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CITY of NOVI CITY COUNCIL

Agenda Item C
April 20, 2015

SUBJECT: Approval of a three (3) year contract with two mutually agreed upon one (1) year renewal options with Suburban Arena Management, LLC for the management for the Novi Ice Arena, commencing on July 1, 2015.

SUBMITTING DEPARTMENT: Parks, Recreation and Cultural Services

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The Novi Ice Arena is a 75,000 square foot facility with two 85 x 200 sheets of ice. The Ice Arena is accounted for in the City's Ice Arena Fund (an Enterprise Fund). The source of funding for this project was through revenue bonds, which are to be paid from the rents received from ice sales at the facility. The City of Novi's management (consulting) contract with Suburban Arena Management expires on June 30, 2015.

In accordance with the City's purchasing policy, a Request for Proposals (RFP) was posted on the Michigan Intergovernmental Trade Network (MITN) website (378 firms received email notice of the RFP). Suburban Arena Management was the only firm that submitted a proposal. The management for this facility requires the operation to be self-sustaining with revenue generated from the operations, including repayment of debt service. For the past fifteen years, Suburban Arena Management has been successful in running a high quality, customer service oriented operation with a complete complement of ice skating and hockey programs. The ice arena has made all of its debt service payments, and established a capital replacement reserve fund under Suburban's management.

The proposed annual management fee for Suburban Arena Management fee is as follows:

Basic Fee					
	7/1/15 6/30/16	7/1/16 6/30/17	7/1/17 6/30/18	7/1/18 6/30/19 (1 st renewal)	7/1/19 6/30/20 (2 nd renewal)
Suburban Arena	\$108,792	\$113,136	\$117,660	\$122,364	\$122,364

The chart above does not take into consideration the importance of revenue generated for this very specialized business venture. Revenue is generated from contracts for ice time, concessions, and programs in the amount of approximately \$2,000,000 annually.

Shared Incentive	
Suburban Arena	Shall be paid 20% percent of any annual growth greater than 4% in operating income from fiscal year to fiscal year, the minimum operating income must be equal to or greater than \$750,000 each year of the agreement.

RECOMMENDED ACTION: Approval of a three (3) year contract with two mutually agreed upon one (1) year renewal options with Suburban Arena Management, LLC for the management for the Novi Ice Arena, commencing on July 1, 2015.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Markham				

	1	2	Y	N
Council Member Mutch				
Council Member Poupard				
Council Member Wrobel				

ICE ARENA MANAGEMENT CONTRACT

This agreement, made this _____ day of April, 2015 by and between the CITY OF NOVI, a Michigan Municipal Corporation having its address at 45175 Ten Mile Road, Novi, Michigan 48375 ("CITY"), and Suburban Arena Management, LLC, a Michigan Limited Liability Company, having its address at 23995 Freeway Park Drive, Farmington Hills, Michigan 48335 ("MANAGEMENT FIRM").

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

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

WHEREAS the CITY and MANAGEMENT FIRM 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.** MANAGEMENT FIRM 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 MANAGEMENT FIRM will have full authority to do so. The facility includes the arena, parking lots, grounds, pro shop, concessions, meeting rooms and related spaces.

a) MANAGEMENT FIRM will hire and supervise all operating personnel, including janitorial, instructional, building and ice maintenance, secretarial, clerical and bookkeepers. All employees hired by MANAGEMENT FIRM

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

- b) MANAGEMENT FIRM shall prepare maintenance and operations programs and supervise day-to-day and long term maintenance of the facility and grounds.
- c) MANAGEMENT FIRM shall lease ice time and space within the facility, including the operations of the pro shop, and concession areas. MANAGEMENT FIRM 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. MANAGEMENT FIRM 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) MANAGEMENT FIRM 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) MANAGEMENT FIRM shall assist in the development, operation, and promotion of Novi Youth Hockey and Skating Club of Novi.
- f) MANAGEMENT FIRM 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) MANAGEMENT FIRM shall attend meetings at the request of the CITY, upon reasonable notice of the same.
- h) MANAGEMENT FIRM 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. MANAGEMENT FIRM 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 MANAGEMENT FIRM and from such deposits, based on pre-approved budget, MANAGEMENT FIRM will be authorized to disburse funds for payment of appropriate expenses of the operation. The bank account shall have one designated MANAGEMENT FIRM employee authorized to sign checks. The CITY, through the appropriate person(s), shall also be added as an

additional signatory to the bank account. MANAGEMENT FIRM may retain not more than \$1,000.00 in petty cash at the arena. It shall be the duty and responsibility of MANAGEMENT FIRM, 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, MANAGEMENT FIRM 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, MANAGEMENT FIRM 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. MANAGEMENT FIRM 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. MANAGEMENT FIRM 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 MANAGEMENT FIRM 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, MANAGEMENT FIRM 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 MANAGEMENT FIRM'S authority to make additional such emergency appropriations.

