



CITY OF NOVI CITY COUNCIL
FEBRUARY 7, 2022

SUBJECT: Approval of Automated Video Broadcast Service Agreement with LiveBarn, LLC, to provide video service at the City of Novi Ice Arena.

SUBMITTING DEPARTMENT: Parks, Recreation & Cultural Services

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). For over twenty years, the City of Novi's management contractor, Suburban Sports Group, has successfully run a high quality, customer service oriented operation with a complete complement of ice skating and hockey programs.

Suburban Sports Group has proposed an agreement with LiveBarn, Inc. to provide automated video broadcast service at the Ice Arena. The primary purpose for this agreement is to allow the public to view events and programs broadcast by LiveBarn. Under the Agreement, LiveBarn would install a fully-automated sports broadcasting system for the delivery of live and/or on demand video and audio streaming of the ice rink's two sheets of ice at no direct cost to the City (other than the cost of electricity.) Ice Arena staff will develop and maintain the schedule of approved broadcast events. A portion of the revenue from LiveBarn memberships will be paid to Suburban Sports Group.

The agreement requires the City to post notice at the entrance of the facility and on each ice rink. These notices will alert the public that the venue is monitored by cameras for security and commercial purposes and by entering the area, the participant is waiving any claim concerning the capturing of their image. The notices will be provided by LiveBarn and will indicate that LiveBarn is capturing the images, not the City. In order to protect the City from potential claims relating to use of a person's image, and any claims relating to the service in general, LiveBarn has agreed to hold the City, its officials, employees and agents harmless from claims relating to the actions or inactions of LiveBarn.

Over the past four years, Suburban Sports Group has utilized the LiveBarn video platform at four company-owned facilities in Macomb, Rochester, Farmington Hills and East Lansing as well as the facility they manage for they City of Royal Oak. They have experienced no issues and recommend the installation due to the potential

revenue, ability to attract and retain tournaments and as it is a popular and requested amenity.

The City Attorney has reviewed and approved the proposed agreement.

RECOMMENDED ACTION: Approval of Automated Video Broadcast Service Agreement with LiveBarn, LLC, to provide video service at the City of Novi Ice Arena.

DATE:

BETWEEN: LIVEBARN INC. ("LiveBarn")

and

_____ ("Venue Owner")

WHEREAS LiveBarn Inc. and Venue Owner wish to enter into this Agreement pursuant to which LiveBarn will install at Venue Owner's Ice Rink Sheet described in the attached Schedule "A" a fully automated sports broadcasting system for the delivery of live and/or on demand video and audio streaming to internet connected devices such as smartphones, computers or tablets (the "Automated Online Broadcast Service");

NOW, THEREFORE, in consideration for the mutual promises set out below, and for other good and valuable consideration acknowledged by the parties, LiveBarn and Venue Owner agree as follows:

1 AUTOMATED ONLINE BROADCAST SERVICE

1.1 LiveBarn shall, at its own expense, install and maintain all hardware, software and internet bandwidth required for the operation and maintenance of the Automated Online Broadcast Service in regard to the Ice Rink Sheet. The initial installation will occur within six months from the date of this Agreement (such six-month date being herein referred to as the "Latest Install Date"); it will be scheduled with the written approval (including email) of Venue Owner, and concurrently with the installation, LiveBarn will specifically explain to Venue Owner representative onsite exactly where any hardware or other components will be installed. Installation will then only proceed with the consent of Venue Owner which consent will be indicated by Owner in writing prior to LiveBarn undertaking its installation. The initial installation for each Ice Rink Sheet shall include one (1) computer, one (1) router, one (1) modem, between one (1) and three (3) power converters, and up to two (2) cameras to be placed on the side walls or on the beams or columns extending from the walls. The internet connection and computer shall be located adjacent to the respective Ice Rink Sheet in a secure location with electrical power outlets. The exact selection of camera locations will be made after consideration for optimal broadcast quality and avoidance of any obstruction. Any modification to the installation will only be undertaken with the permission and process with Venue Owner as outlined above. Venue Owner shall assume the cost of electricity for the components installed in connection with this Agreement.

