

City of West Covina Planet Hockey
RESTATED AND AMENDED
MAINTENANCE AND OPERATION AGREEMENT

This Restated and Amended Maintenance and Operation Agreement ("Amended Agreement" herein) is made and entered into this 3rd day of February, 2004, by and between the City of West Covina ("City"), a municipal corporation, and the California Street Hockey Association ("Association"), a California [non-profit?] corporation, collectively referred to as the "Parties," to provide for the operation and maintenance of the "Planet Hockey" Facility situated in Orangewood Park located at 1615 Merced Avenue within the City of West Covina. This Amended Agreement amends and restates the Maintenance and Operation Agreement (the "Original Agreement") entered into by the Parties on or about August 1, 1995.

RECITALS

The following recitals are a substantive part of this Amended Agreement and incorporated herein by this reference:

WHEREAS, Association is organized and operated for the purpose of sponsoring and conducting hockey activities, including team participation hockey sports activities for children and adults.

WHEREAS, under the terms of the Original Agreement, the City agreed to construct and provide an in-line hockey and recreation Facility consisting of two (2) regulation hockey rinks, team locker rooms, restrooms and a modular structure for the selling, rental and/or repair of hockey equipment at Orangewood Park, also known as "Planet Hockey" (hereinafter referred to either as "Facility" or "Planet Hockey") for public recreation purposes in return for the Association's obligation to provide for the operation and maintenance of the Facility and to compensate City for its costs of constructing the Facility, totaling \$355,000 ("Construction Costs"), and its authorization to Association to use the Facility.

WHEREAS, the City and Association desire to modify certain terms of the Original Agreement to reflect more accurately the current understanding of the Parties. This Amended Agreement is made with respect to the following facts which are acknowledged as true by of the Parties hereto:

- (i) The term of the Original Agreement was for fifteen (15) years, expiring June 30, 2010, unless the City approved an option to extend the term for five (5) additional years under the same terms and conditions therein. On or about December 17, 2003, the Association requested that the City approve the extension option, and such request was approved by the City on February 3, 2004.
- (ii) Under the Original Agreement, the Association agreed to compensate the City in accordance with a payment schedule based upon a percentage of the Association's gross receipts or a minimum guaranteed amount, whichever amount was greater. In addition, the Association agreed to pay the City the balance of the Construction Costs by the end of 2003, the eighth year of operation
- (iii) The outstanding balance of the Construction Costs by the end of 2003 was \$98,818.85. On or about December 2003, the Association, under protest, paid the City the outstanding balance of the Construction Costs and the required percentage of gross receipts for 2003, the latter of which totaling \$57,154. The Association argued that it should have been allowed to defer payment of the gross receipts for 2003 since it could not use and operate the Facility for ten (10) months during 2002 as a result of additional construction relating to the Facility.
- (iv) On February 3, 2004, the City Council of the City of West Covina ("City Council") authorized City staff to defer payment of the required percentage of gross receipts for 2003 and consequently, to credit the \$57,154 already paid by the Association towards the Association's payment of the required gross receipts for 2004 (the ninth year of operation). In addition, the City Council authorized City staff to formalize the understanding of the Parties by way of amending the Original Agreement and to make additional minor "housekeeping" changes related thereto.

NOW, THEREFORE, the Parties hereby agree as follows:

1. TERM OF AGREEMENT

This Amended Agreement extends the 15-year term of the Original Agreement for six (6) additional years, which comprises the five-year extension and one-year payment deferral previously approved by the City, so that the agreement between the Parties as set forth herein shall expire and shall no longer be in effect as of June 30, 2016, unless otherwise terminated sooner pursuant to Section 23 herein. It is the intent of the City and Association to have the Facility remain in operation based upon the current desired public service. Upon termination of this Amended Agreement, use and operation of the Facility and all improvements thereto, except for the modular pro shop structure which shall remain the property of the Association, shall revert back to the City in accordance with Section 23 herein.

