



REQUEST FOR PROPOSALS

Title: **AMUSEMENT RIDES**

Reference No.: 1220-030-2015-038

FOR PROFESSIONAL SERVICES (CONSULTANT)

(General Services)

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REQUEST FOR PROPOSALS

1. INTRODUCTION

1.1 Purpose

The purpose of this RFP is to select a service provider (or service providers) to perform the services (“Services”) described in Schedule A.

1.2 Definitions

In this RFP the following definitions shall apply:

“**BC Bid Website**” means www.bcbid.gov.bc.ca;

“**City**” means the City of Surrey;

“**City Representative**” has the meaning set out in section 2.5;

“**City Website**” means www.surrey.ca;

“**Closing Time**” has the meaning set out in section 2.1;

“**Contract**” means a formal written contract between the City and a Preferred Proponent to undertake the Services, the preferred form of which is attached as Schedule B;

“**Evaluation Team**” means the team appointed by the City;

“**Information Meeting**” has the meaning set out in section 2.2;

“**Preferred Proponent(s)**” means the Proponent(s) selected by the Evaluation Team to enter into negotiations for a Contract;

“**Proponent**” means an entity that submits a Proposal;

“**Proposal**” means a proposal submitted in response to this RFP;

“**RFP**” means this Request for Proposals;

“**Services**” has the meaning set out in Schedule A;

“**Site**” means the place or places where the Services are to be performed; and

“**Statement of Departures**” means Schedule C-1 to the form of Proposal attached as Schedule C.

2. INSTRUCTIONS TO PROPONENTS

2.1 Closing Time and Address for Proposal Delivery

A Proposal should be labelled with the Proponent's name, RFP title and number. A Proposal should be submitted in the form attached to this RFP as Schedule C – Form of Proposal.

The Proponent may submit a Proposal either by email or in a hard copy, as follows:

(a) Email

If the Proponent chooses to submit by email, the Proponent must submit the Proposal electronically in a single pdf file to the City by email at: purchasing@surrey.ca

on or before the following date and time

Time: 3:00 p.m., local time

Date: December 18, 2015

(the "Closing Time").

PDF emailed Proposals are preferred and the City will confirm receipt of emails. Note that the maximum file size the City can receive is 10Mb. If sending large email attachments, Proponents should phone to confirm receipt. A Proponent bears all risk that the City's equipment functions properly so that the City receives the Proposal on time.

(b) Hard Copy

If the Proponent chooses NOT to submit by email, the Proponent should submit one original unbound Proposal and one (1) copy (two (2) in total) which must be delivered to the City at the office of:

Name: Richard D. Oppelt, Purchasing Manager
at the following location:

Address: Surrey City Hall
Finance & Technology Department – Purchasing Section
Reception Counter, 5th Floor West
13450 – 104 Avenue, Surrey, B.C., Canada V3T 1V8

on or before the Closing Time.

2.2 Information Meeting

An information meeting may be hosted by the City Representative to discuss the City's requirements under this RFP (the "**Information Meeting**"). While attendance is at the discretion of Proponents, Proponents who do not attend will be deemed to have attended the Information Meeting and to have received all of the information given at the Information Meeting. At the time of issuance of this RFP a meeting has not been scheduled.

2.3 Late Proposals

Proposals received after the Closing Time will not be accepted or considered. Delays caused by any delivery, courier or mail service(s) will not be grounds for an extension of the Closing Time.

2.4 Amendments to Proposals

Proposals may be revised by written amendment, delivered to the location set out in Section 2.1, at any time before the Closing Time but not after. An amendment should be signed by an authorized signatory of the Proponent in the same manner as provided by section 3.3. E-mailed amendments are permitted, but such amendment should show only the change to the proposal price(s) and should not disclose the actual proposal price(s). A Proponent bears all risk that the City's equipment functions properly so as to facilitate timely delivery of any amendment.

2.5 Inquiries

All inquiries related to this RFP should be directed in writing to the person named below (the "**City Representative**"). Information obtained from any person or source other than the City Representative may not be relied upon.

Name: Richard D. Oppelt, Purchasing Manager
E-mail: purchasing@surrey.ca
Reference: 1220-030-2015-038

Inquiries should be made no later than 7 business days before Closing Time. The City reserves the right not to respond to inquiries made within 7 business days of the Closing Time. Inquiries and responses will be recorded and may be distributed to all Proponents at the discretion of the City.

Proponents finding discrepancies or omissions in the Contract or RFP, or having doubts as to the meaning or intent of any provision, should immediately notify the City Representative. If the City determines that an amendment is required to this RFP, the City Representative will issue an addendum in accordance with section 2.6. No oral conversation will affect or modify the terms of this RFP or may be relied upon by any Proponent.

2.6 Addenda

If the City determines that an amendment is required to this RFP, the City Representative will issue a written addendum by posting it on the BC Bid Website at www.bcbid.gov.bc.ca (the "**BC Bid Website**") and the City Website at www.surrey.ca (the "**City Website**") that will form part of this RFP. It is the responsibility of Proponents to check the BC Bid Website and the City Website for addenda. The only way this RFP may be added to, or amended in any way, is by a formal written addendum. No other communication, whether written or oral, from any person will affect or modify the terms of this RFP or may be relied upon by any Proponent. By delivery of a Proposal, Proponent is deemed to have received, accepted and understood the entire RFP, including any and all addenda.

2.7 Examination of Contract Documents and Site

Proponents will be deemed to have carefully examined the RFP, including all attached Schedules, the Contract and the Site (as applicable) prior to preparing and submitting a Proposal with respect to any and all facts which may influence a Proposal.

2.8 Opening of Proposals

The City intends to open Proposals in private but reserves the right to open Proposals in public at its sole discretion.

2.9 Status Inquiries

All inquiries related to the status of this RFP, including whether or not a Contract has been awarded, should be directed to the City Website and not to the City Representative.

3. PROPOSAL SUBMISSION FORM AND CONTENTS

3.1 Package (Hard Copy)

If the Proponent chooses NOT to submit by email, the Proponent should submit a Submission in a particular submittal format, to reduce paper, encourage our recycled product expectations, and reduce package bulk. Bulk from binders and large packages are unwanted. Vinyl plastic products are unwanted. The City also has an environmentally-preferable purchasing commitment, and seeks a package format to support the green expectations and initiatives of the City.

Please do not use any plastic or vinyl binders or folders. The City prefers simple, stapled paper copies. If a binder or folder is essential due to the size of your Proposal, they should be fully 100% recycled stock.