1.2 In addition LiveBarn shall, at its expense and upon Venue Owner's request, install one advertising management box adjacent to a TV screen that is provided by the Venue. The LiveBarn advertising management box will display a combination of LiveBarn highlights and a Live feed, as well as additional LiveBarn information.

1.3 Title to all hardware, software, and wiring shall remain in the name of LiveBarn.

1.4 All content broadcast using the Automated Online Broadcast Service, including the video and audio relating to all sports and recreational activities occurring on each Ice Rink Sheet (collectively, the "Content"), will be made available to LiveBarn's subscribers on a monthly subscription basis, subject to sections 1.7 and 1.8 below. LiveBarn will determine the pricing for its offerings of the Automated Online Broadcast Service. From time to time LiveBarn may provide a free trial at its discretion.

1.5 Revenue generated from the Automated Online Broadcast Service will be the property of LiveBarn; however, LiveBarn will supply Venue Owner with a unique code to enable it to market and solicit new memberships for LiveBarn, for which LiveBarn will pay Venue Owner fifty percent (50%) of the revenues generated from these memberships over the full lifetime of these memberships - until such membership is discontinued. The above code will enable Venue Owner to solicit LiveBarn memberships by providing potential members with the attraction of a 10% discount. This code will track the memberships generated by Venue Owner on a quarterly basis. The above payments to Venue Owner will only apply to LiveBarn memberships originated with the unique code allocated to Venue Owner. LiveBarn will pay Venue Owner its revenue share within 30 days of the end of each calendar quarter together with a corresponding revenue statement. Venue Owner will provide a staff person to communicate with and receive LiveBarn's various local marketing initiatives (including social media) as described below.

1.6 Except as otherwise provided herein, LiveBarn shall be the exclusive owner of all rights in and to the Content and shall have the exclusive right to broadcast the Content for all purposes and in any manner, it determines in its sole discretion, including by providing its broadcast signal to national broadcasters and digital media distributors. Without limiting the foregoing, the Venue Owner acknowledges that online distributions of the Content from each Ice Rink Sheet will be made available to all subscribers of the Automated Online Broadcast Service, subject to sections 1.7 and 1.8 below. In the event that the Owner receives a Freedom of Information Act ("FOIA") request for the Content, which will require Owner to provide a copy of the Content, LiveBarn will cooperate with Owner and provide the Content that is deemed by Owner to be responsive to the FOIA Request.

1.7 LiveBarn will provide Venue Owner with an exclusive online administrative password to enable Venue Owner in its discretion to "blackout" any particular dates or time periods from being broadcast on any selected Ice Rink Sheet (the "Blackout Restrictions").

1.8 LiveBarn will also provide Venue Owner with the ability in its discretion to restrict viewer access to any broadcasts from its Venue to a pre-selected potential audience for privacy purposes.

1.9 During the Term (as defined below), LiveBarn will provide Venue Owner with three (3) complimentary LiveBarn accounts for each Ice Rink Sheet.

1.10 LiveBarn will hold Venue Owner, its officials, employees, volunteers and agents harmless from and against any and all claims, demands, losses and settlement, including attorney fees incurred and all costs connected therewith, for any damages which may be asserted or recovered and/or property damages which are in any way connected with the actions or inactions LiveBarn relating to the agreement and for any injuries to LiveBarn employees and agents and loss or damage to their personal property in connection with their work. LiveBarn employees and agents shall wear identification badges while working on Venue Owner's premises.

2 TERM AND TERMINATION

2.1 The term of this Agreement commences on the date hereof and continues until the five -year anniversary of the Latest Install Date (the "Term"), and it will automatically renew for successive terms of two (2) years, unless either party notifies the other in writing of its intent to discontinue this Agreement at least ninety (90) days before the expiration of the then current term.

2.2 Notwithstanding the foregoing, but subject to Subsection 3.1 below, either party shall have the right to terminate this Agreement for any reason upon giving (90) days written notice to the other party.

2.3 Upon termination of this Agreement by expiration of the term or for any other cause, LiveBarn shall, at its own cost and expense, remove all hardware, software and wiring from Venue Owner's location and return Venue Owner's location to the same condition it was in prior to installation.

2.4 Venue Owner shall have the right to terminate this Agreement if LiveBarn materially breaches this Agreement and the material breach is not cured to within forty (40) days after Venue Owner provides written notice which outlines such breach to LiveBarn.

