



**OFFICE OF THE
CITY AUDITOR**

**AN AUDIT OF THE
SAN JOSE ARENA MANAGEMENT AGREEMENT**

- THE CITY OF SAN JOSE AND THE SAN JOSE ARENA MANAGEMENT CORPORATION NEED TO PERFORM VARIOUS TASKS TO ENSURE COMPLIANCE WITH THE MANAGEMENT AGREEMENT

**A REPORT TO THE
SAN JOSE
CITY COUNCIL**

OCTOBER 1995

95-06



GERALD A. SILVA
City Auditor

CITY OF SAN JOSÉ, CALIFORNIA

151 W. MISSION STREET, ROOM 109
SAN JOSE, CALIFORNIA 95110
(408) 277-4601

October 19, 1995

Honorable Mayor and Members
of the City Council
801 North First Street, Room 600
San Jose, CA 95110

Transmitted herewith is a report on *An Audit Of The San Jose Arena Management Agreement*. This report is in accordance with City Charter Section 805.

An Executive Summary is presented on the blue pages in the front of this report while the City Administration, the San Jose Arena Authority, and San Jose Arena Management responses are shown on the yellow page(s) before the Appendices.

In addition, we have included some comments on the City Administration's response. These comments are on the green pages immediately following the responses.

I will present this report to the Finance Committee at its October 25, 1995, meeting. If you need additional information in the interim, please let me know. The City Auditor's staff members who participated in the preparation of this report is Wendy Walker.

Respectfully submitted,

Gerald A. Silva
City Auditor

finaltr
GS:mtn

cc: Regina Williams
Debra Figone
Darrell Dearborn
Sherry Langbein
Joan Gallo
Michael D. Ellzey
Bill Hughes

Frank Taylor
Art Savage
Frank Jirik
Gregg Olson
Jim Goddard
Kathryn Meier
Sylvia Esquivel



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EXECUTIVE SUMMARY

In accordance with the City Auditor's 1995-96 Audit Workplan, we have audited the San Jose Arena Management Agreement. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks the San Jose Arena Authority and those individuals in the San Jose Arena Management Corporation who gave their time, information, insight, and cooperation during the audit process.

THE CITY OF SAN JOSE AND THE SAN JOSE ARENA MANAGEMENT CORPORATION NEED TO PERFORM VARIOUS TASKS TO ENSURE COMPLIANCE WITH THE MANAGEMENT AGREEMENT

The San Jose Arena Management Agreement (Agreement) addresses the operation and management of the San Jose Arena facilities. Our audit focused on those areas of the Agreement that contain compliance requirements. Our review revealed 90 instances of compliance with the terms of the Agreement and 29 instances of noncompliance with the terms of the Agreement. In addition, we identified 28 terms for which compliance needs to occur at a future date. Table I summarizes the terms for which we found compliance and noncompliance with specific sections of the Agreement.

TABLE I

**SUMMARY OF COMPLIANCE OR
NONCOMPLIANCE WITH THE TERMS
OF THE AGREEMENT SUBJECT TO AUDIT**

Agreement Section	Section Name	Number Of Terms In Compliance	Number Of Terms Not In Compliance	Number Of Future Compliance Terms	Other
2.01	Term	0	1	0	0
3.03	NBA Or Other Professional Sports Team	0	1	0	1
4.01	In General	7	0	0	0
4.02	Operating Performance Standards	2	0	0	0
4.03	Limitation On Term Of Leases, Licenses, Contracts And Commitments	3	0	0	0
4.08	Maintenance Standard	1	1	0	0
4.09	Security And Security Personnel	1	0	0	1
4.11	Consultation Regarding Prices	1	0	0	1
4.12	Compliance With Laws By Manager	1	1	0	0
4.13	Compliance With Contemporary Community Standards	1	0	0	0
4.16	City Events	1	0	0	0
6.01	Arena Fees	1	0	5	1
6.02	Luxury Suite Net Revenue	0	0	6	0
6.04	Allocated Hockey Gross Ticket Revenue	0	0	2	0
7.02	Capital Repairs, Replacements And Improvements	4	8	5	2
8.01	In General (Bank Accounts)	1	0	1	0
8.02	Ticket Account	0	1	0	0
8.03	Bank Account, Records, And Reports	0	0	1	1
9.02	Annual Budgets	0	3	0	1
10.01	Accounting Records And Reports	0	3	4	1
10.02	Annual Financial Statements	0	2	2	1
10.03	Inspection And Audit Rights	0	0	1	1
10.04	Access To Records	0	0	1	2
11.01	General Requirements (With Regards To Insurance)	0	5	0	0
11.02	Property Insurance	5	2	0	3
15.01	On-Site Parking	3	0	0	1
15.02	Off-Site Parking	7	0	0	1
15.04	Responsibilities Of City And Manager	1	0	0	0
18.01	Space For City And Arena Authority Personnel	0	0	0	2
19.01	Luxury Suites	1	0	0	0
19.02	Complimentary Passes And Tickets To City	2	0	0	0
19.03	Parking Passes	1	0	0	0
Attachment #5	Insurance Requirements	23	1	0	0
Attachment #8	Arena Advertising	18	0	0	1
Attachment #11	Advertising Policies	5	0	0	1
Total		90	29	28	22

By performing various additional tasks, the city of San Jose and the San Jose Arena Management Corporation can correct current instances of noncompliance with the above terms of the Agreement and help ensure future compliance with those terms.

RECOMMENDATIONS

We recommend that the City Attorney's Office:

Recommendation #1:

Prepare a memorandum to formally establish August 20, 1993, as the date the San Jose Arena Management Corporation took possession of the Arena. (Priority 3)

In addition, we recommend that the City and the San Jose Arena Management Corporation:

Recommendation #2:

Formalize any agreement regarding off-site traffic control costs resulting from professional sports events and propose an amendment to section 3.03 of the Management Agreement to ensure consonance between section 3.03 and any forthcoming written agreement. (Priority 2)

Recommendation #3:

Reach an understanding as to which party will be responsible for the type of equipment items the San Jose Arena Management Corporation included as 1997-98 and 1998-99 replacement items in its preliminary five-year budget submittal. (Priority 2)

Recommendation #4:

Agree on a definition of what the program operating budget in section 9.02 of the Management Agreement should include in order to facilitate the San Jose Arena Management Corporation preparing the budget and submitting it to the City for review and approval in accordance with the terms of the Management Agreement. (Priority 2)

Recommendation #5:

Amend the Management Agreement to include a section that identifies which party is responsible for environmental compliance and remediation of hazardous substances located on the Arena site. (Priority 2)

Furthermore, we recommend that the San Jose Arena Management Corporation:

Recommendation #6:

Immediately prepare a detailed programmatic maintenance budget for 1995-96 and submit it to the City in accordance with the Management Agreement. Thereafter, the San Jose Arena Management Corporation should submit to the City a detailed programmatic maintenance budget by March 1 for the following fiscal year and a detailed maintenance performance audit by March 1 for those items in the previous fiscal years' maintenance budget. (Priority 2)

Recommendation #7:

Revise, as necessary, its personnel manual and the contract with Johnson Controls to include the Attachments 9 and 10 required statements regarding first

source hiring, affirmative action, minority business enterprise/woman business enterprise/disabled business enterprise (MBE/WBE/DBE), prevailing wages, outreach programs, equal employment opportunity (EEO) training, reporting of gender and ethnic workforce composition, and posting of notices and job advertisements. (Priority 2)

Recommendation #8:

Immediately prepare and submit for City approval a capital budget for 1995-96 and by November 1, 1995, prepare and submit to the City a preliminary capital budget for 1996-97. (Priority 2)

Recommendation #9:

Either open the ticket account to be in compliance with section 8.02 of the Management Agreement or propose an amendment to the Management Agreement to remove this requirement. (Priority 2)

Recommendation #10:

Submit to the City for review and approval a capital enhancement budget in accordance with section 9.02 of the Management Agreement. (Priority 2)

Recommendation #11:

Adequately document its system of internal controls and procedures that impact the City-related accounts in order to facilitate the City's right to have access to, review, and verify the financial information that supports the City-related accounts. (Priority 2)

Recommendation #12:

Once it is in compliance with sections 7.02, 8.02, and 9.02, provide the City with an audit report and City income report in accordance with section 10.02 of the Management Agreement. (Priority 2)

Recommendation #13:

Amend its insurance policy to include the appropriate language for insureds and its contract with Aramark to incorporate the insurance requirements that are not included in the current contract. (Priority 2)

Finally, we recommend that the City:

Recommendation #14:

In consultation with the City Attorney's Office, determine the appropriateness of \$456,000 of items that the San Jose Arena Management Corporation included in its preliminary five-year capital budget. (Priority 2)

Recommendation #15:

Begin budgeting for the extraordinary capital repairs and replacements for which it is and will be obligated to pay. (Priority 2)

Recommendation #16:

Provide the San Jose Arena Management Corporation with copies of the required insurance policies and bill the San Jose Arena Management Corporation for \$15,584 in premiums incurred on behalf of the San Jose Arena Management Corporation. (Priority 2)

INTRODUCTION

In accordance with the City Auditor's 1995-96 Audit Workplan, we have audited the San Jose Arena Management Agreement by and between the city of San Jose and the San Jose Arena Management Corporation. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks the San Jose Arena Authority and those individuals in the San Jose Arena Management Corporation who gave their time, information, insight, and cooperation during the audit process.

BACKGROUND

On December 17, 1990, the city of San Jose (City), the city of San Jose Redevelopment Agency (Agency), and the San Jose Arena Management Corporation (SJAMC) signed a letter of agreement. That agreement outlined the terms and conditions that were to be negotiated in good faith to arrive at formal agreements relating to the construction, management, and maintenance of a first class, multi-purpose, hockey-ready entertainment and sports facility and adjacent parking facilities.

Subsequently, the City, the Agency, and the SJAMC entered into two agreements: (1) the San Jose Arena Agreement To Enter and (2) the San Jose Arena Management Agreement. The first agreement coordinated the design and construction of the Arena facilities. The second agreement covers the operation and management of the Arena facilities. Our audit addresses the San Jose Arena Management Agreement.

The San Jose Arena Management Agreement

The City and SJAMC entered into the San Jose Arena Management Agreement (Agreement) on October 24, 1991. The term of the Agreement is to July 31, 2008. The SJAMC took possession of the building on August 20, 1993, which is considered the first term year. Therefore, the length of the Agreement is for 15 years. The SJAMC has three five-year options to extend the terms of this Agreement. The purpose of the Agreement is to set forth the rights and obligations of the City and the SJAMC with respect to the management and operation of the Arena facilities.

The City's Goals And Objectives

As stated in the Agreement, the City's goals and objectives are:

1. *To optimize the use of the Arena Facilities and its revenue-gathering capacities while minimizing the net cost to City and avoiding City exposure to operating losses;*
2. *To obtain as an immediate objective a National Hockey League (the "NHL") professional hockey franchise known as the "San Jose Sharks" to play its home games in the Arena . . . ;*
3. *To stimulate the economy of the community;*
4. *To protect the capital investment in the Arena Facilities through exercise of maintenance equal to the Applicable Standard;*
5. *To promote the design and construction in all additions and alterations to the Arena Facilities equal to the Applicable Standard; and*
6. *To provide facilities and opportunities for groups and organizations from outside the greater San Jose community.*

The San Jose Arena Management Corporation

Subject to the terms of the Agreement, the City engaged the SJAMC as an independent contractor with the sole responsibility and right to operate, manage, and maintain the Arena facilities. The SJAMC's sole authority is subject to (1) the terms of the Agreement and (2) applicable laws and governmental regulations. Under the Agreement, the SJAMC has the responsibility and authority for, but is not limited to, the following areas:

- A. *Employ or contract for such workers, mechanics, laborers, clerks, legal counsel, consultants, accountants and other employees and contractors as are reasonably necessary or appropriate in the management and operation of the Arena Facilities;*
- B. *Procure such materials, services, public utility services, supplies and equipment as are reasonably necessary or appropriate in the management and operation of the Arena Facilities, consistent with the terms of this Management Agreement;*

- C. *Procure and maintain in force and effect public liability, workers' compensation, and such other insurance and bonds as are required of Manager . . . ;*
- D. *Purchase or otherwise acquire, hold, own, sell, lease, hypothecate, convey, exchange, option or otherwise dispose of Manager's personal property of every class and description and any estate or interest therein used in the operation of the Arena Facilities, for any reasonable purpose consistent with this Management Agreement;*
- E. *Lease, license, rent, use or permit the use of all or any part of the Arena, to any person or entity, for events consistent with the terms of this Management Agreement, the City Policies and Guidelines which may be established pursuant to Section 3.01 hereof and the use of the Arena as major public assembly facilities . . . ;*
- F. *Operate or grant concession privileges for the vending and sale of food and beverages, including alcoholic beverages, programs, cushions, souvenirs, novelties, retail merchandise and similar articles, and other articles, or for the renting of any such articles, consistent with the terms of this Management Agreement . . . ;*
- G. *Take and omit such other actions, enter into such other agreements, documents, and instruments, and engage in such other transactions, as are reasonably necessary or appropriate in connection with the management, operation, maintenance, improvement and administration of the Arena Facilities . . . ; and*
- H. *Administer all existing and future leases, licenses, use agreements, bookings, concession agreements, advertising, and scoreboard agreements related to the Arena Facilities, except as otherwise specifically provided herein. Subject to the provisions of, and except as otherwise provided in, this Management Agreement, Manager shall have the sole and exclusive right to sell Arena or ticket advertising, and to permit, license, or engage in the broadcast or transmission of all or any part of an Arena event.*

The San Jose Arena Authority

In June 1990, the City Council and the Redevelopment Agency Board approved the creation and funding of the San Jose Arena Authority (SJAA). Section 1.03 of the Agreement discusses the SJAA and states,

City has established the Arena Authority, whose purposes include performing an oversight role respecting the operation of the Arena Facilities on behalf of City and acting as a liaison to the broader community concerning neighborhood impacts and the operation of the Arena Facilities.

In February 1992, the City and the Agency entered a "Restated Agreement" which describes in detail the two major areas for which the SJAA is responsible. Those two major areas of responsibility are to (1) oversee the SJAMC's operation of the Arena through interpretation and the application of the terms and provisions of the Agreement and (2) monitor and develop relations with the community with respect to impacts from the operation of the Arena. In addition, the Restated Agreement lists the following services that the SJAA is to perform:

- 1. Supervise the Manager's operation of the Arena project during construction on behalf of the AGENCY'S Board of Directors.*
- 2. Supervise the operation of the Arena Facilities on behalf of the City Council of San Jose.*
- 3. Monitor and review the performance management and maintenance standards as set forth in the Management Agreement.*
- 4. Act as CITY'S liaison to the San Jose community concerning neighborhood impacts in the operation of the Arena facilities.*
- 5. Administer the Community Events Policy and CITY Events as set forth in the Management Agreement.*
- 6. Review all service and construction contracts to the extent authorized in the Management Agreement.*
- 7. Review all operating and capital budgets furnished by Manager as provided in the Management Agreement.*
- 8. Review all operating budgets submitted by Manager for review in accordance with the Management Agreement.*
- 9. Review and approve all capital budgets submitted by Manager for review in accordance with the Management Agreement.*
- 10. Oversee and review the disposition of the \$200,000.00 Capital Reserve Fund established under the Management Agreement.*

11. *Receive annual audits from the Manager. Copies of such audits shall be furnished to the CITY and AGENCY.*
12. *Serve as the liaison between the Manager, the City Council and Agency Board.*
13. *Administer use of any executive suite or luxury box and tickets (including parking passes) provided to the CITY under the terms of the Management Agreement and in accordance with the policies for distribution as may be adopted by Council from time-to-time.*

Other Agreements

Since entering into the Agreement, various parties have entered into other agreements which affect certain provisions of the Agreement. These agreements are the Settlement Agreement and the Cooperation Agreement.

Settlement Agreement

On July 28, 1994, the City, the Agency, the SJAMC, and the San Jose Sharks entered into a Settlement Agreement. This agreement settled various disputes that had arisen between the various parties. The terms of the Settlement Agreement that are applicable to the various terms of the Management Agreement are as follows:

- The Agency and the City are fully released from any obligations to provide final parking and/or any obligation to provide additional on-site parking facilities arising from the Agreement to Enter beyond the on-site parking presently developed.
- The SJAMC agrees to assume responsibility for the off-site security arrangements pursuant to an agreement to be entered into between the SJAMC and the City in a form substantially as provided in Exhibit A of the Settlement Agreement. The Agency will have no involvement in the agreement for security.

- The SJAMC shall pay to the City the \$100,000 parking fee payment owed to the City since August 20, 1993.
- The SJAMC and the Sharks understand and acknowledge that the City and the Agency have no intention of selling the building name and the Arena will continue to be called the "San Jose Arena."

Cooperation Agreement

On March 20, 1995, the City and the Agency entered into a Cooperation Agreement that relates to the Arena. Pertinent terms of the Cooperation Agreement are as follows:

- The Agency will transfer title, possession, and control of the Arena to the City, and the City will accept such effective as of September 7, 1994;
- The Agency will indemnify the City for all costs required to correct design and workmanship deficiencies or premature failures of building components not covered by warranty which occur or are discovered during a two-year period from September 7, 1994 to September 7, 1996, including any costs associated with the pursuit of corrective actions, except to the extent that any deficiencies or premature failures are the result of the negligence of the SJAMC or the City; and
- The Agency will assist and cooperate with the City throughout the term of the Management Agreement to enable the City to satisfy any and all off-site parking requirements contained in the Management Agreement.

Major Accomplishments

In accordance with Section 4.G. of the agreement between the City, the Agency, and the SJAA, the SJAA submits an annual progress report to the City Manager and the Agency's executive director outlining all of the SJAA's accomplishments. In Appendix F, the SJAA informs us of its major accomplishments from its inception in 1990 to July 1995.

According to the executive director of the SJAA, some of its major accomplishments are

- In coordination with the City and the Agency, oversaw the Arena's construction process;
- Assisted in the development of the City Arena Traffic and Parking Management Plan, including implementation of a successful, free-to-the-public Arena shuttle program;
- Planned and produced the grand opening for the Arena;
- Established and implemented a comprehensive community- and economic development-based Arena ticket distribution policy and program;
- Developed and established a City and Community Events program;
- Developed and implemented the San Jose Sports Hall of Fame program and produced the inaugural inductee ceremony in 1995;
- Approved a \$700,000 basketball improvement program for the Arena;
- Contracted with a joint venture consulting group for the implementation of a comprehensive Arena maintenance oversight program;
- Produced a one-year anniversary event for the San Jose Arena.

A full text of the SJAA's memorandum of accomplishments is shown as Appendix F to this report.

