice to pass the cost of such services on to a third party.

5.3 The Annual Fee and the Hourly Fee shall be paid by the Arena Manager as an Operating Expense under the Arena Management Agreement.

6. Responsibilities of the Arena Manager.

6 .1 The Arena Manager will timely provide a schedule of Events to the City upon the preparation thereof and will timely notify the City in writing of any changes thereto.

6.2 The Arena Manager will provide a barricade truck and trailer and the barricades necessary to implement the Traffic Control Plan in the immediate vicinity of the Arena.

6.2 The Arena Manager will be solely responsible for obtaining any reimbursement from any third party any agreed-upon share of the Annual Fee and the Hourly Fee, and any such agreement shall in no way affect the obligations of the Arena Manager to pay these fees to the City pursuant to the terms and conditions of this Agreement.

7. Joint Venture Disclaimer.

7.1 This Agreement is not intended to and will not constitute, create, give rise to or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the parties hereto, and the rights and obligations of the parties hereto shall be only those expressly set forth in this Agreement.

7.2 No Public Safety Personnel shall be deemed an employee of the Arena Manager, and the Arena Manager shall have no obligations with respect to the City's merit system, employee benefits or compensation including retirement and insurance, or personnel rules applicable to Public Safety Personnel, which shall be solely and completely the City's responsibility.

7.3 The City shall have total responsibility for all salaries, wages, bonuses, retirement benefits, tax withholding, workers' compensation benefits, occupational disease compensation, unemployment compensation, other employee benefits and taxes and premiums appurtenant thereto with respect to the Public Safety Personnel, and the City shall save and hold the Arena

Manager harmless with respect thereto. The obligations of Arena Manager to pay the Hourly Fee to the City to reimburse the City for certain of its costs is a contractual arrangement between the City and Arena Manager and does not, and shall not be construed by the City to, create employee/employer obligations for Arena Manager.

7.4 No Private Security Personnel or other person employed or engaged by the Arena Manager shall be deemed an employee of the City. The City shall have no obligations with respect to the Arena Manager's personnel rules applicable to Private Security Personnel.

7.5 The Arena Manager shall have total responsibility for all salaries, wages, bonuses, retirement benefits, tax withholding, workers' compensation benefits, occupational disease compensation, unemployment compensation, other employee benefits, and taxes and premiums with respect to the Private Security Personnel, and the Arena Manager shall save and hold the City harmless with respect thereto.

8. Indemnification. Each party to this Agreement (**"Indemnitor"**) shall have and hold harmless each of the other parties to this Agreement (**"Indemnitee"**), and its city council members and elected officials (if applicable), officers, agents, servants, and employees, from any and all claims, demands, suits, actions, proceedings, losses, costs and damages of every kind, including, but not limited to attorneys' fees, which may be made or brought against the Indemnitee on account of any loss or damage to property of or for injury to or death of any person, to the extent that said loss, damage, injury or death is related to this Agreement and is the result of any error or omission or negligent act of the Indemnitor, its officials, officers, agents, servants, employees, or any representatives for which the Indemnitor is legally liable (provided that the City (and not the Arena Manager) shall be legally liable for the Public Safety Personnel and the Arena Manager (and not the City) shall be legally liable for the Private Security Personnel), arising out of or incidental to the performance of this Agreement.

9. Conflicts of Interest. The Arena Manager understands and acknowledges that this Agreement is subject to cancellation without penalty or further obligation by the City pursuant to the provisions of A.R.S. § 38-511. Both parties represent and warrant that, as of the date hereof, each party is not aware of any such conflicts of interest.

10. Notices

10.1 All notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to be given under this Agreement shall be in writing, signed by the party or officer, agent or attorney of the party giving such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response and/or invoice, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Arena Manager: IceArizona Manager Co., LLC
c/o IceArizona Acquisition Co. LLC
5709 Cal Verde Street
Suite 100
Houston, Texas 77057
Attn: Avik Dey

with copy (which shall not constitute notice) to:	Snell & Wilmer L.L.P. 400 East Van Buren Street Phoenix, Arizona 85004 Attn: Nicholas J. Wood Esq. Joyce Wright Esq.
To the City:	City Manager City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301
with copy to:	City Attorney City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301

10.2 Any party hereto may from time to time, by notice given to the other parties pursuant to the terms of this Section, change the address to which notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to such party are to be sent or designate one or more additional Persons to whom notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices are to be sent.

10.3 A party giving a notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice under this Agreement shall, contemporaneously with the giving of the same, give a copy of such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice to each party hereto that is not a named recipient thereof.

11. Governing Law. In all respects, including all matters of construction, validity and performance, including, without limitation, the rights and duties of the parties hereto, this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Arizona applicable to contracts made and performed in that state (without regard to the choice of law or conflicts of law provisions thereof) and any applicable laws of the United States of America.

12. Entire Agreement

12.1 This Agreement and the Arena Management Agreement constitute the full and complete understanding and agreement of the parties hereto with respect to the matters that are the subject of this Agreement.

12.2 This Agreement replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter.

12.3 This Agreement and its terms may not be modified, changed or waived except in writing signed by both parties.

13. Breach and Default

13.1 If any party to this Agreement materially breaches any provision of this Agreement and fails to cure such breach within 30 days after receiving written notice of such breach from any other party to this Agreement, the breaching party shall be in default.

13.2 Provided that if such matter cannot reasonably be cured within such 30 day period, the breaching party shall not be in default if, within 10 days of receiving the original written notice of breach, it begins to cure the breach, in good faith continues to attempt to cure the breach, and thereafter cures such breach within 120 days after receiving the original written notice of breach.

13.3 In the event any party breaches this Agreement and does not cure the breach within the time specified within this Section, the other party's sole remedy shall be an action at law for actual monetary damages, but not consequential or punitive damages.

14. Immigration Law Compliance.

14.1 The Arena Manager, on behalf of itself and any subcontractor, warrant, to the extent applicable under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

14.2 A breach of the warranty set forth in Section 14.1 may be considered a material breach of this Agreement which could be subject to penalties up to and including termination of this Agreement to the extent such breach, under the facts and circumstances of such breach would have a material and adverse effect on the Arena Manager or the City.

14.3 To the extent permitted by Applicable Law, the City retains the legal right to inspect the papers of the Arena Manager or subcontractor employee who performs work under this Agreement to ensure that the Arena Manager or any subcontractor is compliant with the warranty under this Section.

14.4 The City may conduct random inspections, and upon the request of the City, the Arena Manager will provide copies of papers and records of the Arena Manager demonstrating continued compliance with the warranty under this Section.

14.5 The Arena Manager agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

14.6 The Arena Manager agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Arena Manager and expressly accrue those obligations directly to the benefit of the City. The Arena Manager also agree to require any

subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

14.7 The Arena Manager's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

14.8 The "E-Verify Program" as used above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

15. **Iran and Sudan Prohibitions.** The Arena Manager certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, (the **"Act"**) that neither have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined By the Act, in the countries of Sudan or Iran.

[*Signatures on Following Page*]

IN WITNESS WHEREOF, the parties have hereunto set their hands to be effective as of the Effective Date.

ARENA MANAGER:

ICEARIZONA MANAGER CO., LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

CITY:

CITY OF GLENDALE, an Arizona municipal corporation

By: _____

Name: _____

Its: _____

ATTEST:

_____

Pam Hanna, City Clerk

APPROVED AS TO FORM:

_____

Nicholas De Piazza, Interim City Attorney

EXHIBIT "F"

Scheduling Procedures

(See Section 1.1)

1. All Hockey Events, excepting regular practices, shall have priority over all other Events and other activities scheduled or proposed to occur at the Arena Facility.

2. The Arena Manager shall provide the City (i) a schedule of Hockey Events (other than Playoff Games and any Warm-up Session(s) not more than five (5) Business Days following the finalization of such schedule and (ii) a schedule of Playoff Games and any Warm-up Session(s) relating thereto not more than two (2) Business Days following the finalization of such schedule.

3. The City will be provided a reasonable opportunity to schedule City Sponsored Events with full recognition of the Arena Manager's need to schedule and reserve dates as described in the preceding two sentences.

4. Unforeseen scheduling needs of the Arena Manager, the Team, or the NHL may cause changes to the aforementioned schedules after the delivery thereof to the City, and the Arena Manager shall have the exclusive right to make such changes and shall provide the City notice of any such changes as soon as reasonably practicable.

5. The Arena Manager (and its designees) may schedule additional Team practices and media events, which are not limited to the Team Exclusive Use Areas, on any dates that remain open twenty-one (21) days in advance of each such date.

PROPOSED

EXHIBIT "G"

Form Annual Budget

(See Section ___)

PROPOSED

EXHIBIT "G"

Form Annual Budget

(See Section ___)

PROPOSED

Arena Manager
Annual Budget
For the Fiscal Year Ending June 30,____

REVENUE

Rental and Co-pro. Revenue
Other Revenue
Reimbursed Labor
Reimbursed Expenses

Total Revenue

EXPENSES

Event Labor
Event Expenses

Total Event Expenses

Non-Event Expenses

Event Services
Guest Services
Suite and Hospitality
Security
Parking
Housekeeping
Facilities/Engineering
Operations/Conversions
Booking and Marketing
Box Office
Productions
Finance and Administration
Insurance
Information Technology
Human Resources
Legal

Total Non-Event Expenses

Capital Expenditures

Total Expenses

OPERATING LOSS

PROPOSED

Arena Manager
Sources and Uses of Cash
For the Fiscal Year Ending June 30, ____

Sources of Cash from Operations

Operating revenue

Less non-cash revenue items:

Coyotes reimbursed labor
Sting reimbursed labor

Total Sources of Cash from Operations

Uses of Cash in Operations

Event expenses
Non-event expenses
Capital expenditures
less non-cash expenses

Total Uses of Cash in Operations

Net Cash Requirement

PROPOSED

Arena Manager
ANNUAL DEPARTMENT BUDGET
For the Fiscal Year Ending June 30, ____

Event Services
Guest Services
Suite and Hospitality
Security
Parking
Housekeeping
Facilities/Engineering
Operations/Conversions
Bookings and Marketing
Box Office
Productions
Arena Management

Total All Departments

EVENT SERVICES - 100

6300 FT Salary - Event Services
6500 SSI - Event Services
6540 MED - Event Services
6600 WC - Event Services
6700 FUTA - Event Services
6740 SUI - Event Services
6800 MED/DENTAL - Event Services
6910 401K - Event Services
6840 STD/LTD/ADD/LIFE - Event Services

Total Salaries and Benefits

Other Expenses

8630 Repairs & Maintenance

Total Other Expenses

Total Event Services

Guest Services - 110

6305 FT Salary
6502 SSI
6542 MED
6602 WC

6702 FUTA
6742 SUI
6802 MED/DENTAL/LIFE
6912 401K
6842 STD/LTD/ADD

Total Salaries and Benefits

Other Expenses

9100 Operating Supplies
9202 Uniforms/Laundry
9252 Training Expense

Total Other Expenses

Total Guest Services

Suites and Hospitality - 120

Other Expenses

9206 Uniforms/Laundry
9254 Training Expense
9278 Business Conference Expense

Total Other Expenses

Total Suites and Hospitality

Security - 130

6315 FT Salary - Security
6506 SSI - Security
6546 MED - Security
6606 WC - Security
6706 FUTA - Security
6746 SUI - Security
6806 MED/DENTAL/LIFE - Security
6916 401K - Security
6846 STD/LTD/ADD - Security

Total Salaries and Benefits

6020 NE. PT Labor - Facility Security

6020 - 6220 NE PT Wages and Taxes

Other Expenses

8060 Office Supplies
8565 City of Glendale Annual Police Fee
8631 Repair and Maintenance
9102 Medical Supplies
9104 Operating Supplies
9210 Uniforms/Laundry
9256 Training Expense
9280 Business Conference Expense
9315 Travel/Lodging/Other

Total Other Expenses

Total Security

PARKING - 140

6325 FT Salary - Parking
6510 SSI - Parking
6550 MED - Parking
6610 WC - Parking
6710 FUTA - Parking
6750 SUI - Parking
6810 MED/DENTAL/LIFE - Parking
6920 401K - Parking
6850 STD/LTD/ADD - Parking

Total Salaries and Benefits

Other Expenses

8065 Office Supplies
9212 Uniforms/Laundry
9090 Light Towers/Fuel
9258 Training Expense
9281 Business Conference Expense
8655 Repair and Maintenance
8703 Licenses and Fees
8203 Dues and Subscriptions
9320 Travel/Lodging/Other
9410 Meals and Entertainment

Total Other Expenses

Total Parking

Housekeeping - 210

6335 FT Salary - Housekeeping
6514 SSI - Housekeeping
6554 MED - Housekeeping
6614 WC - Housekeeping
6714 FUTA - Housekeeping
6754 SUI - Housekeeping
6814 MED/DENTAL/LIFE - Housekeeping
6924 401K - Housekeeping
6854 STD/LTD/ADD - Housekeeping

Total Salaries and Benefits

6035 NE. PT Labor - Housekeeping

6035 - 6235 NE PT Wages and Taxes

Other Expenses

8600 Contracted Services
8602 Hskping Equip. R & M
9108 Operating Supplies
9214 Uniforms/Laundry

Total Other Expenses

Total Housekeeping

Facilities/Engineering - 220

6340 FT Salary - Facilities/Engineering
6410 FT Salary OT - Facilities/Engineering
6516 SSI - Facilities/Engineering
6556 MED - Facilities/Engineering
6616 WC - Facilities/Engineering
6716 FUTA - Facilities/Engineering
6756 SUI - Facilities/Engineering
6816 MED/DENTAL/LIFE - Facilities/Engineering
6926 401K - Facilities/Engineering
6856 STD/LTD/ADD - Facilities/Engineering

Total Salaries and Benefits

6040 NE. PT Labor - Facilities/Eng.

6040 - 6240 NE PT Wages and Taxes

Other Expenses

8610 Contracted Services
8612 Landscaping

8614 General Repair and Maint.
8705 Licenses & Permits
8880 Utilities - Electric
8882 Utilities - Gas
8884 Utilities - Water
9055 Light tower fuel / Vehicle gas
9065 Equipment Rental
9110 Operating Supplies
9114 Hockey Supplies
9216 Uniforms/Laundry
9262 Training Expense
9326 Travel/Lodging/Other
9435 Meals and Entertainment

Total Other Expenses

Total Facilities/Engineering

Operations/Conversions - 230

6345 FT Salary - Operations/Conversions
6518 SSI - Operations
6558 MED - Operations
6618 WC - Operations
6718 FUTA - Operations
6758 SUI - Operations
6818 MED/DENTAL/LIFE - Operations
6928 401K - Operations
6858 STD/LTD/ADD - Operations

Total Salaries and Benefits

6045 NE. PT Labor - Operations

6045 - 6245 NE PT Wages and Taxes

Other Expenses

8620 Contracted Services
8622 Repair and Maintenance
9070 Equipment Rental
9112 Operating Supplies
9218 Uniforms/Laundry
9264 Training Expense
9327 Travel/Lodging/Other
9440 Meals and Entertainment