3 EXCLUSIVITY

3.1 In consideration for the investment of time and expense incurred by LiveBarn to fulfill its obligations under this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Venue Owner hereby declares and agrees that for the initial period of five (5) years, , from the commencement date of the Term, and notwithstanding the termination of this Agreement by the Venue Owner, for any reason, LiveBarn shall have the absolute exclusivity to broadcast Content from each of the Ice Rink Sheets using unmanned operated cameras. For greater certainty, the said exclusivity shall apply for the five (5) year period even if the Venue Owner elects to terminate this Agreement pursuant to Subsection 2.2 above prior to the expiration of the Term. Notwithstanding the above, the Venue Owner

has the right to authorize other broadcasts using cameras that are not owned or operated by Live Barn, provided they are not broadcast using an installed unmanned camera system. However, the foregoing exclusivity shall not apply should LiveBarn cease operations or to the extent Venue Owner terminates this agreement in accordance with section 2.4.

3.2 The Venue Owner hereby declares and acknowledges that the foregoing exclusivity, is reasonable in the circumstances, and that LiveBarn is relying upon such exclusivity in connection with the provision of the Automated Online Broadcast Service and that LiveBarn would not have entered into this Agreement without such exclusivity. However, the foregoing exclusivity shall not apply should LiveBarn cease operations or to the extent Venue Owner terminates this agreement in accordance with section 2.4.

4 SUPPLY OF AUTOMATED ONLINE BROADCAST SERVICE

4.1 LiveBarn will use reasonable skill and care to make the Automated Online Broadcast Service available throughout the Term. Notwithstanding the foregoing, LiveBarn shall have no responsibility, liability, or obligation whatsoever to Venue Owner, or any other third party, for any interruptions of the Automated Online Broadcast Service.

4.2 LiveBarn may, without any liability to Venue Owner, suspend the supply of all or part of the Automated Online Broadcast Service upon giving Venue Owner notice. This would occur if the LiveBarn equipment is repeatedly damaged or LiveBarn is unable to obtain a sufficient internet signal to the venue.

4.3 The Venue Owner agrees to notify LiveBarn by email to venuesupport@livebarn.com as soon as it becomes aware of any interruption or malfunction with the Automated Online Broadcast Service. Venue Owner will not be responsible for damage or malfunction of any equipment and LiveBarn will repair or replace at its cost any malfunctioning components which is required. Any required service visit by LiveBarn will be scheduled with the written approval (including email) of Venue Owner. LiveBarn will specifically explain the repair, replacement or service work to Venue Owner representative onsite and this work will only proceed with the consent of Venue Owner which consent will be deemed upon LiveBarn undertaking its work.

4.4 From time to time there will be on site adjustments requiring assistance from a technically proficient person at the Venue. Venue Owner will be responsible to supply such person when necessary.

5 NOTICE TO PUBLIC

5.1 The Venue Owner agrees to post a notice at the entrance to its venue and inside each Ice Rink Sheet, advising the public that the venue is monitored by video

cameras for security, safety and commercial purposes, and participants waive any claim relating to the capture or public transmission of his/her participation while at the venue. LiveBarn will supply and post these notices during its initial installation. The language of the notices and any modifications to the language. must be approved by Owner .

5.2 In all agreements with parties for usage of the Venue, Venue Owner will include provisions both disclosing the existence of LiveBarn broadcasting at the Venue and requiring such parties to notify all their users of the Venue of this.

5.3 LiveBarn shall indemnify and hold Venue Owner harmless for all claims, losses, damages, expenses or judgments from any customer or parent or legal guardian of a customer relating to the broadcast of a customer's image by LiveBarn. LiveBarn will have full discretion on how to defend any such claims, actions or proceedings and its liability hereunder is subject to it having been given proper notice and having had the opportunity to make such defenses in its discretion.

6 MARKETING

6.1 Venue Owner agrees to promote LiveBarn through all available avenues discussed in this section, understanding that it is in Venue's best interest financially to market LiveBarn to their customers and patrons. LiveBarn will also provide, at its expense, a minimum of one (1) 2.5 x 6' color printed standing banner, branded with Venue Owner's unique code described in Subsection 1.5, to be displayed within Venue Owner's lobby in a prominent location. Venue Owner understands that failure to comply and make reasonable promotion and marketing efforts will result in lower revenue share payments to Venue Owner.