SCOPE AND METHODOLOGY

We reviewed the San Jose Arena Management Agreement (Agreement) between the city of San Jose (City) and the San Jose Arena Management Corporation (SJAMC). Based upon our review, we compiled a list of terms from the Agreement which we tested for compliance. See Appendix B for a list of the terms tested.

To determine compliance with the terms of the Agreement, we interviewed staff from the City Attorney's Office, the San Jose Arena Authority (SJAA), and the SJAMC. We reviewed the controls and procedures the SJAMC has in place as they relate to specific terms in the Agreement. We also reviewed the various agreements that the City, the SJAMC, and/or the Redevelopment Agency (Agency) have entered into from inception. In addition, we reviewed various sections of the agreements the SJAMC has with various contractors who provide cleaning, concession, security, and maintenance services for the Arena facilities.

We also reviewed various reports from the City, the SJAA, the SJAMC, the SJAMC independent auditors, and the contractors who provide the services noted above at the Arena. Furthermore, we reviewed City and SJAMC insurance policies and correspondence between all the parties noted as it relates to the terms of the Agreement that have compliance requirements.

Finally, from all the documents reviewed, we analyzed the information received to determine compliance with the Agreement terms subject to our audit.

FINDING I

THE CITY OF SAN JOSE AND THE SAN JOSE ARENA MANAGEMENT CORPORATION NEED TO PERFORM VARIOUS TASKS TO ENSURE COMPLIANCE WITH THE MANAGEMENT AGREEMENT

The San Jose Arena Management Agreement (Agreement) addresses the operation and management of the San Jose Arena facilities. Our audit focused on those areas of the Agreement that contain compliance requirements. Our review revealed 90 instances of compliance with the terms of the Agreement and 29 instances of noncompliance with the terms of the Agreement. In addition, we identified 28 terms for which compliance needs to occur at a future date. Table I summarizes the terms for which we found compliance and noncompliance with specific sections of the Agreement.

TABLE I

**SUMMARY OF COMPLIANCE OR
NONCOMPLIANCE WITH THE TERMS
OF THE AGREEMENT SUBJECT TO AUDIT**

Agreement Section	Section Name	Number Of Terms In Compliance	Number Of Terms Not In Compliance	Number Of Future Compliance Terms	Other
2.01	Term	0	1	0	0
3.03	NBA Or Other Professional Sports Team	0	1	0	1
4.01	In General	7	0	0	0
4.02	Operating Performance Standards	2	0	0	0
4.03	Limitation On Term Of Leases, Licenses, Contracts And Commitments	3	0	0	0
4.08	Maintenance Standard	1	1	0	0
4.09	Security And Security Personnel	1	0	0	1
4.11	Consultation Regarding Prices	1	0	0	1
4.12	Compliance With Laws By Manager	1	1	0	0
4.13	Compliance With Contemporary Community Standards	1	0	0	0
4.16	City Events	1	0	0	0
6.01	Arena Fees	1	0	5	1
6.02	Luxury Suite Net Revenue	0	0	6	0
6.04	Allocated Hockey Gross Ticket Revenue	0	0	2	0
7.02	Capital Repairs, Replacements And Improvements	4	8	5	2
8.01	In General (Bank Accounts)	1	0	1	0
8.02	Ticket Account	0	1	0	0
8.03	Bank Account, Records, And Reports	0	0	1	1
9.02	Annual Budgets	0	3	0	1
10.01	Accounting Records And Reports	0	3	4	1
10.02	Annual Financial Statements	0	2	2	1
10.03	Inspection And Audit Rights	0	0	1	1
10.04	Access To Records	0	0	1	2
11.01	General Requirements (With Regards To Insurance)	0	5	0	0
11.02	Property Insurance	5	2	0	3
15.01	On-Site Parking	3	0	0	1
15.02	Off-Site Parking	7	0	0	1
15.04	Responsibilities Of City And Manager	1	0	0	0
18.01	Space For City And Arena Authority Personnel	0	0	0	2
19.01	Luxury Suites	1	0	0	0
19.02	Complimentary Passes And Tickets To City	2	0	0	0
19.03	Parking Passes	1	0	0	0
Attachment #5	Insurance Requirements	23	1	0	0
Attachment #8	Arena Advertising	18	0	0	1
Attachment #11	Advertising Policies	5	0	0	1
Total		90	29	28	22

By performing various additional tasks, the City and the SJAMC can correct current instances of noncompliance with the above terms of the Agreement and help ensure future compliance with those terms.

Section 2.01 - Term

Section 2.01 states, "*Promptly following the Possession Date, the parties shall execute and deliver to each other a memorandum specifying the Possession Date and the end of the Shakedown (45 days after the Possession Date).*" Neither party to the Agreement prepared and delivered a memorandum that stated the possession date or the end of the shakedown period. These dates are important because some of the terms in the Agreement utilize one of those dates, or so many days after one of those dates, as a deadline for a requirement to be met. During the course of our audit, we came across a San Jose Arena Authority (SJAA) memorandum that stated the possession date is August 20, 1993.

We recommend that the City Attorney's Office prepare a memorandum to formally establish August 20, 1993, as the date the SJAMC took possession of the Arena.

Section 3.03 - NBA Or Other Professional Sports Team

In April 1994, the SJAMC announced two new professional sports franchises to the San Jose Arena: the Grizzlies, an indoor soccer team, and the Rhinos, a roller hockey contingent. Section 3.03 of the Agreement states,

Manager shall not enter into an agreement with a . . . professional sports team for use of the Arena as a regular home game facility without City's prior written approval . . .

The SJAMC did not inform the City or request approval for the Grizzlies or the Rhinos as the Agreement requires. In addition, in December 1994, the SJAMC entered into an agreement for the Sabercats, an indoor football team. In this situation, the SJAMC informed the SJAA on December 1, 1994, that the negotiations to have an indoor football team would likely be successful. In its letter the SJAMC requested that the SJAA "*approve SJAMC's request for SJAMC to enter into a Use Agreement . . . for such team to play Arena football . . .*" The SJAMC did not specify in its request the time frame during which an agreement would be entered. On December 5, 1994, the executive director of the SJAA communicated that the SJAA Board of Directors (Board) would hear the item at its regularly scheduled meeting on January 25, 1995. He also stated that since a prompt response was requested he would try to get Board approval via a Unanimous Written Consent. However, the City Attorney's Office stated that due to the limitations of the Brown Act a Unanimous Written Consent was not legal. Therefore, the SJAMC did not receive required City approval for the football team prior to entering into an agreement with the Sabercats.

Furthermore, section 3.03 of the Agreement also states,

. . . City may negotiate with Manager for City to receive additional payments from Manager under this Management Agreement to recover additional costs to City incurred by City in performing its obligations hereunder or resulting directly or indirectly from the use of the Arena by such other professional sports team, . . . and City may withhold or condition its approval of any agreement for use of the Arena by such other professional sports team on additional payments to City for

recovery of such additional costs to City to the reasonable satisfaction of City.

In its letter to the City about the potential of an Arena football team, the SJAMC also requested that the SJAA " . . . waive any charges for, or pass through of costs to SJAMC arising from the provision of City off-site traffic control personnel requested or required to staff such Arena Football games at the Arena." According to the executive director of the SJAA, the City and the SJAMC have reached a verbal agreement with regards to who will be responsible for the off-site traffic control costs resulting from any Rhino, Grizzlies, or Sabercat events.

We recommend that the City and the SJAMC formalize any agreement regarding off-site traffic control costs resulting from professional sports events and propose an amendment to section 3.03 of the Agreement to ensure consonance between section 3.03 and any forthcoming written agreement.

Section 4.08 - Maintenance Standard

Section 4.08 describes how the SJAMC should maintain the Arena facilities. This section also requires the SJAMC to prepare and submit to the City, on an annual basis, a detailed programmatic maintenance budget for the Arena facilities including furnishings, fixtures, and equipment. The purpose of the detailed programmatic maintenance budget is to allow for City review to ensure that the SJAMC has complied with the maintenance requirements set forth in this section of the Agreement. In addition, the SJAMC is to submit annually a detailed maintenance performance audit that sets forth the status of maintenance items for the Arena facilities

including those furnishings, fixtures, and equipment that were in the budget for the preceding annual period. The Agreement states that for the first year the maintenance budget was due 90 days after the possession date.

Assuming a possession date of August 20, 1993, the SJAMC should have submitted a maintenance budget to the City on November 18, 1993. For each year thereafter by March 1, the SJAMC should have submitted to the City (1) a detailed programmatic maintenance budget for the following fiscal year and (2) a detailed maintenance performance audit for those items in the previous fiscal years' maintenance budget. The SJAMC has not complied with this requirement for the detailed programmatic maintenance budgets due on March 1, 1994, and March 1, 1995, or the detailed maintenance performance audit which was due on March 1, 1995.

We recommend that the SJAMC immediately prepare a detailed programmatic maintenance budget for 1995-96 and submit it to the City in accordance with the Agreement. Thereafter, the SJAMC should submit to the City a detailed programmatic maintenance budget by March 1 for the following fiscal year and a detailed maintenance performance audit by March 1 for those items in the previous fiscal years' maintenance budget.

Section 4.12 - SJAMC Compliance With Laws, Rules, And Regulations

Section 4.12 of the Agreement states that the SJAMC shall comply with the prevailing wage and hiring requirements set forth in Attachments 9 and 10 of the Agreement. However, a significant portion of the employees working at the Arena work for one of the following four

companies with which the SJAMC has contracted to provide maintenance, concession, security, and cleaning services for the Arena:

- Johnson Controls Worldwide Services, Inc. (maintenance)
- Aramark (concession)
- Staffpro Security, Inc. (security)
- ACME Building Maintenance Co., Inc. (cleaning)

In order to assess compliance with Attachments 9 and 10, we reviewed the SJAMC's personnel manual and the contracts with the above noted entities. Our review revealed noncompliance with some of the terms in Attachments 9 and 10. Appendix C of this report is a summary of the requirements in Attachments 9 and 10 and whether each entity is in compliance with those requirements or not. Based upon our testwork, we noted that the SJAMC personnel manual and the contract with Johnson Controls are not in compliance with the requirements in Attachments 9 and 10. Specifically, neither the SJAMC personnel manual nor the Johnson Controls contract contain any required statements about (1) first source hiring, (2) affirmative action, (3) minority business enterprise/woman business enterprise/disabled business enterprise (MBE/WBE/DBE), (4) prevailing wages, (5) equal employment opportunity (EEO) training, or (6) a policy statement on attempting to expand the pool of qualified female and minority applicants. In addition, the SJAMC personnel manual does not contain any required statements about non-discrimination, outreach programs, or reporting annually to the City Council regarding the gender and ethnic breakdown of the SJAMC's overall workforce. Finally, the Johnson Controls contract does not contain any statements about advertising, all the six requirements listed under affirmative action in Attachment 10, the posting

of notices in conspicuous places regarding discrimination, or the inclusion of a statement regarding EEO in job advertisements.

We recommend that the SJAMC revise, as necessary, its personnel manual and the contract with Johnson Controls to include the Attachments 9 and 10 required statements regarding first source hiring, affirmative action, MBE/WBE/DBE, prevailing wages, outreach programs, EEO training, reporting of gender and ethnic workforce composition, and posting of notices and job advertisements.

Section 7.02 - Capital Repairs, Replacements, And Improvements

Section 7.02 of the Agreement states that

Prior to November 1, of each calendar year, Manager shall prepare and submit to City for its approval a preliminary budget for the following fiscal year which reasonably itemizes and estimates the cost of all Normal Capital Repairs and Replacements and Parking Capital Repairs and Replacements.

The SJAMC has failed to submit a capital budget for 1993-94, 1994-95, and 1995-96. As stated above, a preliminary budget is due on November 1 of each calendar year. The Agreement also states that a final budget is due on March 1 of each year. Without the submittal of a capital budget, the City is unable to review the budget to ensure that it is prepared in accordance with the terms of the Agreement prior to approving the document. In addition, the Agreement states that once the City approves the submitted budget it becomes the official capital budget. Without an official capital budget, the SJAMC cannot make any capital repairs or replacements other than emergency repairs or replacements, without prior written City approval.

We recommend that the SJAMC immediately prepare and submit for City approval a capital budget for 1995-96 and by November 1, 1995, prepare and submit to the City a preliminary capital budget for 1996-97.

It should be noted that in March 1995 the SJAMC submitted a five-year preliminary capital budget to the City Auditor's office and the SJAA. This five-year preliminary capital budget is from 1994-95 through 1998-99. The SJAMC submitted the five-year preliminary capital budget to solicit any City comments prior to the SJAMC submitting its one-year capital budget to the City for approval as specified in the Agreement.

Based on our review of the preliminary five-year capital budget and the definitions in the Agreement regarding the types of items that should be included in the capital budget, it appears that the SJAMC may have inappropriately included some capital items. Table II is a summary of (1) the total proposed amounts by category the SJAMC included in its five-year preliminary capital budget, (2) the City Auditor's concurrence or nonconcurrence with the preliminary capital budget as submitted, and (3) those items in the preliminary capital budget requiring a City Attorney's Office interpretation.

TABLE II

**SUMMARY OF ANALYSIS CONDUCTED ON REPAIRS
INCLUDED IN PRELIMINARY FIVE-YEAR CAPITAL BUDGET**

Type Of Repair ¹	Total Amount In SJAMC's Preliminary Five-Year Capital Budget ²	City Auditor Concurrence Or Nonconcurrence With The SJAMC's Preliminary Budget		Items In The SJAMC's Preliminary Five-Year Capital Budget That Require Legal Interpretation
		Concurrence	Non-concurrence	
Normal Capital Repairs And Replacement	\$362,500	\$165,000	\$106,500	\$91,000
Parking Capital Repairs And Replacement	28,500	18,500	10,000	
Extraordinary Capital Repairs And Replacement	265,000			265,000
Emergency Capital Repairs And Replacement	70,000	70,000		
Code Changes	126,000	6,000	20,000	100,000
Design And Construction Issues	227,000	77,000	150,000	
Capital Enhancements	191,000	191,000		
Manager's Capital Enhancements	26,000	26,000		
Totals	\$1,296,000	\$553,500	\$286,500	\$456,000

**Nonconcurrence With \$286,500 Of Items
In The SJAMC's Preliminary Five-Year Capital Budget**

As shown in Table II, the City Auditor's Office does not concur with the SJAMC's classification for \$286,500 of the \$1,296,000 in items the

¹ See Appendix E for the detailed breakdown for each of the above-noted repair categories.

² Appendix D of this report shows all the types of repairs, the definitions, and the party responsible for funding the repairs according to the Agreement.

SJAMC included in its preliminary five-year capital budget. The reasons for the City Auditor's nonconcurrency are detailed below.

*Nonconcurrency With \$106,500
Of Normal Capital Repairs And Replacement*

Of the \$106,500 in the Normal Capital Repairs and Replacements category with which we do not concur, \$50,000 appears to be Design And Construction Issues type item, not Normal Capital Repairs and Replacement.

The remaining \$56,500 consists of items that appear to be supplies and equipment as defined in Appendix D. When we raised this issue with SJAMC officials, they responded that the City should continue to be responsible for the type of items for which the Agency paid under the Agreement to Enter. Based on this interpretation, the SJAMC included in its preliminary five-year capital budget items like interior and exterior flags, photocopiers, a facsimile machine, portable radios, and a van. While we understand that the Agency originally purchased these items under the terms of the Agreement to Enter, the City does not appear to be obligated to continually provide funds for these types of items under the terms of the Agreement.

It should be noted that the items discussed above are 1997-98 and 1998-99 capital budget items. Based on the terms of the Agreement, those items that are not part of the current year capital budget are not subject to the City's approval.

We recommend that the City and the SJAMC reach an understanding as to which party will be responsible for the type of equipment items the SJAMC included as 1997-98 and 1998-99 replacement items in its preliminary five-year budget submittal.

*Nonconcurrency With \$10,000
Of Parking Capital Repairs And Replacement*

We also do not concur with the \$10,000 for landscaping that is included in Parking Capital Repairs and Replacements. Specifically, Parking Capital Repairs and Replacements addresses repair and replacement of capital items such as fixtures, machinery, or equipment. In our opinion, landscaping costs do not fit within this definition. Further, Section 4.08 of the Agreement, "Maintenance Standard," states that "*Manager shall maintain the Arena Facilities and landscaping of the Arena Facilities [Emphasis Added]*" Accordingly, we believe landscaping should be part of the general maintenance costs of the Arena and surrounding facilities.

Subsequent to the submittal of its preliminary five-year capital budget, the SJAMC informed the City Auditor's Office that the \$10,000 noted above relates to the replacement of items, such as a tree that had died, within the Arena facilities landscaping.

Nonconcurrency With \$20,000 Of Code Changes

We also do not concur with \$20,000 of items listed in Code Changes. These items are connecting fire phones in the elevators and connecting aisle lights in the lower bowl of the Arena. Based on discussions with the SJAA and the SJAMC, these are items that should have been completed during the construction of the Arena. The codes that require these items were in effect during the design of the Arena. Therefore, these items are Design And Construction Issues type items.

*Nonconcurrency With \$150,000
Of Design And Construction Issues*

We also do not concur with the \$150,000 for permanent power for the concourse carts that is included in Design and Construction Issues. Under the terms of the Agreement, Design and Construction Issues relate to workmanship deficiencies or premature failures of building components. The issue here is that there are no power outlets on the Arena concourse for concession carts. In our opinion, this item would be more appropriately categorized under Capital Enhancements, which as defined in Appendix D". . . *are made to improve the quality or functioning of the Arena Facilities"*

**\$456,000 Of Items In The SJAMC'S Preliminary
Five-Year Capital Budget Requiring Legal Interpretations**

Also as shown in Table II, the City Auditor's Office has identified \$456,000 of items in the SJAMC's preliminary five-year capital budget that require legal interpretation. The reasons legal interpretations are needed are detailed below.

*\$91,000 Of Normal Capital Repair And
Replacement Items That Require Legal Interpretation*

We question \$91,000 of items that the SJAMC included in its preliminary five-year capital budget for items like Arena floor carpet, cleaning equipment, homosote insulation floor, ice edger, and motorized carts. The SJAMC has stated that the items listed above meet the definition of Normal Capital Repair And Replacement as defined in Appendix D. In our opinion, these terms also appear to fit the definition of supplies and equipment, which states "*All appropriate supplies and equipment for events and for the management and operation of the Arena*

Facilities shall be rented, leased or purchased by Manager at Manager's sole cost and expense."

\$265,000 Of Extraordinary Capital Repairs And Replacement Items That Require Legal Interpretation

We also question \$265,000 of items that the SJAMC included in its preliminary five-year capital budget for hot water heat exchangers and flexible pipe joints. The hot water heat exchangers need to be replaced sooner than their normal life expectancy because of the high mineral content of the water that comes into the Arena. Given this circumstance, a compelling case can be made that the replacement of the heat exchangers could be appropriately categorized either under Normal Capital Repairs and Replacements, Extraordinary Capital Repairs and Replacements, or Design and Construction Issues.

