

NO: R097

COUNCIL DATE: June 15, 2020

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## REGULAR COUNCIL

TO: **Mayor & Council** DATE: **June 10, 2020**

FROM: **General Manager, Parks, Recreation & Culture** FILE: **0930-30/009**  
**General Manager, Finance**

SUBJECT: **Renewal of the Cloverdale Curling Arena Operating Agreement with the Cloverdale Curling Club**

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## 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 General Manager, Parks, Recreation & Culture Department of the Operating Agreement (the "Agreement") between the City of Surrey (the "City") and the Cloverdale Curling Club (the "Club"), attached as Appendix "I" for the operation of the Cloverdale Curling Arena during the five-year period of August 15, 2020 until August 15, 2025, in the amount of \$70,358 per year plus an annual increase in line with the average Consumer Price Index ("CPI") annual increase to a maximum of 2%.

## INTENT

The purpose of this report is to provide an overview of the proposed Agreement between the City and the Club for the operation of the Cloverdale Curling Arena for the years 2020 through 2025, inclusive, and to obtain approval to execute the agreement.

## BACKGROUND

The five-year operating agreement between the City and the Club covering the period of August 15, 2015 to August 15, 2020 is nearing expiry.

The Club has been operating in the existing building since it was built in 1981. The Club provides excellent recreational and social opportunity for Surrey residents through its learn to curl programs, leagues, and other community events. The Club has over 500 members participating in weekly leagues, bonspiels, and special events. The Club also provides curling opportunities for several hundred elementary and secondary students each year, as well as seniors.

The Cloverdale Curling Arena contains 6 curling sheets, a pro shop, kitchen, and concession area on the main floor with a 224-seat licensed lounge and viewing area on the 2nd floor. During the 'off-season' (April 15 – August 15), the Parks, Recreation & Culture Department assumes use of the dry floor area for recreational programs and rentals. The Club retains operation of the 2nd floor lounge area during the off- season period for use as a meeting room and banquet facility.

## DISCUSSION

The Club continues to see their membership fluctuate over the past five years with 2018/2019 being their highest yet at 601 members. Keeping membership fees competitive with other clubs such as Langley and White Rock has been important to maintaining and gaining new members. The Club's fee comparison and membership trends are attached as Appendix "II". The Club continues to make improvements to their programs including the following:

- Increased flexibility to potential curlers with drop in curling;
- Opportunities for families to learn how to curl;
- Annual review and implement new fee structures;
- Host Learn-to-Play opportunities; and
- Host several regional, provincial, and international events.

Staff recognize that the Club continues to operate the facility efficiently and effectively and at a lower cost than if the City were to operate the facility. Over the past five years there have been increases in operating costs such as utilities and maintenance services as well as decreases in revenues from alcohol/bar and food service.

Under the 2015-2019 operating agreement, the City provided an annual grant payment of \$65,000 to the Club, adjusted for Consumer Price Index in 2016 and each year thereafter. Attached as Appendix "III" is the 2019 financial statements which indicate a net loss of \$239.

To continue to operate the facility for 2020-2025 season, the Club is requesting that the City continues with the annual grant payment and adjust it each year of the term to the average statistics Canada Consumer Price Index ("CPI") annual increase to a maximum of 2%. This increase would result in an annual cost to the City as follows:

- Year 1 - \$70,358
- Year 2 - \$71,765
- Year 3 - \$73,200
- Year 4 - \$74,664
- Year 5 - \$76,157

The Club is also requesting a change in the operational term to start on September 15 until April 15 each year. In previous agreements the Club has operated the facility from August 15 until April 15. In order to keep their operating costs low the Club proposes to delay the season to start one month later.

The grant provided by the City along with a change in operational terms allows the Club to continue to provide accessible and affordable curling opportunities to the community. The grant is used to offset operating costs as outlined in the attached financial statement (Appendix "III"). As the facility ages, repairs and maintenance costs increase the cost to operate the facility.

