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CITY of NOVI CITY COUNCIL

Agenda Item 6
May 18, 2009

SUBJECT: Approval to award an automatic extension of the one year contract for management services at the Novi Ice Arena to Suburban Arena Management – Novi, LLC, in the amount of \$108,796.85.

SUBMITTING DEPARTMENT: Parks, Recreation & Cultural Services

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION:

The City of Novi is the owner of the Novi Ice Arena and has contracted with Suburban Arena Management-Novis LLC, as the manager of the arena facilities. Suburban's responsibility is to provide business administration and management services including personnel, maintenance, and operational supervision. Suburban has provided excellent day-to-day supervision allowing the arena to achieve revenue goals for the facility and benefiting the community.

The current three year management contract will expire on June 30, 2009, and includes an option for a one-year renewal option (4th year) in the amount of a four percent (4%) increase, over the base monthly management fee of the previous year. The base monthly management fee for FY 2008-09 is \$8,717.70 and with the four percent (4%) increase the new base monthly management fee will be \$9,066.40, an increase of \$349 per month or \$4,184 for the year.

Based on Suburban's performance staff recommends exercising the one-year contract option.

RECOMMENDED ACTION: Approval to award an automatic extension of the one year contract for management services at the Novi Ice Arena to Suburban Arena Management – Novi, LLC, in the amount of \$108,796.85.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

Randy Auler

ICE ARENA MANAGEMENT CONTRACT

This agreement, made this 22nd day of May, 2006 by and between the CITY OF NOVI, a Michigan Municipal Corporation having its address at 45175 West Ten Mile Road, Novi, Michigan 48375 ("CITY"), and SUBURBAN ARENA MANAGEMENT-NOVI, LLC, a Michigan Limited Liability Company having its address at 23995 Freeway Park, Suite 200, Farmington Hills, Michigan 48335 ("SUBURBAN").

WHEREAS the CITY is the owner of the Novi Ice Arena, located at 42400 Arena Drive; and

WHEREAS SUBURBAN is engaged in the business of managing ice arena facilities; and

WHEREAS the CITY and SUBURBAN desire to contract with each other, to provide for the management of Novi Ice Arena

IT IS, THEREFORE agreed by and between the parties hereto, for and in considerations of the mutual covenants, as follows:

1. **Facility and Program Management Responsibilities.** SUBURBAN shall provide business administration and management services to operate the Novi Ice Arena in an economically sound manner, consistent with the best interests of the CITY and SUBURBAN will have full authority to do so. The facility includes the arena, parking lots, grounds, pro shop, concessions, meeting rooms and related spaces.
 - a) SUBURBAN will hire and supervise all operating personnel, including janitorial, instructional, building and ice maintenance, secretarial, clerical and bookkeepers. All employees hired by SUBURBAN shall be

employees of SUBURBAN and not employees of the City of Novi. SUBURBAN shall be reimbursed for the wages, taxes and fringe benefits for employees at the arena, including the General Manager. Employees of SUBURBAN may work at other facilities operated by SUBURBAN, provided that the CITY shall provide reimbursement solely for time that is related to the Novi Ice Arena.

- b) SUBURBAN shall prepare maintenance and operations programs and supervise day-to-day and long term maintenance of the facility and grounds.
- c) SUBURBAN shall lease ice time and space within the facility, including the operations of the pro shop, and concession areas. SUBURBAN shall represent the CITY in efforts to negotiate contracts with major ice users and long term tenants, shall supervise the rental of miscellaneous ice time to casual users as well as to outside operators of tournaments or instruction programs. SUBURBAN shall have the authority to sell advertising at the facility or enter into sponsorship agreements on behalf of the CITY, subject to any existing contracts and obligations. All arena operations shall be in compliance with Internal Revenue Service Revenue Procedure 97-13.
- d) SUBURBAN will organize and supervise programs to utilize ice time of the facilities for the benefit of the community. Such programs may include summer day camp instructional programs, adult hockey leagues, general

instructional programs, and on ice or off ice social, recreational or educational programs.

