COUNCIL AGENDA: 3/29/11
ITEM: 4.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Kim Walesh
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: March 23, 2011

Approved

Date 3/23/11

COUNCIL DISTRICT: #7
SNI AREA: N/A

SUBJECT: **FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AND MANAGEMENT AGREEMENT WITH SAN JOSE ARENA MANAGEMENT FOR THE ICE CENTRE OF SAN JOSE AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE ICE CENTRE REVENUE FUND**

RECOMMENDATION

It is recommended that the City Council:

1. Approve a first amendment to Amended and Restated Lease and Management Agreement to provide $2,000,000 from the Ice Centre Revenue Fund to Silicon Valley Sports and Entertainment, Inc. (SVSE), on behalf of San Jose Arena Management, Manager of the Ice Centre of San Jose, for the purchase and installation of a fuel cell based Energy Server System for the Ice Centre.
2. Adopt the following Appropriation Ordinance amendments in the Ice Centre Revenue Fund (Fund 432):
   a) Establish an appropriation to the Finance Department in the amount of $2,000,000 for Fuel Cell Equipment; and
   b) Decrease the Ending Fund Balance by $2,000,000.

OUTCOME

Approval of the recommended actions in this memorandum will allow the San Jose Arena Management (SJAM) to purchase fuel cell equipment for Ice Centre thereby lowering utility costs, furthering the City's interest in reducing the carbon footprint of City buildings, and advancing the City's Green Vision.

EXECUTIVE SUMMARY

SJAM is requesting $2,000,000 from the Ice Centre Revenue Fund to assist in the acquisition of a 420 k/W fuel cell system for the Ice Centre managed by SJAM. The substantial 24/7 refrigeration load, coupled with high community demand for the facility generates an energy bill of over $65,000/month. The fuel cell equipment will replace roughly 85% of the utility power purchased from the electric grid at Sharks Ice with cheaper and cleaner electricity.

BACKGROUND

SJAM has been the operator of the City owned Ice Centre of San Jose since November 1998. On June 29, 1999, the City and SJAM entered into an agreement for the Expansion of the Ice Centre of San Jose to add a third ice rink, as well as training facilities and office space (the "Sharks Training Facility") for the San Jose Sharks and to make other improvements to the Original Facility, which were completed and accepted by the City in August of 2000. In June of 1999, the City and SJAM also entered into a Lease and Management Agreement for the Existing Facility which became effective on December 13, 2000, the date the City issued debt to provide permanent financing for the construction under the First Expansion Agreement.

On May 25, 2004, the City and SJAM entered into an agreement for the Second Expansion of the Ice Centre of San Jose and an Amended and Restated Lease and Management Agreement (Agreement) to reflect the responsibilities of the City and SJAM in light of the expansion of the Existing Facility to add a fourth ice rink and add a restaurant to the existing mezzanine space. The Agreement required the establishment of a special fund of the City, into which SJAM's lease payments are deposited, with uses restricted to City expenses in connection with repayment of debt and the repair and improvement of the facility.

On May 6, 2010, the City Council/Redevelopment Agency Board approved that the City and Redevelopment Agency enter into a Loan Agreement whereby the Agency borrowed, among other funds, $2M from the Ice Centre Revenue Fund to make the state mandated payment to the Supplemental Education Revenue Augmentation Fund (the "SERAF Loan"). Loan repayment of $2 million with interest is anticipated to occur in 2015-2016.

ANALYSIS

Terms of Lease and Operating Agreement

Under the current SJAM Lease and Management Agreement (Agreement) all rent payments made by SJAM must be deposited into the Ice Centre Revenue Fund and may be used only for Capital Repairs and Replacement costs as set forth in the Agreement, debt service and other costs related to bond issues for the expansions of the facility, and other expenditures made by the City in connection with the facility, including, but not limited to insurance premiums, and management oversight expenses.

While the City is responsible for all Capital Repairs and Capital Replacements to the Facility, as specified in Exhibit G (Section 7.02) of the Agreement, the fuel cell equipment is not included in Exhibit G.

The Agreement also provides that all appropriate equipment for the management and operation of the Facility must be rented, leased or purchased by SJAM at their sole cost. Therefore, although the City is not required to pay for this equipment under the Agreement, it is an appropriate expenditure from the Ice Centre Revenue Fund. SJAM will pay the annual operating/maintenance costs of the fuel cells.

