City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 100674

Introduced October 21, 2010

Councilmembers Kenney, DiCicco, Sanchez, Tasco and Blackwell

**Referred to the
Committee on Parks, Recreation and Cultural Affairs**

AN ORDINANCE

Authorizing the Commissioner of Parks and Recreation, on behalf of The City of Philadelphia (the "City"), to enter into a license agreement with the Philadelphia Authority for Industrial Development ("PAID") pursuant to which PAID will operate certain programs at the Scanlon Ice Rink, the Laura Sims Skatehouse at Cobbs Creek, the rink at the Simons Recreation and Teen Access Center, the Rizzo Ice Rink and the Tarken Ice Rink, by entering into a long term sublicense agreement with the Ed Snider Youth Hockey Foundation (the "Foundation") for such operation, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Parks and Recreation, on behalf of the City, is hereby authorized to enter into a license agreement with PAID ("License"), in substantially the form attached as Exhibit "A" hereto, pursuant to which PAID will operate certain programs at the Scanlon Ice Rink, the Laura Sims Skatehouse at Cobbs Creek, the rink at the Simons Recreation and Teen Access Center, the Rizzo Ice Rink and the Tarken Ice Rink (the "Programs"); provided, that PAID shall undertake such operation by entering into a long term sublicense agreement with the Foundation ("Sublicense") for the operation of the programs on substantially the same terms, with respective differences taken into consideration, as the License.

SECTION 2. The Commissioner of Public Parks and Recreation and other City employees are hereby authorized to take any actions necessary to effectuate and perform the terms of this Ordinance and the License and Sublicense.

SECTION 3. The City Solicitor is hereby authorized to include in the License and to require to be included in the Sublicense such other terms and conditions as he or she deems necessary or desirable to protect the interests of the City.

SECTION 4. The Chief Clerk of City Council shall keep on file the document referred to as Exhibit "A" and shall make it available for inspection by the public during regular office hours.

Exhibit "A"

LICENSE AGREEMENT

This LICENSE AGREEMENT (the "Agreement") is made this ___ day of _____ 2010 (the "Effective Date"), by and between THE CITY OF PHILADELPHIA (the "City") a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, acting through its DEPARTMENT OF PARKS AND RECREATION (the "City"), with an address at 1515 Arch Street, 10th Floor, Philadelphia, Pennsylvania 19102, and PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a public authority with an address at 2600 Centre Square West, 1500 Market Street, Philadelphia, PA 19102-2126 ("PAID" or "Licensee").

BACKGROUND

The City owns the facilities known as the Scanlon Ice Rink, the Laura Sims Skatehouse at Cobbs Creek, the rink at the Simons Recreation and Teen Access Center, the Rizzo Ice Rink and the Tarken Ice Rink (collectively, the "Premises").

The City desires to enter into an agreement with Licensee pursuant to which Licensee will sublicense the Premises (the "Sublicense") to the Ed Snider Youth Hockey Foundation, a non-profit organization ("Sublicensee") that, amongst other things, operates various proprietary youth hockey and life skills instructional programs (collectively, the "Program(s)").

Pursuant to the Sublicense, Licensee shall cause Sublicensee to operate the Programs, make improvements to the Premises and run complimentary public open skate at the Premises pursuant to the terms and conditions contained herein.

By resolution dated August 17, 2010, the Board of Directors of PAID authorized entering into this Agreement.

NOW, THEREFORE, in consideration of the recitals above and other good and valuable consideration, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1
INCORPORATION OF BACKGROUND AND LICENSE

1.01 The Background is incorporated by reference herein.

1.02 The City hereby gives to Licensee a non-exclusive, revocable license to access, occupy, and use the Premises for the sole purpose of operating, or causing to be operated, the Programs.

1.03 Nothing contained in this License shall in any way be construed as a limitation on the City's right to enter into other similar agreements during the Term (as defined below). In the event that the City does enter into such other similar agreements, this Agreement shall be subject

to such other agreements. Notwithstanding the foregoing, the City, in entering into such other similar agreements, shall consider the terms and conditions of this Agreement, shall provide for the continuation of this Agreement and shall at all times during the Term allow for Licensee's quiet enjoyment of the Premises in connection with the conduct of the Program and otherwise as contemplated hereunder.