The City seeks and prefers submittals on 100% Post Consumer Fibre (PCF) paper, consistent with the City's policy and the City environmental practices.

Please double-side your Proposal.

3.2 Form of Proposal

Proponents should complete the form of Proposal attached as Schedule C, including Schedules C-1 to C-5. Proponents are encouraged to respond to the items listed in Schedules C-1 to C-5 in the order listed. Proponents are encouraged to use the forms provided and attach additional pages as necessary.

3.3 Signature

The legal name of the person or firm submitting the Proposal should be inserted in Schedule C. The Proposal should be signed by a person authorized to sign on behalf of the Proponent and include the following:

- (a) If the Proponent is a corporation then the full name of the corporation should be included, together with the names of authorized signatories. The Proposal should

be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Proposal on behalf of the corporation is submitted;

- (b) If the Proponent is a partnership or joint venture then the name of the partnership or joint venture and the name of each partner or joint venturer should be included, and each partner or joint venturer should sign personally (or, if one or more person(s) have signing authority for the partnership or joint venture, the partnership or joint venture should provide evidence to the satisfaction of the City that the person(s) signing have signing authority for the partnership or joint venture). If a partner or joint venturer is a corporation then such corporation should sign as indicated in subsection (a) above; or
- (c) If the Proponent is an individual, including a sole proprietorship, the name of the individual should be included.

4. EVALUATION AND SELECTION

4.1 Evaluation Team

The evaluation of Proposals will be undertaken on behalf of the City by the Evaluation Team. The Evaluation Team may consult with others including City staff members, third party consultants and references, as the Evaluation Team may in its discretion decide is required. The Evaluation Team will give a written recommendation for the selection of a Preferred Proponent or Preferred Proponents to the City.

4.2 Evaluation Criteria

The Evaluation Team will compare and evaluate all Proposals to determine the Proponent's strength and ability to provide the Services in order to determine the Proposal which is most advantageous to the City, using the following criteria:

- (a) Experience, Reputation and Resources**
The Evaluation Team will consider the Proponent's responses to items (i) to (xiv) in Schedule C-2.
- (b) Technical**
The Evaluation Team will consider the Proponent's responses to Schedule C-4 and items (i) to (v) in Schedule C-3.
- (c) Financial**
The Evaluation Team will consider the Proponent's response to Schedule C-5.
- (d) Statement of Departures**
The Evaluation Team will consider the Proponent's response to Schedule C-1.

The Evaluation Team will not be limited to the criteria referred to above, and the Evaluation Team may consider other criteria that the team identifies as relevant during the evaluation process. The Evaluation Team may apply the evaluation criteria on a comparative basis, evaluating the Proposals by comparing one Proponent's Proposal to another Proponent's Proposal. All criteria considered will be applied evenly and fairly to all Proposals.

4.3 Discrepancies in Proponent's Financial Proposal

If there are any obvious discrepancies, errors or omissions in Schedule C-5 of a Proposal (Proponent's Financial Proposal), then the City shall be entitled to make obvious corrections, but only if, and to the extent, the corrections are apparent from the Proposal as submitted, and in particular:

- (a) if there is a discrepancy between a unit price and the extended total, then the unit prices shall be deemed to be correct, and corresponding corrections will be made to the extended totals;
- (b) if a unit price has been given but the corresponding extended total has been omitted, then the extended total will be calculated from the unit price and the estimated quantity;
- (c) if an extended total has been given but the corresponding unit price has been omitted, then the unit price will be calculated from the extended total and the estimated quantity.

4.4 Litigation

In addition to any other provision of this RFP, the City may, in its absolute discretion, reject a Proposal if the Proponent, or any officer or director of the Proponent submitting the Proposal, is or has been engaged directly or indirectly in a legal action against the City, its elected or appointed officers, representatives or employees in relation to any matter, or if the City has initiated legal action against any officers or directors of the Proponent.

In determining whether or not to reject a Proposal under this section, the City will consider whether the litigation is likely to affect the Proponent's ability to work with the City, its consultants and representatives and whether the City's experience with the Proponent indicates that there is a risk the City will incur increased staff and legal costs in the administration of the Contract if it is awarded to the Proponent.

4.5 Additional Information

The Evaluation Team may, at its discretion, request clarifications or additional information from a Proponent with respect to any Proposal, and the Evaluation Team may make such requests to only selected Proponents. The Evaluation Team may consider such clarifications or additional information in evaluating a Proposal.

4.6 Interviews

The Evaluation Team may, at its discretion, invite some or all of the Proponents to appear before the Evaluation Team to provide clarifications of their Proposals. In such event, the Evaluation Team will be entitled to consider the answers received in evaluating Proposals.

4.7 Negotiation of Contract and Award

If the City selects a Preferred Proponent or Preferred Proponents, then it may:

- (a) enter into a Contract with the Preferred Proponent(s); or
- (b) enter into discussions with the Preferred Proponent(s) to attempt to finalize the terms of the Contract(s), including financial terms, and such discussions may include:
 - (1) clarification of any outstanding issues arising from the Preferred Proponent's Proposal;
 - (2) negotiation of amendments to the departures to the draft Contract, if any, proposed by the Preferred Proponent as set in Schedule C-1 to the Preferred Proponent's Proposal; and
 - (3) negotiation of amendments to the Preferred Proponent's price(s) as set out in Schedule C-5 to the Preferred Proponent's Proposal and/or scope of Services if:
 - (A) the Preferred Proponent's financial Proposal exceeds the City's approved budget, or
 - (B) the City reasonably concludes the Preferred Proponent's financial proposal includes a price(s) that is unbalanced, or
 - (C) a knowledgeable third party would judge that the Preferred Proponent's price(s) materially exceed a fair market price(s) for services similar to the Services offered by the Preferred Proponent as described in the Preferred Proponent's Proposal; or
- (c) if at any time the City reasonably forms the opinion that a mutually acceptable agreement is not likely to be reached within a reasonable time, give the Preferred Proponent(s) written notice to terminate discussions, in which event the City may then either open discussions with another Proponent or terminate this RFP and retain or obtain the Services in some other manner.

5. GENERAL CONDITIONS

5.1 No City Obligation

This RFP is not a tender and does not commit the City in any way to select a Preferred Proponent, or to proceed to negotiations for a Contract, or to award any agreement, and the City reserves the complete right to at any time reject all Proposals, and to terminate this RFP process.