The amendment identifies the fuel cell equipment as an improvement under the Agreement that will be owned and maintained by SJAM, $2 million of which will be funded out of the Ice Centre Revenue Fund.

Terms of Equipment Purchase

The entire cost of the fuel cell equipment including purchase price, installation costs and maintenance agreement is $4.5 million. The $2 million from the Ice Centre Revenue Fund will be paid in cash pursuant to a payment schedule. SJAM has already purchased the fuel cell system from Bloom Energy. The fuel cell system is scheduled to be installed in the fall of 2011. SJAM may convert their purchase into a capital lease to finance SJAM's costs. SJAM is obligated to make all payments required beyond the City's investment of $2 million including any maintenance payments associated with the fuel cell. The fuel cell project has been issued a conditional reservation with a system size of 420,000KW for State tax credits. SJAM will assume responsibility for payment of the system costs regardless of the availability of the tax credits.

Impact to the Ice Centre Revenue Fund/Protection for the General Fund

In order to reduce the risk to the Ice Centre Revenue Fund the proposed amendment provides that, if for any reason, at any future date, the Ice Centre Revenue Fund falls below the amount of funds projected to be needed in any year to pay costs related to the Ice Centre, the City shall first call the amounts loaned to the Redevelopment Agency SERAF Loan. Per the proposed Amendment, if the Agency is unable to repay the Ice Centre Revenue Fund, SJAM shall replenish the fund to the extent necessary to cover projected expenses in any given year, but in no event will the repayment exceed a total of $2 Million. To the extent SJAM fails to make such payment within 30 days written notice from the City, the City may draw on the Letter of Credit maintained by SJAM pursuant to the Agreement for the needed amount. If SJAM utilizes a capital lease to finance the reminder of the purchase price of the fuel cell equipment, SJAM shall contribute to the Ice Centre Revenue Fund, at the end of the term of the capital lease, 50% of the dollar value of such energy savings realized by SJAM over the term of the capital lease of the fuel cell equipment, minus the lease payments, interest paid and costs incurred for maintenance of the fuel cell equipment over the term of the capital lease. Such contribution shall not exceed $2 million.

Assuming that the City Council approves the recommendations of this memorandum to fund the $2 million purchase and installation of the fuel cell equipment, the unrestricted Ending Fund Balance is estimated to range from $2.2 million in 2010-2011 to $5.7 million in 2015-2016. This projection of the unrestricted fund balance is based on historical information of rent revenues and anticipated expenditures for capital repairs and replacements (based on a five-year capital improvement plan), debt service payments associated with the Ice Centre and other costs. This five-year projection assumes that the Redevelopment Agency will repay the $2.0 million in SERAF loan in 2015-2016. If the Redevelopment Agency does not repay the SERAF loan, the 2015-2016 Ending Fund Balance is anticipated to be $3.7 million and as stated previously, SJAM is responsible for projected expenses up to $2 million, if needed.

It is important to note that rent payments from SJAM create an ongoing source of revenue that is used to pay for capital expenditures, debt service payments and other associated costs. The dollar amounts represented above show a snap shot of revenues for the Ice Centre project as rent payments are made annually.

Benefit to the City

Purchase of the fuel cell equipment advances the City's goals found in the Green Vision, Economic Development Strategy and Climate Action Plan.

Green Vision

Goal #1 Create 25,000 Clean Tech jobs.

Bloom is the innovative company that creates the solid oxide fuel cell proposed to be put in place at the Ice Centre. Bloom resides in Sunnyvale just over San Jose's border. Bloom is growing and many San Jose residents are employed by Bloom.

Goal #2 Reduce Energy Use

Fuel cell technology significantly reduces energy utilization and provides cleaner electricity. The 24/7 refrigeration requirement of the Ice Centre makes the facility an ideal candidate for a fuel cell.

Economic Development Strategy

Goal #1 Encourage Companies and Sectors That Can Drive the San Jose/Silicon Valley Economy.

Bloom provides a disruptive new technology that can alter energy utilization. New technologies need early adaptors to demonstrate the validity of the technology and move industry segments forward, often further increasing efficacy and reducing costs. The Bloom installation at the Ice Centre, if approved, will be the first solid oxide fuel cell used at a City facility. As Bloom and other fuel cell providers expand, the clean tech sector expands.