Total Other Expenses

Total Operations/Conversions

Booking and Marketing - 310

6355 FT Salary - Bookings
6522 SSI - Bookings
6562 MED - Bookings
6622 WC - Bookings
6722 FUTA - Bookings
6762 SUI - Bookings
6822 MED/DENTAL/LIFE - Bookings
6932 401K - Bookings
6862 STD/LTD/ADD - Bookings

Total Salaries and Benefits

Other Expenses

Booking
8215 Membshp Fees/Dues & Subscriptions
8429 Business Gifts
9286 Business Conference Expense
9350 Travel/Lodging/Other
9450 Meals and Entertainment

Marketing
8005 Postage
8120 Printing
8210 Membshp Fees/Dues & Subscriptions
8452 Marketing
8428 Business Gifts and Awards
8430 Website Costs
8432 Public Relations
8450 Design
8570 Photography
9284 Business Conference Expense
9345 Travel/Lodging/Other
9445 Meals and Entertainment

Total Other Expenses

Total Booking and Marketing

BOX OFFICE - 400

6360 FT Salary - Box Office
6524 SSI - Box Office
6564 MED - Box Office
6624 WC - Box Office
6724 FUTA - Box Office
6764 SUI - Box Office
6824 MED/DENTAL/LIFE - Box Office
6934 401K - Box Office
6864 STD/LTD/ADD - Box Office

Total Salaries and Benefits

6060 NE. PT Labor - Box Office

6060 - 6260 NE PT Wages and Taxes

Other Expenses

8010 Postage
8125 Printing
8220 Membshp Fees/Dues & Subscriptions
8648 Equip. Repair and Maint.
8860 Armored Car
9118 Operating Supplies
9225 Uniforms
9268 Training Expense
9288 Business Conference Expense
9355 Travel/Lodging/Other
9455 Meals and Entertainment

Total Other Expenses

Total Box Office

PRODUCTIONS - 500

Other Expenses

8225 Membshp Fees/Dues & Subscriptions
8650 Equip. Repair and Maint.
9085 Equipment Rental
9120 Operating Supplies
9121 Small Tools
9220 Uniforms
9290 Business Conference Expense
9360 Travel/Lodging/Other
9460 Meals and Entertainment

Total Other Expenses

Total Productions

Arena Management - 650

6376 FT Salary
6531 SSI
6571 MED
6631 WC
6731 FUTA

6771 SUI
6831 MED/DENTAL/LIFE
6942 401K
6871 Life Insurance

Total Salaries and Benefits

Other Expenses

9295 Business Conferences
9371 Travel and Lodging
9471 Meals and Entertainment

Total Other Expenses

Total Arena Management

PROPOSED

Arena Manager
ANNUAL EVENT BUDGET
For the Fiscal Year Ending June 30, ____

REVENUE

4010 Arena Rental Fees
4450 Individual Suite Rentals
4030 Arena Share of Promoter Profit
Ticket and Rental Taxes

Total Rental and Co-Pro. Ticket Revenue

Other Revenue

4100 Concessions

Total Concessions Revenue

4200 Merchandise Revenue
4420 Facility Fee
4300 TM Convenience charge %
4400 Visiting Team Bldg. Brdcst Acc
4440 Event Sponsorships

Total Concessions and Other Revenue

Reimbursed Labor

4570 Reimbursed Labor - Coyotes Games
4575 Reimbursed Labor - Sting Games
4545 Reimbursed Labor - Production and Rig
Reimbursed Labor - Other Events

4500 - 4595 Reimbursed Labor

Reimbursed Expenses

4610 Catering - Event
4625 Advertising - Print
4825 Credit Card Fees
Miscellaneous Reimbursed Expenses

4500 - 4905 Reimbursed Expenses

Total Revenue

Expenses

PROPOSED

Event Labor

Front of House (GSRs, Suite Attend., Box Office)
Medical, Event Security & Police
5045 E. PT Labor - Production
5049 - 5055 Housekeeping
5065 E. PT Labor - Conversion Crew
5070 E. PT Labor - Facilities/Eng.
5075 E. PT Labor - Parking Attendant
5398 Contrd Srvs - Production

Total Event Labor

Event Expenses

7001 Promoter Revenue Sharing Expense
7010 Catering - Event
7025 Advertising

Miscellaneous Show Expenses

Total Miscellaneous Show Expenses

Total Event Expenses

Total Expenses

Net Event Income

EXHIBIT "H"

INSURANCE REQUIRED OF ARENA MANAGER

(See Section 13.1)

Definitions. Capitalized terms that are used but not otherwise defined in this Exhibit "H" (this "**Exhibit**") shall have the meanings set forth in Section 1.1 of the Arena Lease and Management Agreement (the "**Arena Management Agreement**") to which this Exhibit is attached.

1. The Arena Manager shall maintain the following insurance coverages during the Agreement Term, or for such additional time as required in any section below:

- Statutory Workers' Compensation
- Commercial General Liability (including Liquor Liability)
- Commercial Automobile Liability
- Excess Liability
- All Risk Property and Boiler & Machinery

The above coverages shall comply with the following:

a. **Statutory Workers' Compensation**: The Arena Manager shall maintain statutory workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of the Arena Manager engaged in the performance of work relating to management of the Arena.

b. **Commercial General Liability**: The Arena Manager shall maintain commercial general liability insurance covering all operations by or on behalf of the Arena Manager on an occurrence basis insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. Further, the policy shall include coverage for liquor liability and the hazards commonly referred to as XCU (explosion, collapse, and underground). The policy shall contain severability of interest provisions and shall be at least as broad as Insurance Service Office (ISO) form 1986. The limits of commercial general liability insurance required of the Arena Manager shall be no less than the following:

$1,000,000 bodily injury and property damage each occurrence
$2,000,000 general aggregate (annual)
$2,000,000 products/completed operations aggregate, and
$1,000,000 personal and advertising injury

In the event the commercial general liability insurance policy is written on a "claims-made" basis, the retroactive date shall be no later than the Agreement Effective

Date. Coverage shall extend for at least five (5) years after termination of the Arena Management Agreement and shall be evidenced by annual certificates of insurance.

c. **Commercial Automobile Liability**: The Arena Manager shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Arena and away from the Arena, whether owned, non-owned, borrowed, leased or hired, with limits no less than the following:

$1,000,000 combined single limit for bodily injury and property damage.

If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

d. **Excess Liability**: The Arena Manager shall maintain excess liability insurance on an occurrence basis, insuring against bodily injury, personal injury, and property damage, and all other coverages as specified in Sections 1.b (commercial general liability) and 1.c (automobile liability) of this Exhibit over and above the limits required for each such coverage. The limits of excess liability insurance shall be no less than the following:

$25,000,000 each occurrence
$25,000,000 annual aggregate
$25,000,000 products / completed operations (annual).

Total per occurrence limits of $25,000,000 may be satisfied in any combination of primary and excess policies of insurance. Any applicable retention shall be the sole responsibility of the Arena Manager.

e. **All Risk Property**: The Arena Manager shall maintain all risk property and boiler & machinery insurance to insure against physical loss or damage to the Arena (including any personal property owned by the City and used in connection with the Arena) and all personal property of the Arena Manager while at the Arena. Such coverage shall be written on a replacement cost basis, include flood and earthquake coverage, and shall not be subject to co-insurance.

2. The Arena Manager shall cause all tenants and concessionaires, other than the Team, to acquire and maintain, during the full term of each such tenant's or concessionaire's contractual relationship, all insurance coverages required of the Team as set forth in Exhibit "O" to the Arena Management Agreement. Certificates of insurance evidencing the required coverages, conditions and limits are in full force and effect shall be provided by each such tenant or concessionaire to the Arena Manager.

EXHIBIT "I"

INSURANCE REQUIRED OF CITY

(See Section 13.2)

Definitions. Capitalized terms that are used but not otherwise defined in this Exhibit "I" (this "**Exhibit**") shall have the meanings set forth in Section 1.1 of the Arena Lease and Management Agreement (the "**Arena Management Agreement**") to which this Exhibit is attached.

1. The City shall maintain the following insurance coverages during the Agreement Term, or for such additional time as required in any section below:

- Statutory Workers' Compensation
- Commercial General Liability (including Liquor Liability)
- Commercial Automobile Liability
- Excess Liability

The above coverages shall comply with the following:

a. **Statutory Workers' Compensation**: The City shall maintain statutory workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of the City engaged in the performance of work relating to the Arena.

b. **Commercial General Liability**: The City shall maintain commercial general liability insurance covering all operations by or on behalf of the City on an occurrence basis insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. Further, the policy shall include coverage for liquor liability and the hazards commonly referred to as XCU (explosion, collapse, and underground). The policy shall contain severability of interest provisions and shall be at least as broad as Insurance Service Office (ISO) form 1986. The limits of liability insurance required of the City shall be no less than the following:

$1,000,000 bodily injury and property damage each occurrence
$2,000,000 general aggregate (annual)
$2,000,000 products/completed operations aggregate, and
$1,000,000 personal and advertising injury

In the event the commercial general liability insurance policy is written on a "claims-made" basis, the retroactive date shall be no later than the Agreement Effective Date. Coverage shall extend for at least five (5) years after termination of the Arena Management Agreement and shall be evidenced by annual certificates of insurance.

c. **Commercial Automobile Liability**. The City shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Arena and away from the Arena, whether owned, non-owned, borrowed, leased or hired, with limits no less than the following:

$1,000,000 combined single limit for bodily injury and property damage.

If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

d. **Self Insurance**: The City may satisfy its requirements under Sections 1.a, 1.b and 1.c above through its established program of self insurance, as authorized by its City Council. The City shall provide all other parties with a certificate of self insurance for the required amounts.

EXHIBIT "J"

INSURANCE REQUIRED OF TEAM

(See Section 13.3)

Definitions. Capitalized terms that are used but not otherwise defined in this Exhibit "J" (this "**Exhibit**") shall have the meanings set forth in Section 1.1 of the Arena Lease and Management Agreement (the "**Arena Management Agreement**") to which this Exhibit is attached.

1. The Team shall maintain the following insurance coverages during the Agreement Term, or for such additional time as required in any section below:

- Statutory Workers' Compensation
- Commercial General Liability (including Liquor Liability)
- Commercial Automobile Liability
- Excess Liability
- All Risk Property

The above coverages shall comply with the following:

a. **Statutory Workers' Compensation**: The Team shall maintain statutory workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of the Team engaged in the performance of work relating to the Team.

b. **Commercial General Liability**: The Team shall maintain commercial general liability insurance covering all operations by or on behalf of the Team on an occurrence basis insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. Further, the policy shall include coverage for liquor liability and the hazards commonly referred to as XCU (explosion, collapse, and underground). The policy shall contain severability of interest provisions and shall be at least as broad as Insurance Service Office (ISO) form 1986. The limits of commercial general liability insurance required of the Team shall be no less than the following:

$1,000,000 bodily injury and property damage each occurrence
$2,000,000 general aggregate (annual)
$2,000,000 products / completed operations aggregate, and
$1,000,000 personal and advertising injury

In the event the commercial general liability insurance policy is written on a "claims-made" basis, the retroactive date shall be no later than the Agreement Effective

Date. Coverage shall extend for at least five (5) years after termination of the Arena Management Agreement and shall be evidenced by annual certificates of insurance.

c. **Commercial Automobile Liability**: The Team shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Arena and away from the Arena, whether owned, non-owned, borrowed, leased or hired, with limits no less than the following:

$1,000,000 combined single limit for bodily injury and property damage

If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

d. **Excess Liability**: The Team shall maintain excess liability insurance on an occurrence basis, insuring against bodily injury, personal injury, and property damage, and all other coverages as specified in Sections 1.b (commercial general liability) and 1.c (automobile liability) of this Exhibit over and above the limits required for each such coverage. The limits of excess liability insurance shall be no less than the following:

$10,000,000 each occurrence
$10,000,000 annual aggregate
$10,000,000 products/completed operations (annual)

Total per occurrence limits of $10,000,000 may be satisfied in any combination of primary and excess policies of insurance. Any applicable retention shall be the sole responsibility of the Team.

e. **All Risk Property**: The Team shall maintain all risk property insurance to insure against physical loss or damage to all personal property of the Team while at the Arena. Such coverage will be written on a replacement cost basis, include flood and earthquake coverage and shall not be subject to co-insurance.

EXHIBIT K

MEMORANDUM OF AGREEMENT

When Recorded, Return to:

_____

_____

_____

_____

Attn: _____

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this **"Memorandum"**) is made as of _____, 2013 by and among the City of Glendale, an Arizona municipal corporation (the **"City"**); IceArizona Manager Co., LLC, a Delaware limited liability company (the **"Arena Manager"**); IceArizona Hockey Co., LLC, a Delaware limited liability company (the **"Team Owner"**).

Notice is hereby given that the City, the Arena Manager and the Team Owner have entered into that certain Professional Management Services and Arena Lease Agreement dated as of _____, 2013 (the **"Arena Management Agreement"**) with respect to that certain real property more particularly descried on Schedule "1" attached hereto. Capitalized terms that are used but not otherwise defined in this Memorandum shall have the meanings set forth in the Arena Management Agreement.

The Arena Management Agreement has a Term that continues until the 30th day after the last day of the NHL hockey season commencing in _____ unless terminated earlier in accordance with the provisions thereof.

The purpose of this Memorandum is to give record notice of the Arena Management Agreement to third parties. The Arena Management Agreement contains and sets forth other important terms and provisions which are incorporated herein by reference, including, without limitation, provisions pertaining to the leasehold interests of the Arena Manager and the Team Owner in certain portions of such real property. This Memorandum shall not limit, expand, supplement or modify the Arena Management Agreement, and in the event of any conflict between the terms of this Memorandum and the Arena Management Agreement, the Arena Management Agreement shall, in all instances, control.

Additionally, under the Arena Management Agreement, the City has irrevocably granted to the Arena Manager, at such times set forth in the Arena Management Agreement, the sole and exclusive option to purchase the Arena Facility at a price to be determined in accordance with the terms of the Arena Management Agreement and upon such other terms as shall be agreed between the City and the Arena Manager.

IN WITNESS WHEREOF, the parties have hereunto set their hands to be effective as of the Closing Date.