Flexible pipe joints connect pipes, provide sound insulation in piping, and absorb the expansion or contraction of piping. Flexible pipe joints in various areas of the Arena have already failed or have started to leak. Based on what is known about these failures, these repairs could be either an Extraordinary Capital Repair and Replacement, Emergency Capital Repair and Replacement, or a Design and Construction Issue.

\$100,000 Of Code Changes That Require Legal Interpretation

We also question \$100,000 for an item that the SJAMC included in its preliminary five-year capital budget for lower level seating handrails. Based on discussions with the SJAMC, the code that applies to this area is discretionary regarding the installation of handrails. The SJAA and the SJAMC agree that installing the handrails is appropriate from both a safety

and potential liability standpoint. Given this information, this repair could also be classified as a Capital Enhancement.

We recommend that the City, in consultation with the City Attorney's Office, determine the appropriateness of \$456,000 of items that the SJAMC included in its preliminary five-year capital budget.

It should be noted that in Table II, the SJAMC submitted an estimate of \$265,000 for Extraordinary Capital Repairs and Replacements. According to the Agreement, the City is responsible for any costs classified in this category. The City currently is not budgeting for any costs included in this category. The City is budgeting only \$200,000 annually for Normal Capital Repairs and Replacements and Parking Capital Repairs and Replacements. To the extent any of the \$265,000 the SJAMC preliminarily classified as Extraordinary Capital Repairs and Replacements survives the City Attorney's interpretive process, the City will need to budget for these items.

We recommend that the City begin budgeting for the Extraordinary Capital Repairs and Replacements for which it is and will be obligated to pay.

Section 8.02 - Ticket Account

Section 8.02 of the Agreement states,

On or before the Possession Date, Manager shall establish one trust or escrow account with the ticket agency or agencies that will sell tickets to Arena events to the public (the "Ticket Account"). Using receipts from the sale of the first tickets sold for events at the Arena (other than Hockey) Manager shall deposit and maintain in the Ticket

Account an amount equal to the gross receipts that would be received from the sale of all tickets to one Arena event, such as a rock concert or family show, assuming the tickets are priced in accordance with the industry standard for such events and the event is sold out, but excluding any tickets attributable to seats in Executive Suites.

To date, the SJAMC has not established a ticket account. According to the SJAMC, this provision was added to the contract to ensure that if a promoter or program backs out of its commitment to perform, there would be a pool of money from which refunds could be made to ticket holders. The SJAMC feels that this account is unnecessary for two reasons. The first reason is that for every program held at the Arena, the SJAMC prepares an Arena Use Agreement. In this Use Agreement, section 9, entitled "Ticket Sales," states the following: *"All ticket revenues shall be the sole property of SJAMC until box office settlement in accordance with Section 11 below."* Section 11, entitled "Box Office Settlement," states that

Within twenty-four (24) hours after the conclusion of the Program, SJAMC shall furnish the Licensee with a box office statement and, at the Licensee's request, make a provisional settlement with the Licensee, with SJAMC withholding such sums from such provisional settlement as it deems, in its sole discretion, required to assure proper final settlement.

Based on this information, the SJAMC has possession of all ticket revenue until the program has taken place.

The second reason the SJAMC feels that the ticket account is unnecessary is because of an operating account reserve. Specifically, the SJAMC represented to the City Auditor's Office that its operating account always has enough money to more than cover any needed refunds.

The preceding two justifications notwithstanding, the SJAMC has not opened the required ticket account and is therefore out of compliance with section 8.02 of the Agreement.

We recommend that the SJAMC either open the ticket account to be in compliance with section 8.02 of the Agreement or propose an amendment to the Agreement to remove this requirement.

Section 9.02 - Annual Budgets

Section 9.02 of the Agreement states that the SJAMC will provide for each fiscal year of the Agreement (1) a program operating budget; (2) a maintenance budget described in section 4.08 (see page 15); and (3) a detailed line-item facility improvements budget for capital enhancements.

Based on our review of the Agreement, we were unable to find a definition for the program operating budget.

We recommend that the City and the SJAMC agree on a definition of what the program operating budget in section 9.02 of the Agreement should include in order to facilitate the SJAMC preparing the budget and submitting it to the City for review and approval in accordance with the terms of the Agreement.

Capital enhancements are expenditures that are made to improve the quality or functioning of the Arena facilities. The SJAMC did include a list of capital enhancements as part of the preliminary five-year capital budget it submitted in March 1995 (see page 20). However, to date, the SJAMC has not provided any budgets to the City for review and approval.

We recommend that the SJAMC submit to the City for review and approval a capital enhancement budget in accordance with section 9.02 of the Agreement.

Section 10.01 - Accounting Records And Reports

Section 10.01 of the Agreement states that the systems and procedures the SJAMC uses to maintain its accounting records shall include a system of internal controls that shall be divided between the activities and operations in which the City has a direct financial interest versus those areas in which the City has no direct financial interest. Any area where the City has a financial interest is called a "City-Related Account." The City-related accounts are the reserve fund, the ticket account, the expenditures described in the budgets discussed in sections 7.02 and 9.02 of the Agreement, and all the items of income and expenditures that are used to calculate luxury suite net revenue and hockey ticket revenue.

Currently, the only City-related accounts where this requirement would apply are the ticket account and the budgets discussed in sections 7.02 and 9.02 of the Agreement. As we have noted on pages 18, 25, and 27 of this report, the SJAMC has not complied with the requirements of these two areas. Therefore, the City has not had the system of internal controls described to it or received or reviewed any detailed records and reports related to these accounts. As a result, the City has not been able to verify that an adequate audit trail exists for all the income and expenses affecting the City-related accounts.

In addition, in our opinion, based on our review and discussions with the vice president and chief financial officer (CFO) of the SJAMC, the documentation of the SJAMC's system of internal controls and procedures is deficient. The CFO stated that he plans on performing a complete review of all the accounting cycles (revenue, expenses, and payroll) in conjunction with the next financial statement audit which will occur in September 1995. According to the CFO, his review will facilitate the SJAMC documenting its system of internal controls and procedures and help resolve the noncompliance issue noted above. It should be noted that the CFO did provide us with the SJAMC's outside auditors' most recent internal control review which addressed the following areas:

- Merchandising/Retail Operations/Concession Sales
- Ticket Sales
- Parking Revenues
- Suite Revenue
- Advertising/Broadcasting Revenue
- Purchasing/Accounts Payable/Cash Disbursements
- Payroll

The SJAMC's outside auditors noted for all the areas listed above that, in general, controls appeared adequate. While they did note some areas where improvements could be made, they did not find any material weaknesses in the SJAMC's internal control structure.

We recommend that the SJAMC adequately document its system of internal controls and procedures that impact the City-related accounts in order to facilitate the City's right to have access to, review, and verify the financial information that supports the City-related accounts.

Section 10.02 - Annual Financial Statements

Section 10.02 of the Agreement states that the SJAMC shall provide, at its expense, statements of income and expense for the City-related accounts every fiscal year, accompanied by an unqualified opinion from an outside auditor (Auditor). The Auditor's opinion must contain a statement with respect to the calculation of the City-related accounts for the fiscal year subject to audit. The Auditor must be a certified public accountant that is licensed to practice in the state of California. The SJAMC has the right to select the Auditor; however, the City must approve of the selection. In addition to the documents noted above, the Auditor must provide a certificate stating that the calculation of the City-related accounts is "*fairly presented in accordance with the terms and provisions of this Management Agreement.*" This document is called the "City Income Report" in the Agreement. The Agreement also states that the SJAMC shall deliver the audit report and City income report to the City within 90 days of the close of the fiscal year. The close of the fiscal year is July 31; therefore, the reports noted must be delivered by October 29 annually.

As we stated earlier in this report, the only City-related accounts where section 10.02 would apply are the ticket account (section 8.02.) and the budgets (sections 7.02 and 9.02). As we previously noted, the SJAMC has not complied with the requirements of sections 7.02, 8.02, and 9.02. Consequently, the City has (1) yet to receive an audit report or City income report and (2) been precluded from exercising its right to inspect or audit the financial records pertaining to the City-related accounts.

We recommend that once the SJAMC is in compliance with sections 7.02, 8.02, and 9.02, it provide the City with an audit report and City income report in accordance with section 10.02 of the Agreement.

Section 11.01 - General Requirements Regarding Insurance

Section 11.01 of the Agreement states that the SJAMC shall purchase and maintain in full force and effect during the term of the Agreement insurance policies in accordance with Attachment 5 of the Agreement. Based on our review of the SJAMC's insurance coverage, we noted that some verbage from the endorsement requirements is not included in its coverage. Specifically, the SJAMC's policy does not include either the SJAA as an insured or the required statement "*. . . its employees, officers, agents and contractors are hereby added as insureds as respects the use, operation and maintenance of the facilities.*"

In addition, section 11.01 also states that the SJAMC

. . . shall cause its tenants, concessionaires, service contractors and others using or performing work or services in or about the Arena Facilities to procure and maintain policies of insurance with the same coverages (but not necessarily the same amounts, in Manager's reasonable judgment) as set forth in Attachment No. 5.

Based upon our review of the insurance requirements listed in each subcontractor agreement, we noted that Aramark, who provides concession services, is not in compliance with the insurance requirements set forth in Attachment 5 of the Agreement. Specifically, the Aramark contract does not include:

- \$5,000/\$25,000 limits for medical coverage;
- Neither the Agency nor the SJAA are listed as insureds; and
- Items #2, #3, and #4 listed under "Endorsements" are not included.

We recommend that the SJAMC amend its insurance policy to include the appropriate language for insureds and its contract with Aramark to incorporate the insurance requirements that are not included in the current contract.

Section 11.02 - Property Insurance

Section 11.02 of the Agreement addresses the level of property insurance both the City and the SJAMC must carry, along with various other requirements. Based upon our review of both the City's and the SJAMC's policies, we noted two areas of noncompliance.

The first area of noncompliance is the requirement that the City provide the SJAMC with copies of the insurance policies applicable to this section in a form reasonably satisfactory to the SJAMC. As of September 1, 1995, the City has not provided the SJAMC with copies of the required insurance policies.

The second area of noncompliance is the requirement that the City carry business income insurance, at the SJAMC's expense, to insure the business losses of the SJAMC in the event of damage to the Arena facilities. The Agreement also states that the City will bill the SJAMC for the increase in the premium attributable to the business income insurance coverage. To date, the City has paid \$15,584 in premiums for business

income insurance. The Agreement also states that the City shall bill and the SJAMC shall pay within 30 days of receipt, but no more than 10 days prior to the date the premium is due, the amount the City incurs as a result of carrying the business income insurance.

We recommend that the City provide the SJAMC with copies of the required insurance policies and bill the SJAMC for \$15,584 in premiums incurred on behalf of the SJAMC.

Environmental Compliance And Remediation

During the course of our audit, the SJAMC expressed concern over the issue of environmental compliance and remediation of hazardous substances present at the Arena facilities. Based on our review of the Agreement, there is no mention of which party is responsible for the remediation or monitoring of hazardous substances on site. However, the Agreement to Enter (construction agreement) states the following as it relates to hazardous substances on-site:

. . . SJ³ shall be responsible for Investigation and Remediation of any Hazardous Substances now present in, on or under or Released onto, in, under, over, from or about the Arena Site . . . including those Hazardous Substances known by SJ to presently exist on the Arena Site as of the date of this Agreement to Enter, and including all costs associated with all Investigation and Remediation performed or required hereunder to be performed by SJ. SJ shall implement and complete the current and, using reasonable good faith efforts, any future Investigation and Remediation for which SJ is responsible hereunder, . . .

³ SJ is defined as " . . . collectively, the City and Agency, or either of them as the case may be."

In addition, the Cooperation Agreement entered into by the Agency and the City on March 20, 1995, states

Agency shall pay any and all costs in connection, or associated with . . . (ii) any and all expenses of remediation due to ground water or soil contamination and remediation, except as may be directly caused by the negligence of Manager or City.

Finally, the Agreement to Enter also states that the SJAMC is responsible for the investigation and remediation of any hazardous substances on the Arena site that arise from the actions of the SJAMC or others acting under the SJAMC's control, supervision, authority or permission.

We recommend that the City and the San Jose Arena Management Corporation amend the Management Agreement to include a section that identifies which party is responsible for environmental compliance and remediation of hazardous substances located on the Arena site.

CONCLUSION

Based upon our audit of the compliance requirements contained in the San Jose Arena Management Agreement, we noted 90 instances of compliance, 29 instances of noncompliance, and 28 terms for which compliance needs to occur at a future date. By implementing the recommendations in this report, both the City and the San Jose Arena Management Corporation can ensure compliance with the terms set forth in the Management Agreement.

RECOMMENDATIONS

We recommend that the City Attorney's Office:

Recommendation #1:

Prepare a memorandum to formally establish August 20, 1993, as the date the San Jose Arena Management Corporation took possession of the Arena. (Priority 3)

In addition, we recommend that the City and the San Jose Arena Management Corporation:

Recommendation #2:

Formalize any agreement regarding off-site traffic control costs resulting from professional sports events and propose an amendment to section 3.03 of the Management Agreement to ensure consonance between section 3.03 and any forthcoming written agreement. (Priority 2)

Recommendation #3:

Reach an understanding as to which party will be responsible for the type of equipment items the San Jose Arena Management Corporation included as 1997-98 and 1998-99 replacement items in its preliminary five-year budget submittal. (Priority 2)

Recommendation #4:

Agree on a definition of what the program operating budget in section 9.02 of the Management Agreement should include in order to facilitate the San Jose Arena Management Corporation preparing the

budget and submitting it to the City for review and approval in accordance with the terms of the Management Agreement. (Priority 2)

Recommendation #5:

Amend the Management Agreement to include a section that identifies which party is responsible for environmental compliance and remediation of hazardous substances located on the Arena site. (Priority 2)

Furthermore, we recommend that the San Jose Arena Management Corporation:

Recommendation #6:

Immediately prepare a detailed programmatic maintenance budget for 1995-96 and submit it to the City in accordance with the Management Agreement. Thereafter, the San Jose Arena Management Corporation should submit to the City a detailed programmatic maintenance budget by March 1 for the following fiscal year and a detailed maintenance performance audit by March 1 for those items in the previous fiscal years' maintenance budget. (Priority 2)

Recommendation #7:

Revise, as necessary, its personnel manual and the contract with Johnson Controls to include the Attachments 9 and 10 required statements regarding first source hiring, affirmative action, minority business enterprise/woman business enterprise/disabled business enterprise (MBE/WBE/DBE), prevailing wages, outreach programs, equal employment opportunity (EEO)

training, reporting of gender and ethnic workforce composition, and posting of notices and job advertisements. (Priority 2)

Recommendation #8:

Immediately prepare and submit for City approval a capital budget for 1995-96 and by November 1, 1995, prepare and submit to the City a preliminary capital budget for 1996-97. (Priority 2)

Recommendation #9:

Either open the ticket account to be in compliance with section 8.02 of the Management Agreement or propose an amendment to the Management Agreement to remove this requirement. (Priority 2)

Recommendation #10:

Submit to the City for review and approval a capital enhancement budget in accordance with section 9.02 of the Management Agreement. (Priority 2)

Recommendation #11:

Adequately document its system of internal controls and procedures that impact the City-related accounts in order to facilitate the City's right to have access to, review, and verify the financial information that supports the City-related accounts. (Priority 2)

Recommendation #12:

Once it is in compliance with sections 7.02, 8.02, and 9.02, provide the City with an audit report and City income report in accordance with section 10.02 of the Management Agreement. (Priority 2)

Recommendation #13:

Amend its insurance policy to include the appropriate language for insureds and its contract with Aramark to incorporate the insurance requirements that are not included in the current contract. (Priority 2)

Finally, we recommend that the City:

Recommendation #14:

In consultation with the City Attorney's Office, determine the appropriateness of \$456,000 of items that the San Jose Arena Management Corporation included in its preliminary five-year capital budget. (Priority 2)

Recommendation #15:

Begin budgeting for the extraordinary capital repairs and replacements for which it is and will be obligated to pay. (Priority 2)

Recommendation #16:

Provide the San Jose Arena Management Corporation with copies of the required insurance policies and bill the San Jose Arena Management Corporation for \$15,584 in premiums incurred on behalf of the San Jose Arena Management Corporation. (Priority 2)

OTHER PERTINENT INFORMATION

Luxury Suite Net Revenue Sharing

Commencing with the beginning of the fourth hockey season (1996-97), the city of San Jose (City) will receive 20 percent of Luxury Suite Net Revenue from the San Jose Arena Management Corporation (SJAMC). The SJAMC is required to pay and remit to the City an estimated amount beginning August 1, 1996.

The following table shows the description of the calculation to determine Luxury Suite Net Revenue from the San Jose Arena Management Agreement (Agreement) and the City Auditor's Office comments to clarify the various steps of the calculation:

TABLE III

DISCUSSION AND COMMENTS REGARDING LUXURY SUITE NET REVENUE CALCULATION

<u>Luxury Suite Net Revenue Calculation Description From The Agreement</u>	<u>City Auditor's Office Comments</u>
<p><i>. . . Luxury Suite Net Revenue . . . shall mean proceeds from sales or rentals of Luxury Suites (prorated annually, in an equal amount attributable to each year of such sale or rental, in the case of proceeds received for more than one year) less:</i></p> <p><i>(a) amounts included in such proceeds representing the price of hockey tickets included as part of the sale or rental package (provided that for purposes of this deduction, the price for such hockey tickets shall not exceed the highest price charged for the sale of such tickets other than as part of a luxury suite or club seat package), and</i></p>	<p>The Arena has 64 luxury boxes. The SJAMC enters into leases with suite holders for various time frames. If a lease is entered into for three years and the total amount of the lease is received in year one, the amount received will be prorated over the lease term for purposes of the revenue sharing calculation.</p> <p>According to this section, the value of the hockey tickets has to be deducted from the amount paid for the luxury suites. The amount of the hockey tickets will be included in the allocated hockey gross ticket revenue calculation in the eleventh hockey season.</p>

Luxury Suite Net Revenue Calculation
Description From The Agreement

City Auditor's Office Comments

(b) Luxury Suite Costs.

