



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh
Matt Cano

SUBJECT: SEE BELOW

DATE: April 4, 2019

Approved

D. DSYL

Date

4/5/19

SUBJECT: AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MEMORANDUM OF UNDERSTANDING WITH SHARKS ICE, LLC REGARDING THE PROPOSED FOURTH EXPANSION OF SOLAR4AMERICA ICE AT SAN JOSE

RECOMMENDATION

- (a) Accept status report on City and Sharks Ice, LLC process for the Fourth Expansion of Solar4America Ice at San Jose.
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute a memorandum of understanding with Sharks Ice, LLC outlining each party's roles in the proposed expansion of Solar4America Ice at San Jose, including the following:
 - (1) Completion of the feasibility study needed for bond financing;
 - (2) Development and review of possible parking solutions for the facility;
 - (3) City's review and approval of Sharks Ice, LLC project delivery and contractor prequalification process; and
 - (4) Terms and conditions for reimbursing Sharks Ice for work performed by the design team it has assembled, including reimbursement being contingent on the Council approving the project and proposed taxable debt financing, and the proceeds of the financing being enough to pay for construction and design costs of the project.

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OUTCOME

The purpose of this memorandum is to advise the City Council of a proposed significant expansion of the Solar4America Ice at San Jose (the Facility). Further, staff requests that the City Council authorize the City Manager and the Department of Public Works to work with Sharks Ice, LLC (Sharks Ice) to select a design team for the proposed facility expansion in accord with all related City regulations. Staff anticipates returning to Council in the fall of 2019 to provide an update on the proposed project and ask for further approval where needed to proceed. While the focus of the information is related to the design of the proposed facility, Sharks Ice staff have related requests detailed below. Sharks Ice, not the City, will expend the upfront funds necessary to prepare a proposal for City Council review at a later date.

BACKGROUND

Existing Facility: The Facility is located at 1500 S. Tenth Street in San Jose on a parcel of land owned by City (APN 477-38-003). The Facility occupies only a portion of that parcel, the other portion is occupied by the San Jose Municipal Stadium, where the San Jose Giants play their home games. The Facility currently contains almost 180,000 square feet of space. The construction of the Facility was completed in phases over more than 20 years, as follows:

1994	Construction of original facility with two sheets of ice
1999	Addition of a third sheet of ice, Sharks training facility and offices (First Expansion)
2005	Addition of a fourth sheet of ice, restaurant and expanded locker rooms (Second Expansion)
2015	Addition of training facility for San Jose Barracuda (Third Expansion)

Current Operation: The Facility is operated by Sharks Ice, LLC under a Lease and Management Agreement dated May 25, 2004, as amended. The parent company of Sharks Ice is Sharks Sports & Entertainment LLC, which is also the parent company of San Jose Sharks, LLC (which owns the NHL team) and San Jose Arena Management, LLC (which operates the SAP Center). As the second largest ice venue west of the Mississippi, the Facility has become one of the most utilized public recreation facilities in the United States and is one of only eight such facilities that currently operates at least four NHL-sized ice rinks. All four rinks are available for public skating at scheduled times (including the professional training rinks) and are open year-round from approximately 5:30 A.M. to 1:30 A.M. Programs offered to the public include ice hockey, figure skating, broomball, curling, speed skating and ice dancing, as well as recreational skating. The Facility is also the official practice facility for the San Jose Sharks NHL team and the San Jose Barracuda AHL team (both of which now play their home games at SAP Center) and is the

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home of the San Jose State University (SJSU) hockey team and nationally ranked San Jose Sharks Junior teams.

Proposed Expansion Project: To meet a huge increase in regional demand for ‘ice time’ and to provide an alternate home arena for the San Jose Barracuda, Sharks Ice is proposing a Fourth Expansion to the Facility (the Project). If approved, the Project will add approximately 200,800 square feet of space to the Facility, including a Community/Practice Rink (Rink 5) and a Competition Rink for the San Jose Barracuda (Rink 6) that will also serve as a community/practice rink when not in use for the Barracuda. This larger complex will allow expanded program offerings and greater flexibility for simultaneous events from AHL hockey games to youth open ice skating and will help attract new events to San Jose such as national competitions. Rink 5 will be two stories. On the event level (Level #1), Rink 5 will include 12 public locker rooms and arena support spaces, such as security/event office, main electrical room, ice making equipment for rinks 3/5/6, boiler room, water entry room, fire pump room, main IT and storage. The second level (Level #2) will include a homework/study room, a bar restaurant concept, seats for 100 spectators and training space for patrons.