ARENA MANAGER:
IceArizona Manager Co., LLC.
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this ___ day of _____, 2013, before me, the undersigned officer, personally appeared _____, the _____ of IceArizona Manager Co., LLC, a Delaware limited liability company, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

NOTARY SEAL:

TEAM OWNER:
IceArizona Hockey Co., LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this ___ day of _____, 2013, before me, the undersigned officer, personally appeared _____, the _____ of IceArizona Hockey Co., LLC, a Delaware limited liability company, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

NOTARY SEAL:

CITY:
CITY OF GLENDALE, an Arizona municipal corporation

By: _____
Name: _____
Its: _____

ATTEST:

_____
Pam Hanna, City Clerk

APPROVED AS TO FORM:

_____
Nicholas C. DiPiazza, Acting City Attorney

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this ___ day of _____, 2013, before me, the undersigned officer, personally appeared _____, the _____ of the CITY OF GLENDALE, an Arizona municipal corporation, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

NOTARY SEAL:

EXHIBIT "L"

Current Renewal and Replacement Schedule
(See Section 11.2)

5/21/2012

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5/21/2012

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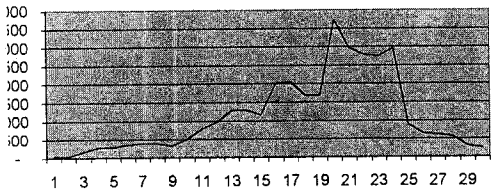
djusted	-	-	5	-	237	6	578	614	6	573	230	552	244	982	1,997	1,066	2,097	385	310	6,234	1,216	326	347	10,490	2,513	195	207	1,339	215	1,322	**34,284**
ate	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	
ate	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	
efore interest	49	50	166	287	288	355	400	395	321	516	801	968	1,277	1,305	1,171	2,018	2,048	1,694	1,686	3,722	2,978	2,774	2,750	2,949	894	656	617	575	307	264	34,284
ıned	-	2	5	13	27	30	47	38	28	43	40	69	90	141	158	116	164	162	227	296	170	258	381	501	124	43	66	86	48	53	3,428
posit, net of rest	49	48	161	274	261	325	353	356	293	473	761	899	1,187	1,164	1,013	1,902	1,884	1,532	1,459	3,426	2,808	2,516	2,369	2,448	770	613	551	489	259	212	30,856
nce w/interest	**49**	**100**	**260**	**547**	**598**	**948**	**770**	**551**	**866**	**809**	**1,380**	**1,796**	**2,830**	**3,153**	**2,327**	**3,280**	**3,231**	**4,539**	**5,916**	**3,404**	**5,167**	**7,615**	**10,019**	**2,478**	**859**	**1,320**	**1,729**	**965**	**1,058**	-	



Annual Level Funding Equivalent

	Team	City	Arbitration
Total Cost Basis	404	1,049	645
Adjusted for Inflation	640	1,461	1,143
Net of Interest Funding Amount			1,029

EXHIBIT "N"

Supplemental Surcharge Escrow Procedures

CITY COUNCIL REPORT

Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**
Title:	**PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT AND NONCOMPETITION AND NON-RELOCATION AGREEMENT WITH ICEARIZONA MANAGER CO., LLC AND ICEARIZONA HOCKEY CO., LLC**
Staff Contact:	**Richard A. Bowers, Acting City Manager**

Purpose and Recommended Action

This is a request for City Council to vote to adopt a resolution authorizing the entering into of a Professional Management Services and Arena Lease Agreement and a Noncompetition and Non-Relocation Agreement with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

Background Summary

In 2001, the City of Glendale entered into an Arena Development Agreement, an Arena Management and Use Agreement (AMULA), and a Mixed-Use Development Agreement (MUDA) with Arena Management Group, LLC, Coyotes Hockey, LLC, Glendale 101 Development, LLC, and Coyote Center Development, LLC. The purpose of these actions was to create a high-quality major economic center in Glendale, consisting of offices, hotels, entertainment, retail and restaurants.

Unexpectedly, in May of 2009, the former team owner Coyotes Hockey, LLC and its affiliated entity, Arena Management Group, LLC (collectively referred to as the "Coyotes") filed for federal bankruptcy protection. The city's investment was meeting financial projections and attracting economic development to the area until the Coyotes were thrust into bankruptcy. During the bankruptcy proceedings, the National Hockey League (NHL) purchased the assets of the Coyotes but did not assume the Arena Management, Use and Lease Agreement.

For the past four years, under the direction of Council, the city has been actively working with the NHL and potential buyers of the Coyotes to structure a deal that would keep the team in Glendale.

Council established criteria for negotiations with potential buyers of the Phoenix Coyotes including:

Keep team in Glendale for the full length of lease
Keep current arena revenues in tact
Provide opportunity to share in revenue streams, when feasible

The loss of the team as an anchor tenant would result in a loss of 44 major events each year at Jobing.com Arena.

Previous Related Council Action

On June 28, 2013, a Council special workshop was held to discuss the status of negotiations and review the draft proposed arena management agreement with RSE.

On March 26, 2013, Council voted to ratify the entering into of an agreement with Beacon Sports Capital Partners, LLC to provide representation for Glendale, assist the city in soliciting and reviewing offers, and negotiate a new Arena Management Agreement for the future lease and management of the city-owned Jobing.com Arena. A Request for Proposal was let on April 16, 2013 with a deadline of May 24, 2013 for Venue Management of Jobing.com Arena. At the direction of City Council, an extension was approved until May 31, 2013.

On February 5, 2013, the Acting City Manager presented a review of the options regarding the city-owned Jobing.com Arena and the impact of the unfulfilled sale of the Phoenix Coyotes. The deadline for prospective Phoenix Coyotes' owner, Greg Jamison of Arizona Hockey Arena Partners, LLC and the Arizona Hockey Partners, LLC, to purchase the Phoenix Coyotes' team was Thursday, January 31, 2013 at midnight. Mr. Jamison was required under terms of the finalized Arena Lease and Management Agreement and Noncompetition and Non-relocation Agreement to purchase the team from the National Hockey League by the deadline date and time to secure the 20 year deal with the city to use and manage the city-owned Jobing.com Arena. Mr. Jamison was not able to complete the purchase of the Phoenix Coyotes and did not sign the agreement by the deadline on January 31, 2013.

On November 27, 2012, Council voted and approved an ordinance with an emergency clause, authorizing and directing the City Manager to enter into an Arena Lease and Management Agreement with Arizona Hockey Arena Partners, LLC and Arizona Hockey Partners, LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

On November 20, 2012, the Acting City Manager presented a comprehensive review of the finalized Arena Lease and Management Agreement and Noncompetition and Non-Relocation Agreement with Arizona Hockey Arena Partners, LLC, and Arizona Hockey Partners, LLC, for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

On October 2, 2012, city staff sought guidance from City Council on proposed modifications to the Arena Lease and Management Agreement with Arizona Hockey Arena Partners LLC and Arizona Hockey Partners for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes. Council provided direction to proceed with negotiations with Arizona Hockey Arena Partners and Arizona Hockey Partners.

In August 2012, Council directed the Acting City Manager to renegotiate the payment terms of the approved agreement with a stated objective of reducing the payments made in the early years of the agreement to better meet the city's cash flow needs.

On June 8, 2012, Council adopted a resolution authorizing the entering into of the following agreements with Arizona Hockey Arena Partners, LLC and Arizona Hockey Partners, LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes: (1) Arena Lease and Management Agreement and (2) Noncompetition and Non-Relocation Agreement.

On May 10, 2011, Council adopted a resolution extending the management agreement between the City of Glendale and the NHL, to satisfy the NHL's requirements in order for the NHL Phoenix Coyotes to remain in Glendale during the NHL 2011-12 hockey season. In May 2011, the city agreed to pay $25 million for the NHL to operate the arena for FY 2011-12.

On December 14, 2010, staff brought forward an Arena Lease and Management Agreement and a Use and Non-Relocation Agreement with Arizona Hockey Arena Holdings, LLC and Coyotes Newco, LLC. The potential buyer did not move forward with plans to purchase the team.

Staff brought forward an MOU to Council for potential buyers of the Phoenix Coyotes on April 13, 2010 and June 8, 2010. Neither potential buyer moved forward with viable plans to purchase the team. Thus, on May 11, 2010, Council authorized an agreement with the NHL to retain the team in Glendale for the 2010-11 season while city staff completed the necessary negotiations with potential new owners.

Attachments

Resolution

Agreement

RESOLUTION NO. 4703 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF THE FOLLOWING TWO AGREEMENTS: (1) PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT WITH ICEARIZONA MANAGER CO., LLC AND ICEARIZONA HOCKEY CO., LLC; AND (2) NON-RELOCATION AGREEMENT WITH ICEARIZONA MANAGER CO., LLC AND ICEARIZONA HOCKEY CO., LLC.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the following two agreements be entered into: (1) Professional Management Services and Arena Lease Agreement with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC; and (2) Non-Relocation Agreement with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC. The agreements, in substantial final form, are now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the management, use, and lease of the Arena under the Professional Management Services and Arena Lease Agreement will benefit the City and its residents by assuring a substantial, regular, and continuing utilization of the Arena, providing additional employment opportunities within the City, increasing the City's tax base, and stimulating additional development on properties in the vicinity of the Arena Facility; and, therefore, this Council finds that the Professional Management Services and Arena Lease Agreement provides a substantial public benefit.

SECTION 3. That the City's proposal to enter into the agreements with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC must be accepted by those parties before 2:00 p.m. Arizona time (5:00 p.m. EDT) by their execution of the agreements or the offer to enter into the agreements shall expire and be null and void.

SECTION 4. That if IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC accept the City's offer to enter into the two agreements in the time prescribed, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver said agreements and any ancillary documents or agreements and to do all such acts required to implement the purpose and intent of the agreements on behalf of the City of Glendale, and to approve the final form of the agreements, consistent with the forms now on file and the understanding of the parties, such approval to be evidenced by execution of such documents by the City Manager and the City Clerk.

SECTION 5. That, upon execution of the agreements, the City Clerk is hereby directed to forward: a memorandum of agreement that reflects the existence of Professional Management

Services and Arena Lease Agreement with IceArizona Manager Co., LLC; and the Non-Relocation Agreement to the Maricopa County Recorder's Office for recording.

SECTION 6. The City Manager and the City Attorney are authorized to make changes to the agreements of a grammatical, form, technical or similar nature so long as there is no material increase in the obligations or exposure to the City of Glendale

SECTION 7. Neither the members of the City Council of the City of Glendale nor any officer, employee or agent of the City shall be subject to any personal liability or accountability by reason of the execution of the agreements.

SECTION 8. Notice of A.R.S. § 38-511 is hereby given.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2013.

_____
M A Y O R

ATTEST:

_____
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

REVIEWED BY:

_____
Acting City Manager

a_arena docs

NON-RELOCATION AGREEMENT

This Non-Relocation Agreement (this **"Agreement"**) is entered into as of July _____, 2013 (the **"Effective Date"**), by and between the City Of Glendale, an Arizona municipal corporation (the **"City"**), IceArizona Hockey Co. LLC, a Delaware limited liability company (the **"Team Owner"**), and IceArizona Manager Co. LLC, a Delaware limited liability company (the **"Arena Manager"**).

RECITALS

A. Upon the closing of a purchase by the Team Owner from NHLK Coyotes Holdings, LLC of all of the membership interests in Coyotes Newco, LLC (the NHL-Controlled entity currently holding all of the player contracts, the Franchise (as defined directly below) and other assets relating to the Team (as defined directly below)) pursuant to a purchase agreement dated _____, 2013 between the Team Owner, the NHL and NHL Coyotes Holdings, LLC (the **"NHL Purchase Agreement"**), the Team Owner will be the owner of the franchise (the "**Franchise**") for the operation of the NHL hockey team currently bearing the designation "Phoenix Coyotes" (the **"Team"**).

B. The parties hereto desire to clarify, confirm and agree that following Team Owner's acquisition of the Franchise, the Team will play its Home Games at the Arena Facility, subject to the terms and conditions set forth in this Agreement and the terms of the Arena Lease and Management Agreement (as defined below); and

B. The parties hereto acknowledge and agree that they will derive a substantial benefit from the Team's use of the Arena Facility and have, accordingly, agreed to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Arena Manager and the Team Owner agree as follows:

1. DEFINITIONS. Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Arena Lease and Management Agreement (as defined below). The following terms as used herein shall have the following meanings:

"Arena Lease and Management Agreement" means the Professional Management Services and Arena Lease Agreement, dated as of the Effective Date, by and among the City, the Team Owner and the Arena Manager, as amended from time to time.

"NHL Rules" means the NHL constitution, as amended from time to time, and all then applicable NHL policies, procedures, provisions, rules, regulations, by-laws, articles, contracts and directives that govern the rights, duties, privileges and obligations of members of the NHL.

2. NON-RELOCATION OBLIGATIONS.

2.1 Team Owner. During the Term, except as otherwise provided in (i) the Arena Lease and Management Agreement, (ii) Section 2.2 below and (iii) in this Section 2.1:

(a) the Team Owner shall maintain its principal place of business in the City as a registered business in good standing under the laws of the State of Arizona;

(b) the Team Owner shall maintain the Franchise as a validly existing and participating NHL franchise under NHL Rules;

(c) the Team Owner shall not relocate, and not permit the relocation of, the Franchise outside of the City; and

(d) the Team Owner shall cause the Team to play all of its Home Games assigned to it under NHL Rules (which shall include Regular Season Games and Play-Off Games), at the Arena Facility; provided, however, the Team Owner shall be permitted to play what would otherwise be a Home Game at a location other than the Arena Facility only as follows:

(i) during such time that the conditions of both Section 2.1(d)(i)(A) and Section 2.1(d)(i)(B) below are satisfied:

(A) as provided in the Arena Lease and Management Agreement in connection with material damage or destruction to, or condemnation of, the Arena in whole or in part (such that such damage, destruction or condemnation prevents the reasonable use of the Arena by Team Owner for the purposes contemplated by the Arena Lease and Management Agreement) or due to a "Force Majeure" as defined in the Arena Lease and Management Agreement;

(B) if necessary and required in accordance with NHL Rules for reasons of public safety or because of rescheduling due to a Force Majeure event (including, without limitation, work stoppage caused by contract negotiations); provided, that if game that otherwise would have been a Home Game is played at a location other than the Arena Facility, the Team Owner shall share fairly with the City, in a proportionate manner based on their respective losses (which with respect to the City shall include lost sales, use or ticket taxes that would have been collected by the City in respect of the Home Game, including but not limited to, the City Surcharge and the Supplemental Surcharge), any compensatory payment made to the Team Owner in respect of the lost game(s) by the NHL or any other person; or

(ii) during a period in which NHL teams are playing no games, in which case, when League plays resumes, all remaining Home Games assigned to the Term under NHL Rules (be such games Regular Season Games or Play-off Games) shall be played at the Arena.

(e) Nothing in this Section 2.1 is intended to (nor does) alter the obligations of Arena Manager and Team Owner as set forth in the Arena Lease and Management Agreement.

2.2 Early Termination. Notwithstanding the other terms and provisions of this Agreement, Team Owner and Arena Manager jointly shall have the right to terminate this Agreement only in accordance with the terms and conditions of the Arena Lease and Management Agreement.

3. TRANSFERS.

3.1 Permitted Transfer. The Team Owner shall not cause or permit any Transfer (as defined in Section 3.2 below) except in those circumstances permitted in, and in accordance with the terms and conditions of, the Arena Lease and Management Agreement, including but not limited to Section 22.2 of the Arena Lease and Management Agreement.

3.2 Transfer. For purposes of this Agreement, a **"Transfer"** shall be and mean any act described in Section 22.2 of the Arena Lease and Management Agreement.