Luxury Suite Costs shall, as applicable, for all Luxury Suites, including the following:

- (a) all of Manager's and Shark's "Hard Costs" and "Soft Costs" (as defined in Attachment No. 6 of the Agreement to Enter), attributable to the build out of the Sky Boxes or upgrade of finishes in the Concourse Boxes, as determined, amortized over twelve (12) years on a level payment basis at the greater of 10.25% per annum, simple interest, or the rate per annum, plus interest, actually charged by a lender advancing funds for purposes of such build-out, such amortization to be determined as if it commenced on the first day of August of the fourth Hockey Season, regardless of when the costs were actually incurred or the actual period during which such costs are amortized . . .*

Hard and soft costs are defined in the Agreement to Enter as follows:

Hard Costs: All sums paid or payable to contractors or suppliers for construction or purchase and installation of items of the Arena Facilities, including costs of so-called "turnkey" contracts, purchases of good and services, purchases of labor and materials, fees (including inspection, testing and plan check, and permit fees), taxes, bonds and insurance included in prices charged by such contractors and suppliers.

Soft Costs: All sums paid or payable to third-party professionals (design, architectural, engineering) for design or descriptive work for the Arena facilities, preparation of plans and bid specifications, change orders, and construction-related supervision and inspection and testing. Excluded are costs of attorneys, managers, employees, consultants and agents, and administrative and overhead costs of San Jose and Manager.

- (b) Hard and Soft Costs to Manager or Sharks of major repairs, replacements, and refurbishments amortized based in accordance with generally accepted accounting principles; and*

- (c) reasonable commissions not exceeding amounts actually paid to salespersons; provided such commissions do not exceed those customarily paid by arenas meeting the Applicable Standard.*

The applicable standard is defined in the Agreement as ". . . a standard of performance, operation (including bookings), maintenance equal to or exceeding those generally applicable to contemporary comparable major arenas in the United States at which NBA and/or NHL games are played (such as Target Center, Palace at Auburn Hills, Phoenix Suns Arena and Bradley Center)."

During the course of our audit, we requested, and the SJAMC did not provide, (1) gross Luxury Suite Net Revenues and (2) hard and soft costs as defined in the Agreement to Enter as shown in Table III.

Therefore, we were unable to determine whether the SJAMC will be able to comply with the Agreement provisions regarding Luxury Suite Net Revenue which go into effect on August 1, 1996.

Preventative Maintenance

Article 4 of the Agreement discusses the general duties of the SJAMC. Section 4.01 states that the SJAMC shall undertake and perform certain services and responsibilities to the extent they are necessary and appropriate and consistent with the terms and purposes of the Agreement and City policies and guidelines. Of those responsibilities, two are (1) the development of a preventative and major maintenance plan and (2) the preparation of maintenance reporting systems.

Preventative maintenance is generally defined as "*. . . a program in which wear, tear, and change are anticipated and continuous corrective actions are taken to ensure peak efficiency and minimize deterioration. It involves a planned and controlled program of systematic inspection, adjustment, lubrication, replacement of components, as well as performance testing and analysis.*" The primary objective of a preventative maintenance program is the reduction in downtime of vital systems and equipment. In addition, a successful preventative maintenance program has many benefits, almost all of which have some type of cost savings. Finally, a preventative maintenance program extends the life of the facilities and equipment, improves equipment reliability, will ensure that the equipment is operating properly, and will improve safety by identifying and quickly correcting unsafe conditions.

Based on our review of the Agreement, there are no specific requirements or guidelines as to the format, content, or a date of completion for the documents and systems noted. As of September 1, 1995, the SJAMC had not prepared a preventative and major maintenance plan. However, the contractor responsible for the maintenance function in the Arena implemented a maintenance reporting system on January 1, 1995.

On June 27, 1995, the City entered into a contract with Aztec Consultants/MCE Corporation (Consultants) to provide assistance in the oversight of the maintenance program at the Arena. The scope of services is broken into three phases:

- Phase I** - Design and development of a Facilities Maintenance Oversight System for the Arena as a pilot project for the City under the direction of the San Jose Arena Authority (SJAA).
- Phase II** - Implementation and operation of the Facilities Maintenance Oversight System for the Arena.
- Phase III** - Continuing services and expansion of the Facilities Maintenance Oversight System in other City-maintained facilities.

Phases I and II will focus on the Arena.

Phase I

Phase I includes the following steps:

- Project orientation
- Document existing practices
- Work activity analysis
- Inventory and condition assessment

- Levels of service objectives
- Work activity guides
- Preventative maintenance task lists
- Annual work program and budget
- Work distribution
- Capital improvements recommendations (optional)

Phase II

Phase II includes the following steps:

- Scheduling and reporting procedures
- Data processing support
- Quarterly facility inspections
- Systems evaluation and improvement (optional)

Based upon the scope of services with the Consultants, the City will be better able to ensure that the SJAMC is maintaining the Arena properly and in accordance with the terms of the Agreement.

It should be noted that the SJAA has requested the Consultants' assistance with a number of repair issues that are not within the scope of services discussed above. Specifically, the Consultants have assisted the SJAA with the following issues: (1) chiller failure, (2) flexible connectors, (3) various water leaks, particularly the roof and atrium area, and (4) basketball and multi-purpose room buildout. In addition, a letter dated September 6, 1995, from Johnson Controls to the SJAA stated the following:

... be advised there are several issues that should be addressed before the start of hockey season to avoid the possibility of business interruption or potential liability.

- 1. Connect Fire phones in elevators.**
- 2. Connect aisle lights. (lower bowl seating)**
- 3. Replace domestic hot water heat exchangers.**
- 4. Replacement of Mason flexible pipe joints.**
- 5. Water supply isolation/bypass valve.**
- 6. Cooling tower isolation valve.**
- 7. Repair Santa Clara street sanitary sewer main.*
- 8. Repair concrete settlement North entrance steps.*
- 9. Roof, glass and other various water leaks.*

The SJAMC has expressed a desire to meet with the SJAA and the Consultants to discuss an action plan to resolve the above-noted issues.

* These items are included in the preliminary five-year capital budget that the SJAMC submitted in March 1995 and are discussed on pages 22, 24, and E-2 of this report.

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OCT 17 1995

CITY AUDITOR

CITY OF SAN JOSE - MEMORANDUM

TO: Gerald A. Silva
City Auditor

FROM: Darrell Dearborn
Deputy City Manager

RE: Response to "An Audit of the
San Jose Arena Management
Agreement"

DATE: October 17, 1995

APPROVED:

DATE:

The City Manager's Office has reviewed the *Audit of the San Jose Arena Management Agreement*. The Administration is generally in agreement with the findings of the audit and provides specific responses to the recommendations directed to the City. The Administration would also like to thank the City Auditor's Office for its work on the audit and believes the process has offered valuable recommendations for improving the oversight and monitoring of the Management Agreement.

Recommendation #1: Prepare a memorandum to formally establish August 20, 1993, as the date the San Jose Arena Management Corporation (SJAMC) took possession of the Arena.

Response:

The City Attorney's Office has indicated that they will prepare the memorandum.

Recommendation #2: Formalize any agreement regarding off-site traffic control costs resulting from professional sports events and propose an amendment to section 3.03 of the Management Agreement to ensure consonance between section 3.03 and any forthcoming written agreement.

Response:

The City and the SJAMC are reviewing a final proposed agreement with regards to who will be responsible for the off-site traffic control costs resulting from professional sports events. The agreement is expected to be approved within the next 30 days. If needed, an amendment to section 3.03 of the Agreement will be prepared.

Recommendation #3: Reach an understanding as to which party will be responsible for the type of equipment items the San Jose Arena Management Corporation included as 1997-98 and 1998-99 replacement items in its preliminary five-year budget submittal.

Response:

The Arena Authority in its oversight role will coordinate with City staff, its Facilities Committee, the City Attorney and the Arena Management Corporation, the review and approval of the Five-Year Estimated Capital Repair Budget. This includes ensuring the proper categorization of items in the various repair categories such as normal capital repairs and replacements, parking capital repairs and replacements, code changes and design and construction categories.

Recommendation #4: Agree on a definition of what the program operating budget in section 9.02 of the Management Agreement should include in order to facilitate the San Jose Arena Management Corporation preparing the budget and submitting it to the City for review and approval in accordance with the terms of the Management Agreement.

Response:

The Administration does not concur that a definition of program operating budget is needed in section 9.02 of the Management Agreement. The intention of requiring the SJAMC to submit to the City a program operating budget was to provide assurance that sufficient funds are allocated to the operation of the facility to maintain the standard of service specified. The budget would provide information on the funding set aside for such operating items as janitorial services, number of ticket takers and other annual expenses that are needed to operate such a facility. The City Manager's Office, coordinating with the Arena Authority, will discuss with the SJAMC the form and content of a budget document that would satisfy this requirement for a program operating budget.

Recommendation #5: Amend the Management Agreement to include a section that identifies which party is responsible for environmental compliance and remediation of hazardous substances located on the Arena site.

Response:

The Administration strongly disagrees with this recommendation due to the fact that an environmental compliance and remediation section is included

in prior agreements. The Agreement to Enter (construction agreement) spells out the responsibilities in Article III, Environmental Compliance and Remediation. This section survives the completion of the Arena as well as the settlement agreement. Basically, the responsibilities are that San Jose (the City and the Agency) will perform all required remediation and hold the Manager (SJAMC) harmless from any losses or damages that result to the SJAMC or its patrons as a result of toxic conditions existing on the site at the time possession was transferred to SJAMC. The SJAMC is required to remedy toxic conditions it brings to the site and indemnify San Jose for any losses or damages resulting from its bringing hazardous materials to the site.

The Cooperation Agreement, an agreement between the City and the Redevelopment Agency on March 20, 1995, further delineates the responsibilities between the City and the Agency. This provision also survives the termination of the Agency's obligations under the Agreement to Enter.

The Settlement Agreement entered into on July 28, 1994 by the Redevelopment Agency (Agency) and the City of San Jose (City) and the San Jose Arena Management Corporation specifically states that parties are not released from their obligations under Article III of the Agreement to Enter.

The Management Agreement dated October 24, 1991 (Management Agreement) provides for the operation and management of the Arena by SJAMC and was not to replace other obligations in other areas in prior agreements. Since the responsibilities of parties are outlined in the above referenced documents and the purpose of the Management Agreement is for operational and management requirements of the Arena, the Administration does not recommend duplicating these provisions in this document.

Recommendation #14: In consultation with the City Attorney's Office, determine the appropriateness of \$456,000 of items that the San Jose Arena Management Corporation included in its preliminary five-year capital budget.

Response:

As stated in the response to Recommendation # 3 above, the Arena Authority in its oversight role will coordinate with City staff, the Facilities Committee, the City Attorney and the SJAMC, the review and approval of the Five-Year Estimated Capital Repair Budget. This will include ensuring the proper categorization of items in the various repair categories which establishes which party is responsible to fund these costs.

Recommendation #15: Begin budgeting for the extraordinary capital repairs and replacements for which it is and will be obligated to pay.

Response:

The Administration philosophically concurs with this recommendation. Currently the City is budgeting \$200,000 annually for Normal Capital Repairs and Replacements and Parking Capital Repairs and Replacements, however, there is not a budget for the extraordinary capital repairs and replacements category. Reserving funds for future capital improvements to city buildings would be an ideal solution to maintaining the City's investment in its many facilities. However, given the City's current resources and more than 275 buildings, this approach is not practical on a regular basis. In the alternative, the City will budget funds in specific years as necessary to pay for extraordinary repair costs anticipated in those years, or fund the needed repairs from contingency funds during the years in which the extraordinary repairs are needed.

Recommendation #16: Provide the San Jose Arena Management Corporation with copies of the required insurance policies and bill the San Jose Arena Management Corporation for \$15,584 in premiums incurred on behalf of the San Jose Arena Management Corporation.

Response:

The City Risk Management Office will be providing these documents to the SJAMC within the next few weeks and will continue to do this on an annual basis.

In summary, the Administration would like to make a few general comments regarding two recommendations directed to the SJAMC. Regarding recommendation #9 which refers to setting up a separate ticket account, the Administration would like to ensure that a pool of money is set aside from which refunds to ticket holders could be made if a promoter backs out of its commitment to perform, whether it be as a separate ticket account or from an operating account reserve held by SJAMC. The City would still prefer this requirement be met.

Recommendation #11 which requires that the SJAMC adequately document its system of internal controls and procedures that impact the City-related accounts in order to facilitate the City's right to access and review. The Administration supports this recommendation and would recommend that

it be implemented by December 1995 since the Luxury Suite Net Revenue owed the City (as defined in Section 6.02) is due beginning August 1, 1996.

A handwritten signature in black ink, appearing to read "Darrell Dearborn", with a stylized flourish at the end.

Darrell Dearborn
Deputy City Manager

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OCT 17 1995
CITY AUDITOR

SAN JOSE ARENA AUTHORITY

MEMORANDUM

To: Gerald A. Silva, City Auditor

From: Kathryn Meier, Chair
Michael D. Ellzey, Executive Director

Subject: Response to Audit of San Jose Arena Management Agreement

Date: October 17, 1995

The San Jose Arena Authority has reviewed the Audit of the San Jose Arena Management Agreement, and wishes to commend the City Auditor for its time and efforts in completing this very valuable audit process.

The Arena Authority is generally in agreement with the findings of the audit and provides the following specific responses to audit recommendations relevant to the Authority's areas of responsibility.

The Arena Authority believes that this audit process and the recommendations formulated will be useful to the Authority in better administering the rights, entitlements and obligations between the City and San Jose Arena Management under the San Jose Arena Management Agreement (the "Agreement"). From a practical perspective, the audit process has also enabled - through the facilitating efforts of the City Auditor's office - City officials, Authority staff and board members, and San Jose Arena Management personnel to establish an open and cooperative working review of important revenue, cost and capital issues under the Agreement, particularly issues which carry future considerations for both the City and Arena Management. The Authority further believes that the scope and methodology employed by the City Auditor in accomplishing the audit was sound and appropriate to its objectives.

The Arena Authority will comment only as to appropriate recommendations relating to the Authority or the City and any of its departments. Therefore, specific responses will be provided for Recommendations #1, #2, #3, #4, #5 and #14.

Though the Auditor's recommendations may be directed to the City, to San Jose Arena Management or to both, under its mandates, the Arena Authority will monitor and ensure compliance of the Audit recommendations and will assist the City and San Jose Arena Management to reach early and effective resolution of issues presented in the Audit so that the mutual interests of the parties are best served and protected. Our responsibility to the City will continue to be fulfilled through a coordinative and facilitative forum, inclusive of all interested agencies and organizations and their representatives.

Recommendation #1: Prepare a memorandum to formally establish August 20, 1993, as the date the San Jose Arena Management Corporation took possession of the Arena.

Response: The Arena Authority will assist the City Attorney's Office in developing the memorandum as needed.

Recommendation #2: Formalize any agreement regarding off-site traffic control costs resulting from professional sports events and propose an amendment to section 3.03 of the Management Agreement to ensure consonance between section 3.03 and any forthcoming written agreement.

Response: The Administration, in their memorandum, is responding to this recommendation. The Arena Authority will assist in any discussions regarding an amendment to Section 3.03 of the Management Agreement, as appropriate.

Recommendation #3: Reach an understanding as to which party will be responsible for the type of equipment items the San Jose Arena Management Corporation included as 1997-98 and 1998-99 replacement items in its preliminary five-year budget submittal.

Response: During the Arena Authority's and the City Auditor's review of the draft preliminary estimated five-year capital budget submitted by Arena Management, it has been necessary to defer several proposed "capital" items to City staff and the City Attorney for an opinion on whether an item is, in fact, a *capital* item, a normal capital repair, a design or construction issue, or whether the item should ultimately be replaced by Arena Management and not the City.

The Arena Authority will coordinate the review and approval process for the 1997-98 and 1998-99 replacement items in its preliminary five-year budget submittal. This process will be coordinated with City staff, the Facilities Committee, the City Attorney and Arena Management. This includes ensuring the proper categorization of items in the various repair categories such as normal capital repairs and replacements, parking capital repairs and replacements, code changes and design and construction categories.

Recommendation #4: Agree on a definition of what the program operating budget in Section 9.02 of the Management Agreement should include in order to facilitate San Jose Arena Management preparing the budget and submitting it to the City for review and approval in accordance with the terms of the Management Agreement.

Response: The Administration is specifically responding to this recommendation in their memorandum. The Arena Authority will work with City Manager's Office and Arena Management to assist in discussions on the form and content of a budget document that would satisfy the requirement for a program operating budget.

Recommendation #5: Amend the Management Agreement to include a section that identifies which party is responsible for environmental compliance and remediation of hazardous substances located on the Arena site.

Response: The City Administration, in their memorandum, will be responding specifically to this recommendation.

Recommendation #14: In consultation with the City Attorney's Office, determine the appropriateness of \$456,000 of items that San Jose Arena Management included in its preliminary five-year capital budget.

Response: As stated in the response to Recommendation #3 above, the Arena Authority will coordinate City staff, the Facilities Committee, the City Attorney and Arena Management, the review and approval of the Five-Year Estimated Capital Repair Budget. This will include ensuring the proper categorization of items in the various repair categories.

In summary, the audit process in connection with the Audit of the San Jose Arena Management Agreement has been beneficial to the City's interests. Clearly, most provisions of the Management Agreement are in compliance. Of those provisions not in compliance, some are more compelling than others.

Gerald A. Silva

Page 4

The most compelling of the items out of compliance is the final approval of the five-year estimated capital repair budget. Approval of this plan is most critical to the City's current and long-term interests. Moreover, the Arena Authority wholeheartedly supports the Auditor's conclusion that the City establish a policy and a resource to accommodate extraordinary capital repairs to the Arena facilities. During the first two years of operation, it has become apparent that unbudgeted, unanticipated capital failures, which are not design and construction related, are outside warranty time lines and are not a part of the normal capital repair budget, can and do occur.

Funding for normal capital repairs exists, as stipulated in the Management Agreement. The Authority acknowledges the difficulty for the City in providing funding for extraordinary failures as an annual appropriation. However, in order to maintain the quality of the Arena facility and alleviate any serious facility problems that pose risks to the Arena or the public, it should be an important objective of the City to finalize the five-year normal capital repair budget and develop and implement appropriate policies, procedures and a budgeting mechanism for addressing extraordinary failures at the San Jose Arena.

Should you have any questions regarding this response memorandum, please contact Michael D. Ellzey, Executive Director of the San Jose Arena Authority.

Submitted by:



Michael D. Ellzey
Executive Director



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October 17, 1995

VIA HAND DELIVERY

Mr. Gerald A. Silva
City Auditor
City of San Jose
151 West Mission Street, Room 109
San Jose, CA 95110

Re: SJAM Comments On An Audit of The San Jose Arena Management Agreement ("Audit Report")

Dear Mr. Silva:

San Jose Arena

SJAM is pleased to offer these comments on the Audit Report and wishes to commend your office on the thorough, professional job evidenced in this Audit Report. The breadth of your office's analysis of this complicated agreement and resulting programmatic relationship with the City provides the best testimony to the fact that the City and SJAM both are committed to fulfilling their obligations under the Management Agreement so as to insure the continuing success and vitality of the San Jose Arena. Our response is organized into two areas: 1) specific comments on the audit report and 2) general comments.