Rink 6 will be three stories surrounding the arena’s oval-shaped seating bowl (total capacity is 4,213), which will be designed to provide optimum spectator seating. The arena level (Level #1) will include a total of up to 3,523 fixed and moveable spectator seats, locker rooms, restrooms, a ticket lobby, concessions/commissary, merchandise location, lounge and loading docks. The club level (Level #2) will provide seating of up to 690 seats in the following areas: suites, theatre box and loge boxes. The club level will also provide a press area, locker room and team training space, club seating and suites pantry. Level #2 will also include a 4,370 SF space designed for physical therapy. That space will be connected to the third level (Level #3), which will contain almost 15,000 square feet of medical office space, including space for a reception/lobby area, restrooms, offices, exam rooms and support services. Both of these spaces are intended to be leased to a third-party medical provider specializing in sports medicine and related services. The tenant would complete its own interior improvements. These structures will be designed to meet and exceed the requirements of the Americans with Disabilities Act Accessibility Guidelines. In addition, Sharks Ice intends to obtain LEED Silver certification (or higher) for the Project in accordance with City requirements. The Sharks Ice expansion will require the demolition of the Gun Range presently on site. The Gun Range lease affords the City the ability to terminate the lease with 180 days’ notice. City staff has met with Gun Range representatives to provide the required notice. The following is a summary of proposed building area changes (all numbers, in square feet, are approximate):

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Existing:	179,687
To be demolished:	<u>(2,687)</u>
Net existing:	177,000
New Level #1:	116,468
New Level #2:	69,332
New Level #3:	<u>15,000</u>
Total New:	200,800
Completed Project:	<u>377,800</u>

Estimated Construction Period: Assuming that California Environmental Quality Act (CEQA) review can be completed by August of this year and Council approves the Project by August or September, Sharks Ice plans to begin construction by January 2020 and complete work by the end of December 2021.

Increased Parking Demand/SJSU Parking Garage: Parking demand for the expanded Facility will be analyzed as part of a Traffic Impact Analysis to be completed as part of the CEQA review and clearance prior to approval of the Project. Current estimates for the number of parking spaces that will be needed under different scenarios range from about 600 spaces (for peak week day operation with no large event) to about 1,700 spaces (for a weekend tournament situation with a simultaneous event in Rink #6). After completion of the Project, approximately 600 spaces will be provided on-site, with about 50 allocated for use by hockey players and staff and about 150 allocated for use by the San Jose Giants or other users of the Municipal Stadium. Therefore, off-site parking will be needed to help meet the parking demands of the Project.

Most of the required off-site spaces will be provided across Alma Street (at the northeast corner of Alma and 10th Streets), where San Jose State University (SJSU) is developing a garage with four levels of parking containing a total of 1,500 parking spaces. The parking garage is being built by SJSU to serve its South Campus athletic facilities including the 30,000-seat CEFCU Stadium, tennis, soccer, softball, golf and future baseball facilities. It will also serve as overflow remote parking/shuttle service to the Main Campus, which is severely parking-restricted. The garage will displace the current track, but SJSU will construct a rugby/soccer field north of the garage with a walking path around it, that will be open to the community.

SJSU and Sharks Ice have conceptually agreed to a parking arrangement for the new garage. Sharks Ice would operate the parking garage during Sharks Ice events. The garage would otherwise be available for public parking. In addition, Sharks Ice could use SJSU's Park and Ride lot on Seventh Street for overflow parking until the garage is completed. The term of the agreement would extend for at least 25 or 30 years (to cover the term of the SJSU bond financing) and would include several options to renew. It would be assignable to the City in the event Sharks Ice no longer operates the Facility. Construction of the parking garage is scheduled

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to begin in June 2019, with completion to occur by September 2020. There are also several other off-site parking options that have been identified in the vicinity as additional overflow spaces. Those parking alternatives will be illustrated in the Traffic Impact Analysis, along with any required traffic and pedestrian safety improvements.

San Jose Giants: The City's Lease Agreement with the San Jose Giants is proposed to be amended for a period of three years. Staff anticipates bringing the Lease Amendment to Council by May 2019. The proposed expansion of Sharks Ice will eliminate many parking spaces needed for the operation of the San Jose Giants at the Municipal Stadium. At this time, the Giants are in negotiations with SJSU for use of the parking garage described above for game day and event parking. Sharks Ice and the San Jose Giants have opposite seasons of peak play. The San Jose Giants are most active in the summer and the Barracuda/Sharks Ice heaviest utilization is in the winter.

