



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Nanci Klein
Matt Cano
Jim Shannon

**SUBJECT: ICE CENTRE EXPANSION, LEASE
AND CITY OF SAN JOSE FINANCING
AUTHORITY TAXABLE LEASE
REVENUE BONDS, SERIES 2020B**

DATE: August 12, 2020

Approved

Date

8/13/2020

RECOMMENDATION

(a) It is recommended that City Council take the following actions:

- (1) Conduct a public hearing for the approval of the issuance by the City of San José Financing Authority of Taxable Lease Revenue Bonds, Series 2020B (Ice Centre Project) (the “2020B Bonds”) in order to finance the acquisition and construction of public improvements of the City of San José consisting of two additional ice rinks and related facilities at the Solar4America Ice at San Jose; and
- (2) Adoption of a resolution authorizing the City Manager to negotiate and execute (a) the Second Amended and Restated Ice Centre Lease and Management Agreement between the City of San José and Sharks Ice, LLC; (b) the Agreement for the Fourth Expansion of the Ice Centre of San Jose between the City of San José and Sharks Ice, LLC; and (c) all other documents necessary to effectuate the Second Amended and Restated Ice Centre Lease and the Agreement for the Fourth Expansion of the Ice Centre; and
- (3) Adopt a resolution approving and authorizing the execution of documents and approving related actions in connection with the issuance by the City of San José Financing Authority of Taxable Lease Revenue Bonds, Series 2020B (the “2020B Bonds”) in the maximum principal amount not to exceed \$155,000,000 in connection with the refunding of the City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008E-1 (“2008E-1 Bonds”) and Series 2008E-2 (Ice Centre Refunding Project) (“2008E-2 Bonds” and together with the 2008E-1 Bonds the, “2008E Bonds”) and the financing of the Ice Centre Project; and

(4) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution Amendments in the Ice Centre Revenue Fund:

- (a) Increase the Beginning Fund Balance by \$919,284;
 - (b) Decrease the estimate for Revenue from the Use of Money/Property by \$1,980,479;
 - (c) Decrease the Ice Centre Debt Service Payment appropriation to the Finance Department by \$2,249,247;
 - (d) Decrease the Repairs – Structures appropriation to the Finance Department by \$440,865;
 - (e) Decrease the Repairs – Mechanical appropriation to the Finance Department by \$278,000;
 - (f) Decrease the Repairs – Miscellaneous appropriation to the Finance Department by \$165,000;
 - (g) Decrease the Repairs – Electrical appropriation to the Finance Department by \$90,000;
 - (h) Decrease the Repairs – Unanticipated/Emergency appropriation to the Finance Department by \$75,000;
 - (i) Establish the Refunding of Previous Base Rent Payments to the Finance Department in the amount of \$1,553,040;
 - (j) Establish a Transfer to the General Fund – Administrative Expenses appropriation in the amount of \$75,000;
 - (k) Increase the Ice Centre Oversight Expenses appropriation to the Finance Department by \$23,546;
 - (l) Establish the Capital Rehabilitation Reserve in the amount of 585,000; and
 - (m) Increase the Unrestricted Ending Fund Balance by \$331.
- (b) It is recommended that the City of San José Financing Authority Board (“Authority”) adopt a resolution authorizing the issuance and sale of the Taxable Lease Revenue Bonds, Series 2020B (Ice Centre Project) in the maximum principal amount not to exceed \$155,000,000 in connection with the refunding of the 2008E Bonds and the financing of the Ice Centre Project and approving and authorizing the execution of documents and approving related actions.

UNDER BOTH THE DEBT MANAGEMENT POLICY AND SAN JOSE MUNICIPAL CODE SECTION 4.34.200, APPROVAL OF THE ISSUANCE OF THE LEASE REVENUE BONDS REQUIRES A TWO-THIRDS VOTE BY THE CITY COUNCIL (8 VOTES).

OUTCOME

Approval of these recommendations will allow for the issuance of the 2020B Bonds, mitigate variable interest rate risk by refinancing of the variable rate 2008E Bonds as fixed rate taxable bonds and allow the acquisition and construction public improvements benefitting the City, specifically the expansion of the Ice Centre of San José. Additionally, approval of these recommendations will also allow the City Manager to complete the negotiations and execution of the Second Amended and Restated Ice Centre Lease and Management Agreement between the City of San José and Sharks Ice, LLC and the Agreement for the Fourth Expansion of the Ice Centre of San Jose between the City of San José and Sharks Ice, LLC. Under the Expansion Agreement, Sharks Ice LLC will construct the expansion of the Ice Centre using the proceeds of the 2020B Bonds and under the Second Amended and Restated Lease, Sharks Ice will lease the facility as expanded with the Sharks Ice's base rent payments to the City anticipated to be the source of the City's repayment of the 2020B Bonds.

EXECUTIVE SUMMARY

The 2020B Bonds are being issued to (i) refund 2008E-1 Bonds in the amount of \$5,590,000 and 2008E-2 Bonds in the amount of \$5,585,000 for a total amount of \$11,175,000 and thereby replace bonds that bear interest at a variable rate with bonds that bear interest at a fixed rate, (ii) finance the acquisition and construction of two additional ice rinks and related facilities (the "Project") at the Solar4America Ice at San Jose (the "Ice Centre"), (iii) fund a deposit to the debt service reserve account and capitalized interest account for the 2020B Bonds, (iv) and pay the issuing costs for the 2020B Bonds.

If approved by Council, the City Manager will negotiate and execute (i) the Second Amended and Restated Ice Centre Lease and Management Agreement between the City of San José and Sharks Ice, LLC ("Sharks Ice" or the "Sharks"); and (ii) the Agreement for the Fourth Expansion of the Ice Centre of San Jose between the City of San José and Sharks Ice. Both of those documents will be executed concurrently with the delivery of the 2020B Bonds.

Second Amended and Restated Ice Centre Lease and Management Agreement. The Second Amended and Restated Ice Centre Lease and Management Agreement provides for the Sharks' base rent payments to the City, which will be secured by a Letter of Credit in favor of the City in an amount equal to two years of maximum annual debt service on the 2020B Bonds and a corporate guarantee by Sharks Ice's parent company. The parent company of Sharks Ice is Sharks Sports & Entertainment LLC, which is also the parent company of San José Arena Management, LLC ("SJAM"), and San José Sharks, LLC. The Sharks are required to make base rent payments regardless of *force majeure* events (except those which result in abatement of City payments due under the bond documents due to physical damage to the property). Neither the City nor the Authority will pledge the rental payments to be made by the Sharks in respect to the Ice Centre as security for the payment of debt service on the 2020B Bonds or the City's related lease payment obligations.

Agreement for the Fourth Expansion of the Ice Centre. This Agreement is designed to achieve the terms of construction of the new improvements to the Ice Centre and the financing of the costs to construct the Project (such costs the “Project Costs”) by City. The term of the Agreement for the Fourth Expansion is from the date of execution and shall continue until the final completion of construction of the new improvements to the Ice Centre. The Expansion Agreement establishes a not to exceed construction cost of \$120 million; provides for the payment of a construction fee to Public Works in the amount of \$1.57 million (included in the construction costs); and establishes a single-phase design and construction approach. The Sharks will divide the construction into portions of work (generally based on trade or specialty) and then enter into separate contracts (i.e., multiple prime contracts) for each such portion of the construction. The construction is scheduled for completion in time for the 2022-23 hockey season.

Public Works will perform its obligations, including inspections of the construction work in accordance with the Project Schedule. The funds for payment of Project Costs will be held by Wilmington Trust, National Association, as trustee of the 2020B Bonds (the “Trustee”), and will be disbursed by the Trustee pursuant to a written requisition of the City which requisition will be submitted by the City to the Trustee upon receipt of a Disbursement executed by the Sharks, among others, in accordance with the Expansion Agreement. The Expansion Agreement also allows the Sharks to be reimbursed for Project Costs that occur before the closing of the 2020B Bonds at closing of the 2020B Bonds, including reimbursement of costs of the Feasibility Study from the Cost of Issuance Account, as provided in the Funding Agreement approved by Council on December 19, 2019.

Budget Actions. Recommended budget adjustments within the Ice Centre Revenue Fund reflect the terms of Second Amended and Restated Ice Centre Lease and Management Agreement, including revised base rent payments for 2020-2021, the establishment of a capital rehabilitation reserve, a repayment to the Sharks for funds previously paid to the City for capital and base rent expenses, and a transfer to the General Fund for administrative costs related to the financing.

BACKGROUND

The Authority has commonly issued lease revenue bonds to assist the City to finance the acquisition and construction of public facilities. Unlike the City’s General Obligation Bonds, no new property taxes are imposed to pay the debt service on such bonds and no voter approval is therefore required. Instead, lease revenue bond payments are made from lease revenues payable from the City’s General Fund for the beneficial use of facilities. Typically, under this structure the City enters into a site lease with the Authority under which the City leases City-owned facilities to the Authority, and concurrently, the City and the Authority enter in a lease agreement, under which the Authority leases such facilities back to the City. In the case of the 2020B Bonds, concurrently with the issuance thereof, the City will lease the Ice Centre to the Authority, and the Authority will lease the Ice Centre back to the City pursuant to a lease agreement (the “Lease Agreement”). Under the terms of the Lease Agreement, in exchange for

beneficial use of the Ice Centre, the City will make lease payments to the Authority (the “Lease Payments”). The City will covenant under the Lease Agreement that as long as City has beneficial use of the Ice Centre, the City will take all necessary actions to include the annual Lease Payments required to be made by the City under the Lease Agreement in the City’s annual budget and to make the necessary appropriations annually.