Management

Our comments on the Audit Report follow:

525 W. Santa Clara St.

Recommendations (pp.iii-vi):

Recommendation #1. The City Attorney's office and SJAM have taken the necessary steps to accomplish this task.

San Jose

Recommendation #2 and #4. The issue of definition of normal capital repairs and equipment and what items are properly included within it should be the subject of discussion between the City and SJAM so as to eliminate any differences of opinion between the parties.¹

California 95113

¹ For example, all Items on p. E-4 marked Code 1 all require individual discussion with the City and Arena Authority as to the appropriate resolution. Additionally, SJAM concurs that in certain instance (Items marked Code 2) a definition must be agreed upon in order to decide the appropriate course of action.

408.287.7070

Mr. Gerald Silva
October 17, 1995
Page 2

Recommendation #3. The off-site traffic controls agreement has been reached. SJAM doesn't believe an amendment to the Management Agreement is necessary.

Recommendation #5, #8, #9 (#10 to eliminate the requirement), #11, #13, and #14. SJAM agrees and will begin to take appropriate administrative action.

Recommendation #6. The Management Agreement and Agreement to Enter establish clearly that environmental remediation is the City's task.

Recommendation #7. SJAM agrees, provided definition can be promptly agreed upon as to the contents and format of a programmatic budget: this will evolve over time.

Recommendation #12. SJAM needs to understand the specifics of Audit Report's recommendation on this matter.

Settlement Agreement (p. 6)

The Settlement Agreement also provided that the City/Agency and not SJAM needed to correct then existing design and construction deficiencies and premature failures in the Arena. To date many of these issues still have not been satisfactorily resolved. For example, please see the letter from Johnson Controls to the Arena Authority dated September 6, 1995 which details a list of uncorrected matters.² It is imperative that these problems/defects get corrected immediately and that the Arena Authority be involved in the management and oversight of these corrections so as to insure future continuity and accountability for these matters.³

P. 11, Finding 1.

² And see items marked as Code 2 on Appendix E, page E-4.

³ For example, at Appendix E, page E-4 Items listed with Code 6 and 10 require individual discussion with the City and Arena Authority as to the appropriate resolution.

Mr. Gerald Silva
October 17, 1995
Page 3

SJAM will work with the City to address the issues revised in the Audit Report at Sections 3.03, 4.08, 4.12, 7.02 (a series of interrelated issues)⁴, 8.02 (as to elimination of ticket account), 9.02, 10.01, and 10.02 (recognizing that these issues are to an extent premature in that certain of the requirements only arise at future dates); 11.01 and 11.02. Consistent with our earlier comments, we believe it essential for the Arena Authority to have continuing involvement in the follow up and resolution of the recommendations.

P. B-1, Miscellaneous Comments -Appendix B.

Item 6, p. B-26 (Re Attachment 8) SJAM did submit proposed revisions to the advertising standards in the concourse in 1993 and such revisions were approved by the Arena Authority in 1993.

P. E-1, Miscellaneous Comments - Appendix E.

SJAM disagrees with the Audit Report's conclusions on the following matters which all should be part of normal capital repairs and replacements:

- Photocopiers
- Fax machines
- Portable radio
- Van
- Landscaping replacement

We would like to take this opportunity to raise some other related issues that are of great concern to us. The relationship and communication between the City and SJAM is critical in order to have continued success at the San Jose Arena. A critical component to the relationship and communication between the City and SJAM is the San Jose Arena Authority. It is our understanding that the Arena Authority is responsible for both the oversight role and the tasks of focusing City attention to and support of the critical needs at the Arena as they develop. Since the opening of the building, various issues have been raised by us, where a prompt response was desired, and as of today, the issues have not been resolved.

⁴ It should be noted that many of the Audit Reports comments in this selection address construction defects/deficiencies unresolved since opening of the Arena which can only be resolved by the City.

Mr. Gerald Silva
October 17, 1995
Page 4

It must be understood at the outset of any public review of the Audit Report that the Management Agreement assumed that the city on a continuing basis would be a proactive party to the Agreement and would respond promptly to issues raised by SJAM. It was envisioned that the Arena Authority would discharge both the oversight role and the tasks of focusing City attention to and support of the critical needs at the Arena as they developed. Indeed, the Audit Report provides listings of Arena Authority duties and accomplishments. We believe, however, there is a considerable risk posed to all parties to the Agreement if the Arena Authority does not and is not permitted to perform the role envisioned for it. These first two and one-half years of operation testify to the wisdom of the City Council in establishing the Arena Authority: the role and function of the Arena Authority must be strengthened and reaffirmed.

In addition, it is important to the proper functioning of the Arena that the City provide:

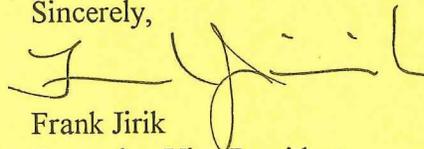
(1) Assurance of maintaining and providing an inventory and supply of the requisite number of off-site parking spaces to serve the Arena and employee parking spaces.

(2) Development and implementation of a program to correct existing design and construction defects and deficiencies in the Arena. SJAM notes the reference(s) in the Audit Report as to these issues, but the report doesn't discuss their resolution or assign responsibility therefor.

(3) Creation of an effective budgeting and review process by which the City, Arena Authority and SJAM can identify items to replace and to upgrade City and Manager Improvements within the Arena. This issue clearly ties both to the resolution of the definitions of Capital Repairs and Replacements and to the present need to plan for the refurbishing and renovation of the Arena in future years.

Once again, we commend the City for producing this Audit Report and stand willing to assist in carrying out its final recommendations.

Sincerely,



Frank Jirik
Executive Vice President
Chief Operating Officer

**OFFICE OF THE CITY AUDITOR'S COMMENTS ON THE RESPONSE
OF THE ADMINISTRATION TO AN AUDIT OF THE SAN JOSE ARENA
MANAGEMENT AGREEMENT**

The following comments are presented to respond to statements in the response of the Administration to *An Audit Of The San Jose Arena Management Agreement*.

Administration's Response - Page 1, Paragraph 5

The City and the SJAMC are reviewing a final proposed agreement with regards to who will be responsible for the off-site traffic control costs resulting from professional sports events. The agreement is expected to be approved within the next 30 days. If needed, an amendment to section 3.03 of the Agreement will be prepared.

Auditor's Comments

We recommend that the City and the SJAMC formalize any agreement regarding off-site traffic control costs resulting from professional sports events and propose an amendment to section 3.03 of the Agreement to ensure consonance between section 3.03 and any forthcoming written agreement.

Administration's Response - Page 2, Paragraph 4

The Administration does not concur that a definition of program operating budget is needed in section 9.02 of the Management Agreement. The intention of requiring the SJAMC to submit to the City a program operating budget was to provide assurance that sufficient funds are allocated to the operation of the facility to maintain the standard of service specified. The budget would provide information on the funding set aside for such operating items as janitorial services, number of ticket takers and other annual expenses that are needed to operate such a facility. The City Manager's Office, coordinating with the Arena Authority, will discuss with the SJAMC the form and content of a budget document that would satisfy this requirement for a program operating budget.

Auditor's Comments

When the City Manager's Office and the Arena Authority meet with the SJAMC to discuss and agree upon the form and content of the program operating budget, this recommendation will be implemented.

Administration's Response - Page 2, Paragraph 6 and Page 3, Paragraphs 1 to 4

The Administration strongly disagrees with this recommendation due to the fact that an environmental compliance and remediation section is included in prior agreements. The Agreement to Enter (construction agreement) spells out the responsibilities in Article III, Environmental Compliance and Remediation. This section survives the completion of the Arena as well as the settlement agreement. Basically, the responsibilities are that San Jose (the City and the Agency) will perform all required remediation and hold the Manager (SJAMC) harmless from any losses or damages that result to the SJAMC or its patrons as a result of toxic conditions existing on the site at the time possession was transferred to SJAMC. The SJAMC is required to remedy toxic conditions it brings to the site and indemnify San Jose for any losses or damages resulting from its bringing hazardous materials to the site.

The Cooperation Agreement, an agreement between the City and the Redevelopment Agency on March 20, 1995, further delineates the responsibilities between the City and the Agency. This provision also survives the termination of the Agency's obligations under the Agreement to Enter.

The Settlement Agreement entered into on July 28, 1994 by the Redevelopment Agency (Agency) and the City of San Jose (City) and the San Jose Arena Management Corporation specifically states that parties are not released from their obligations under Article III of the Agreement to Enter.

The Management Agreement dated October 24, 1991 (Management Agreement) provides for the operation and management of the Arena by SJAMC and was not to replace other obligations in other areas in prior agreements. Since the responsibilities of parties are outlined in the above referenced documents and the purpose of the Management Agreement is for operational and management requirements of the Arena, the Administration does not recommend duplicating these provisions in this document.

Auditor's Comments

The SJAMC expressed a concern to us regarding who is responsible for environmental remediation, particularly as it relates to the two sites the City currently monitors. We feel it would benefit all of the parties involved to have the specific language that addresses the area of environmental remediation placed in the Management Agreement, which is the document that covers the operation and management of the facilities.

APPENDIX A

DEFINITIONS OF PRIORITY 1, 2, AND 3 AUDIT RECOMMENDATIONS

The City of San Jose's City Policy Manual (6.1.2) defines the classification scheme applicable to audit recommendations and the appropriate corrective actions as follows:

Priority Class ¹	Description	Implementation Category	Implementation Action ³
1	Fraud or serious violations are being committed, significant fiscal or equivalent non-fiscal losses are occurring. ²	Priority	Immediate
2	A potential for incurring significant fiscal or equivalent fiscal or equivalent non-fiscal losses exists. ²	Priority	Within 60 days
3	Operation or administrative process will be improved.	General	60 days to one year

¹ The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number. (CAM 196.4)

² For an audit recommendation to be considered related to a significant fiscal loss, it will usually be necessary for an actual loss of \$25,000 or more to be involved or for a potential loss (including unrealized revenue increases) of \$50,000 to be involved. Equivalent non-fiscal losses would include, but not be limited to, omission or commission of acts by or on behalf of the City which would be likely to expose the City to adverse criticism in the eyes of its citizens. (CAM 196.4)

³ The implementation time frame indicated for each priority class is intended as a guideline for establishing implementation target dates. While prioritizing recommendations is the responsibility of the City Auditor, determining implementation dates is the responsibility of the City Administration. (CAM 196.4)

APPENDIX B

**COMPLIANCE REQUIREMENTS
FROM MANAGEMENT AGREEMENT SUBJECT TO AUDIT**

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>ARTICLE II. TERM.</u></p> <p><u>Section 2.01. Term.</u> Promptly following the Possession Date, the parties shall execute and deliver to each other a memorandum specifying the Possession Date and the end of the Shakedown (45 days after the Possession Date).</p>		X			See page 13 of this report.
<p><u>ARTICLE III. APPOINTMENT AND GENERAL AUTHORITY OF MANAGER.</u></p> <p><u>Section 3.03. NBA Or Other Professional Sports Team.</u> Manager shall not enter into an agreement with a National Basketball Association ("NBA") team or other professional sports team for use of the Arena as a regular home game facility without City's prior written approval,</p>		X			See page 13 of this report.
<p>If Manager proposes any professional sports team other than those referred to in the preceding paragraph above, City may negotiate with Manager for City to receive additional payments from Manager under this Management Agreement to recover additional costs to City incurred by City in performing its obligations hereunder or resulting directly or indirectly from the use of the Arena by such other professional sports team, notwithstanding any other provision of this Management Agreement to the contrary, and City may withhold or condition its approval of any agreement for use of the Arena by such other professional sports team on additional payments to City for recovery of such additional costs to City to the reasonable satisfaction of City.</p>				X	The City and the SJAMC have reached a verbal agreement on the costs associated with off-site security for the Rhinos, Grizzlies, and the first year of the Sabercats. The SJAA anticipates that the verbal agreement, along with other pending issues, will be resolved through a written agreement at a later date.
<p><u>ARTICLE IV. DUTIES OF MANAGER.</u></p> <p><u>Section 4.01. In General.</u> . . . Manager shall undertake and perform the following services and responsibilities to the extent they are reasonably necessary and appropriate, consistent with the terms and purposes of this Management Agreement, the City Policies and Guidelines . . . :</p>					
4. Development of equipment inventory systems;	X				
15. Preparation of operating manuals;	X				
16. Development of accounting systems and controls;	X				
Subtotal	3	2	0	1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
19. Computer software and systems development;	X				
21. Development of Arena Facilities security and crowd control plan;	X				
22. Development of preventive and major maintenance plan;	X				
23. Preparation of maintenance reporting systems.	X				
<u>Section 4.02. Operating Performance Standards.</u> Manager shall require by contract that all contractors operating in the Arena Facilities under Manager operate to the Applicable Standard, and shall enforce such requirement against all contractors.	X				
Manager agrees to employ, as its chief operating executive in charge of Arena management, a person and/or firm experienced in the management of comparable major arenas defined under the Applicable Standard. Prior to any such employment, the City shall be informed of the person and/or firm selected. The City shall have the right to approve the selection of the person and/or firm in charge of management and operations of the Arena Facilities, which approval shall not be unreasonably withheld.	X				
<u>Section 4.03. Limitation On Term Of Leases, Licenses, Contracts And Commitments; Notices Of Events.</u> In addition, prior written approval of City, which shall not be unreasonably withheld or delayed, shall be required for the following, except as to such categories of such matters as City shall exempt in writing from its approval rights, from time to time:					
A. All contracts with Affiliates.	X				
B. Any contracts in which George Gund III has a controlling interest in any party to such contract (excluding Manager and Sharks).	X				
Subtotal	8				

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
City shall have the right to pre-approve the persons and/or firms on such list prior to Manager soliciting proposals for qualified concessionaires and service contractors for the principal contracts. City's approval of each person and/or firm on such lists shall not be unreasonably withheld or delayed. City's approval shall be based on the reputation, experience and ability of listed parties to perform the tasks to be contracted to them in accordance with the Applicable Standard. If the City disapproves some persons and/or firms on the lists, all persons and/or firms not disapproved shall be deemed approved.	X				
<u>Section 4.08. Maintenance Standard.</u> Manager shall maintain the Arena Facilities, and any improvements thereto in accordance with maintenance standards equal to or exceeding the Applicable Standard.	X				See discussion on the consultant the City has hired to review the area of maintenance at page 42 of this report.
Manager shall prepare and submit to City a detailed annual programmatic maintenance budget for the Arena Facilities and furnishings, fixtures and equipment for City's review for compliance with the provisions of this Section 4.08. The annual programmatic maintenance budget shall be accompanied by a detailed maintenance performance audit prepared by Manager (and also by City if City has prepared such an audit) setting forth the status of maintenance items for the Arena Facilities and furnishings, fixtures and equipment budgeted for in the budget for the immediately preceding annual period.		X			See page 15 of this report.
<u>Section 4.09. Security and Security Personnel.</u> City shall be responsible for off-site security, including off-site traffic control; provided, however that any extraordinary crowd control or security (excluding that needed to control political speech) for the protection of persons and property necessitated by events held at the Arena shall be paid for by Manager on a nondiscriminatory basis charged by City for extraordinary crowd control for other events or as the parties may agree from time to time. City and Manager agree to coordinate planning event traffic, traffic control, crowd control and other security issues from time to time. City and Manager will each designate a liaison for purposes of such coordination.	X			X	As of July 28, 1994, the SJAMC is now responsible for the off-site traffic control, as stated in the Off-Site Traffic Control Agreement, included as Exhibit A in the Settlement Agreement.
Subtotal	3	1		1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>Section 4.11. Consultation Regarding Prices.</u></p> <p>Manager shall regularly and from time to time report to and consult with City in connection with Manager's establishment of prices for food and beverages and parking, and rates and charges for Community Events or City Events.</p>				X	Since the opening of the Arena, the prices for food, beverages, and parking have remained constant, regardless of the type of event.
<p>Except as provided in Sections 18.01 and 4.16, Manager shall not permit the use of the Arena without requiring the user or its sponsor to pay for reasonable costs and expenses, without the prior approval of City.</p>	X				
<p><u>Section 4.12. Compliance With Laws by Manager.</u></p> <p>. . . Manager shall obtain and keep in full force and effect all permits and licenses and other authorizations required for the use and operation of the Arena Facilities except that Manager shall have no obligation with respect to licenses or permits required or related to the use of the Arena Facility by the Arena Authority.</p>	X				
<p>Manager shall comply with prevailing wages and hiring requirements as set forth in Attachments 9 and 10.</p>		X			See page 16 of this report.
<p><u>Section 4.13. Compliance with Contemporary Community Standards.</u></p> <p>City and Manager agree to meet and confer from time to time for purposes of developing and maintaining effective alcohol management, noise and crowd control programs.</p>	X				
<p><u>Section 4.16. City Events.</u></p> <p>. . . Manager agrees that it will use its reasonable best efforts to provide up to ten (10) Event Dates annually for City Events. Manager shall be reimbursed for actual out-of-pocket expenses which may be incurred for set-up, dismantling, cleaning, event staff and other expenses over and above normal operation and maintenance of the Arena. City Events shall be subject to Manager's standard insurance minimum requirements and licensing requirements consistent with the foregoing.</p>	X				
Subtotal	4	1		1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>ARTICLE VI. ARENA FEES.</u></p> <p><u>Section 6.01. Arena Fees.</u></p> <p><u>A. Fixed Fee.</u> Commencing the first day following the earlier of (1) the end of Shakedown, or (2) the holding of the first event in the Arena (other than a City Event), Manager shall pay in advance on such date and on each August 1 thereafter, and City agrees to receive, the following fixed fee in U.S. dollars on a yearly basis (the "Fixed Fee"):</p> <p>Term Year 1-6: \$500,000.</p>	X				
<p><u>B. Revenue Share.</u></p> <p>1. Commencing with the beginning of the fourth (4th) Hockey Season following the earlier of Shakedown or the holding of the first event in the Arena, twenty percent (20%) of Luxury Suite Net Revenue (as defined in Section 6.02 thereof) attributable to the sale or rental of Luxury Suites (not including any Excluded Suites). Said amount shall be payable and remitted to City in an estimated amount beginning August 1, 1996, and on each August 1 thereafter, based on Manager's reasonable estimate, with supporting explanation satisfactory to City, of the actual amount which will be payable for such year.</p> <p>Not later than fifteen (15) days following the end of each Term Year for which payment is due, Manager shall determine and document to the satisfaction of City the actual amount due for such year and, if such amount exceeds the estimated payment, shall immediately pay the amount due to City. If such actual amount due is less than the estimated payment, the amount of such overpayment shall be deducted from any amounts thereafter owing from Manager to City, . . .</p> <p>Manager agrees to structure Suite leases equitably so that City's share of Luxury Suite Net Revenue is never less than the average annual amount over the lease term.</p>			X		
			X		
Subtotal	1		3		