ANALYSIS

Sharks Ice and the City staff team from Finance, Public Works, Planning Building and Code Enforcement, Transportation, Economic Development and the City Attorney's Office have been engaged in a review of the proposed expansion.

1. Economic and Community Benefits

The expanded Facility would make Solar4America Ice the largest ice facility in the Western United States. This will drive significant business to downtown hotels. Currently, participants at various events at the Facility book approximately 6,000+ room nights at San Jose hotels. Shark's Ice draws approximately 1.5 million visitors annually. The Facility boasts the largest adult hockey program in the nation with 188 teams. The Facility has an additional 97 youth hockey teams, serving over 2,000 families. Sharks Ice staff estimate that approximately 50% of the primary users of the facility are 17 years or younger. Last year alone, Sharks Ice provided 6,400 lessons to the community, many more would have taken place if additional rink time was available. Solar4America offers free skate to at risk school children from San Jose. For 2017-2018, 3,812 kids participated in the program. Since the building opened, Shark's Ice has provided \$1,697,952 to this program. Sharks Ice also a Special Needs Program, every Friday for 1.5 hours. The program becomes more popular each year.

2. Feasibility Study

At this point, Sharks Ice estimates the total cost of the proposed bond issuance to be approximately \$145 million to \$150 million, which includes construction costs (construction, design, project management, inspection and construction interest costs), refunding of outstanding debt, funding a debt service reserve fund and bond issuance costs. Sharks Ice has requested that the City issue taxable municipal debt to finance the construction of the new improvements. The

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lease with Sharks Ice would be amended so that the lease payments made by Sharks Ice would be enough for the City to pay the debt service on the taxable municipal debt. The City of San Jose issued approximately \$31.4 million in bonds (Series 2000C and Series 2004A, collectively "Prior Bonds") to finance prior two expansions of the facility. The Series 2008E bonds, issued to refund the Prior Bonds (and thus no longer outstanding), have currently outstanding \$14.9 million. Sharks Ice has made timely lease payments over the term of the Agreement and these lease payments are necessary for the City to make timely debt service payments to bondholders.

Finance is currently in the process of its due diligence review and is facilitating the preparation of a feasibility study of the proposed project, which is required under the City Debt Management Policy (Council Policy 1-15). Sharks Ice has provided \$75,000 to date to fund the initial phase of the Feasibility Study. The full amount of related feasibility work paid for by Sharks Ice is anticipated to be \$250,000. The feasibility study will be performed to determine the volatility of the revenue and provide a sensitivity analysis on project revenue projections including worst/best case scenarios, including without limitation, the impact on any repayment source identified as the backstop to the project revenues as the repayment source.

The City Manager and Sharks Ice entered into an agreement for Sharks Ice to advance funds to cover the costs of hiring consultants to investigate the feasibility of issuing bonds and to prepare and develop a plan for finance an expansion of the Facility. The Finance Department has engaged the services of a municipal advisor to assist in the development of a plan of finance and review of the feasibility report. Additionally, the Finance Department has selected a Feasibility Consultant through a request for proposal for consultant services process that concluded in February 2019. Work is scheduled to begin on the Feasibility study in April 2019. Finance anticipates presenting the results of the due diligence review, feasibility report to the City Council for review and consideration in August 2019.

3. Fourth Expansion Agreement

The parties will need to negotiate a comprehensive Fourth Expansion Agreement to cover the construction and financing of the new improvements if the financing of the project is to be approved by City Council. Additionally, an Amendment to the Amended and Restated Lease Agreement with Sharks Ice will need to be negotiated to provide for continued operation and maintenance of the Ice Centre covering the expanded facility.

4. Project Delivery

The preliminary plan is for the proposed Facility expansion to be designed and constructed by Sharks Ice. The Department of Public Works would provide project oversight, including design and code review and inspection services. Sharks Ice proposes to deliver the expansion project in the same manner it delivered the 2004 expansion. As with the 2004 expansion project, Sharks Ice will be responsible for all upfront project costs, including those costs associated with design, engineering, permits, City fees, financing and parking improvements. If the City Council