Under the Indenture, the Lease Payments to be made by the City to the Authority will be the source of the Authority’s repayment of the 2020B Bonds and the security for the bonds.

Contemporaneous with the issuance of the 2020B Bonds, the City will execute the Second Amended and Restated Ice Centre Lease and Management Agreement (“Sharks Lease Agreement”) between the City and the Sharks which will provide for the Sharks to make base rent payments to the City, secured by a Letter of Credit in an amount equal to two years of maximum annual debt service on the 2020B Bonds and a corporate guarantee by Sharks Ice’s parent company. The Sharks are required to make base rent payments regardless of *force majeure* events (except those which result in abatement of City payments due under the bond documents due to physical damage to the property). The Sharks base rent payments under the Sharks Lease Agreement are structured to be sufficient to pay the City’s Lease Payments under the Lease Agreement but are not pledged as security for the 2020B Bonds or the Lease Payments under the Lease Agreement.

Existing Ice Centre Facilities

The Ice Centre is located at 1500 S. Tenth Street in San José on a parcel of land owned by the City (APN 477-38-003), a portion of which is leased to Sharks Ice. The Ice Centre occupies only a portion of that parcel; the other portion is occupied by the San José Municipal Stadium, where the San José Giants play their home games. The City is working with the County to split the current APN to create two distinct parcels, one attributable to the Ice Centre and one to the San José Municipal Stadium.

The nearly 180,000 square foot Ice Centre accommodates ice hockey, figure skating, broomball, curling, speed skating, and ice dancing, as well as public skating. It is also the official practice facility for the Sharks and the Barracuda (both of which play their home games at SAP Center), and the home of the San José State University hockey team and nationally-ranked San José Sharks Junior teams.

The existing Ice Centre facilities were built between 1994 and 2005. Each phase was constructed in accordance with then prevailing and applicable codes, as follows:

Original Facility – Construction of original facility, in 1994, including the mezzanine was approximately 80,000 square feet and was comprised of two NHL-sized ice-skating rinks; spectator seating; changing/locker rooms; a pro shop; a snack bar/grill; an arcade area; offices; and a meeting area.

First Expansion – In 1999, improvements were necessary for the Ice Centre to become the official training facility for the Sharks. This expansion added approximately 58,300 square feet of new improvements including a third rink, associated dressing rooms, the Sharks training center, and a new arcade area. The existing mezzanine area was also remodeled to provide an enhanced skater exercise and dance area and increased meeting rooms and storage space. New bathrooms were added, dressing rooms were improved and expanded, and upgrades were made to the electronics and fire safety systems. Lastly, the current entry area was enhanced to improve food and beverage service, enhance and expanded the pro-shop and created a ceremonial display of awards/honors for community ice users.

Second Expansion - In response to usage of the Ice Centre's three ice rinks, the City and SJAM decided to install an approximately 33,034 square foot addition to the Ice Centre. The improvements included an "expansion" of the first floor and second-floor "renovation" elements. First floor expansion improvements included: a fourth ice rink and bench areas, additional dressing rooms/locker areas, a Zamboni room, bleachers, restrooms, and equipment room. Second floor renovation improvements included: the addition of 1,100 square feet to the existing mezzanine to include a 5,580-square foot restaurant and a 285-square foot banquet room; the addition of a mechanical room and additional bathrooms.

Third Expansion - The construction of a two-story expansion to the Ice Centre by approximately 6,800 square feet for a private locker room and related facilities for the Barracuda. The third expansion was funded by the Sharks and included the expansion of: a locker room for use by 25 players; weight training room; medical and physiotherapy area; offices for coaching staff; storage and laundry facilities; and a new public entrance.

All four phases of the existing facilities were constructed, designed and built to include sustainable building standards, seismic considerations, updated fire suppression systems and security systems.

Current Operation

The existing Ice Centre facilities are currently operated by Sharks Ice under a Lease and Management Agreement dated May 25, 2004, as amended. As the second largest ice venue west of the Mississippi, the Ice Centre 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 Ice Centre is the official practice facility for the San José Sharks NHL team and the San José Barracuda AHL team (both of which play their home games at SAP Center). The Ice Centre is

also the home of the San José State University hockey team and nationally ranked San José Sharks Junior teams.

As described, below, the Ice Centre was closed in March 2020 in compliance with the Santa Clara County (“County”) shelter-in-place order and remained closed until it reopened on June 15, 2020 for youth camps, as permitted by the current County public health order.

Fourth Expansion of Ice Centre Project

To meet an increase in regional demand for “ice time” and to provide an alternate home arena for the San José Barracuda, this expansion will add approximately 204,193 square feet of space to the existing Ice Centre facility. This expansion will include a fifth ice rink to be housed in a new two-story building that will serve as an additional community rink to be used by the public and a sixth ice rink to be housed in a new three-story building that will serve as a competition and practice rink for the Barracuda. On the third level of the building there will be a shell space designed to be improved in the future for medical or other office uses and support services which are anticipated to be leased to a third-party medical provider specializing in sports medicine and related services. When not in use by the Barracuda, the sixth rink will be available as a public rink for the community.

In addition, Sharks Ice intends to obtain LEED Silver certification (or higher) for the Project in accordance with City requirements.

Estimated Construction Timeline

Construction of the proposed expansion is anticipated to commence in August 2020 with completion expected in August 2022, at a total estimated project cost of approximately \$120 million (including Public Works fees), to be funded entirely with proceeds of the 2020B Bonds. The Sharks have informed the City that adherence to this schedule is crucial for the Sharks to complete the expansion in time to host the recently awarded NHL Rookie tournament (6-8 NHL teams) in September 2022. The Sharks plan on bidding for a number of future events, utilizing the expanded Ice Centre facilities, that include U.S. Curling Championships, U.S. and National Figure Skating events, and AHL All Star Game. The Sharks are beginning preconstruction activities, including hazardous material abatement, PG&E work and demolition in August. This schedule will enable the Sharks to meet their completion deadline. The Sharks indicate a delay would require overtime and extra work if the Sharks are forced into a shorter schedule to meet this deadline. Sharks Ice is advancing the funds required to start the construction in August at their own risk in the event the 2020B Bonds are not issued or are delayed.

2008E Bonds

On July 3, 2008, the Authority issued its Taxable Lease Revenue Bonds, Series 2008E (the “Original 2008E Bonds”), as publicly-marketed variable rate “demand” bonds supported by credit facilities, for the purpose of refinancing the City’s acquisition and construction of an ice-

skating facility center, consisting of four ice skating rinks and related facilities, known as the Ice Centre.

On October 21, 2010, the Authority re-designated the Original 2008E Bonds as Taxable Lease Revenue Bonds, Series 2008E-1 and its Taxable Lease Revenue Bonds, Series 2008E-2.

On December 18, 2013, the Authority directly placed the 2008E Bonds with U.S. Bank National Association and the credit facilities were terminated.

The aggregate outstanding principal balance of the 2008E Bonds is approximately \$11.2 million as of June 30, 2020. The existing debt service reserve fund of \$2,816,532 will be applied to the redemption of 2008E Bonds. The refinancing plan calls for the outstanding 2008E Bonds to be refunded in full in October 2020 (the “Redemption Date”), at a redemption price equal to the principal amount thereof, together with interest coming due and payable on the Redemption Date. The 2008E Bonds are proposed to be refunded with proceeds of the 2020B Bonds to facilitate the financing of the expansion of the Ice Centre and fix the interest rate while rates are extremely low.

Debt Management Policy and Municipal Code Requirements Related to Lease Financings

The proposal to issue the 2020B Bonds is subject to the City's Debt Management Policy, City Council Policy 1-15 and San José Municipal Code Chapter 4.34 related to lease financings. Under Section III (D) of the Debt Management Policy, the Finance Department is required to conduct its due diligence for the proposed lease financing and identify a source of repayment. As discussed below, the source of repayment for the 2020B Bonds will be part of a permanent funding plan to be developed which could be a combination of various source of funds including lease rental payments. The Debt Management Policy's provision that requires a feasibility study be performed prior to the issuance of a lease financing has been completed and presented to Council and approved in December 2019. A feasibility study is required only when the revenues of the project being financed are the source of repayment. In this case, project revenues are the source of repayment of the 2020B Bonds and there is an identified funding source and additional security in the form of a debt service reserve to be funded with proceeds of the 2020B Bonds. In addition, a Letter of Credit and Guaranty will be provided by the Sharks as security for its payment obligations under the Sharks Lease Agreement. The Letter of Credit and Guaranty will not be pledged as security for the City's Lease Payment under the Lease Agreement or the payment of debt service on the 2020B Bonds.

UNDER BOTH THE DEBT MANAGEMENT POLICY AND SAN JOSE MUNICIPAL CODE SECTION 4.34.200, APPROVAL OF THE ISSUANCE OF THE LEASE REVENUE BONDS REQUIRES A TWO-THIRDS VOTE BY THE CITY COUNCIL (8 VOTES).

ANALYSIS

The analysis section of the report includes a discussion of the (i) financial feasibility report, Council actions and updates; (ii) business terms with Sharks Ice, LLC for the lease and management of the Ice Centre and the fourth expansion of the facility; (iii) a review of the plan of finance for the issuance of the 2020B bonds; (iv) description of the 2020B bond financing documents; (v) summary of the financing participants; and (vi) the financing schedule.