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
If a Luxury Suite lease covers a period before and after the third anniversary of the Arena Fee Commencement Date, Luxury Suite Net Revenue shall be allocated so that a pro rata portion of it is allocated to the period after such third anniversary, even if paid earlier by suite holders; provided that any allocation shall be evenly distributed for each year of the Luxury Suite lease.			X		
2. Commencing on the date of this Management Agreement, City's share of Building Naming Net Revenue.				X	On July 28, 1994, a settlement agreement was entered into which states that the "SJAMC and Sharks understand and acknowledge that the City and Agency have no intention of selling the building name and the Arena will continue to be called the San Jose Arena." This is no longer a compliance item.
3. Commencing with the beginning of the eleventh (11th) Hockey Season, Allocated Hockey Gross Ticket Revenue (as defined in Section 6.04 hereof). Said amount shall be payable to City in an estimated amount on the first day of August of the eleventh Hockey Season and on each August 1 thereafter, based on Manager's reasonable estimate, with supporting explanation, of the actual amount which will be payable for such year. Not later than fifteen (15) days following the end of each Term Year for which payment is due, Manager shall determine and document to the satisfaction of City the actual amount due for such Term Year and, if such amount exceeds the estimated payment, shall immediately pay the amount due to City.			X		
Section 6.02. Luxury Suite Net Revenue. Luxury Suite Net Revenue . . . shall mean proceeds from sales or rentals of Luxury Suites (prorated annually, in an equal amount attributable to each year of such sale or rental, in the case of proceeds received for more than one year) less:			X		
Subtotal			3	1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
(a) Amounts included in such proceeds representing the price of hockey tickets included as part of the sale or rental package (provided that for purposes of this deduction, the price for such hockey tickets shall not exceed the highest price charged for the sale of such tickets other than as part of a luxury suite or club seat package), and			X		
(b) Luxury Suite Costs. Luxury Suite Costs shall, as applicable, for all Luxury Suites, including the following:			X		
(a) All of Manager's and Sharks' "Hard Costs" and "Soft Costs" (as defined in Attachment No. 6 of the Agreement to Enter), attributable to the build out of the Sky Boxes or upgrade of finishes in the Concourse Boxes, as determined, amortized over twelve (12) years on a level payment basis at the greater of 10.25% per annum, simple interest, or the rate per annum, plus interest, actually charged by a lender advancing funds for purposes of such build-out, such amortization to be determined as if it commenced on the first day of August of the fourth Hockey Season, regardless of when the costs were actually incurred or the actual period during which such costs are amortized . . .			X		
(b) Hard and Soft Costs to Manager or Sharks of major repairs, replacements, and refurbishments amortized based in accordance with generally accepted accounting principles			X		
(c) Reasonable commissions not exceeding amounts actually paid to salespersons; provided such commissions do not exceed those customarily paid by arenas meeting the Applicable Standard.			X		
Subtotal			5		

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>Section 6.04. Allocated Hockey Gross Ticket Revenue.</u></p> <p>Average Annual Hockey Revenue shall mean the average of the revenue from gross hockey ticket sales (gross paid admission receipts subject to Section 6.05 including any service charge for the privilege of purchasing a ticket, but not including service charges paid to third parties or amounts allocated with respect to club privileges), less applicable taxes included in ticket prices for all pre-season, regular season (but not all-star), post-season, playoff and championship hockey home games held or required to be held in the Arena (including hockey tickets located in suites or Club Seats but excluding any complimentary, promotional sponsorship tickets which do not generate revenue to Manager or Sharks) for the two regular seasons immediately preceding the beginning of the year at issue to the extent Manager or an Affiliate receives revenue proceeds from ticket sales for such events. Manager, Sharks or an Affiliate shall be deemed to have received revenue proceeds from ticket sales notwithstanding any arrangement or requirement with the NHL or other teams to share in such revenues, it being the intent of this provision to include all gross paid admission receipts received from hockey Home Games without regard to who is entitled to receive the proceeds from such receipts. Commencing with the beginning of the eleventh (11th) Hockey Season Manager shall annually pay to City the greater of \$1,000,000 or five percent (5%) of the Average Annual Hockey Revenue, which amount is referred to as the "Allocated Hockey Gross Ticket Revenue."</p>			X		
<p>Average Annual Hockey Revenue shall be calculated on the basis of sale of tickets for 15,000 seats regardless of the number of such tickets actually sold.</p>			X		
Subtotal			2		

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>ARTICLE VII. FACILITY IMPROVEMENTS.</u></p> <p><u>Section 7.02. Capital Repairs, Replacements and Improvements.</u></p> <p><u>A. Capital Repair and Replacement.</u> A Capital Budget shall be prepared by Manager for City's approval in accordance with the next paragraph.</p>		X			See page 18 of this report.
<p>Prior to November 1, of each calendar year, Manager shall prepare and submit to City for its approval a preliminary budget for the following fiscal year which reasonably itemizes and estimates the cost of all Normal Capital Repairs and Replacements and Parking Capital Repairs and Replacements.</p> <p>The preliminary budget shall include an estimate of the Normal and Parking Capital Repairs and Replacements that will be required over the next 3-5 fiscal years and the estimated cost thereof, but such estimates shall not be subject to approval and shall not constitute part of the Capital Budget.</p> <p>To the extent that Extraordinary Capital Repairs and Replacements can be projected or are currently required, the preliminary budget shall describe, itemize or estimate and include the costs.</p> <p>City shall review and approve the preliminary budget, which approval shall not be unreasonably withheld or delayed.</p>		X			See page 18 of this report.
<p>The Capital Budget shall not exceed the Reserve Fund balance that will be available to pay for budgeted amounts, and neither party shall be required by the other or by an arbitration award to make additional deposits to the Reserve Fund or pay for budgeted items from its separate funds without its prior written consent, which may be withheld in its sole discretion.</p>		X			
<p>The preliminary budget, as and when approved by City (including any agreed to revisions by City or required by an arbitrator) shall constitute the Capital Budget.</p> <p>Manager may not make any Capital Repairs and Replacements, other than Emergency Capital Repairs and Replacements or as provided in Section 23.04F, that are not included in the Capital Budget or not otherwise approved in advance in writing by City.</p>	X	X			See page 18 of this report.
Subtotal	1	7			

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<u>B. Capital Repairs and Replacements; Reserve Fund.</u>					See page 18 of this report.
1. <u>Definitions.</u> "Capital Budget". . . Manager shall take steps reasonably necessary to submit a final budget to City by March 1 of each year.		X			
2. <u>City Obligations Years 1-10.</u> In years 1 through 10 of the Management Term following the Possession Date, City shall deposit, within ten (10) days after the Possession Date, and thereafter by July 10 of each year, \$200,000.00 per year as a reserve (the "Reserve Fund") for City-approved Normal Capital Repairs and Replacements, and for Parking Capital Repairs and Replacements...	X				
Extraordinary Capital Repairs and Replacements shall be the responsibility of City. Costs of Normal Capital Repairs and Replacements or the Parking Capital Repairs and Replacements described above in excess of the amount on hand in Reserve Fund shall be paid for by Manager; provided that Manager shall be entitled to recover said costs from future Reserve Fund deposits; . . .				X	To date, no extraordinary capital repairs and replacements have occurred.
				X	To date, no money has been expended for normal and parking capital repairs and replacements.
City shall have no responsibility for costs of Normal Capital Repairs and Replacements or the Parking Capital Repairs and Replacements described above except as from the Reserve Fund contributions required by City hereunder or those otherwise agreed to in writing by City.	X				
Any monies in the Reserve Fund (including interest earnings) not spent in any given year shall remain in the account and constitute part of the Reserve Fund without affecting City's obligation to fund annually the Reserve Fund.	X				
3. <u>Years 11 and Beyond.</u> In addition to its payments to City under Article VI hereof, commencing in the eleventh (11th) year of the Management Term following the Possession Date, Manager shall fund the Reserve Fund by annually depositing to the account on the first day of the eleventh (11th) Term Year and on each annual anniversary date thereafter including any Extension Term (or at such other times during each year as City shall approve in writing) an amount equal to the greater of:			X		
Subtotal	3	1	1	2	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p>(i) Two Hundred Fifty Thousand Dollars (\$250,000), or</p> <p>(ii) Two percent (2%) of the Average Annual Hockey Revenue applicable to such year determined as provided in Section 6.04 hereof. This Reserve Fund deposit shall be in addition to, and shall not diminish, the amount of revenue payable to City pursuant to Section 6.04 hereof.</p> <p>At all times after Term Year 10, this Reserve Fund shall be under the control of Manager but shall only be spent in accordance with and on items in the Capital Budget as approved in accordance with Section 7.02, or as approved by City or as provided in paragraph B.5 below.</p> <p>Manager, at its sole cost and expense, shall provide reasonable periodic (not less often than quarterly) accounting of the account to City. All moneys in the Reserve Fund, including Interest earned thereon, if any, shall remain in the account and constitute part of the Reserve Fund even after termination of this Agreement.</p>			X		
<p>ARTICLE VIII. BANK ACCOUNTS.</p> <p>Section 8.01. In General.</p> <p>Manager shall establish an interest bearing account in a financial institution in the City of San Jose, ...that shall be known and designated as the "Operating Account".</p> <p>Manager shall also establish a separate, segregated interest bearing account in a financial institution in the City of San Jose that shall hold the Reserve Fund described in Section 7.02.</p>	X		X		
Subtotal	1		5		

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>Section 8.02. Ticket Account.</u></p> <p>On or before the Possession Date, Manager shall establish one trust or escrow account with the ticket agency or agencies that will sell tickets to Arena events to the public (the "Ticket Account"). Using receipts from the sale of the first tickets sold for events at the Arena (other than Hockey) Manager shall deposit and maintain in the Ticket Account an amount equal to the gross receipts that would be received from the sale of all tickets to one Arena event, such as a rock concert or family show, assuming the tickets are priced in accordance with the industry standard for such events and the event is sold out, but excluding any tickets attributable to seats in Executive Suites. The Ticket Account shall be held in a financial institution in the City of San Jose in a form such that it would not be part of the bankruptcy estate of either Manager or the ticket agency. The principal and interest in the Ticket Account shall be Manager's property, the interest shall be paid to Manager not less often than quarterly, but the principal shall not be withdrawn during the Management Term without the written consent of City and the ticket agency.</p>		X			See page 25 of this report.
<p><u>Section 8.03. Bank Account, Records and Reports.</u></p> <p>Manager shall make available to City for inspection and copying, at Manager's expense and at Manager's business, originals of all bank statements concerning the Reserve Fund and Ticket Account.</p>			X	X	To date, the Ticket Account has not been opened; therefore, the SJAMC is unable to implement this requirement.
<p><u>ARTICLE IX. BUDGETS AND FISCAL YEAR</u></p> <p><u>Section 9.02. Annual Budgets.</u></p> <p>Manager, at its sole cost and expense, shall prepare and provide to City for its prior review (or approval, as to certain matters where expressly required under this Management Agreement), in form reasonably satisfactory to City, a separate program operating budget, a maintenance budget described in Section 4.08, and a detailed line-item facility improvements budget for Capital Enhancements each fiscal year during the term of this Management Agreement after the Possession Date.</p>		X			See page 27 of this report.
<p>The initial budgets for the fiscal year shall be those submitted to and reviewed (or approved, as required) by City 90 days after the Possession Date.</p>		X			See page 27 of this report.
Subtotal		3	1	1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
Thereafter, the maintenance budget shall be submitted no later than March 1 preceding commencement of each fiscal year and the program operating and facility improvements budgets shall be submitted to City no later than May 31, preceding the commencement of each fiscal year.		X			See page 27 of this report.
All changes, modifications or adjustments to the program operating budget, maintenance budget and facility improvements budget during any fiscal year shall be made only upon prior approval of City.				X	To date, no budgets have been submitted to the City for approval; therefore, this requirement cannot be satisfied at this time.
<p><u>ARTICLE X. ACCOUNTING RECORDS AND AUDITS.</u></p> <p><u>Section 10.01. Accounting, Records and Reports.</u></p> <p>The systems and procedures used to maintain these records shall also include a system of internal controls which is in accordance with sound business procedures but shall be divided between the activities and operations in which the City has a direct financial interest ("City Related Accounts") and the activities and operations in which the City has no direct financial interest. The City Related Accounts are the Reserve Fund, the Ticket Account, expenditures described in the maintenance and Capital Enhancements budgets described in Section 9.02, and all items of income and expenditure that are used to calculate Building Naming Revenue, Luxury Suite Net Revenue and Allocated Hockey Gross Ticket Revenue (after the eighth anniversary of the Possession Date only). The systems and procedures which maintain City Related Accounts shall also include a system of internal controls which is in accordance with sound business procedures which Manager shall describe to City on request.</p>			X	X	The only City-related accounts where a system of internal controls is currently required are the ticket account and the expenditures described in the maintenance and capital enhancement budgets. As noted earlier, the SJAMC is out of compliance in those areas. See discussion regarding our review of its system of internal controls on page 28 of this report.
Should the financial records be maintained on a computerized system, Manager shall provide City with access, during normal business hours upon reasonable notice, to City Related Accounts and all reports on them generated by the computerized system.		X	X		As noted earlier, the SJAMC is currently out of compliance regarding the City-related accounts. Therefore, this requirement cannot be satisfied at this time. See page 28 of this report.
Manager shall provide City with detailed reports and records relating to City Related Accounts on a monthly basis.		X	X		As noted earlier, the SJAMC is currently out of compliance regarding the City-related accounts. Therefore, this requirement cannot be satisfied at this time. See page 28 of this report.
Subtotal		3	3	2	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
The reports on and accounting of City Related Accounts must be set up so that the City can establish an audit trail for all income and expenses affecting City Related Accounts.		X	X		As noted earlier, the SJAMC is currently out of compliance regarding the City-related accounts. Therefore, this requirement cannot be satisfied at this time. See page 28 of this report.
<p><u>Section 10.02. Annual Financial Statements.</u></p> <p>For each fiscal year during the term of this Management Agreement, Manager shall cause to be prepared, at Manager's sole cost and expense, statements of income and expense for City Related Accounts for such fiscal year, accompanied by an opinion thereon which shall not be disclaimed (the "Audit Report") of a Certified Public Accountant licensed to practice in California ("Auditor") to be selected by Manager, subject to reasonable approval by City, and a statement with respect to the calculation of City Related Accounts for such fiscal year, accompanied by a certificate from the Auditor that the calculation of City Related Accounts is fairly presented in accordance with the terms and provisions of this Management Agreement (the "City Income Report").</p>		X	X		As noted earlier, the SJAMC is currently out of compliance regarding the City-related accounts. Therefore, this requirement cannot be satisfied at this time. See page 30 of this report.
<p>Manager shall secure from the Auditor its customary agreement to provide, upon reasonable request, copies of its audit work papers to City or its authorized representatives.</p> <p>The Audit Report and the City Income Report shall be delivered directly to City by the Auditor within 90 days of the close of each fiscal year and shall be the basis for the reconciliation of the Arena Fee as set forth in Sections 6.01.B.1 and 6.01.B.3 hereof.</p>				X	<p>Since the SJAMC has not contracted with an accounting firm to perform the required services, this requirement is not applicable at this time.</p> <p>As noted earlier, the SJAMC is currently out of compliance regarding these items. Therefore, this requirement cannot be satisfied at this time. See page 30 of this report.</p>
Subtotal		3	3	1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>Section 10.03. Inspection and Audit Rights.</u></p> <p>In addition to the foregoing, City shall have the right, for a period of three years following the delivery of an Audit Report and City Income Report, at Manager's cost and expense (but excluding compensation paid to City employees or City consultants),... to inspect for the purpose of audit all financial and other records of Manager concerning its management and operation of the Arena Facilities pertaining only to City Related Accounts for the period covered by such Audit Report and City Income Report.</p>			X	X	To date, the SJAMC has not submitted any audit report to the City. Therefore, the City cannot exercise its right to inspect the SJAMC's records at this time.
<p><u>Section 10.04. Access to Records.</u></p> <p>Notwithstanding anything to the contrary herein, City shall have the right, at Manager's cost and expense (but excluding compensation paid to City employees or City consultants) during normal business hours, and upon reasonable notice, to inspect all financial records and supporting documentation pertaining only to any City Related Account and any other records of Manager reasonably and directly necessary for City's administration of its specific rights of review, approval or enforcement by this Management Agreement.</p>			X	X	To date, the only City-related accounts that the City could inspect would be the ticket account, which the SJAMC has not established, and the expenditures included in the required budgets, which the SJAMC has not submitted. Therefore, this compliance item is not applicable at this time.
<p>To the extent it is able to do so with applicable requirements of law, City shall ensure the confidentiality of all records it receives that reflect Manager's or Sharks' business performance to the reasonable satisfaction of Manager and Sharks. Manager and Sharks may limit the City's possession of (but not access to and inspection of) records and data to which City is otherwise entitled hereunder if their confidentiality in the City's possession is not maintained by City consistent with applicable requirements of law.</p>				X	To date, the City has not received records or data where this requirement applies.
Subtotal			2	3	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>ARTICLE XI. INSURANCE.</u></p> <p><u>Section 11.01. General Requirements.</u></p> <p>To the extent available on reasonably prudent business terms, Manager (or, upon Manager's written request, City at Manager's expense) shall procure and maintain in full force and effect during the term of this Management Agreement, policies of insurance containing not less than the coverages set forth in Attachment No. 5,</p>		X			See discussion on the compliance of each specific insurance requirement beginning on page 22 of this Appendix.
<p>Manager shall cause its tenants, concessionaires, service contractors and others using or performing work or services in or about the Arena Facilities to procure and maintain policies of insurance with the same coverages (but not necessarily the same amounts, in Manager's reasonable judgment) as set forth in Attachment No. 5.</p>		X			See page 31 of this report.
<p>Said policies shall name City, Agency, Arena Authority and Manager and its Affiliates, and their respective officers, agents and employees, as additional Insureds.</p> <p>The policies of insurance will provide that the insurer will not cancel coverage of any named insured without at least thirty (30) days prior written notice to City.</p> <p>Manager shall provide City evidence of the required insurance, such evidence to be in a form and amounts reasonably satisfactory to City.</p>		X			See page 31 of this report.
<p><u>Section 11.02. Property Insurance.</u></p> <p>During the Management Term, City shall maintain a property insurance policy insuring the Arena Facilities for 100% of their replacement value (all-risk policy with a rider including boiler (and flood if obtainable at no extra cost) coverage, and a deductible amount of no more than \$100,000) excluding foundations and excavations and naming Manager or Sharks as named insureds.</p>	X				
<p>City shall provide Manager with copies of insurance policies obtained pursuant to this Section 11.02, and shall be in forms and with carriers reasonably satisfactory to Manager.</p>		X			See page 32 of this report.
Subtotal	1	6			

