

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “Settlement Agreement”) is entered into by and between IceArizona Manager Co LLC and IceArizona Hockey Co LLC (collectively, “IceArizona”), on the one hand, and the City of Glendale (the “City”), Jerry Weiers, Ian Hugh, Bart Turner, Lauren Tolmachoff, Jamie Aldama, Gary Sherwood, and Samuel Chavira (collectively, the “City Council”), and Dick Bowers (the “City Manager”) and Michael Bailey (the “City Attorney”), on the other hand. The City Manager and the City Attorney are collectively referred to herein as the “City Officers.” The City, the City Council, and the City Officers are collectively referred to herein as “Glendale.” IceArizona and Glendale are collectively referred to herein as the “Parties” and singularly referred to herein as the “Party.”

RECITALS

WHEREAS, the City and IceArizona entered into the Professional Management Services and Arena Lease Agreement, dated July 8, 2013 (the “Arena Agreement”).

WHEREAS, on June 10, 2015, the City Council voted to direct the City Officers to (1) cancel the Arena Agreement pursuant to A.R.S. § 38-511 and (2) pursue any and all other legal actions and remedies necessary to effectuate cancellation or termination of the Arena Agreement (“June 10 Council Action”).

WHEREAS, the Parties are currently litigating a civil action in the Maricopa County Superior Court in the State of Arizona, captioned *IceArizona Manager Co LLC, et al. v. City of Glendale, et al.*, Case No. CV2015-007216 (the “Lawsuit”), in which the primary issues are the June 10 Council Action and whether grounds exist to cancel the contract pursuant to A.R.S. § 38-511 resulting from IceArizona’s hiring of or engaging former City employees Craig Tindall and Julie Frisoni.

WHEREAS, in the Lawsuit, among other things, IceArizona seeks an order (1) requiring the City to perform all of its obligations under the Arena Agreement, (2) temporarily, preliminarily, and permanently enjoining and restraining Defendants from authorizing or effectuating the cancellation of the Agreement, and (3) various forms of declaratory relief.

WHEREAS, the Parties are currently litigating in the United States Bankruptcy Court for the District of Arizona (the “Bankruptcy Lawsuit”), in which the primary issue is what interest the Parties and others have in the proceeds of approximately \$1 million held and escrowed in a restricted account at Wells Fargo Bank, commonly referred to as the “Operating Reserve Account.”

WHEREAS, the City and IceArizona have negotiated and, contemporaneously with the execution of this Settlement Agreement, amended the Arena Agreement in the document titled First Amendment to the Professional Management Services and Arena Lease Agreement (the “First Amendment”).

WHEREAS, the Parties now desire to comprehensively and finally settle, resolve, and put behind them any and all controversies, claims, actions, disputes, and matters, whether known or unknown, that the Parties have or may have against each other, relating to, arising out of, or connected with the June 10 Council Action, the Lawsuit, the Bankruptcy Lawsuit and the factual allegations set forth in the Lawsuit and the Bankruptcy Lawsuit, or whether Craig Tindall (“Tindall”) or Julie Frisoni (“Frisoni”) was involved, in any way, in initiating, negotiating, drafting, creating, or securing the Arena Agreement or the First Amendment on behalf of Glendale, including without limitation any rights or remedies Glendale may seek to assert under A.R.S. §§ 38-503 to 38-511 relating to the acts of Tindall or Frisoni or any other statutory provision or legal authority.

AGREEMENT

For and in consideration of the mutual undertakings hereunder, and each Party intending to be legally bound, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are incorporated in this Settlement Agreement and are made a part of the Settlement Agreement by reference.
2. **Effective Date.** The Parties agree that this Settlement Agreement shall become effective (the “Effective Date”) on the date the last Party to this Settlement Agreement signs this Settlement Agreement.
3. **Dismissal of Lawsuit.** Within five (5) business days of the Effective Date, IceArizona shall file a notice of voluntary dismissal of the City Council and the City Officers from the Lawsuit with prejudice. Within five (5) days of the Effective Date, IceArizona and the City shall execute, and IceArizona shall file, a joint stipulation to dismiss the Lawsuit with prejudice.
4. **No Other City Employee Involved With Arena Agreement.** The Parties represent and warrant that, as of the Effective Date, to the best of their individual and collective knowledge, information, and belief, no other former employees of the City, other than Craig Tindall or Julie Frisoni, have become consultants to or employees of IceArizona, in any capacity, since July 8, 2013. IceArizona represents and warrants that neither Tindall nor Frisoni has, in any way and to any extent, no matter how substantial or insubstantial, been involved in initiating, negotiating, creating, drafting, or securing the First Amendment. In reliance on these representations and warranties and those in Section 6, the City, City Council, City Manager, and City Attorney, collectively and individually, represent and warrant that they will never in the future seek to cancel or void the Arena Agreement or the First Amendment based on the involvement of Tindall or Frisoni, no matter how substantial or insubstantial, in initiating, negotiating, creating, drafting, or securing the Arena Agreement or the First Amendment on behalf of Glendale, so long as Tindall and Frisoni are not employed or retained as a consultant by IceArizona or any of its affiliates, divisions, parent entities, or subsidiaries. These representations and warranties are material terms of this Settlement Agreement and are intended

