

Approved as to Form and Legality:

### **OAKLAND CITY COUNCIL**

RESOLUTION NO. 86850 C.M.S.

A Resolution: (1) Authorizing The City Administrator, Without Returning To The City Council, To Negotiate And Execute A Management Agreement Between The City of Oakland And Sharks Ice, LLC (Or Its Related Entities Or Affiliates) to Manage and Operate the Oakland Ice Center ("OIC") Substantially In Conformance With The Term Sheet Attached As Exhibit A; (2) Authorizing An Appropriation Of Up To \$3,800,000 To Fund Capital Improvements At The OIC, Including A New Refrigeration System, To Be Undertaken By Sharks Ice, LLC; And (3) Finding Such Actions Exempt From CEQA Pursuant To CEQA Guidelines Section 15301

**WHEREAS,** the City of Oakland (the "City") owns the OIC, which is located at 519 18<sup>th</sup> Street in the Central District Redevelopment Project Area; and

WHEREAS, on December 20, 2010, the City entered into a 5-year Management Agreement ("Existing Agreement") with San Jose Area Management, LLC ("SJAM"), a whollyowned subsidiary of Sharks Sports & Entertainment, LLC ("SSE") for the operation and management of the OIC, which expired on December 20, 2015, but, pursuant to its terms the Existing Agreement, has since then remained in effect on a month-to-month basis on the same terms; and

WHEREAS, SJAM has successfully managed the OIC since first assuming management in October 29, 2007, generating an annual cash flow to the City from OIC operations, and maintaining community outreach and accessibility to OIC programs and services; and

WHEREAS, during the year ending June 30, 2014, SJAM assigned its rights and obligations under the Existing Agreement to Sharks Ice, LLC ("SI"), another wholly-owned subsidiary of SSE; and

WHEREAS, the City and SI both desire to continue their partnership and enter into a new management agreement (the "New Agreement") for the OIC; and

WHEREAS, the OIC's existing refrigeration system, which makes and maintains the ice on the rinks, must be replaced because it relies on the refrigerant R-22, which is a greenhouse gas that is being banned by the Environmental Protection Agency, effective January 1, 2020; and

- WHEREAS, the City desires to make available \$3.8 million to fund the replacement of OIC's soon-to-be obsolete refrigeration system and other necessary deferred capital improvements as described in the staff report; and
- **WHEREAS**, the City has identified bond funds of the former Redevelopment Agency bond totaling \$3.8 million to fund the necessary capital improvements at the OIC; and
- **WHEREAS**, the City and SI desire to modify some of the terms of the Existing Agreement by entering into the New Agreement for the OIC; and
- **WHEREAS**, the proposed New Agreement shall have a term of 5 years, with two administrative 5-year extension options at the sole and absolute discretion of the City Administrator; and
- WHEREAS, under the proposed New Agreement, SI's compensation for their management services shall be (1) a \$325,000 base management fee; plus (2) 50% of net revenue (as an incentive management fee), after deduction for a capital investment repayment (at \$172,455 in year one and \$372,455 in years two to fifteen) and contribution to a capital reserve fund (at \$400,000 in year one and \$200,000 in subsequent years); and
- WHEREAS, under the proposed New Agreement, the City's share of net revenue (annual cash flow) from OIC operations under SI management shall be (1) an annual repayment on the City's \$3.8 million capital investment equal to \$172,455 in year one and \$372,455 in years two to fifteen; plus (2) 50% of net revenue, after deduction for annual capital investment repayment and contribution to a capital reserve fund; and
- WHEREAS, the City shall also receive additional lease revenue from renting out the Pro Shop and Snack Bar spaces located within the OIC at a rate of \$25,000 a year which will escalate 10% (or by the rate of the Consumer Price Index, whichever is lower) in year 6 and year 11 and 50% of any advertising revenue from corporate sponsorships of the OIC, after deducting up to the first \$100,000 to reimburse SI for in-kind marketing costs; and
- WHEREAS, the City Council's approval of the New Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 (existing facilities); now therefore be it
- **RESOLVED:** That the City Administrator or her designee is authorized, without returning to the City Council, to negotiate and execute a New Agreement with SI based on the terms and conditions described in the term sheet attached to this Resolution as *Exhibit A*; and be it further
- **RESOLVED:** That the City Council hereby allocates up to \$3.8 million dollars from Central District Redevelopment bond funds to fund the replacement of the refrigeration system and other necessary capital improvements at OIC as outlined in the staff report; and be it further
- **RESOLVED:** That the funding is being appropriated through the Proposed FY 2017-19 Budget in the amount of \$2,054,000 from the City's Central District Fund (5610); Central District Redevelopment Organization (85245); Oakland Ice Center Project (1003244) for the purposes of funding the replacement of the refrigeration system and other necessary capital improvements at the OIC as outlined in the staff report; and be it further