5.2 Proponent's Expenses

Proponents are solely responsible for their own expenses in preparing, and submitting Proposals, and for any meetings, negotiations or discussions with the City or its representatives and consultants, relating to or arising from this RFP. The City and its representatives, agents, consultants and advisors will not be liable to any Proponent for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Proponent in preparing and submitting a Proposal, or participating in negotiations for a Contract, or other activity related to or arising out of this RFP.

5.3 No Contract

By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contract of any kind is formed under, or arises from, this RFP, prior to the signing of a formal written Contract.

5.4 Conflict of Interest

A Proponent shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the City, its elected or appointed officials or employees. The City may rely on such disclosure.

5.5 Solicitation of Council Members, City Staff and City Consultants

Proponents and their agents will not contact any member of the City Council, City staff or City consultants with respect to this RFP, other than the City Representative named in section 2.5, at any time prior to the award of a contract or the cancellation of this RFP.

5.6 Confidentiality

All submissions become the property of the City and will not be returned to the Proponent. All submissions will be held in confidence by the City unless otherwise required by law. Proponents should be aware the City is a “public body” defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

SCHEDULE A - SCOPE OF SERVICES

1.0 PURPOSE

- 1.1 The Contractor will assist the City with the capability and experience to efficiently, cost-effectively, and successfully provide powered amusement rides and food concession stands (the "Services") for Canada Day set out herein.
- 1.2 The Contractor will provide two (2) powered amusement rides at no rental cost to the City for the Surrey Tree Lighting Festival.

2.0 TIME AND PLACE

- 2.1 The Canada Day event will be held on July 1st of each year, approximately between the hours of 10:00am to 10:30pm. There will also be a possibility of providing the Services the day after on July 2nd. The venue will be at the Bill Reid Millennium Amphitheatre located on 64th Avenue and 176th Street, Surrey, B.C., subject to any change made by the City.
- 2.2 Site setup and load in begins up to four (4) days prior to the event. Removal of all powered amusement rides and food concession stands must be completed in one day following the event.
- 2.3 The Surrey Tree Lighting Festival will be held on the third Saturday of November, approximately between the hours of 12:00pm to 8:00pm. The venue will be at Surrey City Hall Plaza located at 13450 104th Avenue, Surrey, B.C., subject to any changes made by the City.

3.0 ROLES AND RESPONSIBILITIES

The City:

- 3.1 The City shall provide space at its Surrey Canada Day Festival to the Contractor for the midway attractions to be set up by the Contractor during the dates aforesaid. Included within this space will be an area to be designated for use by Party Works Interactive to set up a series of inflatable rides.
- 3.2 The City will provide the Contractor suitable grounds for said midway attractions at Bill Reid Millennium Amphitheatre located on 64th Avenue and 176th Street, Surrey, B.C. (the "Site"). A Site map is provided as Schedule A-1.
- 3.3 The City agrees to aid in the promotion and advertising of the said midway attractions as much as possible. i.e. Midway hours, etc. will be included wherever possible in all Newspaper, Radio/TV, posters and direct mail advertising provided by the Sponsor.
- 3.4 The City shall provide space at its Surrey Tree Lighting Festival to the Contractor for the midway attractions and will pay for the delivery costs of these rides.

The Contractor:

- 3.5 The Contractor agrees that it will provide no less than eleven (11) powered rides, as listed in Schedule C, and that all rides shall be clean, in good working order, safe and ready for operation between the hours of 10:00am and 11:00pm on July 1st of each year.
- 3.6 The Contractor will set up two (2) food concession stands, including cotton candy, snow cones and mini donuts in the Midway area as listed in Schedule C.
- 3.7 The Contractor will provide two (2) ticket booths to be located in the Midway area and shall be staffed by the Contractor.
- 3.8 The Contractor will have sole discretion of the layout of midway attractions within the "Midway Area" as labeled in Schedule A-1, subject to final approval by the City.
- 3.9 The Contractor shall have exclusive rights for this event for all riding devices, inflatable attractions and games, throughout the Site, on the understanding that an agreement has been reached between the Contractor and Party Works Interactive to provide the inflatable rides.
- 3.10 The Contractor will pay for electricity for the midway attractions, including any requirements of Party Works Interactive for the inflatable devices which are to be included in the Midway area.
- 3.11 The Contractor will provide adequate staffing and no less than four (4) ticket sellers to manage the ticket sales areas to minimize long line-ups.
- 3.12 The Contractor will perform the Services:
 - (a) with a first standard of care, skill and diligence normally provided in performance of Services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered;
 - (b) in accordance with sound current professional practices in the Contractor's field; and
 - (c) in conformance with the professional standards and codes applicable at the time of rendering the Services.
- 3.13 The Contractor will provide two (2) powered amusement rides at the Surrey Tree Lighting Festival and will only charge the City the delivery costs associated with them. All other costs will be borne by the Contractor including but not limited to setup and removal of powered amusement rides, labour, supervision, operation of powered amusement rides, overheads, general conditions, and any other costs.

4.0 PERMITS AND FEES

- 4.1 The Contractor is to secure and pay for all permits, and governmental fees, licenses and inspection necessary for proper execution and operation of the equipment which are customarily secured and executed of an agreement and which are legally required.

5.0 PROJECT CO-ORDINATION

- 5.1 The Contractor will be responsible for coordinating with other contractors, Site users, City forces, outside agencies and others as required throughout the Term.

6.0 SAFETY

- 6.1 It is the Contractor's responsibility to perform the Services consistent with good safety practice in the safest manner possible. The health and safety manner of all members and the general public is the responsibility of the Contractor. To ensure the safest possible conditions exist on this event, all personnel must adhere strictly to the current requirements of Occupational Health & Safety Regulations and WCB standards, the Corporate Health & Safety Program, and all Federal, Provincial and municipality applicable codes.

7.0 WORKSITE CLEAN-UP

- 7.1 During the performance of the Services the Contractor is to, at all times, keep the Site and immediate surrounding areas clean and free from all waste materials, debris, garbage/rubbish, etc. If accumulation of such materials, debris, rubbish constitutes a nuisance or safety hazard or otherwise objectionable in any way, as reasonably determined by the City, the Contractor will promptly remove them.
- 7.2 At the completion of the event, the Contractor shall remove all its structures including signs, banners, temporary scaffolding, garbage, etc. from the Site.

