

ICE ARENA MANAGEMENT ~~AGREEMENT~~ AGREEMENT

This Ice Arena Management Agreement, ("Agreement") 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, having its address at 23995 Freeway Park Drive, Farmington Hills, MI 48335 ("MANAGEMENT FIRM"). The Agreement will be effective on the date both parties sign it.

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 consideration 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, to the extent authorized under this Agreement. 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 is 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 five thousand dollars (\$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 here under 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 fifteen (15) 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 sixty (60) days of the ending of such fiscal year.

- c) Within sixty (60) 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, which results 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 Agreement 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 for 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 detailed in Attachment A to this Agreement, to operate the Ice Arena during the life of this Agreement.

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 ~~Ten Thousand One Hundred Ninety Eight Dollars (\$10,198.00)~~ **Eleven Thousand Five Hundred Dollars**

(\$11,500.00) for the first and second (2025-26 and 2026-27) years of this Agreement- and **Twelve Thousand One Hundred Twenty-six and 67/100 Dollars (\$12,126.67) the third year of this Agreement.** Any partial month shall be paid pro-rated.

- b) Shared Incentive Schedule: It is the common goal of MANAGEMENT FIRM and the CITY that the facility is operated to generate sufficient funds to pay all direct expenses and all required debt service payments. To encourage the generation of funds and in order for MANAGEMENT FIRM to be paid **25%** percent of the annual ~~growth in~~ operating income from ~~fiscal year to~~ the fiscal year over \$450,000 (by way of example: FYE operating income ends at \$490,000. \$490,000 less \$450,000 = \$40,000 over threshold x 5% = \$2,000)., ~~the minimum operating income must be equal to or greater than \$750,000 each year of the Agreement.~~

Operating Income Defined as:

- All Proceeds (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

5. Agreement Term, Escalation and Termination. The term of this Agreement shall be three (3) years, commencing on July 1, 2025 and ending on June 30, 2028. The CITY will have the option to renew the Agreement for two (2) additional years in one (1) year increments. If the CITY chooses to renew the Agreement for option year one, the CITY shall pay the MANAGEMENT FIRM **Twelve Thousand One Hundred Twenty-six and 67/100 Dollars (\$12,126.67) per month (\$145,520.00 per year).** If the CITY chooses to renew the Agreement for a second year it shall pay MANAGEMENT FIRM **Twelve Thousand Four Hundred Thirty-eight and 33/100 dollars per month (\$149,260.00 per year).** Nothing contained in this Agreement shall be

construed to require the payment of a penalty or require cause for this Agreement to be terminated by the CITY. The CITY shall have the option to terminate this Agreement for one or more of the following reasons:

- a). **Failure to Make Revenue Projection:** This Agreement may be canceled at any time after June 30, 2026 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 ninety (90) days advance written notice of intent to terminate this Agreement. MANAGEMENT FIRM shall have this ninety (90) 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 Agreement without cause. To exercise this option, the CITY shall, to the extent possible, 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 Agreement. If the City receives an offer to purchase the arena it will provide timely notice to MANAGEMENT FIRM.

- c) **Material Breach:** This Agreement may be terminated at any time by either party without termination fee or penalty, 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 duties under this Agreement.

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.

e) Termination for Convenience: After the third year of the Agreement, either Party may terminate the Agreement for convenience upon providing 180 days advanced written notice.

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. MANAGEMENT FIRM shall indemnify and hold CITY and its elected and appointed officials, employees and agents 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, agents, or contractors.

To the extent MANAGEMENT FIRM owes a duty to indemnify the CITY, 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 on behalf of MANAGEMENT FIRM, as well as the CITY.

MANAGEMENT FIRM shall reimburse the CITY 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 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) pairs 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, and such companies shall not receive preferential treatment for scheduling and reserving ice time.