## **Covid-19**

City staff will support the Club in the development of a Covid-19 safety plan that will focus primarily on processes to open safely, measures to maintain a strong awareness of the risks of transmission, and a strategy in the event that a new case or an outbreak should occur.

### ***Review by Legal Services***

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

## **SUSTAINABILITY CONSIDERATIONS**

The work of this Club supports the City's Sustainability Charter 2.0. In particular it supports the Sustainability Charter 2.0 themes of Health & Wellness, and Infrastructure. Specifically, this supports the following Desired Outcomes ("DO") and Strategic Directions ("SD"):

- Wellness & Recreation – DO6: Residents participate in a wide range of recreation and leisure opportunities;
- Wellness & Recreation – SD8: Promotes greater participation in all forms of recreation;
- All Infrastructure – DO2: Infrastructure systems provide safe, reliable and affordable services; and
- All Infrastructure – SD 1: Proactively manage community assets to maintain them over the long term in a state of good repair.

## **FUNDING**

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

## **CONCLUSION**

Based on the discussion above it is recommended that Council approve the execution by the General Manager, Parks, Recreation & Culture Department of the proposed Agreement between the City and the Club for the operation of the Cloverdale Curling Arena during the five-year period from August 15, 2020 until August 15, 2025, in the amount of \$70,358 per year plus an annual increase in line with the average Consumer Price Index ("CPI") annual increase to a maximum of 2%.

Laurie Cavan  
General Manager  
Parks, Recreation & Culture

Kam Grewal, CPA, CMA  
General Manager  
Finance

Appendix "I" – Proposed Operating Agreement (2020-2025)  
Appendix "II" – The Club's Fee Comparison and Membership  
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**CLOVERDALE CURLING ARENA**

**OPERATING AGREEMENT**

**2020-2025**

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## CLOVERDALE CURLING ARENA OPERATING AGREEMENT

THIS AGREEMENT dated for reference the 1<sup>st</sup> day of \_\_\_\_\_, 2020.

BETWEEN:

**CITY OF SURREY**

13450 – 104 Avenue  
Surrey, BC V3T 1V8

(the “**City**”)

AND:

**CLOVERDALE CURLING CLUB**

6150 – 176 Street  
Surrey, BC V3S 4E7

(the “**Operator**”)

WHEREAS the City wishes to engage the Operator and he Operator agrees to provide Services in connection with the operation of Cloverdale Curling Arena and associated parking substantially as outlined in bold in Schedule A (the “**Arena**”) 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:

“**Arena**” has the meaning set out in the recital;

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

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

“**Dispute**” has the meaning set out in Section 21;

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

“**Force Majeure**” means any circumstance or act beyond the reasonable control of a party to this Agreement claiming Force Majeure, including, an intervening act of God or public enemy, an act or acts of terrorism, war, blockade, civil commotions, forest fire, epidemic, quarantine, restriction, a stop work order or injunction issued by a court or authority having jurisdiction, governmental embargo, all or any of which delays the performance of any obligation under this Agreement, provided such circumstances or act is not otherwise expressly dealt with under this Agreement or does not arise by reason of:

- (a) the negligence or willful misconduct of the party claiming Force Majeure or those for whom it is responsible at law;
- (b) any act or omission by the party (or those whom it is responsible at law) claiming Force Majeure in breach of the provisions of this Agreement; and
- (c) an inability by the Operator to satisfy its financial obligations under this Agreement;

“**Indemnitees**” has the meaning set out in Section 22;

“**Kitchen Area**” mean that area of the Arena as shown outlined in heavy black line on Schedule “B” attached hereto;

“**Lands**” means those portions of City land identified as PID: 011-104-961, 007-358-423 & 007-358-431

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

- (a) the costs of services and repairs, including without limitations, vandalism, interior or exterior graffiti, routine maintenance and such replacements to the Arena 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 Arena in accordance with this agreement; not including insurance for the refrigeration, mechanical and building systems.
- (c) the expense for garbage removal within the Arena and immediate surrounding area;

- (d) wages and other costs paid to personnel or independent contractors in connection with the administration and management of the Arena (including the refrigeration contractor), 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 Arena;
- (f) accounting and other professional costs required for the administration and management of the Arena;
- (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 Arena 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 or in relation to the Operator, the business carried on by the Operator and the assets of the Operator within the Arena, or in respect of any fixtures, machinery, equipment, or apparatus installed in the Arena by the Operator;
- (i) audit fees and disbursements;
- (j) computer software; and
- (k) marketing, advertising/sponsorship costs.