Financial Feasibility Report, Council Actions and Updates

The City's Debt Management Policy requires a two-thirds City Council approval prior to embarking on a lease revenue financing in which project revenues are identified as the repayment source. In these situations, the Policy requires a preparation of a feasibility study to determine the volatility of the revenue and provide a sensitivity analysis on project revenue projections including worse/best case scenarios. On December 10, 2019¹, the City Council accepted the Finance Feasibility Report ("Study"), prepared by an independent feasibility consultant, selected by the City, on the feasibility of financing the proposed expansion of the Ice Centre.

The Study evaluated the sustainability of the Ice Centre operation after expansion and the feasibility consultant presented three operating projection scenarios: (1) conservative; (2); expected and (3) aggressive. Projections in the Study assumed smooth growth over time but recognized that business can be affected by unpredictable local and national economic factors; and, demand is often cyclical and based on market conditions. The Study also provided an economic sensitivity analysis for the Expected Scenario for the first year of expected stabilized operations in FY 2025-2026 that presented a range of possible outcomes for Ice Centre operations under typical, cyclical market conditions and the impact of a significant economic downturn or recession. The sensitivity analysis included a 10%, 20%, and 30% reduction of operating and non-operating revenues in the Expected Scenario. The Study did not contemplate a pandemic which forced a prolonged closure of the facility and a reopening under strict operating guidelines for social distancing and regular/frequent cleaning.

As part of the Study, the base rent payments from the Manager were set to be sufficient to cover the debt service payments on bonds issued to finance the proposed expansion. City Council directed staff to (1) develop a bond financing structure and prepare the necessary documents for consideration by the Authority Board and City Council; and (2) negotiate the Amended and Restated Lease and Management Agreement. At the onset of the shelter-in-place order related to COVID-19 pandemic, staff was anticipating Council approval of the bond financing in April 2020 with closing expected to occur in May 2020.

¹ December 10, 2019 City Council Meeting, "Financial Feasibility Study Ice Centre Expansion Project"
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=4263943&GUID=3E5A3385-AB63-4A9B-A7D2-DC45ADEFB470&Options=&Search=>

City staff provided a written update on the Ice Centre expansion project on June 30, 2020² (“June 2020 Update”) as an Information Memo updating the City Council on the then current operations at the Ice Centre and the impact of COVID-19, status of the public works project and the status of the bond financing. The Information Memo also attached a report from the Sharks that answered some important questions regarding COVID-19, an update on the Ice Centre project and future events, and financial guarantees that are being offered to the City regarding the Ice Centre 2020B Bonds. The Ice Centre was closed for three months (March 13 to June 14, 2020) as required by the Santa Clara County public health orders. On June 15, 2020, the Ice Centre reopened with youth camps as approved by the County with required public health protocols in place. According to the Sharks, all programs that have been offered at the Ice Centre have filled to capacity since June 15, 2020. Additional programming at the Ice Centre will occur after the County provides public health guidelines for expanded programming for indoor sports facilities.

Summary Sensitivity Analysis - Expected Scenario (dollars in thousands)

	<u>FY2027</u>	<u>10% Revenue Decline</u>	<u>20% Revenue Decline</u>	<u>30% Revenue Decline</u>
Operating Revenue	\$28,525	\$25,673	\$22,820	\$19,968
Operating Expenses	<u>(16,067)</u>	<u>(14,754)</u>	<u>(13,440)</u>	<u>(12,127)</u>
Operating Income/(Loss)	\$12,458	\$10,919	\$9,380	\$7,841
<i>Non-Operating Revenue</i>	<i>\$1,696</i>	<i>\$1,696</i>	<i>\$1,696</i>	<i>\$1,696</i>
<i>Indirect Expense</i>	<i><u>(505)</u></i>	<i><u>(505)</u></i>	<i><u>(505)</u></i>	<i><u>(505)</u></i>
<i>Net Income/(Loss)</i>	<i>\$13,649</i>	<i>\$12,110</i>	<i>\$10,571</i>	<i>\$9,032</i>

Current Market Coverage Analysis (dollars in thousands)

Bond Scenario				
- Lease Payments ¹	\$8,828	\$8,828	\$8,828	\$8,828
- Coverage by Net Income	1.55x	1.37x	1.20x	1.02x
- Bond Debt Service ²	\$8,003	\$8,003	\$8,003	\$8,003
- Coverage by Net Income	1.70x	1.51x	1.32x	1.13x

¹ Preliminary; subject to change. Assumes Sharks rent payments based on estimated debt service on the 2020B Bonds using market rates as of June 22, 2020 plus 50 basis points (0.50%); 2020B Bonds fund \$120 million of project costs, refinancing of 2008E Bonds, capitalized interest through October 2022, debt service reserve fund, and issuance costs.

² Preliminary; subject to change. Based on debt service number from the City’s municipal advisor, PRAG.

As shown in the table above, the economic sensitivity analysis included in City staff’s June 2020 Update has been updated to reflect the current structure for the 2020B Bonds and the negotiated

² June 30, 2020, Information Memo – “Sharks Ice Expansion Project Update”
<https://www.sanjoseca.gov/home/showdocument?id=61115>

terms for the Sharks' base rent payments under the Sharks Lease Agreement. This updated sensitivity analysis demonstrated that net income from Ice Centre operations would be sufficient to cover the estimated Sharks' base rent payments (which will be set at an interest rate that is 50 basis points (or 0.50%) higher than the rate on the 2020B Bonds) to the City by more than 1.0x.

Additionally, under the Amended and Restated Lease and Management Agreement, to be executed concurrently with the delivery of the 2020B Bonds, the Sharks' base rent payments to the City will be secured by a Letter of Credit obtained by the Sharks and sized to cover two years of maximum annual debt service on the 2020B Bonds, the corporate guarantee by Sharks Ice's parent company, and the requirement that the Sharks make base rent payments regardless of *force majeure* events (except those which result in abatement of City payments due under the bond documents due to physical damage to the Ice Centre).

IT IS ANTICIPATED THE SHARKS WILL MAKE BASE RENT PAYMENTS TO THE CITY FOR THE USE OF THE ICE CENTRE THAT WILL BE SUFFICIENT TO PAY DEBT SERVICE ON THE 2020B BONDS. HOWEVER, CITY'S OBLIGATION TO MAKE LEASE PAYMENTS THAT WILL BE USED TO PAY DEBT SERVICE ON THE 2020B BONDS WILL BE THE SOLE RESPONSIBILITY OF THE CITY FROM LEGALLY AVAILABLE FUNDS, SUBJECT TO ANNUAL APPROPRIATION AND ABATEMENT. NEITHER THE PAYMENTS FROM THE SHARKS OR THE LETTER OF CREDIT WILL BE PLEDGED AS SECURITY FOR THE CITY'S LEASE PAYMENTS OR THE PAYMENT OF DEBT SERVICE ON THE 2020B BONDS. THE 2020B BONDS WILL BE SECURED SOLELY BY THE CITY'S LEASE PAYMENTS AND OTHER FUNDS PLEDGED UNDER THE INDENTURE.

Business Terms with Sharks Ice, LLC

As mentioned above, the City Council is authorizing the City Manager to negotiate and execute (i) the Second Amended and Restated Ice Centre Lease and Management Agreement between the City of San José and Sharks Ice, LLC; and (ii) the Agreement for the Fourth Expansion of the Ice Centre of San Jose between the City of San Jose and Sharks Ice, LLC. Below is a summary detail of key terms of those agreement. Part of the Council action on December 10, 2019 included approval of the key business terms, which are summarized below and detailed in "Attachments A: Lease Summary" and "Attachment B: Expansion Agreement Summary" to this report.

Second Amended and Restated Ice Centre Lease and Management Agreement. The Second Amended and Restated Ice Centre Lease and Management Agreement provides for the Sharks base rent payments to the City.

Term – The Term of the Sharks Lease Agreement will be for an initial period ending June 2051, to coincide with the term of the 2020B Bonds. The Sharks will have the option to extend the Term in increments of three (3) years or more up to a total maximum extension of 25 years beyond the initial term 30-year term, for a total maximum Term of up to 55 years.

Rent - Sharks Base Rent Payments – As provided in the Second Amended and Restated Lease, Sharks Ice will make annual Base Rent payments, payable in quarterly payments in advance, to the City. Initially, Sharks Ice will pay the City \$187,500 quarterly for eight consecutive fiscal quarters to coincide with the capitalized interest and construction period (\$750,000 per year). Thereafter, Base Rent payments will gradually increase during the stabilization period (FY 2022-2023 through the first two quarters of FY 2026-2027). After the stabilization period and until final maturity of the 2020B Bonds, Base Rent will reflect the fixed payment schedule of the 2020B Bonds plus a spread of 50 basis points (“bps”) or 0.50%. As with the City’s Lease Payments for the 2020B Bonds, the Sharks’ Base Rent payments will be adjusted based on prevailing interest rates at the time the 2020B Bonds are sold in late September and a final base rent schedule will be finalized and included in the Sharks Lease Agreement.

Letter of Credit – As security for Sharks payment obligations under the Sharks Lease Agreement, the Sharks shall deliver to the City either an irrevocable letter of credit in favor of the City as the beneficiary or a cash security deposit as described. Such obligation shall continue until the earlier of (i) June 30, 2051; or (ii) the date that all Debt Service under the 2020B Bonds has been paid in full. The Letter of Credit will initially be in the amount of equivalent to approximately two years of maximum annual debt service as determined by the Director of Finance upon issuance of the 2020B Bonds. The final Letter of Credit requirement will be finalized upon issuance of the 2020B Bonds.