2. OPERATION OF FACILITY

- 2.1 Subject to the terms and conditions of this Amended Agreement, including but not limited to the provisions of Section 12 hereof, Association shall manage, operate and maintain the Facility for the conducting of hockey and recreation-related activities.
- 2.2 Association shall provide league and tournament play for both youth and adults as agreed upon by Association and City.
- 2.3 Association shall maintain the Facility in a clean and safe condition for the operation of recreation activities.
- 2.4 Association shall also have the ability to operate and maintain a portable structure on-site for the purposes of providing a pro shop for sale, rental and/or repair of equipment and merchandise involving "Planet Hockey" related activities, provided that Association obtains all required permits from the City.

3. MAINTENANCE OF IMPROVEMENTS AND EQUIPMENT

- 3.1 Association shall provide all maintenance (including major repair and replacement) on all equipment and structures used in the operations permitted herein. City shall have the right to direct Association to perform necessary repairs and maintenance to equipment and structures owned by Association or by City. Because of City's interest in preserving its equipment and providing clean, safe and sanitary conditions, and notwithstanding any other provision of this Agreement, if Association fails to perform the maintenance required hereunder within 72 hours of notice by City, City may cause the maintenance to be performed in an efficient manner and to charge Association for the cost thereof. The cost shall be equal to the sum of the cost of the direct labor and materials plus overhead.
- 3.2 Association shall be responsible for the regular maintenance and upkeep of all machinery, equipment, lights, light standards, and fixtures and surfaces located inside and outside the rink and included as part of the Facility (collectively referred to herein as "Improvements") whether provided by the City or Association. Such Improvements shall be maintained in a first class condition and working order. Evaluation of this maintenance standard shall be at the sole discretion of the City.
- 3.3 Association shall be responsible for maintaining all facilities within the enclosed area designated for hockey and recreation purposes, including but not limited to on-site locker room and restroom amenities. The Facility may utilize existing restrooms at Orangewood Park. City shall be responsible for the maintenance of the Orangewood Park restrooms located adjacent to Planet Hockey. Association shall be provided with keys to the Orangewood Park restroom facilities and shall be responsible for closing and

locking the facilities by 12:00 a.m. each day and the City shall be responsible for unlocking the restroom facilities by 8:30 a.m.

- 3.4 With respect to damage to property, City and Association hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

4. ASSOCIATION STAFFING

- 4.1 As part of its obligations to operate the Facility, Association shall staff the Facility with adequately trained staff and provide for at least one (1) official per game for league and tournament activities and other additional personnel, including but not limited to a site manager, at all times when the Facility is in use.
- 4.2 Association shall provide trained, competent staff to manage and operate the Facility in a professional and safe manner. Association shall provide for trained officials for the conducting of League, Tournament and other recreation activities. Officials shall wear a prescribed uniform mutually agreed upon by the Parties while officiating activities. Hockey officials shall be required to wear safety equipment, including but not limited to helmets and eye protection, and shall sign a release form stating that they are aware of possible hazards and release City and Association of all liability.
- 4.3 Association shall conduct business hereunder in a manner acceptable to City and shall, at all times, have a sufficient number of employees to furnish the best service possible. All such employees shall be clean, neat and professional in appearance, and shall be uniformed and identified in a manner acceptable to City and Association. Vending or selling shall be done in an orderly, courteous, and well-conducted manner.
- 4.4 At any time when the Facility is in operation by Association, Association shall provide for adequate site supervision. This supervisory coverage includes having site supervision during the rental of the Facility for team practices and any other rental and/or special events by outside organizations. Association's required insurance coverage per this Agreement shall be primary.

5. SAFETY EQUIPMENT

Association shall require the following safety equipment to be worn by any participant engaged in hockey activities:

- protective hockey helmets
- eye protection
- gloves
- elbow pads
- knee pads

6. TEAM NAMES

Association shall not permit any team to use a name which is offensive, in poor taste, or connotes an objectionable or derogatory meaning.