- e) SUBURBAN shall assist in the development, operation, and promotion of Youth Hockey and Community Figure Skating.
- f) SUBURBAN shall supervise the maintenance of financial and business record keeping and reporting systems adequate and appropriate for management and oversight of the operations of the facility.
- g) SUBURBAN shall attend meetings at the request of the CITY, upon reasonable notice of the same.
- h) SUBURBAN may enter into contracts in its own name as necessary in the management and operation of the arena. Contracts as to which the CITY is a party must be approved by the Novi City Council. The City Council hereby grants the authority to execute agreements for the rental of ice time at rental rates consistent with the approved annual budget.

2. **Financial Reporting and Money Management.** SUBURBAN will establish timely and accurate accounting and reporting procedures, acceptable to the CITY, for receipt and disbursement of all funds. All funds so received will be deposited daily into a bank account in the name of the SUBURBAN ARENA MANAGEMENT-NOVI, LLC - NOVI ICE ARENA and from such deposits, based on pre-approved budget, SUBURBAN will be authorized to disburse funds for payment of appropriate expenses of the operation. The bank account shall have two designated SUBURBAN employees authorized to sign checks. The CITY,

through the appropriate person(s), shall also be added as an additional signatory to the bank account. SUBURBAN may retain not more than \$ 1,000.00 in petty cash at the arena.

It shall be the duty and responsibility of SUBURBAN, not later than one hundred twenty (120) days prior to the commencement of each fiscal year, to submit to the CITY for approval, a proposed operating budget for the facility, setting forth all estimated receipts and disbursements relating to the facility for the ensuing fiscal year, or in the case of the first proposed budget, for the balance of the current year. The budget shall include the establishment of a reserve account for current and future capital expenses. The operating budget as approved in writing by the CITY is hereinafter referred to as the "approved budget". Except as otherwise provided in this Agreement, SUBURBAN shall incur no expenses in connection with the Ice Arena facility that are not provided for in the approved budget. In the event that a submitted budget is rejected by the CITY, SUBURBAN shall operate under the last approved budget on an item by item basis until a revised budget is approved in writing by the CITY.

The CITY shall provide sufficient working capital for the arena so that expenses can be paid pending receipt of initial revenues, and is otherwise necessary during the term of this agreement. SUBURBAN shall give the CITY at least five (5) days notice if additional funding will be needed from the CITY to meet the expenses of operating the Arena. SUBURBAN shall not be obligated to make any advance to or for the account of the CITY, nor to pay any sums except out of funds in the Operating Account, nor shall SUBURBAN be obligated to incur any liability or obligation on behalf of the CITY without

the assurance that the necessary funds for the payment thereof will be promptly provided by the CITY as required for payment.

If and when revenues exceed direct expenses, the capital reserve and debt service payments, the CITY shall determine the extent to which surpluses shall be accumulated for future expenses and/or debt services, and the extent to which such surpluses shall be returned to the CITY for purposes of investment, and shall be held in a capital replacement and reserve account. This determination shall be made as a part of the CITY'S annual budget approval process.

In the event of certain emergencies threatening the health or safety of the public or employees, or to protect the City's investment in the building or equipment, SUBURBAN shall be authorized to make emergency appropriations without prior approvals in amounts not to exceed \$ 5,000. Subsequent approval of such expenditures by the CITY will have the effect of renewing SUBURBAN'S authority to make additional such emergency appropriations.

- a) SUBURBAN shall keep books, accounts and records that reflect all revenues and all expenditures incurred in connection with the management and operation of the facility. The books, accounts and records shall be maintained at the Ice arena, or at SUBURBAN'S company offices in Farmington Hills, Michigan. SUBURBAN shall, during regular business hours, make the books, accounts and records required to be maintained hereunder available to the CITY or the representatives of the CITY FOR examination and audit by appointment of no less than one (1) days' prior notice. All such audits shall be at the expense of the CITY.