8.0 ACCIDENTS AND EQUIPMENT SAFETY

- 8.1 Any and all accidents, regardless of how minor, involving another person, private property, or vehicle, shall be reported immediately to the Surrey RCMP and a report requested. The Contractor shall immediately contact the City and provide the City with a copy of any reports.
- 8.2 The Contractor's equipment operators shall maintain good safety and driving records, and use extreme caution during the performance of the Services.

9.0 CRIMINAL RECORD CHECKS

- 9.1 The Contractor will submit a list of assigned employees accompanied by a copy of RCMP criminal background check (Form TBS/SCT 330-47, Rev.2006-02) for each employee. This RCMP criminal background check requirement is also applicable to ride operators, attendants, maintenance personnel, food concession operators, helpers and any other personnel involved in this event, including the Contractor's subcontractors and its assigned employees.

10.0 EMPLOYEE STANDARDS

- 10.1 It is the responsibility of the Contractor to ensure that each of its employees, agents, contractors, and drivers performing Services under the Agreement conduct themselves in a courteous and professional manner at all times.
- 10.2 The Contractor shall ensure all its employees are neat and clean in appearance and wear a photo identification card with a first name and employee number clearly visible on the front side and a last name on the reverse side that matches a valid B.C. drivers license and/or a Province of British Columbia Identity Card.

- 10.3 Should the City receive complaints in regard to the conduct, appearance or activities of any of the Contractor's employees, such complaints shall be sent to the Contractor. It shall be the responsibility of the Contractor to deal with his employees in regard to such complaints and to notify the City in a timely manner the resolution recommended to conclude the complaint.
- 10.4 Should the City receive repetitive bona fide complaints from members of the public or from City staff in regard to a specific employee and the Contractor has been unable to successfully resolve these complaints, then the Contractor shall remove the employee from the performance of Services under the Agreement within two (2) working days of receipt of written notification from the City to do so provided that such action does not contravene existing Provincial or Federal Labour Relations Laws.
- 10.5 Should the City receive a complaint, which in the sole opinion of the City is of a highly serious nature, then upon written request by the City, the Contractor shall immediately remove the employee from the performance of Services under the Agreement provided that such action does not contravene existing Provincial or Federal Labour Relations Laws.

SCHEDULE A-1 – SITE MAP



SCHEDULE B – DRAFT CONTRACT



REVENUE AGREEMENT

Title: **AMUSEMENT RIDES**

Reference No.: 1220-030-2015-038

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APPENDIX 2 – FEES AND PAYMENT

APPENDIX 3 – TIME SCHEDULE

APPENDIX 4 – PERSONNEL AND SUB-CONSULTANTS

APPENDIX 5 – ADDITIONAL SERVICES

AMUSEMENT RIDES AGREEMENT

THIS AGREEMENT is dated for reference this _____ day of _____, 201_.

AGREEMENT No.: 1220-030-2015-038

BETWEEN: CITY OF SURREY
13450 - 104 Avenue
Surrey, B.C., Canada V3T 1V8
(the “City”)

AND: _____
(Insert Full Legal Name of Contractor)
(the “Contractor”)

WHEREAS the City wishes to engage the Contractor to provide Services in connection with
Amusement Rides

NOW THEREFORE this Agreement witnesses that in consideration of payment of One (\$1.00) Dollar and other good and valuable consideration paid by each of the parties to each other (the receipt and sufficiency of which each party hereby acknowledges), the parties hereby covenant and agree with each other as follows:

1.0 DEFINITIONS

- 1.1 For purposes of this Agreement, the following terms shall have the meanings set forth below:
- (a) “**Agreement**” means the executed agreement between the City and the Contractor on the terms and conditions set out in this document;
 - (b) “**City Annual Revenue Share**” means in any given Fiscal Year, the greater of the Percentage of Gross Revenues and the Guaranteed Minimum Annual Revenue;
 - (c) “**Department**” means the City’s Parks, Recreation & Culture Department, located at , 13450 104th Avenue, Surrey, British Columbia V3T 1V8;
 - (d) “**Department Representative**” means Preeti Yadav, Park Operations Coordinator, who shall represent all City departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;
 - (e) “**Event of Default**” references Article 6.1(c);
 - (f) “**Fiscal Year**” means a period of twelve (12) consecutive calendar months starting on January 1st and ending on December 31st during the Term except that:
 - (i) the first Fiscal Year begins on the first day of the Term and ends on December 31st of the Term occurs, and may be a period of less than 12 consecutive calendar months; and

- (ii) the last Fiscal Year begins on January 1st or the year during which the last day of Term occurs and ends on the last day of the Term, and may be a period less than 12 consecutive calendar months; “**Initial Term**” means the term as specified in Section 5.0;
- (g) “**Gross Revenues**” means in any given Fiscal Year, the sum of all amounts billed by the Contractor and/or due to the Contractor(s), or paid to the Contractor(s), in cash, credit or property of any kind or nature arising from or attributable to, directly or indirectly, or in any way derived from the Canada Day – Amusement Rides whether or not such amounts are actually collected. This includes any revenues that would have otherwise been credited to the City that are reasonably allocable to the City. Where the Contractor(s) does not bill a particular customer (including itself or an affiliate, partner or joint venturer of the Contractor(s)) for Canada Day – Amusement Rides provided by the Contractor(s), then imputed as billings included within the Gross Revenue will be an amount equal to the billings that would have been billed by the Contractor(s) to a like customer for the provision of Services being provided to the customer not being billed, but not including Canada Day – Amusement Rides and related services provided to the customer not being billed, but not including Services provided to the City without charge as part of this Agreement. Gross Revenue is to be calculated prior to deducting any fees, commissions, licensing expenses, operating expenses payable by the Contractor(s);
- (h) “**Guaranteed Minimum Annual Revenue**” means, in any given Fiscal Year the minimum guaranteed amount which is payable and will be paid by the Contractor to the City without deduction or set-off as specified in Section 8.1 of the Agreement;
- (i) “**Term**” means the term as specified in Section 5.0;
- (j) “**Services**” has the meaning set out Appendices one (1) to five (5); and
- (k) “**Year of the Term**” as used herein shall mean each twelve-month period commencing on (START DATE).

