

**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE AGENCY ADMINISTRATOR
2007 JUN 5 PM 4:17

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 5, 2007

RE: **An Agency Resolution Approving the Agreement as Directed by Agency Resolution No. 2007-0036 C.M.S., Which Authorized the Agency to Negotiate a Three-Year Agreement with San Jose Arena Management, LLC to Manage and Operate the Oakland Ice Center for a Percentage of Net Revenue, Pursuant to Specific Criteria, and to Approve the Allocation of Agency Funds in the amount of \$100,000 as Matching Funds for a Contribution from San Jose Management LLC for Necessary Capital Improvements to the Oakland Ice Center, and allocating Agency funds of up to \$200,000 for Capital Improvements to the Oakland Ice Center**

SUMMARY

It is recommended that the City Council authorize a Resolution approving (1) a three-year Management/Operation Agreement (the "Agreement") between the Oakland Redevelopment Agency (Agency) and San Jose Arena Management LLC (SJAM) as directed by Agency Resolution No. 2007-0036 C.M.S., to manage and operate the Oakland Ice Center (OIC) for a percentage of net revenue, pursuant to specific criteria, (2) the allocation of Agency funds in the amount of \$100,000 as matching funds for an equal contribution from SJAM for Capital Improvements to the OIC, and (3) the allocation of additional Agency funds in the amount of \$200,000 for necessary capital improvements to the OIC.

During its meeting of April 3, 2007, City Council passed Resolution No. 2007-0036 C.M.S., which authorized the Agency Administrator to negotiate a three-year agreement with SJAM for the management and operation of the OIC. When those negotiations were completed, the Agency Administrator was directed to return to City Council for final approval of the Agreement. Following are the significant points resulting from the negotiation between Agency staff and SJAM representatives; a full Term Sheet and the actual contract are attached to this Report. Significant items are:

- A profit-sharing Agreement that provides a financial return to both the Agency and SJAM, thereby giving SJAM an incentive to excel in their management of the OIC, while giving the Agency the opportunity to receive significant positive cash flow from the facility that it has not enjoyed in the past, over the next three years.
- SJAM is solely responsible for making up any operating short-falls in any given month, quarter or year during the term of the Agreement; there is no cost to the Agency.

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- SJAM will provide funding towards the completion of needed and necessary capital improvements to the OIC.
- SJAM has committed to conduct significant community outreach and marketing involving the Oakland Unified School District, Oakland residents and the users of the OIC, including the formation of a Community Advisory Committee, comprised of volunteer parents and users of the OIC.

The specific terms of the agreement are attached to this report as Exhibit A, a Term Sheet, and the actual contract that will be executed on approval of City Council.

FISCAL IMPACT

Operating Costs

During the last 11 years, the Agency has had to cover and make up any operating shortfalls at the OIC. In the proposed Agreement, SJAM, solely, is responsible for making up any such shortfalls during the term of the Agreement. Therefore, the Agency will no longer incur any operating expense or obligations for any operating losses. This results in cost savings to the Agency's Capital Budget for the Oakland Ice Center.

SJAM Compensation

The unique profit-sharing arrangement negotiated with SJAM provides the Agency with a percentage of net revenues, which saves the Agency the cost of historically paying out a management fee. The contract sets forth the following profit sharing mechanism:

The base line is \$0 for all three years. The first year, for the first \$150,000 of net revenues, 30 percent (30%) of net revenues will go to the Agency and 70 percent (70%) to SJAM. Net revenues above \$150,000 up to the amount of \$200,000 are shared 40 percent (40%) to the Agency and sixty percent (60%) to SJAM. Net revenues in excess of \$200,000 will be evenly divided between the Agency and SJAM - 50%/50%. This profit sharing arrangement between the Agency and SJAM will likely generate significant positive cash flow for the Agency for the first time in many years, while giving SJAM the incentive to excel at the management of the OIC.

Initial Clean-up Advance

SJAM will advance \$30,000 to perform clean-up and maintenance of the OIC within the first weeks of its management. This \$30,000 will be repaid from the Agency's share of net profits from the OIC.

Snack Bar and Pro Shop

The Agency is currently leasing the Snack Bar and Pro Shop located inside the OIC to third party operators. Unlike the current situation, SJAM will operate the pro shop and snack bar itself, and will not sub-contract out those operations. Instead, SJAM will lease the existing pro shop and snack bar areas for \$1.50 per square foot on a full service basis, with free rent for the first three

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months of the lease term. The rent-free period is intended to provide SJAM with sufficient time to rebuild sales to profitable levels after the anticipated shut-down of the OIC, and the limited operation of the Pro Shop since March 2007. Total monthly rent for the Snack Bar and Pro Shop will be \$2,655. Staff in the City's Real Estate Division has confirmed that these lease terms are reasonable and are supported by prevalent market data.

Capital Improvements

SJAM has agreed to invest \$100,000 of its money for capital improvements to the OIC if the Agency commits to provide at least a matching amount. Staff proposes that the Agency make available \$100,000 as matching funds to equal the contribution from SJAM. Staff also proposes an additional \$200,000 of Agency funds for other immediate and necessary capital improvements to the OIC. SJAM's \$100,000 capital investment and the Agency's initial \$100,000 match will be expended pro rata until fully expended before the additional Agency funds of \$200,000 will be drawn down. Funds for the Agency's capital improvement contribution in the amount of \$300,000 are available in the Agency's Central District Tax Allocation Bond Series 2005 Fund (9533), CIP: Economic Development Organization (94800), 10K Housing Project (P118550). Since the 10K Project has been very successful and requires no further financial contributions from the Agency, all of the Agency's remaining 10K Housing funds were going to be reallocated to the Agency's proposed Uptown Garage at 21st Street and Telegraph Avenue as part of the FY 2007-09 Budget proposal. This action will decrease the Uptown Garage allocation by \$300,000.

KEY ISSUES

This Agreement complies with the direction contained in Resolution No. 2007-0036 C.M.S. and all significant terms are set forth on the attached Term Sheet, and the entire contract is also attached.

Ice Rink Closure

SJAM has made a preliminary facility inspection along with Agency staff and discovered several immediate repairs that are necessary. Once SJAM begin its management, July 1, 2007, it will more thoroughly inspect and repair the ice surfaces and ice-making systems at the OIC. This process includes inspection and rebuilding or repair of the refrigerant pumps as well as any other problems that need to be remedied. In order to effect this repair and remedy, it is necessary to "take down" the ice. The ice surfaces must be melted down so that the pipe system may be inspected. This is the first melting down of the ice surfaces of both rinks since the OIC was built in 1995. The taking down of the ice is normally performed every 7 to 10 years, and has never been done since the OIC opened. This process will enable SJAM and the Agency to properly determine the cause of several regularly recurring soft spots on both ice surfaces. The problematical spots in the ice surfaces have been remedied in the short view by tamping in ice shavings as needed. However, the overall rink safety and function will be greatly improved by locating the cause and repairing the problem. The actual cost of complete repair cannot be

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inspection of the refrigerant piping systems located under the ice. Once the cause has been determined, the capital improvement funds will be used to remedy the situation and the ice will be restored to a much better condition. The taking down of the ice surfaces will result in the OIC being closed for at least three weeks, and more likely, an entire month, depending on the nature of the capital repairs that will be required. SJAM desires to take the ice down beginning July 1, 2007.

There is no “good” time to close down the OIC; some programs will always be disrupted. It is the best economic choice to close the entire facility and both surfaces at once, rather than closing one surface at a time. Not only will the ice surface repairs be completed in this time, but all necessary repairs to the entire facility will be accomplished in this time period. The closure of the facility and completion of the improvements during July will cause the least disruption to currently scheduled or planned programs and activities. It will also enable SJAM to begin its management of the OIC with a freshly renovated, more attractive facility and greatly facilitate SJAM’s plan to attract new users and improve the facility’s financial performance.

Besides eliminating daily scheduled public skating, totaling approximately 40 hours per week, closure of the OIC during July will also necessitate the cancellation of the first week of three two-week ice skating camps for children aged 7 to 12 in beginner, intermediate and freestyle categories. However, the OIC closure will not affect the second sessions of those three camps since the earliest of them will not begin until July 30. Therefore, at least one session in all camp skating categories will be offered this summer. SJAM will make every effort to permit any customer that will not be able to attend the first session of the ice skating camps to attend the second session. The OIC closure will also trim four weeks off the 16-week adult hockey season, but this is not expected to create a significant problem for adult hockey players in light of the much-improved facility they will be able to enjoy after their 4-week hiatus.

SUSTAINABLE OPPORTUNITIES

Execution of a management agreement with SJAM as proposed is expected to create the following sustainable opportunities:

Economic

It is expected that usage of the Ice Center will increase under SJAM’s management, thereby drawing larger numbers of participants and spectators who will patronize surrounding businesses and garages.

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Environmental

It is expected that SJAM will work with Agency and City staff to implement energy saving measures at the Ice Center, similar to the solar panel system and energy efficient lighting installed last year.

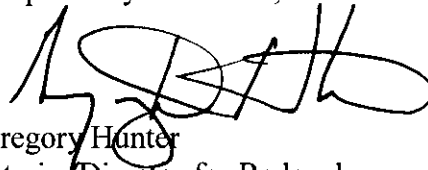
Social Equity

It is expected that SJAM will hire Oakland residents at the Ice Center. SJAM is also committed to develop and implement effective strategies that will further increase the participation of Oakland residents in activities and programs at Ice Center.

RECOMMENDATION

It is recommended that the City Council authorize a Resolution approving (1) a three-year Management/Operation Agreement between the Oakland Redevelopment Agency and San Jose Arena Management LLC to manage and operate the Oakland Ice Center for a percentage of net revenue, pursuant to specific criteria, (2) the allocation of Agency funds in the amount of \$100,000 as matching funds for an equal contribution from San Jose Arena Management, LLC for capital improvements to the OIC, and (3) the allocation of Agency funds in the amount of \$200,000 for capital Improvements to the OIC.