7. SPECIAL EVENTS AND ACTIVITIES CONDUCTED BY OUTSIDE ORGANIZATIONS

Association shall be responsible for the rental of rink(s) within the Facility to individuals and other outside organizations which may request to utilize the Facility for special events, recreational activities, pick-up play, team practices, etc. Association shall not issue any rink rental (except for individual team practice) or reservation for any tournament, exhibition, clinic, league or ladder to be conducted by any other organization or individual, unless such activity or event has been approved and

agreed upon in advance, in writing, by both the City's Community Services Director or his or her designee and the Association.

The Association shall have priority use of rink(s). Association agrees to make the Facility available to the City no less than twelve (12) days per calendar year at no charge. The City shall give Association a thirty (30) day notice prior to use of the Facility for each such event. These twelve (12) days need not be consecutive, and may be spread out over the course of the calendar year.

Association shall post signs in public view with the respective name(s) and telephone number(s) of individual(s) to contact for the purpose of rental of the Facility.

8. FEES

The Association shall notify in writing the City's Community Services Director or his or her designee of all fees charged by the Association for use of the Facility, a copy of which shall be kept on file with the City.

9. LAWS AND ORDINANCES

Association shall comply with all applicable federal, state and local laws, rules, regulations, and the directives issued by City relating to the operations permitted herein. Failure to do so may result in the immediate suspension of this Amended Agreement.

10. CONDUCT

Association shall at all times conduct the operations permitted herein in a quiet and orderly manner to the satisfaction of City. To the extent reasonably feasible, the Association shall permit no intoxicated person, profane or indecent language, or boisterous or loud conduct on or about the Facility. If an ongoing condition develops which requires repeated assistance and/or intervention by the West Covina Police Department, City shall have the right to require Association to obtain private, licensed, uniformed security personnel as approved by the West Covina Chief of Police to remedy the situation, or, if the condition persists, Association agrees to reimburse City for police and/or fire services required as a result of activities conducted at Planet Hockey.

11. PERSONAL ATTENTION

Association shall appoint a site manager under its direct control, who shall devote the greater part of his/her time and attention to the operations permitted herein and shall promote, increase and develop said operations and render every possible service and convenience to the public. Such managers shall have full authority for operations permitted herein or that portion under their control. In employing of managers, Association shall seek individuals skilled in management of businesses similar to operations permitted herein.

12. SCHEDULE OF OPERATIONS

Unless otherwise provided by permit, the Facility hours shall be 7:00 a.m. and run through 12:00 a.m., with the Association having priority use of the Facility. All activities shall cease by 11:30 p.m. and all persons shall vacate the grounds by 12:00 a.m.

Before commencing operation each calendar year during the term of this Amended Agreement, Association shall submit a written schedule of operation (including days and hours) to City for approval. Association agrees to make the facilities available to the City at no charge in accordance with Section 7 herein. The Community Services Director or designee and Association designee shall meet to determine and mutually agree upon the calendar of Association and City events for the coming year. Final use of the Facility shall be determined at this meeting, and the City and Association must approve any change to the calendar of events prior to any such events taking place on the Facility. Schedules may be adjusted, but the permitted hours of operation shall remain and shall not be adjusted such that maximum period of operation shall be from 7:00 a.m. to 12:00 a.m. No individuals and/or

members of the public or customers shall be allowed on the Facility between 12:01 a.m. and 6:59 a.m. without prior written permission from City.

Between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, Association shall make available a minimum of one (1) rink for use by the general public and shall provide adequate supervision thereof. Youth activities shall have priority on the rinks before 6:00 p.m., Monday through Friday.

Association shall not deviate from the permitted hours of operation without the prior written approval of City. Association shall post the hours of operation in public view.

13. CLEANLINESS OF ADJACENT PARK AREA

Association shall keep the area surrounding the operation in a clean and sanitary condition satisfactory to City at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health shall be permitted or remain thereon, and Association shall prevent any such matter or material from being or accumulating in the area.

14. ALTERATIONS OR ADDITIONS TO THE PREMISES

No alterations, changes, improvements or additions of any character shall be made by Association to the Facility, to Orangewood Park, or to any structure or improvements within the Facility or Orangewood Park, without the prior written approval of City. The costs to install any City-approved alterations shall be borne solely by the Association unless otherwise agreed upon in writing by City.