by the Parties to have the broadest possible application and interpretation so as to conclusively foreclose any challenge to the Arena Agreement or the First Amendment under any conflict or self-dealing related statute.

5. Agreement Not To Cancel Arena Agreement. In reliance upon the representations and warranties by IceArizona in Sections 4 and 6, which are material to this Settlement Agreement, Glendale agrees not to cancel, void, or vote to cancel or void the Arena Agreement or the First Amendment as a result of, or based on, any claim or allegation that Tindall or Frisoni has, had, or could have had a conflict of interest or substantial or pecuniary interest in the Arena Agreement or the First Amendment under A.R.S. §§ 38-503 to 38-511, or any other state law or statute, or has, had, or could have had any involvement in initiating, negotiating, creating, drafting, or securing the Arena Agreement or the First Amendment, so long as neither Tindall nor Frisoni are employed or retained as a consultant by IceArizona or any of its affiliates, divisions, parent entities, or subsidiaries.

6. Representations and Warranties by IceArizona. IceArizona represents and warrants that as of the Effective Date, Tindal is not be an employee or consultant of IceArizona or any of its affiliates, divisions, parent entities, or subsidiaries and will make an agreement with IceArizona to release the City, the City Council, and the City Officers, individually and collectively, in connection with any allegations set forth in the Lawsuit, that gave rise to or were the basis for the June 10 City Council Action, with respect to any involvement that he had or may have had in initiating, negotiating, drafting, creating, or securing the Arena Agreement and/or the effort by the City, the City Council and the City Officers to cancel the Arena Agreement pursuant to A.R.S. § 38-511. IceArizona further represents and warrants that as of the Effective Date, Frisoni is not an employee or consultant of IceArizona or otherwise associated with IceArizona or any of its affiliates, divisions, parent entities, or subsidiaries.

7. Costs and Attorneys' Fees. The Parties agree to bear their own costs, attorneys' fees, and other expenses incurred in connection with the Lawsuit, the Arena Agreement, the First Amendment, the Bankruptcy Lawsuit, or in any way relating to this Settlement Agreement. In any dispute involving the enforcement of this Settlement Agreement, the prevailing party shall be entitled to recover, in addition to all other remedies it, he, she, or they may have, its, his, her, or their attorneys' fees, and all other reasonable costs and expenses incurred as a result of such a dispute.

8. Mutual Release. IceArizona, on behalf of itself and its past, present, and future, representatives, agents, and assigns, including, its affiliates, divisions, parent entities, subsidiaries, principals, owners, shareholders, managers, investors, members, insurers, officers, agents, employees, beneficiaries, servants, directors, partners, independent contractors, executors, trustees, successors and predecessors-in-interest, administrators and assigns, heirs, and all or any other persons or entities claiming by, through, under, or on behalf of IceArizona, hereby, knowingly and voluntarily, forever waive, covenant not to sue, release, and discharge Glendale, and any, all, and each of Glendale's past, present, or future representatives, agents, and assigns, including, but not limited to, the City, City Council, City Officers, and the City's employees,

elected and appointed public officials, officers, agencies, attorneys, departments, special purpose districts, affiliates, or entities, and any and all other persons or entities claiming by, through, under, or on behalf of Glendale, from all claims, demands, obligations, actions and causes of action, or causes of liability, rights, and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, matured or unmatured, discovered or undiscovered, asserted or unasserted, including without limitation any form of injunctive or equitable relief, any award of actual, consequential, incidental, liquidated or other types or categories of damages or relief, any form of recoupment, any award of punitive or exemplary damages, any claims for attorneys' fees or costs or expenses of litigation, and any other type of relief which IceArizona, or any other person or entity claiming by, through, under, or on behalf of IceArizona, has, had, may have, or may have had as of the Effective Date, relating to, arising out of, or connected with the June 10 Council Action, the Lawsuit, the Bankruptcy Lawsuit, the factual allegations set forth in the Lawsuit or the Bankruptcy Lawsuit or related in any way to those factual allegations, or whether any employee or consultant of IceArizona was involved, in any way, in initiating, negotiating, drafting, creating, or securing the Arena Agreement or the First Amendment on behalf of Glendale, including without limitation any rights or remedies under A.R.S. §§ 38-503 to 38-511 or any other statutory provision or legal authority.