ARTICLE 2
TERM

2.01 The term of this Agreement shall commence _____, 2010 and shall continue thereafter until _____, unless sooner terminated in accordance with the further provisions hereof (the "Term").

ARTICLE 3
TITLE AND CONDITION OF PREMISES

3.01 At all times, the Premises shall be and remain owned by and titled in the City. No legal title or any other interest in real estate shall be deemed or construed to have been created or vested in Licensee by anything contained in this Agreement. Notwithstanding the foregoing, in conformity with all existing laws, Licensee shall be permitted to permit Sublicensee to place signage at or about the Premises identifying such as a site of Sublicensee's programs. All signage shall be subject to the review and prior written approval of the City.

3.02 Licensee agrees that its exercise of the License given under this Agreement is subject to the "AS IS" condition of the Premises, including all defects latent and patent, and the City makes no representation or warranty, express or implied, in fact or in law, as to (i) title to the Premises, (ii) any encumbrances, restrictions and conditions which may affect the Premises, (iii) the nature, condition or usability of the Premises, including, but not limited to, the suitability for use by Licensee as contemplated by this Agreement, (iv) compliance of the Premises with Applicable Law (defined below), and (v) the License. The City disclaims any and all warranties of fitness, merchantability, suitability for intended purpose and habitability.

3.03 The City shall not in any event be liable for any injury or damage to any property or to any person occurring in connection with Licensee's use of the Premises and/or operation of the Program. Licensee shall cause Sublicensee to have care, custody and control of the Premises for purposes of all liabilities arising from its use of the Premises and/or operation of the Program.

ARTICLE 4
REVIEW BY THE CITY

4.01 Licensee shall inform that any review, approval and/or inspection by the City of any plans, designs, specifications, work or other materials submitted or performed by Sublicensee in connection with the Sublicense, shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved for the operation of the Program. No person or party shall rely in any way on such review or approval,

and at all times Sublicensee shall use its own independent judgment as to the accuracy and quality of all such matters. The City's review or approval of any work performed under this Agreement shall not constitute or be construed to constitute approval otherwise required under Applicable Laws (as defined below) by any and all City departments, boards and commissions in connection with any and all aspects of the Program.

ARTICLE 5
NO JOINT VENTURE

5.01 Licensee shall not do any act nor make any representation to any person or entity that Licensee, its agents, representatives or any entities under its control or in privity of contract with Licensee, are the principal, agent, employee, partner or joint venture partner of the City, except as the parties may hereinafter agree, in writing. Any press release or public announcement concerning this Agreement or the formation of the arrangement contemplated by this Agreement shall require the mutual agreement of Licensee and the City, in the reasonable discretion of each.

ARTICLE 6
CONSTRUCTION; ALTERATIONS

6.01 Licensee may not, without obtaining (i) prior written approval from the appropriate City officials and (ii) all permits and approvals necessary under any Applicable Law, including those related to health, safety, welfare, employment, traffic, and/or zoning, alter or in any way modify, any part of the Premises, or any property or premises owned or controlled by the City.

6.02 During the Term and any additional terms, Licensee shall cause Sublicensee to identify those capital projects at or about the Premises which Sublicensee determines in its sole discretion (but subject to the prior written approval of the City, not to be unreasonably withheld), are necessary and desirable to improve the Premises or the efficiency of Sublicensee's operations thereat. To the extent the City shall make available funding for such improvement, Licensee shall cause Sublicensee to match the funding, dollar for dollar, up to One Million Dollars ($1,000,000) in any given year. Notwithstanding the foregoing, nothing herein shall obligate the City to make available City funding for any of the improvements Sublicensee desires to make to the Premises for the purposes of operating its Programs. The City funding contemplated herein may be fulfilled either through cash or in-kind contributions so that, by way of example and not limitation and for the avoidance of doubt, the actual cost of material or labor contributed by the City to a capital project shall qualify for matching funds from Sublicensee. To the extent the City funds any capital improvements, Licensee shall inform Sublicensee that the City is required to competitively bid the contracts for the improvements through its Procurement Department and own said capital improvements at the completion thereof. In the event Sublicensee desires to fund, or cause to be funded, and undertakes any such capital projects without City funding and/or otherwise alters or modifies any of the Premises, or any property or premises owned or controlled by the City (after receiving the necessary written City approval(s)), all such improvements shall remain affixed to or otherwise incorporated into the Premises at the conclusion of the Term hereof, for the benefit of the City. At the conclusion of the Term hereof,

