

**MEMORANDUM OF UNDERSTANDING REGARDING SECURITY  
IMPROVEMENTS TO SAP CENTER AND  
SHARKS ICE AT SAN JOSE**

This MEMORANDUM OF UNDERSTANDING ("**MOU**") is entered into by and among the CITY OF SAN JOSE, a municipal corporation ("**City**"), SAN JOSE ARENA MANAGEMENT, LLC, a Delaware limited liability company ("**SJ Arena Management**"), and SHARKS ICE, LLC, a Delaware limited liability company ("**Sharks Ice**"). The "**Effective Date**" of this MOU shall be later of the date this MOU is signed by City or the date this MOU is signed by SJ Arena Management or Sharks Ice as indicated in their respective signature blocks below. SJ Arena Management and Sharks Ice are collectively referred to herein as the "**Sharks**". City, Sharks Ice and SJ Arena Management are referred to in this MOU individually as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

A. City and SJ Arena Management are parties to a Second Amended and Restated Arena Management Agreement dated August 15, 2018, as amended ("**2018 AMA**") regarding the management and operation of a regional multi-purpose sports and entertainment arena and related facilities currently known as SAP Center (collectively, "**Arena Facilities**"). The Arena Facilities are located at 525 West Santa Clara Street in San Jose, California on land owned by City as more particularly described in the 2018 AMA ("**Arena Land**"). Capitalized terms applicable to the Arena Facilities and Arena Land which are not otherwise defined herein shall have the meanings set forth in the 2018 AMA.

B. City and Sharks Ice are parties to a Second Amended and Restated Ice Centre Lease and Management Agreement dated October 1, 2020, as amended ("**2020 Ice Centre Lease**"), regarding the use and operation of the Ice Centre of San Jose, currently known as Sharks Ice at San Jose ("**Ice Centre**"). The Ice Centre is located at 1500 S. Tenth Street in San Jose, California on land owned by City as more particularly described in the 2020 Ice Centre Lease ("**Ice Centre Land**"). Capitalized terms applicable to the Ice Centre and Ice Centre Land which are not otherwise defined herein shall have the meanings set forth in the 2020 Ice Centre Lease.

C. City and the Sharks have a mutual interest in enhancing the security and safety of the Ice Centre and Arena Facilities for the benefit of the Parties as well as patrons of and visitors to the Ice Centre and Arena Facilities. In furtherance of this goal City and Sharks have identified certain mutually desirable security-related improvements to the Ice Centre ("**Ice Centre Security Improvements**") and the Arena Facilities ("**Arena Facilities Security Improvements**") and, collectively with the Ice Centre Security Improvements, the "**Security Improvements**", which are described in Exhibit A attached hereto and incorporated herein. The "**Scope of Work**" includes six separate Security Improvements line items (one applicable to the Ice Centre and five applicable to the Arena Facilities) estimated to cost \$997,046.57, inclusive of a 10% contingency and an allowance of \$65,000 for estimated Department of Public Works fees.

D. The 2018 AMA and 2020 Ice Centre Lease authorize the construction and installation from time to time of Alterations, including mutually agreed upon improvements, betterments, additions, installations, repairs or other alterations or fixtures, to the Arena Facilities and Ice Centre, respectively, with the cost of such Alterations allocated between the Parties as they may mutually agree.

E. The Parties desire by this MOU to memorialize their agreement that the Security Improvements constitute mutually acceptable Alterations per the terms of the 2018 AMA and 2020 Ice Centre Lease, and to provide a mechanism for financing and managing the construction and installation of the Security Improvements listed in the Scope of Work and, potentially, one or more additional security-related items to be mutually agreed upon by the Parties to the extent excess funds from City's Share remain after completion of the Scope of Work.

## **AGREEMENT**

In consideration of the mutual promises, covenants, and conditions set forth in this MOU, the Parties agree as follows:

### **1. TERM**

**1.1 Term.** This MOU will remain in effect from the Effective Date until completion of construction and installation of the Security Improvements listed in the Scope of Work, together with additional items included in a Supplemental Scope of Work, if any.