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
The policies of insurance shall provide that the insurer shall not cause any coverage to be cancelled or amended without thirty (30) days prior written notice to Manager and Sharks, and that Manager and Sharks will receive copies on all correspondence affecting the property insurance for the Arena Facilities.	X				
Notwithstanding the foregoing, City may self-insure any obligations hereunder only upon proof to the reasonable satisfaction of Manager that sufficient funds will be available for repair or replacement of all self-insured losses. Manager may elect to purchase a separate property insurance policy for Manager's Improvements, in which event City shall delete the Manager's Improvements from the policy required hereunder.				X X	Self-insuring is not applicable. The City has a property insurance policy with Arkwright Mutual Insurance Company. The SJAMC has always carried property insurance for the improvements it made to the Arena; therefore, this item is not applicable.
At Manager's request, City shall to the extent possible add to the property insurance policy described herein at Manager's expense (or if self insuring, add to the amount which would be paid in the event of a self insured loss) business income insurance or coverage in an amount specified by Manager, which shall insure the business losses of Manager and/or Sharks in the event of damage to the Arena Facilities.	X				
City shall bill Manager for the increase in the premium payable by City for such business income insurance, including a copy of the invoice or statement of City's insurer and a calculation of the amount owing by Manager and Manager shall pay such amount within thirty (30) days of receipt, but no more than ten (10) days prior to the date the premium is due.		X			See page 32 of this report.
If City or Agency is required to maintain earthquake insurance for the replacement cost of the Arena Facilities in conjunction with any financing of the Arena Facilities by City or Agency, it shall do so in accordance with applicable financing documents. Otherwise, Manager shall have the option to purchase at its cost and maintain (or cause the Sharks to purchase and maintain on behalf of Manager) earthquake insurance for the Arena Facilities in the amount of \$30 million. Such policy shall name City and Sharks as named insureds, and contain the lowest industry standard deductible amount.	X			X	According to Risk Management, the financing documents do not require the City or the Agency to obtain earthquake insurance for the Arena; therefore, this requirement is not applicable.
Subtotal	3	1		3	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
City shall be obligated to pay the standard deductible amount up to a maximum of \$4 million based on earthquake insurance of \$30 million; provided, if Manager fails to obtain earthquake insurance of \$30 million, City's obligation to pay the standard deductible amount shall be proportionately reduced.	X				
<p><u>ARTICLE XV. ARENA PARKING FACILITIES AND OFF-SITE PARKING</u></p> <p><u>Section 15.01. On-Site Parking.</u></p> <p>Subject to the provisions of Section 2.03 of the Agreement to Enter, the City and Agency have agreed to provide a minimum 2,100 parking spaces at the Arena Parking Facilities (referred to herein as "on-site" spaces), with approximately 1,800 spaces to be available on Arena opening, and the balance of the 2,100 spaces to be made available as soon as possible, but in no event later than three years after the Possession Date. The 1,800 spaces may include the approximately 76,000 square feet adjacent to or across the street as more specifically provided in Section 2.03 and Attachment No. 4 of the Agreement to Enter.</p>				X	When the Arena opened, there were 1,664 on-site parking spaces. The Settlement Agreement, dated July 28, 1994 states, "Agency and City are fully released from any and all obligations to provide the Final Parking and/or any obligation to provide additional On-Site Parking facilities arising from the Agreement to Enter beyond the On-Site Parking presently developed."
So long as the site referred to in the previous sentence is used for Interim Parking, Manager shall pay to City \$100,000 annually commencing on the later of August 1, 1993 or the Possession Date, and on each anniversary thereafter.	X				
Beginning on the first anniversary date, and each year thereafter, the \$100,000 fee for the site shall be increased by 5% per annum.	X				
On Non-Event Days, but only to the extent available, City may reasonably use at no cost to City Arena Parking Facilities for Convention Center overflow or other City parking; provided that such use shall not interfere with the Sharks or other Arena events. City shall be responsible for any liability resulting from such use and for all costs of security and clean up.	X				
<p><u>Section 15.02. Off-Site Parking.</u></p> <p><u>A. Spaces For Patrons.</u> City shall make available for use by patrons of Arena events as needed on all Event Days, at City's cost if necessary, certain off-site parking facilities after 6:30 p.m. on weekdays and a reasonable time before, during and after events on weekends as described below (the "Off-Site Parking Facilities").</p>	X				
Subtotal	5			1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p>The Off-Site Parking Facilities may include available on-street parking spaces and off-street parking lots or garages owned by the City, Agency, or third parties. City will actively pursue reasonable best efforts to achieve and maintain at least 6,350 parking spaces at the Off-Site Parking Facilities (referred to herein as the off-site parking spaces) consistent with the TPMP will be available for Arena patrons within one-half mile of the West Santa Clara entrance to Arena, of which approximately half of such spaces will be within one-third mile of the West Santa Clara entrance to the Arena. City will take reasonable best efforts to secure approximately one-half of the 6,350 spaces within one-third mile of the West Santa Clara entrance to the Arena.</p> <p>Upon City and Agency making available the balance of the 2,100 on-site spaces in accordance with the Agreement to Enter and there are at least 3,175 off-site spaces available within one-third mile of the West Santa Clara entrance to the Arena, the requirement of off-site spaces within one-third mile of the Arena will be reduced on a space for space basis to the extent on-site spaces exceed 1,800.</p>	X				<p>On December 7, 1994, the Department of Streets and Parks conducted an inventory of off-site parking. The inventory showed that the off-site parking requirements are being met. The SJAMC concurs with the inventory taken.</p> <p>The Settlement Agreement entered into on July 28, 1994, states, "Agency and City are fully released from any and all obligations to provide the Final Parking and/or any obligation to provide additional On-Site Parking facilities arising from the Agreement to Enter beyond the On-Site Parking presently developed." Given this provision of the Settlement Agreement, this requirement is no longer a compliance item.</p>
<p>City may replace or substitute particular spaces within each radius from time to time as necessary so long as the total spaces available continue to exceed the above-stated 3,175 and 6,350 space minimums.</p>	X				
Subtotal	2			1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>B. Spaces for Arena Employees.</u> In addition to the Off-Site Parking Facilities, City shall provide based on demonstrated need by Manager, on all Event Days, 150 spaces for Manager's, Manager's concessionaires' and the event promoter's, employee parking as needed at a reasonable time before, during and after events, and an additional 150 spaces after 6:00 p.m.</p> <p>All such employee parking spaces shall be within one-third mile of the Arena or a shuttle service shall be provided.</p> <p>City shall use reasonable good faith efforts to provide up to an additional 100 employee parking spaces for use by Manager, Manager's concessionaires and event promoters employees within a reasonable distance of the Arena Facilities at no cost to the Manager, Manager's concessionaires and event promoters or any employee.</p> <p>All employee parking provided by the City on Event Days will be strictly limited to use by Arena employees only. During non-event periods, Manager shall provide employee parking in On-Site Parking Facilities.</p>	X				
<p>All such employee parking spaces shall be within one-third mile of the Arena or a shuttle service shall be provided.</p>	X				
<p>City shall use reasonable good faith efforts to provide up to an additional 100 employee parking spaces for use by Manager, Manager's concessionaires and event promoters employees within a reasonable distance of the Arena Facilities at no cost to the Manager, Manager's concessionaires and event promoters or any employee.</p>	X				
<p>All employee parking provided by the City on Event Days will be strictly limited to use by Arena employees only. During non-event periods, Manager shall provide employee parking in On-Site Parking Facilities.</p>	X				
<p><u>Section 15.04. Responsibilities of City and Manager.</u></p> <p>The City shall provide adequate, off-site traffic control (including a signalization control program and traffic officers) at the City's expense. Manager and City shall consult and act reasonably to monitor performance of the TPMP and to periodically revise and modify the TPMP with the common objective of providing the most effective use of the Arena Parking Facilities and Off-Site Parking Facilities during Arena events. Such effective use will account for the adequacy of the parking supply, vehicular ingress and egress movements for Arena patrons, and pedestrian movements.</p>	X				
Subtotal	5				

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>ARTICLE XVIII. CITY OFFICE SPACE.</u></p> <p><u>Section 18.01. Space for City and Arena Authority Personnel; Hall of Fame.</u></p> <p>Manager shall at all times after the opening of the Arena and during the Management Term, and any extension thereof, maintain with full services, at no cost to City, permanent dedicated office space in the Arena for, and permit access to such space by, officers, employees, agents and other authorized persons of City to use such space not as permanent office space, but on an as needed basis, in connection with meetings and other events from time to time conducted by City, in the location shown on plans for the Arena approved by City.</p> <p>Said office space shall be constructed by Agency and shall include approximately one thousand five hundred (1,500) square feet consisting of conference, office and rest room space.</p>				X	<p>The Management Agreement states that ". . . permanent dedicated office space in the Arena for, and permit access to such space by, officers, employees, agents and other authorized persons of City to use such space not as permanent office space, but on an as needed basis," The SJAA determined that it could perform its duties more efficiently and effectively by having permanent office space in the Arena. Therefore, the SJAA, the City, and the SJAMC entered into a Construction and Payment Agreement. The Agreement stated that the SJAA would have an 800-square-foot space for permanent office space in exchange for giving up the remaining 700-square feet to the SJAMC. Additional meeting space is provided on an as-needed basis. Based on the above information, this section of the Management Agreement has been superseded and this item is no longer a compliance item.</p>
<p><u>ARTICLE XIX. LUXURY SUITES AND COMPLIMENTARY PASSES AND TICKETS.</u></p> <p><u>Section 19.01. Luxury Suites.</u></p> <p>In addition to the fees set forth in Article 6 and as additional consideration hereunder, Manager shall provide to the City a Luxury Suite in the concourse level of the Arena at no charge to City. The suite shall be in a mutually acceptable location for viewing all events (Suite C-11) and shall include at no cost to City, tickets for each seat in the Luxury Suite for each Event Day in the Arena.</p>	X				
Subtotal	1			2	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<p><u>Section 19.02. Complimentary Passes And Tickets To City.</u></p> <p>To the extent possible, as additional consideration and in addition to those provided in Section 20.01, in all contracts and agreements with a lessee, licensee or user of the Arena for an event requiring a pass or ticket for admission, Manager shall require and include a provision that the lessee, licensee or user shall provide City, for civic purposes, without charge, sixteen (16) passes or tickets for each Event Day at the Arena as the case may be.</p>	X				
<p>The passes or tickets for each Event Day in the Arena shall be in prime locations for the event. All such passes or tickets shall be provided directly to City by Manager and shall be distributed by City for civic purposes in accordance with the City's ticket distribution policy as set forth in the agreement between the City and Arena Authority.</p>	X				
<p><u>Section 19.03. Parking Passes.</u></p> <p>Manager shall provide City, at no charge, sixteen (16) on-site "all event" parking passes together with the tickets provided in Section 20.02 and with the four (4) "all event" on-site parking passes with the Luxury Suite provided in Section 20.01.</p>	X				
<p><u>Attachment No. 5</u></p> <p><u>Insurance Requirements</u></p> <p>Manager, at Manager's sole cost and expense and for the full term of this contract or any renewal thereof, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any operations or occupying any space under this contract:</p> <p>A. A 1986 ISO COMMERCIAL GENERAL LIABILITY policy or its equivalent and, if necessary, an umbrella or excess policy or policies liability with a minimum limit of not less than \$25,000,000 combined single limit for bodily injury and property damage, providing at least all of the following minimum coverage (without deductibles except deductibles are permitted in standard NHL policies):</p>	X				
<p>1. Premises Operations</p>	X				
<p>Subtotal</p>	5				

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
2. Premises Medical					
a. Minimum limit of \$5,000/\$25,000	X				
3. Blanket Contractual	X				
4. Products/Completed Operations	X				
5. Broad Form Property Damage	X				
6. Personal and Advertising Injury and Liability	X				
7. Fire Legal Liability with a minimum limit of \$100,000	X				
8. Liquor Legal Liability with a minimum limit of not less than \$25,000,000	X				
B. A COMPREHENSIVE BUSINESS AUTO policy with a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage, providing at least all of the following coverages (without deductibles):	X				
1. Coverages shall be applicable to any and all leased, owned; hired, or non-owned vehicles used in pursuit of any of the activities associated with this contract.	X				
2. Any and all mobile equipment including cranes which is not covered under the above Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy.	X				
C. A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY policy written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor:	X				
1. This policy shall provide coverage for Workers' Compensation (Coverage A).	X				
2. This policy shall also provide coverage for \$500,000 Employers' Liability (Coverage B).	X				
D. A COMBINATION CRIME policy with minimum limits not less than \$250,000 for each form:	X				
1. Employee Dishonesty	X				
2. Forgery or Alteration	X				
Subtotal	16				

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
3. Theft, Disappearance, Destruction Inside Premises Outside Premises	X				
E. ENDORSEMENTS: All of the following endorsements are required to be made a part of each of the above required policies as stipulated below: (For the Excess Liability policy only, identify on the Certificate of Insurance as "following form".)					
1. "The City of San Jose, Redevelopment Agency of San Jose, San Jose Arena Authority, its employees, officers, agents and contractors are hereby added as insureds as respects the use, operation and maintenance of the facilities."		X			See page 31 of this report.
2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of San Jose, Redevelopment Agency of San Jose, San Jose Arena Authority may possess, including any self-insured retention the City, agency, authority may have, and any other insurance the City, agency, authority does possess shall be considered excess insurance only."	X				
3. "This insurance shall act for each insured, and additional insureds as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."	X				
4. "Thirty (30) days prior written notice of cancellation shall be given to the City of San Jose in the event of cancellation and/or reduction in coverage of any nature."	X				
F. PROOF OF COVERAGE:: Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the stipulated coverages.	X				
Subtotal	5	1			

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<u>Attachment No. 8</u>					
<u>Arena Advertising</u>					
<p><u>Exterior Advertising</u></p> <p>With the exception of advertising expressly associated with the naming of the Arena building, all exterior advertising shall be prohibited, whether free-standing or affixed to the Arena Building. Announcements of future events at the Arena within areas designated for same shall be permitted. Reader Board, or other Facilities, unless approved by SJ and consistent with the Management Agreement.</p>	X				
<p><u>Interior Advertising</u></p> <p>It is the intention of the parties that except for advertising within the Concourse which shall be governed by special provisions as set forth below, Manager shall be permitted to display or present advertising within the Arena consistent with an advertising plan developed by Manager and presented from time to time to the City for approval which approval shall be reasonably and promptly given. Said advertising plan shall be approved at least once every two (2) years and shall contain the locations/areas within the Arena where advertising is intended to be displayed and the manner and visual appearance of presentation.</p>	X				
Said advertising plan shall address such items as:					
(1) The scoreboards;	X				
(2) Hockey dasher boards;	X				
(3) The balcony fascia;	X				
(4) Team benches;	X				
(5) Scorers tables and penalty boxes;	X				
(6) Video systems;	X				
(7) User/location of banners;	X				
(8) Sky box level sound walls;	X				
(9) Sale and promotion of merchandise associated with events at the Arena;	X				
(10) Location of temporary advertising; and	X				
(11) Proprietary signs regarding name of club.	X				
Subtotal	13				

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
<u>Advertising Within the Concourse</u>					
1. Advertising of products not associated with events at the Arena within the Concourse shall be limited to 32 pendant signs with two faces each. Each face shall measure no more than 48 square feet.	X				
2. Signs identifying concession franchises on concession stand fascias and back walls. Fascia signage shall not be larger in area than the product of one-half the fascia height times the length of the front edge of the counter.	X				
3. Frames around television monitors. Television monitors shall be confined to the pendant concourse signs and to the fascia or back wall of concession stands.	X				
4. Signs on portable stands.	X				
5. Proprietary signage necessary to identify the owner or operator of devices such as telephones and automatic teller machines.	X				
6. From time to time, Manager may submit requests to the City for its approval for alternative standards and systems to be used in the Concourse.				X	To date, the SJAMC has not proposed any changes to the standards or systems used for the Concourse advertising. This requirement is not applicable at this time.
Attachment No. 11					
III. Advertising Policies.					
A.					
1. Manager will not display ads for tobacco products anywhere in the Arena Facilities. Beer and wine products will be permitted to be so advertised and displayed. Hard liquor advertising shall be affixed only to the scoreboard.	X				
2. Within the concourse, no display affixed to walls of ads for hard liquor products.	X				
3. On exterior of Arena, no displays of tobacco or hard alcohol products.	X				
Subtotal	8			1	

Agreement Section	Compliance		Future Compliance Issue	Other	Comments
	Yes	No			
4. On the reader board and temporary signs during events only, event related displays of tobacco products sold by event sponsors.				X	The reader board has not been installed to date. This requirement is not applicable at this time.
5. In other interior portions of the Arena (i.e., Club, restaurant, etc.), no restrictions on alcohol advertising.	X				
B. In addition, Manager will refrain from advertising products in the concourse and other public areas of the Arena which because of their nature may be inappropriate for general public viewing.	X				
Subtotal	2			1	
Grand Total	90	29	28	22	

APPENDIX C

STATUS OF COMPLIANCE WITH ATTACHMENTS 9 AND 10 OF THE MANAGEMENT AGREEMENT

Requirement	SJAMC Personnel Manual*	Johnson Controls*	Aramark	Staffpro Security	ACME Building Maintenance
ATTACHMENT 9: SAN JOSE ARENA MANAGEMENT CORPORATION STATEMENT ON LABOR AND CONTRACTING ISSUES					
First Source Hiring	∇	∇	√	√	√
Non-Discrimination	∇	√	√	√	√
Affirmative Action	∇	∇	√	√	√
MBE/WBE/DBE	∇	∇	√	√	√
Prevailing Wages	∇	∇	√	√	√
Competitive Bidding	√	∅	∅	∅	∅
Advertisements	√	∇	√	√	√
Outreach Programs	∇	∅	∅	∅	∅
ATTACHMENT 10: STATEMENT ON HIRING					
1. Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin, sex, age, sexual orientation or ancestry, in connection with employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. For this purpose, "affirmative action" shall mean:					
(a) Establishing a clear policy of nondiscrimination in employment.	√	∇	√	√	√
(b) Posting Manager's policy of nondiscrimination.	√	∇	√	√	√
(c) Providing EEO training for all employees who are involved in Manager's recruitment and hiring efforts.	∇	∇	√	√	√

√ = In compliance	∇ = Not in compliance	∅ = Not applicable
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* These noncompliance issues are addressed at page 16 of the audit report.