Capital Improvements and Reserves – It is important that the City’s General Fund be protected and that the project provides Capital Reserve funds to ensure appropriate maintenance of a capital-intensive use. Each fiscal year, Sharks Ice will be responsible for making all Capital Repairs and Replacements. Payment for such work shall be provided by Sharks Ice through its own funding sources, without contribution by the City. After commencement of the Sharks Lease Agreement, a Capital Rehabilitation Reserve shall be established in the Ice Centre Revenue Fund to be used solely as a source of funds to pay for any Extraordinary Repair Work or uninsured casualty loss that may occur over the term of the Sharks lease. The Capital Rehabilitation Reserve is funded by excess base rent payments above the amounts required for annual debt service and City administrative expenses. This reserve will receive an estimated \$21 million over the term of the Sharks lease.

Arena Authority – Sharks Ice currently contributes an annual payment to support Arena Authority Operations, which generally increases with inflation. For 2020-2021, this payment is currently budgeted at \$51,454 and through the actions described in this memorandum increases to \$75,000, a prorated amount from the negotiated increase for annual Arena Authority support to \$100,000 per year, which will escalate annually with inflation. For 2020-2021, the amount for City Administrative Expenses is estimated at \$75,000 and will also escalate with inflation.

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 to be distributed by the Arena Authority in accordance with the City’s ticket distribution policy.

Long Term Leases – The Barracuda will sign a 30-year sublease for the Barracuda’s occupancy of the AHL training facility, the San Jose Sharks will sign a 30-year sublease for the NHL training facility.

Substitutions – In the unlikely event that either the Barracuda or San Jose Sharks would relocate to another venue, Sharks Ice, LLC would continue to pay all amounts due under their sub-lease until they found substitute subtenant acceptable to the City.

Parking – In addition to roughly 435 on-site parking spaces that will be available for Sharks Ice patrons, Sharks Ice will enter into a Parking Agreement with SJSU for parking. The Parking Agreement must align with the term of the Agreement and allow the Parking Agreement to be assigned to the City or other operator of the Ice Centre. The Term of the Agreement with SJSU includes no options to extend past the Sharks Lease Term with the City (June 2051).

Agreement for the Fourth Expansion of the Ice Centre. This Agreement outlines the terms of construction of the new improvements to the Ice Centre and the financing of the Project Costs by City. The term of the Expansion Agreement is from the date of execution and shall continue until the final completion of construction of the new improvements to the Ice Centre. The Agreement establishes the not to exceed construction costs of \$120 million; provides for the payment of a construction fee to Public Works in the amount of \$1.57 million (as part of the \$120 million); establishes a single-phase design and construction approach. The Sharks will divide the construction work into portions of work (generally based on trade or specialty) and then enter into separate contracts (i.e., multiple prime contracts) for each such portion of the construction work. The construction is scheduled for completion in time for the 2022-23 hockey season. Public Works will perform its obligations, including inspections of the construction work in accordance with the Project Schedule. The funds for payment of Project Costs will be held by the Trustee appointed under the 2020B Bond documents and will be disbursed by the Trustee pursuant to a Disbursement Request signed by the Sharks and approved by Public Works Department and the Director of Finance. The Agreement also allows for reimbursement of Project Costs that occur before the closing of the 2020B Bonds, including reimbursement of costs of the Feasibility Study as provided in the Funding Agreement approved by Council on December 19, 2019, to be reimbursed at closing of the 2020B Bonds from Costs of Issuance.

Additional terms of the Expansion Agreement, include:

- Multiple prime construction delivery process;
- Public bidding process when obtaining and awarding construction bids;
- Requirement that all contractors to pay prevailing wages and conduct outreach to small and local businesses for all bid opportunities;
- The City’s Project Labor Agreement (with exclusion of the installation of the ice skid).

Sharks shall be responsible for all Project Costs in excess of the amount financed by the City (the “Excess Project Costs”), including any and all cost overruns, and Sharks hereby assumes the risk

of any and all Excess Project Costs except as otherwise specifically provided in the Expansion Agreement. The City shall have no obligation whatsoever, to either Sharks or any third parties, for any of the Excess Project Costs.

Sharks base rent and other payments are accounted for in Fund 432. As the Sharks are entering into Second Amended and Restated Lease and Management Agreement for the Ice Centre, at closing \$300,000 of existing balances in Fund 432 will be retained by the City for a Capital Rehabilitation Reserve, with additional contributions from the Sharks over the life of the lease. As part of the budget actions recommended in this staff report, approximately 75% of the remaining funds not budgeted in Fund 432 will be paid to Sharks Ice on or around the closing of the bond issue. After a final reconciliation of Fund 432 has been completed the balance will be paid in February and included as part of the Mid-Year Budget Review recommendations.

Plan of Finance

Description of the 2020B Bonds

2020B Bonds. The 2020B Bonds will be issued on a taxable basis to finance public improvements of the Ice Centre. The remaining proceeds of the 2020B Bonds will be used to refund the outstanding 2008E Bonds in the outstanding principal amount of \$11,175,000 at closing of the 2020B Bonds, fund the debt service reserve fund, fund the capitalized interest account, and pay the costs of issuance on the 2020B Bonds.

Aggregate Debt Service Structure

- Total net debt service on the 2020B Bonds is estimated to be approximately \$237,642,888.94 of which \$147,240,000 is principal and approximately \$90,402,889 is net interest cost.
- Interest on the 2020B Bonds accrues from the date of delivery and is payable semiannually on June 1 and December 1 of each year, commencing December 1, 2020.
- The 2020B Bonds are also structured with interest capitalized through the end of October 2022, as a result interest on the 2020B Bonds will be capitalized through (and beyond) the Project's expected two-year construction period.
- Payments of principal and interest on the 2020B Bonds will be paid by Wilmington Trust, National Association (the "Trustee") and have a final maturity of June 1, 2051.
- The estimated true interest cost for the 2020B Bonds is approximately 3.27% based on market rates as of June 22, 2020.

The accumulated spread between the payment of scheduled debt service on the 2020B Bonds and the Base Rent payments made by the Sharks is Excess Base Rent and will accumulate during the Term of the Sharks Lease Agreement which is coterminous with the term of the 2020B Bonds. The Sharks Lease Agreement states that Excess Base Rent shall first be used to pay City costs and expenses associated with the administration of the 2020B Bonds, including rating agency fees, trustee fees, consulting fees, and other City administrative expenses. Thereafter, any remaining Excess Base Rent shall be deposited into the Capital Rehabilitation Reserve, within

the Ice Centre Revenue Fund, that will provide the City with a “safety net” in the event City is required to pay for any Extraordinary Repair Work on the Project during the term of the Lease. Specifically, Excess Base Rent shall be used only to pay for the following purposes, all as provided for and defined in the Sharks Lease Agreement: Extraordinary Repair Work; Uninsured losses (including payment of deductibles or restoration costs) following a Casualty; Capital Enhancements, to the extent the City Council approves a contribution to the cost thereof; or any other Alterations or FF&E for the Facility as authorized by the City Council.

Public Improvements. A large portion of the 2020B Bonds proceeds will finance the acquisition and construction of \$120 million public improvements benefitting the City, including two additional ice rinks and related facilities at the Solar4America Ice Centre at San Jose, formerly the Ice Centre of San José (the “Project” or the “Ice Centre”).

2020B Bonds Estimated Sources and Uses of Funds. The estimated sources and uses of funds for the financing are shown below:

<div> <div>City of San José</div> <div>Taxable Lease Revenue Refunding Bonds, Series 2020B</div> <div>Estimated Sources and Uses of Funds ⁽¹⁾</div> </div>	
Sources of Funds:	
Bond Proceeds – Par Amount	\$ 147,240,000
Prior 2008E Debt Service Reserve Fund Release	<u>2,816,532</u>
Total Sources	\$ 150,056,532
Uses of Funds:	
Project Fund ⁽²⁾	\$ 120,00,000
Refunding of Outstanding 2008E Bonds	11,175,000
Debt Service Reserve Fund ⁽³⁾	8,005,384
Capitalized Interest Fund ⁽⁴⁾	9,143,394
Cost of Issuance ⁽⁵⁾	1,143,794
Underwriter’s Discount	<u>588,960</u>
Total Uses	\$ 150,056,532
<div> <div>⁽¹⁾ Preliminary; subject to change.</div> <div>⁽²⁾ Represents funds to be used to finance the construction of the Project.</div> <div>⁽³⁾ Represents proceeds from the 2020B Bonds that will fund the debt service reserve fund.</div> <div>⁽⁴⁾ Represents twenty-six months of capitalized interest, from date of issuance of the bonds, through November 2022</div> <div>⁽⁵⁾ Based on not to exceed amount; subject to negotiation at pricing.</div> <div>⁽⁶⁾ Includes Bond Counsel/Disclosure Counsel fees and expenses, Municipal Advisor fees and expenses, Sharks reimbursement for Feasibility Report, rating agencies fees, trustee fees and expenses, printing costs and contingency subject to change at final bond pricing.</div> </div>	

The Lease Payments made by the City to the Authority will be the sole source of the Authority's repayment for the 2020B Bonds. While not pledged to the 2020B Bonds, the Base Rent Payments from the Sharks are expected to be used by the City to make the Lease Payments.

Obligation to Pay. Under the Lease Agreement, the City will agree to pay to the Authority, its successors and assigns, the Lease Payments in the amounts specified in the Lease Agreement, to be due and payable in immediately available funds on the interest payment dates. The Authority will assign its rights to receive the City's Lease Payments to the Trustee. The payments will be deposited by the City with the Trustee on each of the lease payment dates specified in the lease.