### **2. ALTERATIONS APPROVAL**

**2.1 Ice Centre Security Improvements.** Pursuant to Article 9 of the 2020 Ice Centre Lease, City and Sharks Ice hereby agree that the Ice Centre Security Improvements constitute approved Alterations (as defined in the Ice Centre Lease).

**2.2 Arena Facilities Security Improvements.** Pursuant to Section 28.5 of the 2018 AMA, City and SJ Arena Management hereby agree that the Arena Facilities Security Improvements constitute approved Alterations (as defined in the 2018 AMA).

### **3. FINANCIAL PROVISIONS**

**3.1 City's Share.** Within the times set forth in section 3.2 below, City shall (i) pay to SJ Arena Management \$485,000 representing City's Share of Scope of Work costs allocable to the Arena Facilities Security Improvements ("**City's Share of Arena Facilities Work**"), and (ii) pay to Sharks Ice \$515,000 representing City's Share of Scope of Work costs allocable to the Ice Centre Security Improvements ("**City's Share of Ice Centre Work**"). City shall fund City's Share of Arena Facilities Work and City's Share of Ice Centre Work from its own funds and not from the San Jose Arena Capital Reserve Fund or the Ice Centre Reserve Account. The sum total of City's Share of Arena Facilities Work and City's Share of Ice Centre Work is One Million Dollars (\$1,000,000) and is referred to herein as "**City's Share**". The Parties agree that City's Share is a fixed amount and, therefore, City shall not be obligated to pay any cost overruns if the actual costs of the Scope of Work exceed \$1,000,000.

**3.2 Timing of Disbursement of City's Share.** City shall disburse City's Share of Arena Facilities Work and City's Share of Ice Centre Work in installments as set forth below.

**3.2.1 Payment of City's Share of Arena Facilities Work.** Within thirty (30) days following the Effective Date, City shall pay to SJ Arena Management \$388,000, representing 80% of City's Share of Arena Facilities Work. City shall pay to SJ Arena Management the balance of City's Share of Arena Facilities Work in the amount of \$97,000 within 30 days following SJ Arena Management's written notice to City that the Arena Facilities Security Improvements work is complete with the exception of minor punch list items.

3.2.2 Payment of City's Share of Ice Centre Work. Within thirty (30) days following the Effective Date, City shall pay to Sharks Ice \$412,000, representing 80% of City's Share of Ice Centre Work. City shall pay to Sharks Ice the balance of City's Share of Ice Centre Work in the amount of \$103,000 within 30 days following Sharks Ice's written notice to City that the Ice Centre Security Improvements work is complete with the exception of minor punch list items.

**3.3 Supplemental Scope of Work.** To the extent any funds from City's Share remain after completion of the Scope of Work, City and Sharks shall discuss and agree upon one or more additional security-related improvements to the Arena Facilities or Ice Center, the cost of which is approximately equal to the amount of such remaining funds ("**Supplemental Scope of Work**"). When the Parties have agreed on the Supplemental Scope of Work item(s), the Sharks shall promptly commence and complete such Supplemental Scope of Work item(s) thereby ensuring that all monies contributed by City as part of City's Share are properly expended on mutually acceptable security-related improvements.

**3.4 Shark's Share.** To the extent the cost of the Scope of Work (and any additional components undertaken by the Sharks in connection with any Supplemental Scope of Work) exceeds City's Share, such cost overruns shall be borne by the Sharks.

#### **4. SHARKS OBLIGATIONS**

**4.1 Sharks Contracting Duties.** Sharks Ice or SJ Arena Management, as applicable, will be solely responsible for constructing and installing, or causing construction and installation of, the Scope of Work, together with the additional items, if any, included in any Supplemental Scope of Work. All such work shall be constructed and installed in accordance with the provisions of this MOU and the 2020 Ice Centre Lease and 2018 AMA, as applicable. As the contracting parties for the Scope of Work and, if applicable, any Supplemental Scope of Work items, Sharks Ice and SJ Arena Management shall perform the following services:

4.1.1 Contracting. Negotiate and enter contracts with the individuals or entities constructing and installing the Ice Centre Security Improvements and Arena Facilities Security Improvements included in the Scope of Work and, if applicable, any Supplemental Scope of Work items.