in the event the City wishes to restore the Premises to the same condition which existed immediately prior to the commencement of the Term; such restoration shall be at the sole cost and expense of the City. Review, approval or acceptance by any one City agency, under this Agreement, shall not be construed to constitute approval otherwise required by any other City agencies, departments, boards and/or commissions in connection with any and all work or alteration performed under or pursuant to this Agreement, including, without limitation, construction, health, safety, welfare, employment, traffic and zoning. Review or approval by the City with respect to any matter under this Agreement or in any way related to any part of the Premises, shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the reviewed or approved matter. No person may rely in any way on such review or approval and at all times, Licensee must use its own independent judgment as to the accuracy and quality of all matters including all work performed in relation to this Agreement and/or the Premises.

ARTICLE 7
COMPLIANCE WITH APPLICABLE LAWS

7.01 Licensee shall cause Sublicensee to comply, at its sole cost and expense, with all Applicable Laws in connection with the Sublicense. For purposes of this Agreement, "Applicable Laws" shall mean all applicable present and future federal, state, municipal laws, ordinances, codes, rules, regulations, statutes, orders and requirements, and the requirements of all insurance underwriters and of any board of fire underwriters having jurisdiction, including without limitation, The City of Philadelphia Home Rule Charter, The Philadelphia Code, and the Americans With Disabilities Act of 1990, P.L. Section 101-336, as amended, generally codified at 42 U.S.C. § 1201 et seq.

7.02 Licensee shall cause Sublicensee to secure, at Sublicensee's sole cost and expense, any and all permits, licenses, and other legal authorizations required in connection with the construction, installation and operation of the Program on the Premises. This Agreement shall not be construed to constitute an approval or permit required to be given by any City department or agency under any Applicable Law.

ARTICLE 8
THE CITY'S OBLIGATIONS

8.01 The City shall be responsible for the utilities, daily opening and closing of the Premises, routine cleaning of the Premises, and the supplies necessary for the day to day operations of the Premises. In addition, the City shall provide a full-time facility supervisor ("Site Manager") at each location which constitutes a part of the Premises hereunder, with the duty hours for such Site Managers to be determined in consultation with Licensee, considering the nature, scope and extent of the Program being implemented at each such location. Notwithstanding the foregoing, Licensee shall have Sublicensee acknowledge that the cost to the City of carrying out the City's obligations hereunder shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Agreement.

ARTICLE 9
INSURANCE

9.01 Licensee shall cause Sublicensee and all Sublicensee's contractors and subcontractors, licensees and sublicensees, to obtain and maintain, at no cost to the City, throughout the Term, insurance in the types and minimum limits specified below, as applicable, issued by reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania and wholly acceptable to the City, with all coverages being on an "occurrence" basis and not a "claims-made" basis.

(a) Workers Compensation and Employers Liability

(1) Statutory Workers' Compensation Insurance in accordance with the laws of the Commonwealth of Pennsylvania;

(2) Employers Liability: $100,000 each Accident - Bodily injury by Accident; $100,000 Each Employee - Bodily Injury by Disease; and $500,000 Policy Limit - Bodily Injury by Disease.

(b) Commercial General Liability

(1) Limit of liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; $1,000,000 personal and advertising injury; and $2,000,000 general aggregate. The City may require higher limits of liability, if in the City's sole discretion, the potential risk so warrants.

(2) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations) liability; and explosion, collapse and underground hazards.

(c) Automobile Liability

(1) Limit of Liability; $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned and hired vehicles.

9.02 Original certificates of insurance evidencing the required coverages and copies of the endorsements evidencing full compliance with all insurance requirements, shall be submitted by Licensee to the City's Risk Manager at the following address:

City of Philadelphia
Finance Department
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, Pennsylvania 19102

The submission must be made prior to Sublicensee exercising any rights under the Sublicense. The City and its officers, employees, agents and representatives shall be named as additional insureds on the General Liability Insurance Policy described above. The City reserves the right to require Licensee to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days prior written notice to Licensee. All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them.

