



INTER-OFFICE MEMO

TYPE OF MEETING: RCPH
MEETING DATE: September 16, 2019
SEE AGENDA ITEM: R176

TO: Mayor & Council

FROM: General Manager, Parks, Recreation & Culture

DATE: September 16, 2019

FILE: 2240-20/C

** Replacement Page for
Corporate Report R176*

RE: **Renewal of the Cloverdale Fairgrounds Operating Agreement with the Lower Fraser Valley Exhibition Association - Amendment to the Corporate Report R176**

The purpose of this memo is to advise Mayor & Council of an amendment to the Renewal of the Cloverdale Fairgrounds Operating Agreement with the Lower Fraser Valley Exhibition Association Corporate Report.

Some of the wording within the sub-section on page 3 titled "Other Changes in the Proposed Agreement in comparison to the Current Agreement" of the Corporate Report is inconsistent with the proposed Cloverdale Fairgrounds Operating Agreement 2020-2022. The Corporate Report has been updated accordingly.

Laurie Cavan
General Manager,
Parks, Recreation & Culture

C.C. City Manager

The existing and proposed Agreements both provide for the City's continuing involvement in certain specified operating functions and preventative/corrective maintenance programs for Fairgrounds buildings, Bill Reid Millennium Amphitheatre, roads and city-owned underground utilities as per the list below:

- (a) Mechanical equipment directly related to building systems;
- (b) Equipment associated with the heating, ventilation, and air conditioning systems;
- (c) Electrical equipment directly associated with building systems;
- (d) Plumbing systems, including but not limited to, in-ground services of the recreational vehicle lot;
- (e) Fire prevention systems, and firefighting systems and equipment;
- (f) Indoor and outdoor lighting systems, including parking lot lighting;
- (g) Building envelope including roof systems;
- (h) City infrastructure associated with underground City utilities such as water, sanitary sewer and storm sewer, but excluding hydro and gas;
- (i) Built portions of 62 Avenue and 62A Avenue and its associated ditches; and
- (j) Patching of asphalt parking lots, to a maximum of \$3,000 in each year of the Term, upon request by the Operator.

- V. **Independence of the Operator** – The Agreement stipulates that the Association is an independent contractor to the City and does not create a relationship of employer and employee nor a partnership or a joint venture. The Association does not have the authority to enter into any agreements or contracts on behalf of the City except as expressly set out in the Agreement.
- VI. **Insurance and Damages** – The Agreement contains standard damage, insurance and indemnity clauses.
- VII. **Termination** – Under the terms of the Agreement, the City may terminate the Agreement subject to giving the Association 120 days of notice in writing. The Agreement also allows for termination by the Association under certain stipulated conditions.

Other Changes in the Proposed Agreement in comparison to the Current Agreement:

The following summarizes other changes that have been incorporated into the proposed Agreement in comparison to the current Agreement

- ~~1. Lands previously managed by the City that fall within the proposed footprint of the twin-sheet ice arena and future parking areas have been added back into the agreement for management by the Association.~~

The following house-keeping changes have been made:

- Schedule 'C', the Capital Equipment List, has been removed and will be replaced by an annual equipment list that the Association will produce for insurance renewal purposes;
- A number of wording changes for the purpose of bringing more clarity to certain clauses of the Agreement have been made.

The Association Executive is satisfied with the proposed Agreement.



NO: R176

COUNCIL DATE: September 16, 2019

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **September 12, 2019**

FROM: **General Manager, Parks, Recreation & Culture** FILE: **2240-20/C**
General Manager, Finance

SUBJECT: **Renewal of the Cloverdale Fairgrounds Operating Agreement with the Lower Fraser Valley Exhibition Association**

RECOMMENDATION

The Parks, Recreation & Culture Department and the Finance Department recommend that Council:

1. Receive this report for information; and
2. Approve the execution by the City Manager and the City Clerk of the Operating Agreement (the "Agreement") between the City of Surrey (the "City") and the Lower Fraser Valley Exhibition Association (the "Association"), attached as Appendix "I", for the operation of the Cloverdale Fairgrounds during the three-year period from January 1, 2020 to December 31, 2022.

INTENT

The purpose of this report is to provide an overview of a proposed Operating Agreement between the City of Surrey and the Lower Fraser Valley Exhibition Association for the operation of the Cloverdale Fairgrounds for the years 2020 through 2022, inclusive, and to obtain approval to execute the Agreement.

BACKGROUND

The three-year operating agreement between the City and the Association covering the period from January 1, 2017 to December 31, 2019 is nearing expiry.

In May 2018, Council approved a proposed extension to the Agreement and a proposed Tennant Improvement Agreement (the "TI Agreement") for the operation of a ball hockey league at the Show Barn Building through Corporate Report No. R119; 2018, attached as Appendix "II". Despite several months of discussion, the parties did not mutually agree on the proposed budget to proceed. In November 2018, the association advised City staff that they no longer wish to proceed with the TI Agreement. As a result, execution of the extension to the Agreement and execution of the TI Agreement did not occur.

Staff have been in discussions with the Association executive over the last few months with a view to entering into a new Agreement with the Association to allow the Association to continue to operate the City-owned Cloverdale Fairgrounds.

DISCUSSION

The following sections provide a brief overview of key elements of the current Agreement and of changes that are proposed in the new Agreement:

Key Elements of the Agreement

- I. **Broad Purpose** – Under the Agreement the Association provides services in connection with the operation of the Cloverdale Fairgrounds in accordance with the terms and conditions specified within the Agreement.
- II. **Facilities and Grounds Covered by the Agreement** – The Agreement covers the Fairgrounds land and includes: Bill Reid Millennium Amphitheatre; Shannon Hall; Alice McKay Building; Agriplex; Show Barn; First-Aid / Washroom Building; Stetson Bowl; Cover-all Building; and Shops. The areas covered under the Agreement are attached as a map in Appendix “III” of this report and illustrated in Schedule ‘A’ of the Agreement.
- III. **Uses** – The Agreement provides for the Association to operate the Fairgrounds and buildings thereon for cultural uses, recreational uses, community events, livestock shows and trade shows. The Agreement stipulates that the Association is not permitted to book the Fairground facilities for extreme martial arts or unsanctioned boxing matches.

The Agreement allows the City free use of the Fairgrounds to host Canada Day celebrations at the Millennium Amphitheatre.

- IV. **Fees** – Under the 2017-2019 Agreement, the City provided an annual base payment of \$380,000 to the Association, adjusted for CPI in 2018 and each year thereafter. In addition, the agreement provides the Association with use of a \$200,000 line of credit as a contingency if the fees are insufficient to meet all of the Association’s needs during the term of the Agreement. The Agreement stipulates that any draws that the Association makes from the line of credit must be approved by the City’s General Manager, Finance, in advance. The Association is responsible for paying down any amounts used from the line of credit at the end of each year.

Under the proposed 2020-2022 Agreement, the City will provide an annual base payment of \$407,000 to the Association in 2020 and will adjust this payment in each of 2021 and 2022 by the change in the CPI for the Vancouver area for the 12 months ending on December 31 of the immediately preceding year. The \$200,000 line of credit will remain available to the Association whose use must be again approved by the City’s General Manager Finance. In addition to the amounts listed above, the Association also receives a grant of \$225,000 to stage the annual Rodeo and Exhibition. This ongoing community grant has been in place since 2008.

It should be noted that given the success of the Cloverdale Fairgrounds operation, the Association has not required the line of credit since July 2017.

The existing and proposed Agreements both provide for the City's continuing involvement in certain specified operating functions and preventative/corrective maintenance programs for Fairgrounds buildings, Bill Reid Millennium Amphitheatre, roads and city-owned underground utilities as per the list below:

- (a) Mechanical equipment directly related to building systems;
- (b) Equipment associated with the heating, ventilation, and air conditioning systems;
- (c) Electrical equipment directly associated with building systems;
- (d) Plumbing systems, including but not limited to, in-ground services of the recreational vehicle lot;
- (e) Fire prevention systems, and firefighting systems and equipment;
- (f) Indoor and outdoor lighting systems, including parking lot lighting;
- (g) Building envelope including roof systems;
- (h) City infrastructure associated with underground City utilities such as water, sanitary sewer and storm sewer, but excluding hydro and gas;
- (i) Built portions of 62 Avenue and 62A Avenue and its associated ditches; and
- (j) Patching of asphalt parking lots, to a maximum of \$3,000 in each year of the Term, upon request by the Operator.

- V. **Independence of the Operator** – The Agreement stipulates that the Association is an independent contractor to the City and does not create a relationship of employer and employee nor a partnership or a joint venture. The Association does not have the authority to enter into any agreements or contracts on behalf of the City except as expressly set out in the Agreement.
- VI. **Insurance and Damages** – The Agreement contains standard damage, insurance and indemnity clauses.
- VII. **Termination** – Under the terms of the Agreement, the City may terminate the Agreement subject to giving the Association 120 days of notice in writing. The Agreement also allows for termination by the Association under certain stipulated conditions.