4.1.2 Administration. Monitor and manage construction and installation of the Ice Centre Security Improvements and Arena Facilities Security Improvements included in the Scope of Work and, if applicable, any Supplemental Scope of Work items.

4.1.3 Expenditures. Utilize City's Share of the Security Improvements funding only for payment of costs incurred in connection with the design, permitting, installation and construction of Security Improvements.

4.1.4 Accounting. Provide to City an accounting of all contract costs and Security Improvements-related expenditures under this MOU upon City's request made from time to time.

4.1.5 Reporting. Provide periodic reports concerning the status of the Security Improvements work at such frequency as the Parties may mutually agree.

**4.2 Timing of Commencement and Completion of Construction.** Promptly following City's payment in full of City's Share, Sharks shall commence and thereafter diligently

prosecute to completion the construction and installation of the Security Improvements listed in the Scope of Work and, if applicable, any Supplemental Scope of Work items.

**4.3 Retention and Inspection of Cost Expenditure Records.** Sharks shall retain records of all expenditures made in connection with construction and installation of the Security Improvements work for at least three years following completion of such work. The records of all expenditures for Security Improvements work will be open to inspection by City's designated representatives or employees or agents upon reasonable notice to Sharks.

**4.4 Compliance with Laws; Insurance and Indemnity Requirements.** Sharks shall perform all Security Improvements-related work in compliance with all Applicable Laws and subject to the insurance and indemnity provisions of the 2020 Ice Centre Lease and 2018 AMA, as applicable.

## **5. DEFAULTS**

Each Party has the right to assert matters which it believes have not been undertaken in accordance with this MOU, to explain the basis for such assertion, and to receive from the other Party or Parties a justification of its position on such matters. If any Party concludes that another Party has not complied in good faith with the terms of the MOU, then such Party may issue a written "**Notice of Non-Compliance**" specifying the grounds and all facts demonstrating such non-compliance, which Notice of Non-Compliance must be provided to the alleged noncompliant Party along with all other Parties. The alleged noncompliant Party will have 15 days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such 15-day period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion.

## **6. MISCELLANEOUS PROVISIONS**

**6.1 Notices.** Any notices or reports relating to this MOU, and any request, demand, statement, or other communication required or permitted under this MOU must be in writing and must be delivered to the Parties at the addresses set forth below. A notice will be deemed to have been received on the date of delivery, if delivered by hand, or via nationally recognized overnight delivery service during regular business hours. A notice delivered by email shall not be deemed to be delivered unless and until the recipient expressly acknowledges receipt of the email (it being understood that an automatic reply is not an express acknowledgement).

City: Office of Economic Development and Cultural Affairs  
Real Estate Services Division  
200 E. Santa Clara St., 17<sup>th</sup> Floor  
San José, CA 95113  
Attn: Director of Economic Development  
Tel: 408-535-8197  
Email: [kevin.ice@sanjoseca.gov](mailto:kevin.ice@sanjoseca.gov)

With copies to: Department of Public Works  
200 E. Santa Clara St., 5<sup>th</sup> Floor  
San José, CA 95113  
Attn: Sal Kumar  
Tel: 408-535-8300  
Email: [sal.kumar@sanjoseca.gov](mailto:sal.kumar@sanjoseca.gov)

And: Office of City Attorney  
200 E. Santa Clara St., 16<sup>th</sup> Floor  
San José, CA 95113  
Attn: Real Estate Attorney  
Tel: 408-535-1900  
Email: [cao.main@sanjoseca.gov](mailto:cao.main@sanjoseca.gov)

Sharks: Sharks Ice, LLC  
525 West Santa Clara St.  
San Jose, CA 95113  
Attn: Jon Gustafson, Senior Vice President  
Tel: (408) 593-7694  
Email: [jgustafson@sharksice.com](mailto:jgustafson@sharksice.com)