All permitted alterations, changes, improvements or additions to the Facility, to Orangewood Park, or to any structure or improvements within the Facility or Orangewood Park must be compatible with planned or existing improvements and facilities in the area.

All operations permitted herein must be compatible with planned or existing improvements and facilities in the area. Association shall confine the operations permitted herein strictly to that area set aside for that purpose.

All alterations, changes, additions, or improvements installed by the Association as described above are intended by the Parties to become and remain property of the City, whether or not affixed to the land, except portable restrooms and modular structures, which shall be removed by Association upon termination of this Amended Agreement.

15. PARKING

Throughout the term of this Amended Agreement, Association shall obtain and maintain an agreement with the West Covina School District to allow and provide for the joint use of all parking stalls located on the school district's property adjacent to Orangewood Park. A copy of said joint use parking agreement, and any amendments thereto, shall be provided to the City and kept on file throughout the term of this Amended Agreement.

16. NON-DISCRIMINATION

Association and its employees shall not discriminate on the basis of race, religion, color, ancestry, sex, sexual orientation, AIDS, AIDS related condition, age, national origin, handicap or disability by refusing to furnish such person any accommodation, Facility, service, or privilege offered to or enjoyed by the general public. Nor shall Association or its employees publicize the operations permitted herein in any manner that would directly or inferentially reflect on or question the acceptability of the patronage of any person on such basis.

In the performance of this Amended Agreement, Association shall not discriminate against employee or applicant for employment on any such basis. Association shall take action to ensure that applicants are employed, and that employees are treated without regard to any such basis.

17. HEALTH AND SAFETY

Association shall correct safety deficiencies and violations of safety practices immediately and shall cooperate fully with City in the investigation of accidents occurring at the Facility. In the event of injury to a patron or customer, Association shall ensure that the injured person receives prompt and qualified medical attention. If Association fails to correct hazardous conditions which have led to or, in the opinion of City, could lead to injury after reasonable notice to Association by the City, City may terminate this Amended Agreement.

18. PERMISSIONS

Any permission or approval required hereunder from the City relating to the operation of the Facility shall be obtained in writing by Association from City and any error or omission to do so shall not relieve Association of its obligations to faithfully perform the conditions herein. Association shall immediately comply with any written request or order submitted to it in writing by City. For purposes of this section, the City's Community Services Director or his/her designee shall be authorized to provide the required City permission or approval, except in cases where the Community Services or his/her designee, in his sole discretion, determines that the City Council must provide such permission or approval.

19. OPERATION OF CONCESSION AREA AND PRO SHOP

Association will be granted permission to operate a pro-shop and concession area/snack bar as an additional service to the public, subject to City's regular rules and regulations pertaining to such operations. Association shall provide the necessary supervision, staffing, equipment, and merchandise to operate the pro-shop and concession area/snack bar and the City shall not be liable to Association for any illegal activity (including theft), personal injury or property damage related thereto. Items sold from the pro-shop shall be "Planet Hockey" activity related and all merchandise is subject to approval by the City's Community Services Director or his/her designee. At the City's discretion and approval, the City, Association or a third party contractor may operate the concession area/snack bar.

The City reserves the right to implement a city-wide vending machine program and city-wide advertising campaign at City facilities. The Parties agree and acknowledge that the subject Facility is one of several City facilities included in the program.

20. LICENSES, PERMITS, AND TAXES

Throughout the term of this Amended Agreement, Association shall obtain and pay for all licenses and permits (including a City business license and resale permit) required for operations of the Facility and any related pro shop and concession area/snack bar. In addition, Association shall pay for any and all taxes levied on the Facility or its business or equipment

21. TRANSFER OR ASSIGNMENT

Association shall not transfer, subcontract, delegate or assign its rights or duties hereunder, either in whole or in part, without the prior written consent of City. Any proposed transfer, subcontract, delegation or assignment shall provide a description of the services to be covered, identification of the, and an explanation of why and how the same was selected. Any proposed transfer, subcontract, delegation or assignment shall not release Association from any obligation hereunder, including but not limited to, the duty to properly supervise and coordinate the work and services of proposed transferee, subcontractor, delegee or assignee. In the event of Association seeks or has engaged in an unpermitted transfer, subcontract, delegation or assignment, or in the event of the insolvency or bankruptcy (whether voluntary or involuntary) of Association, City may, at its sole option, terminate this Amended Agreement.

