

**Second Amended and Restated Lease and Management Agreement for the Ice Centre
Proposed Business Terms**

- I. Ice Centre Term (Section 2.02):** The term (Term) of the Second Amended and Restated Lease and Management Agreement (Lease Agreement) will be for an initial period of approximately 30 years to cover the last debt service payment.
- A. Commencement Date: The Term will commence upon issuance of the 2020 Bonds (expected to occur around April 1, 2020) and will terminate upon final maturity of the 2020 Bonds, or about June 30, 2050.
- B. Rent (Section 4.01): Rent payable under the Lease Agreement will consist of:
- 1) Base Rent: Annual Base Rent will be payable in quarterly installments in the following amounts:
 - a) Base rent for FY 2019-2020 (i.e., from the commencement date through June 30, 2020) remains as agreed to in the August 2018 amendment.
 - b) Base rent for FY 2020-2021 and FY 2021-2022 will be \$750,000.
 - (i) Beginning in FY 2022-2023, Base Rent will be equivalent to the City's debt service obligations under the 2020 Bonds assuming a taxable fixed interest rate at the time of issuance, plus 50 basis points (0.5%), per a fixed payment schedule to be approved by both parties. Base Rent payments for fiscal years 2023, 2024 and 2025 will reflect gradually increased payments during the stabilization period. The spread of 50 basis points begins at the end of the stabilization period, i.e. with the base rent payment in FY 2025-2026 at approximately \$8.6 million per year.
 - (ii) From FY 2025-2026 the base rent will be flat, and will fully amortize principal and interest under the assumed taxable fixed-rate bonds (+ 50 basis points) through final maturity in FY 2049-2050.
 - 2) Additional Rent: An amount to reimburse the City for the following:
 - a) Actual costs of providing "all risk" property insurance for the Ice Centre – same as existing agreement; and
 - b) Oversight by the Arena Authority – same as existing agreement, except the fee will be increased to \$100,000 in FY 2020-2021 to cover additional oversight of the Expansion Project and the new arena, including administration of the Ticket Distribution Program, with subsequent increases as defined in the existing agreement.
- C. Capital Repairs and Replacements: In addition to paying Rent, Sharks Ice will remain responsible for Capital Repairs and Replacements as described in Section VII below.
- D. Ticket Distribution Program: Sharks Ice will provide the City with up to 20 complimentary club-level seat tickets to Barracuda home games, for distribution for municipal purposes in accordance with guidelines established by the City.
- E. Extension of Term:
- 1) If the Arena Management Agreement (AMA) is extended beyond June 30, 2050 (the initial 30-year Term of the Lease Agreement), then the Lease Agreement will be extended to match any extension of the AMA.
 - 2) In addition, Sharks Ice will have the option to extend the Term in increments of 3 years or more, up to a total maximum extension of 25 years beyond the initial 30-year Term (for a total maximum Term of 55 years).

- 3) Rent for periods beyond the initial 30-year Term (after the debt is paid in full) will be based on the appraised fair market rental value, to be specifically defined in the Lease Agreement, but which will take into account:
 - a) Any deferred maintenance and capital expenditures needed;
 - b) The permitted uses, restrictions and obligations under the Lease Agreement;
 - c) The obligation to provide for off-site parking;
 - d) That no commissions, improvement allowances or other incentives or concessions would be provided by the City;
 - e) That the goodwill generated by the Sharks organization would not be considered a factor in determining the rental value; and
 - f) That the capital improvements paid for by Sharks Ice solely through their own funding sources, and not through financing or reimbursements provided by the City, would not be considered in determining the condition and quality of the facility.