These expenses shall not be included in Operating Expenses:

- (a) the costs of arbitration;
- (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 Arena caused by the Operator or its employees' or agents' negligence, deliberate or reckless acts or omissions or misuse which results in damage; and
- (f) losses due to the Operator or its employees', independent operators' or agents' theft.

**“Operator’s Representative”** has the meaning set out in Section 20(a)i;

**“Services”** has meaning set out in Section 2.1.

“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 – Land;
- (b) Schedule B – Kitchen Area;
- (c) Schedule C – Capital Equipment to be returned to the City; and
- (d) Schedule D – Capital Equipment to be retained by the Operator.

## **1.3 Surrender**

The parties agree that all previous agreements for the Arena have been surrendered or terminated. The parties agree that this Agreement is the only Agreement dealing with the operation of the Arena between the parties. The Operator may enter into a license agreement with third parties for use of the Arena 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, acting reasonably, from time to time, by written notice to the Operator, make changes in the Services.

### **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 Sections 4.1, 4.2, and 17.1, the Operator will provide the Services for the period commencing on August 15, 2020 and terminating on September 14, 2025 (the “Term”).

## **3. USE**

### **3.1 General Use**

The Arena is to be used by the Operator for recreational curling uses and community and private events as approved by the City and for no other purposes.

### **3.2 City Use**

The City shall have the use of the main floor area of the Arena, with the exception of the Kitchen Area, starting April 15 up to and including September 15 of each year of the Term. Operator personnel will not be permitted to be in attendance for City events at the Arena from April 15 to and including September 15 of each year of the Term unless their attendance has received prior approval in writing from the City. The City will be responsible for the hydro costs of the Arena during the period starting April 15 up to and including September 15 of each year of the Term. All bookings of the floor area of the Arena from April 15 and September 15 will be done through the City's Representative. During the period starting April 15 up to and including September 15 of each year the City will be responsible for any damages to the main floor of the Arena, with the exception of the Kitchen Area and will ensure the Arena is returned to the Operator in the same condition as it was on April 15. The City's Representative will conduct an inspection of the condition of the Arena with the Operator's Representative on April 10 and September 10 annually. The purpose of this inspection will be to ensure the condition and cleanliness of the Arena is maintained year round by both parties.

## **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 this Agreement by the Operator, including but not limited to, all of the Services provided by the Operator, the City shall pay to the Operator SEVENTY THOUSAND THREE HUNDRED AND FIFTY EIGHT (\$70,358) DOLLARS, plus an annual increase in each of the last four years of the Term equal to the Statistics Canada Consumer Price Index (CPI) increase for the Vancouver area for the previous calendar year not to exceed 2% in total over the four years, for each year of the Term, payable in two installments on or within 15 days after the following dates: September 30 and January 15 of each year of the Term. 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.

### **4.2 Adjustment of Fees**

The City may after December 31 of each year of the Term, by providing 120 days written notice to the Operator, reduce or eliminate Fees.

## **5. OPERATING EXPENSES**

### **5.1 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 Arena will be allocated to the management, maintenance and operation of the Arena and for carrying out of events which the Operator puts on or sponsors in accordance with the financial summaries.

### **5.2 Utilities**

All utility billing for the Arena will be registered in the City's name. All charges for gas, electricity and water and sewer under the terms of this Agreement will be billed to, and paid by, the Operator on the following dates:

Calculation of fees for January 1 - April 14

Calculation of fees for September 16 - December 31

## **6. 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.

## **7. CAPITAL EXPENDITURES**

### **7.1 Capital Expenditures**

Where the Operator can demonstrate a thorough and complete preventative and periodic maintenance program for the assets listed below, the City will be responsible for the repair or replacement of equipment that has failed where the cost of repair or replacement exceeds \$5,000:

- Evaporative Condenser and components;
- Compressors;
- Chiller and Surge Tank
- Pumps, pump motors;
- Dehumidifiers
- Gas heaters

The cost of scheduled maintenance repair shall not be included in the calculation of the \$5000 cost.