22. STANDARDS OF SERVICE

City or authorized representative shall have the right to approve the level of service and to order such service changed, discontinued or remedied. If the quality of service or products or the cleanliness of the Facility are not at a level of satisfactory to City or do not adequately meet the needs of the public, or if Association violates any of the terms or conditions of this Amended Agreement, then City shall have the right to terminate this Amended Agreement by giving notice to Association in advance of such suspension. Upon receipt of such notice, the Community Services Director or designee and Association shall meet within ten (10) working days to resolve the unsatisfactory occurrence and develop and agreed upon an appropriate course of action. If the Parties cannot resolve the unsatisfactory occurrence and develop and agree upon an appropriate course of action, or if the occurrence is not properly remedied to the City's satisfaction after a reasonable period of time which shall not exceed thirty (30) days from the date of the meeting, the City may terminate this Amended Agreement by giving thirty (30) days prior written notice in accordance with Section 23.4 herein.

Association or its authorized manager, shall supervise the operations permitted hereunder during the hours in which the Facility is open for business. Any notice or order given to Association's manager shall be binding as though delivered and served upon Association. If, at any time, City or its authorized representative makes a determination that the manager or any employee of Association is performing unsatisfactory, and City gives notice to Association of such deficiencies with the City, Association shall take appropriate remedial steps, including replacement of the manager with a suitable manager within a reasonable time not to exceed thirty (30) days.

23. TERMINATION, AND EXPIRATION

- 23.1 If a circumstance occurs which under the terms of this Amended Agreement would result in termination, then within ten (10) days of the date of notice from City of its intent to terminate, City and Association representatives shall meet and directly work to attempt to resolve the problem. If there is no resolution of the problem at that time, City may terminate this Amended Agreement pursuant to Section 23.4 herein.
- 23.2 If City terminates this Amended Agreement in accordance with Section 23.4, there will be no liability on City's part to reimburse Association for loss profits resulting from the termination of the operation of the Facility. Association does not hereby waive any rights it may have just compensation for breach of contract.
- 23.3 Upon the termination or expiration of this Amended Agreement, the City at its sole option may require the Association to return the Facility to the condition in which it existed prior to the Association's use and operation thereof, normal wear and tear excluded, and remove any improvements or equipment owned by Association that has been installed, or the City, at its sole option, may require the Association to leave selected improvements or equipment owned and installed by the Association in a safe condition. All costs for disassembling and removal shall be borne solely by Association. In addition, City reserves rights to operate existing "Planet Hockey" programs. Association is prohibited from dismantling or dissolving existing programs, discouraging or recruiting existing teams away from the "Planet Hockey" program. Association will make available to City all program information including, but not limited to, team rosters, program and staff schedules, vendor information, contracts and records of accounts for three most recent years.
- 23.4 In the event Association shall fail or refuses to improve or change the operations permitted herein or to conform to the rules, regulations, or directions of City, or otherwise fails or refuses to comply with the terms of this Amended Agreement and said default continues for thirty (30) days (after notice and meeting as set out in Section 23.1), City may terminate this Amended Agreement, with said termination to be effective thirty (30) days from date of the notice to terminate. Upon the effective date of termination, City shall either immediately take possession of the operations herefore conducted by

Association or require Association to remove any or all improvements at Association expense. Such foregoing remedies are cumulative and shall not impair any other rights or remedies of City.