Reserve Account. Under the Indenture, a Reserve Account will be established for the 2020B Bonds. Amounts on deposit in the Reserve Account are to be used only to make debt service payments with respect to the 2020B Bonds in the event of a deficiency in the Lease Payments by the City under the Lease Agreement. Proceeds of the 2020B Bonds, will be deposited into the Reserve Account on the date of issue of the 2020B Bonds. Based on current interest rates, the initial reserve requirement is estimated to be approximately \$8,005,324.

Source of Payments; Covenant to Budget and Appropriate. Under the Lease Agreement, the Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of the Lease regarding abatement of Lease Payments and annual appropriation. During periods that the City does not have beneficial use of the Ice Centre due to physical damage or destruction, the Lease Agreement provides that there is an abatement of Lease Payments.

Subject to the provisions of the Lease Agreement regarding abatement, the City covenants in the Lease Agreement to take all actions required to include the Lease Payments in each of its budgets during the term of the Lease Agreement and to make the necessary appropriations for all Lease Payments and additional rental payments annually. This covenant of the City constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements agreed to be carried out and performed by the City under the Lease Agreement. Notwithstanding any other provision of the Lease Agreement, the City will in no event be obligated to pay any Lease Payments or additional rental payments due under the Lease Agreement in any rental period for any succeeding rental period.

2020B Bond Financing Documents

Both the City Council and the Authority Board must adopt resolutions authorizing the issuance and sale of the 2020B Bonds (the "City Authorizing Resolution" and the "Authority Authorizing Resolution" and collectively, the "Authorizing Resolutions") and other related actions. The Authorizing Resolutions authorize the issuance and sale of the 2020B Bonds in the principal amount not to exceed \$155,000,000 with a final maturity of June 1, 2051. Both Authorizing Resolutions will be posted to the agenda webpage for this joint meeting of the City Council and Authority Board on or about August 14, 2020.

Staff recommends that the City Manager, Director of Finance, or their authorized designees and the Authority's Executive Director, Treasurer, or their authorized designees ("Designated Officers") be authorized to execute the agreements on behalf of the City and the Authority as described below. As modifications may be required prior to the closing, staff also recommends that the Designated Officers each be authorized to execute the final version of each of these agreements as may be modified upon consultation with the City Attorney's Office. Staff also recommends that the Designated Officers be authorized to be authorized to execute and deliver the documents necessary or advisable upon consultation with the City Attorney in order to consummate the issuance of the 2020B Bonds and the refunding of the 2008E Bonds.

Additionally, staff recommends that the Designated Officers each be authorized to take actions as are necessary or advisable to obtain a municipal bond insurance policy and/or a debt service reserve policy for the 2020B Bonds if it is determined, upon consultation with the Underwriters (defined below in Financing Participants) and the municipal advisor to the City, that such policies will facilitate the issuance of the 2020B Bonds or reduce the true interest costs of the 2020B Bonds.

On or about August 14, 2020 the financing documents for the 2020B Bonds, in substantially final form, will be posted to the City's agenda website for the August 25, 2020 joint meeting of the Authority Board and City Council. These documents are required to be approved by City Council and Authority Board in order for the Authority to issue the 2020B Bonds. City Council approval requires the affirmative vote by two-thirds of the City Council members (8 votes).

Official Statement. The draft Preliminary Official Statement (POS) has been reviewed and approved for transmittal to the City Council by the Disclosure Working Group. The distribution of the POS by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the POS to include all facts that would be material to an investor in the 2020B Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the 2020B Bonds. If the City Council concludes that the POS includes all facts that would be material to an investor in the 2020B Bonds, and authorizes staff to proceed with the issuance of the 2020B Bonds, then one of the actions the City will take in the Authorizing Resolution is to authorize staff to execute a certificate to the effect that the POS has been "deemed final."

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the City's compliance with the federal securities laws, has issued guidance as to the duties of the City with respect to its approval of the POS. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC stated that, if a member of the authorizing board has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the 2020B Bonds, whether relating to their repayment, tax status, undisclosed conflicts of interest with interested parties, or otherwise, he or

she should endeavor to discover whether such facts are adequately disclosed in the POS. In the Release, the SEC stated that the steps that a member of the council could take include becoming familiar with the POS and questioning staff and consultants about the disclosure of such facts concerning the following areas:

Purpose of Financing	Risks Relating to Repayment of the 2020B Bonds, as applicable
Documents for Approval; Security for the 2020B Bonds	Requested Approvals

The information to address these areas in the Preliminary Official Statement can be found in body of the document in the INTRODUCTION section which describes the purpose of the 2020B Bonds and the source of repayment, among other things. More detailed information on these topics and on the risks related to repayment of the CERTAIN RISK FACTORS as well as in Appendix A. Appendix A provides demographic, economic, and financial information about the City. Appendix B, which provides detailed information regarding the retirement plans, is included in order to give investors an understanding of the impact of retirement costs on the City's budget.

Staff recommends that Council approve the POS in substantially the form posted to the agenda webpage for this meeting, with such additions thereto or changes therein as any of the Authorized Officers, acting alone, shall deem necessary, desirable, or appropriate upon consultation with the City Attorney. Staff further recommends that each Authorized Officer be authorized and directed, for and on behalf of the City and the Authority, to execute all certificates necessary to deem final the POS as of its date, with the exception of certain final pricing and related information. Staff has carefully reviewed the information contained in the draft Preliminary Official Statement and believes it to be accurate and complete in all material aspects. Staff further recommends that the Authorized Officers be authorized and directed, each acting alone for and on behalf of the City, pursuant to the Authorizing Resolution, to execute and deliver the Official Statement with such additions thereto or changes therein necessary.

If any councilmember has any personal knowledge that any of the material information in the Preliminary Official Statement is false or misleading, the councilmember must raise These issues prior to approval of the distribution of the document to potential investors in the 2020B Bonds.

City staff, representatives of Jones Hall, A Professional Law Corporation, the City's bond and disclosure counsel for the 2020B Bonds, and representatives of Public Resources Advisory Group, the City's municipal advisor will be available at the Council meeting on August 25, 2020 to address any questions, issues, and/or concerns.

Legal Documents

Indenture of Trust. The Indenture of Trust (the “2020B Indenture”) will be entered into by and between the Authority, as the issuer of the 2020B Bonds, and Wilmington Trust, National Association (the “Trustee”) for the 2020B Bonds. The 2020B Indenture sets forth terms of the 2020B Bonds and contains the responsibilities and duties of the Trustee and the rights of the bondholders. The Trustee was selected through an RFP process based on the completeness of their reply, prior City experience with the Trustee acting as trustee on other bond issues, and their proposed fees.

Site Lease. The Site Lease is between the City (lessor) and the Authority (lessee). The City will lease the existing Ice Centre facility and the adjacent site on which the Project will be constructed to the Authority. In exchange the Authority will make an upfront payment (the amount of the 2020B Bonds) that will be applied, among other costs, to the refunding of the 2008E Bonds and the Project.

Lease Agreement. Under the Lease Agreement, the Authority will lease the Ice Centre to the City and the City will lease the Ice Centre back from the Authority, under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property. The Lease Agreement also provides that lease payments are reduced or eliminated when there is substantial interference with the City’s use and occupancy of the facilities, such as damage or destruction from “abatement events.”

Bond Purchase Agreement. The Bond Purchase Agreement is an agreement by and among the Authority, the City, and the Underwriters as the initial purchasers of the 2020B Bonds. The Bond Purchase Agreement specifies the representations and warranties of the Authority and the City, the documents to be executed at closing, the final maturities, interest rates and yields for the 2020B Bonds and the conditions that allow the Underwriters to cancel the purchase of the 2020B Bonds. The Bond Purchase Agreement also specifies the amount of the Underwriters’ discount on the 2020B Bonds, which staff recommends not exceed 0.4% of the par amount of the 2020B Bonds.

Continuing Disclosure Certificate. Pursuant to the Continuing Disclosure Certificate, the form of which is appended to the Preliminary Official Statement, the City will covenant for the benefit of owners of the 2020B Bonds to provide to the Electronic Municipal Market Access System (“EMMA System”) certain financial information and operating data relating to the City (the “Annual Report”) no later than April 1 after the end of each fiscal year of the City, commencing on April 1, 2021 with the Annual Report for the 2019-20 Fiscal Year, and to provide notices of the occurrence of certain listed events. The specific nature of the information to be contained in the Annual Report or the notices of listed events is summarized in Continuing Disclosure Certificate.

These covenants in the Continuing Disclosure Certificate will be made by the City in order to assist the underwriters of the 2020B Bonds in complying with SEC Rule 15c2-12(b)(5).

Financing Team Participants

The financing team participants consist of:

- City's Municipal Advisor: Public Resources Advisory Group
- Bond and Disclosure Counsel: Jones Hall, A Professional Law Corporation
- Underwriters of 2020B Bonds: Senior Manager: BofA Securities, Inc.
Co-Managers: JP Morgan Securities LLC,
US Bancorp Investment Inc.
- Trustee for 2020B Bonds: Wilmington Trust, N.A.
- Trustee for 2008E Bonds: Wells Fargo Bank, N.A.