**RESOLVED:** That the funding is being appropriated through the Proposed FY 2017-19 Budget in the amount of \$1,746,000 from the City's Central District TA Bond Series 2006T Fund (5614); Central District Redevelopment Organization (85245); Oakland Ice Center Project (1003244) for the purposes of funding the replacement of the refrigeration system and other necessary capital improvements at the OIC as outlined in the staff report; and be it further

**RESOLVED:** That net revenue from the OIC generated as repayment to the City on the \$3.8 million capital investment be deposited back proportionately into the respective funding sources from which funding came; and be it further

**RESOLVED**: That any additional net revenue generated from the OIC (i.e. from OIC operations, ProShop and Snack Bar lease payments, and advertising/sponsorship revenue) during the Term of the Agreement will be deposited into the City's Central District Fund (5610); Central District Organization (85245); Oakland Ice Center Project (1003244); and be it further

**RESOLVED:** That the City finds and determines, after independent review and consideration, that the authorization to enter into the New Agreement with SI is exempt from CEQA pursuant to CEQA Guidelines Section 15301 (existing facilities); and be it further

**RESOLVED:** That any and all documents necessary to effectuate the intent of this Resolution shall be reviewed and approved as to form and legality by the City Attorney prior to execution by the City Administrator or his or her designee and a copy shall be filed with the City Clerk; and be it further

**RESOLVED:** That the City Administrator or his or her designee is further authorized to negotiate and enter into other agreements and take whatever action is necessary with respect to funding the capital improvement work consistent with this Resolution and its basic purposes.

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IN COUNCIL, OAKLAND, CALIFORNIA	,, 2	2017

#### PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT

ABSTENTION -

ATTEST: MARKET LATONDA SIMMONS

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City Clerk and Clerk of the Council of the City of Oakland, California

### **EXHIBIT A – TERM SHEET**

## MANAGEMENT/OPERATIONS AGREEMENT FOR THE OAKLAND ICE CENTER

Updated: June 21, 2017

Upaaiea: June 21, 2017			
1.	Facility	Oakland Ice Center ("OIC") property located at 519 18th Street, Oakland, California	
2.	Owner	City of Oakland, a municipal corporation ("City")	
3.	Manager and Operator	Sharks Ice, LLC ("SI")	
4.	Term; Form of Extension	5 years commencing July 1, 2017 with two five (5) year extension options for SI.	
	Agreement	Following the approval of this document ("Term Sheet"), the parties will work together in good faith to draft and execute a formal Management/Operations Agreement ("Extension Agreement"). The Extension Agreement would be consistent with the provisions of this Term Sheet but would include additional details, definitions and clarifications. The Extension Agreement would also include additional provisions based on the provisions of the existing Management/Operations Agreement by and between the City and SI, dated December 20, 2010 ("Existing Agreement") that are not superseded by this Term Sheet, subject to appropriate revisions based on current laws and regulations.	
5.	Compensation	"Net Revenue" shall be calculated by including all revenue received by SI for operations at the OIC from whatever source ("Operating Revenue") less all costs of maintaining and operating the OIC ("Operating Expenses"), except that (a) revenues and expenses attributable to SI's operation of the OIC Snack Bar and OIC Pro Shop shall be excluded from this calculation and shall be allocated solely to SI except as provided in Section 6, and (b) revenues and expenses related to building naming rights and interior advertising/branding signage, if any, shall be allocated as provided in Sections 16 and 17.  Annual allocation of Net Revenue shall be as follows:	
		<ul> <li>1st: To pay the City for City's Capital Investment of \$3.8 Million (see Section 11). This will be \$172,455 in year one and \$372,455 per year for years 2 to 15. This amount shall be paid to the City annually.</li> <li>2nd: To pay a fixed management fee to SI in the amount of \$325,000 per year. This fee includes compensation to SI for managing the capital projects at OIC, including the refrigeration system replacement project described below.</li> <li>3rd: \$200,000 a year to pay into the Capital Reserve Fund, except in the first year \$400,000 to pay into the Capital Reserve Fund. (see Section 10)</li> <li>4th: Revenue Split - 50/50 between the City and SI</li> </ul>	
	•	The City's Annual Share of Net Revenue is due no later than 10 days following completion of the annual audit of Sharks Ice's financial statements for the OIC, but in no event later than 180 days after the end of each fiscal year during the term of the Extension Agreement.	