Other Changes in the Proposed Agreement in comparison to the Current Agreement:

The following summarizes other changes that have been incorporated into the proposed Agreement in comparison to the current Agreement:

- 1. Lands previously managed by the City that fall within the proposed footprint of the twin-sheet ice arena and future parking areas have been added back into the agreement for management by the Association.
- 2. The following house-keeping changes have been made:
 - Schedule 'C', the Capital Equipment List, has been removed and will be replaced by an annual equipment list that the Association will produce for insurance renewal purposes;
 - A number of wording changes for the purpose of bringing more clarity to certain clauses of the Agreement have been made.

The Association Executive is satisfied with the proposed Agreement.

The existing and proposed Agreements both provide for the City's continuing involvement in certain specified operating functions and preventative/corrective maintenance programs for Fairgrounds buildings, Bill Reid Millennium Amphitheatre, roads and city-owned underground utilities as per the list below:

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The Association Executive is satisfied with the proposed Agreement.

Review by Legal Services

Legal Services has reviewed the proposed Agreement and has no concerns.

SUSTAINABILITY CONSIDERATIONS

The Cloverdale Fairgrounds serve as a venue for community celebrations, festivals and local community programs, and agriculturally focussed exhibitions. This venue supports the objectives of the City's Sustainability Charter 2.0. In particular, it supports the Sustainability Charter themes of Economic Prosperity and Livelihoods and Health and Wellness. Specifically, this supports the following Desired Outcomes ("DO") and Strategic Direction ("SD"):

- Economy - DO11: Food production and enterprises of all scales are an integral part of the economy.
- Wellness and Recreation - DO6: Residents participate in a wide range of recreation and leisure opportunities.
- Wellness and Recreation - SD8: Promote greater participation in all forms of recreation.

FUNDING

Funding for the agreement is available within the On-going Community Grants budget of the City Grants Program.

CONCLUSION

Based on the above discussion, it is recommended that Council approve the execution by the City Manager and the City Clerk of the proposed Operating Agreement between the City of Surrey and the Lower Fraser Valley Exhibition Association (the "Association") for the operation of the Cloverdale Fairgrounds during the three-year period from January 1, 2020 to December 31, 2022.

Laurie Cavan
General Manager,
Parks, Recreation and Culture

Kam Grewal, CMA
General Manager,
Finance

Appendix "I" – Proposed Operating Agreement (2020 – 2022)

Appendix "II" – Corporate Report No. R119; 2018

Appendix "III" – Map of the Cloverdale Fairgrounds



CLOVERDALE FAIRGROUNDS OPERATING AGREEMENT

2020-2022

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SCHEDULE B – OVERFLOW PARKING

SCHEDULE C – POTENTIAL ONE TIME LUMP SUM PAYMENT TO THE OPERATOR

SCHEDULE D – FEES PAYABLE BY THE OPERATOR TO THE CITY

CLOVERDALE FAIRGROUNDS OPERATING AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 2019

BETWEEN:

CITY OF SURREY
13450 – 104 Avenue
Surrey, BC V3T 1V8

(the “City”)

AND:

LOWER FRASER VALLEY EXHIBITION ASSOCIATION
6050A – 176 Street
Surrey, BC V3S 4E7

(the “Operator”)

WHEREAS the City wishes to engage the Operator and the Operator agrees to provide Services in connection with the operation of Cloverdale Fairgrounds, including the Amphitheatre, Shannon Hall, Alice McKay Building (Products Building), Agriplex, Show Barn, First Aid/Washroom Building, Stetson Bowl, Coverall Building and Fairgrounds Works Yard Building and Shops and internal roads and parking substantially as outlined in bold in Schedule A (collectively the "Fairgrounds") in accordance with the terms and conditions of this Agreement.

THEREFORE in consideration of the payment of One (\$1.00) Dollar and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the City and the Operator agree as follows:

1. Interpretation

1.1 Definitions

In this Agreement the following definitions apply:

“**Agreement**” means all of the Sections within this document and all of the schedules listed in Section 1.2;

“**Amphitheatre**” means Area B outlined in red on Schedule "A" attached hereto;

“**Capital Expenditures**” means all expenditures on or in the Fairgrounds of a capital nature, which are not Operating Expenses, as determined by the City;

“**City**” means the City of Surrey;

“**City’s Line of Credit**” has the meaning set out in Section 4.5;

“**City's Representative**” has the meaning set out in Section 20 (a) (ii);

“Dispute” has the meaning set out in Section 21.1;

“Equipment” has the meaning set out in Section 6.3;

“Fairgrounds” has the meaning set out in the recital;

“Fees” has the meaning set out in Section 4.1;

"Lands" means that portion of the City owned lands in Surrey, BC as shown outlined in red as Area B on Schedule "A" attached hereto, excluding any areas leased to Orangeville Raceway Limited pursuant to the lease/easements registered in the New Westminster Land Title Office under Nos. BW135810 – BW135813, and also excluding the statutory road allowances for 62 Avenue and 62A Avenue;

“Licensee” means any business, organization or individual granted permission by the Operator to occupy the Lands for the purposes contained in any license contract.

“Operator” means the Lower Fraser Valley Exhibition Association;

"Operator's Representative" has the meaning set out in Section 21(a)(i);

"Operating Expenses" means the total, without duplication, of the expenses incurred by the Operator for operating, maintaining, insuring and repairing the Fairgrounds, approved by both parties in accordance with this Agreement, including without limitation the following:

- (a) the costs of repairs, including without limitations, vandalism, maintenance and such replacements to the Fairgrounds as are properly chargeable in accordance with generally accepted accounting principles to operating expenses as distinguished from capital replacements or improvements;
- (b) the cost of insurance including deductibles for the Fairgrounds in accordance with this agreement;
- (c) the expense for garbage removal within the Fairgrounds and immediate surrounding area, sanitary control and snow removal;
- (d) wages and other costs paid to personnel or independent contractors in connection with the administration and management of the Fairgrounds (including the on-site manager for the Fairgrounds), including payments for workers' compensation, unemployment insurance, vacation pay, Canada Pension Plan, and other fringe benefits whether statutory or otherwise;
- (e) all costs of supplies and equipment required for the administration and management of the Fairgrounds;
- (f) accounting and other professional costs required for the administration and management of the Fairgrounds;
- (g) any non-recoverable sales and excise taxes;

- (h) the cost of electricity, gas, other fuel, telephone (including long distance charges), photocopying, faxes, water, sewer and other similar utilities consumed on the Fairgrounds and all business taxes, garbage taxes, licenses, rates, and other charges, taxes, other than income taxes, licenses, or rates levied or assessed on or in respect of or in relation to the Operator, the business carried on by the Operator and the assets of the Operator within the Fairgrounds, or in respect of any fixtures, machinery, equipment, or apparatus installed in the Fairgrounds by the Operator;
- (i) audit fees and disbursements;
- (j) computer software; and
- (k) marketing, advertising/sponsorship costs.

These shall not be included in Operating Expenses:

- (a) the costs of dispute resolution;
- (b) each party's own legal fees and disbursements and taxes;
- (c) income taxes;
- (d) interest expense;
- (e) the cost of maintenance, repair or replacement made necessary as a result of loss or damage to the Fairgrounds caused by the Operator or its staff or agents' negligence, deliberate or reckless acts or omissions or misuse which results in damage;
- (f) losses due to the Operator or its employees, independent operators or agent's theft; and
- (g) Capital Expenditures;

"**Services**" has the meaning set out in Section 2.1; and

"**Term**" has the meaning set out in Section 2.4.

1.2 Schedules

The following attached Schedules are a part of this Agreement:

- (a) Schedule A – Lands;
- (b) Schedule B – Overflow Parking Area;
- (c) Schedule C – Potential one time lump sum payment; and
- (d) Schedule D – Fees Payable by the Operator upon termination by the City

1.3 Surrender

The parties agree that all previous agreements for the Fairgrounds have been surrendered or terminated. The parties agree that this Agreement is the only Agreement dealing with the operation of the Fairgrounds between the parties. The Operator may enter into license agreements with third parties for use of the Fairgrounds or a portion thereof during the Term including, without limitation, indoor concessions.

2. Services

2.1 Services

The City hereby retains the Operator to provide the services as described herein, including anything and everything required to be done for the fulfillment and completion of this Agreement (the "Services").

2.2 Amendment of Services

The City may from time to time, by written notice to the Operator, make changes in the Services. The City reserves the right to change the traffic access and flow at the Fairgrounds to provide access to the arena, curling rink and other buildings as required. Where changes to the Services may negatively impact Fairgrounds tenants or renters, the City will make efforts to provide reasonable notice in an effort to mitigate any such negative impacts.