Financing Schedule

The current proposed schedule for the issuance of the 2020B Bonds is as follows:

City Council/Authority Board approval:	August 25, 2020
Bond Pricing (expected):	September 22, 2020
Bond closing (expected):	October 7, 2020

CONCLUSION

Approval of these recommendations will (i) allow for the issuance of the 2020B Bonds, mitigate variable interest rate risk by refinancing the 2008E Bonds with the 2020B Bonds bearing a fixed rate taxable for federal tax purposes, and, allow the acquisition and construction public improvements benefitting the City (i.e. the Ice Centre expansion); (ii) authorize the City Manager to negotiate and execute the Second Amended and Restated Ice Centre Lease and Management Agreement, the Agreement for the Fourth Expansion of the Ice Centre of San Jose, and between the City of San José and Sharks Ice, LLC; and (iii) provide budget adjustments within the Ice Centre Revenue Fund to reflect the terms of Second Amended and Restated Ice Centre Lease and Management Agreement, including revised rent payments for FY 2020-2021, the establishment of a capital rehabilitation reserve, a repayment to the Sharks for funds previously paid to the City, and a transfer to the General Fund for administrative costs related to the financing.

EVALUATION AND FOLLOW-UP

This memorandum presents a recommendation for the City Council's approval of various actions related to the issuance of the 2020B Bonds and requires no follow-up to the City Council. The Finance Department will submit an informational memo on the pricing results after the closing of the 2020B Bonds. Final budgetary adjustments related to the transaction will be included in the 2020-2021 Mid-Year Budget Review scheduled for City Council approval in February 2021.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

It is necessary that Council conduct a public hearing, as required by State law, to authorize the issuance of the 2020B Bonds for the Ice Centre Project. No later than 5 days before the public hearing to be held by the City Council on August 25, 2020, a notice advertising the hearing will be published in the *San José Post-Record*.

The public hearing will allow the City Council and Authority Board to hear and consider information concerning the approval of the financing by the Authority and the City for the issuance of the 2020B Bonds. Under State law "significant public benefit" includes lower costs of financing. Establishing the financing with the Authority as the issuer, rather than the City as the issuer, makes the financing less complicated and, because the Authority can issue 2020B Bonds whereas the City would have to issue Certificates of Participation, which would involve creating a new financing program.

This memorandum will be posted on the City's Council Agenda website for the August 25, 2020 Council Meeting, along with all the referenced financing documents.

COORDINATION

This report was prepared by the Finance Department in compliance with the City's Disclosure Policies and Procedures and in coordination with the City Manager's Budget Office, the City Attorney's Office, Public Works Department, Office of Economic Development, and the financing team participants.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation or input associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed financing plan is consistent with the City's Debt Management Policy which establishes objectives in order to obtain cost-effective access to the capital markets, which includes minimizing debt service and issuance costs (including producing estimated net present value savings that are greater than 3% of the refunded debt); achieving a desired debt service profile; maintaining access to cost-effective borrowing; and ensuring compliance with applicable State and Federal laws.

The proposed financing plan is consistent with the Council approved Guiding Principles for Budget and Financial Management for the City to meet its legal commitments and requirements with respect to repayment of bonds, and is consistent with the City Debt Management Policy, which establishes the following equally important objectives in order to obtain cost-effective access to the capital markets:

- Minimize debt service and issuance costs;
- Maintain access to cost-effective borrowing;
- Achieve the highest practical credit rating;
- Full and timely repayment of debt;
- Maintain full and complete financial disclosure and reporting; and
- Ensure compliance with applicable State and Federal laws.

COST SUMMARY/IMPLICATIONS

The Administration anticipates that, while the General Fund is the backstop for bond debt service payments, the agreements and budget adjustments recommended in this memorandum reasonably ensures that Sharks provide sufficient funding on an annual basis to pay all debt-related costs, as well as normal capital repair and rehabilitation costs, such that the General Fund is not impacted.

The estimated project costs of the Ice Centre expansion will be \$120 million, financed by 2020B Bonds proceeds not to exceed approximately \$155 million to be issued by the City of San José Financing Authority. Proceeds from the 2020B Bonds e, if approved by the Council are anticipated to be sufficient to provide funding for construction cost (which includes design and project development), refunding of the outstanding 2008E Bonds, capitalize interest, fund a debt service reserve fund for the 2020B Bonds, and pay issuance costs for the 2020B Bonds.

Professional services (bond/disclosure counsel fees, municipal advisor fees, and rating agency fees), together with the reimbursement to the Sharks of funds expended for the feasibility study, and other related costs are estimated to be approximately \$1,143,794, including contingencies to be resolved during the final bond sizing, and will be paid from costs of issuance funded from the 2020B Bonds. The proceeds received by the City will be net of the underwriters' discount of not to exceed 0.4%, or approximately \$588,960. The Underwriters, municipal advisor, and bond/disclosure counsel work on a contingency basis and are only paid from the cost of issuance proceeds upon the successful sale and close of the 2020B Bonds.

Although it is anticipated the Sharks will make base rent payments to the City for the use of the Ice Centre that will be sufficient to pay debt service on the 2020B Bonds, the obligation to make Lease Payments that will be the sole source of repayment of the 2020B Bonds will rest solely with the City. Provisions to mitigate City's repayment of obligations in the event of a shortfall in Sharks base rent payments include a Letter of Credit and Guaranty provided by the Sharks. In addition, a debt service reserve funded from proceeds of the 2020B Bonds, that will protect bondholders as a last resort if other sources of liquidity are unavailable.

The Project if approved, would be financed through the issuance of 2020B Bonds and secured by Lease Payments made by the City to the Authority for the lease of the Ice Centre. It is anticipated that the City will make its Lease Payments with proceeds of base rent payments to be paid to the City by Sharks Ice, LLC pursuant to a proposed Second Amended and Restated Lease and Management Agreement ("Agreement"). Under the Lease Agreement, the City will be obligated to make Lease Payments that will be used to pay debt service on the 2020B Bonds so long as there is beneficial use and occupancy of the Ice Centre.

This memorandum also includes budget adjustments in the Ice Centre Revenue Fund to:

- Reduce the rent payments from the Sharks by a net \$2.0 million to account for the reduced debt service in FY 2020-2021 due to the refunding of the existing bonds (\$2.6 million), the prorated lease payment for FY 2020-2021 (\$562,500), and the prorated increase of funding for the Arena Authority (\$23,456);
- Eliminate capital repairs expenses (\$1.0 million) that were previously routed through the Fund – these expenses will instead be paid directly by the Sharks;
- Establish a transfer to the General Fund to pay for costs to administer the bond program (\$75,000);
- Establish an appropriation to refund the Sharks for previous rent payments related to capital repair and prior debt service savings (\$1.6 million); and
- Establish a Capital Rehabilitation Reserve (\$585,000) that will be added to over the course of the agreement to pay for major structural repairs and rehabilitation of the facility.

These budgetary adjustments are necessary to facilitate execution of the agreements related to the 2020B bonds, but are anticipated to be slightly modified as part of the 2020-2021 Mid-Year Budget Review after final reconciliation of the bond transactions.

BUDGET REFERENCE

The table below identifies the fund and appropriations recommended to be amended as part of this memorandum.

Fund #	Appn #	Appn. Name	Current Total Appn	Rec. Budget Action	2020-2021 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
432	R999	Beginning Fund Balance	\$52,831	\$919,284	IX-51	6/23/2020, 79605
432	R130	Revenue from the Use of Money/Property	\$3,530,097	(\$1,980,479)	IX-51	6/23/2020, 79605
432	3737	Ice Centre Debt Service Payment	\$2,321,000	(\$2,249,247)	IX-51	6/23/2020, 30437
432	2053	Repairs - Structures	\$440,865	(\$440,865)	IX-51	6/23/2020, 30437
432	2051	Repairs – Mechanical	\$278,000	(\$278,000)	IX-51	6/23/2020, 30437
432	2052	Repairs – Miscellaneous	\$165,000	(\$165,000)	IX-51	6/23/2020, 30437
432	2049	Repairs – Electrical	\$90,000	(\$90,000)	IX-51	6/23/2020, 30437
432	2054	Repairs – Unanticipated/ Emergency	\$75,000	(\$75,000)	IX-51	6/23/2020, 30437
432	NEW	Refunding of Previous Base Rent Payments	N/A	\$1,553,040	N/A	N/A
432	NEW	Transfer to the General Fund – Administrative Expenses	N/A	\$75,000	N/A	N/A
432	3279	Ice Centre Oversight Expenses	\$51,454	\$23,546	IX-51	6/23/2020, 30437
432	NEW	Capital Rehabilitation Reserve	N/A	\$585,000	N/A	N/A
432	8999	Unrestricted Ending Fund Balance	\$150,000	\$331	IX-51	6/23/2020, 30437

CEQA

Ice Centre Facility Expansion Project Mitigated Negative Declaration (Resolution no. 79388).

/s/


JULIA H. COOPER
Director of Finance

/s/

NANCI KLEIN
Director of Economic Development

/s/

MATT CANO
Director of Public Works


JIM SHANNON
Budget Director

Attachment A - Summary of Key Business Terms – Second Amended and Restated Lease and Management Agreement

Attachment B - Summary of Key Business Terms – Fourth Expansion Agreement

For questions, please contact Julia H. Cooper, Director of Finance, at (408) 535-7011 or Nanci Klein, Director of Economic Development at (408) 535-8184 or Matt Cano, Director of Public Works at (408) 535-8477 or Jim Shannon, Budget Director at (408) 535-8142.

Attachment A (Lease Summary)

Second Amended and Restated Lease and Management Agreement for the Ice Centre Summary of Proposed Business Terms As of August 12, 2020

I. 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 shell space designed to be improved in the future for medical or other office uses and support services. The shell spaces are anticipated to be leased to a third-party medical provider specializing in sports medicine and related services, or other compatible uses.
 - 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) (See Attachment B).
- 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.