Respectfully submitted,



Gregory Hunter
Interim Director for Redevelopment,
Economic Development, Housing and
Community Development

Prepared by:
Jens Hillmer
Urban Economic
Coordinator

APPROVED AND FORWARDED TO THE
CITY COUNCIL:


OFFICE OF THE AGENCY ADMINISTRATOR

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PERTINENT TERM SHEET

MANAGEMENT/OPERATIONS AGREEMENT FOR THE OAKLAND ICE CENTER

- Facility: Oakland Ice Center ("OIC") property located at 519 18th Street, Oakland, California
- Owner: Oakland Redevelopment Agency ("Agency")
- Manager and Operator: San Jose Arena Management, LLC ("SJAM")
- Term: Three years commencing on July 1, 2007 and ending on June 30, 2010.
- Compensation: This is a profit-sharing agreement. For all three years, SJAM and the Agency will share net revenues as calculated from an agreed upon amount (referred to as "Baseline") from OIC operations. The profit sharing will be as follows:
- All three years --Base line equals \$0.
Profit sharing:
Net revenues to \$150,000: 70% to SJAM and 30% to Agency;
Net revenues from \$150,000 to \$200,000: 60%/40%;
Net revenues over \$200,000: 50%/50%
- Programming: SJAM will maintain a balanced and diverse schedule of programs of hockey, figure skating, public skating, ice dancing and other ice-related activities at the OIC, with any significant changes in program scheduling to be brought back to Agency Administrator for review and approval.
- Charges and Fees: For the first 6 months following the commencement of the term of the agreement, SJAM will base all fees to be charged to all individual and group users of the OIC, as well as for all events taking place at the OIC, on those fees and rates currently in effect at the OIC. Should SJAM desire to increase any fees, it must submit the proposed fee schedule to Agency Administrator for review and approval, which approval will be granted if the increased fees are comparable to the fees charged by other ice rinks in the greater Bay Area, which must include rinks that are not managed or owned by SJAM or its affiliates.

Pro Shop

and Snack Bar: SJAM will pay to Agency monthly full service rent in the amount of \$1.50 per square foot for the Pro Shop-for a total of \$1,684.50, and \$1.50 per square foot for the Snack Bar (including vending machines selling food and drink products, which may be located outside the Snack Bar location) for a total of \$970.50. The first three months of the Term will be rent-free for the Pro Shop and the Snack Bar.

Maintenance
and Repair:

SJAM will as a cost of operation, keep and maintain all portions of the OIC and all improvements located in the OIC in good order and repair consistent with the uses of the buildings contemplated by the agreement and in as safe and clean a condition as they were when received from Agency, reasonable wear and tear excepted.

Within one hundred-twenty (120) days of the execution of the agreement, SJAM will complete \$30,000 of maintenance and clean-up work at the OIC. The scope of said maintenance and clean-up work will be determined by SJAM in consultation with Agency. Such initial maintenance and clean-up work at the OIC by SJAM will not be an operating expense, but paid for directly by SJAM. Agency will reimburse SJAM for whatever portion of such \$30,000 is spent for the cost of initial facility clean-up and maintenance from Agency's share of net revenue from the OIC during the three (3) year term of this Agreement.

Capital

Improvements: SJAM will contribute \$100,000 for capital improvements on a dollar for dollar matching basis with contributions from Agency (in addition to the \$30,000 referred to above). Agency will appropriate and make available Agency's equal match in the amount of \$100,000. Said capital improvement funds from Agency and SJAM will be expended in accordance with an initial capital improvement list, and to the extent not fully expended for such purposes then in accordance with the capital budget submitted by SJAM. After SJAM has expended its share of the capital improvement funds in an amount of \$100,000, Agency will be responsible for all additional capital improvements.

Community
Outreach:

During each year of the term of the agreement SJAM will (a) offer free admission and skating equipment for no less than one thousand (1,000) Oakland Unified School District ("OUSD") students during field trips to the OIC, which will take place on dates and times to be determined in consultation with Agency and OUSD staff; and (b) in cooperation with OUSD, SJAM will arrange the physical transporting of these OUSD

students to the OIC, whether by financial contributions or other means, without any expense/cost to the City/Agency or OUSD.

At least four (4) times during each year of the term of the Agreement, SJAM will offer every OUSD student participating in OUSD's 'After School Program' free skating dates and times, and skating equipment, and SJAM will offer additional scholarship programs for OUSD students.

SJAM will endeavor to create a High School Hockey League competition and sponsor at least one OUSD team.

SJAM will ensure that Oakland residents receive a ten (10) percent discount on all fees, admissions, and skating equipment rentals.

SJAM and Agency will endeavor to establish an OIC advisory committee consisting of representatives of the customers and parents of youth who are customers of the OIC, whose members will represent a balance of ice activities. SJAM will meet with the OIC advisory committee at least three (3) times during each year of the term of the Management Agreement. In those meetings, the advisory committee and SJAM management will review and discuss issues relevant to the programs, scheduling and standards at the OIC.

Marketing:

Within thirty (30) days following the commencement of the term of this agreement, SJAM will provide a marketing plan for the OIC to Agency for review and approval. Said marketing plan will, among other things, describe how SJAM will market the OIC at other San Jose Sharks or SJAM-affiliated facilities such as HP Pavilion at San Jose, Logitech Ice at San Jose and Fremont Ice Center. For marketing purposes, SJAM will be entitled to use the name "Oakland Ice Center managed by Sharks Ice" and the logo of the Sharks in advertising, internal labeling of forms, certificates and paper products, and general reference to the Property; provided that the font size of the phrase "Oakland Ice Center" and "Sharks Ice" will be the same size, but may be different type faces.

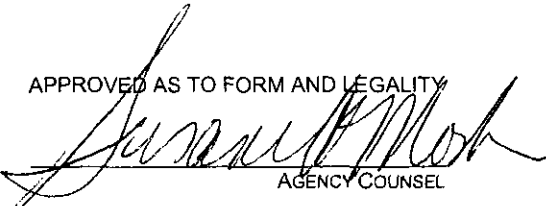
In consultation with Agency staff, SJAM will include up to \$80,000 for direct OIC marketing expenditures during each annual budget cycle for the OIC, and offer another \$175,000 in-kind value (at commercial rates charged by third parties) at other San Jose Sharks or SJAM-affiliated facilities such as HP Pavilion at San Jose, Logitech Ice at San Jose and Fremont Ice Center. Up to the committed \$80,000 for direct marketing expenses will be a cost of operation for OIC; the \$175,000 in-kind value will not be a cost of operation for OIC.

Facility

Naming Rights: Agency reserves all naming rights for the facility and any revenues that may be generated from such naming rights in the future. SJAM will consult with Agency prior to any proposed name changes of the facility during the period of the agreement.

OFFICE OF THE CITY CLERK
2007 APR 16 10:16

APPROVED AS TO FORM AND LEGALITY


AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

An Agency Resolution Approving the Agreement as Directed by Agency Resolution No. 2007-0036 C.M.S., Which Authorized the Agency to Negotiate a Three-Year Agreement with San Jose Arena Management, LLC to Manage and Operate the Oakland Ice Center for a Percentage of Net Revenue, Pursuant to Specific Criteria, and to Approve the Allocation of Agency Funds in the amount of \$100,000 as Matching Funds for a Contribution from San Jose Management LLC for Necessary Capital Improvements to the Oakland Ice Center, and allocating Agency funds of up to \$200,000 for Capital Improvements to the Oakland Ice Center

WHEREAS, on April 3, 2007, the Redevelopment Agency of the City of Oakland (Agency), pursuant to Resolution No. 2007-0036 C.M.S., directed the Agency Administrator to negotiate a three-year agreement with San Jose Arena Management, LLC (SJAM) to operate the Oakland Ice Center (OIC) for a percentage of net revenue, pursuant to specific criteria; and

WHEREAS, negotiations with SJAM are complete and agreement has been reached on the terms and conditions of a Management/Operations Agreement ("Agreement") for the OIC; and

WHEREAS, SJAM has agreed to invest \$100,000 of its money for capital improvements to the OIC if the Agency commits to provide at least a matching amount; and

WHEREAS, the Agency desires to make available \$100,000 as matching funds to equal the contribution from SJAM; and

WHEREAS, staff also proposes to make available an additional \$200,000 of Agency funds for immediate and necessary capital improvements to the OIC; and

WHEREAS, the Agency has identified funds totaling \$300,000 from Agency's Central District Tax Allocation Bond Series 2005 Fund (9533), CIP: Economic Development Organization (94800), 10K Housing Project (P118550) to fund capital improvements to the OIC; now therefore be it

RESOLVED: That the Agency Administrator is hereby authorized to execute and enter into a three-year Agreement with SJAM for the management and operation of the OIC consistent with the terms of the contract submitted to Council, and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator to reallocate \$300,000 from the Agency's Central District Tax Allocation Bond Series 2005 Fund (9533), CIP: Economic Development Organization (94800), 10K Housing Project (P118550) to fund capital improvements to the OIC; and be it further

RESOLVED: That SJAM shall deposit one-hundred percent (100%) of its capital contribution in the amount of \$100,000 into an interest bearing account at a commercial bank (Capital Improvement Account) with the only permissible withdrawals from the Capital Improvement Account to be used for capital improvements to the OIC; and be it further

RESOLVED: That Agency shall deposit one-hundred percent (100%) of its capital contribution in the amount of \$300,000 into the Capital Improvement Account with the only permissible withdrawals from the Capital Improvement Account to be used for capital improvements to the OIC; and be it further

RESOLVED: That SJAM shall deposit one-hundred percent (100%) of all gross revenues collected from all aspects of OIC operations into an interest bearing account at a commercial bank (the "Operating Account"), and pay one-hundred percent (100%) of the OIC operating and management expenses from the Operating Account; and be it further

RESOLVED: That the Agency Administrator is authorized to take whatever action is necessary with respect to the Agreement consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by the Agency's Counsel prior to execution; and be it further

RESOLVED: That any agreements authorized hereunder, including amendments, modifications, or extensions, shall be approved as to form and legality by the Agency's Counsel and filed with the Office of the City Clerk.

IN AGENCY, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland

2007 JUL 01 PM 4:17

MANAGEMENT/OPERATIONS AGREEMENT

Between

SAN JOSE ARENA MANAGEMENT and REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

THIS MANAGEMENT/OPERATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2007 ("Effective Date") between the Redevelopment Agency of the City of Oakland, a municipal corporation, ("Agency") and San Jose Arena Management, LLC, a Delaware Limited Liability Company, ("SJAM") in managing and operating the Oakland Ice Center ("OIC" or "Property").

RECITALS

A. Agency is the fee owner of that certain real property located at 519 18th Street, Oakland, California known as the Oakland Ice Center ("OIC"); and

B. Health and Safety Code Section 33125(c) authorizes a redevelopment agency to enter into contracts; and

C. Pursuant to Resolution No. 2007- C.M.S., Agency has authorized Agency Administrator to enter into this Agreement;

THEREFORE, in consideration of the above recitals and performance of the respective covenants herein described, Agency and SJAM agree to the following terms and conditions:

SJAM shall operate, manage, maintain and promote the OIC during the term of the Agreement and perform the tasks as described in detail below.