The City is responsible for all Capital Expenditures except as specified in this Section.

### **7.2 Damages**

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 Arena caused by the Operator or its employees' or agents' negligence, deliberate or reckless acts or omissions or misuse which result in damage.

The City shall pay the cost of maintenance, repair or replacement made necessary as a result of loss or damage to the Arena caused by the City's employees' or

agents' negligence, deliberate or reckless acts or omissions or misuse which result in damage.

### **7.3 Equipment**

The parties agree that all of the equipment listed in Schedule C is to be returned to the City at the end of the Term and that all of the equipment listed in Schedule D is to be retained by the Operator at the end of the Term. Any other equipment not listed in Schedules C or D is to be returned to the City at the end of the Term, including any Capital Expenditures throughout 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.

## **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 Arena 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, contacts, 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 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 for a period of 7 years without the prior written consent of the City.

## **9. PROVISION OF FINANCIAL INFORMATION**

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 sixty (60) days after the end of the Operator's fiscal year end which is May 31, the Operator shall furnish a statement in writing signed and verified by the Operator and compiled by the accountant of the Operator, who shall be a registered chartered accountant acceptable to the City, setting out the amount of the gross revenue, Operating Expenses and available cash flow for that fiscal year.

## **10. OPERATION AND MAINTENANCE**

### **10.1 The Operator's Responsibilities and Control of the Work**

Subject to Section 3, the Operator shall have control of the Arena during the Term of this Agreement and shall effectively direct and supervise the work at the Arena, 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 it duties, responsibilities and obligations under this Agreement. The Operator shall at all times be responsible for the total security of the Arena and equipment within this Agreement. The Operator shall at all times be responsible for compliance with the City's Snow Removal and Ice Control Plan.

The Operator will not enter into contracts with sub-contractors without the prior written approval of the City.

The Operator will make no additions or alterations to the exterior of the Arena building without the prior written approval of the City

## **10.2 Inspection**

The City or its agents shall have the right, at all reasonable times, to enter the Lands and Arena 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 or the Arena 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 not to remedy the problem which may result in the Arena being closed.

## **10.3 Maintenance**

The Operator shall keep the Arena in a clean and tidy manner that will be equal to or exceed the standards in other City facilities. 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 the following maintenance at the Arena:

- (a) Regular and preventative scheduled maintenance of ice plant (compressors, chiller, condenser, motors) dehumidifiers;
- (b) Maintenance of lounge area coolers and dispensing systems;
- (c) Cleaning of inside of building and janitorial services;
- (d) Litter control of Lands;
- (e) Snow removal and ice control when the Arena is open, to the City standard set out in City's Snow Removal and Ice Control Plan;
- (f) Regular and preventative scheduled maintenance of Kitchen Area equipment;

- (g) Regular and preventative scheduled maintenance of the elevator and related systems;
- (h) Repair and replacement of furniture and office equipment; and
- (i) Vandalism repair (internal and external).

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

- (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;
- (e) Fire prevention systems, and fire fighting systems and equipment;
- (f) Indoor and outdoor lighting systems, including parking lot lighting;
- (g) Building envelope including roof system;
- (h) City infrastructure associated with underground City utilities such as water, sanitary sewer and storm sewer, but excluding hydro and gas;
- (i) Patching of asphalt parking lots, to a maximum of \$3,000.00 in each year of the Term, at the discretion of the City; and
- (j) Elevator repair other than regular and preventative scheduled maintenance.

#### **10.4 Parking**

The Operator may make use of any and all parking spaces located on the Lands. The parking areas cannot be designated solely for the use of the Operator or its patrons.