II. 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 October 7, 2020) and will terminate upon final maturity of the 2020 Bonds, or about June 1, 2051
- 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 advance in the following amounts:
 - a) Base rent for FY 2020-2021 is \$1,418,008.50, consisting of (i) plus (ii): \$855,508.50, the pro-rata portion (July through September) of debt service on the 2008E Bonds due in FY 2020-21; and \$562,500, or \$187,500 for the remaining three quarters of FY 2020-21.
 - b) Base rent for FY 2021-2022 and a portion of FY 2022-23 will be payable quarterly in advance, to the City, in the amount of \$187,500 per quarter, for five consecutive quarters.

- c) Commencing with the second quarterly payment in FY 2022-23, the Base Rent payments will gradually increase during the stabilization period (FY 2022-2023 through the first two quarters of FY 2026-2027). After the stabilization period and until final maturity of the 2020B Bonds, Base Rent will reflect the fixed payment schedule of the 2020B Bonds plus a spread of 50 basis points (“bps”) or 0.50%. As with the City’s Lease Payments for the Bonds, the Sharks’ Base Rent payments will be established based on prevailing interest rates at the time the 2020B Bonds are sold – a final schedule will be included as a schedule in the Amended Lease
- 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 \$100,000 per year (prorated in first year) with CPI adjustments each succeeding Fiscal Year 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. In FY 2020-21 the fee will be \$75,000; current budgeted amount of \$51,454 and prorated adjustment of \$23,546, representing 75% of the \$100,000 new annual fee.
- 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. Maintenance: Manager covenants and agrees, throughout the Term, and at Manager’s sole cost, to maintain the Facility and to keep the same in good order and condition.
- E. 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.
- F. Extension of Term:
 - 1) If the Arena Management Agreement (AMA) is extended beyond June 30, 2051 (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.

III. Construction Financing:

- A. Amount to be Financed: The amount to be financed by the 2020B 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, through October 31, 2022.
 - 5) Debt Service Reserve Fund for the 2020B Bonds, equal to maximum annual debt service on the bonds.
- B. Change Orders:
 - 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 for the cost of Capital Repairs and Replacements or other Alterations to the existing portions of the Facility (such as, by way of example only, retrofitting bathrooms with "no touch" plumbing fixtures or other public health features in response to the COVID-19 pandemic); provided, however, that such Alterations shall be subject to approval by City in accordance with the provisions of Section 9.02 or pay debt service, with a credit to Base Rent in the year that remaining construction funds were declared surplus .
- C. Disbursements from Bond Proceeds:
 - 1) Sharks Ice funded the feasibility study work efforts, and is funding 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 2020B 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 2020B Bonds plus 50 basis points (.50%). It is estimated that the spread between debt service payments and base rent payments will accumulate approximately \$21,570,000 (assuming no expenditures) over the Term,

for an equivalent present value (calculated at bond all-in True Interest Cost (TIC) of 3.27%) of approximately \$12,000,000.

- 1) Excess Base Rent shall first be used to pay costs and expenses associated with the administration of the 2020B Bonds, including rating agency fees, trustee fees, consulting fees, and City Administrative expenses.
- 2) Any remaining Excess Base Rent shall be deposited into the Capital Rehabilitation Reserve, within the Ice Centre Revenue Fund, that will provide the City with a “safety net” in the event City is required to pay for any Extraordinary Repair Work on the Project during the term of the Lease. Specifically, Excess Base Rent shall be used only to pay for the following purposes, all as provided for and defined in the Lease: Extraordinary Repair Work; Uninsured losses (including payment of deductibles or restoration costs) following a Casualty; Capital Enhancements, to the extent the City Council approves a contribution to the cost thereof; or any other Alterations or FF&E for the Facility as authorized by the City Council, all as provided in Article 9 of the Second Amended and Restated Lease.

IV. Subleases and Use Agreements (Article 19):

- A. San Jose Barracuda/AHL team (Section 19.01 (A)(B) and Section 19.01(D)(2):
 - 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 agreement for Barracuda’s use of Competition Arena as home venue for regular and post-season games.
 - 3) Barracuda will rent ice time for AHL practices as needed.
- B. San Jose Sharks Section 19.01 (C) and Section 19.01(D)(2):
 - 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. Subleases for Shell Space (Section 19.02): Sharks Ice will be entitled to into one or more subleases for the exclusive occupancy of all or any portion of the Shell Space (which contains a total of approximately 20,000 square feet) upon terms and conditions reasonably acceptable to City.

V. Parking (Article 8)

- 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.

B. San Jose State University (SJSU) Parking Garage (Section 8.03):

- 1) Sharks Ice will enter into a Parking Agreement with SJSU prior to the sale of the 2020B 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. Sharks/Giants MOU (Section 8.02)

- A. City shall give SJ Giants written notice of termination of the Sharks/Giants written notice of termination of the Sharks/Giants MOU, prior to commencement of pre-construction activities that require use of the On-Site Parking Spaces.
- B. Once the Project has been completed, Manager and City shall meet with the SJ Giants and work in good faith to develop a new memorandum of understanding to address parking operations for the On-Site Parking Spaces.
 - 1) During events at the Facility (and provided that the SJ Giants do not have a home game or other event), Manager shall be entitled to use and operate the On-Site Parking Spaces located on the Stadium Land, at no charge to Manager. However, Manager shall pay all costs and expenses associated with such use and leave the On-Site Parking Spaces in clean conditions.
 - 2) City shall not amend the Stadium lease or any other existing agreements in a manner that will decrease the availability of the On-Site Parking Spaces to Manager, without Manager's consent.

VII. SJSU Parking Agreement (Section 8.03)

- A. It is estimated that following completion of the Project, the number of parking spaces on the City Land (including the Stadium Land as well as the ice Centre Land) will be approximately 599 spaces.
- B. To meet City parking requirements a total of 2,185 spaces will be required during Barracuda games and large events. Approximately 1,586 parking spaces must be provided through the SJSU Parking Agreement. Patrons will pay a modest fee to park at the SJSU Garage on a priority basis during events and to park at the Park and Ride lot on an overflow basis as reasonably needed.
- C. Prior to any issuance of the 2020B, Bonds, City must have received an executed version of the SJSU Parking Agreement. The following provisions must be included in the SJSU Parking Agreement
 - 1) The term of the agreement must commence upon completion of the Project and continue until June 1, 2051, which is coterminous with the Term of the Lease.
 - 2) The SJSU Parking Agreement must be transferable to City or other operator of the Facility.
 - 3) City shall have the authority to approve any amendment of the SJSU Parking Agreement that could impact the City's interests.

VIII. Sale of Alcohol (Section 3.14 (C))

- 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.

IX. Annual Financial and Activity Reports to City Finance and Arena Authority (Section 7.04 and Section 15.01)

- 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)

X. Capital Repairs and Replacements; Ice Centre Capital Reserve (Article 9)

- 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 Rehabilitation Reserve (Section 9.05). After commencement of the Term, a Capital Rehabilitation Reserve shall be established in the Ice Centre Revenue 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 Rehabilitation 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 (when bond debt service is capitalized).
- 2) Additional funding for the Capital Rehabilitation Reserve will come from interest earnings on the Debt Service Reserve Fund (held by the bond trustee).
- 3) After retaining \$300,000 of the fund balance in Fund 432, the City will be distributed to Sharks Ice the balance as a refund for previous rent payments relate to capital repair and prior debt service savings. Initial distribution of approximately \$1.6 million to occur on or about the time of the closing of the 2020B Bonds, the balance will be paid after a true-up and reconciliation is completed by the City and such true-up is anticipated to occur as part of the 2020-2021 Mid-Year Budget Review Report considered by the City Council in February 2021.

XI. 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 annual base rent as determined by the Director of Finance upon issuance of the 2020B Bonds, based on the maximum annual debt service. The final Letter of Credit requirement will be finalized upon issuance of the 2020B Bonds, (currently estimated to be approximately \$8.8 million per year, or a total Letter of Credit amount of \$17.6 million). Such obligation shall continue until the earlier of (i) June 30, 2051; or (ii) the date that all Debt Service under the 2020B Bonds has been paid in full.
 - a. The Letter of Credit (or cash security deposit) may be reduced to one year of base rent payments (estimated at \$8.8 million) whenever the Debt Service Coverage Ratio for the prior three (3) fiscal years is at least 1.50, as confirmed in writing by the Director of Finance, provided, however, that the first year of such look back no being earlier than FY 2027-2028. The formula for calculating the Debt Service Coverage Ratio is described in Section 15.02 (C)(1) of 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 (b) and (c) 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 (estimated at \$8.8 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 15.03):

- 1) Sharks Sports & Entertainment will provide a current, unconditional Guaranty of all 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.

XII. Force Majeure (Section 20.9)

If either Party is delayed or prevented from performance of any act required by this lease by reason of acts of Force Majeure, performance shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay – other than the payment of money (including Base Rent and Additional Rent, which shall not be pro-rated due to *Force Majeure*).