6.2 Venue Owner will provide a marketing contact person (s) who will be responsible for interacting with LiveBarn and becoming knowledgeable about the various LiveBarn marketing and promotion initiatives. Upon installation of LiveBarn, Venue Owner will make said contact available for a 30- minute video web session, serving as an orientation into all of the best practices for introducing and promoting LiveBarn. This person will subsequently be responsible for implementing promotion and marketing initiatives to Venue's customers and patrons.

7 GENERAL

7.1 Any amendment to this Agreement must be in writing and signed by both parties.

7.2 Although LiveBarn will remain liable for its obligations hereunder, LiveBarn shall be permitted to use agents and subcontracts to perform its installation, maintenance and repair obligations hereunder.

7.3 The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

7.4 If any part of this Agreement is held to be invalid or unenforceable, that part will be severed, and the rest of the Agreement will remain in force. Headings herein are for reference only.

7.5 LiveBarn hereby represents that it maintains \$2,000,000 of General Liability Insurance, \$2,000,000 in Media Coverage Insurance and \$2,000,000 in Cyber Insurance, and that upon execution of this Agreement Venue Owner will be named as additionally insured, with its name and location included in such insurance policies.

7.6 All notices required under this Agreement must be given in writing and by email to LiveBarn at venuesupport@livebarn.com, fmliller@livebarn.com, ray@livebarn.com, and to Venue Owner at its address listed herein. Either party may change its address from time to time by providing notice of such change to the other party.

7.7 This Agreement describes the entire understanding and agreement of the parties and supersedes all oral and written agreements or understandings between them related to its subject matter.

7.8 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which taken together will be deemed to be one instrument.

7.9 This Agreement is governed by and will be interpreted under the laws of the State of Michigan. Any disputes shall be heard in the state or federal courts of the State of Michigan as indicated by applicable court rule.

7.10 Venue Owner will not be liable to LiveBarn by reason of inconvenience or annoyance for any damages or lost revenue due to power loss or shortage, mechanical breakdown, structural damage, roof collapse, fire, flood, renovations, improvements, alterations, or closure of the facility by it or any regulatory agency.

7.11 LiveBarn consents to the Venue Owner in connection with the operation of its Venue, promoting in its marketing materials that LiveBarn supplies it with the LiveBarn installed product and hereby provides a license to use its trademark for such purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and at the place first above mentioned.

LIVEBARN INC.

Per: _____

VENUE OWNER

Per: _____

Print Name:

PLEASE FILL OUT SCHEDULE A ICE RINK SHEET

Venue Name and Address:

We require one point of contact to initiate communication with for each venue. This person will receive a request to complete an online form that gathers information about the venue and points of contact.

Name of Each Rink:

(i.e. Rink #1 or Main Rink)

Primary Contact - Venue General Manager or Decision Maker:

Name:

Work Number:

Cell Phone:

Email Address:

Revenue Share Payment Information:

Payee Name (name of entity depositing check):

Attention (name of individual receiving check and statement):

Street Address:

City:

State/Province:

Zip/Postal Code:

Additional Special Instructions:



January 28, 2022

Mr. Jeff Muck
Department of Parks, Recreation and Cultural Services
City of Novi
45175 Ten Mile Road
Novi, MI 48375

Re: LiveBarn at Novi Ice Arena

Dear Jeff,

Please accept this letter of recommendation that the City of Novi enter into an agreement with LiveBarn for services at the Novi Ice Arena.

Over the past four years, Suburban Sports Group has utilized the LiveBarn video platform at four company-owned facilities in Macomb, Rochester, Farmington Hills and East Lansing as well as the managed facility for the City of Royal Oak.

We have experienced no problems or issues with the service and have found it to be a very popular amenity for the families of our participants. Additionally, it has served as a valuable revenue stream for the facilities and can easily be turned off when necessary. The majority of ice arenas in Michigan and across North America utilize the service.

We strongly support having LiveBarn at the Novi Ice Arena. Please don't hesitate to contact me directly if you have any questions.

Sincerely,

Lyle Phair
Suburban Sports Group