Roll Call Vote on CM-04-02-060 **Yeas: Gatt, Lorenzo, Nagy, Paul, Csordas, Landry, Capello**
Nays: None
Absent: None

4. Resolution Approving Building Authority Refunding and Contract (Ice Arena Bonds).

CM-04-02-061 **Moved by Landry, seconded by Nagy; CARRIED UNANIMOUSLY: To approve Resolution Approving Building Authority Refunding and Contract (Ice Arena Bonds).**

Roll Call Vote on CM-04-02-061 **Yeas: Lorenzo, Nagy, Paul, Csordas, Landry, Capello, Gatt**
Nays: None
Absent: None

5. Consideration of lifting from the table Council Motion 03-07-215 to reject the Singh Development Agreement (Uptown Park) as presented at the July 7, 2003 City Council meeting.

Mike Kahm, Singh Development Company, said he did not want to rehash the history of this development. Rather, he just wanted to take a few minutes to put it in perspective. His company and the City spent many hours discussing and debating the merits of rezoning this subject parcel from OST to RM-2. There was a collective agreement that, under the circumstances, the use of this property was appropriate for many reasons. One of the conditions discussed in a meeting last year prior to the July meeting was a condition that Council requested the use of the property be restricted to ownership. He said he was in attendance to commit to that condition. Singh is receptive to initiating a development agreement on the property for rezoning to ownership. The other item that was discussed at that meeting was density. When Singh submitted its application for the property, it requested rezoning to RM-2 and brought in a concept site plan. At that time, Singh was proposing a rental community. That rental community did not meet the favor of Council, so Singh has now agreed to make that ownership. The 201 units on that site plan were a concept for a very particular product under very particular circumstances. Now that Singh has taken that off the table, it is no longer an issue, and Singh is open to the use of the property for RM-2. He proposed that the development agreement entered into for the rezoning be quite simple. There are not many natural features on the property. There are ordinances in place governing the planning of this piece of property. He proposed simply rezoning the property to RM-2 with the condition that it be ownership, and allow the ordinances, the existing natural features of the property, and market conditions to dictate what type of product would be appropriate for the development of an ownership product on this location.

Mayor Csordas asked how many dwelling units would be allowed underneath the underlying zoning.

Mr. Kahm said that there are about 35 acres on the site collectively. Many of those are not buildable because of regulated wetlands, particularly in some regulated woodlands.

CITY OF NOVI
Clerk's Department
MEMORANDUM

TO: Kathy Smith-Roy, Finance Director

FROM: Mary Ann Cabadas, Clerk's Dept.

DATE: March 8, 2004

SUBJECT: Building Authority Refunding Contract (Ice Arena Bonds)

Enclosed are seven signed original certified Refunding Contracts, signed by the Mayor and City Clerk.

Please date the first page and forward one fully executed contract to the Clerk's Office once signed by the Building Authority.

If you should need any additional information, please call.

REFUNDING CONTRACT

THIS CONTRACT, made and entered into as of the ____ day of ___________, 2004, by and among the NOVI BUILDING AUTHORITY, a public corporation organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended (the "Act") (the "Authority"), and the provisions of Act 34, Public Acts of Michigan, 2001, as amended, ("Act 34") and the Act (collectively, the "Acts"), and the CITY OF NOVI, County of Oakland, a Michigan municipal corporation organized and existing under the Constitution and laws of the State of Michigan (the "City").

WITNESSETH:

WHEREAS, the Authority has been incorporated under and in pursuance of the provisions of the Act for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining a building or buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for use for any legitimate public purpose of the City; and

WHEREAS, the City and the Authority have entered into a Limited Tax Full Faith and Credit General Obligation Contract, dated February 27, 1997 (the "Contract") wherein the Authority agreed to acquire public facilities and lease said facilities to the City; and

WHEREAS, bonds have been issued by the Authority pursuant to the Contract, designated 1997 Building Authority Bonds, dated May 1, 1997, (the "Prior Bonds"); and

WHEREAS, the Authority and the City have been advised that conditions in the bond market have now improved to the point that all or a portion of the Prior Bonds could be refunded at a considerable savings; and

WHEREAS, it is the determination and judgment of the Authority and the City that all or a portion of the Prior Bonds should be refunded (the "Refunding") to secure for the City the interest savings anticipated and thereby permit the operation of the financed facilities in a more economical fashion for the benefit of the users of the facilities and the taxpayers of the City; and

WHEREAS, the execution of this contract (the "Refunding Contract") is necessary in order to implement a refunding program;

NOW, THEREFORE, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

1. The Authority and the City hereby approve and confirm the Refunding under the provisions of the Acts in the manner provided by and pursuant to this Refunding Contract.