II. **Proposed Expansion Project:**

- A. **Project Description:** The proposed Expansion Project (Project) plans to include two new buildings adjacent to the existing buildings, with a total of about 204,000 SF of new space. One new structure will contain a community/practice ice rink (Rink 5), and the second new structure will contain a competition rink for the San Jose Barracuda (Rink 6) surrounded by an arena with about 4,213 spectator seats.
 - 1) Associated ancillary uses will be added, such as locker rooms, ticket lobbies, concourse concession areas, restaurant and bar areas, team training facilities, and security/event offices.
 - 2) The Project will also include about 20,000 square feet of medical office space.
 - 3) The Gun Range presently on site will be demolished.
 - 4) Off-site improvements will be made to the adjacent sidewalks, street trees, and street lighting, as required by the Department of Public Works.
- B. **Fourth Expansion Agreement:** The construction of the proposed Expansion Project will be governed by a Fourth Expansion Agreement (Expansion Agreement), to be entered into concurrently with the Lease Agreement.
 - 1) The Expansion Agreement will be similar to the Second Expansion Agreement for the addition of Rink 4 to the Ice Centre.
 - 2) The Sharks intend to follow updated City requirements on construction and labor agreements.
- C. **Signage:** Following approval of the Conditional Use Permit, Sharks Ice will submit a separate Sign Permit Application for exterior signage desired by Sharks Ice.

III. **Construction Financing:**

- A. **Amount to be Financed:** The amount to be financed by the 2020 Bonds includes the following components:
 - 1) The project costs (including hard and soft costs), construction cost escalations due to project delays, and contingency amounts, less any amounts provided by the NHL as an Industry Growth Fund (IGF) Grant (expected to be \$1 million).
 - 2) The principal amount of the existing bonds to be retired, less the existing debt service reserve to be applied to such payment.
 - 3) Debt issuance costs.

- 4) Interest to be capitalized during the two-year construction period.
 - 5) Debt Service Reserve Fund for the 2020 Bonds, equal to maximum annual debt service on the bonds.
- B. Changes:
- 1) Sharks Ice will seek City's written approval for any change order resulting in construction enhancements that materially modify the scope of work from the improvements originally approved as part of the construction financing.
 - 2) Any funds remaining from the bond proceeds after completion of project will be used to pay debt service, with a credit to Base Rent in the year that remaining construction proceeds were transferred to Fund 432.
- C. Disbursements from Bond Proceeds:
- 1) Sharks Ice has been funding feasibility study work efforts, pre-construction design, environmental studies, attorneys' fees directly associated with the design or construction of the facility and other project-related services at its own risk and expense. Subject to the terms of the 2020 Bond financing approved by Council, the initial disbursement from the bond proceeds will reimburse Sharks Ice for such costs, provided that attorneys' fees will be capped at an amount to be approved by the Director of Finance.
 - 2) The process for disbursements from the bond proceeds will be described in the Expansion Agreement.
- D. Funds in Excess of Annual Debt Service Requirements ("Excess Base Rent"): The Base Rent payments established under the Lease Agreement will be set based on the interest rate on the taxable fixed rate 2020 bonds plus 50 basis points (.50%). It is estimated that the spread between debt service payments and base rent payments will accumulate approximately \$19,200,000 (assuming no expenditures) over the Term, for an equivalent present value (calculated at bond all-in True Interest Cost (TIC) of 3.40%) of approximately \$10,900,000.
- 1) Excess Base Rent shall first be used to pay costs and expenses associated with the administration of the 2020 Bonds, including rating agency fees, trustee fees, consulting fees, and City Administrative expenses.
 - 2) Any remaining Excess Base Rent shall be deposited into the Ice Centre Capital Reserve, as described in Section VIII(D) below. This will provide the City with a "safety net" in the event City is required to pay for any Extraordinary Repair Work or repairs from an uninsured casualty loss.

IV. Long-Term Subleases (Section 18.19):

- A. San Jose Barracuda/AHL team:
- 1) Barracuda will sign a 30-year sublease for Barracuda's occupancy of the AHL training facility, containing approximately 6,700 square feet of space.
 - 2) Barracuda will also sign a 30-year license for Barracuda's use of Rink 6 for home games.
 - 3) Barracuda will rent ice time for AHL practices as needed.
- B. San Jose Sharks:
- 1) San Jose Sharks will sign a 30-year sublease for San Jose Sharks' occupancy of the NHL training facility, containing approximately 21,000 square feet.
 - 2) San Jose Sharks will rent ice time for NHL practices as needed.