1. TERM. The term of this Agreement is for three (3) years. The Agreement commences on July 1, 2007 and terminates on June 30, 2010. In order to provide a smooth transition, Agency will notify SJAM in writing prior to May 30, 2010, of its intent to terminate or extend the Agreement as of June 30, 2010. If Agency has not delivered a written notice to SJAM on or before May 30, 2010, SJAM shall be deemed merely a hold-over tenant after June 30, 2010, and SJAM's rights under this Agreement shall continue on a month to month basis on the same terms and conditions as provided in this Agreement, until terminated by Agency. Prior to the expiration of this Agreement, upon the mutual satisfaction of the Parties' performances pursuant to the terms of this Agreement, Agency will recommend either the negotiation of a new contract or an extension of this Agreement to the City Council.

2. PERMISSIBLE USES OF THE PROPERTY. Except with the prior written consent of Agency, the use of the Property by SJAM and any sub-concessionaires shall be restricted to the following:

2.1 Any use inconsistent with the above purposes shall constitute a breach of this Agreement upon notice and right to cure as provided herein.

3. OIC OPERATIONS AND PROGRAMMING.

3.1 SJAM RESPONSIBILITIES. SJAM shall, at no cost to Agency, except as expressly provided for herein, operate and manage all aspects of the OIC. SJAM shall maintain a balanced and diverse schedule of programs as more particularly described in Section 1 of Exhibit A (“Scope and Special Conditions and Services”) attached hereto and incorporated herein by reference. SJAM shall operate during specified hours during specified months in accordance with Exhibit A attached and incorporated herein by reference. Any proposed changes to the attached Exhibit A that are material, must be approved by Agency Administrator before they are implemented.

3.2 AGENCY APPROVALS. Any approvals by Agency required by this Agreement shall be granted or disapproved within ten (10) business days of receipt of the request for such approval, and if Agency does not grant or deny such approval within that time, or any other specific time limit provided for a specific approval in this Agreement, the approval will be deemed to have been granted. All approvals by Agency and by SJAM required by this Agreement shall be given reasonably except where this Agreement specifically states a different standard.

4. CHARGES AND FEES. SJAM will set all charges and admission fees related to the use of the OIC as more specifically described on Exhibit A.-1.

5. OIC BUDGETS, REVENUE COLLECTION AND EXPENDITURES AND REVENUE SHARING.

5.1 SJAM COMPENSATION. As compensation under this Agreement, SJAM shall receive seventy percent (70%) and Agency shall receive thirty percent (30%) of Net Revenue up to One Hundred Fifty Thousand Dollars (\$150,000), SJAM shall receive sixty percent (60%) and Agency shall receive forty percent (40%) of Net Revenue above One Hundred Fifty Thousand Dollars (\$150,000) up to Two Hundred Thousand Dollars (\$200,000), and SJAM shall receive fifty percent (50%) and Agency shall receive fifty percent (50%) of Net Revenue above Two Hundred Thousand Dollars (\$200,000) in Net Revenue from all operations (not including the OIC Snack Bar and OIC Pro Shop which are addressed below) each year above an agreed upon amount (referred to as “Baseline”) from OIC operations (also excluding the OIC Snack Bar and OIC Pro Shop which are addressed below) as provided in this Section. The Baseline for each year of operation under this Agreement shall be zero dollars (\$0). SJAM shall pay to Agency its share of Net Revenue no later than seventy-five (75) days after the close of each fiscal year.

(a) Net Revenue shall be calculated by including all revenue received by SJAM for operations at OIC, from whatever source (not including revenue from the OIC Snack Bar or the OIC Pro Shop) less all costs of maintaining and operating the OIC (except as specifically excluded from such costs in this Agreement and its Exhibits and not including costs of Capital Improvements or Capital Repairs) (“Operating Expenses”).

5.2 OPERATING AND CAPITAL BUDGETS. SJAM shall prepare and administer OIC Operating and Capital Budgets, collect revenues and make operating and capital

expenditures in accordance with Section 3 of the Exhibit A. SJAM shall deposit one-hundred percent (100%) of all revenues collected from all aspects of the OIC operations, except for those revenues covered by this Section and Section 5.3 below, into the operating account. SJAM shall be responsible for and shall pay one-hundred percent (100%) of the OIC Operating Expenses from the operating account.

5.3 OIC SNACK BAR. SJAM shall operate and pay Agency a flat rental fee for the operation of the OIC Snack Bar in accordance with Section 4 of Exhibit A.

5.4 PRO/RETAIL SHOP. SJAM shall operate and pay Agency a flat rental fee for the operation of the OIC Pro Shop in accordance with Section 4 of Exhibit A.

5.5 Bank Accounts, Reporting Requirements and Audits. SJAM agrees to establish and utilize the bank accounts and to comply with Agency reporting accounting and audit requirements, including any commercially reasonable updates and modifications, set forth by the Finance Director, City Auditor and Agency Administrator during the term of the Agreement as more specifically described in Section 5 of Exhibit A.

5.6 Licenses and permits. SJAM shall be responsible for obtaining, at its own expense, all permits and licenses necessary to conduct its operations on the Property, and shall maintain all necessary permits and licenses during the term of this Agreement. SJAM shall obtain and keep current a valid Agency of Oakland Business Tax License. SJAM shall be solely responsible for adhering to and complying with all federal, state and local laws, codes, ordinances, regulations, etc. in its operations and performance pursuant to this Agreement, except as otherwise provided in this Agreement. The costs of all necessary licenses and permits and compliance with laws shall be operating costs of OIC for purposes of this Agreement.

5.7 Subcontracts. SJAM may subcontract to sub-concessionaires approved by Agency pursuant to written sub-agreements approved by Agency. Each sub-contractor must agree to abide by the terms and conditions of this Agreement, including the insurance requirements herein. Each sub-contractor agreement must state that the sub-contract shall terminate automatically upon expiration or termination, with or without cause, of this Agreement. Sub-contractors must obtain and keep current a valid Agency of Oakland Business Tax License.

5.8 Agency Right to Utilize the OIC.

(a) SJAM understands and agrees that Agency, with prior notice, may enter on and operate its own programs on the Property without obtaining the permission of SJAM. Agency use may not exceed five (5) times/programs in any year and each program cannot be in excess of twelve (12) hours. Agency must provide sixty (60) days written notice to SJAM of such use and Agency must pay the current facility rental fee and all costs normally charged to third parties for such rental. Agency acknowledges that some ice activity events may have been scheduled in advance of Agency's sixty (60) day request, and under those circumstances Agency's request may be denied. Agency shall not utilize the OIC for uses that compete with SJAM's operations, such as tournaments, ice shows or other activities that charge fees to the public.

(b) SJAM understands and agrees that in the event of a natural disaster when an immediate response is required and local capacity is insufficient to address and manage traumatic events caused by such disaster such as, but not limited to, deaths, injuries, displacement of people, disease, disability, food insecurity, damage or loss of infrastructure, weakened or destroyed public administration and reduced public safety and security, Agency may enter on and take temporary possession of all or part of the Property without obtaining the permission of SJAM. In the event of the use by Agency described by this subsection, Agency shall be solely responsible for paying any cancellation fees or damages due to cancellation of scheduled activities at OIC, other damage to OIC, including but not limited to the costs resulting from the loss of ice due to loss of power, as well as all operating costs of the Property during the use described in this subsection. Agency shall also pay a loss of revenue payment to SJAM equal to the average per day income for all days of use by the Agency under this subsection. Average per day income shall be determined at the end of the fiscal year in which the loss occurs by dividing the total revenue received for the operation of OIC by three hundred-sixty-five (365). Payment of lost revenue pursuant to this Section to SJAM shall be made within thirty (30) days after the end of the fiscal year in which the loss causing the payment occurs and may at Agency's discretion be made from payments it receives from Net Revenues of OIC.

(c) It is understood by the parties, that Agency is evaluating the feasibility of selling the triangular portion of property behind OIC, bordering on San Pablo and 17th Streets, to a third party. If such sale occurs, it is anticipated that as part of the development of such property, the generator for OIC will need to be relocated by PG&E. Agency will endeavor to include in agreements with the purchaser of such property, provisions that the relocation will occur at a time to minimize interference with the use of OIC by the public and also to endeavor to have replacement power provided to OIC while such relocation is occurring. If power is turned off for OIC as a result of the development on such property, Agency shall be solely responsible for paying any cancellation fees or damages due to cancellation of scheduled activities at OIC, other damage to OIC, including, but not limited to, loss of the ice, as well as all operating costs of the Property during the period OIC is not open to the public because of such loss of power. Agency shall also pay a loss of revenue payment to SJAM equal to the average per day income for all days of use by the Agency under this subparagraph. Average per day income shall be determined as provided in subsection (b) above. Payment of lost revenue pursuant to this Subsection to SJAM shall be made after the end of the fiscal year in which the loss causing the payment occurs and may at Agency's discretion be made from payments it receives from Net Revenues of OIC within thirty (30) days of receiving any such payments. Agency and SJAM shall cooperate to minimize all such damages.

(d) Agency and SJAM shall cooperate to notify patrons of OIC regarding cancellation of any programs required by the closure of OIC in July 2007 described in Section 5.12 below, and SJAM will use its best efforts to conduct any such programs at a later date.

5.9 Taxes and assessments. This Agreement does not create a possessory interest subject to property taxation. Agency represents and warrants that as a publicly owned property there are no property taxes or assessments due or that may be imposed on the Property.

5.10 Title to improvements. SJAM shall not make any Capital Improvements, as defined in Section 5.12, to the Property without first obtaining the written consent from Agency. If SJAM makes any Capital Improvements to the Property, Agency shall have the option to require SJAM to remove any such Capital Improvements made prior to the end of this Agreement at no cost to Agency, provided that such determination is made at the time the particular Capital Improvements are approved by Agency. If any Capital Improvements are not removed, such Capital Improvements shall become part of the Property, and SJAM shall not have any claim or interest in such Capital Improvements.

SJAM agrees that all permanent structures, fixtures, repairs, alterations, installed equipment and/or improvements affixed to the Property by either of the parties hereto, are the property of Agency, and shall remain upon and be surrendered with the Property upon termination of this Agreement.

5.11 Maintenance and repairs. Agency shall, at its own cost and expense, keep and maintain in good order the structural and mechanical elements of buildings on the Property consistent with the current condition of said buildings, except for any maintenance or repairs resulting from misuse by or primary negligence of SJAM, any of its agents, employees, contractors, invitees, or residents and users of the Property. For purposes of this Agreement, structural and mechanical elements shall mean: foundations; structural supports; bearing and exterior walls; sub-flooring; exterior roofs; window frames; the unexposed electrical, plumbing, water and sewage systems, gutters and downspouts; solar panels and solar heating equipment; ice plant; condensers; de-humidifiers, and ice resurfacing machines, and all other items which would be considered capital improvements under standard accounting principals (collectively and individually "Capital Improvements"). Repairs to Capital Improvements shall be known as "Capital Repairs" which shall be the responsibility of Agency for payment thereof, except as otherwise expressly provided in this Agreement. SJAM shall immediately notify Agency of any incident or condition within its knowledge that is or may lead to a hazard to the Property or its occupants, or that may otherwise indicate the need for Capital Repairs at the Property. Agency shall have no obligation to make Capital Repairs until a reasonable time after notice from SJAM of the need for such repairs, unless it is an emergency. "Emergency" is defined as a sudden and unforeseen event that calls for immediate measures to minimize its adverse consequences and occurs when an immediate response is required such as, but not limited to deaths, injuries, displacement of people, disease, disability, , damage or loss of infrastructure, danger to public safety and security (collectively and individually "Emergency Repairs"). In the event of an emergency, SJAM shall notify Agency as soon as possible but may undertake Emergency Repairs and bill Agency for such costs.