9.03 In no event shall Licensee cause Sublicensee to exercise any rights hereunder until the required evidence of insurance has been furnished to the City. The insurance shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled or not renewed or scheduled to lapse. At least ten (10) days prior to the expiration of each policy period, Sublicensee shall deliver, or cause to be delivered, to the City a certificate of insurance (and copies of the endorsements) evidencing a replacement policy to become effective immediately upon the termination of the previous policy. Sublicensee shall in no event permit any lapse in the insurance coverage required under this Agreement, and replacement coverage meeting the requirements of this Section 9 shall be in effect prior to the expiration of the policy period.

9.04 From time to time, and in any event not more frequently than once every year, the City may, upon thirty (30) days notice to Licensee, reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder.

9.05 The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnification obligations made under this Agreement or to limit any liability under this Agreement to the limits of the policies of insurance required to be maintained by Sublicensee hereunder.

9.06 All insurance money paid on account of damage to or destruction of the Premises, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of cost of the restoration, repairs, replacement, rebuilding, or alterations of the Premises subject to the satisfaction of the City.

9.07 If Licensee neglects or fails to cause Sublicensee to obtain or maintain, or cause to obtain and maintain, any of the insurance required by this Agreement or to submit proof of such insurance as required by this Agreement, and fails to cure same after five (5) days written

notice from the City informing Licensee of such default, then the City may terminate this Agreement immediately without any liability on the part of the City, and without limiting any other remedy available to the City at law or in equity.

9.08 Upon expiration of the Term, or upon the earlier termination of this Agreement, Licensee need not cause Sublicensee to maintain any insurance coverage with respect to the Premises.

ARTICLE 10
DAMAGE AND DESTRUCTION

10.01 In the event of damage or destruction to the Premises while Sublicensee is conducting a Program, Sublicensee must act immediately to secure and make safe the Premises.

10.02 If any part of the Premises, after the date of execution, shall be rendered unusable by unforeseen occurrence to an extent that it is unsafe or impossible to hold the Program on the Premises, or if the Program is canceled due to riot, extreme weather, or similar event, the prevention of which is beyond Licensee's or the City's control, or if a public emergency renders performance of this Agreement by Licensee or the City impossible, including, without limitation, the requisitioning of the Premises by the federal, state or city governments, this Agreement shall terminate with respect to the Program without any liability of either party to the other.

ARTICLE 11
INDEMNIFICATION

11.01 PAID shall require Sublicensee to indemnify, defend and hold harmless the City, and it officials, officers, boards, employees, agents, representatives, successors and assigns (acting officially or otherwise) from and against all claims, losses, suits, actions, causes of action, disputes, damages, liabilities, obligations or penalties, including, without limitation, all costs, charges, expenses, and attorneys' and experts' fees (whether incurred in pre-suit negotiation, in preparation for or at trial, on appeal, in any insolvency or bankruptcy proceeding or otherwise), arising out of (i) any damage to property, or injury to, or death of persons (including, but not limited to, the property and persons of the parties hereto, and their agents, representatives, licensees, invitees, volunteers, employees, members, contractors, subcontractors, officers and directors) occasioned wholly or in part by the act or omission or the tortuous acts, malfeasance or negligence of Sublicensee; or (ii) Sublicensee's (or its agents', representatives', employees', officers', or directors') breach of its (or their) duties and obligations under the Sublicense. The obligation of Sublicensee hereunder shall survive the Termination or earlier expiration of the Sublicense. These indemnification obligations shall not apply to any claims, losses, damages, obligations, penalties or liabilities which result or arise solely and exclusively from the gross negligence or willful misconduct of the City.

ARTICLE 12
RELEASE

12.01 In consideration of the rights granted by the City to Licensee under this Agreement, Licensee shall require Sublicensee to, remise, quitclaim, release and forever discharge, and by these presents does for Licensee's successors, assigns, members, agents, guests, employees, contractors, subcontractors, officers, invitees, and any person claiming by, under or through Sublicensee or any of them (each a "Releasor"; collectively, the "Releasors"), hereby remise, quitclaim, release and forever discharge the City and its respective officials, commissioners, officers, employees, agents and successors and assigns (acting officially or otherwise) (each a "Releasee"; collectively, the "Releasees") from any and all, and all manner of, actions and causes of action, suits, claims and demands whatsoever at law or in equity which any or all Releasors may have against any or all Releasees relating in any way whatsoever, directly or indirectly to (a) the Premises and all conditions now or hereafter existing in, on or about the Premises, and (b) the use, occupancy, operation, and maintenance of the Premises or any part of the Premises by Sublicensee.