3.3 Submission. The Team Owner shall, not less than 30 days prior to submitting a Transfer application to the NHL, deliver to the City written notice of the Team owner's intent to deliver such application.

4. TERM.

The "**Term**" of this Agreement shall commence on the Effective Date and shall be co-terminous with the Term of the Arena Lease and Management Agreement. In addition, at the joint option of Team Owner and Arena Manager (with joint written notice provided to the City by Team Owner and Arena Manager), the Term may be terminated in accordance with Section 2.2 above.

5. DEFAULT.

5.1 Team Default. A "**Team Default**" shall mean (a) the violation of, or failure to comply with, any provision of Section 2 or Section 3 of this Agreement, including the Team Owner's non-relocation obligations, or a material breach of the representations and warranties of the Team Owner and the Arena Manager in Section 8.1, (b) the failure (other than an event resulting from Force Majeure) of the Team to continue operations of its business in the ordinary course, (c) any suspension, revocation, or termination of the Franchise by the NHL, or (d) the Team Owner (i) becomes insolvent, as determined by a court order; (ii) makes an assignment for the benefit of creditors; (iii) applies for, or consents to, the appointment of a receiver or trustee for itself, or for a substantial part of its property or business; or (iv) commences, or have commenced against it, any case, proceeding or other action under the United States Bankruptcy Code, or any other applicable law relating to bankruptcy, insolvency, reorganization or relief of debtors and such proceeding is not terminated within one hundred twenty (120) days thereafter; provided, however, that with respect to any default set forth in clause (a), (b) or (c) above, Team Owner and Manager shall be entitled to cure such default within 30 days after the Team Owner's

and the Arena Manager's receipt from the City of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for a period of time not to exceed 180 days so long as the Team Owner and the Arena Manager (i) commences to cure such breach within 30 days after receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

6. REMEDIES FOR DEFAULT

6.1 City Remedies.

(a) The Team Owner acknowledges and agrees that a Team Default will cause the City irreparable harm, that money damages would not be a sufficient remedy for any such event, and that the City may, but is not required to, seek an injunction, specific performance, or other court order without any requirement for showing economic loss or the securing or posting of any bond in connection with such remedy.

(b) Alternatively upon the occurrence of a Team Default (which has not been cured as provided for in Section 5.1) , the City may terminate this Agreement without any further obligation to the Team Owner, and recover from the Team Owner, as liquidated damages and not as a penalty, an aggregate amount in accordance with the schedule set forth on Exhibit "A" hereto. The Team Owner, and the City acknowledge that it would be extremely difficult if not impossible to ascertain the City's actual damages and that the amount specified on Exhibit "A" hereto is a reasonable forecast of just compensation to the City resulting from a Team Default and is not a penalty. The Team Owner and the City expressly agree that this provision is a material and bargained-for component of the consideration for this Agreement and that defining the remedies in the event of a Team Default is of mutual benefit to each of the Team Owner and the City. The Team Owner and the City further expressly agree not to contest, in any proceeding, the validity or enforceability of this provision and expressly and knowingly waive the right to do so.

6.2 Jurisdiction. Any litigation shall be subject to the exclusive jurisdiction of the state and federal courts located in Maricopa County, Arizona and the Parties irrevocably submit to such exclusive jurisdiction and expressly waive all rights to seek venue in any other jurisdiction.

7. INDEMNIFICATION.

The parties indemnity obligations under this Agreement shall be consistent with the terms and conditions of Section 20 of the Arena Lease and Management Agreement.

8. REPRESENTATIONS AND WARRANTIES.

8.1 Representations and Warranties of the Team Owner and the Arena Manager. The Team Owner and the Arena Manager jointly and severally represent and warrant to the City that

the statements below are correct and complete as of the Effective Date and will remain correct and complete at all times during the term of this Agreement.

(a) Valid Existence. Each of the Team Owner and the Arena Manager is duly organized, validly existing and in good standing under the laws of the state(s) of its organization and is duly authorized, qualified and licensed under the laws of the State of Arizona to carry on its business in the places and in the manner as presently conducted.

(b) Power. Each of the Team Owner and the Arena Manager has full right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. All limited liability company action of the Team Owner and the Arena Manager necessary to approve the execution, delivery and performance of this Agreement has been taken.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Team Owner and the Arena Manager do not: (i) violate, conflict with, or result in, the breach of any provision of the Team Owner's or the Arena Manager's Articles of Organization or agreements among members; (ii) conflict with or violate any Applicable Law applicable to the Team Owner or the Arena Manager or any of their respective assets, properties or businesses; or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time would become a default) under, require any consent under, or give to any other person any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage, indenture, contract, agreement, license, permit, authorization, franchise or other instrument or arrangement to which the Team Owner or the Arena Manager is a party or by which any of their respective assets or properties are bound or affected.

(d) Valid Execution and Binding Effect. Each of the Team Owner and the Arena Manager has duly executed and delivered this Agreement, and (assuming due authorization, execution and delivery by the City) this Agreement constitutes a legal, valid and binding obligation of each of the Team Owner and the Arena Manager enforceable against each of the Team Owner and the Arena Manager in accordance with its terms.

(e) Franchise Ownership; NHL Good Standing. Upon the closing of the NHL Purchase Agreement, the Team Owner will own the Franchise, and the Franchise will be in good standing with the NHL, and the Team Owner is in compliance with the NHL Rules, except as would not have a material adverse effect on the results of operations of the Team.

8.2 Representations and Warranties of the City. The City represents and warrants to the Arena Manager and the Team Owner that the statements below are correct and complete as of the Effective Date and will remain correct and complete at all times during the term of this Agreement.

(a) Valid Existence. The City is duly organized, validly existing and in good standing under the laws of the state(s) of its organization and is duly authorized, qualified and licensed under all Applicable Laws to carry on its business in the places and in the manner as presently conducted.

(b) Power. The City has full right, power and authority to execute and deliver this Agreement and to perform its obligations under Agreement. All action of the City, and the City Council, necessary to approve the execution, delivery and performance of this Agreement has been taken.

(c) No Conflict. The execution, delivery and performance of this Agreement by the City do not: (i) violate, conflict with or result in the breach of any provision of the City's charter; (ii) conflict with or violate any Applicable Law applicable to the City or its assets, properties or activities; or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time would become a default) under, require any consent under, or give to any other person any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any lien on the assets or the properties of the City pursuant to any note, bond, mortgage, indenture, contract, agreement, license, permit, authorization, franchise or other instrument or arrangement to which the City is a party or by which any of its assets or properties are bound or affected.

(d) Valid Execution. The City has duly executed and delivered this Agreement, and (assuming due authorization, execution and delivery by the Team Owner and the Arena Manager).

9. MISCELLANEOUS.

9.1 Entire Agreement. This Agreement, together with the Arena Lease and Management Agreement and the Related Agreements, represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, written or oral, pertaining to the subject matter of this Agreement.

9.2 Amendments. No modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon the City, the Team Owner or the Arena Manager unless in writing signed by the City, the Team Owner or the Arena Manager, respectively.

9.3 Choice of Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Arizona, without giving effect to conflict of laws provisions.

9.4 Severability; Interpretation. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof, only, shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Agreement or the valid portion of such provision, which provisions are deemed severable.

9.5 No Implied Waivers. No waiver by a party of any term, obligation, condition or provision of this Agreement shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is

expressed in writing and signed and delivered by the party granting the waiver, nor shall any forbearance by either party to seek a remedy for any breach by the other party be a waiver by such party of any rights or remedies with respect to such or any subsequent breach. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

9.6 Successors and Assigns. Each party binds itself and its successors and authorized assigns to the other and to the successors and authorized assigns of the other party with respect to all covenants of this Agreement. Except in connection with an assignment of this Agreement pursuant to a Transfer by Team Owner of the Franchise and Team in compliance with Section 4 above, neither this Agreement nor the obligations provided herein may be assigned without the prior written consent of the other parties, which may be granted, withheld, conditioned or delayed in such non-assigning party's sole, absolute and unfettered discretion.

9.7 Interpretation. The Parties agree that they have been represented by counsel during the negotiation, drafting, preparation and execution of this Agreement and, therefore, waive the application of any law or rule of construction providing that ambiguities in a contract or other document will be construed against the party drafting such contract or document.

9.8 Notices. All notices, demands, certificates or other communications under this Agreement shall be in writing (except as expressly provided otherwise in this agreement) and shall be deemed to be delivered: (a) when actually received if personally delivered by hand or by reputable commercial overnight courier service; or (b) three (3) Business Days after deposit in the U.S. Mail, postage prepaid, certified mail, return receipt requested, and in each case properly addressed to the City or Team Owner, as follows:

If to the City:

City Manager
City Of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301

With a copy (which shall not constitute notice) to:

City Attorney
City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301

If to the Team Owner:

IceArizona Hockey Co. LLC
c/o IceArizona Acquisition Co. LLC
5709 Cal Verde Street
Suite 100
Houston Texas, 77057
Attn: Avik Dey

With a copy (which shall not constitute notice) to:

Snell & Wilmer
400 East Van Buren Street
Phoenix, Arizona 85004
Attn: Nicholas J. Wood Esq.
Joyce Wright Esq.

If to the Arena Manager:

IceArizona Management Co. LLC
c/o IceArizona Acquisition Co. LLC
5709 Cal Verde Street
Suite 100
Houston Texas, 77057
Attn: Avik Dey

With a copy (which shall not constitute notice) to:

Snell & Wilmer
400 East Van Buren Street
Phoenix, Arizona 85004
Attn: Nicholas J. Wood Esq.
Joyce Wright Esq.

Any party, by written notice to the other parties, may change its address for purposes of this Agreement.

9.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same fully executed agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

9.10 Survival. The payment obligations for amounts due and payable prior to the expiration or any other termination of this Agreement, and the rights and obligations for indemnification, shall survive the termination of this Agreement.

9.11 Recordation of Agreement and Amendments. This Agreement will be recorded in the Official Records of Maricopa County, Arizona, within ten (10) calendar days after its approval and execution by the City and Team Owner.

9.12 Conflict of Interest. Notice is hereby given of the applicability of A.R.S. § 38-511. As of the date hereof, the parties hereto acknowledge and agree that they are aware of no such applicable conflict of interest invoked by A.R.S. § 38-511.

9.13 Attorneys Fees. In the event of any controversy, claim or dispute between or among the parties arising from or relating to this Agreement, the prevailing party or parties shall be entitled to recover reasonable costs, expenses and attorneys' fees.

9.14 Immigration Law Compliance.

a. The Team Owner and the Arena Manager warrant, to the extent applicable under A.R.S. §41-4401, compliance with all federal and state immigration laws and regulations that relate to its employees, including, without limitation, A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

b. A breach of the warranty set forth in clause (a) may be considered a material breach of this Agreement which could be subject to penalties up to and including termination of this Agreement to the extent such breach, under the facts and circumstances of such breach would have a material and adverse effect on the Team, Team Owner or the City.

c. The City retains the legal right to inspect the papers of the Team Owner and the Arena Manager to ensure that the Team Owner, the Team and the Arena Manager each are compliant with the warranty under this Section.

d. The City may conduct random inspections, and, upon the request of the City, the Team Owner and the Arena Manager will provide copies of papers and records of the Team Owner and the Arena Manager demonstrating continued compliance with the warranty under this Section.

e. The Team Owner and the Arena Manager each agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

f. Team Owner's and the Arena Manager's warranties and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

g. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

9.15 Iran and Sudan Prohibitions. Team Owner certifies under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that it does not, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TEAM OWNER:
IceArizona Hockey Co. LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

ARENA MANAGER:
IceArizona Manager Co. LLC, a Delaware limited liability company

By :_____
Name: _____
Its: _____

CITY:
CITY OF GLENDALE, an Arizona municipal corporation

By: _____
Name: Richard Bowers
Its: City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

LIQUIDATED DAMAGES

To the City pursuant to Section 6.1(b):

From the Effective Date and until June 30, 2028:

$

CITY COUNCIL REPORT

Meeting Date: **7/2/2013**
Meeting Type: **Voting**
Title: **LAMAR OUTDOOR LICENSE AGREEMENT FOR 7691 NORTH 99TH AVENUE**
Staff Contact: **Jon M. Froke, AICP, Planning Director**

Purpose and Recommended Action

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a license agreement with Lamar Outdoor for the placement of a digital billboard on city-owned land.

Staff is requesting Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a license agreement.

Background Summary

The site is located at 7691 North 99th Avenue. The site is near the north end of the Glendale Park & Ride Lot.

Staff has been working with Lamar Outdoor to bring this license agreement forward for Council consideration.

Previous Related Council Action

In January 2009, staff began negotiations for an outdoor advertising agency to install, operate, maintain and repair digital billboards on city-owned land located in the vicinity of Glendale Avenue and Loop 101 and to construct certain improvements. The licenses grant the advertiser the uses and responsibilities above and place no responsibility on the city for maintenance, repairs or operations.

On March 24, 2009, Council approved an authorization to enter into a digital billboard placement license agreement with American Outdoor Advertising. American constructed two digital billboards on the Park & Ride Lot. In 2012, Lamar Outdoor bought the assets of American and assumed the position as the city's business partner relative to digital billboards. The 2009 agreement made provisions for five locations.

On December 22, 2009, Council adopted a resolution authorizing the City Manager to enter into five license agreements at locations on the Loop 101 in the Sports & Entertainment District.

This is one of two final locations that will complete the license agreements with Lamar Outdoor. It has been mutually agreed upon that both parties will not pursue the site located at 9802 West Camelback Road.

Community Benefit/Public Involvement

Entering into this license agreement will provide an additional revenue stream to the General Fund. This can generate resources to pay for needed services to benefit the citizens of Glendale. This will also provide special broadcast capabilities and messaging for public safety and other public uses. Revenue generated by the license agreement will be deposited into the General Fund.

On June 26, 2012, Council approved a Zoning Text Amendment (ZTA11-01) for digital billboards. This provided a new definition and enacts zoning regulations and established a set of development standards to regulate digital billboards along the Loop 101 in the Sports & Entertainment District.

The proposed license agreement is on a site located in the Sports & Entertainment District and Lamar Outdoor has agreed to comply with the provisions of the Zoning Ordinance.

Staff recommends that the license agreement be approved.

Budget and Financial Impacts

Terms of the license agreement are as follows:

- $10,416.67 per month base rent, per structure to be paid in advance ($500,000) for the first 48 months.
- Consumer Price Index will incur on month 49.
- 33% revenue share from annual gross billings from $125,001 to $500,000.
- 40% revenue share from annual gross billings of $500,001 and greater.
- 20-year lease agreement.
- All other terms and verbiage remain same from previous license agreements.