Except for Capital Improvements and Capital Repairs as provided above and except for any maintenance or repairs resulting from misuse by or negligence of Agency or any of Agency's agents, employees, or contractors, and except for costs required to bring the Property into building and fire code compliance at the inception of this Agreement, SJAM shall, as a cost of operation, keep and maintain all portions of the Property and all improvements located on the Property in good order and repair consistent with the uses of the buildings contemplated by this Agreement and in as safe and clean a condition as they were when received from Agency, reasonable wear and tear excepted. SJAM shall reasonably prevent all nuisance conditions that

could arise out of the operations of ice activities at OIC. SJAM's maintenance and repair obligations are more specifically described in Section 6 of Exhibit A.

5.12 Capital Improvements.

(a) **Condition of the Property.** Agency and SJAM recognize that there are a number of items of deferred maintenance at the Property that will require repair or replacement. The exact nature, extent and cost of repair and replacement of these items are not known as of the Effective Date of this Agreement.

(b) **Capital Improvements and Major Repair Projects.** The parties will work cooperatively to determine the nature, extent and costs of all capital improvement and major repair projects, as soon as reasonably possible, and with the understanding and intent to complete such improvements and repairs in the most effective and cost-efficient manner that least disrupts planned and general use of the Property. In making such determination, Agency and SJAM will take into consideration the reasonable life of the relevant Capital Improvements, the availability of Agency's capital resources, and will utilize standard industry practices but may not, unless they otherwise agree, utilize best industry practice. As an example, if the sand under the ice needs to be repaired and best industry practice would indicate that the sand should be replaced in its entirety but standard industry practices would indicate that the sand could be supplemented and evened, then the parties would choose to supplement and even the sand.

The parties further recognize that to fully determine the nature, extent and cost of repair and replacement of any items related to the systems servicing the ice rinks, such items will require that the ice on each of the rinks at the Property be taken down simultaneously. The parties have worked together and commit to continue working together to determine a schedule for implementing any repair and replacement related thereto with the understanding and intent to accomplish this in the most efficient manner that is least disruptive of planned and general use of the Property.

(c) **Initial Capital Improvements.** SJAM and Agency shall carry out initial Capital Improvements ("Initial Capital Improvements") as specified in terms of item, schedule and source of funds as soon as they become known.

(d) **Subsequent Capital Improvements.** SJAM shall complete any Capital Improvements to the OIC required by this Agreement after the Initial Capital Improvements in accordance with Section 6 of Exhibit A.

(e) **Contribution to Cost of Capital Improvements.** SJAM shall contribute One Hundred Thousand Dollars (\$100,000) for Capital Improvements on a dollar for dollar matching basis with contributions from Agency (in addition to the Thirty Thousand Dollars (\$30,000) referred to in Section 6.6 of Exhibit A). Agency Administrator shall coordinate with the proposed Fiscal Year 07/08 City/Agency Budget Agency's equal match by Agency or City of Oakland. Said Capital Improvement funds from Agency and SJAM shall be expended in accordance with the Initial Capital Improvement List, Exhibit A-2, and to the extent not fully expended for such purposes then in accordance with the Capital Budget submitted by SJAM pursuant to Section 3 of Exhibit A. After SJAM has expended its share of the Capital

Improvement funds provided for in this subsection, One Hundred Thousand Dollars (\$100,000), Agency shall be responsible for all additional Capital Improvements and Capital Repairs. All Capital Improvement contributions from SJAM and Agency shall be deposited in the Capital Improvements Account and expenditures made in accordance with the Capital Budget shall be payable out of the Capital Improvements Account.

(f) SJAM shall enter into contracts on behalf of Agency in accordance with the OIC Capital Budget, as defined below, provided, however, that all contracts greater than Fifty Thousand Dollars (\$50,000) must be approved by Agency Administrator.

5.13 Right to Inspect Property. Agency reserves the right to enter the OIC at any time to inspect the property and to make any repairs that it may consider necessary to the preservation of the OIC. Agency shall provide reasonable advance notice prior to inspection and the making of any repairs. On discovery of needed repairs, Agency must inform SJAM of the needed repair and the Parties shall discuss the repair and if the repair is not a Capital Repair, SJAM shall implement required repairs in a timely manner. Should SJAM then fail to make the repair, Agency shall have the right to implement the repair, after written notice to SJAM and SJAM shall reimburse the cost of repair to Agency within thirty (30) days if the repair is not to a Capital Improvement that is the responsibility of Agency, and such reimbursement shall be a cost of operation of the OIC. Agency shall provide documentation of repairs that it makes. However, the making of such repairs by Agency shall not be construed as a waiver of Agency's right to require SJAM to keep the Property in repair as required by this Agreement.

6. COMMUNITY OUTREACH. SJAM shall perform the community outreach duties and obligations as more specifically described in Section 7 of Exhibit A.

7. MARKETING. SJAM shall market and promote the OIC as more specifically described in Section 8 of Exhibit A.

8. MISCELLANEOUS DUTIES AND OBLIGATIONS. SJAM shall perform miscellaneous duties and obligations as more particularly described in Section 9 of Exhibit A.

9. WASTE, NUISANCE, UNLAWFUL ACTS AND HOLD HARMLESS. SJAM shall not commit, or permit the commission by others (including, but not limited to, sub-concessionaires and customers) of any waste or nuisance on the Property. SJAM shall not use or permit others (including, but not limited to, sub-concessionaires and customers) to use the Property for any unlawful purpose, and shall comply with all local, state, and federal laws in connection with the use and occupancy of the Property.

10. HAZARDOUS SUBSTANCES. No material shall be kept, stored, used or disposed of on the Property that is explosive or hazardous. However, SJAM shall not be precluded from bringing, keeping or using on the Property such materials or supplies as are necessary or customary in carrying out the uses expressly authorized by this Agreement. In the event such uses include the keeping or storage of flammable, hazardous or explosive substances, the substances shall be stored in closed containers and shall be stored, used or disposed of in the manner prescribed by the public body having authority in the matter, and in any event, in the safest possible manner. Agency will turn the Property over to SJAM without the presence of any

hazardous materials, except to the extent hazardous materials are a necessary and integral part of any of the Capital Improvements at the Property.

11. INDEMNIFICATION.

11.1 SJAM Indemnification. Notwithstanding any limits of liability set forth in the insurance requirements herein, SJAM agrees to defend, hold harmless and indemnify Agency (including its respective Council members, officers, agents and employees) of and from any and all claims, losses, damage, injury, actions, causes of action and liability of every kind, nature and description, directly or indirectly arising out of SJAM's negligent failure and/or willful misconduct in perform any of its obligations as and when required by this Agreement, any negligent act or omission reasonably under the control or responsibility of SJAM or any subcontractor or agent of SJAM. SJAM shall also indemnify Agency for damages arising from any breach of any warranty or covenant made by SJAM in this Agreement. The duty of SJAM to indemnify includes the duty to defend Agency in any court action, administrative action, or other proceeding brought by any third party arising from the Property or this Agreement. These obligations of SJAM shall not apply to any such loss, damage, injury or death caused solely, or in part, by the negligence or willful misconduct of Agency or any of Agency's agents, employees, or contractors. The duty to indemnify and defend shall survive the term of this Agreement. Defense counsel retained under this section shall be subject to Agency's Attorney's reasonable approval.

11.2 Agency Indemnification. Notwithstanding any limits of liability set forth in the insurance requirements herein, Agency agrees to defend, hold harmless and indemnify SJAM (including its respective directors, members, officers, agents and employees) of and from any and all claims, losses, damage, injury, actions, causes of action and liability of every kind, nature and description, directly or indirectly arising out of Agency's negligent failure and/or willful misconduct in performance any of its obligations as and when required by this Agreement, any negligent act or omission reasonably under the control or responsibility of Agency or any subcontractor or agent of Agency. Further, Agency warrants that as of the beginning of the Term the Property will be free and clear of any liens, litigation or encumbrances. Agency shall also indemnify SJAM for damages arising from any breach of any warranty or covenant made by Agency in this Agreement. Agency shall be responsible for, and this indemnity includes, any liens, damage to person or property, claims of any kind or encumbrances regarding events, actions or omissions (collectively "Claims") which occur or which relate to events or actions that occurred prior to July 1, 2007, whenever filed, or are caused by Agency's negligence or willful misconduct after July 1, 2007. The duty of Agency to indemnify includes the duty to defend SJAM in any court action, administrative action, or other proceeding brought by any third party regarding arising from the Property or this Agreement for such Claims. These obligations of Agency shall not apply to any such loss, damage, injury or death caused solely, or in part, by the negligence or willful misconduct of SJAM or any of SJAM's agents, employees, or contractors. The duty to indemnify and defend shall survive the term of this Agreement. Defense counsel retained under this section shall be subject to SJAM's reasonable approval.

12. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No Councilmember, official, employee, or agent of Agency shall be personally liable to any party

for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

13. INSURANCE REQUIREMENTS. At all times during the term of this Agreement, SJAM shall maintain or cause to be maintained in full force and effect as an operating cost the following policies of insurance with companies doing business in California and acceptable to Agency. SJAM shall provide Agency with copies of all certificates of insurance for the required coverage, or, upon the request of Agency, copies of all insurance policies.

The insurance, at a minimum, shall include:

(a) Workers' compensation insurance as required by the laws of the State of California. The policy may include Employees Liability coverage with limits not less than One Million Dollars (\$1,000,000).

(b) Commercial general liability insurance, broad form, including but not limited to, bodily injury coverage, property damage coverage, premises and operations (including off-site operations), blanket contractual liability, products and completed operations, personal injury, and owners and contractors protective liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof. The policy shall be endorsed to include the following:

(i) That Agency and its directors, officers, agents and employees are additional insureds.

(ii) That coverage afforded on behalf of Agency shall be primary insurance and any other insurance available to Agency under any other policies shall be excess over the insurance required hereby.

(iii) If the policy is a "claims made" type policy, then the following should be included as endorsements:

(A) The retroactive date shall be the Effective Date of this Agreement or a prior date.