2.3 Standard of Care

The Operator will perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing services similar to the Services, and on the understanding that the City is relying on the Operator's experience and expertise.

2.4 Term

Subject to Section 17, the Operator will provide the Services for the period commencing on January 1, 2020 and terminating on December 31, 2022 (the "Term"), provided that the City or any third party authorized by the City, at its option, may during the Term at any time rezone, subdivide or develop the Fairgrounds and/or the Lands or any portion thereof. Subject to Section 4.2, the Operator covenants to cooperate with the City during any rezoning, subdivision or development and agrees that there will be no adjustment to the Fees as a result of any rezoning, subdivision or development.

3. Use

3.1 General Uses

The Lands and all improvements thereon are to be used by the Operator for cultural uses, recreational uses, community events, livestock shows and trade shows as

approved by the City and for no other purposes and specifically excluding extreme martial arts which may include, but is not limited to, Muy Thai (Thai Boxing) and Mixed Martial Arts and Ultimate Fighting, whether amateur or professional. The Operator agrees to provide the City with all plans for the promotion and utilization of the Fairgrounds, including without limitation rental charges.

3.2 Canada Day

The City shall have the Fairgrounds available for its own use for the three-day period from June 30 through July 2. The City is responsible for the costs associated with Canada Day celebrations, which are held on the Fairgrounds, as agreed to between the parties.

3.3 Alcohol

Alcoholic beverages cannot be served or consumed within the Amphitheatre without the express advance permission of the City, and in compliance with any and all applicable Provincial and/or Municipal licensing requirements.

3.4 Emergency Social Services

In the event of a large-scale disaster which may result in a mass evacuation of residents and/or livestock, the City reserves the right to access the Fairgrounds for use as an Emergency Social Service reception centre or group lodging facility as required. The City will compensate the Operator for losses as determined by the City acting reasonably associated with cancelled bookings as a result of Emergency Social Services occupying the Fairgrounds or a portion thereof.

3.5 Use of City's Arena, Curling Rink and Cloverdale Recreation Centre

The City's Cloverdale arena and curling rink adjacent to the Fairgrounds are to be made available to the Operator free of charge for the annual Cloverdale rodeo and exhibition from 0800 hours on the Wednesday prior to the event until 1200 hours on the Wednesday following the event provided that the Operator cleans and maintains the arena and rink during and immediately following these times to the satisfaction of the City.

The gymnasiums on the lower floor of the City's Cloverdale Recreation Centre will be made available to the Operator free of charge for the rodeo and exhibition from 1800 hours on Wednesday prior to the event until 1600 hours on the Tuesday following the event, provided that the Operator pays all of the City's costs of cleaning and maintenance of the gymnasiums for those dates and times of use.

The Operator will have a representative present during set up and take down in the Cloverdale Recreation Centre and will ensure that vendors have removed all items from the gymnasiums by 1600 hours on the Tuesday following the event.

Other rooms (e.g. multi-purpose rooms) in the Cloverdale Recreation Centre may be made available to the Operator from 1800 hours on Wednesday prior to the event

until 1800 hours on the Monday following the event, based on availability, and at the sole discretion of the City. Should the Operator need these other rooms, the Operator will apply to the City ninety (90) days in advance of the annual rodeo event. The Operator is responsible for paying all of the City's costs of cleaning and maintenance of other rooms, common areas and washrooms used during the event.

The City and the Operator will annually, in April of each year of the Agreement, mutually agree on a plan for use of the Cloverdale Recreation Centre Parking Lot during the dates and times of the Cloverdale Rodeo.

The Operator agrees to maintain free and uninterrupted public access on the southern sidewalk on 62 Avenue, from Highway 15 to the east (main) entrance of the Cloverdale Recreation Centre prior to 1600 hours on the Friday of the event until 1800 hours on the Monday following the event.

3.6 FEST Requirement

The Association, recognized as a competent manager and steward of the Cloverdale Exhibition Grounds (Fairgrounds) will adhere to the Festival & Event Support Team (FEST) Bylaw, "SPECIAL EVENTS REGULATION BY-LAW, 2002, No. 14731", and policies set by the FEST Committee for any event taking place on the Fairgrounds insomuch as it pertains to Outdoor events, and indoor events in excess of 1,000 persons. The Association is responsible for event organizers to fill out a FEST Application and have the application reviewed by the FEST Committee. The Association will ensure that event organizers are meeting requirements set by FEST agencies and will ensure that the RCMP are provided with accurate information relative to RCMP invoicing for Services.

4. Fees

4.1 Fees

Subject to the terms and conditions of this Agreement and, in particular, Section 4.2, and the continuous performance of the Services by the Operator, the City shall pay to the Operator as follows:

- (a) FOUR HUNDRED AND SEVEN THOUSAND (\$407,000.00) DOLLARS for the period commencing January 1, 2020 and ending December 31, 2020, payable in two equal payments of \$203,500 on or within 15 days after the following dates: January 3, 2020 and March 1, 2020;
- (b) FOUR HUNDRED AND SEVEN THOUSAND (\$407,000.00) DOLLARS, plus an adjustment equal to the Statistics Canada Consumer Price Index (CPI) increase calculated for 2020 for the Vancouver area, for the period commencing January 1, 2021 and ending December 31, 2021 payable in two equal payments on or within 15 days after the following dates: January 3, 2021 and March 1, 2021; and

- (c) FOUR HUNDRED AND SEVEN THOUSAND (\$407,000.00) DOLLARS, plus an adjustment equal to the CPI increase calculated for 4.1 (b), compounded by the CPI calculated for 2021 for the Vancouver area, for the period commencing January 1, 2022 and ending December 31, 2022 payable in two equal payments on or within 15 days after the following dates: January 3, 2022 and March 1, 2022.

4.2 Adjustment of Fees

The City, by 120 days written notice to the Operator may at any time during the Term of this Agreement, advise the Operator that it intends to demolish or close Shannon Hall, Alice McKay (Products Building) or any other building or facility within the Fairgrounds. The parties agree to work cooperatively to calculate the adjustment to the Fees as a result of this notice and the related change in the scope of the operations of the Fairgrounds. In the event the parties cannot agree on the adjustment to the Fees within 120 days of the notice, the parties agree that the net revenue for a specified building being closed or demolished, up to a maximum of the amount specified in Schedule C may be solely determined by the City's auditors provided that any recapture through additional use is discounted. The date of the notice in writing will define the start of the 120 day notice period. Repayment of the Fees is applicable in the year of notice in accordance with this agreement and no amounts are applicable in the remaining years of the Term. Section 4.2 Fee adjustments do not apply if this Agreement is terminated in accordance with Section 17.1

4.3 Operating Expenses

The Operator shall pay the Operating Expenses. The Operator hereby covenants and agrees that all profits realized as a result of its operation of the Fairgrounds will be allocated to the management, maintenance and operation of the Fairgrounds and for carrying out of events, which the Operator puts on, or sponsors in accordance with the financial summaries. It is understood and agreed that should the Operator receive a grant or loan for any purpose specified by the grantor or lender, the monies thus received shall be expended for the specified purpose.

4.4 Utilities

All utility billing for the Fairgrounds will be registered in the Operator's name, save for the Amphitheatre, where the City is named on electrical utility bills. All charges for gas, electricity and water and sewer under the terms of this agreement will be billed to, and paid by, the Operator, except those costs for pathway lighting at the Amphitheatre which are currently metered separately provided that if the Operator has big bookings at the Amphitheatre which draw extra power, they will reimburse the City for any costs associated therewith.

4.5 City's Line of Credit

In addition, as an operating contingency should the Fees not be sufficient to operate the Fairgrounds for the Term, the City will provide a line of credit (the "City's Line of

Credit") with all expenditures on the line of credit to be submitted by the Operator in writing to be approved by the City's General Manager, Finance acting reasonably for the purposes of this Agreement with a maximum limit of \$200,000 for each year of the Term, on the condition that the Operator covenants and agrees to the following:

- (a) that it has no debts;
- (b) that it will pay all net revenues to the City throughout the Term of the Agreement to reduce the balance on the City's Line of Credit to nil; and
- (c) that the Operator will provide at the end of each quarter during each year a financial report outlining the revenues and expenditures to date for the year, complete with a projection to the end of the year.

It is understood by the City and the Operator that any unused portion of the \$200,000 line of credit in any year of the Term will not be carried over to the following year.

Payment by the City of the Fees will be full payment for the Services and the Operator will not be entitled to receive any additional payment from the City. At the end of the Term, provided that the Operator has no debt, and the Operator has no outstanding balance on the City's Line of Credit, the Operator will be entitled to retain any monies received during the Term, provided that the Operator continues to hold its annual rodeo and exhibition in Surrey. Should the Operator choose to move the rodeo and exhibition from Surrey, these monies must be returned to the City.