#### **10.5 Advertising**

The Operator shall advertise and promote the Arena.

#### **10.6 Sponsors**

The Operator may solicit for sponsors or advertisers at the Arena.

#### **10.7 Banners and Flags**

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

## 11. EMERGENCY AND EVACUATION PROCEDURES

- 11.1 The Operator shall submit to the City in writing detailed procedures and action plans to deal with emergency and evacuation procedures at the Arena. The City shall be informed in writing if any subsequent changes to the procedures are made.
- 11.2 The Operator may implement emergency and evacuation procedures when any of the following incidents occur:
- (a) Smoke or fire or alarm sounds;
  - (b) Lighting failure;
  - (c) Bomb threat;
  - (d) Toxic gas leak;
  - (e) Death or injury;
  - (f) Lost person; or
  - (g) Other situations where the public or staff's health is at risk.
- 11.3 The Operator shall provide trained staff who are conversant with emergency procedures in accordance with the BC Safety Authority *Safety Standards Act & Regulations* in keeping with industry standards pertaining to the Arenas.
- 11.4 The Operator will make suitable arrangements to ensure that the public are made aware of general safety precautions required at 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 Arena.
- 11.5 The Operator shall be responsible for the safety of all contractors and sub-contractors, employees, invitees, and equipment of the Arena in accordance with this Agreement, but shall not be responsible for the safety of all contractors and sub-contractors, employees, invitees, and equipment that are under the supervision, control or management of the City.
- 11.6 Incidents, altercations or accidents involving Arena visitors, the Operator, its 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 no more than twenty-four (24) hours for major incidents.
- 11.7 The Operator shall remove or remedy any hazardous conditions immediately.

## **12 OCCUPATIONAL HEALTH AND SAFETY**

- 12.1 The Operator, for all its operations on the Arena, shall ensure compliance with and conform to all health and safety laws, bylaws and regulations of the Province of British Columbia. The City may, on twenty-four (24) hours' written notice to the Operator, rectify any existing conditions creating an immediate hazard 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.
- 12.2 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 to comply or ensure compliance with the health and safety laws, bylaws and regulations.
- 12.3 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 Work Safe BC and shall install signs and barriers as required to ensure the safety of the public and of its employees in the use of the Arena.
- 12.4 The Operator understands and undertakes to comply with all Work Safe BC Industrial Health and Safety Regulations for hazardous materials and substances, and in particular with the Workplace Hazardous Materials Information Systems Regulations.

## **13 WORK SAFE BC COVERAGE**

- 13.1 The Operator agrees that it shall procure and carry or cause to be procured and carried and paid for, full Work Safe 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 Work Safe BC premiums, assessments or penalties in respect of the work done or service performed at the Arena have been paid in full.
- 13.2 The Operator agrees that it is the principal operator for the purposes of the Work Safe BC Industrial Health and Safety Regulations for the Province of British Columbia. The Operator shall have a safety program acceptable to Work Safe BC

and shall ensure that all Work Safe BC safety rules and regulations are observed during performance of this Agreement, not only by Operator, but by all sub-operators, workers, material men and other engaged by the Operator in the performance of this Agreement.

- 13.3 The Operator shall provide the City with the Operator's Work Safe BC registration number and a letter from the Workers' Compensation Board confirming that they Operator is registered in good standing with the Work Safe BC 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.
- 13.4 The Operator agrees that it is the "Prime Contractor" for the purpose of the *Workers Compensation Act* of B.C. The Operator will have a safety program in place that meets the requirements of the Work Safe BC Occupational Health & Safety Regulations & 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 object to the performance, experience, qualifications or suitability of any of the Operator's personnel or sub-contractors, 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 purposed 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 Arena and buildings on the Lands. The Operator will 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-contractors. 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:

- Blanket contractual;
- Employees as additional insureds;
- Owners and contractors protective liability;
- Contingent employers liability;
- Personal injury; and
- 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 five million (\$5,000,000) 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 Operator 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.