2.0 INTERPRETATIONS

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;
- (b) “Determination” shall mean the written documentation of a decision of the Department Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Headings and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word “including”, when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but rather shall be

deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;

- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 REPRESENTATIONS OF CONTRACTOR

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) the Contractor is a corporation, duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) the Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize the Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by the Contractor and is enforceable against the Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by the Contractor, its directors, officers or anyone acting on behalf of the Contractor, to the City in connection with this Agreement is materially correct and accurate;
- (f) the Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its constating documents, or any contract or agreement to which it is a party;
- (h) the Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) the Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by the Contractor under those laws as of the reference date of this Agreement;

- (j) the Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) the Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) the Contractor accepts the risks assigned within this Agreement identified as being borne by the Contractor;
- (m) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) the Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) the Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) the Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) the Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) the Contractor is an independent the Contractor and not the servant, employee, partner, or agent of the City;
- (s) the Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to the Contractor as the City considers necessary in connection with provision of the work, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by the Contractor to provide the work are at all times the employees and sub-contractors of the Contractor and not of the City. The Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee;
- (w) the Contractor has independently reviewed all labour relations issues related to the performance of the Contractor's obligations under this Agreement; and
- (x) The Contractor acknowledges that the following attached Appendices are a part of this Agreement:
 - Appendix 1 – Scope of Services
 - Appendix 2 – Fees and Payment
 - Appendix 3 – Time Schedule
 - Appendix 4 – Key Personnel and Sub-Contractors
 - Appendix 5 – Additional Services

4.0 GENERAL OBLIGATIONS OF CONTRACTOR

4.1 Contractor shall:

- (a) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of the Services during the Term;
- (b) use its best endeavours to provide the Services to the City in a timely manner and in accordance with the terms of the Agreement;
- (c) ensure that all its employees engaged in this Agreement are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Services standards for persons having those qualifications and experience;
- (d) follow all instructions of the Department Representative, in respect of the performance by Contractor of its obligations under this Agreement and cooperate fully with the various departments and act in good faith towards the City;
- (e) comply with all laws; and
- (f) only use the Facilities provided by the City for the purposes of this Agreement.

5.0 TERM

5.1 The City agrees to engage, and does hereby engage, Contractor for the period commencing February 1, 2016 to January 31, 2017 ("Initial Term").

5.2 The City may at any time prior to 30 days before the end of the Term, by written notice to the Contractor, extend the Term for a period of time not to exceed four (4) additional twelve (12) month renewal periods. If the City elects to extend the Term, the provisions of this Agreement will remain in force, including the Fees, except where amended in writing by the parties. The additional one (1) year annual renewals shall be contingent upon the City's satisfaction with the Services performed.

6.0 TERMINATION - CITY

6.1 This Agreement will terminate:

- (a) at the expiration of the Term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues unremedied for a period of thirty (30) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, "Event of Default" shall mean any one or more of the following:
- i. if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - ii. if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - iii. if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - iv. if Contractor fails to provide the Services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor's performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 DISPUTE RESOLUTION

- 7.1 Contractor will continue performance of the Agreement during all disputes with the City. The timely performance of Services must not be delayed or postponed pending resolution of any disputes, except as Contractor and the City may otherwise agree in writing.
- 7.2 The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to this Agreement ("**Dispute**") using the following dispute resolution procedures:
- (a) Negotiation
The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.
 - (b) Mediation
If all or any portion of a Dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within seven (7) days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Surrey, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.
 - (c) Litigation
If within 90 days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a

negotiated resolution, then either party may without further notice commence litigation.

8.0 FINANCIAL ARRANGEMENT AND REVENUE SHARING

8.1 Compensation to the City

During the Term, the Contractor will pay to the City the City Annual Revenue Share, on the following terms:

- (a) The Contractor agrees to pay to the City a fee for each year, whichever is the greater of:
 - (i) a Guaranteed Minimum Revenue of \$_____ plus GST; or
 - (ii) _____% of the Gross Revenue plus GST from all Services, all rides, concessions, including Party Works Inflatable riding devices and any other related attractions.
- (b) In the case where the event is affected grossly by inclement bad weather which the City will solely determine, the City will make an exception, and will consider reverting to the _____% of the gross revenue plus GST from all Services, whichever is the lower amount than the Guaranteed Minimum Revenue of \$_____.
- (c) Payment of the Guaranteed Minimum Revenue amount of \$_____ plus GST by cheque shall be made no later than July 8th of each year.
- (d) If the Percentage of Gross Revenues exceeds the Guaranteed Minimum Revenue for any Year, then the Contractor will pay to the City the difference between the Guaranteed Minimum Revenue and the Percentage of Gross Revenue for each Year during the Term of this Agreement by July 8th of each year;
- (e) GST will apply to this Agreement as required by the *Excise Tax Act*;
- (f) the City reserves the right to conduct an independent audit and review at its own expense of the Contractor's books and records following the payment of the Percentage of Gross Revenues in respect of any Fiscal Year during the Term to confirm and verify the amount of Percentage of Gross Revenues payable to the City for any given Fiscal Year. At the sole discretion of the City, the Contractor will provide to the City, an annual audited statement by a chartered professional accountant verifying the Gross Revenues for any given Fiscal Year. In this regard and to facilitate such audit and review by the City, the Contractor will keep proper books, accounts and records of all advertising commissions paid, all revenues received, owed and/or refunded in connection with this Agreement and in connection with the determination of Gross Revenues in particular, and all invoices, receipts and vouchers relating thereto. The City may exercise its audit right only once per Fiscal Year. Such right may be exercised by the City within ninety (90) days of Contractor's delivery of the City's Annual Revenue Share and upon reasonable notice to the Contractor. Notwithstanding the foregoing, if the City's audit in respect of any Fiscal Year confirms that the Contractor is legally obligated to pay, in respect of such period, an amount which is equal to or exceeds three (3) percent of the amount actually paid in respect of such period, then all costs of that audit will be paid by the Contractor upon the written notice of the City; and

- (g) Losses incurred from the operation of the Services due to theft, fire, vandalism, damage, and for any other reason whatsoever, will be absorbed by the Contractor and shall not be factors in the determination of Gross Revenues, Percentage of Gross Revenues or computation of the City's commissions. All monies located in the Contractor's rides, food concession stands, and ticket booths shall at all times remain the sole property of the Contractor. The City agrees that the Contractor shall be solely responsible for collecting the monies the rides and food concession stands generate.

8.2 Compensation to the Contractor

- 8.2.1 Subject to any contrary provisions set out in Schedule C, the Contractor will submit a monthly invoice to the City requesting payment of the delivery costs relating to the Surrey Tree Lighting Festival provided in the previous month. Invoices must include the Contractor's name, address and telephone number, the City's purchase order number, the Contractor's invoice number; the Services completed and Goods delivered at the end of the previous month; the total budget for the Goods and Services and the amount of the budget expended to the date of the invoice; taxes (if any); and grand total of the invoice.