5. Appropriation

The Operator recognizes and agrees that the City cannot make financial commitments beyond the City's current fiscal year. In this regard it is understood that the City shall annually make bona fide requests for appropriation of sufficient funds to cover all payments covered by this Agreement. Should such funds not be appropriated by City Council, the City will notify the Operator of its intention to renegotiate the scope of work so affected within 120 days after such non-appropriation becomes final provided that if no consensus ad idem is reached between the parties, this Agreement is terminated effective 120 days from the date of notification by the City. The Operator shall not be entitled to any loss of anticipated profits.

6. Capital Expenditures

6.1 No Capital Expenses

As the City is anticipating redeveloping the Fairgrounds, neither party is responsible for Capital Expenditures except as specified in this Section.

6.2 Damage

The Operator shall be liable to pay the City the cost of maintenance, repair or replacement made necessary as a result of loss or damage to the Fairgrounds caused by the Operator or its staff or agents' negligence, deliberate or reckless acts or omissions or misuse which results in damage.

The City shall pay the cost of maintenance, repair or replacement made necessary as a result of loss or damage to the Fairgrounds caused by the City's staff or agents' negligence, deliberate or reckless acts or omissions or misuse which results in damage.

6.3 Equipment

The Operator agrees to produce an equipment list for insurance renewal purposes each year. This list includes but is not limited to equipment such as vehicles, power tools, pumps, trailers, light towers, stages, mowers, tractors, etc. The Operator shall provide this list each year to the City. The parties agree that all of the equipment listed on the annual insurance list is to be returned to the City at the end of the Term.

Any equipment purchased by the Operator throughout the term is to be returned to the City at the end of the Term. The City may elect to purchase additional equipment in its name and enter into a licence agreement with the Operator regarding the use of this equipment. The Operator is solely responsible for the cost of maintaining and operating all equipment used by the Operator.

Disposal of the City's assets, regardless of value, must be processed through the City. Notwithstanding the foregoing, if for any reason assets are to be disposed of, the City should be notified in writing. Assets should only be offered for sale by the City.

The City shall have the right to use the portable stage, at no cost, for Tree Lighting Festival (three days in either November or December), Children's Festival (five days in June), Canada Day (June 30, and July 1-3) and Fusion Festival (five days in July) and at all times other than when it is being used by the Operator for the Operator's directly delivered events. The City agrees to give reasonable notice to the Operator as to when it plans to use the portable stage and will bear the expenses associated with its use by the City.

6.4 Approval

All Capital Expenditures greater than \$10,000.00 must be pre-approved by the City's General Manager, Finance in writing prior to any equipment being purchased or work being performed and the Operator must submit an invoice to the City for the same (if applicable). Capital equipment less than \$10,000.00 may be purchased by the Operator from operating funds but will revert to the City at the end of this Agreement. In the event of an emergency, and the City cannot be contacted, the Operator may proceed with rectifying the emergency if it threatens the safety of persons at the Fairgrounds.

7. Amphitheatre

The Operator shall diligently follow all City rules and regulations for use of the Amphitheatre, which is to primarily serve as a grass seating area for crowds to observe events which take place on a multi-purpose stage, so as not to cause or allow damage to occur to the turf,

landscaping and structures associated with the Amphitheatre. The Operator is responsible for the cost of all repairs that occur as a result of events booked by the Operator, or directly by the actions of the Operator. All repairs will follow City guidelines and requirements. The above will not apply to City-sponsored events, managed by and administered by City staff, where the City will take responsibility for damage and repairs to the facility.

Repairs are to be affected when weather permits. Use of the electrical conduits at the Amphitheatre must be by qualified electricians only. The City, through its Facility Management Department, shall solely make the determination as to whether electricians suggested by the Operator are considered as "qualified" for this purpose.

The Operator shall not use the Amphitheatre between the end of the annual rodeo and Canada Day so that the City can repair any damage and prepare the site for its Canada Day event. Upon special request by the Operator, the General Manager, Parks Recreation and Culture may provide permission to use this space during this time period.

8. Books of Account

The Operator shall keep proper books of account and records in respect of all revenues and expenditures arising from its operation of the Fairgrounds during the Term. The City, its agents, solicitors and internal and external auditors may at any time inspect and review copies of the books of account, records, source documents, reports, computerized records, contracts, sub-contracts and other papers of the Operator relating to the Services performed by the Operator under this Agreement on a date convenient to both parties during the working hours of a business day, provided however that the City shall have the right to inspect the same three (3) days after the date of giving verbal or written notice of such request to the Operator provided only that the City shall attempt to schedule the inspection so as to cause as little interruption as reasonably practicable to the activities of the Operator. All books of account and records referred to herein shall be retained and not destroyed without the consent of the City.

9. Provision of Financial Information

At any time, the City may request financial statements and the Operator shall produce these statements within two (2) weeks of receiving such a request.

The City may cause an internal or independent/external audit to be conducted and such audit is to be at the City's sole expense. Within ninety (90) days after the end of the Operator's fiscal year end which is December 31st, the Operator shall furnish audited financial statements of the Operator, audited by a Chartered Professional Accountant in good standing and acceptable to the City, setting out the amount of the gross revenue, Operating Expenses and available cash flow for that payment year.

10. Operation and Maintenance

10.1 The Operator's Responsibilities and Control of the Work

The Operator shall have control of the Fairgrounds during the Term of this Agreement and shall effectively direct and supervise the work at the Fairgrounds, using its best skill and attention, and shall be solely responsible for all housekeeping and sanitation maintenance, methods, techniques, sequences, safety and procedures and for coordinating all parts of its duties, responsibilities and obligations under this agreement. The Operator shall at all times be responsible for the total security of the Fairgrounds and equipment within this agreement.

10.2 Inspection

The City or its agents shall have the right, at all reasonable times, to enter the Lands to inspect the same and to ensure that these areas are being used, operated and maintained in accordance with applicable policies, standards and regulations. Should the Lands be found to be in disrepair, unsafe or in contravention of any policies, standards or regulations, the Operator may be ordered to repair or remedy the problem provided that it is an Operating Expense. If it is a Capital Expenditure, the City reserves the right to not remedy the problem which may result in the relevant facility being closed.

10.3 Maintenance

The Operator shall keep the Fairgrounds in a clean and tidy manner that will be equal to or exceed the standards in other City facilities. Customer satisfaction surveys will be used to determine the customer satisfaction on the cleanliness of the Fairgrounds. The Operator shall select its own site(s) for disposal of debris, trash and unsuitable materials collected and pay for and arrange for disposal of the same.

The Operator shall be responsible for maintaining and operating the Fairgrounds, except the Amphitheatre, as the City will be responsible for these items only at the Amphitheatre:

- (a) Mowing, trimming and leaf control;
- (b) Drainage, including catch-basin cleaning and wet pond maintenance;
- (c) Horticulture;
- (d) Tree maintenance;
- (e) Turf maintenance;
- (f) Structure maintenance;
- (g) Electrical fixture maintenance; and
- (h) Vandalism repair.

The City shall be responsible, at its own discretion, for preventative and corrective maintenance to the following on the Fairgrounds:

- (a) Mechanical equipment directly related to building systems;
- (b) Equipment associated with the heating, ventilation, and air conditioning systems;
- (c) Electrical equipment directly associated with building systems;
- (d) Plumbing systems, including but not limited to, in-ground services of the recreational vehicle lot;
- (e) Fire prevention systems, and firefighting systems and equipment;
- (f) Indoor and outdoor lighting systems, including parking lot lighting;
- (g) Building envelope including roof systems;
- (h) City infrastructure associated with underground City utilities such as water, sanitary sewer and storm sewer, but excluding hydro and gas;
- (i) Built portions of 62 Avenue and 62A Avenue and its associated ditches; and
- (j) Patching of asphalt parking lots, to a maximum of \$3,000 in each year of the Term, upon request by the Operator.

10.4 Parking

The Operator may make use of any and all parking spaces located on the Lands and may at times, if demand for parking is such that the parking located on the Lands cannot meet the supply of parking spaces, utilize the “overflow” parking area located on the adjacent parking lot as shown outlined in red on Schedule B.

For the Canada Day celebration, parking will be free to those attending the celebration at the Fairgrounds. The City shall be guaranteed open and free access to a minimum of 80% of the Fairground site parking. For all other events booked by the Operator, the Operator may charge for parking as the market permits.

10.5 Bookings and Advertising

The Operator shall provide bookings and event administration for those events booked by the Operator. The Operator shall advertise and promote the Fairgrounds. The Operator covenants and agrees to refer all enquiries for bookings beyond the Term to the City's Representative.