C. Substitutions:

- 1) In the unlikely and unforeseeable event that either Barracuda or San Jose Sharks would relocate their operations to another venue, then unless such move is caused by an event of damage or destruction, they would continue to pay all amounts due under their sublease or license agreements until they find a substitute subtenant reasonably acceptable to the City.
- 2) In the case of Barracuda, any substitute would also need to be another sports team that plays their home games at the Ice Centre, and is either a professional team or a team that would operate similar to a professional team, with home games that are regularly ticketed events.

D. Medical Office Space:

- 1) Sharks Ice will be entitled to sublease the 20,000 square foot medical office space to one or more third party subtenants, upon terms and conditions reasonably acceptable to the City.

V. Parking (Section 6.01)

- A. On-Site Parking: It is estimated that after completion of the Expansion Project, there will be a total of 599 on-site parking spaces with roughly 160 spaces to be available for San Jose Giants home games to be further determined.
- B. San Jose State University (SJSU) Parking Garage:
 - 1) Sharks Ice will enter into a Parking Agreement with SJSU prior to the sale of the 2020 Bonds. The Parking Agreement will allow Sharks Ice customers priority parking during Barracuda games and other Sharks Ice events for a modest fee. The term of the Parking Agreement must align with the Lease Agreement, or at a minimum extend until debt service is paid.
 - 2) The Parking Agreement will include an assignment clause that will allow the agreement to be transferred to the City or other operator of the Ice Centre. The City shall approve the assignment language in the Parking Agreement prior to Sharks Ice execution of said agreement. The City shall also have authority to approve any amendment to the Parking Agreement that could impact the City's interests.

VI. Sale of Alcohol

- A. ABC License: Sharks Ice intends to obtain, through an affiliate or concessionaire, a new or amended general ABC license that would permit the sale and consumption of distilled spirits (as well as beer and wine) within Rink 6 and other areas of the Ice Centre in addition to the mezzanine restaurant. The Lease Agreement will be amended to allow the sale and consumption of alcoholic beverages consistent with the amended ABC license.
- B. Advertising. Sharks Ice may display advertisements for beer and wine anywhere within the Ice Centre, and may display advertisements for distilled spirits wherever distilled spirits are allowed to be sold.

VII. Annual Financial and Activity Reports to City Finance and Arena Authority

- A. Reports to City Finance: Sharks Ice will deliver annual financial performance reports to the Director of Finance, with details concerning Operating Revenues (by category), Operating

Expenses (by category), and Net Operating Income, substantially similar in form to the historical financial operations data presented in the Feasibility Study.

- B. Reports to Arena Authority: Sharks Ice will continue to provide an annual performance report to the Arena Authority or other agent on behalf of the City, with details concerning programs, community benefits, expenditures for repairs/improvements, and revenues. The form of the report and data provided will be substantially similar to the reports currently provided. (Section 6.03)

