

**RESTATED AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE ARENA AUTHORITY**

THIS RESTATED AGREEMENT (hereinafter "Agreement") is entered into this _____ day of _____, 2019, between the CITY OF SAN JOSE, a municipal corporation of the State of California (referred to herein as "CITY") and the SAN JOSE ARENA AUTHORITY, a nonprofit corporation of the State of California (referred to herein as "AUTHORITY").

RECITALS

WHEREAS, in June 1990, the CITY approved the creation and funding of AUTHORITY as a nonprofit corporation formed to oversee operation and management of the San José Arena facility, now known as SAP Center at San Jose (referred to as "Arena") on behalf of the CITY; and

WHEREAS, on October 24, 1991, the City Council approved an agreement between the CITY and AUTHORITY to further these purposes; and

WHEREAS, on December 19, 2000, CITY and San Jose Arena Management ("SJAM") entered into an Amended and Restated San Jose Arena Management for the management and operation of the Arena and related facilities; and

WHEREAS, on May 25, 2004, CITY and SJAM entered into an Amended and Restated Lease and Management Agreement in which the CITY designated to the AUTHORITY certain general management responsibilities of the CITY-owned ice center now known as Solar4America Ice at San Jose ("Ice Facility"); and

WHEREAS, on September 26, 2006, CITY and AUTHORITY entered into a Restated Agreement updating the agreement executed in 1991 to add additional responsibilities and provide for AUTHORITY staff through the use of CITY employees; and

WHEREAS, on December 17, 2013, the City Council approved an Agreement between the CITY and Baseball Acquisition Company, Inc. ("Stadium Management Agreement") In which the CITY delegated to the AUTHORITY certain management agreement responsibilities for San Jose Municipal Stadium "Baseball Stadium"); and

WHEREAS, on August 15, 2018, the CITY entered into a Second Amended and Restated Arena Management agreement, and a fourth Amendment to the Amended and Restated Lease and Management Agreement, extending the term of each agreement to 2025, with an option to extend the term to 2040; and

WHEREAS, on March 23, 2004, the City Council approved an agreement between the CITY and San José Arena Management Corporation in which the CITY had delegated to the AUTHORITY certain general management responsibilities of Logitech Ice at San José (referred to as “Ice Facility”); and

WHEREAS, CITY and AUTHORITY desire to restate the 2006 Restated Agreement to align with the Term of the Second Amended and Restated Arena Management Agreement and the Fourth Amendment to the Amended and Restated Lease and Management Agreement and to recognize the additional responsibilities undertaken by AUTHORITY related to the Public Ice Facility and Baseball Stadium.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

SECTION 1. DEFINITIONS.

Unless otherwise defined herein or the contract otherwise requires, the capitalized terms used herein shall have the meanings specified in the Second Amended and Restated San José Arena Management Agreement (“Arena Management Agreement”) and the Amended and Restated Lease and Management Agreement Regarding the Ice Centre (“Ice Centre Agreement”) (collectively the “Management Agreements”), by and between the CITY and San José Arena Management Corporation LLC (“Manager”). Additionally, the capitalized terms used herein shall also have meanings specified in the Amended and Restated Agreement between the CITY and the Baseball Acquisition Company, Inc. for oversight of the operation of the Baseball Stadium.

SECTION 2. TERM OF AGREEMENT.

The term of the Agreement shall be from the date of execution by the CITY to June 30, 2025, inclusive, unless terminated earlier pursuant to Section 8 below. The City has the option to extend the agreement until June 30, 2040 in alignment with the term of the San Jose Arena Management Agreement.

SECTION 3. SERVICES PROVIDED BY CITY.

CITY agrees during the term of this Agreement to perform the following duties:

- A. CITY will fund the AUTHORITY at a level to support AUTHORITY staff, operations and programs as well as Board of Directors areas of responsibilities. Funding will be based in part on the level of AUTHORITY’S areas of oversight and administration. In conference with the AUTHORITY, CITY will provide regular, sufficient funding, as deemed appropriate by CITY to support the ongoing operation of the AUTHORITY, including funding to support an executive staff, Board of Directors meetings, activities and other organizational functions, responsibilities and programs. Besides annual cost of living (COLA) adjustments

that CITY will endeavor to provide, CITY funding can be further augmented to align with the various responsibilities undertaken by the AUTHORITY. Additionally, CITY recognizes the AUTHORITY'S expanding areas of responsibilities and will take this issue into consideration for future funding increases to support expanding AUTHORITY responsibilities and oversight.

- B. Provide administrative support to address Arena Authority operations and oversight through the appropriate City departments, including but not limited to, the City Manager's Office, the City Attorney, the Department of Transportation, the Department of Public Works, the Fire and Police Departments and the Office of Emergency Management.

SECTION 4. SERVICES PERFORMED BY AUTHORITY.