8.3 Payment

- 8.3.1 All payments due to the City will be presented to the City's Parks, Recreation & Culture Department, Administration, 13450 104th Avenue, Surrey, British Columbia V3T 1V8. All payments shall be itemized to the specific Facility.
- 8.3.2 The City requires product costs to remain firm for a period of not less than three (3) years and thereafter the prices shall be subject to increase during the Term once per Year of the Term by a percentage which shall not be greater than the percentage increase in the Consumer Price Index (All items) for Vancouver, British Columbia as published by Statistics Canada ("CPI") or any successor government agency for the Calendar Year immediately preceding the applicable January 1st of each Calendar Year. If such percentage is not available, the Contractor will estimate and adjust when such percentage is available.

8.4 Records and Reporting

- 8.4.1 The Contractor agrees to maintain, at its expense, accurate and true records of all sales and revenue collected from the Equipment in accordance with industry accepted accounting practices and such records shall be available to the City for inspection for a period of not less than three (3) years following the end of each Year of the Term. The Department Representative shall have the right to authorize City employees to examine these records aforesaid on reasonable notice during regular business hours. The City agrees to keep confidential all information obtained under this Agreement.

8.5 Audit

- 8.5.1 Upon the City's request and at least ten (10) business days prior written notice to Contractor, Contractor shall provide the City with copies of all pertinent revenue and

sales records relating to the Canada Day – Amusement Rides for the period covered by any statement issued by Contractor as above set forth.

9.0 INDEPENDENT CONTRACTOR

9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

10.0 LIAISON

10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

a) Contractor shall appoint a representative (“Contractor’s Representative”) who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor’s Representative; and

b) The City shall appoint a representative (“Department Representative”) who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the Department Representative.

10.2 Each party’s representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party’s obligations hereunder and each party’s representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the Department Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 GOVERNING LAW

11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Agreement and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by

the City in respect of this Agreement, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.

- 11.2 Notwithstanding any provisions herein, the Contractor shall in the performance of the Agreement comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Surrey Policies and By-laws and Parks, Recreation and Culture Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor shall pay all of the Contractor's employees as required by the Act and the regulations then in force.

12.0 WAIVER

12.1 Waiver – City

- 12.1.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

- 12.1.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

12.2 Waiver – Contractor

- 12.2.1 Any failure of Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

- 12.2.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

13.0 SUBCONTRACTORS

- 13.1 Contractor shall not sub-contract the whole of the work nor shall any part of the work be sub-contracted without the prior written consent of the Department's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.

- 13.2 The sub-contracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its sub-contractors.

14.0 AMENDMENTS

14.1 No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

15.0 SURVIVAL OF COVENANTS

15.1 All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 25.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

16.0 CONFIDENTIALITY OF INFORMATION

16.1 No Disclosure

16.1.1 Except as provided for by law or otherwise by this agreement, the Contractor will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of the performance of the Services and this agreement, and will not, without the prior express written consent of the City, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of this agreement, except as reasonably required to complete the Services.

16.2 Freedom of Information and Protection of Privacy Act

16.2.1 The Contractor acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia and agrees to any disclosure of information by the City required by law.

16.3 Return of Property

16.3.1 The Contractor agrees to return to the City all of the City's property at the completion of this agreement, including any and all copies or originals of reports provided by the City.

17.0 NON ASSIGNABILITY

17.1 This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

18.0 JOINT AND SEVERAL

18.1 If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

19.0 FORCE MAJEURE

- 19.1 Except for defaults of sub-contractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its sub-contractor, and if such default arose out of causes beyond the control of both Contractor and sub-contractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

20.0 INSURANCE & INDEMNITY

20.1 Indemnity

- 20.1.1 The Contractor will indemnify and save harmless the City and all of its elected and appointed officials, officers, employees, servants, representatives and agents (collectively the “**Indemnitees**”), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Contractor of any obligation of this agreement, or any wrongful or negligent act or omission of the Contractor or any employee or agent of the Contractor.

20.2 Survival of Indemnity

- 20.2.1 The indemnity described in section 20.1 will survive the termination or completion of this agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the Indemnitees.

20.3 Contractor's Insurance Policies

- 20.3.1 The Contractor will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this agreement the following insurances in forms and amounts acceptable to the City from insurers licensed to conduct business in Canada:
- (a) commercial general liability insurance on an occurrence basis, in an amount not less than five million (\$5,000,000) dollars inclusive per occurrence against death, bodily injury and property damage arising directly or indirectly out of the work or operations of the Contractor, its employees and agents. The insurance will include cross liability and severability of interests such that the coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. The insurance will include, but not be limited to: premises and operators liability, broad form products and completed operations, owners and Contractors protective liability, blanket contractual, employees as additional insureds, broad form property damage, non-owned automobile, contingent

employers liability, broad form loss of use, personal injury, and incidental medical malpractice. The City will be added as additional insured;

- (b) automobile liability insurance on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than three million (\$3,000,000) dollars per occurrence for bodily injury, death and damage to property; and
- (c) Contractor's Equipment insurance covering machinery and Equipment used by the Contractor for performance of the Contract in such adequate forms and amounts as will enable prompt replacement and repair of the Equipment.

20.4 Insurance Requirements

20.4.1 The Contractor will provide the City with evidence of the required insurance prior to the commencement of this agreement. Such evidence will be in the form of a completed certificate of insurance acceptable to the City. The Contractor will, on request from the City, provide certified copies of all of the Contractor's insurance policies providing coverage relating to the Services, including without limitation any professional liability insurance policies. All required insurance will be endorsed to provide the City with thirty (30) days advance written notice of cancellation or material change restricting coverage. To the extent the City has an insurable interest, the builder's risk policy will have the City as first loss payee. The Contractor will be responsible for deductible amounts under the insurance policies. All of the Contractor's insurance policies will be primary and not require the sharing of any loss by the City or any insurer of the City.

20.5 Contractor Responsibilities

20.5.1 The Contractor acknowledges that any requirements by the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Contractor acknowledges and agrees that the Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Contractor from responsibility for any amounts which may exceed these limits, for which the Contractor may be legally liable.