### **17 TERMINATION**

#### **17.1 By the City**

- (a) The City, by 120 days written notice after December 31 of each year of the Term to the Operator, may for any reason terminate this Agreement before the completion of all the Services. If the City terminates this Agreement before the completion of all the Services, the parties agree to work cooperatively to calculate the adjustment to the Fees as a result of this notice.
- (b) Upon payment of Fees 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 Arena and shall leave the Lands and Arena in a sanitary, neat, tidy and safe condition free from all nuisance, debris and rubbish and shall ensure that the Lands and Arena 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 listed in Schedule B attached

hereto, and including those capital items purchases 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.

### **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 for cause, the City will be entitled to:

- (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.

### **17.4 Curling 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 to such courts.

### **18.2 Codes and Bylaws**

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

## **19 CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

### **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; and
  - ii. The City shall appoint a representative ("City Representative") who shall have the duty of instituting and maintaining liaison with the Operator's Representative as to the requirements of the Agreement, plus

an alternative representative to so act in the absence or inability to act of the City's Representative.

- (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**

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 be 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 cost of participating in the mediation.

## **22 INDEMNIFICATION**

The Operator agrees to release, indemnify and hold harmless the City, its past and present elected and appointed officials, officers, directors, employees, servants, agents, volunteers, associations, partnerships, parents, affiliates and subsidiaries, predecessors and successors in interest, administrators, members, contractors, assigns, legal representatives, insurers, reinsurers, and related governmental

authorities (collectively referred to as the "Indemnitees"), for any losses, damages, claims, actions and causes of actions that the Indemnitees may incur, sustain, suffer arising directly or indirectly out of this Agreement with the exception of losses arising out of the negligence or willful misconduct on the part of the Indemnitees. This provision shall survive the termination of this Agreement.

## **23 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 bylaw or other enactment.

## **24 GENERAL**

### **24.1 Clear Title**

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

### **24.2 Time of the Essence/Force Majeure**

Time will be of the essence of this Agreement, subject only to Force Majeure and provided that the City will give the Operator a written notice of a failure to satisfy its obligations and a five (5) business day opportunity to cure such failure.

Notwithstanding the definition of Force Majeure or the termination provisions of this Agreement, the parties agree that the City reserves the right due to the ongoing Covid-19 pandemic to suspend the Services prior to the commencement of the Term, or during the Term. The Operator agrees to not make any claims against the City for any losses, damages, or costs as a result of this suspension.

### **24.3 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 provisions of the Services.

### **24.3 Amendment**

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

#### **24.4 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.

#### **24.5 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.

#### **24.6 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 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.

#### **24.7 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 addresses, 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 – 104<sup>th</sup> Avenue  
Surrey, BC V3T 1V8  
Attention: Manager of Community & Leisure Services  
Facsimile No.: (604) 598-5766

##### **To the Operator:**

Cloverdale Curling Club  
6150 – 176 Street  
Surrey, BC V3S 4E7  
Attention: President  
Facsimile No.: (604) 574-5595

#### **24.8 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.

#### **24.9 Heading**

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.