24. RIGHT OF INSPECTION

City shall have the right to enter the Facility at any and all reasonable times for the purpose of inspection and observation of Association's operations. During these inspections, City shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place at Planet Hockey. Inspections may be made by City employees or may be made by independent contractors engaged by City. City shall have the right to inspect to determine if the terms and conditions of this Amended Agreement are being met and to observe transactions between Association and patrons in order to evaluate the quality and quantities of food or drinks or other items sold or dispensed, the courtesy extended to and methods of dealing with the public, the performance and caliber of Association's employees and for any purpose incidental to the rights of City.

25. FORMULA FOR PAYMENTS

The Parties agree and acknowledge that this Amended Agreement takes effect during the ninth year of the fifteen-year term of the Original Agreement. In addition, as previously stated in the Recitals herein, the Parties agree and acknowledge that the City Council authorized an extension of the term of the Original Agreement, that Association has paid the City the outstanding balance of the Construction Costs in accordance with the terms of the Original Agreement, and that the City Council authorized a credit of \$57,154 to be used towards the Association's payment of the required gross receipts for 2004 (hereinafter referred to as "Allowable Credit"). Therefore, throughout the term of this Amended Agreement, Association shall pay the City the specified percentage of gross receipts as set forth below:

During Year 2004	(9 th year)	15% of gross receipts, less "Allowable Credit"
During Years 2005 to 2016	(10 th year to 21 st year)	15% of gross receipts

For purposes of this section, "gross receipts" shall include any and all revenues received, without deduction of any sort, from all sources, and shall include but not be limited to the following:

- a) Adult league fees
- b) Youth league fees
- c) Tournament fees
- d) Clinic fees
- e) Facility rental fees

Gross receipts as defined herein shall not include pro shop or snack bar sales. Association shall pay to City \$600 per year to operate and provide the pro shop/snack bar services.

All payments shall be due four (4) times a year, sixty (60) days following the start of each hockey or activity season, and shall be made in accordance with Sections 25.1 and 25.2 below. The annual balance is due in full by December 31st of each year.

Association shall receive a Five Thousand Dollar (\$5,000.00) per year rent credit for operating a free public skate program Monday through Friday, 1:00 p.m. to 5:00 p.m. in conjunction with its operation of the Facility.

25.1 REPORTS BY ASSOCIATION

Association shall submit gross receipts reports and payments four (4) times per year showing gross receipts for each season of play from the operations permitted herein. Said report and payments are due to the City sixty (60) days following the beginning of each season. The reports shall show both adult and youth league fees, tournament fees, clinic fees, and Facility rental fees.

In the event Association fails to submit a payment or report by the due date, Association shall pay to City a late charge of ten percent (10%) on the outstanding unpaid balance, or \$25.00, whichever is greater, or the maximum permitted by law. If a due date falls on a non-workday, the late charge will not apply until the next workday. If the Association offers unusual or extenuating circumstances for not making said payment when due, the Community Services Director or designee at his/her discretion may waive the late charge. If Association pays with a check returned for insufficient funds, Association shall also pay a service charge per Finance Department policy in addition to applicable late charges, and Association shall thereafter make all payments in cash or by money order.

25.2 RECORDS AND BOOKS OF ACCOUNT

Association shall keep or cause to be kept in accordance with generally accepted accounting principles full and accurate books of account, records, cash receipts, and other pertinent data showing its gross receipts regarding its operation of the Facility. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of four (4) years after the end of each accounting year and partial accounting year, and shall be made available to the City's Community Services Director or designees upon 72 hours notice. The receipt by City of any statement or any payment of the percentage of gross receipts for any period shall not bind City to the correctness of the statement or the payment. City shall be entitled at any time during the term of this Amended Agreement and within two (2) years after expiration or termination of this Amended Agreement, to inspect and examine records, books of account, cash receipts, and other pertinent data of Association so City can ascertain the percentage of gross receipts and sales tax, as applicable, due to City. Association shall cooperate fully with Director with respect to the inspection. Director shall hold all such data as competitive sensitive data to extent allowed by law.

City may request an independent audit of Association during normal business hours. The Association may be responsible for proceeds no more than three years past from date of audit.