10.6 Concession

The Operator is to have the right to operate a concession at the Fairgrounds on all event days other than Canada Day.

10.7 Sponsors

The Operator may solicit for sponsors or advertisers at the Fairgrounds. For the Amphitheatre, the City shall preapprove all advertising and sponsorships and shall have the right to reject any advertising and/or sponsorships in its sole discretion.

10.8 Banners and Flags

Prior approval must be obtained from the City for all proposed banners or flags to be hung/flown at the Amphitheatre.

11. Emergency and Evacuation Procedures

The parties agree to the following:

- (a) The Operator shall submit to the City, detailed procedures and action plans to deal with emergency and evacuation procedures. The City shall be informed if any subsequent changes to the procedures are made;
- (b) The Operator may implement emergency and evacuation procedures when any of the following incidents occur:
 - (i) Smoke or fire or alarm sounds;
 - (ii) Lighting failure;
 - (iii) Bomb threat;
 - (iv) Toxic gas leak;
 - (v) Death or injury;
 - (vi) Lost person; and
 - (vii) Other situations where the public or staff's health is at risk.
- (c) The Operator shall provide trained staff who are conversant with emergency procedures in keeping with industry standards pertaining to the Fairgrounds;
- (d) The Operator will make suitable arrangements to ensure that the public are made aware of general safety precautions required at the various locations and the action they are required to take in the event of accident or other emergency and that staff are kept fully informed of all procedures in existence for ensuring the safety of themselves and the users of the Fairgrounds;
- (e) The Operator shall be responsible for the safety of all contractors and sub-contractors employees, invitees, and equipment of the Fairgrounds in accordance with the Agreement, and shall not be responsible for the safety of all contractors and sub-contractors employees, invitees, and equipment who are under the supervision, control or management of the City;
- (f) Incidents, altercations or accidents involving Fairgrounds visitors, the Operator, employees or City employees shall be reported by the Operator to the City's Representative in a timely manner but in no case more than one (1) week for minor incidents, or more than twenty-four (24) hours for major incidents; and
- (g) The Operator shall remove or remedy any hazardous conditions immediately.

12. Occupational Health and Safety

The parties agree to the following:

- (a) The Operator, for all its operations on the Fairgrounds, shall ensure compliance with and conform to all health and safety laws, by laws or regulations of the Province of British Columbia. The City may, on twenty-four (24) hour written notice to the Operator, rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case shall the City be responsible for ascertaining or discovering, through inspections or review of the operations of the Operator or otherwise, such deficiency or immediate hazard;
- (b) Without limiting the generality of any other indemnities granted by the Operator herein, the Operator shall indemnify and save harmless the City, its elected and appointed officials, employees and agents from and against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Operator, its agents or employees, or any sub operators of the Operator, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations;
- (c) The Operator shall fulfill all its duties, obligations and responsibilities in such a manner that it ensures the safety of the public and in accordance with the safety regulations of the Workers Compensation Board and shall install signs and barriers as required to ensure the safety of the public and of its employees in the use of the Fairgrounds; and
- (d) The Operator understands and undertakes to comply with all the Workers Compensation Board Industrial Health and Safety Regulations for hazardous materials and substances, and in particular with the Workplace Hazardous Materials Information Systems Regulations.

13. Workers Compensation Board Coverage

The parties agree to the following:

- (a) The Operator agrees that it shall procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board (WorkSafe BC) coverage for itself and all workers, employees, servants and others hired by the Operator, engaged in or upon any work or service which is the subject of this Agreement. The City shall have the right to withhold payment under this Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the work done or service performed in fulfilling this Agreement have been paid in full;
- (b) The Operator agrees that it is the principal operator for the purposes of the Workers' Compensation Board Industrial Health and Safety Regulations for the Province of British Columbia. The Operator shall have a safety program acceptable to the Workers' Compensation Board and shall ensure that all Workers' Compensation Board safety rules and regulations are observed during performance of this

Agreement, not only by the Operator, but by all sub-operators, workers, material men and others engaged by the Operator in the performance of this Agreement;

- (c) The Operator shall provide the City with the Operator's Workers' Compensation Board registration number and a letter from the Workers' Compensation Board confirming that the Operator is registered in good standing with the Workers' Compensation Board and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Agreement. The Operator will maintain good standing throughout the Term of this Agreement; and
- (d) The Operator agrees that it's the "Prime Contractor" for the purposes of the Workers Compensation Act of B.C. The Operator will have a safety program in place that meets the requirements of the WCB Occupational Health & Safety Regulation & the Workers Compensation Act. The "Prime Contractor" is responsible for appointing a qualified coordinator for ensuring the health & safety activities for the location of their work.

14. Personnel

14.1 Qualified Personnel

The Operator will provide only personnel who have the qualifications, experience and capabilities to perform the Services.

14.2 Replacement of Personnel or Sub-Contractors

If the City reasonably objects to the performance, experience, qualifications or suitability of any of the Operator's personnel or sub-contractors who are carrying out work on Fairgrounds assets (including but not limited to buildings, grounds and capital equipment) then the Operator will, on written request from the City, stop the unqualified person from performing the work, and find suitable replacement personnel or sub-contractors.

14.3 Assignment

The Operator will not assign its obligations under this Agreement, in whole or in part, without the prior written approval of the City. Such approval may be unreasonably withheld.

14.4 Agreements with Sub-Contractors

The Operator will preserve and protect the rights of the City with respect to any Services performed under sub-contract and incorporate the terms and conditions of this Agreement into all sub-contracts as necessary to preserve the rights of the City under this Agreement. The Operator will be as fully responsible to the City for acts and omissions of sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Operator.

15. Limited Authority

15.1 Agent of City

The Operator is not and this Agreement does not render the Operator an agent or employee of the City, and without limiting the above, the Operator does not have authority to enter into any contract or reach any agreement on behalf of the City, except for the limited purposes as may be expressly set out in this Agreement, or as necessary in order to perform the Services. The Operator will make such lack of authority clear to all persons with whom the Operator deals in the course of providing the Services.

15.2 Independent Contractor

The Operator is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City will not control or direct the details, means or process by which the Operator performs the Services. The Operator will determine the number of days and hours of work required to properly and completely perform the Services. The Operator will be solely liable for the wages, fringe benefits, work schedules and work conditions of any partners, employees or sub-contractors.

16. Insurance and Damages

16.1 Structure and Personal Property

The City will insure the basic structure of the buildings on the Lands. The Operator will be responsible for insurance coverage of the personal property within the Lands.

16.2 Operator's Insurance Policies

The Operator will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this Agreement the following insurance 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 provision of the Services by the Operators, its employees, agents, and sub-operators. The insurance policy will be endorsed to add the City as additional insured and 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 insured to each insured. The insurance will include, but not be limited to:
 - (i) Blanket contractual;
 - (ii) Employees as additional insureds;

- (iii) Non-owned automobile;
 - (iv) Owners and contractors protective liability;
 - (v) Contingent employers liability;
 - (vi) Personal injury; and
 - (vii) Where such further risk exists, advertising liability.
- (b) automobile liability insurance on all vehicles owned, operated or licensed in the name of the Operator in an amount not less than two million (\$2,000,000) dollars per occurrence for bodily injury, death and damage to property.

16.3 Insurance Requirements

The Operator 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 Operator will, on request from the City, provide certified copies of all of the Operator'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. The Operator will require and ensure that each sub-contractor maintain insurance comparable to that required above. The Operator will be responsible for deductible amounts under the insurance policies. All of the Operator's insurance policies will be primary and not require the sharing of any loss by the City or any insurer of the City.

16.4 Waiver of Subrogation

The Operator hereby waives all rights of recourse against the City for loss or damage to the Operator's property.

16.5 Additional Insurance

Subject to any specific agreements the City and the Operator may have reached with respect to insurance, as may be set out in other provisions of this Agreement, the Operator 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.

The Operator 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 Operator acknowledges and agrees that the Operator 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 Operator from responsibility for any amounts which may exceed these limits, for which the Operator may be legally liable.

16.6 Notice of Claims

If at any time during the performance of the Services the Operator becomes aware of a claim or potential claim against any insurance policy that the Operator has, pursuant to this Agreement, indicated to the City may apply to the Services, then the Operator will immediately advise the City in writing of such claim, including particulars.

16.7 Hold Harmless and Indemnity

The Operator shall defend, fully indemnify and save harmless the City, its elected and appointed officials, employees and agents from and against any and all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the City as a result of any damage to property, including loss of use thereof, and any injury to any person or persons, including death, arising from the occupancy of the Lands and operations of Operator, except where such damage or injury is due to the act, default, or negligence of the City its officers, agents, servants, employees and contractors.