Glendale, on behalf of itself and its past, present, and future representatives, agents, and assigns, including, but not limited to, the City, City Council, City Officers, and the City's employees, elected and appointed public officials, officers, agencies, departments, special purpose districts, affiliates, or entities, and any and all other persons or entities claiming by, through, under, or on behalf of Glendale, hereby, knowingly and voluntarily, forever waive, covenant not to sue, release, and discharge IceArizona, and any, all, and each of IceArizona's past, present, and future, representatives, agents, and assigns, including, its affiliates, divisions, parent entities, subsidiaries, principals, owners, attorneys, shareholders, managers, investors, members, insurers, officers, agents, employees, beneficiaries, servants, directors, partners, independent contractors, executors, trustees, successors and predecessors-in-interest, administrators and assigns, heirs, and all other persons or entities claiming by, through, under, or on behalf of IceArizona, from all claims, demands, obligations, actions and causes of action, or causes of liability, rights, and offset rights, whether at law or in equity, whether known or unknown, suspected or unsuspected, matured or unmatured, discovered or undiscovered, asserted or unasserted, including without limitation any form of injunctive or equitable relief, any award of actual, consequential, incidental, liquidated or other types or categories of damages or relief, any form of recoupment, any award of punitive or exemplary damages, any claims for attorneys' fees or costs or expenses of litigation, and any other type of relief which Glendale, or any other person or entity claiming by, through, under, or on behalf of Glendale, has, had, may have, or may have had as of the Effective Date, relating to, arising out of, or connected with the June 10 Council Action, the Lawsuit, the Bankruptcy Lawsuit, the factual allegations set forth in the Lawsuit or the Bankruptcy Lawsuit or related in any way to those factual allegations, or whether any employee or consultant of IceArizona was involved, in any way, in initiating, negotiating, drafting, creating, or securing the Arena Agreement or the First Amendment on behalf of Glendale, including without limitation any rights or remedies under A.R.S. §§ 38-503 to 38-511 or any other statutory provision or legal authority.

9. Release and Waiver of Bond. The Parties agree and acknowledge that, in conjunction with the Court's Temporary Restraining Order entered in the Lawsuit on June 12, 2015, IceArizona posted a bond on or around June 24, 2015, and posted an increased bond on or around July 8, 2015. Glendale agrees to release and does hereby waive any right or claim to any and all bonds posted or ordered to be posted in the Lawsuit upon the filing of the Notice of Voluntary Dismissal, the Court granting the Stipulation to Dismiss, and the Court vacating the June 12, 2015 Temporary Restraining Order. Immediately upon the dismissal of the Lawsuit, Glendale further agrees to promptly cooperate, in any way necessary, to effectuate the unconditional release to IceArizona of any and all bonds posted in this Lawsuit.

10. Bankruptcy Lawsuit Settlement. The Parties agree and acknowledge that they have negotiated and, contemporaneously with the execution of this lawsuit, have entered into a settlement agreement in the Bankruptcy Lawsuit (the "Bankruptcy Settlement"), a final, approved to form copy of which is attached as Exhibit A. The Parties acknowledge and understand that in the Bankruptcy Settlement, subject to approval by the Court in the Bankruptcy Lawsuit (the "Bankruptcy Court"), the Operating Reserve Account shall be disbursed as follows: \$350,000 to the City, \$10,000 to the David Reaves, Chapter 7 Trustee of Arena Management Group, LLC, and \$640,000 to IceArizona. The Parties agree to seek an expedited order approving the settlement within ten (10) business days of the Effective Date; the Parties acknowledge that the timing is subject to the Court's schedule. The Parties agree that if the Bankruptcy Court does not approve the foregoing distribution, within five (5) business days of such disapproval, IceArizona shall pay to the City \$350,000 (the "Bankruptcy Payment"). Upon receipt of the Bankruptcy Payment, the City (a) agrees and does release, waive, and surrender all rights, claims, demands, and interests it had, has, may have had, potentially could have had, or could have in the future to the Operating Reserve Account and (b) unconditionally assigns to IceArizona all rights, claims, demands, and interests it had, has, may have had, potentially could have had, or could have in the future to the Operating Reserve Account (the "Release and Assignment"). The City and IceArizona further agree to enter into the Release, Waiver, and Unconditional Assignment of Claims to the Operating Reserve Account, in the form attached hereto as Exhibit "B", promptly upon the Bankruptcy Court declining to distribute and release the \$350,000.00, in order to memorialize the Release and Assignment.