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	An example of Net Revenue allocation is shown attached as <b>Exhibit A-1</b> .
	The Extension Agreement will more specifically define and describe <b>Operating Revenue</b> , <b>Operating Expenses</b> and <b>Net Revenue</b> as well as the Net Revenue allocations described above.
Pro Shop and Snack Bar	Revenue and expenses from Pro Shop and Snack Bar are <u>excluded</u> from OIC operations. SI (or a third party licensee/concessionaire) shall be required to pay rent for the Pro Shop and Snack Bar.
	Rent shall be fixed at \$25,000 per year for the Pro Shop and Snack Bar, combined, due in monthly installments. Rent shall escalate 10% or based on the CPI, whichever is lower in year 6 and year 11.
Activities during the Term of the Agreement	SI shall perform all duties ("Management Duties") reasonably necessary to operate and manage all aspects of the OIC, in accordance with the provisions of the Existing Agreement. The costs and expenses of performing the Management Duties shall be included in the Operating Expenses of the OIC, and shall not be borne by either the City or SI, except as otherwise expressly stated in this Term Sheet or in the Extension Agreement.
	The City and SI understand that the OIC will need to be closed temporarily during the refrigeration system replacement project described in Section 11.
	SI's Management Duties will include project management for all capital improvements to the OIC that are authorized by the City.
	The Extension Agreement will more specifically describe the Management Duties.
Programming	SI will continue to maintain a balanced and diverse schedule of programs of hockey, figure skating, public skating, ice dancing and other ice-related activities at the OIC, in accordance with the provisions of the Existing Agreement.
Maintenance & Repair	SI will, as an Operating Expense, keep and maintain all portions of the OIC, all improvements located in the OIC and all furniture, fixtures and equipment ("FF&E") in the OIC in good order and repair consistent with the uses of the building contemplated by the Existing Agreement ("Ordinary Maintenance and Repair"). Ordinary Maintenance and Repair to the building and its various systems and equipment, including the entire ice refrigeration system, that are typically performed more frequently than once per year shall be considered Operating Expenses.
	The Extension Agreement will more specifically define <b>FF&amp;E</b> and <b>Ordinary Maintenance and Repair</b> .
	Activities during the Term of the Agreement  Programming  Maintenance &

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# 10. Capital Improvements Fund

Each year, SI shall set aside from Net Revenue (as defined above) in a restricted fund for the benefit of OIC ("Capital Reserve Fund") the amounts described in Section 5 above (\$400,000 in first year and \$200,000 in subsequent years).

During the Term of the Extension Agreement, the Capital Reserve Fund shall be used for all "Capital Repairs and Replacements," which shall mean all expenditures for (i) building additions, alterations, or improvements, or (ii) repairs to existing capital improvements, and (iii) purchases of additional or replacement machinery, FF&E or building systems, consistent with historical use and practice. Such definition shall be established in the final Extension Agreement.

To the extent available, the Capital Reserve Fund may also be used for (1) capital improvements made to improve the quality, functioning, efficiency or competitiveness of the OIC ("Capital Enhancements") and (2) "Extraordinary Repair Work" consisting of (i) unforeseen repairs to structural elements of the building or permanently installed, unexposed mechanical, electrical, and plumbing components that are not expected to wear out during the life of the OIC building (and therefore are not scheduled for repair or replacement); (ii) repairs or improvements required to ensure that the OIC building meets all federal, state, and local building code requirements (e.g., fire, ADA, electrical, etc.) applicable to the existing building components as constructed by the City (or the Agency, as the City's predecessor). The City shall be solely responsible for the cost of all Extraordinary Repair Work.

Notwithstanding the foregoing, if the need arises for (i) any Extraordinary Repair Work for which the City does not have a source of adequate funding (such as insurance proceeds and amounts in the Capital Reserve Fund), or (ii) any Capital Repairs and Replacements that are required to keep the OIC operating in a safe manner (including but not limited to emergency work) for which the amounts in the Capital Reserve Fund are not sufficient (or projected to be sufficient in the applicable fiscal year) to cover the cost thereof, then the parties shall meet and confer in good faith to try to agree on terms upon which one or both of the parties would be willing to accept responsibility for such costs. If the parties are unable to reach such agreement, then either party may terminate the Extension Agreement upon thirty (30) days' written notice to the other party.