26. NOTICES

Any notice or demand required to be given herein shall be writing and delivered in person, by United States mail, postage prepaid, or by reliable overnight mail to the addresses of the respective Parties as set forth below. Notice shall be effective on the date it is delivered in person or by overnight courier, or if mailed, three (3) days after the date of deposit. The Parties may from time to time designate any other addresses by written notice to the other party.

To City: City of West Covina
Attention: Community Services Director
P.O. Box 1440
West Covina, CA. 91793

To Association: California Street Hockey Association
Attention: Bryan Garland
2564 Associates Road, #9
Fullerton, CA 92835

27. LIABILITY INSURANCE

27.1 General Liability Insurance

Without limiting the Association's indemnification of the City as set forth in Section 28 below, the Association shall secure from a good and responsible company or companies doing insurance business in the State of California, pay for, and maintain in full force and effect for the duration of this Amended Agreement, a policy of comprehensive general liability insurance, and shall furnish a Certificate of Liability Insurance and applicable endorsements to the Community Services Director upon request. Said policy shall provide:

- (a) An endorsement naming the City and West Covina School District, their officers, agents, and employees as additional insureds before execution of this Amended Agreement by the City.
- (b) The Association also shall maintain throughout the term of this Amended Agreement, comprehensive automobile liability insurance (including owned, non-owned and hired automobile hazards) on the same terms and conditions.

Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the protection offered by the policy shall also:

- (a) Insure the City, their officers, employees and agents, while acting within the scope of their duties under this Amended Agreement, against all claims arising out of, or in connection with, the Amended Agreement.
- (b) A combined single limit policy for both liability and property in the amount of \$1,000,000 per occurrence will be considered equivalent to the required City's minimum limits. The Association may file insurance acceptable to the City, covering more than one project.
- (c) Bear an endorsement or shall have attached a rider providing that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the Community Services Director shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) days before such expiration or cancellation is effective.

27.2 Workers' Compensation Insurance

By execution of this Amended Agreement, the Association certifies that it is aware of, and will comply with, Section 3700 et seq. of the California Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work. The Association shall secure, pay for and maintain in full force and effect for the duration of this Amended Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Community Services Director before execution of this Amended Agreement by the City. The City, their agents, officers and employees shall not be responsible for any claims in law or equity occasioned by the failure of Association to comply with this section.

Every compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the City's Community Services Director shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) days before such expiration or cancellation is effective.

27.3 Association's failure to comply with the insurance provisions herein may result in termination of this Amended Agreement in accordance with Section 23 herein.

28. INDEMNIFICATION

Association shall indemnify, defend, protect and hold harmless the City, their officers, agents, and employees from, and against, any claim, loss, liability or expense, including reasonable attorney's fees, court costs, and necessary disbursements, for any damage whatsoever, including but not limited to, bodily injury, death, or injury to property, arising or alleged to arise from any act or omission of Association, its officers, employees, or agents in the performance or non-performance of this Amended Agreement.

29. PLAYER RELEASE FORMS

Association shall not permit any individual to participate in any organized activity on the Facility without first having completed a release form, such release forms shall be approved by City in advance. At the City's request, Association shall provide copies of the required release forms.

30. CONTROL OF FACILITY

If necessary for the health, welfare or safety of the general public, or as a result of the termination of this Amended Agreement, Community Services Director or designee shall have the right to enter the Facility and take possession thereof immediately.

31. MAILING LIST

Association shall, during the term of this Amended Agreement, maintain City on Association's regular mailing list for all correspondence which is generally sent out to teams. This shall include all team schedules and any correspondence dealing with the operation of the Facility. All correspondence shall be addressed to: Community Services Department, P.O. Box 1440, West Covina, CA 91793, Attn: Community Services Director or designee.

32. INDEPENDENT CONTRACTOR

The Association is and shall at all times remain as to the City, a wholly independent contractor, and shall have no power or authority to incur any debt, obligation or liability on behalf of the City. Neither the City, nor any of their officers, employees or agents shall have control over the conduct of the Association or any of the Association's officers, employees or agents, except as herein set forth. The Association shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City, nor shall City officers, employees or agents be deemed the officers, employees or agents of Association as a result of this Amended Agreement.