11. Non-Admission. It is understood and agreed that the execution of this Settlement Agreement or anything herein does not in any way constitute an admission or concession of wrongdoing or liability by any Party hereto.

12. Binding on Successors and No Assignment. Neither Party may assign this Settlement Agreement without the prior written consent of the other Party. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

13. Consideration. Each Party represents and acknowledges that this Settlement Agreement is supported by fair and adequate consideration sufficient to support a binding agreement.

14. Governing Law and Forum. This Settlement Agreement is to be construed according to the laws of the State of Arizona without regard to the conflicts of law or choice of law doctrines thereof. If any suit, claim, cause, charge, or action is brought related to this Settlement Agreement, it shall be brought in Maricopa County Superior Court.

15. Counterparts. This Settlement Agreement may be signed in any number of counterparts, including facsimile or copies of signatures, each of which shall be deemed an original, but together shall comprise one in the same document.

16. Further Assurances. Each Party agrees to cooperate and to execute such other supplementary or corrective documents and to take such additional actions that reasonably may be necessary to give full force and effect to the terms and provisions of this Settlement Agreement. The individuals executing this Settlement Agreement represent and warrant that he or she possesses all necessary authority and power to execute this on behalf of the Party on whose behalf he or she signs.

17. Entire Settlement Agreement. This Settlement Agreement constitutes and contains the entire agreement and understanding between the Parties regarding the subject matter hereof and thereof, and each Party warrants that no promise, representation, or warranty, express or implied, other than what is contained in this Settlement Agreement, has been made to induce the execution hereof.

18. Severability. If any portion, part, or provision of this Settlement Agreement or the application thereof is held invalid, the invalidity shall not affect other portions, parts, provisions, or applications of this Settlement Agreement which can be given effect without the invalid portions, parts, provisions, or applications, and, to this end, the provisions of this Settlement Agreement are declared to be severable.

19. No Oral Modification. This Settlement Agreement may be amended, modified, or altered only by a writing signed by both Parties; no oral modification of any term of this Settlement Agreement shall be effective for any purpose.

20. Voluntary Agreement. Each Party acknowledges it is entering into this Settlement Agreement freely and voluntarily and is not acting under any coercion, duress, or compulsion, nor is it entering into this Settlement Agreement because of any supposed disparity in bargaining power, rather each Party is freely and voluntarily entering into this Settlement Agreement for its own benefit.

21. Fully Informed Parties. The Parties hereto have been represented in the negotiations for and in preparation of this Settlement Agreement by counsel of their own choosing or have had the opportunity to consult with counsel concerning the legal consequences of this Settlement Agreement; they have reviewed and understand the provisions of this Settlement Agreement; they have had this Settlement Agreement fully explained to them by their counsel or have had the opportunity to consult with counsel but have declined to do so; and they

are fully aware of and understand this Settlement Agreement's contents and its legal effect and consequences.

22. Cooperative Drafting. In any construction or interpretation to be made of this Settlement Agreement, the Settlement Agreement shall not be construed or interpreted against any one Party on the basis that such Party was the drafter. Any rule of law that would require interpretation of any ambiguities in this Settlement Agreement against the Party who has drafted it is of no application is hereby expressly waived.

23. No Other Parties With Interest. The Parties represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of actions referred to in this Settlement Agreement, except as otherwise set forth herein, that they have the sole right and exclusive authority to execute this Settlement Agreement, that the individuals executing this Settlement Agreement have lawful authority and good right to execute this Settlement Agreement, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of actions referred to in this Settlement Agreement.

24. Captions. The paragraph captions set forth in this Settlement Agreement are for the convenience of the parties and do not modify, limit or otherwise affect the express provisions of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date written below.

ICEARIZONA MANAGER CO LLP

ICEARIZONA HOCKEY CO LLP

By: _____

By _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

CITY OF GLENDALE

By: _____

Name: _____

Its: _____

Date: _____

JERRY WEIERS, IAN HUGH, BART TURNER,
LAUREN TOLMACHOFF, JAMIE ALDAMA,
GARY SHERWOOD, SAMUEL CHAVIRA,
DICK BOWERS, AND MICHAEL BAILEY,
IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

By: _____

Name: _____

Its: _____

Date: _____

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