ARTICLE 13
RELEASE AND WAIVER OF LIENS

13.01 Licensee shall cause Sublicensee for itself and any and all contractors, subcontractors, and all parties acting for, through or under Sublicensee, them or any of them, to covenant and agree with the City that no mechanics' and materialmen's liens or claims shall be filed or maintained by it, them or any of them, against the Premises, or any parts thereof, for or on account of any work done or materials furnished by or for Sublicensee under this Agreement or any supplement hereto, or under any contract for work in, on or about the Premises. Licensee shall cause Sublicensee, for itself and any and all of its contractors, subcontractors and all parties acting through or under Sublicensee, them or any of them, to expressly waive and relinquish the right to have, file or maintain any such mechanics' or materialmen's lien or claim.

13.02 Nothing contained in this Agreement shall be construed in any way as constituting the consent or request of the City, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials on, in and/or about the Premises, nor as giving Licensee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Premises.

13.03 Without limiting the generality of Article 11, Licensee shall cause Sublicensee to indemnify, defend, and hold harmless the City from and against any and all claims for labor and/or material that may arise during the course of the performance of any work in, on and/or about the Premises, by or under Sublicensee or with respect to this Agreement.

ARTICLE 14
LICENSEE'S OBLIGATIONS

14.01 Licensee shall cause Sublicensee to be responsible for the routine maintenance of, and replacement parts for, the zamboni machines at the Premises and to perform routine day to day maintenance of the ice surface and the dasherboard system located on the Premises.

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14.02 Licensee shall cause Sublicensee not to operate the food concessions at the Premises.

14.03 Licensee shall cause Sublicensee to staff, equip, and make the Premises available, at no charge, for community open skate hours.

14.04 Licensee shall cause Exhibit A, a copy of which is attached hereto and made a part hereof, to be attached to the Sublicense.

ARTICLE 15
CONTRIBUTIONS

15.01 Licensee shall cause Sublicensee to comply with the contribution representations set forth in 17-1402 of The Philadelphia Code.

ARTICLE 16
MINORITY, WOMENAND DISABLED OWNED BUSINESS OPPORTUNITIES

16.01 The City is committed to providing business opportunities for Minority, Woman and Disabled Owned Business Enterprises ("M/W/DSBEs"). The City's Office of Economic Opportunity ("OEO") maintains a registry of certified M/W/DSBEs and any M/W/DSBE already certified by an approved certifying agency (a list of these approved agencies can be found at www.phila.gov/oeo) may have its participation counted on a City contract. Licensee shall encourage Sublicensee to make solicitations of M/W/DSBEs for services and/or supplies relevant to Licensee's operations (e.g., sports equipment and clothing, consulting services in connection with capital improvements audit, signage, etc.) and, where Sublicensee makes commitments to use M/W/DSBEs, the dollar value of the commitments along with identification of the M/W/DSBE and description of the supply effort or service must be documented on the form entitled "Voluntary Participation Form."

ARTICLE 17
INSPECTIONS

17.01 The City reserves the right upon reasonable notice to Licensee to enter the Premises by an authorized officer, employee, agent of the City for the purpose of inspecting the Licensee's use of the Premises for purposes of the Program. Nothing in this Article 17 shall in anyway be construed as a limitation on the exercise of the City's municipal functions.

ARTICLE 18
DEFAULT

18.01 If Licensee shall default in the performance or observance of any of the conditions and covenants herein contained to be performed or observed by Licensee, and such default shall continue for fifteen (15) days after written notice thereof from the City to Licensee (or if such default cannot with due diligence be cured within said fifteen [15] day period, then if Licensee does not promptly proceed with reasonable diligence to cure such default within a reasonable period, but in no event longer than forty-five [45]days), then and in that event, the City may:

(a) terminate this Agreement upon written notice to Licensee and any and all of the rights and interests of Licensee under this Agreement shall terminate, cease and expire, and Licensee shall quit and surrender the Premises to the City and the City may, in any manner permitted by law, re-enter the Premises and take possession and use thereof; and/or

(b) suspend this Agreement for a period of time not to exceed three hundred sixty-five (365) days or until such default is cured; and/or

(c) to exercise any and all other rights or remedies available to the City, at law or in equity.

18.02 The rights and remedies of the City, whether provided at law or in equity, or by this Agreement, shall be cumulative, and the exercise by the City of any one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any default or breach by Licensee unless otherwise expressly provided herein.