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ultimately approves a taxable debt financing for the project, the Sharks Ice upfront expenditures will be included in the financing. It is important to note that Sharks Ice will assume the risk of all project cost overruns, not the City, once the project budget is established. Although the City is in the process of undertaking the feasibility study, Sharks Ice is eager to start preliminary design work. As previously mentioned, Sharks Ice would perform the upfront work at its "own financial risk." Accordingly, Staff is requesting authorization for the City Manager to negotiate and execute a memorandum of understanding with Sharks Ice consistent with the following:

- City and Sharks Ice will work together to develop and review possible parking solutions for the facility;
- City will review and approve Sharks Ice project delivery and prequalification process;
- Sharks Ice will not be reimbursed for any costs associated with preliminary design work undertaken by its design team if for any reason the project does not go forward; and
- If the City Council approves the project, including the proposed taxable debt financing and the project moves forward, Sharks Ice would be reimbursed for design costs from the proceeds of the taxable municipal debt financing, subject to the proceeds being enough to pay for construction and design costs.

a. Design Team

As with the 2004 expansion project, Sharks Ice has selected a design team and intends to have the team start preliminary design work. Selecting a team to undertake the design of an ice rink facility involves the procurement of unique services. Ice rinks are highly specialized facilities. Except for the ice rinks at the Sharks Ice Facility, no NHL-sized ice rinks have been built in the Bay Area for over 15 years. Sharks Ice has assembled a design team that is uniquely qualified to provide the specialized expertise and the site-specific knowledge that are critical for the success of this project. Moreover, because of the design team's institutional knowledge of the pre-existing improvements to the Facility and its deep understanding of the operational needs of the Facility (for both public use and NHL/AHL use) the team can offer its services at a much lower price than would typically be charged for comparable projects. The design team will consist of the following:

- Perkins + Will is recommended to be the design architect. The principals at Perkins + Will served as the architect for the original construction of SAP Center and continues to be the primary architect for numerous renovation projects at SAP center. The company is an internationally-recognized leader in mixed-used arena projects and has designed more mid-sized event centers than any other architecture firm in the country. Perkins + Will has an intimate knowledge of the design and construction of mechanical and electrical infrastructure unique to indoor ice facilities. They have been the architect for over 50 major ice rinks/arenas across the country.

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- Devcon Construction is recommended to be the project architect and construction manager. Devcon, a Local Business Enterprise, has been the designer and builder of the newest, state-of-the-art ice sheets in the Bay Area, including the four ice rinks at the Facility, and of all major projects at the Facility since 1999, including the locker rooms and team facilities for the Sharks and the Barracuda. These projects give Devcon a unique knowledge of the building and building systems needed to construct the new facilities. No other contractor has that kind of unique knowledge of the Facility.
- B32 Engineering Group is recommended to be the ice rink engineer. It too has unique qualifications and prior experience at the Facility. B32 recently designed the replacement ice systems for Rinks 1 and 2 at the Facility, giving B32 unique insights into the specific features and design challenges associated with the Facility. Moreover, B32 has provided specialized design services on over 250 state-of-the-art ice rink projects across the country, including numerous ice rinks for NHL teams. In addition, B32 has provided design services on numerous LEED-certified ice facilities and is a recognized leader in the application of renewable and sustainable materials.

b. Construction

The construction contracting process would follow the same multiple prime construction process that was used in the 2004 Second Expansion Agreement. Under this delivery method, Sharks Ice would divide the project into portions (generally by trade) and then enter into separate contracts for each portion of construction. As with the previous expansion project, each portion of construction would be performed by prequalified multiple prime contractors selected for each trade consistent with the City's public bidding process. Some of the separate contracts – like those for electrical, plumbing, HVAC and ice refrigeration, might incorporate design-build elements.

All contractors would have to comply with applicable prevailing wage requirements and would be required to provide appropriate payment and performance bonds.

Sharks Ice would be responsible for providing appropriate insurance, acceptable to the City, for the expansion project (for both design and construction risks). This could be done either by requiring the various contractors to provide insurance, having an umbrella type of policy, or by some other method, all subject to the City's approval.

5. Project Labor Agreement

At the time of the drafting of this memorandum, the Project Labor Agreement (PLA) between the City and the Santa Clara and San Benito Counties Building Trades Council (BTC) is not yet signed. On March 22, 2019, the City received a copy of the PLA signed by the Santa Clara and San Benito Counties Building and Construction Trades Council and all affiliate Unions. The

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PLA will be fully executed within a few weeks. Upon a fully executed PLA, Sharks Ice has agreed to utilize the PLA on this project with the exception of one portion of the work. The portion of work that would be excluded from the PLA is the installation of the ice skid.