Attachments

Staff Report

Resolution

Agreement

STAFF REPORT

To:	**Richard A. Bowers, Acting City Manager**
From:	**Jon M. Froke, AICP, Planning Director**
Item Title:	**LAMAR OUTDOOR LICENSE AGREEMENT FOR 7691 NORTH 99TH AVENUE**
Requested Council Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**

PURPOSE

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a license agreement with Lamar Outdoor for the placement of a digital billboard on city-owned land. The site is located at 7691 North 99th Avenue. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

In January 2009, staff began negotiations for an outdoor advertising agency to install, operate, maintain and repair digital billboards on city-owned land located in the vicinity of Glendale Avenue and Loop 101 and to construct certain improvements. The licenses grant the advertiser the uses and responsibilities above and place no responsibility on the city for maintenance, repairs or operations.

On March 24, 2009, Council approved an authorization to enter into a digital billboard placement license agreement in the vicinity of Glendale Avenue and the Loop 101 for five locations. This is one of two final locations that will complete the license agreements with Lamar Outdoor. It has been mutually agreed upon that both parties will not pursue the site located at 9802 West Camelback Road.

On December 22, 2009, Council adopted a resolution authorizing the City Manager to enter into five license agreements at locations on the Loop 101 in the Sports & Entertainment District.

ANALYSIS

Entering into this license agreement will provide an additional revenue stream to the General Fund. This can generate resources to pay for needed services to benefit the citizens of Glendale. This will also provide special broadcast capabilities and messaging for public safety and other public uses. Revenue generated by the license agreement will be deposited into the General Fund.

On June 26, 2012, Council approved a Zoning Text Amendment (ZTA11-01) for digital billboards. This provided a new definition and enacts zoning regulations and established a set of development standards to regulate digital billboards along the Loop 101 in the Sports & Entertainment District.

The proposed license agreement is on a site located in the Sports & Entertainment District and Lamar Outdoor has agreed to comply with the provisions of the Zoning Ordinance.

Staff recommends that the license agreement be approved.

FISCAL IMPACTS

Terms of the license agreement are as follows:

- $10,416.67 per month base rent, per structure to be paid in advance ($500,000) for the first 48 months.
- Consumer Price Index will incur on month 49.
- 33% revenue share from annual gross billings from $125,001 to $500,000.
- 40% revenue share from annual gross billings of $500,001 and greater.
- 20-year lease agreement.
- All other terms and verbiage remain same from previous licensee agreements.

RESOLUTION NO. 4704 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENT WITH LAMAR CENTRAL OUTDOOR, LLC.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager or his designee is hereby authorized to execute and deliver a Digital Billboard Placement License Agreement with Lamar Central Outdoor, LLC, which is now on file with the City Clerk at the following location:

1. 7691 North 99th Avenue, Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No. 142-56-032.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2013.

_____
M A Y O R

ATTEST:

_____
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

REVIEWED BY:

_____
Acting City Manager

l_lamar_billboard_orangewood

Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**
Title:	**LAMAR OUTDOOR LICENSE AGREEMENT FOR 7691 NORTH 99TH AVENUE**
Staff Contact:	**Jon M. Froke, AICP, Planning Director**

AGREEMENT

Agreement is subject to final revisions and not available at the time of posting the meeting agenda; it will be provided separately and posted no later than 24 hours prior to the Council meeting.

DIGITAL BILLBOARD PLACEMENT
LICENSE AGREEMENT
(7691 North 99th Avenue)

This Digital Billboard Placement License Agreement ("Agreement") is entered and executed to be effective the ____ day of _____, 2013 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Lamar Central Outdoor, LLC, a Delaware limited liability company, registered and authorized to do business in the State of Arizona ("Licensee").

RECITALS

A. The City is the owner of certain real property located in the vicinity of Bethany Home Road and the Agua Fria Freeway (Loop 101), Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No. 142-56-032, within which the area more fully described in Exhibit A will be licensed for use pursuant to this Agreement ("License Area").

B. The Licensee desires to install, operate, maintain and repair digital billboard advertising equipment ("Billboard") in the described License Area and to construct certain improvements within the License Area, depicted in the Exhibits B and C, Conduit Area and Design Concept, respectively.

C. The City is willing to grant to the Licensee a license to use the License Area for the purpose stated subject to the requirements of this Agreement, subject to the guarantee of this agreement by Licensee's parent corporation, which is attached hereto as Exhibit D.

AGREEMENT

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration given, it is hereby agreed as follows:

1. License. The City grants to the Licensee the right to use the "License Area only for use as stated and subject to the provisions and conditions of this Agreement:

1.1 Billboard Area. During the term of this Agreement, Licensee will have access to and may locate one Digital Billboard and all supporting equipment enclosures used solely in connection with the Digital Billboard, within the License Area, all in accordance with the City of Glendale, Zoning Ordinance, Section 7.110.

1.2 Conduit Area. During the term of this Agreement, Licensee will have access to and may locate conduit and cable to provide electrical service and coaxial cabling to the Digital Billboard, as described in Exhibit B of this Agreement or as otherwise approved by the City.

1.3 Rights, Use Requirements and Restrictions

a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area.

b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.

c. Licensee may use the License Area only for constructing, installing, operating, maintaining, and repairing the Billboard and no other use.

d. Except for the Digital Billboard, Licensee must not install any signs in the License Area other than required safety warning signs or any other signs as are requested or approved by the City, and Licensee bears all costs pertaining to the erection, installation, maintenance, and removal of all signs.

e. Licensee must at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Area will have on other uses of the License Area. Licensee is aware that the License Area may be improved and utilized for parking.

f. Licensee may not remove, damage, or alter in any way any improvements or property of the City upon the License Area, whether currently existing or installed in the future, without the City's prior written approval.

g. Licensee must repair any damage or alteration to the License Area to the same condition that existed before the damage or alteration.

h. Licensee has non-exclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Digital Billboard, which right will be exercised so as to not unreasonably interfere with City operations.

1.4 "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice as the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 11.2, including any warranties or representations by the City as to its condition or fitness for any use.

1.6 Limitation on Grant. The parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.

1.7 Rights Reserved

a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area, including use of the License Area for parking. Licensee agrees that use of License Area for parking, including for any event held at the University of Phoenix Stadium, shall have precedence over any construction, installation and maintenance activities by Licensee.

b. If the City installs any fire, emergency or communication equipment in or near the License Area, the Licensee will take reasonable corrective measures to avoid interference problems between the Digital Billboard and the City's equipment.

c. Licensee will not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future.

1. If such interference does occur, the Licensee must immediately discontinue using the equipment, methodology or technology that

causes the interference until corrective measures are taken which must be made at no cost to the City.

2. City and the Licensee will use their best reasonable efforts to resolve immediately any interference problems, but if an interference problem is unavoidable, the City's right to use the City's own equipment remains paramount to any use of the License Area by the Licensee and Licensee has the right to terminate this Agreement without penalty.

d. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.

e. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services may, at their own cost:

1. Enter upon the License Area at any time to make repairs, replacements or alterations that, in the opinion of the City or the furnisher of utilities and other services, may be necessary or advisable and from time to time to construct or install over, in, or under the License Area systems or parts; and

2. In connection with any maintenance, use the License Area for access to other parts in and around the License Area; provided that in the exercise of these rights of access, repairs, alterations or new construction, the City does not unreasonably interfere with the use and occupancy of the License Area by the Licensee.

f. The exercise of any of the foregoing rights by the City or others does not constitute an eviction of the Licensee, nor be made the grounds for any abatement of rent, or any claim for damages.

2. Term

2.1 License Period. This Agreement is for a period of 240 months commencing on the Effective Date, unless sooner terminated as hereinafter set forth ("Commencement Date").

2.2 Initial Construction. Licensee must install and place into use the Digital Billboard in accordance with the specification set forth herein no later than December 31, 2013 or this Agreement will automatically terminate unless, for the purposes of completing construction, this completion date is extended by City in writing.

2.3 Surrender of Possession

a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in good condition; normal wear and tear excepted.

b. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area remains the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of 90 days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations and if Licensee repairs, at its sole cost, any damage caused by the removal.

c. Any property not removed by the Licensee within the 90-day period becomes a part of the License Area, and ownership vests in the City. Alternatively, the City may, at the Licensee's expense, have the property removed.

2.4 Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement, and the Licensee must pay the City twice the Monthly Rent (as defined below), with each month fully accruing after the first day of the month regardless of the actual number of days Licensee holds over during the month, plus any Royalty Payments (as defined below) accrued during the hold-over.

3. Rent, Royalty Payments

3.1 For its right to use the License Area, the Licensee must pay, without notice and free from all claims, deductions and setoffs against the City, rent and royalties as follows:

a. Monthly Rent.

1. The rent for the Licensed Area ("Monthly Rent") is as follows:

(i) For the first 48 months of the lease term $10,416.67 per month ($125,000 per annum), plus all applicable taxes.

(a) Licensee will prepay rent to City on or before the date this Agreement is last signed by the parties for the first 48 months in the amount of $500,000, plus applicable taxes.

(b) In the event this Agreement is terminated in accordance with the provisions set forth herein prior to the 49th month, the prepaid rent will be returned to Licensee within 60 days of the date of termination on a *pro rata* monthly basis calculated from the Commencement Date. Rent for any month where the Licensee used the License Area for at least one day shall not be returned.

(ii) On the first day of the 49th month, rent of $10,416.67 per month, plus all applicable taxes and subject to the Monthly Rent Adjustment set forth in § 3.2.

2. Licensee will pay the Monthly Rent and continue to pay the Monthly Rent on the first day of each following month until the expiration or earlier termination of this Agreement as set forth herein.

3. If the Monthly Rent is not received by the fifth day of any month, Licensee will pay an additional 5% of each Monthly Rent amount due and unpaid.

b. Royalty Payments. In addition to the Monthly Rent, during the term of this Agreement, Licensee must pay City each year on or before the 30th day after each anniversary of the Commencement Date a royalty ("Royalty Payment") equal to:

1. 33% of Total Revenue (as defined below) received during the previous 12 months for the use of the Digital Billboard that is greater than $125,000 and less than $500,000; and

2. 40% of Total Revenue (as defined below) received from the use or operation of the Digital Billboard that is $500,000 or greater, all generated from the previous year's use of the License Area.

3. "Total revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use of the License Area minus applicable taxes and any advertising agency commissions.

4. Licensee will pay an additional 5% of each Royalty Payment amount due and unpaid.

c. Audited Financial Statements Required. Licensee must submit annual GAAP-based, audited financial statements, which are certified by a licensed Certified Public Accountant (CPA), to verify each year's Total Revenue on which the Royalty Payments are calculated. The Audited Financial Statements must be submitted to the City with each year's Royalty Payment, on or before the30th day after each anniversary of the Commencement Date.

d. Referrals. Upon referral by City to Licensee of any other customer for Billboard advertising, City will receive on a quarterly basis 15% of the gross fee charged to the customer for Digital Billboard advertising. Referral fees, if any, will be paid on January 1, April 1, July 1, and October 1.

3.2 Monthly Rate Adjustment. The Monthly Rent due from Licensee to the City will increase annually based upon the Consumer Price Index – All Urban Consumers, U.S. city average, 1982-84=100 ("CPI") beginning upon the fourth anniversary of the Commencement Date, and be calculated and implemented as follows:

a. Adjustment to Monthly Rent is calculated as follows:

1. Beginning on the fourth anniversary of the Effective Date, subtract the published CPI for the anniversary month of the Effective Date from the previous year from the CPI for the anniversary month of the then current year;

2. Divide the result by the previous year CPI;

3. Multiply the resulting factor by the current rental rate to determine the amount of increase; then

4. Add the amount of increase to the then current rate to establish the rate that will become effective the first day of the first full month that is 45 days after the anniversary of the Effective Date.

b. Monthly Rent increases made in accordance with this section do not require notice to Licensee and become effective solely by operation of this provision.

3.3 Inspection and Audit. Upon request, City may inspect Licensee's business and financial records. Additionally, upon 15 days' notice, City may, at its expense, audit Licensee's financial records for the purpose of assuring compliance with this Agreement, the cost of which will be reimbursed to the City should any material non-compliance be found.

4. Licensee's Operations

4.1 Generally

a. Licensee must at all times have on-call and at the City's access an active, qualified, and experienced representative to supervise the Digital Billboard, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Digital Billboard. Licensee will

provide the City Engineer's Office with the names, addresses, and 24-hour telephone numbers of all such persons in writing.

b. Licensee must operate and maintain the License Area in an orderly and clean manner and all facilities and equipment in a well-maintained state at all times.

c. The Licensee is responsible for obtaining and paying for all utilities necessary to operate the Digital Billboard.

4.2 Improvements

a. Approvals

1. The Digital Billboard placed upon the License Area will be consistent in size, placement and design with the City of Glendale, Zoning Ordinance, Section 7.110, and is required to be submitted to and receive approval from the City Planning Department. No construction activities related to Digital Billboard placement in the License Area may commence before all Planning Department approval processes have been completed.

2. Licensee's ability to use the License Area on an on-going basis is contingent upon its obtaining, after the execution date of this Agreement, all of the required certificates, permits, and other approvals that may be required by any federal, state or local authorities (collectively "Governmental Approvals"), as well as satisfactory soil boring tests that sufficiently support the Licensee's intended use of the License Area. Licensee shall pay for all boring tests.

3. Prior to any construction upon the License Area, Licensee must obtain all necessary construction permits and complete all requirements of the permits prior to any use of the License Area.

4. After construction activity is complete, Licensee will restore the City's property to the satisfaction of the City Engineer, and if Licensee fails to restore the License Area as required, the City may take all actions necessary to restore the License Area, and the Licensee will pay all of City's reasonable costs of such restoration upon demand.

5. The following procedure governs Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:

(i) The Licensee will coordinate with the City as necessary on significant design issues prior to preparing plans being submitted.

(ii) Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' participation in designing and constructing the Licensee's Improvements. Each project manager will devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.

(iii) Licensee acknowledges that as of the date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements and no plans are considered approved until stamped "APPROVED" and dated by the City's project manager.

(iv) No final plans are considered approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City to the effect that all of Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification must be accompanied by and refer to any backup information and analysis as the City may reasonably require.

(v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other Governmental Approvals and to satisfy all governmental requirements pertaining to the project and will not rely on the City or the City's project manager for any of the same.

(vi) City's issuance of building permits does not constitute approval of any plans for purposes of this Agreement. City's project manager will be reasonably available to coordinate and assist Licensee in working through issues that may arise in connection with plan approvals and requirements.

(vii) Licensee when submitting plans will allow adequate time for all communications and plan revisions necessary to obtain approvals and schedule its performances and revise its plans as necessary to timely obtain all approvals.

(viii) The parties will use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues rests with the City.

(ix) Licensee is subject to all design review and sign permit fees as determined by the City's project manager.

b. Design, Labor and Materials

1. Licensee's Improvements must be designed and materials and labor purchased at the Licensee's sole expense.

2. All of Licensee's Improvements will be designed so as to present uniformity of design, function, appearance and quality throughout and consistent with other improvements located in or near the License Area.

3. Except as otherwise specifically provided for herein, in no event is the City obligated to compensate the Licensee in any manner for any of the Licensee's Improvements or other work provided by the Licensee during or related to this Agreement.