16.8 Licensees Insurance

The Operator shall require General Liability insurance from all Licensees of the Lands in an amount not less than Five Million Dollars (\$5,000,000) per occurrence naming both the Operator and the City as additional Insureds. The Licensees insurance shall be primary and contain, at minimum, the following;

- (a) Cross Liability and Severability of Interest Clause;
- (b) Injury to Participants Coverage;
- (c) Host Liquor Liability (if applicable);
- (d) Employees as Additional Insureds;
- (e) Blanket Contractual; and
- (f) Waiver of Subrogation.

The Licensee shall ensure that any contractors and/or subcontractors provide insurance as stated in this section 16.8.

17. Termination

17.1 By the City

The parties agree to the following:

- (a) The City, by 120 days written notice to the Operator, may for any reason terminate this Agreement before the completion of all the Services. Repayment of the Fees is applicable in the year of notice and no amounts are

applicable in the remaining years of the Term. It is understood between the parties that if the City has already paid the Fees outlined in Section 4.1, the Operator would be required to repay the City the net amounts of the over-payment of Fees previously made by the City to the Operator, such overpayment to be calculated with reference to Schedule D.

- (b) Upon payment of Fees in Subsection 17.1 (a) by the City, no other or additional payment will be owed by the City to the Operator, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Services not performed or other profit opportunities.
- (c) At the end of the Term, whether by the passage of time or otherwise, the Operator shall deliver up vacant possession of the Lands and shall leave the Lands in a sanitary, neat, tidy and safe condition free from all nuisance, debris and rubbish and shall ensure that the Lands are to the standard of repair that they were at the commencement of this Agreement.
- (d) At the end of the Term, whether by the passage of time or otherwise, the Operator shall deliver up all capital equipment as listed in accordance with Section 6.3 and including those capital items purchased during the Term, in good order, to the standard of repair that they were at the commencement of this Agreement, to the City for its sole use and disposition. Should the Operator wind up its affairs or choose to hold an annual rodeo and exhibition event outside the City of Surrey, the capital equipment as listed in accordance with Section 6.3 would revert to the City for its sole use and disposition.
- (e) If such termination occurs, the City can take over the operation of the Fairgrounds and may use all the bookings of the Operator.

17.2 By the Operator

The Operator may, by 120 days written notice to the City, terminate the Agreement before the completion of all Services.

17.3 Termination for Cause

The City may terminate this Agreement for cause as follows:

- (a) If the Operator is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the City may, without prejudice to any other right or remedy the City may have, terminate this Agreement by giving the Operator or receiver or trustee in bankruptcy written notice;
- (b) If the Operator is in breach of any term or condition of this Agreement, and such breach is not remedied to the reasonable satisfaction of the City within ten (10) days after delivery of written notice from the City to the Operator, then the City may, without prejudice to any other right or remedy the City may have, terminate this Agreement by giving the Operator further written notice.

If the City terminates this Agreement as provided by this Section, then the City may:

- (c) enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Services;
- (d) withhold payment of any amount owing to the Operator under this agreement for the performance of the Services;
- (e) set off the total cost of completing the Services incurred by the City against any amounts owing to the Operator under this Agreement, and at the completion of the Services pay to the Operator any balance remaining; and
- (f) the Operator and the City may appoint a mediator if the Operator disputes the set off in subsection 18.3(e) herein.

17.4 Curing Defaults

If the Operator is in default of any of its obligations under this Agreement, then the City may without terminating this Agreement, upon ten (10) days written notice to the Operator, remedy the default and set off all costs and expenses of such remedy against any amounts owing to the Operator. Nothing in this Agreement will be interpreted or construed to mean that the City has any duty or obligation to remedy any default of the Operator.

18. Applicable Laws, Building Codes and By-Laws

18.1 Applicable Laws

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia. The City and the Operator accept the jurisdiction of the courts of British Columbia and agree that any action under this Agreement be brought in such courts.

18.2 Codes and By-Laws

The Operator will provide the Services in full compliance with all applicable laws and regulations.

19. Confidentiality and Disclosure of Information

19.1 No Disclosure

Except as provided for by law or otherwise by this Agreement, the Operator will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Operator as a result of the performance of the Services and this Agreement, and will not, except to its members, acting reasonably 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.

19.2 Freedom of Information and Protection of Privacy Act

The Operator acknowledges that the City is subject to the Freedom of Information and Protection of Privacy Act and agrees to any disclosure of information by the City required by law.

20. Liaison

- (a) Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:
 - (i) The Operator shall appoint the Operator's president ("Operator's Representative") or designate 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 the Operator's Representative;
 - (ii) The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with the Operator's Representative as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative; and
- (b) Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all matters relating to this Agreement 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 Operator's Representative and the City's 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.

21. Dispute Resolution

21.1 Dispute Resolution Procedures

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 dispute resolution procedures set out as follows:

- (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.

22. Jurisdiction

Nothing in this Agreement limits or abrogates, or will be deemed to limit or abrogate, the jurisdiction of the Council of the City in the exercise of its powers, rights or obligations under any public or private statute, regulation or by-law or other enactment.

23. General

23.1 Clear Title

The Operator shall keep the title to the Fairgrounds and every part thereof free and clear of any lien or encumbrance.

23.2 Entire Agreement

This Agreement, including the Appendices and any other documents expressly referred to in this Agreement as being a part of this Agreement, contains the entire Agreement of the parties regarding the provision of the Services and no understandings or agreements, oral or otherwise, exist between the parties except as expressly set out in this Agreement. This Agreement supersedes and cancels all previous Agreements between the parties relating to the provision of the Services.

23.3 Amendment

This Agreement may be amended only by agreement in writing, signed by both parties.

23.4 Survival of Obligations

All of the Operator's obligations to perform the Services in a professional and proper manner will survive the termination or completion of this Agreement.

23.5 Cumulative Remedies

The City's remedies under this Agreement are cumulative and in addition to any right or remedy which may be available to the City at law or in equity.

23.6 No Interest in Land

The parties hereto acknowledge and agree that this Agreement is an operating agreement and not a lease. Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of landlord and tenant between the parties. The Operator acknowledges that the rights granted in this Agreement are contractual only and do not give the Operator an interest in the Lands.

23.7 Notices

Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and will be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by facsimile, on transmission, or if by mail, five calendar days after posting. The addresses for delivery will be as follows:

To the City:

City of Surrey
Parks, Recreation & Culture
13450 – 104th Avenue
Surrey, BC V3T 1V8

Attention: Manager of Parks
Facsimile No.: (604) 598-5781

To the Operator:

Lower Fraser Valley Exhibition Association
6050A – 176 Street
Surrey, BC V3S 4E7

Attention: General Manager
Facsimile No.: (604) 576-0216

23.8 Unenforceability

If any provision of this Agreement is invalid or unenforceable, it will be severed from the Agreement and will not affect the enforceability or validity of the remaining provisions of the agreement.

23.9 Headings

The headings in this Agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this Agreement.

23.10 Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.

23.11 Waiver

No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day and year first above written.