- b) SUBURBAN shall furnish to the CITY, a detailed statement of all revenues and expenditures. The monthly financial statement shall be submitted within fifteen (15) days after the close of the month. In addition, SUBURBAN shall furnish the original copy of all invoices, statements, purchase orders and billings received and paid during a given fiscal year, as well as such other information relating to the operation or management of the Ice Arena, within forty-five (45) days of the ending of such fiscal year.
- c) Within forty-five (45) days after each fiscal year ending June 30, SUBURBAN shall prepare and deliver to the CITY a detailed statement of revenues received and expenditures incurred and paid during the calendar year, that result from operations of the facility. Within thirty (30) days, following the expiration or termination of this agreement, SUBURBAN shall deliver to the CITY all books, accounts and records pertaining to the property. SUBURBAN may retain copies of such records.
- d) SUBURBAN shall provide a fidelity bond in an amount not less than \$200,000 in favor of and for the protection of the CITY. Said fidelity bond shall be issued by a Michigan licensed and admitted property and casualty insurance company and subject to the approval of the CITY. Said fidelity bond shall be maintained in full force and effect throughout the term of this Management Contract and shall be in effect prior to the first day of the receipt of any funds by SUBURBAN on behalf of the CITY. The cost of the fidelity bond shall be deemed a reimbursable expense of operating the arena.

3. SUBURBAN will assume the total cost of providing its own liability insurance coverage, in a form and amount approved by the City, to operate the Ice Arena during the life of this contract.

4. Compensation for Facility & Program Management. SUBURBAN shall be compensated pursuant to the annual budget approved by the CITY and referenced in Section 2, Paragraph 2, for facility and program management activities set forth above, as follows:

a) **Base Annual Management Fees:** The CITY shall compensate SUBURBAN a base monthly management fee of **eight thousand and sixty dollars (\$8,060)** for the first year of this agreement. Any partial month shall be paid pro-rated. The base monthly Management fee for each subsequent year of this agreement shall increase by **four percent (4%)** over the base monthly management fee in effect during the immediately preceding year, unless CITY and SUBURBAN agree to another fee.

b) **Shared Incentive Schedule:** It is the common goal of SUBURBAN and the CITY that the facility is operated so as to generate sufficient revenues to pay all direct expenses and all required debt service payments. To encourage the generation of revenues, SUBURBAN shall be paid 25% percent of the annual growth in operating income from fiscal year to fiscal year, each year of the agreement. The 2005/2006 fiscal year will serve as the base year for purposes of establishing operating income, excluding the expenditures for the boiler repairs and storage tanks installation.

Operating Income Defined as:

-All Revenue (excluding the cell tower lease and dance studio lease)

-Less: All Operating Expenses (not including depreciation, amortization and debt service) = Operating Income

5. **Contract Term, Escalation and Termination.:**

The term of this contract shall be three (3) years, beginning July 1, 2006.

At the end of the **third** year the CITY will have the option to renew the contract for one year, or it may terminate its relationship and this contract with SUBURBAN without penalty or cause upon ninety (90) days notice.

Nothing contained in this contract shall be construed to require the payment of a penalty or require cause for this contract to be terminated by the CITY at the end of the third year. Prior to the end of the third year of the contract, the CITY shall also have the option to terminate this contract for one or more of the following reasons:

- a). **Failure to Make Revenue Projection:** This contract may be canceled at anytime after June 30, 2007 and after advance written notice, for cause or failure to generate sufficient revenues from operations to meet debt service requirements for a given fiscal year. Such cause shall occur when the revenues from the past fiscal year were not sufficient to pay 1) all direct expenses, and 2) all required debt service payments.

The CITY shall provide sixty (60) days) advance written notice of intent to terminate this contract. SUBURBAN shall have this sixty (60) days "cure period" to remedy any performance deficiencies. If deficiencies

are not cured within said period, then unless the parties agree otherwise, the agreement shall terminate.