AUTHORITY agrees during the term of this Agreement to perform a number of oversight duties on behalf of the CITY as the CITY deems appropriate in its sole and absolute discretion and shall engage in the following activities:

- A. Monitor the implementation of the terms and conditions set forth in the 2018 Second Amended and Restated Arena Management Agreement and the First Amendment to the Second Amended and Restated Arena Management Agreement.
- B. Oversee the management and operation of SAP Center at San José on behalf of the CITY.
- C. Monitor the implementation of the terms and conditions set forth in the 2004 Amended Lease and Management Agreement for the Ice Centre of San Jose (Solar4Amercia Ice at San Jose).
- D. Oversee the management and operation of Solar4Amercia Ice at San José as set forth in the Ice Centre Agreement.
- E. Monitor the implementation of the terms and conditions set forth in the 2019 Amended and Restated Agreement for San Jose Municipal Stadium.
- F. Oversee the management and operation of San Jose Municipal Stadium, the Minor League Baseball stadium.
- G. Act as CITY's liaison to the San José community concerning neighborhood impacts in the operation of the Arena, the Ice Facility and the Baseball Stadium (Collectively, the Facilities).
- H. Administer the City and Community Events Program Policy and fund as set forth in the Arena Management Agreement.

- I. Oversee the planning and implementation of the annual facilities capital budgets as determined in the three Facilities management agreements.
- J. Serve as the liaison between the Managers of the Facilities, City Administration and the City Council.
- K. Develop and submit an annual AUTHORITY program-operating budget to CITY to coincide with the CITY's established budget process.
- L. Administer the use of the CITY executive suite (Arena Suite C-11) and lower section seating tickets (including parking passes) provided to the CITY under the terms of the Arena Management Agreement and in accordance with the policies for distribution as may be adopted by City Council Policy 9-11, "Distribution of Tickets or Passes to City/Agency Officials", as may be amended from time to time.
- M. Accept an annual report on the Ice Facility and provide report to the CITY, including information on facility projects, programs and capital improvements.
- N. Serve as the facilitator to the South Campus Operations Team (SCOT) in the ongoing operations and activities of CITY-owned facilities and University-owned facilities in the south campus area of San Jose State University.
- O. Prior to November 1 of each year, the AUTHORITY shall submit an annual executive summary to the CITY regarding previous fiscal year operations of the arena, ice facility and baseball stadium facilities as in accordance with the term of the three management agreements. Included in the annual executive summary will be a report on AUTHORITY programs, including the Arena Ticket Distribution Program, the City and Community Events Program, the facilities' capital budget program and operations undertaken by the South Campus Operations Team.
- P. By request of the CITY, participate in the ongoing development meetings and discussions held by the CITY relating to arena-vicinity transit and development projects, including but not limited to, the Bay Area Rapid Transit (BART), High Speed Rail, the Autumn Parkway, arena on-site and off-site parking inventories, traffic management strategies, the San Jose Diridon Transit Center and the Google campus properties.
- Q. Participate in the discussions and planning held by the CITY in relation to the ongoing development in the south campus area.
- R. Serve as the facilitator for the City's Emergency Resources Network and work with the appropriate CITY representative and facility operators in the development of a comprehensive emergency network.

- S. Participate in the administration of and updates to the comprehensive Arena Transportation and Parking Management Plan.
- T. From time to time, participate in other CITY-directed projects or programs in furtherance of CITY program and project development.
- U. Continue to expand its areas of oversight to support and enhance CITY operations, including the planning and development in the Arena/Diridon Station area, the planned expansion of Solar4America Ice at San Jose, and the development of the south campus area

Nothing herein shall authorize the AUTHORITY to enter into any agreement on behalf of the CITY or which (1) would cause any part of the revenues received by the CITY under the Arena Management Agreement to be reduced; or (2) would materially increase the financial obligations of the CITY in connection with the construction, operation or use of the arena, ice training facilities or baseball stadium.

SECTION 5. CITY FUNDING.

- A. Funds provided by the CITY to the AUTHORITY will be issued by check no later than July 15 of each fiscal year of this agreement.
- B. For Fiscal Year 2019-20, CITY will fund the AUTHORITY base funding of \$227,630 and an additional \$49,955 for oversight for Solar4America Ice at San Jose for a combined funding total of \$277,585.
- C. CITY and AUTHORITY will confer from time to time to address funding levels to adequately support AUTHORITY operations that benefits CITY, taking into consideration services performed by AUTHORITY as described in Section 4.

SECTION 6. INSURANCE REQUIREMENTS. AUTHORITY shall maintain the following insurance coverage for the term of this Agreement.