(B) The extended reporting or discovery period shall not be less than thirty-six (36) months.

(C) General automobile liability insurance, including all owned, non-owned and hired automobiles used by the Contractor or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage – Five Hundred Thousand Dollars (\$500,000) Combined Single Limit.

Notification of cancellation, which at a minimum requires insurer's notification to Agency in writing within thirty (30) days of the expiration of any "claims made" insurance policy which is canceled or not renewed by SJAM. SJAM further agrees to comply with all the

policy terms and conditions, obtain a timely quote for the extended reporting or discovery period and promptly pay the full premium required to purchase the required extended reporting or discovery periods as required by this Agreement. Fire and casualty insurance coverage for the Property shall be the responsibility of Agency. However, Agency shall not be responsible for insuring the personal property of SJAM or any sub-contractors.

14. NO AGENCY. The relationship of Agency and SJAM is solely contained in this Agreement, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Agency neither undertakes nor assumes any responsibility or duty to SJAM (except as provided for herein) or to any third party with respect to the Property or its activities and operation, except as Agency may specify in writing. SJAM shall have no authority to act as an agent of Agency or to bind Agency to any obligation.

15. DEFAULT. The occurrence of any of the following shall constitute a material default and breach of this Agreement by SJAM:

(a) Failure by SJAM to make any payment required to be made under this Agreement; or

(b) Failure to maintain the required insurance coverage or make insurance payments (I do not think that we are expecting payments from SJAM for insurance) to Agency required by this Agreement; or

(c) Assignment of this Agreement or encumbering the Property without the prior written consent of Agency; or

(d) Use of the Property for purposes not specified in this Agreement; or

(e) Failure by SJAM to perform its obligations to operate the OIC up to the standards specified in this Agreement; or

(f) Failure by SJAM to meet standards provided in the Scope of Services, Exhibit A; or

(g) Failure of SJAM to maintain the Property as required by this Agreement; or

(h) Damaging the Property or permitting others to damage the Property; or

(i) Failure to comply with all applicable laws; or

(j) The abandonment or vacation of the Property by SJAM during the term of this Agreement for a period in excess of thirty (30) consecutive days; provided, however, that no closure to the public of OIC or portions thereof for required repairs shall be deemed an abandonment or vacation; or

(k) SJAM's (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due; or

(l) Substantial failure by SJAM to observe and perform other provisions of this Agreement.

Agency shall give written notice to SJAM or its agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than thirty (30) days from the mailing of the notice, by which such action to cure, if a cure is possible, must be taken. SJAM shall not be in default if it cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, SJAM begins to cure the default within the cure period and thereafter diligently prosecutes the cure to completion, or if the default is de minimis or otherwise not material to accomplish the purposes of this Agreement.

16. TERMINATION OF AGREEMENT FOR CAUSE. In the event of any default by SJAM under this Agreement, including but not limited to the obligations contained in Exhibit A, that has not been cured within the specified time or that is not capable of cure, in addition to any other remedies available to Agency at law or in equity or under this Agreement, Agency shall have the right to terminate this Agreement and all rights of SJAM under this Agreement by giving written notice of the termination. No act of Agency shall be construed as terminating this Agreement except such written notice. SJAM shall have fifteen (15) days to file any contest or objection to the notice of termination, and if the matter is not resolved within thirty (30) days from the date of notice of termination, SJAM shall have the right to have the matter heard and resolved by Agency Governing Body. On termination, Agency may recover from SJAM any amount due under this Agreement to the date of termination. All sub-contract agreements with respect to the Property or the operations thereon shall automatically terminate upon any termination of this Agreement by Agency, whether such termination is with or without cause. Agency and SJAM shall make reasonable efforts to resolve any differences prior to termination for cause.

17. AGENCY'S RIGHT TO CURE DEFAULTS. If SJAM breaches or fails to perform any of its obligations under this Agreement, and the notice and opportunity to cure has been given to SJAM as provided above, Agency may, but shall be under no obligation to, cure SJAM's breach. Prior to effecting such cure, Agency shall give SJAM written notice of its intent to cure. Any amount expended by Agency, along with the maximum legal rate of interest not to exceed ten percent (10%) per annum, shall be reimbursable by SJAM to Agency, and such costs shall be a cost of operation of OIC, except for interest paid to Agency.

18. AGENCY'S DEFAULT AND SJAM'S REMEDIES. Any substantial failure by Agency to observe and perform its obligations under this Agreement shall constitute a material default and breach of this Agreement by Agency. SJAM shall give written notice to Agency or Agency's agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than thirty (30) days from the mailing of the notice, by which such action to cure, if a cure is possible, must be taken. Agency shall not be in default if Agency cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, Agency begins to cure the default within the cure period and thereafter diligently prosecutes the cure to completion. In the event of any default by Agency under this Agreement that has not been cured within the specified time or that is not capable of cure, in addition to any other remedies available to SJAM at law or in equity or under this Agreement, SJAM shall have the right to terminate this Agreement by giving not less than thirty (30) days written notice of the termination. SJAM also may, but shall be under no obligation to, cure Agency's breach. Prior to effecting such cure, SJAM shall give Agency written notice of its intent to cure. Any amount expended by SJAM, along with the maximum legal rate of interest not to exceed ten percent (10%) per annum, shall be reimbursable by Agency to SJAM. Agency and SJAM shall make reasonable efforts to resolve any differences prior to termination for cause. If Agency has not reimbursed any amounts required under this Section by the end of a fiscal year of this Agreement, SJAM may retain the amount of required reimbursement from funds to be distributed to Agency.

19. REMEDIES CUMULATIVE. The remedies granted to the parties to this Agreement shall not be exclusive, but shall be cumulative and in addition to all remedies allowed by law or this Agreement, except as expressly provided herein.

20. WAIVER. The waiver by either party of any breach or default by the other party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by a party of the same or another provision.

21. SURRENDER OF THE PROPERTY. At the expiration of the term of this Agreement or earlier termination, SJAM shall surrender its occupancy of the Property and deliver the Property, including any personal property of Agency that is located on the Property as indicated by the agreed upon inventory of such property, to Agency in as good a condition as it is on the date of this Agreement, excluding reasonable wear and tear, reasonably clean and free of debris. Upon expiration or termination of this Agreement, SJAM shall have terminated and removed any sub-concessionaires and other occupants of the Property, unless permission for continued occupancy is expressly granted by Agency to such persons prior to termination. SJAM shall repair any damage to the Property caused by the installation or removal of its trade fixtures, furnishings, and equipment.

22. DESTRUCTION OF THE PROPERTY. If the Property, or any essential part thereof, is destroyed by fire or other casualty, this Agreement shall in case of total destruction terminate at the sole discretion of Agency. If Agency terminates this Agreement pursuant to this Paragraph, then to the extent SJAM has expended any portion of the One Hundred Thousand Dollars (\$100,000) contribution to Capital Improvements described in Section 5.12, then Agency shall repay SJAM a portion of such contribution, based upon the following formula: the amount

contributed by SJAM times a fraction the numerator of which is the number of months left before expiration of the term and the denominator is thirty-six (36). If the available insurance and allocated self insurance reserves of Agency are sufficient to replace the Property within one-hundred-eighty (180) days, then Agency may in its sole discretion determine to rebuild and restore the Property unless otherwise mutually agreed by the parties. In case of partial destruction or injury, resulting in the condition of the Property being such that portions can be *reasonably operated by SJAM, including a reasonable expectation of positive economic return*, then this Agreement shall not terminate unless otherwise mutually agreed by the parties. A partial destruction or injury that results in the condition of the Property being such that no portion can be reasonably be operated by SJAM, including a reasonable expectation of positive economic return shall be treated as total destruction. The parties shall meet as soon as possible after any destruction and determine whether the destruction is total or partial under this paragraph. If the parties cannot agree, Agency's determination of total or partial destruction shall prevail. Should Agency elect, in such event, not to terminate this Agreement, it will, with reasonable diligence and in no event in less than one-hundred-eighty (180) days, restore the Property as nearly as practicable to its former condition.

23. CONDEMNATION. If at any time during the term of this Agreement, title and possession of all of the Property is taken under the power of eminent domain by any public or quasi-public agency or entity, this Agreement shall terminate as of the date actual physical possession of the Property is taken by Agency or entity exercising the power of eminent domain, and both Agency and SJAM shall thereafter be released from all obligations under this Agreement. If at any time during the term of this Agreement, title and possession of only a portion of the Property is taken under the power of eminent domain by any public or quasi-public agency or entity, Agency may, at its option, terminate this Agreement if more than twenty-five percent (25%) of the Property is taken under the power of eminent domain. If at any time during the term of this Agreement, title and possession of all or any portion of the Property is taken under the power of eminent domain by any public or quasi-public agency or entity, the compensation or damages for the taking shall be awarded to and be the sole property of Agency; provided, however, that SJAM shall keep any separate award for relocation expenses, loss of its personal property or fixtures, loss of good will, the value of its license to operate the OIC and similar damages. Good will for purposes of this paragraph will be based upon the profit that SJAM would have made during the remaining part of the term of this Agreement after the condemnation based upon reasonable projections derived from the profits made or earned by SJAM during the term of this Agreement prior to the condemnation.

24. ACCESS TO RECORDS AND MEETINGS.

24.1 SJAM shall provide requested records to agency within ten (10) working days of receipt of Agency's request and shall allow Agency access to books and records at all reasonable times. At the option of Agency, SJAM shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with federal, state and local government.

24.2 SJAM acknowledges that Oakland Municipal Code Section 2.20.040 applies to the meetings of its governing board and that it will comply with the terms of that Section.

25. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES/EQUAL BENEFITS. In carrying out the operation and management of the OIC, SJAM shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community.

(a) This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations requiring contractors on Agency contracts of Twenty-Five Thousand Dollars (\$25,000) or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. If SJAM does not provide employees with spousal benefits they are not required to change their benefits policies. SJAM shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as Schedule C-2 to this Agreement.

(b) If applicable, SJAM will send to each labor union or representative of workers with whom SJAM has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of SJAM's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

SJAM further agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other form of compensation, and selection for training, including apprenticeship.

26. LIVING WAGE REQUIREMENTS. This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code ("the Ordinance") and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as Schedule N and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that SJAM provide the following to its employees who perform services under or related to this Agreement:

(a) **Minimum Compensation.** Said employees shall be paid an initial hourly wage rate of Ten Dollars and seven cents (\$10.07) with health benefits or Eleven Dollars and fifty-eight cents (\$11.58) without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

(b) **Health Benefits.** Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least One Dollar and twenty-five cents (\$1.25) per hour. SJAM shall provide proof that health benefits are in effect for those

employees no later than thirty (30) days after execution of the contract or receipt of Agency or City of Oakland financial assistance.