- b) **Option to Terminate/Sale, Lease or Closure:** In the event that the CITY determines to sell, lease or close the arena, the CITY shall have the option to terminate this contract without cause. To exercise this option, the CITY shall provide not less than one hundred eighty (180) days advance written notice that it has decided to sell, lease or close the arena, where such sale lease or closing will occur at least 180 days prior to the end of the third year of this contract. In the event that the sale, lease commencement or closing will occur after the last day of the third year of this contract the City shall not be required to give notice or pay liquidated damages as described below. Upon the date of termination **due to a sale, leasing or closure**, SUBURBAN will be compensated for all unpaid fees or unreimbursed expenses. In the event of such termination, SUBURBAN shall be paid liquidated damages of \$ 62,500.00 if the termination occurs in the first fiscal year, \$39,375.00 if the termination occurs in the second fiscal year and \$ 20,672.00 if the termination occurs in the third fiscal year.
- c) **Material Breach:** This contract may be terminated at any time by either party without termination fee, penalty or liquidated damages, if the other party commits a material breach of its obligations under the agreement, provided that the party seeking to so terminate gives the other party notice and the opportunity to cure as set forth in paragraph 4(a), above. If the

material breach constitutes malfeasance or misfeasance, the CITY shall not be obligated to provide an opportunity to cure. For purposes of this agreement, malfeasance means: evil doing; ill conduct; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which the person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. It includes any wrongful conduct that affects, interrupts or interferes with the performance of official duties. For purposes of this agreement misfeasance means the improper performance of some act, which the party may lawfully do.

- d) **Mutual termination:** This Agreement may be terminated at any time without termination fee, penalty or liquidated damages if the parties so mutually agree.

6. **Governing Law.** All actions under this Agreement shall be governed by, subject to, and construed according to the laws of the State of Michigan. Each party agrees, consents and submits to the personal jurisdiction of any competent court in Oakland County, Michigan, for any action brought against it arising out of this Agreement; agrees that service of process at the address and in the manner specified below will be sufficient; agrees that it will not commence any action against the other party hereto, because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those of Oakland County, State of Michigan.

7. **Assignment Successors and Assigns.** This Agreement may not be assigned by either party except with the advance written permission of the other party. The parties hereto this Agreement, respectively, bind themselves, their partners, successors, permitted assigns and legal representatives to the other party to this Agreement and to the partners, successors permitted assigns and legal representative of such other party with respect to all terms, covenants and provisions of this Agreement.

8. **Indemnification.** To the extent permitted by law, CITY shall indemnify, save and hold SUBURBAN harmless from and against any and all claims, losses, costs, charges, assessments, liabilities, damages and interest, as well as legal fees and other expenses of whatever kind or nature, arising out of or in connection with the services provided by SUBURBAN hereunder. The foregoing indemnification shall not apply in the event of negligence, gross negligence or willful misconduct on the part of SUBURBAN or any of its employees.

SUBURBAN shall indemnify and hold CITY harmless from and against any and all claims, losses, costs, charges, assessments, liabilities, damages and interest, as well as legal fees arising out of or in connection with negligence, gross negligence or willful misconduct on the part of SUBURBAN or any of its employees.

To the extent either party owes a duty to indemnify the other, as provided above, there shall be a corresponding duty to defend any action or suit instituted pertaining to

such occurrence. To the extent applicable, the defense of governmental immunity shall be asserted in behalf of SUBURBAN, as well as the CITY.

Each party shall reimburse the other within thirty (30) days of written demand for any payment made or indebtedness incurred by the other with respect to any liability; obligation or claim covered by the foregoing indemnification provisions.