20.6 Additional Insurance

20.6.1 Subject to any specific agreements the City and the Contractor may have reached with respect to insurance, as may be set out in other provisions of this agreement, the Contractor will, as part of the Services, cooperate with the City to obtain additional insurance covering the Services if the City in its discretion determines that additional insurance is required. The City may pay the cost of the premiums for any additional insurance.

20.6.2 The Contractor acknowledges that any requirements of the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Contractor acknowledges and agrees that the Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Contractor from responsibility for any amounts, which may exceed these limits, for which the Contractor may be legally liable.

20.6.3 The Contractor shall place and maintain, or cause any of its sub-contractors to place and maintain, such other insurance or amendments to the foregoing policies as the City may reasonably direct.

20.7 Waiver of Subrogation

20.7.1 The Contractor hereby waives all rights of recourse against the City for loss or damage to the Contractor's property and Equipment.

21.0 WORKERS' COMPENSATION BOARD AND OCCUPATIONAL HEALTH AND SAFETY

21.1 The Contractor will, at its own expense, procure and carry full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in the supply of the Goods and Services. The City has the unfettered right to set off the amount of the unpaid premiums and assessments for the Workers' Compensation Board coverage against any monies owing by the City to the Contractor. The City will have the right to withhold payment under this agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Goods and Services have been paid in full.

21.2 The Contractor will provide the City with the Contractor's Workers' Compensation Board registration number and a letter from the Worker's Compensation Board confirming that the Contractor is registered in good standing with the Workers' Compensation Board.

21.3 The Contractor agrees that it is the prime contractor for the Services for the purposes of the *Workers Compensation Act*. The Contractor will have a safety program in place that meets the requirements of the Workers' Compensation Board Occupational Health and Safety Regulation and the *Workers Compensation Act*. As prime Contractor, the Contractor will be responsible for appointing a qualified coordinator for insuring the health and safety activities for the location of the Services. The qualified coordinator is:

Name: _____

Contact No. _____

The Contractor will advise the City immediately in writing if the name or contact number of the qualified coordinator changes.

21.4 Without limiting the generality of any other indemnities granted by the Contractor in this agreement, the Contractor will indemnify and save harmless the Indemnitees from and against all claims, demands, causes of action, suits, losses, damages, costs, liabilities, expenses, judgments, penalties and proceedings (including all actual legal costs) which any of the Indemnitees incur, suffer or are put to arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or corporation engaged in the performance of this agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board.

- 21.5 The Contractor will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto.
- 21.6 The City may, on twenty-four (24) hours written notice to the Contractor, install devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case will the City be responsible for ascertaining or discovering, through inspections or review of the operations of the Contractor or otherwise, any deficiency or immediate hazard.

22.0 AUDIT

- 22.1 At its option, the City may cause at any reasonable time upon forty eight (48) hours prior written notice to Contractor, a complete audit to be made of Contractor's business affairs and records relating to the Services by an accountant acceptable to the City for the period covered by any statement issued by Contractor as above set forth. If such audit shall disclose a liability for commission payable Contractor shall promptly pay the City. The City would be responsible to cover the auditors expenses.

23.0 CONFLICT OF INTEREST

- 23.1 A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company which is the successful Contractor.
- 23.2 The Contractor shall disclose to the City prior to accepting the Agreement, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the Agreement from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the Agreement, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the Agreement or shall take such steps as are necessary to remove the conflict of interest.
- 23.3 Contractor shall disclose to the City Representative, prior to awarding of the Agreement, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Agreement from the Contractor until the matter is resolved to the satisfaction of the City.
- 23.4 Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

24.0 NON-LIABILITY OF CITY OFFICIALS

- 24.1 Under no circumstances shall any officer, employee, or agent of the City of Surrey acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the Agreement, including but not limited to its negotiation, execution, performance, or termination.

25.0 BUSINESS LICENCE

25.1 The Contractor will obtain and maintain throughout the Term of this agreement a valid City of Surrey business license.

26.0 CONTRACTOR PERFORMANCE REVIEW

26.1 Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- (a) Overall financial performance as compared to the previous year's performance adjusted for participation variations. Actual figures compared to revenue projections will be compared to analyze variances;
- (b) Volume of customer complaints; and
- (c) Participation levels and growth.

27.0 BUSINESS REVIEW & PLANNING

27.1 Contractor agrees to conduct quarterly business review meetings with Parks, Recreation & Culture Department Representatives.

27.2 Meetings would evaluate promotions, participation levels, service and future opportunities, develop overall strategic sales and volume building programs.

28.0 SERVICE OF NOTICES

28.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

To the City Representative:

Preeti Yadav, Park Operations Coordinator
Filming & Special Events Section, Parks, Recreation & Culture Department
13450 104th Avenue, Surrey, British Columbia V3T 1V8
Telephone No.: (604) 591-4811
E-mail: PYadav@surrey.ca

To the Contractor Representative:

Attention:
Contractor

Telephone No.:
Fax No.:
E-mail:

28.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five

(5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

29.0 ENUREMENT

29.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

CITY OF SURREY

I/We have the authority to bind the City.

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

CONTRACTOR

I/We have the authority to bind the Contractor.

(Legal Name of Contractor)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(APPENDICES 1 THROUGH 5 WILL BE INSERTED LATER WHEN AN AGREEMENT IS ASSEMBLED FOR EXECUTION INCLUDING INFORMATION FROM THE RFP AND SUCCESSFUL PROPOSAL.)

APPENDIX 1 – SCOPE OF SERVICES

APPENDIX 2 – FEES AND PAYMENT

APPENDIX 3 – TIME SCHEDULE

APPENDIX 4 – PERSONNEL AND SUB-CONSULTANTS

APPENDIX 5 – ADDITIONAL SERVICES

SCHEDULE C – FORM OF PROPOSAL

RFP Project Title: AMUSEMENT RIDES

RFP Reference No.: 1220-030-2015-038

Legal Name of Proponent: _____

Contact Person and Title: _____

Business Address: _____

Telephone: _____

Fax: _____

E-Mail Address: _____

TO:

City Representative: Richard D. Oppelt, Purchasing Manager

Address: Surrey City Hall
Finance & Technology Department – Purchasing Section
Reception Counter, 5th Floor West
13450 – 104 Avenue, Surrey, B.C., Canada V3T 1V8

E-mail for PDF Files: purchasing@surrey.ca

Dear Sir:

1.0 I/We, the undersigned duly authorized representative of the Proponent, having received and carefully reviewed all of the Proposal documents, including the RFP and any issued addenda posted on the City Website and BC Bid Website, and having full knowledge of the Site, and having fully informed ourselves as to the intent, difficulties, facilities and local conditions attendant to performing the Services, submit this Proposal in response to the RFP.