Goal #3 Preserve and Strengthen Manufacturing Activity and Related Jobs

Bloom's headquarters, research and development, and manufacturing functions are all carried out in Sunnyvale.

Goal #5 Increase San Jose's Influence in the Regional, State and National Economy in Order to Advance City Goals

San Jose proudly describes the City as the "Capitol of Silicon Valley". As the Capitol of the region known globally for innovative technology it's important that San Jose support cutting edge technologies. The City has already made significant strides to forward the City's Demonstration Policy which leverages the City's land and buildings to show how new technologies work. Early adoption of break through technology sets San Jose apart, it shows San Jose's leaders "get it" when it comes to technology and how technology can solve global problems.

Goal #12 Develop a Distinctive Set of Sports Arts and Entertainment Offerings

The Ice Centre is a heavily used successful public/private partnership. As City resources dwindle the City must be even more creative in developing successful public/private partnerships to achieve City goals. The fuel cell will reduce energy costs at the Ice Centre. The City does not benefit directly from decreased operating costs, but the City does benefit from a strong partner - SJAM successfully operating the Ice Centre.

Climate Action Plan

Reducing Green House Gases (GHC)

The City is committed to supporting the visionary AB32 legislation that mandates reduction of GHC on a statewide basis. Due to the efficiency of the fuel cell equipment, the Ice Centre will reduce its carbon footprint by 30%.

SJAM's fuel cell equipment will run with the leasehold interest until 2024 when the lease term is up. The City will have the option to leave the fuel cells, or alternatively request removal at SJAM's expense. Under the payment schedule requested by SJAM to meet procurement obligations, payments under the agreement between Supplier and SJAM will be disbursed according to the following schedule: i) 10% of Net Due at signature, ii) 25% of Net Due one hundred and eighty (180) days before delivery, iii) 40% of net Due at product shipment, and iv) 25% of Net Due upon acceptance of the Fuel cell at the site.

EVALUATION AND FOLLOW-UP

The City and SJAM will closely coordinate on payment, and installation of fuel cell equipment at the site, and SJAM will report utility savings realized at the Ice Centre on an annual basis.

POLICY ALTERNATIVES

Alternative: SJAM does not purchase fuel cell equipment to be deployed at the Ice Centre.
Pros: No funds are allocated from the Ice Centre Fund to support the fuel cell.
Cons: Ice Centre loses opportunity for, reduction in carbon footprint, high profile clean technology deployment at high-traffic community facility, and package of federal tax credits and state incentives available to reduce cost of system.

PUBLIC OUTREACH/INTEREST

✓ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This memorandum was coordinated with the Finance Department, City Attorney's Office, and SJAM.

FISCAL/POLICY ALIGNMENT

This action aligns with the City's Green Vision, Clean Tech Strategy, Climate Action goals and the Economic Development Strategy which Encourages Companies and Sectors that Can Drive the San Jose/Silicon Valley Economy and Generate Revenue for City Services and Infrastructure (Goal #1), and Develop a Distinctive Set of Sports, Arts, and Entertainment Offerings, Aligned with San Jose's diverse, growing population (Goal #12). Additionally, this action furthers the objectives of public/private partnerships operating public buildings by supporting private investments in achieving cost savings in operations.

COST SUMMARY/IMPLICATIONS

Assuming that the City Council approves the recommendations of this memorandum to fund the purchase and installation of the fuel cell equipment with $2 million from the Ice Centre Revenue Fund, it is currently projected that the unrestricted Ending Fund Balance for 2010-2011 will be approximately $2.2 million. As part of the 2011-2012 Proposed Budget process, this figure will be refined. Assuming currently projected rent revenues as well as expenditures for repairs and

replacements, debt service payments and other costs, the unrestricted Ending Fund Balance is projected to range from $2.3 million in 2011-2012 to $5.7 million in 2015-2016. Please note that this five-year projection assumes that the Redevelopment Agency will repay the $2.0 million SERAF loan in 2015-2016.

At this time, there appears to be sufficient funds available in the Ice Centre Revenue Fund to allocate $2 million for the purchase of this equipment. However, should the Ice Centre Revenue Fund balance fall below the amount needed in any given year to pay for costs related to the Ice Centre, per the Agreement with SJMA, up to $2 million will be replenished to cover costs related to the Ice Centre by the Redevelopment Agency or if the funds are not available by SJAM.

CEQA
Exempt

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