The Extension Agreement will more specifically define and describe the Capital Reserve Fund, Capital Repairs and Replacements, Capital Enhancements, and Extraordinary Repair Work.

# 11. City Investment for Capital Improvement

Concurrent with the approval of the Term Sheet, staff shall seek City Council approval, at its sole and absolute discretion, to allocate a one-time capital investment to fund the replacement of the refrigeration system and other existing deferred capital improvements, which will be further defined in the Extension Agreement.

- The one-time capital investment shall be in an amount not to exceed \$3.8 million.
- The investment will be repaid on an annual basis from gross revenues over a 15 year period, due 30 days after close of the fiscal year.

<ul> <li>Annual payment amount is \$172,455 in year one and \$372,455 for years two to fifteen</li> </ul>	
SI shall comply with the City's Local Employment, Apprenticeship, and Local/Small Local Business Enterprise Program.  • 50% Local and Small Local For Profit and Not For Profit Business Enterprise Program (L/SLBE)  • 50% Local Employment Program (LEP)  • 15% Oakland Apprenticeship Program  • Payment of Prevailing Wages  • City of Oakland Living Wage Ordinance  • City of Oakland Equal Benefits Ordinance  • City of Oakland Minimum Wage Ordinance  • Electronic Certified Payroll Submittals  More information about these programs can be found at the City of Oakland's website at  • http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak029	
<ul> <li>SI shall continue to provide benefits to the community, as described below. Costs related to these benefits shall be an Operating Expense of the OIC.</li> <li>a. Free Admissions for OUSD students <ul> <li>OIC shall offer free admission and skating equipment for no less than 1,000 Oakland Unified School District ("OUSD") students during field trips with their class to the OIC.</li> <li>At least twelve (12) times during each year of the Term of the Extension Agreement, OIC shall offer OUSD students participating in OUSD's 'After School Program' free skating dates and times, and skating equipment during scheduled regular public skating sessions as defined in the Extension Agreement.</li> </ul> </li> </ul>	
<ul> <li>b. Scholarships</li></ul>	

	The reporting shall quantify the value of these community benefits from OIC operations.
	The Extension Agreement will more specifically describe progress reporting and after school program requirements.
14. Fee Schedules	An updated schedule of current standard fees will be included in the Extension Agreement. Should SI desire to increase any of such standard fees by more than five (5) percent in any calendar year, it must submit the proposed fee schedule to the City 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 comparable market areas within California (namely, the greater San Francisco Bay area, Los Angeles area, and San Diego area), excluding rinks managed or owned by SI or its affiliates.
15. Marketing	For marketing purposes, SI will be entitled to use the name "Oakland Ice Center operated 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. Additionally, Sharks Ice shall have the right to utilize a different name for the facility in accordance with Section 16 below.
	In consultation with City staff, during the Extension Agreement, SI will include up to \$70,000 for direct OIC marketing expenditures during each annual budget cycle for the OIC. Additionally, SI shall offer another \$150,000 in-kind value (at standard commercial rates) for advertising of the OIC at other San Jose Sharks or SI-affiliated facilities such as SAP Center at San Jose, Solar4America Ice at San Jose and Solar4America Ice at Fremont.
	Up to the committed <u>\$70,000</u> for direct marketing expenses shall be an Operating Expense for the OIC; the <u>\$150,000 in-kind value will not be</u> an Operating Expense for OIC.
	Progress Reporting on marketing expenditures: due quarterly to City staff at the same times as the report under Section 13 above. Report shall itemize and demonstrate how both the \$70,000 paid for by OIC operations, as well as the \$150,000 worth of "in-kind" marketing expenditures, were spent to benefit the OIC <i>solely</i> or as an equitable proportion of shared advertising.
16. Naming Rights	SI shall have the right to sell naming rights to the facility to an advertiser approved by the City in its sole and absolute discretion. SI shall include "Oakland" in the new name. The City retains the right to approve the graphic representation of the name, as well as the location, design, size and appearance of the building signage depicting the name, consistent with applicable City requirements.
	Naming rights revenue shall be allocated per section 17 below.
17. Advertising Rights	SI shall have the right to sell advertising and branding opportunities within the facility (but not on the exterior of the facility) to SI sponsors, except to companies who produce, market

and/or distribute alcohol (including beer and wine) or tobacco products, provided such advertising is in good taste and consistent with good community standards, which the City shall determine in its sole and absolute discretion.