4. Licensee must timely pay for all labor, materials and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee.

5. All work performed on the License Area by the Licensee must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.

6. All of Licensee's Improvements must be high-quality, safe, modern in design and attractive in appearance, all as approved by the City in accordance with its standard policies and procedures.

7. Licensee must participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 et seq. regarding underground facilities, and the Licensee will submit proof of such participation to the City Engineer upon request.

c. Records. Licensee must keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of the improvements and any changes to the same.

d. Construction Bonds. Prior to the commencement of any construction in the License Area, Licensee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract for the construction to be performed on, in, and related to the License Area.

1. The payment bond will be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction work.

2. Each bond must be executed by a surety company duly authorized to do business in Arizona.

4.3 <u>Performance Bond</u>

a. In addition to any other bond required by this Agreement, Licensee must, no later than the Effective Date, provide to the City and maintain during the term of this Agreement a cash deposit, letter of credit, or performance bond in the amount of $250,000.

b. The performance bond, letter of credit, or the terms of a cash deposit will be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement.

c Any bond provided to fulfill the requirements of this section must be issued by a surety company duly authorized to do business in Arizona and which is acceptable to the City's Risk Manager.

d. Any letter of credit provided to fulfill the requirements of this section must be provided by a national bank authorized to do business in Arizona and the instrument must be structured such that it can be drawn upon by the City without the necessity of the countersignature of Licensee.

4.4 Maintenance of License Area

a. Licensee, at its own expense, is responsible for improvements to and maintenance of the License Area during the term of this Agreement.

b. Licensee, at its own expense, will use commercially reasonable efforts to minimize the collateral visual and aesthetic impacts of the Billboard, which will include, but not be limited to, replacing existing equipment with smaller equipment, decreasing the area used to house supporting equipment, or decreasing the size of any wireless communications equipment.

4.5 City Ad Placements. As consideration for the grant of this Agreement by the City, Licensee must also:

a. Accept and coordinate with City as part of any regular and routine ad placement on the Digital Billboard on-going ad placements by the City for City-related events ("City Placements");

1. City Placements will consist of one 8-second spot per minute on either side, but not both simultaneously, of the Digital Billboard.

2. City Placements will be at no additional cost to the City and will result in no setoff against Monthly Rent or Royalty.

b. Broadcast any message on the Billboard the City considers necessary for public safety; and

c. Receive, consider and promptly respond to any City objection to Digital Billboard advertising displayed in the License Area.

4.6 Co-Location

a. Licensee will use reasonable efforts to cooperate with the City and any third parties with regard to the possible co-location of additional facilities or equipment in the License Area.

1. If a co-location is feasible, City may, in its sole discretion, negotiate a co-location license agreement with any third party on terms the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement.

2. Licensee's approval for co-location is not required, provided that the City grants the co-locater no rights and is expressly prohibited from attaching to or coming into physical contact with equipment, facilities or structures Licensee has installed in the License area or visually impairs the operation of the Billboard.

3. Any rent or fees paid by an additional co-locator belong solely to the City.

4. If any third party desires to co-locate equipment or associated fixtures on Licensee's equipment, facilities or structures, the third-party carrier will be directed to Licensee in order to secure a separate agreement and the City will consider any necessary amendment to this Agreement.

b. Prior to permitting the installation by any third party in or around the License Area of any additional equipment which may interfere with the Licensee's operation of the Digital Billboard, City will give Licensee 30 days' notice so that the Licensee can determine if the third-party's equipment will interfere with the Billboard.

1. If Licensee determines that interference is likely to occur, Licensee may, within 30 days, give the City a detailed written explanation of the anticipated interference, including any supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position.

2. City and the Licensee will seek to resolve any interference problems before the City permits the third party to operate its proposed equipment.

3. If a third party is permitted to operate in or near the License Area, and the third-party's operations interfere with Licensee's Billboard (as operating and configured prior to the third-party operations beginning), then the City will direct the third party to remedy the interference within 72 hours and, if the interference is not resolved within this 72-hour period, then the third party will be required to cease its operations until the interference is resolved.

4. These same procedures apply to (i) any interference caused by Licensee with respect to equipment existing and as configured on the Commencement Date, and (ii) any licensee equipment existing on the Commencement Date which is later reconfigured so as to interfere with Licensee's Billboard.

4.7 Insurance

a. Licensee must procure and at all times maintain commercial general liability and property damage insurance in the minimum amount of $3,000,000 combined single limit for its operations in the License Area.

b. Insurance must be issued by a company authorized to provide coverage in Arizona and rated at least A- by AM Best and naming the City as an additional insured by endorsement with a requirement of 30 days' written notice to the City prior to cancellation for any reason.

c. The insurance must also include advertising and contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions.

d. Licensee's insurance must be primary and non-contributory with respect to all other available sources. Licensee must provide appropriate certificates and endorsements of insurance to the City for all insurance policies required by this section.

e. As commercially reasonable, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.

4.8 Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

5. Damage or Destruction. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of Licensee, except for such loss or damage as is caused by the negligence or fault of the City or its officers, employees or agents.

6. Indemnification and Limitation of Liability

6.1 Licensee will defend, indemnify and hold harmless the City, its officers and employees, and agents (collectively, the "City") from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or loss of any property, or that arise out of Licensee's operations, including the failure of the Licensee to comply with any provision of this Agreement.

a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault of City, be indemnified by Licensee against all losses, damages or claims. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to indemnify, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.

b. City may, but does not have the duty to, participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.

c. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's activities in the License Area.

6.2. Neither Party is liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data (except as provided herein), or interruption or loss of use of service (except as provided herein), even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

7. Taxes and Licenses

7.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.

7.2 If any law or judicial decision results in the imposition of a real property tax on the interest of the City, the tax must also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.

7.3 Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

8. Rules and Regulations. Licensee must at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee must display to the City, upon request, any permits, licenses or other evidence of compliance with all laws.

9. Termination

9.1 For Cause

a. Licensee may terminate this Agreement and any unaccrued pre-paid rent will be refunded or a pro-rata basis in the event of any of the following:

1. Applications for Governmental Approval are rejected;

2. Governmental Approval issued to Licensee by the City is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority;

3. Licensee reasonably determines that Governmental Approval may not be obtained in a timely manner;

4. Licensee reasonably determines that any soil boring tests are unsatisfactory;

5. Licensee reasonably determines that the License Area is no longer technically compatible for its use;

6. Licensee reasonably determines that it will be unable to use the License Area for its intended purposes.

7. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and the injunction remaining in force for a period of 30 consecutive days.

8. The inability of the Licensee to use any substantial portion of the License Area for a period of 30 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.

9. If the License Area or Digital Billboard is destroyed or damaged in either party's reasonable judgment to substantially and adversely affect the use of the Digital Billboard.

b. The City may terminate this Agreement and seek damages by giving Licensee 30 days' written notice after the happening of any of the following events:

1. The failure of Licensee to perform any of its obligations under this Agreement and such failure is not cured fully within the 30 days' notice period or, if the cure cannot reasonably be completed within the 30 days' notice period, then within 90 days from the date of the original notice; provided that Licensee must initiate the cure within the original 30 days' notice period and thereafter diligently pursue the cure;

2. The taking of possession for a period of 90 days or more of substantially all of the personal property used in the License Area belonging to the Licensee by or pursuant to final lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or

3. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.

c. The City may terminate this Agreement and seek any other remedy allowed by law or equity by giving the Licensee 15 days' written notice of the Licensee's failure to timely pay rent or any other charges required to be paid by the Licensee pursuant to this Agreement.

d. The City may terminate this Agreement if the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, immediately terminate this Agreement or alternatively and at it sole discretion, secure the required insurance at Licensee's expense, which will be immediately due and payable.

9.2 Without Cause. Each party may, in its sole discretion and without cause, terminate this Agreement by giving the other party written notice one year prior to the termination date, and in the event the City terminates without cause:

a. Any prepaid Monthly Rent will be reimbursed to Licensee on a prorated basis.

b. Licensee's actual capital cost directly related to equipment that is located on the License Area that cannot be removed for other use or salvage will be reimbursed to Licensee using a straight-line depreciation method calculated over the lesser of the equipment's useful life or the term of this Agreement, less any salvage value.

9.3 Upon termination, Licensee will immediately pay to the City any due and unpaid Monthly Rental Payments and Royalty Payments.

9.4 Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns, and all others similarly situated as to the License Area.

10. Default

10.1 Licensee's sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages.

10.2 Failure by a party to take any authorized action upon default by the other party of any of the other party's obligations does not constitute a waiver of the default nor of any subsequent default by the other party.

10.3 Acceptance of rent and other fees by the City under the terms of this Agreement for any period after a default by the Licensee of any of its obligations is not considered waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

11. City's Representations and Warranties. The City represents and warrants to the Licensee that:

11.1 It has full right, power, and authority to execute this Agreement;

11.2 The City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with the Licensee's right to use the License Area; and

11.3 The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

12. Hazardous Waste

12.1 Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona

Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

12.2 Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.

12.3 Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.

12.4 Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

13. Notice

13.1 Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

To the City: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

with a copy to: City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

To the Licensee: Lamar Central Outdoor Advertising, L.L.C.
1661 E. Camelback Ste. 320
Phoenix, Arizona 85016

13.2 Any notice given by certified mail is considered received on the third business day after the date of mailing.

13.3 Either party may designate in writing a different address for notice purposes pursuant to this section.

14. Assignment

14. l Licensee may assign this Agreement, upon 30 days' written notice to the City and upon City's written consent, which may not be unreasonably withheld, conditioned or delayed. City may as a condition of consent, require that any assignee submit biographical and financial information to the City at least 30 days prior to any the assignment of Licensee's interest under this Agreement.

14.2 Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and Digital Billboard, and may assign this Agreement and Digital Billboard to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In this event, City will execute consent to leasehold or

other financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in the real property of the License Area.

14.3 Subject to subsections 14.1 and 14.2, Licensee may not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

15. Severability. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

16. Litigation. This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

17. Immigration Law Compliance

17.1 Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

17.2 Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

17.3 City retains the legal right to inspect the papers of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.

17.4 City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

17.5 Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

17.6 Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

17.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

18. Foreign Prohibitions. Licensee certifies to the extent applicable under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, nor during the term of this Agreement will have,

"scrutinized" business operations, as defined in the preceding sections, in the countries of Sudan or Iran.

19. **Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

20. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning all related matters. This Agreement will be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

[*Signatures appear on the following pages*]

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE, an Arizona municipal corporation

_____
Richard Bowers, Acting City Manager

Date: _____

ATTEST:

_____
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company

_____
By: Christina Butler
Its: Vice President/General Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING, L.L.C.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

Description of License Area

EXHIBIT B

Electrical Service and Coaxial Cabling

EXHIBIT C

Design Concept

EXHIBIT D

Corporate Parent Guarantee

In order to induce City to enter into the Digital Billboard Placement License Agreement (the "License") by and between the City of Glendale, an Arizona municipal corporation ("City") and LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company ("Lamar"), _____, LLC, an _____ ("Parent"), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Lamar, and as the managing member of Lamar, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Lamar arising under or relating to the License.

1. Parent's obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Lamar before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty.

2. If City, for any reason, seeks to enforce Parent's compliance with the provisions of this Guaranty, the same rights and remedies and choice of law provisions as are included in the License shall apply.

3. In addition, for the City benefit and as consideration for the License, Parent hereby makes the same representations and warranties as to Parent as those made by Lamar in the License, except that Parent represents that it is a _____ duly formed and validly existing under the laws of the State [Commonwealth] of _____.

4. Notices given to Parent shall be delivered and deemed received in the same manner as set forth in the Notice section of the License. Parent acknowledges that it has received a copy of the License.

5. This Guaranty shall continue in full force and effect until all obligations of Lamar under the License have been paid or performed in full.

6. Parent agrees that its obligations pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Parent shall have any knowledge thereof):

    a. any termination, amendment, modification or other change in the License;

    b. any failure, omission or delay on the part of City to conform or comply with any term of the License;

    c. any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the License;

    d. any dissolution of Parent or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Lamar, Parent, or any other guarantor of Lamar's obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

    e. any merger or consolidation of Lamar, Parent, or any other guarantor of Lamar's obligations into or with any person, or any sale, lease or transfer of any of the assets of Lamar, Parent or any other guarantor of Lamar's obligations to any other person; or

    f. any change in the ownership of the capital stock or equity ownership of Lamar, Parent, or any other guarantor of Lamar's obligations or any change in the relationship between Lamar, Parent, or any other guarantor of the License obligations, or any termination of

any such relationship.

7. Parent waives any defense arising by reason of any disability or other defense of Lamar or by reason of the cessation from any cause whatsoever of the liability of Lamar.

8. Lamar waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date of the foregoing License.

_____, a _____
_____

_____
By: _____
Its: _____

Date: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____in his/her capacity as authorized representative of _____

_____
Notary Public

My Commission Expires:

_____

LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company

_____
By: Christina Butler
Its: Vice President/General Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING, L.L.C.

_____
Notary Public

My Commission Expires:

_____

CITY COUNCIL REPORT

Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**
Title:	**LAMAR OUTDOOR LICENSE AGREEMENT FOR 9802 WEST BETHANY HOME ROAD**
Staff Contact:	**Jon M. Froke, AICP, Planning Director**

Purpose and Recommended Action

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a license agreement with Lamar Outdoor for the placement of a digital billboard on city-owned land.

Staff is requesting Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a license agreement.

Background Summary

The site is located at 9802 West Bethany Home Road. The site is vacant and is located on the west side of the Loop 101.

Staff has been working with Lamar Outdoor to bring these two license agreements forward for Council consideration.

Previous Related Council Action

In January 2009, staff began negotiations for an outdoor advertising agency to install, operate, maintain and repair digital billboards on city owned land located in the vicinity of Glendale Avenue and Loop 101 and to construct certain improvements. The licenses grant the advertiser the uses and responsibilities above and place no responsibility on the city for maintenance, repairs or operations.

On March 24, 2009, Council approved an authorization to enter into a digital billboard placement license agreement with American Outdoor Advertising. American constructed two digital billboards on the Park & Ride Lot. In 2012 Lamar Outdoor bought the assets of American and assumed the position as the City's business partner relative to digital billboards. The 2009 agreement made provisions for five locations.

On December 22, 2009, Council adopted a resolution authorizing the City Manager to enter into five license agreements at locations on the Loop 101 in the Sports & Entertainment District.

This is one of two final locations that will complete the license agreements with Lamar Outdoor. It has been mutually agreed upon that both parties will not pursue the site located at 9802 West Camelback Road.

Community Benefit/Public Involvement

Entering into this license agreement will provide an additional revenue stream to the General Fund. This can generate resources to pay for needed services to benefit the citizens of Glendale. This will also provide special broadcast capabilities and messaging for public safety and other public uses. Revenue generated by the license agreement will be deposited in the General Fund.

On June 26, 2012, Council approved a Zoning Text Amendment (ZTA11-01) for digital billboards. This provided a new definition and enacts zoning regulations and established a set of development standards to regulate digital billboards along the Loop 101 in the Sports & Entertainment District.