33. LEGAL RESPONSIBILITIES

The Association shall keep itself informed of City, State, and Federal laws, ordinances and regulations, which in any manner effect the performance of its obligation pursuant to this Amended Agreement. The Association shall at all times observe and comply with all such laws, ordinances and regulations. Neither the City, nor their officers, agents or employees shall be liable at law or in equity as a result of the Association's failure to comply with this section.

34. NO WAIVER OF CONDITIONS

No waiver of any conditions of performance under this Amended Agreement shall be construed as waiver of any other condition of performance under its Amended Agreement or as a continuing waiver of that condition. All waivers of the provisions of this Amended Agreement must be in writing and signed by the appropriate authorities of City and Association.

35. FAMILIARITY WITH WORK

By executing this Amended Agreement, Association warrants that: (1) it has thoroughly investigated and considered the work to be performed; (2) it has investigated the Facility and fully acquainted itself with the conditions there existing; (3) it has carefully considered how the work should be performed; and (4) it fully understands the facilities, difficulties, and restrictions attending performance of the work under this Amended Agreement. Should Association discover any latent or unknown conditions materially differing from those inherent in the work or as represented by City, it shall immediately inform City of such fact and shall not proceed, except at Association's risk, until written instructions are received from City.

36. TIME OF ESSENCE

Time is the essence of this Amended Agreement.

37. LIMITATIONS UPON SUBCONTRACTING AND ASSIGNMENT

This experience, knowledge, capability, and reputation of Association, its principals and employees were a substantial inducement for the City to enter into this Amended Agreement. Therefore, Association shall not contract with any other entity to perform in a whole or in part the services required hereunder without express written approval of City. In addition, neither this Amended Agreement nor any obligation or benefit herein may be assigned or transferred, voluntarily or by operation of law, without prior written approval of City. If Association is permitted to subcontract or assign any part of this Amended Agreement, Association shall be as fully responsible to City for the acts and omissions of the subcontractor or assignee as it is for the acts and omissions of persons directly employed by itself, and shall be responsible for properly supervising and coordinating the work of the subcontractor or assignee. Nothing contained in this Amended Agreement shall create any contractual relationship between any subcontractor/assignee and City. Association shall require every subcontractor/assignee to be bound by the terms of this Amended Agreement as applicable to his work.

38. ENTIRE AGREEMENT; MODIFICATIONS

This Amended Agreement constitutes the entire integrated understanding between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral, including the Original Agreement. This Amended Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Amended Agreement may be modified only by subsequent mutual agreement executed by City and Association.

39. CALIFORNIA LAW

This Amended Agreement shall be interpreted and construed in accordance with the laws of the State of California.

40. INTERPRETATION; ATTORNEYS' FEES

This Amended Agreement shall be interpreted as though prepared by both parties. It may be executed in counterparts. Disputes regarding the interpretation or application of any provided of this Amended Agreement shall to the extent reasonably feasible, be resolved through good faith negotiations between the Parties. Should any dispute regarding the interpretation or application of this Amended Agreement lead to litigation, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which it may be entitled in law or equity.

41. SEVERABILITY.

If any provision of this Amended Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provision nevertheless will continue in full force and effect without being impaired or invalidated in any way.

42. EFFECTIVE DATE

Unless otherwise specified herein, this Amended Agreement shall become effective on the date in which the last of the Parties, whether City or Association, executes this document.

[Signature Page to follow.]

IN WITNESS WHEREOF, the Parties hereto cause this Amended Agreement to be executed by its duly authorized officers.

City of West Covina ("City")

Date: 3/11/04

By [Signature]
Steve Herfert, Mayor

ATTEST:

APPROVED AS TO FORM:

[Signature]
City Clerk

[Signature] for
City Attorney

California Street Hockey Association
Orangewood, Inc. ("Association")

Date: 3/11/04

By [Signature]
Bryan Garland, President

Date: 3/10/04

By [Signature]
Gilbert Morrison II, Vice President
Vice President/Secretary