Requirement	SJAMC Personnel Manual*	Johnson Controls*	Aramark	Staffpro Security	ACME Building Maintenance
(d) Stating in all advertisements for employment that Manager is an equal opportunity employer.	√	∇	√	√	√
(e) Advising all recruitment agencies that Manager uses that Manager is an equal opportunity employer.	√	∇	√	√	√
(f) Attempting to expand the pool of qualified female and minority applicants by advising female and minority organizations with which Manager has a collective bargaining agreement of Manager's nondiscrimination policy.	∇	∇	√	√	√
2. Manager agrees to post in conspicuous places available to employees and applicants for employment notices setting forth that Manager is prohibited from discriminating against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or ancestry, and that Manager is required to take affirmative action to ensure that applicants are employed and that employees are treated during employment without discrimination in connection with employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship; provided that if Manager is required by any federal or state law, order, rule or regulation to post a similar notice, such posting shall satisfy the requirements thereof.	√	∇	√	√	√

√ = In compliance	∇ = Not in compliance	∅ = Not applicable
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* These noncompliance issues are addressed at page 16 of the audit report.

Requirement	SJAMC Personnel Manual*	Johnson Controls*	Aramark	Staffpro Security	ACME Building Maintenance
3. Manager will, in all solicitations or advertisements for employees placed by or on behalf of Manager, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, sexual orientation or ancestry, or in lieu thereof that Manager is an equal opportunity employer.	√	▽	√	√	√
4. Manager will send to each labor union or representative of workers with which it has a collective bargaining agreement a notice advising the labor union or workers' representative of Manager's nondiscrimination commitments under this contract, and shall post copies of the notice in conspicuous places available to employees and applicants for employment, provided that if Manager is required by any federal or state law, order, rule or regulation to transmit a similar notice to such labor organization, such transmittal shall satisfy the requirements hereof.	√	▽	√	√	√
5. In its annual report to the City Council, Manager shall include a report on the sex and ethnic breakdown of Manager's overall workforce.	▽	∅	∅	∅	∅
6. Manager shall include provisions similar to those specified in the above paragraphs 1 through 5, inclusive, in each construction subcontract which exceeds Twenty Thousand Dollars (\$20,000.00) so that each such subcontractor will be required in the performance of his/her subcontract to take affirmative action as is required of Manager.	√	∅	∅	∅	∅

√ = In compliance	▽ = Not in compliance	∅ = Not applicable
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* These noncompliance issues are addressed at page 16 of the audit report.

APPENDIX D

TYPES OF REPAIRS PROVIDED FOR IN THE SAN JOSE ARENA MANAGEMENT AGREEMENT

<u>Term</u>	<u>Definition</u>	<u>Party Responsible For Funding</u>
Normal Capital Repairs And Replacements	<i>" . . . are those repairs and replacements of capital items, including fixtures, machinery or equipment, . . . Normal Capital Repairs and Replacements can be forecasted and budgeted for. As an example, the cost of replacement of seats by section due to normal wear and tear is a Normal Capital Repair and Replacement."</i>	The city of San Jose through a \$200,000 annual reserve that the City must fund through the tenth year of the Agreement.
Parking Capital Repairs And Replacements	<i>" . . . those repairs and replacements of capital items, including fixtures, machinery or equipment, which are necessary to repair or replace over time capital items that wear out over a useful life or which are reasonably necessary to maintain the structural integrity and operating functions of the Arena Parking Facilities and adjacent areas of the Arena Site, excluding the Arena and its ramps, stairs and supports."</i>	The city of San Jose through a \$200,000 annual reserve that the City must fund through the tenth year of the Agreement.
Extraordinary Capital Repairs And Replacements	<i>" . . . are those repairs and replacements, as distinguished from Normal Capital Repairs and Replacements, which are reasonably necessary to maintain the structural integrity and operational functioning of the Arena. Examples are repair or replacement of a faulty roof, HVAC, or ice system not covered by construction or manufacturing warranties and not budgeted as Normal Capital Repairs and Replacements."</i>	The city of San Jose. This is a separate responsibility from the \$200,000 annual reserve noted above.
Emergency Capital Repairs And Replacements	<i>" . . . those Capital Repairs and Replacements that must be accomplished immediately or as soon as possible in order to remove a hazard to health and safety, ensure the structural integrity of the Arena Facilities, or eliminate a factor that causes the Arena Facilities not to be operational."</i>	The city of San Jose. The nature of the repair--that is, Normal Capital Repairs and Replacements, Parking Capital Repairs and Replacements, or Extraordinary Capital Repairs and Replacements--determines the City's funding source as shown above.
Code Changes	<i>"City shall pay for and perform within the time period required by law any capital alterations or changes to the SJ's Improvements . . . that are required to conform the SJ's Improvements . . . to "Applicable Construction Codes". . . . Manager shall pay for and perform within the time periods required by law any capital alterations or changes to the Manager's Improvements . . . that are required to conform the Manager's Improvements . . . to Applicable Construction Codes, . . ."</i>	The City or the SJAMC, depending on which party made the improvement.

<u>Term</u>	<u>Definition</u>	<u>Party Responsible For Funding</u>
Capital Enhancements	<i>" . . . capital expenditures that are not required to repair or replace faulty or worn out capital items but are made to improve the quality or functioning of the Arena Facilities, including costs of Capital Repairs and Replacements in excess of costs necessary to restore or replace capital items to the same or substantially similar level of quality or function as originally installed."</i>	The City or SJAMC depending on which party proposed the enhancement. Specifically, the Agreement states: <i>"The other party, in its sole and absolute discretion, may elect not to contribute to the cost of construction, but if this contribution is withheld, the initiating party may proceed consistent herewith at its sole cost; . . ."</i>
Manager's Capital Enhancements	<i>" . . . Capital Enhancements that Manager constructs either because it is required to do so or by exercising its right to do so as provided"</i>	SJAMC.
Supplies And Equipment	<i>"All appropriate supplies and equipment for events and for the management and operation of the Arena Facilities shall be rented, leased or purchased by Manager at Manager's sole cost and expense."</i>	SJAMC.
Design And Construction Related Repairs Or Replacements	The Cooperation Agreement between the Redevelopment Agency and the City states: <i>"Agency will indemnify City for all costs required to correct design and workmanship deficiencies, or premature failures of building components not covered by warranty, which occur or are discovered during a two year period after transferring the facility to the City . . . , including any costs associated with the pursuit of corrective actions,"</i>	Redevelopment Agency.

APPENDIX E

**ANALYSIS OF REPAIR COSTS
IN PRELIMINARY FIVE-YEAR CAPITAL BUDGET**

Type Of Repair	Total Amount In SJAMC's Preliminary Five-Year Capital Budget	City Auditor Concurrence Or Nonconcurrence With The SJAMC's Preliminary Budget		Items In The SJAMC's Preliminary Five- Year Capital Budget That Require Legal Interpretation	Explanation
		Concurrence	Non- Concurrence		
Normal Capital Repairs And Replacements:					
Arena Floor Carpet	\$40,000			\$40,000	1
Arena Sign Uplights	50,000		\$50,000		2
Audio Visual Systems	25,000	\$25,000			3
Blackout Curtains	4,000	4,000			3
Carpeting	10,000	10,000			3
Cleaning Equipment	22,000			22,000	1
Door Hardware	25,000	25,000			3
Exterior Flags	2,500		2,500		4
Furniture	5,000		5,000		4
Glazing	50,000	50,000			3
Graphics	10,000	10,000			3
Homosote Insulation Floor	25,000			25,000	1
Ice Edger	2,000			2,000	1
Interior Flags	3,000		3,000		4
Loading Dock Bumpers	6,000	6,000			3
Motorized Carts	2,000			2,000	1
Building Automation Computer	5,000	5,000			3
Exhaust Fan Motors	5,000	5,000			3
Faucet Replacements	25,000	25,000			3
Photocopiers	20,000		20,000		4
Fax Machines	7,000		7,000		4
Portable Radios	4,000		4,000		4
Van	15,000		15,000		4
Total	\$362,500	\$165,000	\$106,500	\$91,000	

		City Auditor Concurrence Or Nonconcurrence With The SJAMC's Preliminary Budget			
Type Of Repair	Total Amount In SJAMC's Preliminary Five-Year Capital Budget	Concurrence	Non- Concurrence	Items In The SJAMC's Preliminary Five- Year Capital Budget That Require Legal Interpretation	Explanation
Parking Capital Repairs And Replacement					
Concrete Screen Wall	\$10,000	\$10,000			3
Landscaping	10,000		\$10,000		5
Parking Island Pavers	3,500	3,500			3
Tree Grates	5,000	5,000			3
Total	\$28,500	\$18,500	\$10,000		
Extraordinary Capital Repairs And Replacements:					
Hot Water Heat Exchangers	\$15,000			\$ 15,000	6
Flexible Pipe Joints	250,000			250,000	6
Total	\$265,000			\$265,000	
Emergency Capital Repairs And Replacements:					
Chiller	\$70,000	\$70,000			7
Total	\$70,000	\$70,000			
Code Changes					
Connect Fire Phones In Elevator	\$16,000		\$16,000		2
Connect Aisle Lights	4,000		4,000		2
Lower Level Seating Handrails	100,000			\$100,000	6
Boiler Non Gas Retrofit	6,000	6,000			8
Total	\$126,000	\$ 6,000	\$20,000	\$100,000	
Design And Construction Issues:					
Water Supply Isolation Valve	\$10,000	\$10,000			9
Connect Lower Level Seating Drains	12,000	12,000			9
Cooling Tower Valve	10,000	10,000			9
Dressing Room High Heat	15,000	15,000			9
Inadequate Water Supply Vom 103	8,000	8,000			9
Permanent Power For Concourse Carts	150,000		\$150,000		10
Static Pressure Balancing	10,000	10,000			9
Water Damage Protection - Telephone And A/V Rooms	12,000	12,000			9
Total	\$227,000	\$77,000	\$150,000		

City Auditor Concurrence Or Nonconcurrence With The SJAMC's Preliminary Budget					
Type Of Repair	Total Amount In SJAMC's Preliminary Five-Year Capital Budget	Concurrence	Non-Concurrence	Items In The SJAMC's Preliminary Five-Year Capital Budget That Require Legal Interpretation	Explanation
Capital Enhancements:					
Anti-Graffiti Coating	\$30,000	\$30,000			11
Drink Cup Holders	3,000	3,000			11
Dressing Room Heater Circuits	1,000	1,000			11
Electrical Power In Shop	10,000	10,000			11
Exterior Show Power	10,000	10,000			11
Interior Show Power	5,000	5,000			11
Recircuit Exterior Exit Down Lights	1,000	1,000			11
Recircuit Exterior Pole Lights	1,000	1,000			11
Roof Walkways And Pads	30,000	30,000			11
Seating Area Acoustic Treatment	100,000	100,000			11
Total	\$191,000	\$191,000			
Manager's Capital Enhancements:					
FM Broadcast System	\$4,000	\$4,000			12
Permanent Power For Photographer Strobes	5,000	5,000			12
Power For Foghorn	2,000	2,000			12
Water Treatment System	15,000	15,000			12
Total	\$26,000	\$26,000			
Grand Total	\$1,296,000	\$553,500	\$286,500	\$456,000	

1. The City Attorney's Office needs to opine on whether the San Jose Arena Management Agreement holds the City responsible for replacing items that were purchased by the Redevelopment Agency through the Agreement to Enter which coordinated the design and construction of the Arena facilities.
2. Given the nature of the problem with this item, it appears that it should be classified as a Design and Construction issue.
3. Item appears to meet the definition of the repair category it is classified in.
4. Given the nature of the item, it appears that it should be classified under supplies and equipment. See discussion at page 21 of the report.
5. Section 4.08. of the Management Agreement states "*Manager shall maintain the Arena Facilities and landscaping of the Arena Facilities to the standard set forth above*" Item should be part of the general maintenance of the Arena, which is paid for by the SJAMC. See discussion at page 22 of the report.
6. Given the information on these repairs, they could be categorized under a number of different repair types. Therefore, the City Attorney's Office needs to opine on what is the most appropriate repair category for the repair listed.
7. This amount was the estimate to repair the second chiller failure. Actual expenses incurred were \$104,385. These costs have been submitted to the City's insurance company, and reimbursement is expected at any time.
8. The City is responsible for the code changes noted as they relate to construction for which the Redevelopment Agency was responsible.
9. On March 20, 1995, the Redevelopment Agency and the City entered into a Cooperation Agreement. The Agreement states that the Agency will indemnify the City for all costs required to correct design and workmanship deficiencies for a two-year period ending September 7, 1996. These items appear to fall within the scope of the Cooperation Agreement.
10. This item is more appropriate to include under Capital Enhancements given the fact that Design and Construction issues relate to workmanship deficiencies or premature failures of building components. This item addresses the fact that there are no power outlets on the concourse for the concession carts.
11. The SJAMC is proposing the above noted items as Capital Enhancements. The City can elect to not contribute to the cost of these items. However, if the City approves the item, the SJAMC can proceed with the enhancement at its sole cost.
12. Any item proposed as a Manager Capital Enhancement requires the City's approval, and the SJAMC can proceed with the enhancement at its sole cost.

APPENDIX F

SAN JOSE ARENA AUTHORITY

MEMORANDUM

To: Gerald A. Silva, City Auditor
From: Michael D. Ellzey, Executive Director
Subj: San Jose Arena Management Agreement Audit
Date: September 11, 1995



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CITY AUDITOR

This memorandum is intended to provide a summary of major accomplishments of the San Jose Arena Authority, dating from its inception in 1990 as a City-sponsored non-profit organization.

BACKGROUND

The San Jose Arena Authority was created in 1990 by resolution of the City Council and operates under an agreement with the City of San Jose. Under this agreement, the Arena Authority is directed to perform a liaison role on behalf of the City in two major areas in respect to the San Jose Arena: (1) Oversee the manager's operation of the San Jose Arena through interpretation and application of the terms and conditions of the San Jose Arena Management Agreement (the "Management Agreement"); and (2) Monitor and develop relations with the community with respect to impacts from operations of the San Jose Arena.

The charter and organizational structure of the San Jose Arena Authority are defined in its Articles of Incorporation and its Bylaws. The Arena Authority is a 501 (c)(3) non-profit corporation.

As indicated, the Authority's responsibilities fall into two general categories: (1) *Operations and Compliance* and (2) *Community Relations*.

Operations and Compliance relates to oversight of the arena manager's (San Jose Arena Management, hereinafter referred to as "SJAM") operation of the facility within the context of the various provisions of the Management Agreement, as well as the overall administration of the terms and conditions of any subsequent agreements to which the Authority (either directly or on behalf of the City) is a party. In addition, the Arena Authority serves as the City's liaison to the community regarding impacts from arena operations.

Under the direction of the Arena Authority's Board of Directors, the Arena Authority staff has established a number of important Arena-related programs and projects to protect and further develop the interests of the City of San Jose with regard to impacts from arena operations. The following section of this memorandum will identify these major areas of accomplishment.

SUMMARY OF ACCOMPLISHMENTS

When the San Jose Arena Authority began doing business in 1991, the arena was a design concept only. The City had identified an NHL franchise and had entered into negotiations with the franchise's arena management organization. In mid-1991, negotiations were completed and the construction project began.

Listed below is a summary of major accomplishments of the San Jose Arena Authority since it began doing business:

- o In coordination with the City of San Jose and the Redevelopment Agency, oversaw the arena's construction process;
- o Assisted in the development of the City of San Jose's Arena Traffic and Parking Management Plan, including implementation of a successful, free-to-public arena shuttle program;
- o Provided staff support to the Arena Oversight Committee (a participatory group of neighborhood representatives);
- o Developed and implemented a Pre-opening Publicity and Community Education Program, including a speakers' bureau and a collateral program;
- o Planned and produced the Grand Opening for the San Jose Arena;
- o Pre-approved the Arena's various service contracts;
- o Approved SJAM's advertising plan;
- o Established and implemented a comprehensive community- and economic development-based arena ticket distribution policy and program;
- o Developed and established a post-opening community liaison program, through the Community Relations Subcommittee of the Board;
- o Developed and established a disability access liaison program;
- o Developed and established a City & Community Events program;

- o Developed, in cooperation with SJAM, a responsible alcohol management policy for the arena;
- o Developed and implemented a San Jose Sports Hall of Fame program, and produced the inaugural inductee ceremony in 1995;
- o Monitored the "acceptance" of the arena facility by the City through a "cooperation agreement" between the City and the Redevelopment Agency;
- o Monitored a "settlement" between the City and SJAM regarding a series of future obligations of the City and SJAM;
- o Coordinated a Management Agreement audit for 1994-95 with the City Auditor's office;
- o Approved a \$700,000 basketball improvement program for the San Jose Arena;
- o Contracted with a joint venture consulting group for the implementation of a comprehensive arena maintenance oversight program;
- o Coordinated the recognition and analysis of several capital repair issues;
- o Printed and distributed an Arena Access Guide, which communicates a series of transportation alternatives to the regional community;
- o Coordinated with Office of Cultural Affairs, the Arena Public Art process;
- o Coordinated with the Redevelopment Agency, the planning and development of the Guadalupe River Park Project, Confluence West;
- o Coordinated with a variety of agencies, an evaluation of the proposed Vasona Light Rail Extension project;
- o Resolved operational and community issues regarding late night activities in the Arena's surrounding areas;
- o Implemented with the Departments of Planning and Streets and Traffic provisions of Council Policy 6-26, which monitors newly issued use permits for off-site arena parking enterprises;
- o Developed and implemented the Gateway Area Policing Program (GAPP), which provides for cleanup programs for the Arena's major public access gateways;
- o Produced a one-year anniversary event for the San Jose Arena.

COORDINATION

The Arena Authority has coordinated its efforts since inception with many City, County and regional departments and agencies to ensure successful coordination and implementation of Arena-related programs, projects and committee efforts. These organizations include the Mayor's office; City Council; City Auditor; City Manager; City Attorney; SJAM; Neighborhood Associations; San Jose Downtown Association; Alameda Business Association; Chamber of Commerce; Department of Streets and Traffic; Planning; Office of Contract Compliance and Affirmative Action; Police and Fire Departments; San Jose Airport; Office of Economic Development; the Redevelopment Agency; City Clerk; Office of Cultural Affairs; Public Works; General Services; Code Enforcement; Santa Clara County Transportation Agency; CalTrain; Joint Powers Board; and over 50 San Jose-based non-profit agencies.

CONCLUSION

Clearly, the San Jose Arena Authority's charter is broad-based and its impact on arena operations and related community affairs has been significant. The future of the organization will continue to emphasize quality and professionally administered community-based programs, together with a notable gravitation internally toward capital-related issues. Preservation of relationships with the community and of the facility as a valuable capital asset will comprise our basic efforts for the foreseeable future.

With the cooperation of the City Manager's office, the Department of Public Works and other City agencies, I believe the City is well positioned to identify and implement a workplan for the future which will continue to serve the City's financial and community interests.