The proposed license agreement is on a site located in the Sports & Entertainment District and Lamar Outdoor has agreed to comply with the provisions of the Zoning Ordinance.

Staff recommends that the license agreement be approved.

Budget and Financial Impacts

Terms of the license agreement are as follows:

- $10,416.67 per month base rent, per structure to be paid in advance ($500,000) for the first 48 months.
- Consumer Price Index will incur on month 49.
- 33% revenue share from annual gross billings from $125,001 to $500,000.
- 40% revenue share from annual gross billings of $500,001 and greater.
- 20-year lease agreement.
- All other terms and verbiage remain same from previous license agreements.

Attachments

Staff Report

Resolution

Agreement

STAFF REPORT

To:	**Richard A. Bowers, Acting City Manager**
From:	**Jon M. Froke, AICP, Planning Director**
Item Title:	**LAMAR OUTDOOR LICENSE AGREEMENT FOR 9802 WEST BETHANY HOME ROAD**
Requested Council Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**

PURPOSE

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a license agreement with Lamar Outdoor for the placement of a digital billboard on city-owned land. The site is located at 9802 West Bethany Home Road. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

In January 2009, staff began negotiations for an outdoor advertising agency to install, operate, maintain and repair digital billboards on city owned land located in the vicinity of Glendale Avenue and Loop 101 and to construct certain improvements. The licenses grant the advertiser the uses and responsibilities above and place no responsibility on the city for maintenance, repairs or operations.

On March 24, 2009, Council approved an authorization to enter into a digital billboard placement license agreement in the vicinity of Glendale Avenue and the Loop 101 for five locations. This is one of two final locations that will complete the license agreements with Lamar Outdoor. It has been mutually agreed upon that both parties will not pursue the site located at 9802 West Camelback Road.

On December 22, 2009, Council adopted a resolution authorizing the City Manager to enter into five license agreements at locations on the Loop 101 in the Sports & Entertainment District.

ANALYSIS

Entering into this license agreement will provide an additional revenue stream to the General Fund. This can generate resources to pay for needed services to benefit the citizens of Glendale. This will also provide special broadcast capabilities and messaging for public safety and other public uses. Revenue generated by the license agreement will be deposited into the General Fund.

On June 26, 2012, Council approved a Zoning Text Amendment (ZTA11-01) for digital billboards. This provided a new definition and enacts zoning regulations and established a set of development standards to regulate digital billboards along the Loop 101 in the Sports & Entertainment District.

The proposed license agreements are on sites located in the Sports & Entertainment District and Lamar Outdoor has agreed to comply with the provisions of the Zoning Ordinance.

Staff recommends that the license agreement be approved.

FISCAL IMPACTS

Terms of the license agreement are as follows:

- $10,416.67 per month base rent, per structure to be paid in advance ($500,000) for the first 48 months.
- Consumer Price Index will incur on month 49.
- 33% revenue share from annual gross billings from $125,001 to $500,000.
- 40% revenue share from annual gross billings of $500,001 and greater.
- 20-year lease agreement.
- All other terms and verbiage remain same from previous licensee agreements.

RESOLUTION NO. 4705 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENT WITH LAMAR CENTRAL OUTDOOR, LLC.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager or his designee is hereby authorized to execute and deliver a Digital Billboard Placement License Agreement with Lamar Central Outdoor, LLC, which is now on file with the City Clerk for the following location:

1. 9802 West Bethany Home Road, Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No. 102-01-010M.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2013.

_____
M A Y O R

ATTEST:

_____
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

REVIEWED BY:

_____
Acting City Manager

l_lamar_billboard_bhr

Meeting Date:	**7/2/2013**
Meeting Type:	**Voting**
Title:	**LAMAR OUTDOOR LICENSE AGREEMENT FOR 9802 WEST BETHANY HOME ROAD**
Staff Contact:	**Jon M. Froke, AICP, Planning Director**

AGREEMENT

Agreement is subject to final revisions and not available at the time of posting the meeting agenda; it will be provided separately and posted no later than 24 hours prior to the Council meeting.

DIGITAL BILLBOARD PLACEMENT
LICENSE AGREEMENT
(9802 West Bethany Home Road)

This Digital Billboard Placement License Agreement ("Agreement") is entered and executed to be effective the ____ day of _____, 2013 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Lamar Central Outdoor, LLC, a Delaware limited liability company, registered and authorized to do business in the State of Arizona ("Licensee").

RECITALS

A. The City is the owner of certain real property located in the vicinity of Bethany Home Road and the Agua Fria Freeway (Loop 101), Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No.102-01-010M, within which the area more fully described in Exhibit A will be licensed for use pursuant to this Agreement ("License Area").

B. The Licensee desires to install, operate, maintain and repair digital billboard advertising equipment ("Billboard") in the described License Area and to construct certain improvements within the License Area, depicted in the Exhibits B and C, Conduit Area and Design Concept, respectively.

C. The City is willing to grant to the Licensee a license to use the License Area for the purpose stated subject to the requirements of this Agreement, subject to the guarantee of this agreement by Licensee's parent corporation, which is attached hereto as Exhibit D.

AGREEMENT

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration given, it is hereby agreed as follows:

1. License. The City grants to the Licensee the right to use the "License Area only for use as stated and subject to the provisions and conditions of this Agreement:

1.1 Billboard Area. During the term of this Agreement, Licensee will have access to and may locate one Digital Billboard and all supporting equipment enclosures used solely in connection with the Digital Billboard, within the License Area, all in accordance with the City of Glendale, Zoning Ordinance, Section 7.110.

1.2 Conduit Area. During the term of this Agreement, Licensee will have access to and may locate conduit and cable to provide electrical service and coaxial cabling to the Digital Billboard, as described in Exhibit B of this Agreement or as otherwise approved by the City.

1.3 Rights, Use Requirements and Restrictions

a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area.

b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.

c. Licensee may use the License Area only for constructing, installing, operating, maintaining, and repairing the Billboard and no other use.

d. Except for the Digital Billboard, Licensee must not install any signs in the License Area other than required safety warning signs or any other signs as are requested or approved by the City, and Licensee bears all costs pertaining to the erection, installation, maintenance, and removal of all signs.

e. Licensee must at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Area will have on other uses of the License Area. Licensee is aware that the License Area may be improved and utilized for parking.

f. Licensee may not remove, damage, or alter in any way any improvements or property of the City upon the License Area, whether currently existing or installed in the future, without the City's prior written approval.

g. Licensee must repair any damage or alteration to the License Area to the same condition that existed before the damage or alteration.

h. Licensee has non-exclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Digital Billboard, which right will be exercised so as to not unreasonably interfere with City operations.

1.4 "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice as the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 11.2, including any warranties or representations by the City as to its condition or fitness for any use.

1.6 Limitation on Grant. The parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.

1.7 Rights Reserved

a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area, including use of the License Area for parking. Licensee agrees that use of License Area for parking, including for any event held at the University of Phoenix Stadium, shall have precedence over any construction, installation and maintenance activities by Licensee.

b. If the City installs any fire, emergency or communication equipment in or near the License Area, the Licensee will take reasonable corrective measures to avoid interference problems between the Digital Billboard and the City's equipment.

c. Licensee will not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future.

1. If such interference does occur, the Licensee must immediately discontinue using the equipment, methodology or technology that

causes the interference until corrective measures are taken which must be made at no cost to the City.

2. City and the Licensee will use their best reasonable efforts to resolve immediately any interference problems, but if an interference problem is unavoidable, the City's right to use the City's own equipment remains paramount to any use of the License Area by the Licensee and Licensee has the right to terminate this Agreement without penalty.

d. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.

e. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services may, at their own cost:

1. Enter upon the License Area at any time to make repairs, replacements or alterations that, in the opinion of the City or the furnisher of utilities and other services, may be necessary or advisable and from time to time to construct or install over, in, or under the License Area systems or parts; and

2. In connection with any maintenance, use the License Area for access to other parts in and around the License Area; provided that in the exercise of these rights of access, repairs, alterations or new construction, the City does not unreasonably interfere with the use and occupancy of the License Area by the Licensee.

f. The exercise of any of the foregoing rights by the City or others does not constitute an eviction of the Licensee, nor be made the grounds for any abatement of rent, or any claim for damages.

2. Term

2.1 License Period. This Agreement is for a period of 240 months commencing on the Effective Date, unless sooner terminated as hereinafter set forth ("Commencement Date").

2.2 Initial Construction. Licensee must install and place into use the Digital Billboard in accordance with the specification set forth herein no later than December 31, 2013 or this Agreement will automatically terminate unless, for the purposes of completing construction, this completion date is extended by City in writing.

2.3 Surrender of Possession

a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in good condition; normal wear and tear excepted.

b. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area remains the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of 90 days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations and if Licensee repairs, at its sole cost, any damage caused by the removal.

c. Any property not removed by the Licensee within the 90-day period becomes a part of the License Area, and ownership vests in the City. Alternatively, the City may, at the Licensee's expense, have the property removed.

2.4 Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement, and the Licensee must pay the City twice the Monthly Rent (as defined below), with each month fully accruing after the first day of the month regardless of the actual number of days Licensee holds over during the month, plus any Royalty Payments (as defined below) accrued during the hold-over.

3. Rent, Royalty Payments

3.1 For its right to use the License Area, the Licensee must pay, without notice and free from all claims, deductions and setoffs against the City, rent and royalties as follows:

a. Monthly Rent.

1. The rent for the Licensed Area ("Monthly Rent") is as follows:

(i) For the first 48 months of the lease term $10,416.67 per month ($125,000 per annum), plus all applicable taxes.

(a) Licensee will prepay rent to City on or before the date this Agreement is last signed by the parties for the first 48 months in the amount of $500,000, plus applicable taxes.

(b) In the event this Agreement is terminated in accordance with the provisions set forth herein prior to the 49th month, the prepaid rent will be returned to Licensee within 60 days of the date of termination on a *pro rata* monthly basis calculated from the Commencement Date. Rent for any month where the Licensee used the License Area for at least one day shall not be returned.

(ii) On the first day of the 49th month, rent of $10,416.67 per month, plus all applicable taxes and subject to the Monthly Rent Adjustment set forth in § 3.2.

2. Licensee will pay the Monthly Rent and continue to pay the Monthly Rent on the first day of each following month until the expiration or earlier termination of this Agreement as set forth herein.

3. If the Monthly Rent is not received by the fifth day of any month, Licensee will pay an additional 5% of each Monthly Rent amount due and unpaid.

b. Royalty Payments. In addition to the Monthly Rent, during the term of this Agreement, Licensee must pay City each year on or before the 30th day after each anniversary of the Commencement Date a royalty ("Royalty Payment") equal to:

1. 33% of Total Revenue (as defined below) received during the previous 12 months for the use of the Digital Billboard that is greater than $125,000 and less than $500,000; and

2. 40% of Total Revenue (as defined below) received from the use or operation of the Digital Billboard that is $500,000 or greater, all generated from the previous year's use of the License Area.

3. "Total revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use of the License Area minus applicable taxes and any advertising agency commissions.

4. Licensee will pay an additional 5% of each Royalty Payment amount due and unpaid.

c. Audited Financial Statements Required. Licensee must submit annual GAAP-based, audited financial statements, which are certified by a licensed Certified Public Accountant (CPA), to verify each year's Total Revenue on which the Royalty Payments are calculated. The Audited Financial Statements must be submitted to the City with each year's Royalty Payment, on or before the30th day after each anniversary of the Commencement Date.

d. Referrals. Upon referral by City to Licensee of any other customer for Billboard advertising, City will receive on a quarterly basis 15% of the gross fee charged to the customer for Digital Billboard advertising. Referral fees, if any, will be paid on January 1, April 1, July 1, and October 1.

3.2 Monthly Rate Adjustment. The Monthly Rent due from Licensee to the City will increase annually based upon the Consumer Price Index – All Urban Consumers, U.S. city average, 1982-84=100 ("CPI") beginning upon the fourth anniversary of the Commencement Date, and be calculated and implemented as follows:

a. Adjustment to Monthly Rent is calculated as follows:

1. Beginning on the fourth anniversary of the Effective Date, subtract the published CPI for the anniversary month of the Effective Date from the previous year from the CPI for the anniversary month of the then current year;

2. Divide the result by the previous year CPI;

3. Multiply the resulting factor by the current rental rate to determine the amount of increase; then

4. Add the amount of increase to the then current rate to establish the rate that will become effective the first day of the first full month that is 45 days after the anniversary of the Effective Date.

b. Monthly Rent increases made in accordance with this section do not require notice to Licensee and become effective solely by operation of this provision.

3.3 Inspection and Audit. Upon request, City may inspect Licensee's business and financial records. Additionally, upon 15 days' notice, City may, at its expense, audit Licensee's financial records for the purpose of assuring compliance with this Agreement, the cost of which will be reimbursed to the City should any material non-compliance be found.

4. Licensee's Operations

4.1 Generally

a. Licensee must at all times have on-call and at the City's access an active, qualified, and experienced representative to supervise the Digital Billboard, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Digital Billboard. Licensee will

provide the City Engineer's Office with the names, addresses, and 24-hour telephone numbers of all such persons in writing.

b. Licensee must operate and maintain the License Area in an orderly and clean manner and all facilities and equipment in a well-maintained state at all times.

c. The Licensee is responsible for obtaining and paying for all utilities necessary to operate the Digital Billboard.

4.2 Improvements

a. Approvals

1. The Digital Billboard placed upon the License Area will be consistent in size, placement and design with the City of Glendale, Zoning Ordinance, Section 7.110, and is required to be submitted to and receive approval from the City Planning Department. No construction activities related to Digital Billboard placement in the License Area may commence before all Planning Department approval processes have been completed.

2. Licensee's ability to use the License Area on an on-going basis is contingent upon its obtaining, after the execution date of this Agreement, all of the required certificates, permits, and other approvals that may be required by any federal, state or local authorities (collectively "Governmental Approvals"), as well as satisfactory soil boring tests that sufficiently support the Licensee's intended use of the License Area. Licensee shall pay for all boring tests.

3. Prior to any construction upon the License Area, Licensee must obtain all necessary construction permits and complete all requirements of the permits prior to any use of the License Area.

4. After construction activity is complete, Licensee will restore the City's property to the satisfaction of the City Engineer, and if Licensee fails to restore the License Area as required, the City may take all actions necessary to restore the License Area, and the Licensee will pay all of City's reasonable costs of such restoration upon demand.

5. The following procedure governs Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:

(i) The Licensee will coordinate with the City as necessary on significant design issues prior to preparing plans being submitted.

(ii) Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' participation in designing and constructing the Licensee's Improvements. Each project manager will devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.

(iii) Licensee acknowledges that as of the date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements and no plans are considered approved until stamped "APPROVED" and dated by the City's project manager.

(iv) No final plans are considered approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City to the effect that all of Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification must be accompanied by and refer to any backup information and analysis as the City may reasonably require.