**24.10 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.

**24.11 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**

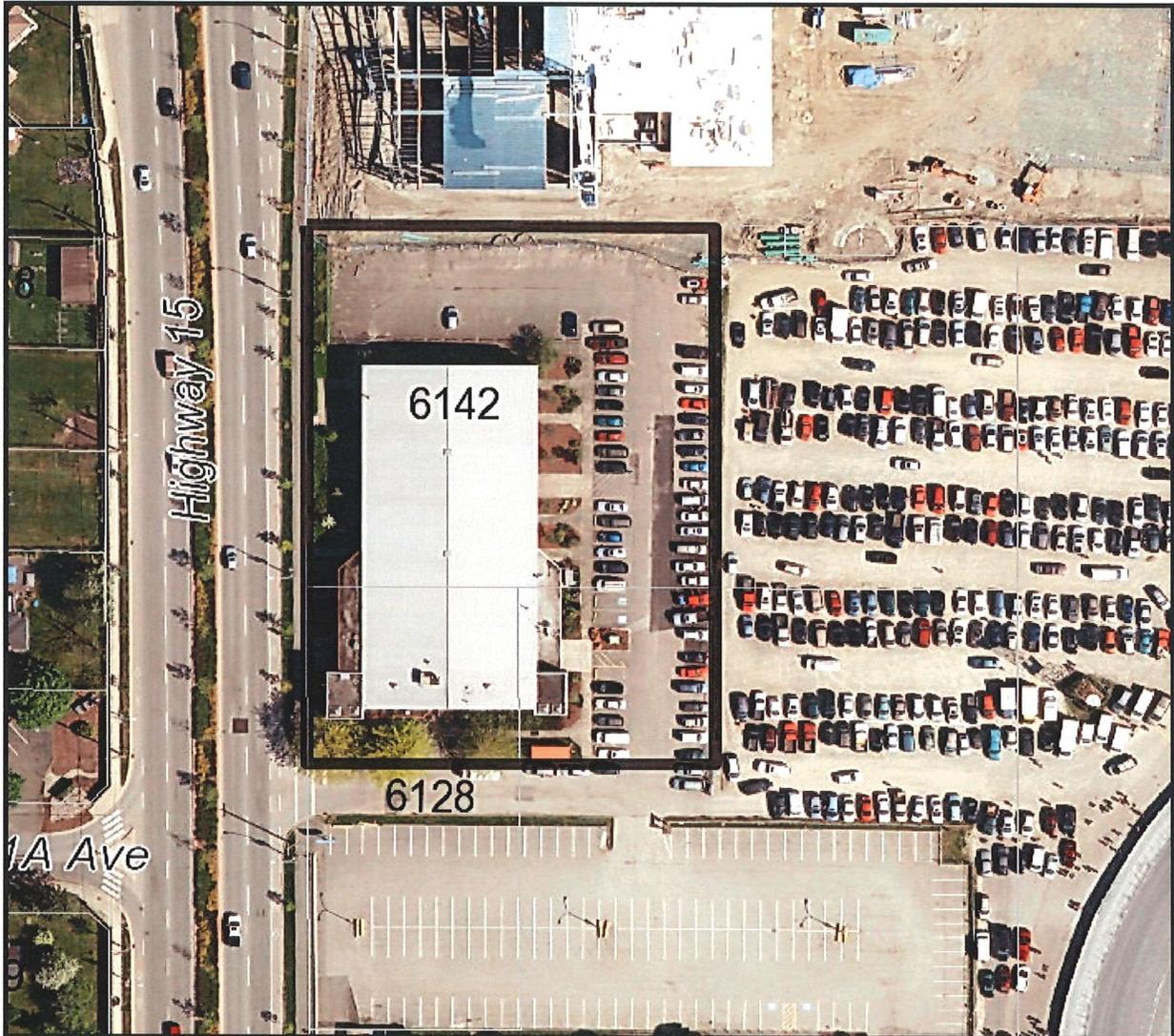
**CLOVERDALE CURLING CLUB**

Per: \_\_\_\_\_  
\_\_\_\_\_

Per: \_\_\_\_\_  
\_\_\_\_\_, President

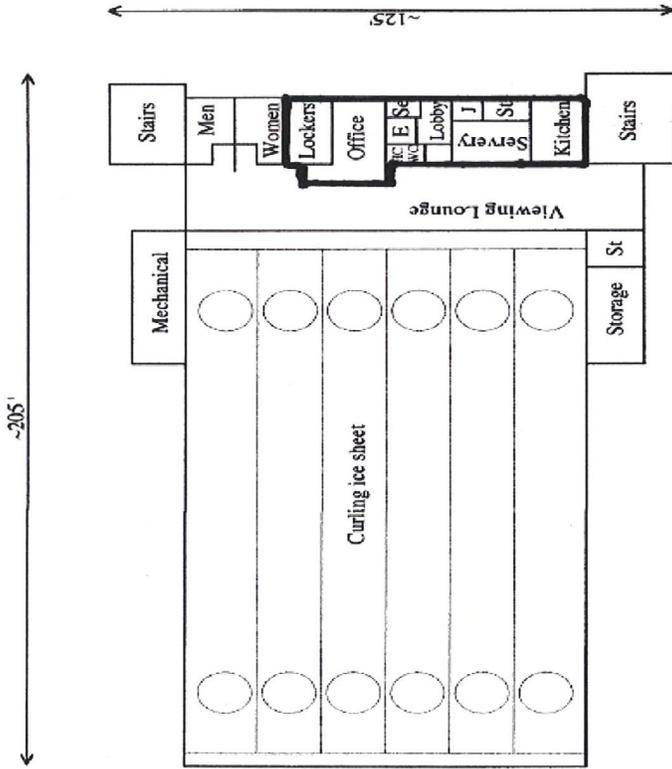
SCHEDULE A

LANDS



**SCHEDULE B  
KITCHEN AREA**

J = Janitorial room  
 E = Elevator  
 Se = Service room  
 St = Storage room  
 HC = Handicapped  
 WC = Washroom



Cloverdale Curling Rink  
 6150 - 176 - Street Surrey



**GROUND FLOOR PLAN**

Scale: 1/32" = 1'-0"

## Schedule C

### Equipment to be returned to the City at the end of the Term

Equipment Type	Comments
Range/Grill/Fryer/Exhaust Hood	Ground Floor – 38" x 68"
Counter & Storage under	Ground Floor – 8 linear Ft
Hand Sink – Stainless Steel	Ground Floor - 14" x 14"
Sandwich Preparation Table	Ground Floor - 74"
Cafeteria Service Counter	Ground Floor – 25 Linear Ft
Oven – Commercial	Ground Floor – 24" x 28" x 24"
Side Counter – Laminate	Ground Floor – 62"
Dish Counter - Stainless Steel	Ground Floor – 44"
Double Sink – Stainless Steel	Ground Floor – 48"
Dish Counter – Stainless Steel	Ground Floor – 30" x 84"
Prep Table – Laminate	Ground Floor – 32" x 72"
Storage Room/Wood Shelving	Ground Floor – 6' x 9'
Bar Counter	2 <sup>nd</sup> Floor
Cooler – 2 door	2 <sup>nd</sup> Floor
Glassware cleaning station – Stainless Steel	2 <sup>nd</sup> Floor