2. The Authority will issue a single series of refunding bonds (the "Refunding Bonds") in a total principal amount not to exceed $8,000,000 in order to pay part of the costs of the Refunding. All costs of the Refunding and of issuing the Refunding Bonds, including payment of the principal of and interest on the Prior Bonds, call premium, underwriting discount, bond and other printing, administrative, legal and financial advisory expenses, credit enhancement costs, rating fees, trustee and paying agent/registrar fees and all related expenses shall be paid from the proceeds of sale of the Refunding Bonds or from cash amounts to be made available by the City to pay such costs.

3. To carry out and accomplish the Refunding in accordance with the provisions of Michigan law, the Authority shall take the following steps:

(a) The Authority will adopt a resolution providing for the issuance of the Refunding Bonds in an aggregate principal amount not to exceed $8,000,000 (the "Refunding Bond Resolution"), such resolution to be substantially in the form attached hereto and based upon the Authority's analysis of the financial benefits of the Refunding. The Refunding Bonds shall mature serially, as authorized by law, and will be issued in anticipation of the debt service installment payments required to be made by the City as provided in the Contract and as hereinafter provided in this Refunding Contract and will be secured primarily by the contractual obligations of the City to pay said installments when due, including interest. After due adoption of the Refunding Bond Resolution, the Authority will take all legal procedures and steps necessary to effectuate the sale and delivery of the Refunding Bonds.

(b) The Authority, upon receipt of proceeds of sale of the Refunding Bonds, will comply with all provisions and requirements of law, the Refunding Bond Resolution and this Refunding Contract relative to the disposition and use of the proceeds of sale thereof.

(c) The Authority shall not make any investments or take any other actions which would cause the Refunding Bonds herein authorized to be constituted as arbitrage bonds pursuant to any applicable federal statutes or regulations.

(d) The Authority shall take all steps necessary to refund the Prior Bonds as aforesaid on June 1, 2006.

4. The full principal amount of the Refunding Bonds shall be charged to and paid by the City to the Authority in annual principal installments, together with interest and other expenses as herein provided. It is understood and agreed that the Refunding Bonds of the Authority will be issued in anticipation of such payments by the City.

It is agreed that the City shall pay to the Authority, at least one business day prior to the annual maturity or mandatory redemption date of principal amounts of the Refunding Bonds, such principal amount, and in addition, at least one business day prior to each interest payment date on the Refunding Bonds, as accrued interest on the principal installments remaining unpaid, an amount sufficient to pay all interest due on the next succeeding interest payment date. From time to time as the Authority is billed by the registrar/transfer/paying agent for the Refunding Bonds for their services, and as other costs and expenses accrue to the Authority from handling of the payments made by the City or from other action taken in connection with the Refunding Bonds, the Authority shall notify the City of the amount of such fees, costs and expenses, and the City shall, within thirty (30) days from such notification, remit to the Authority sufficient funds to pay such amounts.

The Authority shall, within thirty (30) days after the delivery of the Refunding Bonds, furnish the City with a complete schedule of said installments and the interest thereon and due dates and shall also, at least thirty (30) days prior to each due date, advise the City, in writing, of the exact amount due on the next due date. The failure to give such notice shall not, however, excuse the City from making required payments when due under the provisions hereof.

5. The City, pursuant to authorization of Section 11k of the Act, hereby irrevocably pledges its full faith and credit for the prompt and timely payment of its obligations pledged for payment of the Refunding Bonds as expressed in this Refunding Contract. Pursuant to such pledge, if other funds are not available, the City shall be required to pay such amounts from any of its general funds as a first budget obligation and shall each year levy an ad valorem tax on all the taxable property in the City in an amount which, taking into consideration estimated delinquencies in tax collections, will be sufficient to pay such obligations under this Refunding Contract becoming due before the time of the following year's tax collections, such annual levy shall however be subject to applicable constitutional, statutory and charter tax rate limitations. Commitments of the City are expressly recognized as being for the purpose of providing funds to meet the respective contractual obligations of the City in anticipation of which the Refunding Bonds are issued. Nothing herein contained shall be construed to prevent the City from using any, or any combination of, the means and methods provided in Section 8A of the Act for the purpose of providing funds to meet its obligations under this Refunding Contract, and if at the time of making the annual tax levy there shall be other funds on hand earmarked and set aside for the payment of the contractual obligations due prior to the next tax collection period, then such annual tax levy may be reduced by such amount.