(c) **Compensated Days Off.** SJAM will comply with Federal, State and the Ordinance requirements for compensated days off.

(d) **Federal Earned Income Credit (EIC).** SJAM shall inform said employees who earn less than Twelve Dollars (\$12.00) per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.

(e) **Living Wage Notice.** SJAM shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City of Oakland's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.

(f) **Language of Notices and Forms.** SJAM shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within thirty (30) days of employment under this Agreement.

(g) **Reporting.** SJAM shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees at OIC. SJAM shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within ten (10) days of the due date for the applicable quarter will result in liquidated damages of Five Hundred Dollars (\$500) for each day that the list remains outstanding. SJAM shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

(h) **Living Wage Contractors' Compliance.** SJAM shall require contractors and subcontractors that provide services pursuant to this Agreement to comply with the above Living Wage provisions. Such contractor(s) shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

27. AGENCY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS. This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred-eighty (180) days after completion of, or termination of, contract negotiations.

This Agreement requires Council approval, therefore SJAM must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

28. NUCLEAR FREE ZONE DISCLOSURE. SJAM represents pursuant to Schedule P ("Nuclear Free Zone Disclosure Form") that it is in compliance with the City of

Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement SJAM shall complete Schedule P, attached hereto.

29. POLITICAL PROHIBITION. Subject to applicable law, funds received pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, or for publicity or propaganda designed to support or defeat legislation and ballot measures pending before federal, state, or local government. SJAM shall not use the property for political purposes, including, but not limited to, political fundraising and campaigning.

30. RELIGIOUS PROHIBITION. There shall be no religious worship, instruction, or proselytization as part or, or in connection with the performance of this Agreement.

31. CONFLICT OF INTEREST. The following protections against conflict of interest will be upheld:

(a) SJAM certifies that no member of or delegate of the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising herefrom.

(b) SJAM certifies that no member, officer, or employee of Agency, the City of Oakland, or its designees or agents, and no other public official of Agency or City of Oakland who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, indirect or direct in this Agreement or in its proceeds during his/her tenure or for one year thereafter.

(c) SJAM certifies that no one who has any financial interest in this Agreement or receives compensation for the services from SJAM is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, City Administrator, or the head of the department to which these services are to be provided pursuant to this Agreement.

32. NON-ASSIGNMENT OF INTEREST. The parties to this Agreement shall not assign or otherwise transfer any rights, duties, or obligations or interest in this Agreement, either in whole or in part, without the prior written approval of the other party.

33. BANK ACCOUNTS AND REPORTING REQUIREMENTS. SJAM shall create, maintain and deliver to Agency the financial and operational reports more specifically described in Exhibit A.

34. BINDING ON HEIRS AND SUCCESSORS. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Agency and SJAM.

35. RESTRICTION AGAINST ENCUMBRANCE OR ASSIGNMENT. SJAM shall not encumber, assign, or otherwise transfer this Agreement, or any right or interest in this Agreement, without first obtaining the express written consent of Agency. SJAM shall not allow any other person, other than its agents, employees, and authorized sub-concessionaires, to

occupy the Property or any part of the Property without the prior written consent of Agency, except with respect to authorized concession uses and as otherwise authorized herein. Any assignment without the prior written consent of Agency, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Agency, terminate this Agreement.

36. ATTORNEYS' FEES. Should any party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party, in addition to the Court costs incurred by the prevailing party, such amount as the Court may adjudge to be reasonable out-of-pocket costs and expenses incurred by the prevailing party including, without limitation, the disbursements and reasonable fees of such party's outside counsel, and all court costs and other reasonable litigation and expenses, including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, courier expenses, postage and communication expenses incurred by such prevailing party in connection with such enforcement.

37. PARTIAL INVALIDITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

38. SOLE AND ONLY AGREEMENT. This instrument constitutes the sole and only Agreement between Agency and SJAM regarding the Property and its operation and management, except for separate license agreements between the parties regarding the operation of the OIC Snack Bar and the OIC Pro Shop, and correctly sets forth the obligations of Agency and SJAM to each other as of its date.

Any agreements or representations regarding the Property not expressly set forth in this instrument are null and void.

39. TIME OF ESSENCE. Time is expressly declared to be of the essence in this Agreement.

40. NO INTEREST IN LAND CREATED. SJAM understands and agrees that this Agreement establishes only the management and operation of the OIC and not a lease with respect to the Property, and that no interest or estate in real property or any improvements thereon is created hereby. SJAM understands and agrees that it shall not have exclusive possession of the Property by virtue of this Agreement, and that Agency retains possessory rights over the Property and may freely enter and use the Property as it chooses, so long as any Agency uses are consistent with this Agreement.

41. INUREMENT. This Agreement shall be and is hereby binding on the successors of the parties hereto.

42. WAIVER OF BREACH. The waiver by either party to this Agreement of any breach by the other party of any of the provisions of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.

43. NOTICES. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to Agency by SJAM or SJAM by Agency shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

Redevelopment Agency
Community and Economic Development
Agency
250 Frank Ogawa Plaza
Oakland, CA 94607-4892
Attn: Jens Hillmer and John Quintal

City of Oakland
Office of the Agency Administrator
1 Frank Ogawa Plaza
Oakland, CA 94607-4892
Attn: Deborah Edgerly

SJAM:
525 West Santa Clara Street
San Jose, CA 95113
Attn: Don Gralnek

44. SEVERABILITY. In the event that any covenant, term or condition herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.

45. GOVERNING LAW. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of California.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Agency Administrator of the City of Oakland has caused the name of Agency to be affixed hereto and San Jose Arena Management, LLC, has caused its name to be affixed. Agency Administrator is duly authorized by Resolution No. C.M.S. passed by the Oakland City Council on _____ 2007, to execute this agreement.

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a municipal corporation

SAN JOSE ARENA MANAGEMENT, LLC, a Delaware Limited Liability Company

By: _____

By: _____

Date: _____

Date: _____

Title: Agency Administrator
Approved:

Title: _____

OFFICE OF CITY ATTORNEY

By: _____

Date: _____

Title: _____

EXHIBIT A
SCOPE & SPECIAL CONDITIONS OF SERVICES

EXHIBIT A

SCOPE AND SPECIAL CONDITIONS OF SERVICES

Agency hereby grants to San Jose Arena Management, LLC (SJAM) the right, authority and power to manage, promote, maintain, improve and operate the Oakland Ice Center (OIC) and carry out its duties and obligations hereunder, subject to the conditions and limitations contained in the Agreement. In carrying out its duties and obligations under the Agreement, SJAM shall act honestly and in good faith, and shall exercise that degree of care, diligence and skill that a professional and prudent commercial ice rink operator would exercise in comparable circumstances.

1. OIC PROGRAMMING.

SJAM shall maintain a balanced and diverse schedule of programs of hockey, figure skating, public skating, ice dancing and other ice-related activities at the OIC, with any significant changes in program scheduling to be brought back to Agency Administrator for review and approval.

SJAM shall establish such written policies, rules and procedures as may be necessary or prudent for the operation and maintenance of the OIC. Agency shall review and consult on such policies, rules and procedures prior to their becoming effective.

SJAM shall operate OIC generally between 5:30 a.m. and 1 a.m., twelve (12) months a year, which hours may be increased or decreased based on demand and economics, as approved by the Agency Administrator.

2. CHARGES AND FEES.

2.1 For the first six (6) months following the commencement of the term of this Agreement, SJAM shall base all fees to be charged to all individual and group users of the OIC, as well as for all events taking place at the OIC, on those fees and rates currently in effect at the OIC, a schedule of which has been attached hereto as Exhibit A-1. Should SJAM desire to increase any fees paid by the general public, it must submit the proposed fee schedule to Agency Administrator for review and approval, which approval shall be granted if the increased fees are comparable to the fees charged by other ice rinks in the greater Bay Area, which must include rinks that are not managed or owned by SJAM or its affiliates. SJAM may set an initial fee for services or products not contained in Exhibit A-1.

2.2 All fees collected by Iceoplex prior to July 1, 2007 for services to be provided after that date at OIC, shall be accounted for and paid by Agency by September 1, 2007 into the OIC Operating Account and shall be included as revenue for OIC for fiscal year 07/08. Agency shall take all appropriate steps to minimize the collection of fees by Iceoplex for services to be provided after July 1, 2007.

3. OIC BUDGETS, REVENUE COLLECTION AND OPERATING EXPENDITURES.

SJAM shall prepare and submit to Agency a proposed operating budget (“Operating Budget”) and a proposed capital budget (“Capital Budget”) for each year comprising the three (3) year term of the Agreement for review and consultation with Agency. Said Operating and Capital Budgets shall cover the following three fiscal years: July 1, 2007 through and including June 30, 2008; July 1, 2008 through and including June 30, 2009; and July 1, 2009 through and including June 30, 2010. The Operating and Capital Budgets for the first year of the three (3) year term of the Agreement shall be prepared fifteen (15) days prior to the commencement of the contract term, while the Operating and Capital Budgets for each subsequent year shall be prepared sixty (60) days prior to the commencement of the fiscal year. The Operating Budget for each year shall reflect projected revenues and expenses and shall be reviewed by Agency prior to its implementation. SJAM may, in the performance of its duties and responsibilities as set forth in this Agreement, make such expenditures as provided for in the Operating Budget without further authorization by Agency. Non-budgeted expenditures in excess of Fifty Thousand Dollars (\$50,000) shall be approved, in writing, by Agency prior to SJAM entering contracts or issuing purchase orders for such expenditure, unless there is an emergency, in which case SJAM will obtain Agency’s written ratification for such expenditure no later than the next three (3) business days. The Capital Budget shall reflect, to the best of SJAM’s professional assessment, all anticipated major repairs and replacements to the facility and its improvements and equipment.

SJAM shall deposit one-hundred percent (100%) of all gross revenues collected from all aspects of OIC operations into the Operating Account, as defined more specifically below. Gross revenues shall mean all cash or cash equivalents (including the cash value of barter or trade agreements) derived directly or indirectly from, or in connection with the management and operation of the OIC, including, but not limited to payments from Pro Shop and Snack Bar licensees (unless the Pro Shop and Snack Bar are licensed by SJAM from Agency pursuant to a separate license agreement (the “License”), in which case any license payments would be payable directly to Agency and the gross revenue from the Pro Shop and Snack Bar, including sale of food and drink from vending machines operated by the Snack Bar, will not be included in gross revenues of OIC and will not be deposited in the Operating Account), and from vending and video/arcade machines revenue and from advertising revenues. Gross revenues shall be deposited into the Operating Account no later than the next business day after receipt.