2.0 I/We confirm that the following schedules are attached to and form a part of this Proposal:

- Schedule C-1 – Statement of Departures;
- Schedule C-2 – Proponent’s Experience, Reputation and Resources;
- Schedule C-3 – Proponent’s Technical Proposal (Services);
- Schedule C-4 – Proponent’s Technical Proposal (Time Schedule); and
- Schedule C-5 – Proponent’s Financial Proposal.

3.0 I/We confirm that this proposal is accurate and true to best of my/our knowledge.

4.0 I/We confirm that, if I/we am/are awarded a contract, I/we will at all times be the “prime contractor” as provided by the *Worker's Compensation Act (British Columbia)* with respect to the Services. I/we further confirm that if I/we become aware that another consultant at the place(s) of the Services has been designated as the “prime contractor”, I/we will notify the City immediately, and I/we will indemnify and hold the City harmless against any claims, demands, losses, damages, costs, liabilities or expenses suffered by the City in connection with any failure to so notify the City.

This Proposal is submitted this _____ day of _____, 201_.

I/We have the authority to bind the Proponent.

(Legal Name of Proponent)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

SCHEDULE C-1 - STATEMENT OF DEPARTURES

1. I/We have reviewed the proposed Contract attached to the RFP as Schedule “B”. If requested by the City, I/we would be prepared to enter into that Contract, amended by the following departures (list, if any):

Section	Requested Departure(s) / Alternative(s)

2. The City of Surrey requires that the successful Proponent have the following in place **before commencing the Services**:

- (a) Workers' Compensation Board coverage in good standing and further, if an “Owner Operator” is involved, personal operator protection (P.O.P.) will be provided,
Workers' Compensation Registration Number _____;
- (b) Prime Contractor qualified coordinator is Name: _____
and Contact Number: _____;
- (c) Insurance coverage for the amounts required in the proposed Agreement as a minimum, naming the City as additional insured and generally in compliance with the City’s sample insurance certificate form available on the City’s Website at www.surrey.ca search [Consultants Certificate of Insurance](#);
- (d) City of Surrey or Intermunicipal Business License: Number _____;
- (e) If the Consultant’s Goods and Services are subject to GST, the Consultant’s GST Number is _____; and
- (f) If the Consultant is a company, the company name indicated above is registered with the Registrar of Companies in the Province of British Columbia, Canada, Incorporation Number _____.

As of the date of this Proposal, we advise that we have the ability to meet all of the above requirements **except as follows** (list, if any):

Section	Requested Departure(s) / Alternative(s)

3. I/We offer the following alternates to improve the Services described in the RFP (list, if any):

Section

Requested Departure(s) / Alternative(s)

4. The Proponent acknowledges that the departures it has requested in Sections 1, 2 and 3 of this Schedule C-1 will not form part of the Contract unless and until the City agrees to them in writing by initialling or otherwise specifically consenting in writing to be bound by any of them.

SCHEDULE C-2 - PROPONENT'S EXPERIENCE, REPUTATION AND RESOURCES

Proponents should provide information on the following (use the spaces provided and/or attach additional pages, if necessary):

- (i) Location of primary business, branch locations, background, stability, structure of the Proponent and number of years business has been operational;
- (ii) Proponent's relevant experience and qualifications in delivering Services similar to those required by the RFP;
- (iii) Proponent's demonstrated ability to provide the Services;
- (iv) Proponent's equipment resources, capability and capacity, as relevant;
- (v) Proponent's references (name and telephone number). The City's preference is to have a minimum of three references. Provide contact information and names of corporate clients (government preferred). Proponent is currently supplying same or similar Services to:

- (vi) Proponent's financial strength (with evidence such as financial statements, bank references);
- (vii) Describe any difficulties or challenges you might anticipate in providing the Services to the City and how you would plan to manage these;
- (viii) Proponents should provide information on the background and experience of all key personnel proposed to undertake the Services (use the spaces provided and/or attach additional pages, if necessary):

Key Personnel

Name: _____

Experience: _____

Dates: _____

Project Name: _____

Responsibility: _____

Dates: _____

Project Name: _____

Responsibility: _____

Dates: _____

Project Name: _____

Responsibility: _____

SCHEDULE C-3 - PROPONENT'S TECHNICAL PROPOSAL (SERVICES)

Proponents should provide the following (use the spaces provided and/or attach additional pages, if necessary):

- (i) a narrative that illustrates an understanding of the City's requirements and Services;
- (ii) a description of the general approach and methodology that the Proponent would take in performing the Services including specifications and requirements;
- (iii) a narrative that illustrates how the Proponent will complete the scope of Services, manage the Services, and accomplish required objectives within the City's schedule;
- (iv) a description of the standards to be met by the Proponent in providing the Services; and
- (v) a list of the significant reports that you would anticipate providing the City's management team, including their relationship to project milestones and the method of delivery (electronic, paper, e-mail, other).

SCHEDULE C-5 - PROPONENT'S FINANCIAL PROPOSAL

Proponents are to indicate their proposed fee (excluding GST), and the basis of calculation (use the spaces provided and/or attach additional pages, if necessary) as follows (as applicable):

1) City Annual Revenue Share

(a) Percentage of Gross Revenue is _____ %.
(Refer to Section 8.1 (a) (ii) of this Agreement.)

(b) Guaranteed Minimum Annual Revenue is \$_____.
(Refer to Section 8.1 (a) (i) of this Agreement.)

Once the Guaranteed Minimum Annual Revenue has been attained in commissions the Contractor will begin to pay to the City the Percentage of Gross Revenue.

2) Delivery cost for two (2) powered amusement rides at the City's Surrey Tree Lighting Festival is \$_____.

3) Alternate Pricing

In addition to the above financial offer, the Proponent may submit alternative financial proposals, however the information requested above should be supplied and will be used for proposal evaluation purposes.

4) Additional Expenses

The proposed Contract attached as Schedule "B" to the RFP provides that expenses are to be included within the fee, other than the expenses listed in the Contract as disbursements. Details of disbursements are to be shown in the chart above. Please indicate any expenses that would be payable in addition to the proposed fee and proposed disbursements set out above:

5) Payment Terms:

A cash discount of _____% will be allowed if account is paid within _____ days, or the _____ day of the month following, or net 30 days, on a best effort basis.