(v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other Governmental Approvals and to satisfy all governmental requirements pertaining to the project and will not rely on the City or the City's project manager for any of the same.

(vi) City's issuance of building permits does not constitute approval of any plans for purposes of this Agreement. City's project manager will be reasonably available to coordinate and assist Licensee in working through issues that may arise in connection with plan approvals and requirements.

(vii) Licensee when submitting plans will allow adequate time for all communications and plan revisions necessary to obtain approvals and schedule its performances and revise its plans as necessary to timely obtain all approvals.

(viii) The parties will use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues rests with the City.

(ix) Licensee is subject to all design review and sign permit fees as determined by the City's project manager.

b. Design, Labor and Materials

1. Licensee's Improvements must be designed and materials and labor purchased at the Licensee's sole expense.

2. All of Licensee's Improvements will be designed so as to present uniformity of design, function, appearance and quality throughout and consistent with other improvements located in or near the License Area.

3. Except as otherwise specifically provided for herein, in no event is the City obligated to compensate the Licensee in any manner for any of the Licensee's Improvements or other work provided by the Licensee during or related to this Agreement.

4. Licensee must timely pay for all labor, materials and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee.

5. All work performed on the License Area by the Licensee must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.

6. All of Licensee's Improvements must be high-quality, safe, modern in design and attractive in appearance, all as approved by the City in accordance with its standard policies and procedures.

7. Licensee must participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 et seq. regarding underground facilities, and the Licensee will submit proof of such participation to the City Engineer upon request.

c. Records. Licensee must keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of the improvements and any changes to the same.

d. Construction Bonds. Prior to the commencement of any construction in the License Area, Licensee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract for the construction to be performed on, in, and related to the License Area.

1. The payment bond will be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction work.

2. Each bond must be executed by a surety company duly authorized to do business in Arizona.

4.3 <u>Performance Bond</u>

a. In addition to any other bond required by this Agreement, Licensee must, no later than the Effective Date, provide to the City and maintain during the term of this Agreement a cash deposit, letter of credit, or performance bond in the amount of $250,000.

b. The performance bond, letter of credit, or the terms of a cash deposit will be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement.

c Any bond provided to fulfill the requirements of this section must be issued by a surety company duly authorized to do business in Arizona and which is acceptable to the City's Risk Manager.

d. Any letter of credit provided to fulfill the requirements of this section must be provided by a national bank authorized to do business in Arizona and the instrument must be structured such that it can be drawn upon by the City without the necessity of the countersignature of Licensee.

4.4 Maintenance of License Area

a. Licensee, at its own expense, is responsible for improvements to and maintenance of the License Area during the term of this Agreement.

b. Licensee, at its own expense, will use commercially reasonable efforts to minimize the collateral visual and aesthetic impacts of the Billboard, which will include, but not be limited to, replacing existing equipment with smaller equipment, decreasing the area used to house supporting equipment, or decreasing the size of any wireless communications equipment.

4.5 City Ad Placements. As consideration for the grant of this Agreement by the City, Licensee must also:

a. Accept and coordinate with City as part of any regular and routine ad placement on the Digital Billboard on-going ad placements by the City for City-related events ("City Placements");

1. City Placements will consist of one 8-second spot per minute on either side, but not both simultaneously, of the Digital Billboard.

2. City Placements will be at no additional cost to the City and will result in no setoff against Monthly Rent or Royalty.

b. Broadcast any message on the Billboard the City considers necessary for public safety; and

c. Receive, consider and promptly respond to any City objection to Digital Billboard advertising displayed in the License Area.

4.6 Co-Location

a. Licensee will use reasonable efforts to cooperate with the City and any third parties with regard to the possible co-location of additional facilities or equipment in the License Area.

1. If a co-location is feasible, City may, in its sole discretion, negotiate a co-location license agreement with any third party on terms the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement.

2. Licensee's approval for co-location is not required, provided that the City grants the co-locater no rights and is expressly prohibited from attaching to or coming into physical contact with equipment, facilities or structures Licensee has installed in the License area or visually impairs the operation of the Billboard.

3. Any rent or fees paid by an additional co-locator belong solely to the City.

4. If any third party desires to co-locate equipment or associated fixtures on Licensee's equipment, facilities or structures, the third-party carrier will be directed to Licensee in order to secure a separate agreement and the City will consider any necessary amendment to this Agreement.

b. Prior to permitting the installation by any third party in or around the License Area of any additional equipment which may interfere with the Licensee's operation of the Digital Billboard, City will give Licensee 30 days' notice so that the Licensee can determine if the third-party's equipment will interfere with the Billboard.

1. If Licensee determines that interference is likely to occur, Licensee may, within 30 days, give the City a detailed written explanation of the anticipated interference, including any supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position.

2. City and the Licensee will seek to resolve any interference problems before the City permits the third party to operate its proposed equipment.

3. If a third party is permitted to operate in or near the License Area, and the third-party's operations interfere with Licensee's Billboard (as operating and configured prior to the third-party operations beginning), then the City will direct the third party to remedy the interference within 72 hours and, if the interference is not resolved within this 72-hour period, then the third party will be required to cease its operations until the interference is resolved.

4. These same procedures apply to (i) any interference caused by Licensee with respect to equipment existing and as configured on the Commencement Date, and (ii) any licensee equipment existing on the Commencement Date which is later reconfigured so as to interfere with Licensee's Billboard.

4.7 Insurance

a. Licensee must procure and at all times maintain commercial general liability and property damage insurance in the minimum amount of $3,000,000 combined single limit for its operations in the License Area.

b. Insurance must be issued by a company authorized to provide coverage in Arizona and rated at least A- by AM Best and naming the City as an additional insured by endorsement with a requirement of 30 days' written notice to the City prior to cancellation for any reason.

c. The insurance must also include advertising and contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions.

d. Licensee's insurance must be primary and non-contributory with respect to all other available sources. Licensee must provide appropriate certificates and endorsements of insurance to the City for all insurance policies required by this section.

e. As commercially reasonable, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.

4.8 Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

5. Damage or Destruction. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of Licensee, except for such loss or damage as is caused by the negligence or fault of the City or its officers, employees or agents.

6. Indemnification and Limitation of Liability

6.1 Licensee will defend, indemnify and hold harmless the City, its officers and employees, and agents (collectively, the "City") from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or loss of any property, or that arise out of Licensee's operations, including the failure of the Licensee to comply with any provision of this Agreement.

a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault of City, be indemnified by Licensee against all losses, damages or claims. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to indemnify, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.

b. City may, but does not have the duty to, participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.

c. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's activities in the License Area.

6.2. Neither Party is liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data (except as provided herein), or interruption or loss of use of service (except as provided herein), even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

7. Taxes and Licenses

7.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.

7.2 If any law or judicial decision results in the imposition of a real property tax on the interest of the City, the tax must also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.

7.3 Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

8. Rules and Regulations. Licensee must at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee must display to the City, upon request, any permits, licenses or other evidence of compliance with all laws.

9. Termination

9.1 For Cause

a. Licensee may terminate this Agreement and any unaccrued pre-paid rent will be refunded or a pro-rata basis in the event of any of the following:

1. Applications for Governmental Approval are rejected;

2. Governmental Approval issued to Licensee by the City is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority;

3. Licensee reasonably determines that Governmental Approval may not be obtained in a timely manner;

4. Licensee reasonably determines that any soil boring tests are unsatisfactory;

5. Licensee reasonably determines that the License Area is no longer technically compatible for its use;

6. Licensee reasonably determines that it will be unable to use the License Area for its intended purposes.

7. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and the injunction remaining in force for a period of 30 consecutive days.

8. The inability of the Licensee to use any substantial portion of the License Area for a period of 30 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.

9. If the License Area or Digital Billboard is destroyed or damaged in either party's reasonable judgment to substantially and adversely affect the use of the Digital Billboard.

b. The City may terminate this Agreement and seek damages by giving Licensee 30 days' written notice after the happening of any of the following events:

1. The failure of Licensee to perform any of its obligations under this Agreement and such failure is not cured fully within the 30 days' notice period or, if the cure cannot reasonably be completed within the 30 days' notice period, then within 90 days from the date of the original notice; provided that Licensee must initiate the cure within the original 30 days' notice period and thereafter diligently pursue the cure;

2. The taking of possession for a period of 90 days or more of substantially all of the personal property used in the License Area belonging to the Licensee by or pursuant to final lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or

3. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.

c. The City may terminate this Agreement and seek any other remedy allowed by law or equity by giving the Licensee 15 days' written notice of the Licensee's failure to timely pay rent or any other charges required to be paid by the Licensee pursuant to this Agreement.

d. The City may terminate this Agreement if the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, immediately terminate this Agreement or alternatively and at it sole discretion, secure the required insurance at Licensee's expense, which will be immediately due and payable.

9.2 Without Cause. Each party may, in its sole discretion and without cause, terminate this Agreement by giving the other party written notice one year prior to the termination date, and in the event the City terminates without cause:

a. Any prepaid Monthly Rent will be reimbursed to Licensee on a prorated basis.

b. Licensee's actual capital cost directly related to equipment that is located on the License Area that cannot be removed for other use or salvage will be reimbursed to Licensee using a straight-line depreciation method calculated over the lesser of the equipment's useful life or the term of this Agreement, less any salvage value.

9.3 Upon termination, Licensee will immediately pay to the City any due and unpaid Monthly Rental Payments and Royalty Payments.

9.4 Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns, and all others similarly situated as to the License Area.

10. Default

10.1 Licensee's sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages.

10.2 Failure by a party to take any authorized action upon default by the other party of any of the other party's obligations does not constitute a waiver of the default nor of any subsequent default by the other party.

10.3 Acceptance of rent and other fees by the City under the terms of this Agreement for any period after a default by the Licensee of any of its obligations is not considered waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

11. City's Representations and Warranties. The City represents and warrants to the Licensee that:

11.1 It has full right, power, and authority to execute this Agreement;

11.2 The City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with the Licensee's right to use the License Area; and

11.3 The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

12. Hazardous Waste

12.1 Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona

Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

12.2 Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.

12.3 Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.

12.4 Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

13. Notice

13.1 Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

To the City: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

with a copy to: City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

To the Licensee: Lamar Central Outdoor Advertising, L.L.C.
1661 E. Camelback Ste. 320
Phoenix, Arizona 85016

13.2 Any notice given by certified mail is considered received on the third business day after the date of mailing.

13.3 Either party may designate in writing a different address for notice purposes pursuant to this section.

14. Assignment

14. l Licensee may assign this Agreement, upon 30 days' written notice to the City and upon City's written consent, which may not be unreasonably withheld, conditioned or delayed. City may as a condition of consent, require that any assignee submit biographical and financial information to the City at least 30 days prior to any the assignment of Licensee's interest under this Agreement.

14.2 Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and Digital Billboard, and may assign this Agreement and Digital Billboard to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In this event, City will execute consent to leasehold or

other financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in the real property of the License Area.

14.3 Subject to subsections 14.1 and 14.2, Licensee may not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

15. Severability. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

16. Litigation. This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

17. Immigration Law Compliance

17.1 Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

17.2 Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

17.3 City retains the legal right to inspect the papers of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.

17.4 City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

17.5 Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

17.6 Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

17.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

18. Foreign Prohibitions. Licensee certifies to the extent applicable under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, nor during the term of this Agreement will have,

"scrutinized" business operations, as defined in the preceding sections, in the countries of Sudan or Iran.

19. **Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

20. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning all related matters. This Agreement will be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

[*Signatures appear on the following pages*]

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE, an Arizona municipal corporation

_____
Richard Bowers, Acting City Manager

Date: _____

ATTEST:

_____
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Acting City Attorney

LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company

_____
By: Christina Butler
Its: Vice President/General Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING, L.L.C.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

Description of License Area

EXHIBIT B

Electrical Service and Coaxial Cabling

EXHIBIT C

Design Concept

EXHIBIT D

Corporate Parent Guarantee

In order to induce City to enter into the Digital Billboard Placement License Agreement (the "License") by and between the City of Glendale, an Arizona municipal corporation ("City") and LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company ("Lamar"), _____, LLC, an _____ ("Parent"), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Lamar, and as the managing member of Lamar, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Lamar arising under or relating to the License.

1. Parent's obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Lamar before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty.

2. If City, for any reason, seeks to enforce Parent's compliance with the provisions of this Guaranty, the same rights and remedies and choice of law provisions as are included in the License shall apply.

3. In addition, for the City benefit and as consideration for the License, Parent hereby makes the same representations and warranties as to Parent as those made by Lamar in the License, except that Parent represents that it is a _____ duly formed and validly existing under the laws of the State [Commonwealth] of _____.

4. Notices given to Parent shall be delivered and deemed received in the same manner as set forth in the Notice section of the License. Parent acknowledges that it has received a copy of the License.

5. This Guaranty shall continue in full force and effect until all obligations of Lamar under the License have been paid or performed in full.

6. Parent agrees that its obligations pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Parent shall have any knowledge thereof):

    a. any termination, amendment, modification or other change in the License;

    b. any failure, omission or delay on the part of City to conform or comply with any term of the License;

    c. any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the License;

    d. any dissolution of Parent or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Lamar, Parent, or any other guarantor of Lamar's obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

    e. any merger or consolidation of Lamar, Parent, or any other guarantor of Lamar's obligations into or with any person, or any sale, lease or transfer of any of the assets of Lamar, Parent or any other guarantor of Lamar's obligations to any other person; or

    f. any change in the ownership of the capital stock or equity ownership of Lamar, Parent, or any other guarantor of Lamar's obligations or any change in the relationship between Lamar, Parent, or any other guarantor of the License obligations, or any termination of

any such relationship.

7. Parent waives any defense arising by reason of any disability or other defense of Lamar or by reason of the cessation from any cause whatsoever of the liability of Lamar.

8. Lamar waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date of the foregoing License.

_____, a _____
_____

_____
By: _____
Its: _____

Date: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____in his/her capacity as authorized representative of _____

_____
Notary Public

My Commission Expires:

_____

LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company

_____
By: Christina Butler
Its: Vice President/General Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING, L.L.C.

_____
Notary Public

My Commission Expires:

_____

CITY COUNCIL REPORT

Meeting Date: **7/2/2013**
Meeting Type: **Voting**
Title: **COUNCIL APPOINTMENT OF CITY MANAGER**
Staff Contact: **Mayor and Council**

Purpose and Recommended Action

This is a request for the City Council to appoint a city manager. The Mayor will accept a motion or motions, call for a second, and conduct a vote of the Council that shall, by virtue of assent of a majority, appoint a city manager and authorize Bob Murray & Associates along with the Human Resources Department to negotiate and execute a contract for employment.

Background Summary

The Glendale City Charter provides for the appointment of a city manager. The Charter states:

> Art. III, Sec. 1. Appointment of City Manager
> The Council shall appoint an officer of the city who shall have the title of city manager and shall have the powers and perform the duties provided in this charter. No Councilman shall receive such appointment during the term for which he shall have been elected, nor within one (1) year after the expiration of his term.

Attachments

None