SJAM shall pay for all expenses of operating and managing the OIC, except as provided in the Management and Operating Agreement, including this Exhibit A. SJAM shall be responsible and shall pay one-hundred percent (100%) of the OIC operating and management expenses from the Operating Account, which shall not include Capital Repairs or Capital Improvements which shall be paid from the Capital Improvement Account. In the event net operating income (which is defined as gross revenues collected and received minus all operating expenditures incurred by SJAM during the management, promotion (with certain exceptions noted below), maintenance and operation of the OIC) is insufficient to cover all operating expenditures at any given time during each fiscal year, SJAM shall be solely responsible for payment of all operating expenses and shall make up any deficit so that all expenses are paid in a timely manner and at no cost to Agency. Any operating shortfall advances by SJAM during a

fiscal year shall be repaid to SJAM from net income for that fiscal year. Agency will have no obligation to repay SJAM for covering any such operating shortfalls at any time during or after expiration of the term of the Agreement.

SJAM, in consultation with Agency, shall purchase from and through others, contracts of general public liability, casualty and other appropriate insurance for the protection of the OIC, unless such insurance is purchased by Agency.

SJAM shall pay all taxes or licenses (collectively "Taxes") of whatever kind or nature imposed upon or against the OIC (which shall not include any property taxes or assessments) and for these purposes, file such returns and perform all other tasks related to such Taxes as SJAM may deem necessary for the benefit of the OIC. The cost of Taxes, except for taxes on SJAM's own income, including but not limited to income from SJAM's operation of the Pro Shop and the Snack Bar, shall be a cost of operation of OIC.

SJAM shall operate the equipment rental service at the OIC. All revenues from this service shall be deposited in the Operating Account.

4. SNACK BAR AND PRO SHOP.

Unless the Pro Shop and Snack Bar are operated directly by SJAM pursuant to a license agreement between Agency and SJAM or a related entity, SJAM shall enter into agreements with Snack Bar and Pro Shop Operators; ensure that such operators apply for, obtain and maintain all necessary governmental approvals, licenses and permits, including City of Oakland Business License; and monitor Snack Bar and Pro Shop Operations and analyze financial reports submitted by the operators. In no event shall SJAM enter into any agreements with operators of the Pro Shop and Snack Bar without the prior written approval of Agency.

In the event that the Pro Shop and Snack Bar are directly operated by SJAM, or a related entity, SJAM shall pay to Agency monthly full service rent in the amount of One Dollar and fifty cents (\$1.50) per square foot for the Pro Shop, for a total of \$1684.50 and One Dollar and fifty cents (\$1.50) per square foot for the Snack Bar (including vending machines selling food and drink products which may be located outside the Snack Bar location) for a total of \$970.50. The first three months of the Term shall be free for the Pro Shop and the Snack Bar and SJAM shall not be obligated to pay Agency any rent for those months. All services, including utilities, general liability insurance and janitorial services, shall be provided for the Snack Bar and the Pro Shop without further charge, and these charges shall be included as an operating expense of OIC.

The Snack Bar shall be entitled to sell all food and beverage, including catering, at the Property.

5. BANK ACCOUNTS AND REPORTING REQUIREMENTS.

SJAM shall perform financial and accounting services as required by this Agreement and establish, maintain and supervise the deposit of any monies regarding the OIC with federally insured banking institutions or other institutions as may be selected by SJAM with prior approval by Agency.

5.1 Operating Account.

SJAM shall maintain in the name of SJAM, LLC – OIC an interest bearing operating account (“Operating Account”), on which SJAM shall be the sole authorized signatory. SJAM shall deposit all net revenues generated by the operation of the OIC into the Operating Account. SJAM shall make payments for all operating costs as reflected in the annual Operating Budget out of the Operating Account.

SJAM shall pay all amounts due to vendors or contractors within a commercially reasonable time, but in no event later than twelve (12) months from receipt of invoice.

5.2 Capital Improvement Account.

SJAM shall maintain in the name of SJAM an interest bearing capital improvement account (the “Capital Improvement Account”) in the aforementioned Agency-approved bank, on which SJAM shall be the sole authorized signatory. [Sole authority over a specific amount is an open question.]

SJAM shall deposit therein all monies provided by SJAM, and directly provided by Agency and/or authorized by Agency as a contribution from Agency’s share of net revenues designated for capital improvements to be made to the OIC. The only permissible withdrawals from the Capital Improvement Account will be for funds to be used for capital improvements to the OIC. In no event shall SJAM withdraw any funds from the Capital Improvement Account without the prior authorization of Agency for the capital improvements to be paid for by such funds.

5.3 Reporting.

SJAM shall create, maintain and deliver to Agency the following records:

(a) Financial Type.

(i) Accounting Records. SJAM shall maintain a double entry set of accounting records maintained in accordance with generally accepted accounting principles based on an accrual system.

Quarterly reports to be submitted on or before the 30th of the next succeeding month (four times a year):

(ii) Cumulative statement of total income, operating expenses as well as other expenses arising out of operation of the OIC compared with the approved budget, e.g. on a monthly and year-to-date basis.

The following quarterly reports to be submitted on or before the 30th of the month following the end of each quarter (1/30, 4/30, 7/30 and 10/30) of the fiscal year:

(A) Balance Sheet

(B) Statement of income and expense

(C) Itemized additions or disposition of fixed assets.

(b) **Operational Type.** Quarterly reports to be submitted on or before the 30th of the month following the end of each quarter of the fiscal year:

(i) Employment and Contracting statement of compliance with Agency's local employment and contracting programs.

(ii) Number of Employees (position, compensation, ethnicity, gender and residency);

(iii) Attendance figures with comparison to previous year;

(iv) Marketing efforts (advertising, promotions, including evidence that SJAM has promoted OIC at SJAM-affiliated facilities and websites);

(v) Community outreach (including number of OUSD students that received free admission and skating equipment, number of Oakland residents that received a ten (10) percent discount on all fees, admissions, and skating equipment rentals; status of SJAM's efforts to create a High School Hockey League competition and sponsor at least one OUSD team; number, names and school name of OUSD students that received a scholarship for OIC; minutes from meeting(s) with OIC advisory committee)

(vi) Special events

(vii) Physical changes to the facility

(viii) Changes in programs and operations

(ix) Recommended changes to fee structure

(c) **Audits.** At the end of each fiscal year, SJAM shall cause the preparation of a financial audit of the books and records. Such audit is to be completed and a report furnished within one hundred-twenty (120) days after the end of such fiscal year. Such audit shall be waived at Agency's sole election. The report shall include a statement reflecting gross revenues, operating expenses, gross operating profit or loss and net operating income or loss. Such reports shall also include a balance sheet, statements of income and expenses. The cost of such an independent audit shall be deemed an operating expense. An independent certified public accounting firm selected by Agency shall perform such audit or the audit may be performed by the Oakland City Auditor.

SJAM shall permit Agency and its authorized representatives to have access to SJAM's books, records, accounts and any and all data relevant to this agreement, for the purpose of making an audit or examination for a period of four years following the fiscal year of the last expenditure under this agreement.

SJAM shall also revise the financial and accounting services and controls to conform to all City Audit findings, if any, within sixty (60) days of such findings.

6. MAINTENANCE AND REPAIR.

6.1 SJAM shall employ and discharge all agents, employees or contractors necessary for the proper and efficient management, maintenance and operations of OIC and all improvements and equipment located therein in good order and repair, reasonable wear and tear excepted, consistent with the uses of the facility contemplated by this Agreement, including, but not limited to all vendors, concessionaires, tenants, subtenants and construction and professional services contractors in accordance with the City of Oakland employment and contracting programs as set forth in this Agreement. It is being expressly understood, however, that the costs of such agents, employees or contractors, plus any applicable employer payroll taxes and other related payroll costs relating solely to the performance of this Agreement shall be an operating expense of the OIC. SJAM shall keep and maintain all necessary payroll and employment records for any and all employees, withhold appropriate payroll taxes, and file all tax returns as required by law. This may include, but not be limited to the following:

- (i) Interior and exterior window cleaning;
- (ii) Interior and exterior Graffiti abatement;
- (iii) Janitorial services for sweeping, mopping, wiping down and dusting of various surfaces located in the two arenas, the dressing rooms, the showers and bathrooms, lounge/lobby/stands and the ice;
- (iv) Continuous trash and litter removal;
- (v) Periodic maintenance of the equipment and facilities at the OIC in conformance with industry standards, which include, but are not limited to, roof top units, de-humidifiers, ice resurfacing equipment, the compressor room and all equipment located therein, and the maintenance of the ice;
- (vi) Maintain an equipment repair log in a form satisfactory to Agency;
- (vii) Monthly pest control services;
- (viii) Painting and refinishing of all painted elements of the OIC, and all other items not covered by preventive maintenance agreements;
- (ix) Specify and negotiate for the purchase of supplies necessary to perform the routine repairs and maintenance of the OIC and manage the subsequent inventory of such parts and supplies;
- (x) Maintain an equipment repair log in a form satisfactory to Agency;

(xi) SJAM shall prevent all nuisance conditions that could arise out of the operations of ice activities at OIC;

(xii) Purchase telephone service, electricity, trash removal and water and sewer services from local providers.

6.2 SJAM at all times shall keep the Property in a neat, clean and orderly condition, and shall prevent the accumulation of waste materials that present an unattractive appearance or that might be or constitute a health or safety hazard. If SJAM fails to maintain the Property free of waste materials, Agency shall have the option to remove the same at SJAM's expense. The performance of such removal by Agency shall in no event be construed as a waiver of the duty of SJAM to keep the Property neat, clean and orderly as herein provided.

6.3 SJAM shall maintain all elements of the OIC as provided for above in full compliance with all applicable governmental laws, ordinances, and codes governing the uses of the OIC (collectively "Laws") as contemplated by this Agreement, including any applicable provisions of the Americans with Disabilities Act and other laws governing disabled access. Provided, however that any failure by SJAM to comply with building codes or similar requirements based upon conditions existing on the Effective Date shall not be a breach of this Agreement until any necessary Initial Capital Improvements required to bring the Property into compliance with building codes and similar laws shall have been completed. All work required to bring the Property into compliance with building and similar codes based upon the physical condition of the Property and the building and similar codes that exist on July 1, 2007, shall be deemed to be a Capital Repair or Capital Improvement. Physical changes to the Property required by the Americans with Disabilities Act shall be deemed a Capital Improvement and shall be the responsibility of Agency.

Agency will endeavor to have the Property inspected by all appropriate City inspectors, including Fire and Building, as soon as possible and in any event prior to July 1, 2007. Agency shall use its best efforts to cause the Property to be in full compliance with all applicable fire and building codes as of July 1, 2007.

6.4 Agency shall provide an inventory of major furniture, fixtures and equipment located at or on the premises with the estimated value of each item within ten (10) working days of the effective beginning date of the Agreement. SJAM shall maintain this inventory on a quarterly basis.