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

If to MANAGEMENT FIRM:

Lyle Phair
Executive Director
Suburban Arena Management, LLC
23995 Freeway Park Drive
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:

Suburban Arena Management, an LLC

By:
Its _____

Date: _____

City of Novi

By: Justin Fischer, Mayor

Date: _____

**CITY OF NOVI
INSURANCE REQUIREMENTS
ATTACHMENT A**

1. The MANAGEMENT FIRM shall maintain at its expense during the term of this Agreement, the following insurance:
 - a. **Worker's Compensation** insurance with the Michigan statutory limits and Employer's Liability insurance with minimum limits of \$100,000 (One Hundred Thousand Dollars) each accident.
 - b. **Commercial General Liability Insurance** - The MANAGEMENT FIRM shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance, Personal Injury, Bodily Injury and Property Damage on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** (One Million Dollars) per occurrence combined single limit.
 - c. **Automobile liability** insurance covering all owned, hired and non-owned vehicles with Personal Protection insurance to comply with the provisions of the Michigan No Fault Insurance Law including Residual Liability insurance with minimum bodily injury limits of **\$1,000,000** (One Million Dollars) each person and \$1,000,000 (One Million Dollars) each occurrence and minimum property damage limits of **\$1,000,000** (One Million Dollars) each occurrence.
2. All policies shall name the MANAGEMENT FIRM as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice date to the City; alternately, MANAGEMENT FIRM may agree to provide notice of such cancellation or reduction.
3. The City of Novi shall be named as Additional Insured for General Liability and Auto Liability. Certificates of Insurance evidencing such coverage shall be submitted to City of Novi, Purchasing Department, 45175 Ten Mile Road, Novi, Michigan 48375-3024 prior to commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies. A current certificate of insurance must be on file with the City for the duration of the Agreement. Said coverage shall be primary coverage rather than any policies and insurance self-insurance retention owned or maintained by the City. Policies shall be issued by insurers who endorse the policies to reflect that, in the event of payment of any loss or damages, subrogation rights under those Agreement documents will be waived by the insurer with respect to claims against the City.
4. The MANAGEMENT FIRM shall be responsible for payment of all deductibles contained in any insurance required hereunder.

5. If, during the term of this Agreement, changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate insurance limits, the MANAGEMENT FIRM will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the MANAGEMENT FIRM's expense, under valid and enforceable policies issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City.
6. If any work is sublet in connection with this Agreement, the MANAGEMENT FIRM shall require each subcontractor to effect and maintain at least the same types and limits of insurance as fixed for the MANAGEMENT FIRM.
7. The provisions requiring the MANAGEMENT FIRM to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the MANAGEMENT FIRM under this Agreement.
8. The City has the authority to vary from the specified limits as deemed necessary.

**ADDITIONAL REQUIREMENTS
HOLD HARMLESS/INDEMNITY**

1. The MANAGEMENT FIRM agrees to fully defend, indemnify and hold harmless the City, its City Council, its officers, employees, agents, volunteers and MANAGEMENT FIRMS from any claims, demands, losses, obligations, costs, expenses, verdicts, and settlements (including but not limited to attorney fees and interest) resulting from:
 - A. Acts or omissions by the MANAGEMENT FIRM, its agents, employees, servants and MANAGEMENT FIRMS in furtherance of execution of this Agreement, unless resulting from the sole negligence and tort of the City, its officers, employees, agents and MANAGEMENT FIRMS.
 - B. Violations of state or federal law involving whether administrative or judicial, arising from the nature and extent of this Agreement.
 - C. The MANAGEMENT FIRM agrees to defend the City from and against any and all actions or causes of action, claims, demands or whatsoever kind or nature arising from the operations of the MANAGEMENT FIRM and due to the acts or omissions of the MANAGEMENT FIRM or its agents, including, but not limited to, acts of omissions alleged to be in the nature of gross negligence or willful misconduct. The MANAGEMENT FIRM agrees to reimburse the City for reasonable attorney fees and court costs incurred in the defense of any actions, suits, claims or demands arising from the operations of the MANAGEMENT FIRM under this Agreement due to the above-referenced acts or omissions.
2. The MANAGEMENT FIRM agrees that it is its responsibility and not the responsibility of the City to safeguard the property and materials used in performing this Agreement. Further the MANAGEMENT FIRM agrees to hold the City harmless

for any loss of such property and materials used in pursuant to the MANAGEMENT FIRM's performance under this Agreement.

3. The MANAGEMENT FIRM shall not discriminate against any employee, or applicant for employment because of religion, race, color, national origin, age, sex, height, weight, handicap, ancestry, place of birth, sexual preference or marital status. The MANAGEMENT FIRM further covenants that it will comply with the Civil Rights Act of 1973, as amended; and the Michigan Civil Rights Act of 1976 (78. Stat. 252 and 1976 PA 453) and will require a similar covenant on the part of any consultant or subcontractor employed in the performance of this Agreement.