Procedurally once SI has procured an advertiser or sponsor (including a naming rights sponsor), SI shall provide the City Administrator with the name of the sponsor/advertiser, the duration of the arrangement, and the amount of revenue. Within 15 days after receiving the information, the City Administrator shall review it to ensure consistency with good community standards, and shall, in her sole and absolute discretion, give SI notice as to whether such advertising or sponsorship arrangement has been approved.

SI and/or the corporate entity requesting the naming or advertising rights will be responsible for all related costs and expenses, including but not limited to (i) the new facility name and logo, (ii) costs for the design, fabrication and installation of the new exterior signage, and (iii) all other related expenses, including costs for permits, plan review and inspection fees.

Advertising revenues received by SI for the sale of naming, branding and advertising rights on or in the facility, less the costs and expenses described above, are referred to as the "Advertising Net Revenue." Advertising Net Revenue shall be allocated annually as follows:

1st: Up to the first \$100,000 shall be used to reimburse SI for advertising costs that are not included in the OIC Operating Expenses regarding marketing and promotion (i.e., direct OIC advertising costs in excess of \$70,000, and the value of in-kind advertising provided by SI at affiliated facilities.)

<u>2nd</u>: The remaining Advertising Net Revenue shall be split 50/50 between the City and SI.

For example, if advertising revenues for a fiscal year are \$400K and related advertising costs and expenses are \$150K, the \$250K in Advertising Net Revenue would be allocated \$175K to SI and \$75K to the City.

Due quarterly, at the time of the Community Outreach Progress Report (See Section 13), SI shall provide an itemized accounting of SI's advertising costs and all revenues generated by the sale of naming, advertising and branding opportunities.

The SI annual financial statements shall also include a final annual report of the Advertising Net Revenue for each applicable fiscal year. The City's share of Advertising Net Revenue shall be payable at the same time as payment is due for City's share of Net Revenue under Section 5 above.

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18. Parking	City shall continue to make best efforts to offer SI the right to purchase parking in City's Dalziel parking garage or comparable garage at \$6,500 per month, for free parking by OIC customers from Monday – Friday from 4:00 pm to 1:00 am, and on Saturdays from 8:00 am to 1:00 am, in accordance with the current arrangement.
	This \$6,500 payment for parking shall be an Operating Expense and this Operating Expense shall not exceed \$6,500.
19. Annual Plan and Operating Budget	SI and City shall prepare, provide, and review an Annual Plan and Operating Budget consistent with the current Management Agreement. These processes will be outlined in the Extension Agreement.

#### **EXHIBIT A-1: NET REVENUE ALLOCATION - NEW vs. EXISTING**

NEW - REVENUE SHARE	
5-year term with two 5-year extensi	on options
\$200K/yr setaside for Capital Rese	rve Fund
\$3,8 M Upfront Capi	tal Investment
recaptured over	a 15-Year term
Net Revenue (FY 2015-16)	1,167,190
Capital Investment Repayment - 1st out	(372,455,23)
Sharks Base Fee - 2nd out	(325,000)
Capital Reserve - 3rd out	(200,000
Sharks Share (50%)	(134,867)
City Share (50%)	(134,867)
Net Revenue to Sharks	459,867
Snack Bar & Pro Shop Lease Payment Addt'l Rev: Ad and Naming Rights - after	(25,000)
\$100K to reimburse Sharks in-kind ad expenses, then 50% split of revenues	100,000
Net Revenue to City	507,323
Addt'l Rev: Snack Bar & Pro Shop Lease Addt'l Rev: Ad and Naming Rights - after	25,000
\$100K to reimburse Sharks in-kind ad expenses, then 50% split of revenues	ТВІ

### **EXISTING REVENUE SHARE** 5-year term, then month-to-month since Dec 2015 \$190K+/yr setaside for Capital Reserve Fund Net Revenue (FY 2015-16) 1,167,190 First \$450K Sharks Share (50%) (225,000)City Share (50%) (225,000) Above \$450K Sharks Share (65%) (466,174) (251,017) City Share (35%) Revenue to Sharks 691,174 Less Capital Reserve (40,000) 651,174 Net Revenue to Sharks Snack Bar & Pro Shop Lease Payment (37,700)476,017 Revenue to City (171,076) Less Capital Reserve 304,941 Net Revenue to City Addt'l Revenue: Snack Bar Lease 37,700