- A. A COMMERCIAL GENERAL LIABILITY policy with minimum limits of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage and provide at least the following minimum coverages:
 - 1. Premises Operations;
 - 2. Broad Form Property Damage, including advertising injury liability;
 - 3. Broad Form Contractual Liability;
 - 4. Completed Operations;
 - 5. Products Liability;

6. Personal Injury (Coverage A, B, & C);
 7. Fire Legal Liability in an amount not less than Fifty Thousand Dollars (\$50,000), or in such amount as the CITY shall specify;
 8. Employers non-ownership (automobile): \$2,000,000 each occurrence.
- B. A WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY to provide coverage for any and all employees of AUTHORITY:
1. This coverage shall be written in accordance with the laws of the State of California and for the statutory limits associated therewith.
 2. This coverage shall provide for Workers' Compensation (Coverage A).
 3. This coverage shall also provide for a minimum of \$100,000 Employers' Liability (Coverage B).

C. EXCEPTION.

If, however, AUTHORITY does not have any employees AUTHORITY shall sign the following statement as well as the contract itself to effect a fully initiated contract:

The herein designated AUTHORITY, does not have, nor intends to have for the full term of this Agreement, any employees. Furthermore, AUTHORITY does not wish to obtain or be covered under any Workers' Compensation insurance coverage and, therefore, is signing this statement in lieu of providing the above required Workers' Compensation Coverage.

Signature of AUTHORITY

Date

(Please print or type name)

- E. ENDORSEMENTS: All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below (For the Excess Liability policy only, identify on the Certificate of Insurance as following form.):
1. "The City of San José, their employees, officers, agents and contractors are hereby added as additional insured."

2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of San José may possess, including any self-insured retention the CITY may have, and any other insurance the CITY does possess shall be considered excess insurance only."
3. "This insurance shall act for each insured, and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
4. "Thirty (30) days prior written notice shall be given to the City of San José in the event of cancellation, reduction in coverage, or non-renewal of any nature. Such notice shall be sent to:

CITY OF SAN JOSE--Finance
Risk Manager
200 E. Santa Clara Street, 14th Floor Tower
San José, California, CA 95113-1905

5. Endorsement #4 (30 days notice) listed above is the only endorsement required to be made a part of the Workers¹ Compensation and Employers¹ Liability policy.
- F. PROOF OF COVERAGE: Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the AUTHORITY's insurance company as evidence of the stipulated coverages. This Proof of Insurance shall then be mailed to:

CITY OF SAN JOSE--Finance
Risk Manager
200 E. Santa Clara Street, 14th Floor Tower
San José, California, CA 95113-1905

SECTION 7. INDEMNIFICATIONS.

- A. INDEMNIFICATION BY CITY. CITY shall defend, indemnify and hold harmless the AUTHORITY, its officers, agents, directors and employees, from and against all claims, suits, actions, causes of action or liability of any kind, nature or description, brought by any and all persons for or on account of any loss, damage, death of or injury to persons, property or any interest, tangible, or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from the performance or obligations of the AUTHORITY under this Agreement or the failure of AUTHORITY to perform under this Agreement, except as may arise

from the gross negligence or willful default of AUTHORITY, its officers, agents, directors and employees.

- B. INDEMNIFICATION BY AUTHORITY. AUTHORITY shall defend, indemnify and hold harmless the CITY, its officers, agents, directors and employees, from and against all claims, suits, actions, causes of action or liability of any kind, nature or description, brought by any and all persons for or on account of any loss, damage, death of or injury to persons, property or any interest, tangible, or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from the performance or obligations of CITY under this Agreement or the failure of CITY to perform under this Agreement, except as may arise from the gross negligence or willful default of CITY, its officers, agents, directors and employees.

SECTION 8. TERMINATION OF CONTRACT FOR CONVENIENCE.

This Agreement may be terminated by CITY whenever CITY in its sole and absolute discretion determines that such termination is in the best interests of the CITY. Any such termination shall be effected by delivery to AUTHORITY of a notice of termination. Upon receipt of such notice of termination, AUTHORITY shall cease conducting all operations under this Agreement as are otherwise permitted or allowed and shall immediately return to CITY all CITY funds in AUTHORITY's possession or control, except that AUTHORITY shall be allowed to retain sufficient funds to wind up the affairs of the AUTHORITY.

SECTION 9. GIFTS.

- A. AUTHORITY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. AUTHORITY agrees that its officers, directors and employees shall be bound by the provisions of Chapter 12.08 of the San José Municipal Code.

SECTION 10. NOTICES AND COMMUNICATIONS.

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally serviced or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:	City of San José -- City Manager 200 East Santa Clara Street, 17 th Floor Tower San José CA, 95113-1905
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To AUTHORITY:

Executive Director
San José Arena Authority
P.O. Box 90207
San José, CA 95109-3207

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 11. AMENDMENTS.

Unless otherwise authorized by this Agreement, amendments to the terms and conditions of this Agreement shall be requested in writing by the party desiring such revision, and any such amendments to this Agreement shall be effective by a duly executed amendment hereto.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

Elizabeth Klotz
Senior Deputy City Attorney

By _____
Toni J. Taber, CMC
City Clerk

“AUTHORITY”

SAN JOSE ARENA AUTHORITY, a
California nonprofit corporation

By _____
Chairperson of the Board

By _____
Executive Director/
Chief Executive Officer

Revised: 6/13/2019