With a copy to: San Jose Arena Management, LLC  
525 West Santa Clara St.  
San Jose, CA 95113  
Attn: General Counsel  
Tel: (408) 287-7070  
Email: [legal@sjsharks.com](mailto:legal@sjsharks.com)

**6.2 Confidentiality of Draft Documents.** The Parties acknowledge and agree that certain of the Security Improvements-related reports and plans previously prepared or to be prepared in connection with this MOU may be proprietary, privileged, or otherwise confidential (collectively, “**Confidential Records**”) and therefore not subject to disclosure to third parties, including under the California Public Records Act (“**CPRA**”). Each Party agrees to hold any Confidential Records in confidence, to the extent allowed by law, and to take all reasonable precautions regarding the storage, custody, or use of Confidential Records to ensure that the content and confidential nature is maintained and protected, including all precautions that such Party employs with respect to its own confidential and proprietary records. In the event a Party receives a request from a third party for disclosure of any Confidential Records pursuant to the CPRA or a discovery request or subpoena, such Party agrees to give notice of such request to the other Parties, including the disclosure deadline. The notified Parties will have five days from the date they receive such notice to in turn notify the other Party in writing that it or they object to the disclosure of any specific Confidential Records. A Party may disclose any Confidential Records pursuant to a proper court, governmental order, or existing law, provided that such Party may disclose only that portion of the Confidential Record that is legally required to be disclosed. This section and the obligations and duties imposed on each Party will survive the expiration or termination of this MOU.

**6.3 Relationship of the Parties.** The Parties are, and will remain as to each other, independent entities. No Party to this MOU has any power to incur any debt, obligation, or liability on behalf of any other Party unless expressly provided in this MOU. No employee, agent, or officer of a Party will be deemed for any purpose whatsoever to be an agent, employee, or officer of another Party.

**6.4 Amendment of MOU.** This MOU may be amended only by written instrument signed by all Parties.

**6.5 Assignment.** The rights and duties of the Parties under this MOU may not

be assigned without the advance written consent of all the other Parties, and any attempt to assign such rights or duties in contravention of this section will be null and void. Subject to the foregoing limitations, this MOU inures to the benefit of, and is binding upon, the successors and assigns of the Parties.

**6.6 Governing law.** This MOU is governed by, and will be interpreted, construed, and enforced in accordance with the laws of the State of California, without reference to its choice of law rules.

**6.7 Entire Agreement.** This MOU, together with all relevant provisions of the 2018 AMA and 2020 Ice Centre Lease applicable to construction and installation of Alterations, constitutes the entire agreement of the Parties with respect to the subject matter of this MOU.

**6.8 Waiver.** Waiver by any Party to this MOU of any term, condition, or covenant of this MOU will not constitute a waiver of any other term, condition, or covenant. Waiver by any Party to any breach of the provisions of this MOU will not constitute a waiver of any other provision, nor will it constitute a waiver of any subsequent breach or violation of any provision of this MOU.

**6.9 No Presumption in Drafting.** All Parties have had the opportunity to have this MOU reviewed by their legal counsel. Accordingly, this MOU will be construed according to its fair language.

**6.10 Severability.** If one or more clauses, sentences, paragraphs or provisions of this MOU is held to be unlawful, invalid or unenforceable, the remainder of the MOU will not be affected. Such clauses, sentences, paragraphs or provisions will be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.

**6.11 Execution by Counterparts; Electronic Signatures.** This MOU may be executed in any number of counterparts and upon execution by all Parties, each executed counterpart will have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Unless otherwise prohibited by law or policy of a Party, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Cal. Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City. Any Party may execute and/or deliver this Agreement by facsimile or PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Civ. Code § 1633.1 et seq.) or other applicable law, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

*[SIGNATURES ON NEXT PAGE]*

The undersigned authorized representatives of the Parties have executed this MOU as of the dates written below, the last of which shall be the "Effective Date" of this MOU.