18.03 The failure or delay on the City's part to enforce or exercise at any time any of the provisions, rights or remedies in this Agreement shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Agreement or any act hereof, or the rights of the City to thereafter enforce each and every such provision, right or remedy. No waiver by the City of any breach or default by Licensee of this Agreement shall be held to be a waiver of any other subsequent default of Licensee.

ARTICLE 19
PROHIBITION ON WASTE AND DAMAGE

19.01 Licensee shall not do or suffer any waste, damage, disfigurement or injury to the Premises or to any improvements thereon.

ARTICLE 20
SURRENDER

20.01 Upon the expiration or earlier termination of this Agreement, Licensee shall, and shall cause Sublicensee, subject to Article 15 above, peaceably and quietly leave, surrender and

yield up to the City the Premises in good order, condition and repair, reasonable wear and tear excepted.

ARTICLE 21
NOTICE

21.01 Any notice, demand, request, consent or waiver to be given in accordance with this Agreement shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, or overnight mail through a nationally recognized courier, addressed to the following parties:

If to the City:	City of Philadelphia Department of Parks and Recreation 1515 Arch Street, 10th Floor Philadelphia, PA 19131-0901 Attention: Recreation Commissioner
With a copy to:	Senior Attorney City of Philadelphia Law Department One Parkway - 17th Floor 1515 Arch Street Philadelphia, PA 19102-1595
If to Licensee:	Philadelphia Authority for Industrial Development 2600 Centre Square West 1500 Market Street Philadelphia, PA 19102-2126 Attention: Chairman
With a copy to:	Philadelphia Industrial Development Corporation 2600 Centre Square West 1500 Market Street Philadelphia, PA 19102-2126 Attention: Vice President, Corporate Counsel

or to such other address as the party to receive the notice, demand, request, consent or waiver may hereafter designate by written notice to the other party.

ARTICLE 22
MISCELLANEOUS

22.01 **Assignment.** Licensee shall not transfer, assign, hypothecate, or sublicense, except to Sublicensee, all or any part of its interest under this Agreement without the prior consent of the City, which shall be confirmed in writing, which consent may be granted or withheld in the City's sole judgment. Such consent may be conditioned on any requirement the

City, in its sole discretion, deems desirable, including, but not limited to, the payment of money. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22.02 Non-Discrimination.

(a) This Agreement is entered into under the terms of the Philadelphia Home Rule Charter and, in its performance, Licensee shall not discriminate nor permit discrimination against any person because of race, color, religion, age, sex, sexual orientation, gender identity or national origin. Without limiting the generality of Article 18 of this Agreement, Licensee's noncompliance with the provisions of this Section 22.02 shall constitute a substantial breach of this Agreement entitling the City to take appropriate action to enforce compliance, including without limitation, at the City's option, termination of this Agreement and/or pursuit of such other remedies as may be provided in this Agreement, at law or in equity.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, Licensee agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the generality of Article 17 of this Agreement, a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

(c) Licensee agrees to include Paragraphs (a) and (b) of this Section 22.02, with appropriate adjustments for the identity of the parties, in all contracts which are entered into for work to be performed pursuant to this Agreement.

(d) Licensee further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which such Commission deems reasonable and necessary to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall, without limiting the generality of Article 18 of this Agreement, constitute a substantial breach of this Agreement, entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

(e) Licensee agrees, in exercising its rights under this Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

(f) Licensee shall cause Sublicensee to comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), The Age Discrimination Act of 1975, (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45

C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

(g) Licensee understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Agreement or from activities or services provided under the Agreement. As a condition of accepting and executing the Agreement, Licensee shall cause Sublicensee to comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Licensee, (b) to the benefits, services, activities, facilities and programs provided in connection with the Agreement, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Agreement are provided by the federal government, which are applicable to the federal government and its benefits, services, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Licensee shall cause Sublicensee to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

22.03 MacBride Principles.

(a) In accordance with Section 17-104 of The Philadelphia Code, Licensee by execution of this Agreement certifies and represents that (i) Licensee (including any parent company, subsidiary, exclusive distributor or company affiliated with Licensee) does not have and will not have at any time during the Term (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under this Agreement will originate in Northern Ireland, unless Licensee has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Agreement, Licensee agrees that it will not utilize any suppliers, subcontractors or sublicensees at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland, or (ii) who will provide products originating in Northern Ireland unless said supplier, sublicensee or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Licensee further agrees to include the provisions of this Section 22.03 with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements, which are entered into in connection with the performance of this Agreement.