- a) MANAGEMENT FIRM 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 MANAGEMENT FIRM'S company offices in Farmington Hills, Michigan. MANAGEMENT FIRM 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) MANAGEMENT FIRM shall furnish to the CITY, a detailed statement of all revenues and expenditures. The monthly financial statement shall be submitted within twelve (12) days after the close of the month. In addition, MANAGEMENT FIRM 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, MANAGEMENT FIRM 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, MANAGEMENT FIRM shall deliver to the CITY all books, accounts and records pertaining to the property. MANAGEMENT FIRM may retain copies of such records.
- d) MANAGEMENT FIRM 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 MANAGEMENT FIRM on behalf of the

CITY. The cost of the fidelity bond shall be deemed a reimbursable expense of operating the arena.

3. **Liability Insurance.** MANAGEMENT FIRM 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.** MANAGEMENT FIRM 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 MANAGEMENT FIRM a base monthly management fee of **nine thousand and sixty six dollars (\$9,066.00)** for the first year of this agreement. Any partial month shall be paid pro-rated. The base monthly Management fee for the second year shall be increased by 4% to **nine thousand four hundred and twenty eight dollars (\$9,428.00)**. The base monthly Management fee for the third year shall be increased by 4% to **nine thousand eight hundred and five dollars (\$9,805.00)**. Upon a mutually agreed one year renewal, the base monthly Management fee will increase by 4% to **ten thousand one hundred and ninety seven dollars (\$10,197.00)** and shall remain at that rate for a mutually agreed upon additional year (fifth year). These fees shall be fixed unless CITY and MANAGEMENT FIRM agree to another fee.

- b) Shared Incentive Schedule: It is the common goal of MANAGEMENT FIRM 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 and in order for MANAGEMENT FIRM shall be paid 20% percent of any annual growth greater than 4% in operating income from fiscal year to fiscal year, the minimum operating income must be equal to or greater than \$750,000 each year of the agreement.

Operating Income Defined as:

-All Revenue (excluding the cell tower lease, grants, City programs and interest earnings)

-Less: All Operating Expenses (including certain maintenance items that may be capitalized pursuant to the City's policy, and not including depreciation, amortization and debt service) = Operating Income

Example:

Year 1 Operating Income: \$1,200,000

Year 2 Operating Income: \$1,300,000

Operating Growth: \$100,000 or 8.33%

Incentive Payout: \$100,000 - \$48,000 ($\$1,200,000 \times 4\%$) = \$52,000

$\$52,000 \times 20\% = \$10,400$

5. **Contract Term, Escalation and Termination.** The term of this contract shall be three (3) years, commencing on July 1, 2015 and ending on June 30, 2018. The CITY will have the option to renew the contract for two (2) years in one (1) year increments, or it may terminate its relationship and this contract with MANAGEMENT FIRM 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 any time after June 30, 2016 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. MANAGEMENT FIRM 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, MANAGEMENT FIRM will be compensated for all unpaid fees or unreimbursed expenses. In the event of such termination, MANAGEMENT FIRM shall be paid liquidated damages of \$ 50,000 if the termination occurs in the first fiscal year, \$35,000 if the termination occurs in the second fiscal year and \$ 20,000 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 5(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 MANAGEMENT FIRM 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 MANAGEMENT FIRM hereunder. The foregoing indemnification shall not apply in the event of negligence, gross negligence or willful misconduct on the part of MANAGEMENT FIRM or any of its employees.

MANAGEMENT FIRM 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 MANAGEMENT FIRM 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 MANAGEMENT FIRM, 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 Cultural Services Director has been appointed as the initial City's Representative to deal with

MANAGEMENT FIRM 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 MANAGEMENT FIRM. Except as otherwise stated in this Agreement, the City Representative shall be MANAGEMENT FIRM'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, MANAGEMENT FIRM 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. MANAGEMENT FIRM 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, MANAGEMENT FIRM may use two (2) pair of dasher boards to identify itself.

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

13. Disclaimers. CITY acknowledges and agrees that MANAGEMENT FIRM 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 MANAGEMENT FIRM or an affiliated entity operates Suburban Ice, located at 23996 Freeway Park Drive, Farmington Hills, Michigan 48335.

City further acknowledges and agrees that MANAGEMENT FIRM may rent ice time at the arena to companies that are affiliated with MANAGEMENT FIRM, including, but not limited to, Suburban Hockey Club and Suburban Hockey Schools, 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:

To the CITY:	City of Novi Jeffrey A. Muck Director of Parks, Recreation and Cultural Services 45175 Ten Mile Road Novi, MI 48375
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If to MANAGEMENT FIRM:	Lyle Phair, Executive Director Suburban Arena Management, LLC 23995 Freeway Park Drive Farmington Hills, MI 48335
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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:

SUBURBAN ARENA MANAGEMENT, LLC, a
Michigan Limited Liability Company

By: Lyle Phair
Its: Executive Director

CITY OF NOVI, a Michigan municipal
Corporation

By: Robert J. Gatt
Its: Mayor

By: Maryanne Cornelius
Its: City Clerk