CITY OF SURREY

**LOWER FRASER VALLEY EXHIBITION
ASSOCIATION**

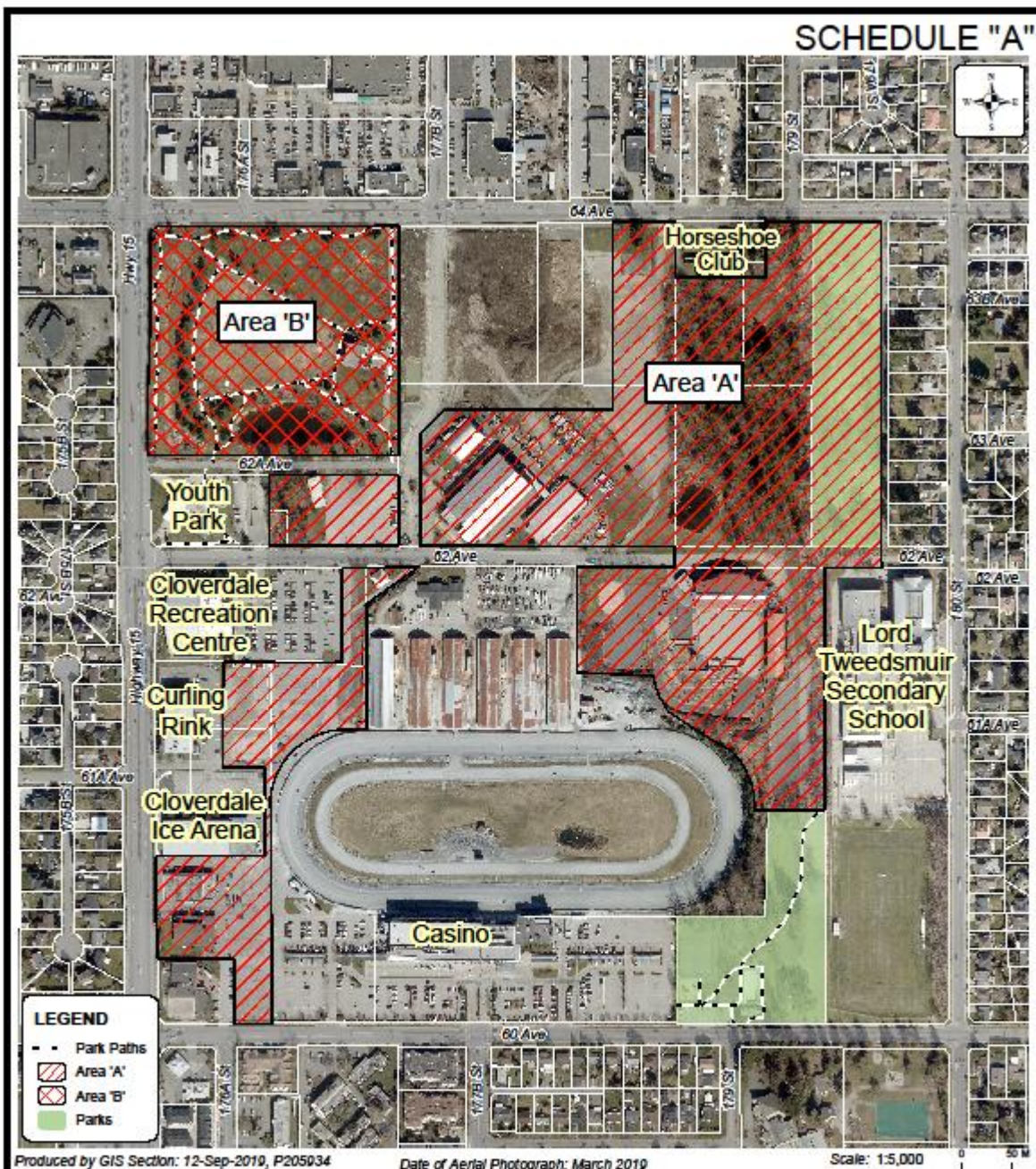
Per: _____
V. Lalonde, City Manager

Per: _____
S. Claypool, President

Per: _____
Jennifer Ficocelli, City Clerk

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SCHEDULE A - LANDS



Produced by GIS Section: 12-Sep-2010, P205034

Date of Aerial Photograph: March 2010

Scale: 1:5,000



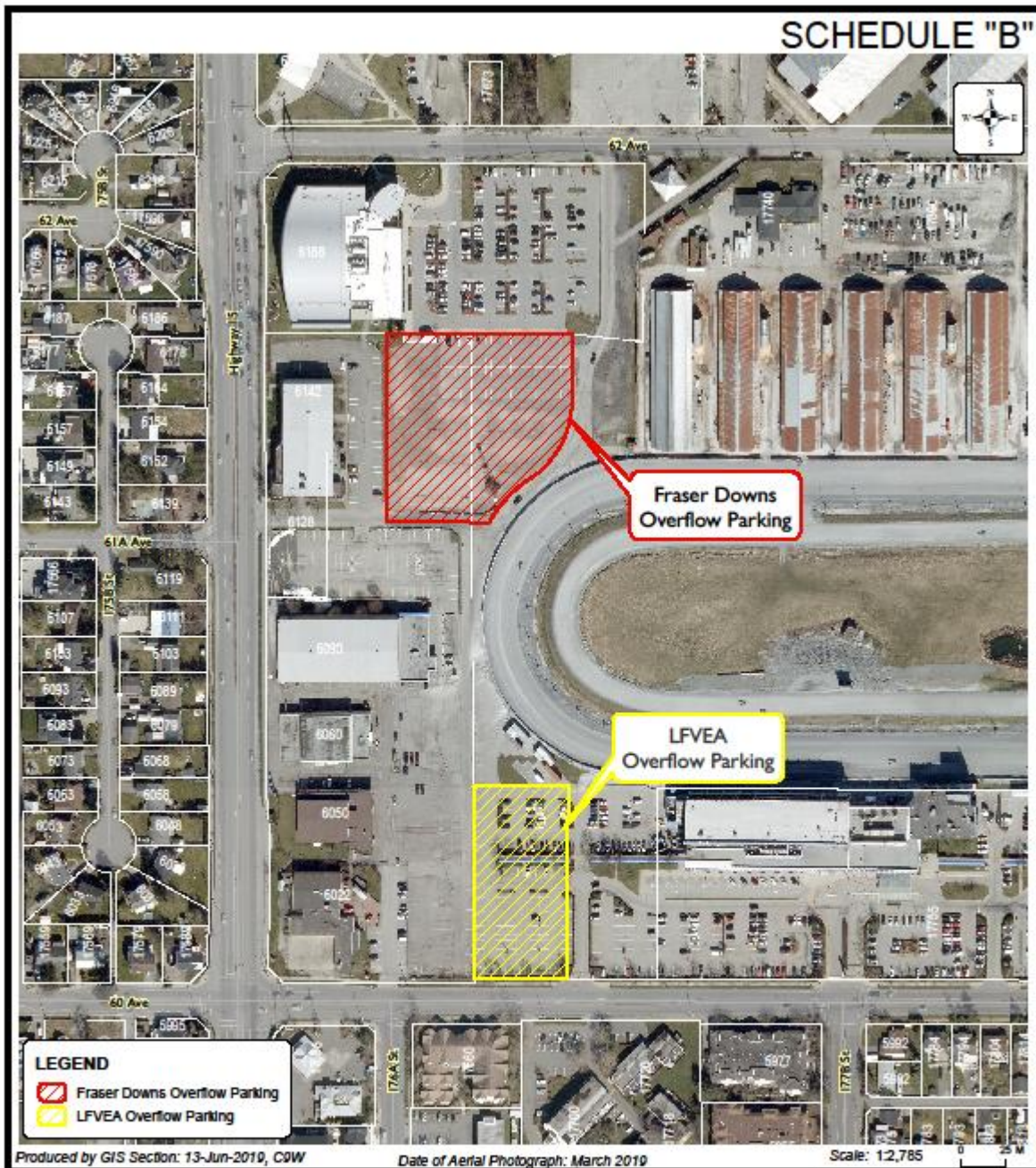
"LANDS"

ENGINEERING
DEPARTMENT

The data provided is compiled from various sources and IS NOT warranted as to its accuracy or sufficiency by the City of Surrey.
This information is provided for information and convenience purposes only.
Lot sizes, legal descriptions and encumbrances must be confirmed at the Land Title Office.

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SCHEDULE B – OVERFLOW PARKING



"OVERFLOW PARKING"

**ENGINEERING
DEPARTMENT**

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**SCHEDULE C
POTENTIAL ONE TIME LUMP SUM PAYMENT IF THE FACILITY IS CLOSED IN THE SPECIFIED
MONTH**

Shannon Hall

Potential Operator's loss	Select month in which Shannon Hall is closed
January	*\$61,000
February	*\$55,916.67
March	*\$50,833.33
April	*\$45,750.00
May	*\$40,666.67
June	*\$35,583.33
July	*\$30,500.00
August	*\$25,416.67
September	*\$20,333.33
October	*\$15,250.00
November	*\$10,166.67
December	*\$5,083.33

Alice McKay (Products Building)

Potential Operator's loss	Select month in which Alice McKay (Products Building) is closed
January	*\$34,000
February	*\$31,166.67
March	*\$28,333.33
April	*\$25,500.00
May	*\$22,666.67
June	*\$19,833.33
July	*\$17,000.00
August	*\$14,166.67
September	*\$11,333.33
October	*\$8,500.00
November	*\$5,666.67
December	*\$2,833.33

*These amounts are approximate and are subject to audit.

SCHEDULE D

FEES PAYABLE BY THE OPERATOR TO THE CITY UPON TERMINATION, IN THE MONTH OR PORTION THEREOF IN WHICH THE TERMINATION IS FINALIZED, ON THE BASIS THAT THE CITY HAS PRE-PAID THE FEES IDENTIFIED IN SECTION 4.1

Month	Amount	Cumulative Total
January	\$33,917	\$407,000
February	\$33,917	\$373,083
March	\$33,917	\$339,166
April	\$33,917	\$305,249
May	\$33,917	\$271,332
June	\$33,917	\$237,415
July	\$33,917	\$203,498
August	\$33,917	\$169,581
September	\$33,917	\$135,664
October	\$33,917	\$101,747
November	\$33,917	\$67,830
December	\$33,917	\$33,913



CORPORATE REPORT

NO: R119

COUNCIL DATE: May 28, 2018

REGULAR COUNCIL

TO: Mayor & Council

DATE: May 23, 2018

FROM: General Manager, Parks, Recreation & Culture
General Manager, Finance

FILE: 2240-20/C

SUBJECT: Extension of the Cloverdale Fairgrounds Operating Agreement with the Lower Fraser Valley Exhibition Association and Approval of the Tenant Improvement Agreement with the Lower Fraser Valley Exhibition Association and Willow Industries Ltd.