6. Additional moneys over and above any of the payments specified in this Refunding Contract may be prepaid as provided in this Refunding Contract.

7. All provisions of the Contract not inconsistent herewith, and particularly all covenants relative to the payment of and security for the Prior Bonds made by the City therein, shall remain in full force and effect and shall apply with equal effect to the Refunding Bonds authorized hereby, it being understood that upon issuance of the Refunding Bonds, all or any portion of the Prior Bonds refunded will be defeased and the Refunding Bonds shall be substituted therefor and shall be outstanding in their place and stead.

8. Nothing herein contained shall in any way be construed to prevent additional financing under the provisions of the Act.

9. The obligations and undertakings of each of the parties to this Refunding Contract shall be conditioned upon the successful accomplishment of the proposed Refunding, and therefore if for any reason whatsoever the Refunding Bonds are not issued, then this Refunding Contract shall be considered void and of no force and effect; provided, however, that in such event, all costs and expenses shall be paid by the City in accordance with existing commitments to the Authority, and the Authority shall not be obligated for such costs and expenses.

10. The Authority and the City each recognize that the holders from time to time of the Refunding Bonds will have contractual rights in this Refunding Contract, and it is therefore covenanted and agreed by each of them that so long as any of the Refunding Bonds shall remain outstanding and unpaid, the provisions of this Refunding Contract shall not be subject to any alteration or revision which would in any manner materially affect either the security of the Refunding Bonds or the prompt payment of principal of or interest thereon. The City and the Authority further covenant and agree that they will each comply with their respective duties and obligations under the terms of this Refunding Contract promptly at all times and in the manner herein set forth, and will not suffer to be done any act which

would in any way impair the Refunding Bonds, the security therefor, or the prompt payment of principal of and interest thereon. It is hereby declared that the terms of this Refunding Contract insofar as they pertain to the security of the Refunding Bonds shall be deemed to be for the benefit of the holders of said Refunding Bonds.

11. This Refunding Contract shall remain in full force and effect for a period of forty (40) years from the date hereof, or until such lesser time as the Refunding Bonds issued by the Authority are paid, at which time this Refunding Contract shall be terminated, and the provisions of the Contract relative to disposition of the financed facilities shall be carried out. In any event, the obligations of the City to make the payments required hereunder shall be terminated at such time as all of the Refunding Bonds are paid in full by the City, together with all interest and penalties and other obligations hereunder.

12. This Refunding Contract shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

IN WITNESS WHEREOF, the NOVI BUILDING AUTHORITY, by its Commission, and the CITY OF NOVI, COUNTY OF OAKLAND, MICHIGAN, by its City Council, have each caused its name to be signed to this instrument by its duly authorized officers and its seal to be affixed hereto the day and year first above written.

In the presence of: NOVI BUILDING AUTHORITY

_______________________ By ______________________________
Chairman

_______________________ By ______________________________
Secretary

(Seal)

CITY OF NOVI

Nancy Reutter
NANCY REUTTER By Lou Csordas
Mayor

MaryAnn Cabadas
MARYANN CABADAS By Maryanne Cornelius
Clerk

(Seal)

STATE OF MICHIGAN)
: ss.
COUNTY OF OAKLAND)

On this ____ day of _____________, 2004, before me appeared _________________________ and _________________________, to me personally known, who, being by me duly sworn, did, each for himself or herself, say that they are respectively the Chairman and Secretary of the Commission of the NOVI BUILDING AUTHORITY, a public corporation of the State of Michigan, and that said instrument was signed and sealed on behalf of said Authority by authority of its Commission, and the said persons acknowledged said instrument to be the free act and deed of said Authority.

____
Notary Public, Oakland County, MI
My Commission Expires: ______________

STATE OF MICHIGAN)
: ss.
COUNTY OF OAKLAND)

On this ____ day of ______________, 2004, before me appeared _________________ and _________________, to me personally known, who, being by me duly sworn, did, each for himself or herself, say that they are respectively the Mayor and Clerk of the CITY OF NOVI, County of Oakland, Michigan, a municipal corporation in the State of Michigan, and that said instrument was signed and sealed on behalf of the said City by authority of its City Council and the said persons acknowledged said instrument to be the free act and deed of said City.

____
Notary Public, Oakland County, MI
My Commission Expires: ______________

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