**"CITY"**

APPROVED AS TO FORM: CITY OF SAN JOSE,  
a California municipal corporation

_____	By _____	_____
Cameron Day	Toni Taber	Date Signed
Senior Deputy City Attorney	San Jose City Clerk	

**"SJ ARENA MANAGEMENT"**

SAN JOSE ARENA MANAGEMENT,  
LLC  
a Delaware limited liability company

By _____	_____
Jon Gustafson	Date Signed
Senior Vice President	

**"SHARKS ICE"**

SHARKS ICE, LLC  
a Delaware limited liability company

By _____	_____
Jon Gustafson	Date Signed
Senior Vice President	

**EXHIBIT A**

**SCOPE OF WORK**

<b>Title</b>	<b>Facility</b>	<b>Recommendation to Reach or Exceed FSL 3</b>	<b>Mitigation Response</b>	<b>Project Cost</b>
Vehicle Barriers / Vehicle Access Control	SAP Center	Determine the appropriate crash rating for the north end private parking lot gate and planters along the south and east side of the building. Install crash rated bollards or other barriers to impede vehicles from gaining access to the sidewalks from the far north and west sides of SAP Center. Install bollards or other barrier (per a bollard plan to be developed) at the loading dock to stop unauthorized vehicles from approaching the building	Add additional planter boxes to Barrack Obama, Santa Clara Street and St. John Street to close vulnerabilities.	\$196,975.00
Vehicle Barriers / Vehicle Access Control	SAP Center	Determine the appropriate crash rating for the north end private parking lot gate and planters along the south and east side of the building. Install crash rated bollards or other barriers to impede vehicles from gaining access to the sidewalks from the far north and west sides of SAP Center. Install bollards or other barrier (per a bollard plan to be developed) at the loading dock to stop unauthorized vehicles from approaching the building	Prevent Advisors contracted to assess the Vehicle Barrier and Access Control project and develop a project plan.	\$16,975.00
Vehicle Barriers / Vehicle Access Control	SAP Center	Determine the appropriate crash rating for the north end private parking lot gate and planters along the south and east side of the building. Install crash rated bollards or other barriers to impede vehicles from gaining access to the sidewalks from the far north and west sides of SAP Center. Install bollards or other barrier (per a bollard plan to be developed) at the loading dock to stop unauthorized vehicles from approaching the building	Walter P Moore to provide professional services to develop construction ready design documents and project administration for Clam Shell Barriers installed at the loading dock to stop unauthorized vehicles. With construction documents prepared, SJAM will get construction quotes and implement the project in the near-future.	\$31,000.00
Enforce Vehicle Standoff	Sharks Ice	Enforce standoff distances using additional bollards and/or effective barriers or hardscaping. ROM based upon 30 bollards (spaced no more than 5 feet apart) rated for vehicle impact (M4). However, it was unclear following completion of construction if additional bollards may be needed	SJAM to install 35 bollards in front of the main entrance as a mitigation response.	\$407,602.00
Control of Keys and Access to Media	SAP Center	Replace existing lock cores and re-establish key control, Implement new policies regarding key issuance and complete audits every 12 months. Alternatively, utilize electronic access control for alonge or in combination with select mechanical locks to control access to authorized staff only. ROM assumes a combination of new lock cores and electronic access controls	SJAM to upgrade all door access to key card controlled access. Quote includes the following spaces: Fire Control Room, All IDF/MDF Rooms, Engineering Office and Workshop, Main Electrical, Boiler Room, South Mechanical, Chiller Room w Omni Camera, all 4 Catwalk Stairwell Access, AT&T Room, all Roof Hatches.	\$149,335.25
Upgrade Weapons Detection	SAP Center	Replace outdated CEIA PMD2 Weapon Detection Systems (Magnetometers)	Replace with new and advanced CEIA Open Gate Technology. 2 Units Quoted to replace CEIA PMD2s at 24-Hour Security Entrance and Players Entrance.	\$45,427.82

Total Project Costs	\$847,315.07
Department of Public Works Fees (Estimate)	\$65,000
Contingency (10%)	\$84,731.50
<b>Total Project Cost</b>	<b>\$997,046.57</b>

Exhibit A

4903-3663-5660 v8

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**