(c) Licensee agrees to cooperate with the City's Director of Finance in any manner which the said Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Licensee expressly understands and agrees that any false certification or representation in connection with this Section 22.03 and/or any failure to comply with the provisions of this Section 22.03 shall

constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

22.04 Certificate of Non-Indebtedness.

Licensee hereby certifies and represents to the City that Licensee is not currently indebted to the City, and will not during the duration of this Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Licensee shall require Sublicensee to certify that it is not currently indebted, and shall not be indebted, to the City, during the Term, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Any breach or failure to conform to the aforesaid certifications shall constitute a default by Sublicensee and entitle the City to exercise any rights or remedies available to it under this Agreement or otherwise available at law or in equity.

22.05 Severability.

If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid, or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to parties or circumstances other than those to which the Agreement was held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

22.06 Survival.

Any and all provisions set forth in this Agreement which, by its nature or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Agreement shall survive and be enforceable after the expiration or earlier termination of this Agreement. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Agreement, shall survive any expiration or termination of this Agreement.

22.07 Amendment.

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by City and Licensee.

22.08 Entire Agreement.

This Agreement sets forth all the promises, agreements, conditions and understanding by and between City and Licensee with respect to the Premises. There are no promises, agreements,

conditions or understandings by and between City and Licensee with respect to the Premises other than those set forth in the Agreement.

22.9 Governing Law; Venue.

This Agreement is made in Philadelphia, Pennsylvania, and shall be governed, construed, and decided by the laws of the Commonwealth of Pennsylvania. Any proceeding instituted in connection with this Agreement shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County.

22.10 Waiver of Trial by Jury.

The parties hereby waive trial by jury in any legal proceeding involving, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of, or related to, this agreement or the relationship created or evidenced hereby. This provision is a material inducement for the city to enter into this Agreement.

22.11 Headings; Section Numbers.

The headings and section references in this Agreement are for convenience only and are not a part of this Agreement. The headings and section references do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.

22.12 Counterparts.

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

22.13 Limitation of Liability.

Notwithstanding anything contained in this Agreement, in the event of a default by Licensee pursuant to the terms of this Agreement, City shall be entitled to satisfy any liability of Licensee solely through the equity, if any, of Licensee in the Premises (and only the Premises), and such limitation on Licensee's recourse against Licensee shall be absolute, complete, and unconditional.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first above written.

APPROVED AS TO FORM
Shelley R. Smith, City Solicitor

Per: _____
Valerie M. Robinson
Senior Attorney

THE CITY OF PHILADELPHIA

By:_____
Recreation Commissioner

APPROVED AS TO FORM

By: _____
Ilene Burak, VP Corporate Counsel
PIDC

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: _____

Name: _____
Chairman

Exhibit A
Proposal

As we previously agreed, ESYHF is looking forward to providing services seven days per week at the rinks that it will be allowed to administer programs in 2010-2011. Those rinks are Scanlon, Simons, and Sims. Moreover, at your direction, ESYHF will provide and administer the hockey and public skating at all five City rinks; Scanlon, Simons, Sims, Tarken and Rizzo, collectively, the "Premises". ESYHF also is prepared to expand its services to include year round programs that would include Floor Hockey, Summer Camps, and expanded off-ice activities (as noted in section 13 below). This will keep our participants fully immersed in structured programming ensuring better retention from season to season and year to year.

RESPONSIBILITIES OF ESYHF:

During the Ice-Season (November through March) ESYHF will:

1. Supply a person known as the "Site Coordinator" at each site. The Recreation Leader in charge of each of the sites comprising the Premises shall serve as the site supervisor (the "Site Supervisor"). The Site Coordinator will report to the Site Supervisor daily before the Program, as defined below, begins and report off daily to the Site Supervisor. Site Coordinators will remain on site until all Program participants are dismissed from the ice rink area. During the Program, "Rink Attendants" hired by ESYHF will report to the Site Coordinator. During public skate, skate lessons and cleanup, Rink Attendants will report to the Site Supervisor.