Attachment B (Expansion Agreement Summary)

Agreement for the Fourth Expansion Agreement of the Ice Centre of San Jose **Summary of Proposed Business Terms**

I. Overview

- A. **Project Description:** The proposed expansion of the Ice Centre of San Jose (Project) plans to include two new buildings adjacent to the existing buildings, with a total of about 204,000sf 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. The Project will be governed by the proposed Agreement for the Fourth Expansion Agreement of the Ice Centre of San Jose (Expansion Agreement) between the City of San Jose (“City”) and Sharks Ice, LLC (“Sharks”), which is structurally similar to the prior expansion agreements approved by the City Council.
- 1) Sharks will manage the building process using multiple prime contractors. The Dept. of Public Works will coordinate the build and be responsible for discretionary approvals at various points throughout the Project.
 - 2) Anticipated construction schedule begins in August 2020 with completion in August 2022
 - 3) 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.
 - 4) The Project will also include about 20,000 square feet of additional warm shell space, anticipated to be subleased to a third-party.
 - 5) The Gun Range presently on site will be demolished and any hazardous materials will be abated.
 - 6) Off-site improvements will be made to the adjacent sidewalks, street trees, and street lighting, as required by the Department of Public Works.
 - 7) Parking will be impacted by the Project and will be split between onsite and offsite sources.
 - 8) The City of San Jose will own the entirety of the facility including the land, the existing building, and the new structures proposed under the Project, with a new lease governing the operations of the facility (“Ice Centre Lease”) to be executed concurrent the Expansion Agreement.
- B. **Project Financing:** The City will cause taxable lease revenue bonds to be issued in an amount sufficient to fund a maximum \$120,000,000 construction fund deposit, which will finance the Project. Business terms:
- 1) The City is responsible for the repayment of the bonds, with the proceeds from the rent of the Ice Centre Lease to be used to make debt service payments
 - 2) The Sharks are responsible for all project costs above \$120,000,000

C. Prior Expansions of San Jose Ice Centre:

- 1) 1994 – Construction of original facility with two sheets of ice
- 2) 1999 (First Expansion) – Addition of a third sheet of ice, Sharks training facility, and offices
- 3) 2005 (Second Expansion) – Addition of a fourth sheet of ice, restaurant and locker rooms
- 4) 2015 (Third Expansion) – Addition of training facility for San Jose Barracuda
- 5) 2020 (proposed Fourth Expansion) – Addition of a fifth ice rink (community/practice), a sixth ice rink (competition, also available for public use) with arena seating, and additional facilities include concessions, ticketing, locker rooms, and office space

II. Conditions Precedent to Bond Issuance

A. Conditions Precedent: The following must be met prior to issuance of the proposed bonds:

- 1) The Sharks must obtain the necessary plan check approvals from the City as well as City approval of the Site Logistics Plan
- 2) The Sharks must provide the City a Letter of Credit (or cash security deposit) in the amount equal to approximately two years of annual base rent estimated at \$17,600,000 to be held until specific financial circumstances are per the terms of the Ice Centre Lease
- 3) The Sharks, through its parent company, must provide a guaranty for the project under the terms of the Ice Centre Lease

III. Construction Process

A. Procedure: The Project will be built in accordance with industry standard construction procedure specified in the Expansion Agreement, which notably include:

- 1) Utilizing a multiple prime construction process, with an approved construction manager
- 2) Sharks are responsible for payment of any and all contractors, the City is not obligated to directly pay any contractors
- 3) Must use a public bidding process consistent with City standards
- 4) Require all contractors to comply with prevailing wage and labor requirements and conduct outreach to small and local business for bid opportunities
- 5) Require contractors to sign and abide by the City's Project Labor Agreement (with one exception for the specialized ice sheet contractors)
- 6) Require payment and performance bonds
- 7) Comply with conditions set forth in the mitigation monitoring and reporting program
- 8) Require City-approved insurance on all contractors
- 9) Coordinate with City, specifically the Dept. of Public Works, including weekly construction meetings
- 10) All payments to contractors must be approved by City under a detailed, industry-standard disbursement approval process
- 11) The City approval is required for major changes to the construction plan
- 12) Contractors must provide industry standard guarantees on their work

- 13) The City is able to inspect the work and Sharks are required to correct any construction deficiencies
 - 14) Sharks must cause the construction manager to maintain all necessary project records in accordance with industry standards
 - 15) The Sharks will take all reasonable actions necessary to ensure the continued operation of the existing facility throughout the construction
 - 16) Complying with industry standard closeout procedures
- B. Cost of Construction: The estimated budget for the Project is \$120,000,000. This amount is to be financed by the City through the issuance of bonds approved separately by City Council and the City of San Jose Financing Authority Board (Financing Authority).
- 1) The Sharks are responsible for any Project costs incurred in excess of the above amount
 - 2) A one-time payment of \$1,570,000 will be disbursed to the City from the bond funds to reimburse the City for Department. of Public Works staff time related to this Project
- C. Construction Schedule: While pre-construction work is already underway (being paid for by the Sharks) the construction is set to begin in earnest upon Council approval of the bond financing. Construction is set to be completed in time for the 2022-2023 hockey season.

IV. Project Financing

- A. Bond Issuance: The City, through the Financing Authority shall provide financing of the Project for up to \$120,000,000 through the proposed issuance of lease revenue bonds (2020B Bonds), the issuance of which and the approval of the associated bond lease is separately considered by City Council/Financing Authority Board Key terms on the 2020B Bonds are:
- 1) Payment of costs related to the Project is not to exceed \$120,000,000
 - 2) The Sharks are responsible for any costs in excess of \$120,000,000
 - 3) Creation of the Debt Service Reserve Fund for the 2020B Bonds, which will be funded equal to its maximum annual debt service through the proceeds of the bonds
 - 4) The existing 2008E Bonds will be redeemed
 - 5) Interest accrued during the construction period (as agreed to in the Ice Centre Lease) will be capitalized and funded with bond proceeds
 - 6) Costs of issuing the 2020B Bonds will be included in the total bond sizing
 - 7) Reimbursement to Sharks for expenditures charged under the funding agreement between the City and Sharks
- B. Repayment of Bonds: The City, through the Financing Authority shall provide financing of the Project for up to \$120,000,000 through the proposed issuance of the bonds (2020B Bonds). Key terms on the 2020B Bonds are:
- 1) The City has the legal obligation to make payments under the Lease Agreement to repay debt service on the 2020B Bonds so long as there is a beneficial use and occupancy of the facility
 - 2) Funding of the City's debt service payment obligations will come from the Sharks' lease payments made pursuant to the Ice Centre Lease, however these payments are not pledged to bondholders.

- 3) The Sharks will maintain a letter of credit (or cash security) in a fixed amount equal to approximately two years of base rent payments under the Ice Centre Lease
 - 4) The Sharks will guarantee payment through its parent company, Sharks Sports & Entertainment, LLC
- C. Disbursement of Bond Proceeds: The funds for the payment of costs related to the Project shall be held by the trustee appointed under the 2020B Bond documents in a separate, interest bearing account (“Project Fund”) with the interest earnings added to the Project Fund. Following the issuance of the 2020B Bonds, the trustee shall disburse the funds as allowed under the Indenture of Trust and in accordance with the Ice Centre Expansion Agreement, which include the following key provisions:
- 1) The City will not make any payments directly to other parties or contractors, but shall reimburse the Sharks for costs incurred related to the Project
 - 2) The Sharks must comply with specific, industry standard procedures for disbursement requests for work related to the Project, which include items such as waivers, accurate invoices,
 - 3) Funds shall be disbursed on a percentage of completion basis
 - 4) Contractors working on the project and seeking payment must register with the Dept. of Industrial Relations and provide the requisite information
 - 5) Contractors must provide relevant waivers, insurance certificate and other similar proofs
 - 6) Contractors must provide certified payroll reports to satisfaction of the City’s Office of Equality Assurance
 - 7) The Sharks will maintain a 5% retention on all payments pending the completion of work, or specific approval by City
 - 8) The City, through the Dept. of Public Works, shall review disbursement requests and shall approve such requests that conform to the outlined procedure and forward to the Dept. of Finance for approval and, if approved, payment of the invoice
 - 9) In the event of any notice of stoppage, City has the right to withhold 125% of any noticed amount
 - 10) In the event there are funds remaining in the Project Fund, such funds shall be transferred to the Ice Centre Reserve Fund (Fund 432), as defined in the Ice Centre Lease. Any funds remaining from the bond proceeds after completion of project will be used to pay for the cost of Capital Repairs and Replacements or other Alterations to the existing portions of the Facility (such as, by way of example only, retrofitting bathrooms with “no touch” plumbing fixtures or other public health features in response to the COVID-19 pandemic); provided, however, that such Alterations shall be subject to approval by City in accordance with the provisions of Section 9.02 or pay debt service, with a credit to Base Rent in the year that remaining construction funds were declared surplus .

V. Other Provisions

A. Other key terms are summarized below:

- 1) The Sharks cannot assign the agreement without City approval

- 2) The City has the right to assign the agreement to any public financing authority or similar entity
- 3) Standard notice of default provisions and cure periods and provided for both parties. If a default does occur, the remedies for both parties are contained in the Ice Centre Lease
- 4) The Sharks shall indemnify the City for any acts of negligence on behalf of the Sharks relating to the Project and for any breach of the Expansion Agreement, save for acts or omission from the City or its related parties
- 5) The City shall indemnify the Sharks for any breach of the Expansion Agreement by the City save for acts or omissions from the Sharks or its related parties
- 6) Standard force majeure provisions allow for extensions of time before any defaults if the delay is due to a force majeure event, with a maximum delay of 2 years
 - Either party may terminate the Expansion Agreement after the 2-year period has expired, with no liability to the other party
 - Time for submission of plans, evidence of financing, and other pre-constriction matters is not subject to the force majeure provisions
 - The force majeure provision in the Ice Centre Agreement do not themselves allow for termination of the Ice Centre Lease, which has its own force majeure provisions