RECOMMENDATION

The Parks, Recreation and Culture Department and the Finance Department recommend that Council:

1. Receive this report for information; and
2. Approve the execution by the City Manager and the City Clerk of the extension of the Operating Agreement (the "Agreement") between the City of Surrey and the Lower Fraser Valley Exhibition Association (the "Association"), attached as Appendix "I", for the operation of the Cloverdale Fairgrounds during the seven-year period from January 1, 2017 to December 31, 2023; and
3. Approve the execution by the Realty Asset Manager of the Tenant Improvement Agreement (the "TI Agreement") between the City of Surrey, the Lower Fraser Valley Exhibition Association (the "Association"), and Willow Industries Ltd. ("Willow"), attached as Appendix "II", for the improvements to the Cloverdale Fairgrounds Show Barn.

INTENT

The purpose of this report is to provide an overview of:

1. A proposed extension of the Agreement between the City and the Association for the operation of the Cloverdale Fairgrounds for the years 2017 through 2023 inclusive, and to obtain approval to execute the Agreement; and

2. A proposed TI Agreement between the City and the Association and Willow for the improvements to the Cloverdale Fairgrounds Show Barn, and to obtain approval to execute the TI Agreement.

BACKGROUND

The Agreement with the Association covering the period from January 1, 2017 to December 31, 2019 was approved by Council on December 5, 2016 (Corporate Report No. R259; 2016: attached as Appendix "III"). An extension to the Agreement is now required to allow the Association to enter into a new five-year sub-licence agreement with Willow for the operation of a ball hockey league at the Show Barn Building, as illustrated in Appendix "IV" attached to this report. Under the terms of the current Agreement between the City and the Association, the Association has the ability to sub-licence with third parties.

Willow has been operating at the Central City Arena located at 10240 City Parkway for the past nine years. Willow's lease agreement for the arena expires on April 31, 2018, with the potential to extend to July 1, 2018 and will not be renewed after the final extension date due to development plans for the lands. Willow primarily operates ball and roller hockey leagues and currently has 2,000 regular participants making up over 100 teams annually for ball hockey and roller hockey.

The Association and Willow approached the City in 2017 with a proposal to carry out improvements in the Show Barn in order to operate a viable ball hockey and roller hockey league. The City is prepared to carry out the improvements subject to the terms of the TI Agreement in Appendix "II".

The Association Executive is satisfied with the proposed Agreement and the Association Executive and Willow are satisfied with the proposed TI Agreement.

Review by Legal Services

Legal Services has reviewed the proposed Agreement and TI Agreement and has no concerns.

Review by Finance

Finance has reviewed the proposed Agreement and TI Agreement and has no concerns.

SUSTAINABILITY CONSIDERATIONS

The Cloverdale Fairgrounds serve as a venue for community celebrations, festivals and local community programs, and agriculturally-focussed exhibitions. This project supports the objectives of the City's Sustainability Charter 2.0. In particular, this work relates to the themes of Economic Prosperity & Livelihoods and Health & Wellness. Specifically this will assist in meeting the following Desired Outcomes (DO) and Strategic Direction (SD):

- Economy - DO11: Food production and enterprises of all scales are an integral part of the economy.
- Wellness & Recreation - DO6: Residents participate in a wide range of recreation and leisure opportunities.
- Wellness & Recreation - SD8: Promote greater participation in all forms of recreation.

CONCLUSION

Based on the above discussion, it is recommended that Council:

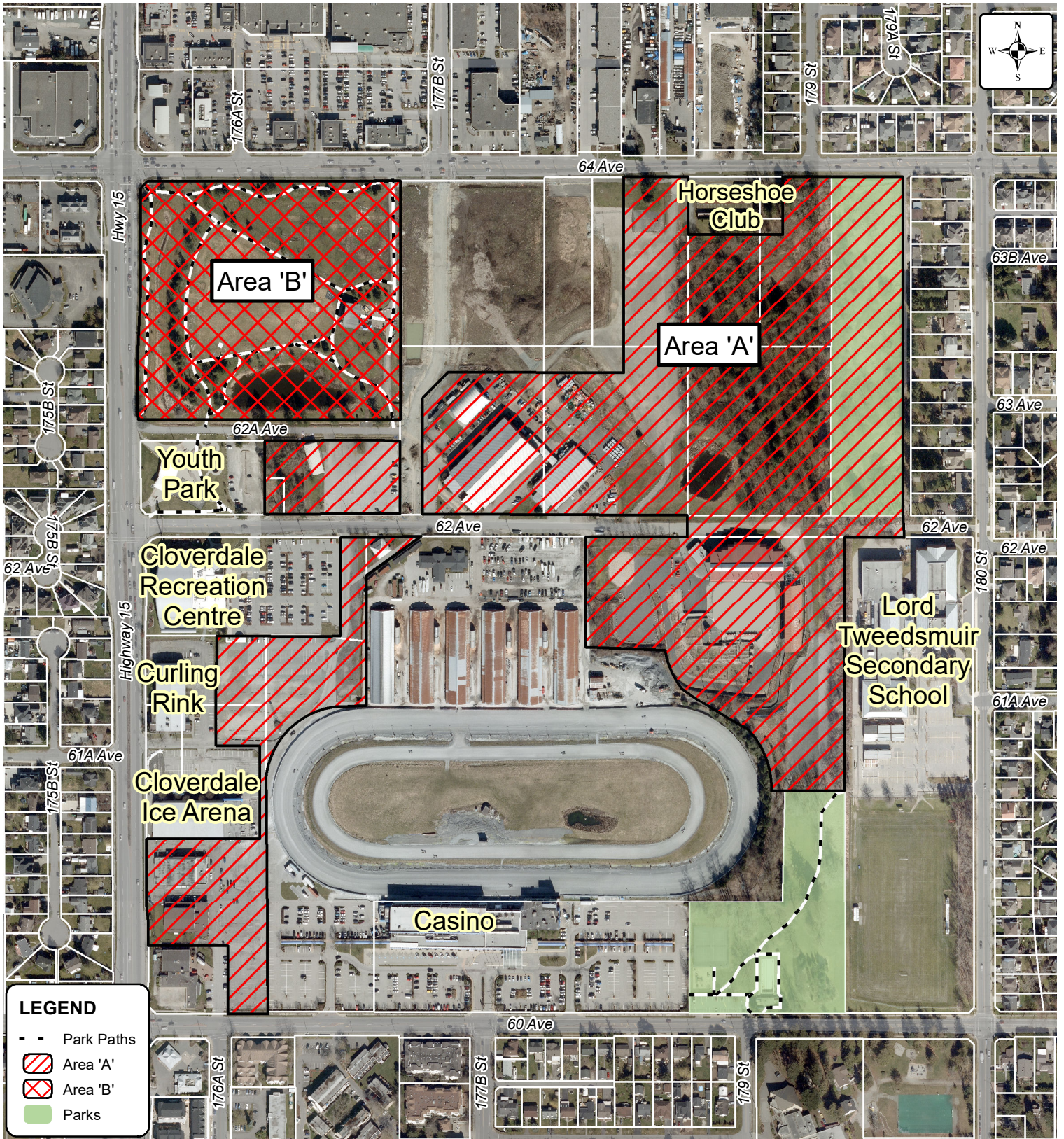
- Approve the execution by the City Manager and the City Clerk of the extension of the Agreement between the City of Surrey and the Association, attached as Appendix "I", for the operation of the Cloverdale Fairgrounds during the seven-year period from January 1, 2017 to December 31, 2023; and
- Approve the execution by the Realty Asset Manager of the TI Agreement between the City of Surrey, the Association, and Willow, attached as Appendix "II", for the improvements to the Cloverdale Fairgrounds Show Barn.

Laurie Cavan
General Manager,
Parks, Recreation & Culture

Kam Grewal, CPA, CMA
General Manager,
Finance

- | | |
|----------------|--|
| Appendix "I" | Proposed Operating Agreement (2017 - 2023) |
| Appendix "II" | Proposed Tenant Improvement Agreement |
| Appendix "III" | Corporate Report No. R259; 2016 |
| Appendix "IV" | Aerial Photograph of Show Barn Building |

(appendices available upon request)



Produced by GIS Section: 12-Sep-2019, P205934

Date of Aerial Photograph: March 2019

Scale: 1:5,000 0 50 M



"LANDS"

ENGINEERING
DEPARTMENT

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Source: G:\MAPPING\GIS\Maps\CorporateReps\Parks-Recs\CloverdaleFairGrounds\CloverdaleFairgrounds.mxd