2. Work in conjunction with the Department of Parks and Recreation (the "Department") at Scanlon, Simons and Sims to develop, and deliver youth ice hockey programs Mondays through Fridays from 3:30 PM until 7:30 PM and 9:00 AM to 1:00 PM on Saturdays (the "Program").

3. Coordinate with the Department, through the Site Supervisor, time slots to be made available for public or open skating opportunities at all five (5) City rinks, including those where the Program is held. Public skating programs shall be available on days including, but not limited to Sunday. Skates will be provided to the public free of charge during public skate.

4. Develop and deliver public introductory *Learn to Skate, Learn to Play* programs three days per week (days and times TBD) at Rizzo and Tarken.

5. Work closely with surrounding schools and other local agencies that control access to youth to cultivate and recruit new players through the establishment of school day programming (times TBD), open houses, press releases, etc.

6. Provide trained USA Hockey certified coaches, instructors and other personnel necessary to maintain optimum child to adult ratios (this will generally include an ESYHF Site Director/Head Coach and a minimum of 2 other staff assistants/volunteers at each site).

7. Provide all hockey equipment at no charge to Program participants, replace skates at the Program sites and provide public skates at no cost at the Premise for open skate.

8. Include the nationally acclaimed ESYHF *Life Skills Curriculum* and other supplemental educational services as an integral part of overall programming.

9. Encourage and provide ESYHF participants with opportunities to join select competitive play programming at the Class of 23 Rink (University of Pennsylvania) and the Flyers Skate Zones (Northeast Philadelphia and Pennsauken, NJ), as well as opportunities to join ESYHF sponsored trips to destinations such as Detroit (annual Hockey in the Hood Tournament) and other NHL Cities for competitive play.

10. Develop and provide competitive Inter-rink League competition culminating in a City Championship.

11. Work in partnership with the Department, the community, and the School District of Philadelphia to continually improve and enhance both on and off ice recreational, academic, cultural, and civic experiences for the children, youth, and families of the surrounding communities.

12. Provide the City with technical assistance in maintaining rinks to help ensure cost efficiencies.

During the Non-Ice Season (April thru October):

1. Work with the Site Supervisor and the community to develop year round programming such as fall and spring floor hockey sessions at all Premises, extended supplemental educational initiatives, experiential day trips to various local attractions; and opportunities for neighborhood youth to access ESYHF summer camp sessions at the Flyers Skate Zones in Northeast and Pennsauken, NJ. The year round programs will be established on a site by site basis based on current program needs with at least 20 hours per week dedicated to ESYHF programs.

   All ESYHF services will be delivered at no cost to City residents, ages 6-19.

<u>RESPONSIBILITES OF THE DEPARTMENT OF RECREATION</u>:

1. Provide a Site Supervisor at the Premises.

2. Provide ESYHF with access to ice and all other facilities as required at the Premises.

3. Pay for the cost of utilities, City personnel costs (other than staffing provided by ESYHF pursuant to the terms of this Agreement) and other operating costs necessary to maintain day-to-day operations at each facility.

4. Provide ESYHF with support in recruitment and registration of participants.

5. Oversee all staff, including the rink attendants, during open skate opportunities at Scanlon, Simons and Sims.

6. Develop a Program communication protocol.

Communication Protocol

1. Primary line of communication for Program purposes will be between Jim Britt (Vice President/Chief Operating Officer) from ESYHF and Lisa Whittle (Aquatics/Ice Rink Coordinator) from Department of Parks and Recreation. All Program issues should be communicated to Jim Britt from ESYHF employees (Site Coordinators) and Lisa Whittle from Department of Parks and Recreation employees (Site Supervisors).

2. ESYHF Site Coordinators check in daily with Site Supervisor (Recreation Leader)
   a. Check in on the way in and check out on the way out
   b. Discussion of what's happening for the day
   c. # of registrants
   d. Schedule
   e. Changes of schedule approved by Site Supervisor

3. Day to day communication will take place between the Site Supervisor (Recreation Leader) and the ESYHF Site Coordinator

4. Program Schedule to be reviewed and approved by site supervisor prior to being sent out to participants or being hung up on the walls of the center

5. Press Releases/Schedule Changes

   a. 48 hours notice of any press release/media blast.

   b. Commissioner approval must be given before press release is submitted.

   c. Language for press release shall always mention Philadelphia Department of Parks and Recreation. Possible language: The ESYHF Program working in partnership with the Philadelphia Department of Parks and Recreation…etc