6.5 SJAM shall be responsible for securing, maintaining, and repairing all furnishings, appliances, and other personal property located in the OIC. SJAM shall promptly inform Agency of any significant loss, theft, or destruction of any of Agency's furnishings, appliances, or personal property located in the OIC, and shall arrange for the replacement of any lost, stolen, or destroyed property to the extent that the replacement is appropriate for the operation of the OIC. If any losses in one incident or of the same type of property exceed the value of Two Thousand Five Hundred Dollars (\$2,500) that is not covered by insurance, SJAM and Agency shall jointly agree whether the items need to be replaced. To the extent any such losses are not covered by insurance proceeds, the cost of replacement will be an operating cost of OIC. Any loss, theft or destruction resulting from misuse by or negligence of Agency, its

employees, agents, or contractors that is not covered by insurance shall be replaced by Agency at its cost.

6.6 Within one hundred-twenty (120) days of the execution of the Agreement, SJAM shall complete Thirty Thousand Dollars (\$30,000) of maintenance and clean-up work at the OIC. The scope of said maintenance and clean-up work shall be determined by SJAM in consultation with Agency. Such initial maintenance and clean-up work at the OIC by SJAM shall not be an operating expense, but paid for directly by SJAM. Agency shall reimburse SJAM for whatever portion of such Thirty Thousand Dollars (\$30,000) is spent for the cost of initial facility clean-up and maintenance but only from Agency's share of Net Revenue from the OIC during the three (3) year term of this Agreement, if any.

6.7 SJAM shall apply for, obtain and maintain all government approvals, licenses, and permits necessary for SJAM's performance under this Agreement. Expenses incurred for said approvals, licenses and permits shall be paid from the Operating Account, unless specified otherwise in this Agreement.

7. COMMUNITY OUTREACH

7.1 During each year of the term of the Management Agreement SJAM shall (a) offer free admission and skating equipment for no less than one thousand (1,000) Oakland Unified School District ("OUSD") students during field trips to the OIC, which shall take place on dates and times to be determined in consultation with Agency and OUSD staff; and (b) in cooperation with OUSD, SJAM shall arrange the physical transporting of these OUSD students to the OIC, whether by financial contributions or other means, without any expense/cost to the City/Agency or OUSD;

7.2 At least four (4) times during each year of the term of the Agreement, SJAM shall offer every OUSD student participating in OUSD's 'After School Program' free skating dates and times, and skating equipment during scheduled regular public skating sessions;

7.3 SJAM shall offer additional scholarship programs for OUSD students;

7.4 SJAM shall endeavor to create a High School Hockey League competition and sponsor at least one OUSD team;

7.5 SJAM shall ensure that Oakland residents receive a ten (10) percent discount on all fees, admissions, and skating equipment rentals;

7.6 SJAM and Agency shall endeavor to establish an OIC advisory committee consisting of representatives of the customers and parents of youth who are customers of the OIC, whose members shall represent a balance of ice activities. SJAM shall meet with the OIC advisory committee at least three (3) times during each year of the term of the Management Agreement. In those meetings, the advisory committee and SJAM management will review and discuss issues relevant to the programs, scheduling and standards at the OIC.

8. MARKETING

8.1 Within thirty (30) days following the commencement of the term of this Agreement, SJAM shall provide a marketing plan for the OIC to Agency for review and approval. Said marketing plan shall, among other things, describe how SJAM will market the OIC at other San Jose Sharks or SJAM-affiliated facilities such as HP Pavilion at San Jose, Logitech Ice at San Jose and Fremont Ice Center. For marketing purposes, SJAM shall be entitled to use the name "Oakland Ice Center managed by the Sharks Ice" and the logo of the Sharks in advertising, internal labeling of forms, certificates and paper products, and general reference to the Property; provided that the type size of the phrase "Oakland Ice Center" and "Sharks Ice" shall be the same size, but may be different fonts.

8.2 In consultation with Agency staff, SJAM will include up to Eighty Thousand Dollars (\$80,000) for direct OIC marketing expenditures during each annual budget cycle for the OIC, and offer another One Hundred Seventy-Five Thousand Dollars (\$175,000) in-kind value (at commercial rates charged third parties) at other San Jose Sharks or SJAM-affiliated facilities such as HP Pavilion at San Jose, Logitech Ice at San Jose and Fremont Ice Center. Up to the committed Eighty Thousand Dollars (\$80,000) for direct marketing expenses shall be a cost of operation for OIC; the One Hundred Seventy-Five Dollars (\$175,000) in-kind value shall not be a cost of operation for OIC.

8.3 Agency reserves all naming rights for the facility and any revenues that may be generated from such naming rights in the future. SJAM shall consult with Agency prior to any proposed name changes of the facility during the period of the Agreement.

9. MISCELLANEOUS DUTIES AND OBLIGATIONS

9.1 SJAM shall hire and terminate an individual, acting in the capacity of an on-site general manager, who shall be responsible for day-to-day communications with Agency for the duration of this Agreement, and shall determine his/her duties and responsibilities, performance evaluations, and compensation.

9.2 SJAM shall meet with Agency from time to time, when requested by Agency, upon three (3) business day's prior notice. Such meetings shall take place in Oakland, California, or such other place as shall be agreed upon between Agency and SJAM.

9.3 Agency will terminate all agreements that it has with any vendors at OIC effective July 1, 2007 and will have Iceoplex, the current operator of OIC, terminate all agreements for any products or services at OIC effective July 1, 2007, except to the extent contracts for such services are reviewed by SJAM and SJAM agrees to assume such contracts.

10. Agency Assistance with Parking. Agency will cooperate with SJAM to obtain parking for OIC customers at parking facilities adjacent or near to the OIC.

EXHIBIT A-1
SCHEDULE OF FEES

EXHIBIT A-2
INITIAL CAPITAL IMPROVEMENTS

EXHIBIT A-1
SCHEDULE OF RATES AND FEES

PUBLIC SKATING

PUBLIC SKATING ADMISSION

General Admission	
Youth 12 & under	\$6.50
Adult	\$7.50
Senior	\$6.50
Skate Rental	\$2.50

Discount Public Session Packages

Frequent Skater Adult	10/\$69.00
Frequent Skater Child	10/\$59.00

SKATING DEALS

Lunch Bunch		\$5.00 with skate rental
Mon-Fri 12noon-2pm (excluding holidays)		\$3.50 w/out skate rental
Tues/Thurs Coffee Club	10:15-11:45am	\$6.00 with skate rental \$5.00 Sr w/ Skate rental \$49.00/10 pack coupons plus \$5.00 for Thurs lesson
Tues eve Cheap Skate	7-8:30pm	\$5.50 admission \$1.50 skate rental
Thurs eve Adult 2for1	7-8:30	\$7.50/2 \$2.50 each skate rental
Sundays Family Skate	1:30-5:00pm	\$25.00/ family of 4 (must incl 1 adult) \$2.50 each skate rental
Birthday Party Packages		\$13.00 per person
min 10 max 25		
extras:	Pizza	\$13.50
	Pitcher of soda	\$3.50
	Party Bags	\$2.50
	extra hour room rental (1st and last party only)	\$50.00
	Skate Lesson (payable to coach)	\$35.00

FIGURE SKATING AND LEARN TO SKATE PROGRAMS

FIGURE SKATING PROGRAMS

Freestyle Drop-in	\$12.00/45min
Flex Pkg (15 or more f/s sessions)	\$150.00
Unlimited (summer)	\$1100.00 (purch by 5/24/07)
	\$1300.00 (after 5/24/07)
Off-Ice classes	\$15.00/each
Stroking Class	\$120.00
Stroking Drop-in	\$15.00

Oakland Residents save \$10.00 for each class they sign up for (residency proof required)

LEARN TO SKATE

Classes 10week series	\$120.00
Synchro Team	\$150.00

Pilates \$15.00

Summer Camps
6 sessions 5 days each \$150.00

add LTS class for \$10.00 per class

HOCKEY

HOCKEY LEAGUES

	Summer	Winter
Adult	\$6500.00 per team Split payment of \$3500 and \$3000 OK	\$7500 per team split payment of \$4500 and \$3000 OK
Youth	\$1400.00 if paid in full at beginning 7 payments of \$215.00 each	
In-House	\$325.00	\$500.00
Womens League	\$700.00	\$700
Pick-Up	\$12.00	
package of 10 coupon book	\$8.00 Mon am only \$110.00	
Drop-In Beginner class	\$12.00	

GROUPS AND ICE RENTAL RATES

GROUP ICE RENTAL RATES

Broomball	\$275.00/hour \$200/hour non prime time (5a-5p M-F)
Ice Rental	\$300/hour \$1.00 per person skate rental \$200/hour non prime time (M-F open - 5pm)
Room Rentals	\$25.00 hour
Ice Dancers (BAID)	\$15.00 per person/2 hour session
St Moritz Ice Skating Club	\$200/hour test sessions \$300/hour club skating sessions \$210/hour competition ice
Tri-Valley Hockey club	\$300/hour
Core Speedskaters	\$300/1.5 hours

OAKLAND SCHOOLS (No Minimum) \$5.00each

GROUPS OF 15 OR MORE:

	15-30	31-100	101-200	skate rental charge
Lunch Bunch (12-2p W	\$5.00	\$5.00	\$4.50	included
Tues/Thurs eve	\$6.50	\$6.00	\$5.50	included
Afternoon Session (ful	\$7.50	\$7.00	\$6.50	included
Evening Fri/Sat 7-10p	\$7.50	\$7.00	\$6.50	included

GROUP TIME

Mon-Wed-Fri & Fri only during summer)

10:15-11:45am	\$6.50	\$6.00	\$5.50	included
10:15-1pm	\$7.00	\$7.00	\$6.00	included
10:15a-2pm	\$7.50	\$7.50	\$7.00	included

Corporate Advantage Program purch min of 10 booklets of 10 each

Adult	\$59.00 each
Child	\$49.00/each

OAKLAND ICE CENTER
FIGURE SKATING COACH
MONTHLY FEES

Figure Skating Coaching Fees

\$300.00 per month Required to teaching a minimum of two (2) Learn-to-Skate classes per week

\$550.00 per month No required participation in the Learn-to-Skate classes

Currently, all coaches teach the classes and therefore pay the \$300 per month. Payment of the monthly entitles coaches to use to conduct private lessons during any scheduled freestyle skating session.

EXHIBIT A-2
INITIAL CAPITAL IMPROVEMENTS

SCHEDULE C-2

EQUAL BENEFITS DECLARATION OF NON-DISCRIMINATION

SCHEDULE N
DECLARATION OF COMPLIANCE

SCHEDULE O

ACKNOWLEDGMENT OF CAMPAIGN CONTRIBUTION LIMITS FORM

SCHEDULE P
NUCLEAR FREE ZONE DISCLOSURE FORM