The ice skid is a specialized design-build work involving an on-site manufacturing process whereby a layered subfloor is constructed under the rink surface including over five miles of steel piping under each rink welded to withstand expansion and contraction while heating and cooling. The entire ice rink piping and header system is eventually encased in concrete, so there is no room for error during the design or installation process. The total cost of the labor for the ice skid work is roughly \$1 million to \$1.3 million, which is only about 20% of the work to be done by pipefitters and only about 3% of the labor on the entire project. Despite being a relatively small part of the overall project, it is critical work fundamental to the overall success of the rinks. Since this piping will be embedded in concrete and is a specialized work, it requires a significant liability/warranty so it is recommended to be performed by a company that specializes in this work. Given the highly specialized nature of this work, only a few contractors are qualified to do the work and finding one that complies with the PLA requirements will be challenging.

Sharks Ice and the City have discussed with BTC and United Association Local Union 393- Plumbers, Steamfitters and HVAC Service Technicians of Santa Clara and San Benito Counties the issue of excluding this work from the PLA. In the spirit of cooperation, BTC and Local union 393 have agreed that this work can be excluded from the PLA for this project.

6. Small and Local Business Outreach:

Sharks Ice agrees to conduct outreach to small and local business for all bid opportunities for this project. Traditional outreach is via email to a list of identified and local business contractors and notify them of a bid opportunity. Additionally, Sharks Ice will coordinate with the Department of Public Works on other suggested methods of outreach to qualified businesses. Also, Devcon Construction, the project architect and construction management firm, is a Local Business Enterprise.

EVALUATION AND FOLLOW-UP

Several reports will be finalized and returned to City Council for review and approval. It is anticipated that the financial feasibility study, CEQA analysis and related project plans will be brought to Council by September 2019.

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PUBLIC OUTREACH

This memorandum will be posted on the City's website April 16, 2019 in accordance with the City of San Jose's public outreach policy. Sharks Ice fully intends to conduct public outreach activities as the project proceeds through the consideration process.

COORDINATION

This memorandum has been coordinated with the Department of Finance, the City Manager's Budget Office, the City Attorney's Office and the Department of Parks and Recreation.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation associated with this item.

FISCAL/POLICY ALIGNMENT

The City's Economic Development Strategy, Strategy #12 directs staff to, develop a distinctive set of sports, arts and entertainment offerings, aligned with San Jose's diverse and growing population. The proposed Sharks Ice Expansion widens the availability of the Sharks Ice to San Jose residents and visitors. Sharks Ice is a hub for family and youth activity that is heavily utilized. The proposed project is anticipated to generate approximately 10,000 additional room nights annually on top of the estimated 6,000 annual room nights the facility currently generates.

COST SUMMARY/IMPLICATIONS

If approved by the City Council, the expansion of the Facility is expected to be financed through the issuance of taxable Lease Revenue Bonds, estimated in the amount of \$145 million to \$150 million, by the City of San Jose Financing Authority and secured by lease payments made by the City to the Authority for the lease of the Project. The estimated cost includes construction and contingency for the expansion, refinancing of the current debt on the facility, construction interest, estimated debt service reserve and finance/bond issuance costs. It is anticipated that the City will fund its lease (debt service) payments from lease payments to be paid to the City by Sharks Ice pursuant to a Lease and Management Agreement. Under the lease revenue bond structure, the City would have the legal obligation to make lease payments to repay debt service on the contemplated lease revenue bonds so long as there is beneficial use and occupancy of the Project. As the source of such lease payments would be payments made by Sharks Ice under the Agreement, the City's Debt Management Policy requires the completion of a feasibility study on the financial viability of lease revenue bond repayment for the Project.

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The City and Sharks Ice entered into a Funding Agreement, in November 2018, to provide funds to conduct hire a feasibility consultant and a municipal advisor to assist in the development of a plan of finance and review of the feasibility report. The full amount of related feasibility and preliminary plan of finance development paid for by Sharks Ice is anticipated to be \$250,000. The initial deposit of \$75,000 was recognized and appropriated to the Ice Centre Revenue Fund as part of the 2018-2019 Mid-Year Budget Review. Subsequent deposits will be recognized and appropriated as they are received.

CEQA

Not a Project, File No. PP17-002, Consultant services for design, study, inspection, or other professional services with no commitment to future action and File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

/s/
MATT CANO
Director of Public Works

/s/
KIM WALESH
Deputy City Manager
Director of Economic Development

For questions, please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.