9. **City's Representative.** The Parks, Recreation and Forestry Director has been appointed as the initial City's Representative to deal with SUBURBAN with respect to the rights and obligations of the parties under this Agreement. City may designate a new City's Representative at any time upon notice to SUBURBAN. Except as otherwise stated in this Agreement, the City Representative shall be SUBURBAN'S contact person at the CITY for purposes of fulfilling its obligations under this Agreement, including the resolution of day-to-day operational issues. In this connection, unless otherwise specifically advised by the CITY, SUBURBAN shall make all reports to City's Representative, and shall have the right to rely upon communications received from the City's Representative with regard to the arena.

10. **Identification of Manager.** SUBURBAN may identify itself as the Manager of the Arena, and may include its company logo, in all promotional literature, letterhead, business cards, advertisements, etc., that are prepared or distributed regarding the arena.

11. **Promotion Within Arena.** For each ice surface in the arena, SUBURBAN may use two (2) pair of dasher boards to identify itself.

12. **Cooperation by City of Novi Parks and Recreation Department.** The City of Novi Parks and Recreation Department shall include information about Novi Ice Arena programs in its promotional materials, at no cost to arena or SUBURBAN, to the extent that such space is available.

13. **Disclaimers.** CITY acknowledges and agrees that SUBURBAN currently does, and during the term of this Agreement may, simultaneously perform services of the type specified under this Agreement for other persons and parties and shall be disclosed to owner.

City further acknowledges and agrees that SUBURBAN or an affiliated entity operates the Suburban Training Center, located at 23996 Freeway Park Drive, Farmington Hills, Michigan 48335.

City further acknowledges and agrees that SUBURBAN may rent ice time at the arena to companies that are affiliated with SUBURBAN, including, but not limited to, Suburban Hockey L.L.C. and Suburban Hockey Club, L.L.C., but the fees paid by these related entities must be the same fees charged by the arena to third parties.

14. **Irrevocability and Severability.** In the event that one or more provisions of this Agreement, or any instrument or other document delivered pursuant to this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, or shall jeopardize the tax exempt status of the bonds utilized to finance the establishment of the facility, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. **Entire Agreement.** The terms and conditions as contained herein are the entire agreement between the parties. Neither party has made any representations

except those expressly set forth herein, and no rights or remedies are or shall be acquired by either party by implication or otherwise unless expressly set forth herein.

16. **No Waiver.** No failure of either party to insist upon strict performance of any term, covenant or provision of this Agreement, or to exercise any right, term or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant or provision. No waiver of any breach shall affect or alter this Agreement, but each and every term, covenant or provision of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

17. **Notice.** Notice, consents, approvals, requests and other communications required or permitted under this Agreement, shall be given in writing and mailed by registered or certified first class mail, return receipt requested, addressed as follows:

If to the CITY: City of Novi
Randy Auler, Director of Parks , Recreation and Forestry
45175 West Ten Mile Road
Novi, MI 48375

If to SUBURBAN: Thomas A. Anastos
Suburban Arena Management-Nov, LLC
23995 Freeway Park – Suite 200
Farmington Hills, MI 48335

18. **Time Given.** All notices shall be deemed given on the day of mailing. Either party to this agreement may change its address for the receipt of Notices at any time by giving notices thereof to the other by delivery of such notice as specified above.

19. **Amendments.** The parties may from time to time consider it in their best interest to change, modify or extend a term, condition or covenant of this Agreement. Any such change, addition, deletion, extension or modification, which is mutually agreed upon by and between the parties, shall be incorporated in written form ("amendment"),

and no such amendment shall be binding upon the parties unless it expressly makes reference to this Agreement and is signed by authorized representatives of both parties.

Agreement made the date written above by and between the parties:

WITNESSES:

David Klavon

Lindsay Brink

Charlene McLean

Charlene McLean

**SUBURBAN ARENA MANAGEMENT-
NOVI, LLC, a Michigan Limited
Liability Company**

Thomas Anastos
BY: THOMAS ANASTOS
Its: President

**CITY OF NOVI, a Michigan municipal
Corporation**

David B. Landry
BY: DAVID B. LANDRY
Its: Mayor

Maryanne Cornelius
BY: MARYANNE CORNELIUS
Its: City Clerk