VIII. **Capital Repairs and Replacements; Ice Centre Capital Reserve (Section 7)**

- A. Allocation of Responsibility. Defined terms and allocation of responsibility for repairs and replacements will be substantially the same as in the AMA. For example:
- 1) Sharks Ice will be responsible for “Capital Repairs and Replacements,” which refers to work on capital improvements (including FF&E) that are expected to wear out after a useful life, such as roof coverings, Zambonis, restroom fixtures, or mechanical equipment.
 - 2) The City will be responsible to pay for “Extraordinary Repair Work,” which refers to work on building components that are not expected to wear out during the life of the building, such as foundations, load bearing walls, or permanently installed infrastructure such as unexposed ventilation ductwork or pipelines (including sub-floor ice systems).
 - 3) The City will also be responsible to pay for work needed to repair or replace capital improvements (including FF&E) following an uninsured casualty, or to pay the deductible for an insured casualty, to the extent required by the Lease Agreement. The Lease Agreement will be modified to ensure that the City has a reasonable period of time in which to make such repairs or replacements.
- B. Annual Five-Year Plan and Capital Budget.
- 1) Prior to each fiscal year, Sharks Ice will submit to the Arena Authority a five-year capital expenditure plan (CapEx Plan), the first year of which constitutes the proposed Capital Budget for the upcoming fiscal year. Sharks Ice will work with the Arena Authority to address any concerns raised by the Arena Authority.
 - 2) The Arena Authority will forward the revised CapEx Plan to the City Manager for approval once the Arena Authority is satisfied with it. The City Manager’s approval will constitute permission for Sharks Ice to make the alterations or other improvements described in the Capital Budget (the first year of the CapEx Plan), subject to the applicable provisions of the Lease Agreement.
 - 3) Amendments to the CapEx Plan/Capital Budget may be submitted by Sharks Ice for approval by the Arena Authority and the City Manager in the same manner as described above.
- C. Funding for Capital Repairs and Replacements. During each fiscal year, Sharks Ice will be responsible for making all Capital Repairs and Replacements substantially as described in the Capital Budget for that fiscal year. Payment for such work shall be provided by Sharks Ice through its own funding sources, without contribution by the City.
- 1) On a quarterly basis throughout the fiscal year, Sharks Ice will provide a report to the Arena Authority describing the Capital Repairs and Replacements made during that quarter and year to date, along with a comparison against the amounts budgeted for each item listed in the Capital Budget.

- D. Ice Centre Capital Reserve. After commencement of the Term, a Capital Reserve shall be established in the Ice Centre Reserve Fund (Fund 432) to be used solely as a source of funds to pay for any Extraordinary Repair Work that may become necessary over the Term, which may include uninsured casualty loss.
- 1) The Capital Reserve will be funded primarily by the Excess Base Rent as described above, as well as the Base Rent payable for fiscal years 2021 and 2022.
 - 2) Additional funding for the Capital Reserve will come from interest earnings on the Debt Service Reserve Fund (held by the bond trustee).
 - 3) After the close of fiscal year 2019-2020, any ending fund balance in Fund 432 in excess of \$300,000 will be distributed to Sharks Ice to apply towards Capital Repairs and Replacements. The distribution will occur as part of the 2019-2020 Annual Report process that will be considered by the City Council in mid-October 2020.

IX. Financial Security

A. Letter of Credit (Sections 2.01, 3.18):

- 1) Sharks Ice will maintain a Letter of Credit (or cash security deposit) in a fixed amount equal to approximately two years of new lease payments, to be set as of bond issuance based on the maximum annual debt service on the 2020 Bonds (currently estimated to be approximately \$7.9 million per year, or a total Letter of Credit amount of \$15.8 million).
 - a) The Letter of Credit (or cash security deposit) may be reduced to one year of base rent payments (\$7.9 million) whenever the Debt Service Coverage Ratio for the prior three (3) fiscal years is 1.50 times operating income. The formula for calculating the Debt Service Coverage Ratio will be described in the Lease Agreement.
 - b) The Letter of Credit (or cash security deposit) may be reduced to one year of base rent payments if/when San Jose Arena Management, LLC agrees to extend the AMA to June 30, 2040, without right of early termination.
 - c) The Letter of Credit (or cash security deposit) may be eliminate when both conditions have been met.
 - d) City has the ability to reinstate the Letter of Credit (or cash security deposit) to one year of base rent payments (\$7.9 million) if the Debt Service Coverage Ratio for the prior consecutive three (3) fiscal years has not be maintained at least 1.50 times operating income.

B. Guaranty (Section 1.9):

- 1) Sharks Sports & Entertainment will provide a current, unconditional Guaranty of all of the Sharks Ice payment obligations under the Lease Agreement, throughout the entire Term of the Lease Agreement.
- 2) A replacement guarantor may be substituted in place of Sharks Sports & Entertainment in accordance with assignment provisions to be approved by the City, based on financial and business experience criteria acceptable to the City.