Ice Machine - Commercial	2 <sup>nd</sup> Floor
Wash Sink with Side Counters – Stainless Steel	2 <sup>nd</sup> Floor
Sink – 2 compartments – Stainless Steel	2 <sup>nd</sup> Floor
Counter & Cabinets	2 <sup>nd</sup> Floor - 12'

## Schedule D

### Equipment to be retained by the operator

Equipment Type	Comments
Microwave	Ground Floor
Cash Register	Ground Floor
Coffee Maker	Ground Floor
Refrigerator	Ground Floor
Refrigerator – 2 door	Ground Floor
Dishwasher	Ground Floor
Cooler – 1 door	2 <sup>nd</sup> Floor
Cash Register	2 <sup>nd</sup> Floor
Stove	2 <sup>nd</sup> Floor
Fridge	2 <sup>nd</sup> Floor
Microwave	2 <sup>nd</sup> Floor

## APPENDIX "II"

### Cloverdale Curling Club Fee Comparison 2019/2020 season

Fee comparison prices are listed for members. Fees vary for non-members. Rates compared are assuming membership and best price available (early registration discounts).

Facility/Club	Junior Rates	Adult 1 Rates	Adults second league	Daytime Leagues	Notes
Cloverdale Curling Club	\$119	\$301	\$284	\$224	Life time membership costs \$100
Langley Curling Club	\$175	\$320	\$320	\$220	Membership not required, non members pay high league fees
Peace Arch Curling Club	\$127	\$306	\$306	\$242	New building fee \$20 Lifetime membership \$250
Delta Thistles curling club	\$145	\$334	\$334	\$195	League fees include membership fees \$80
Abbotsford Curling Club	\$120	\$350	\$350	\$280	Lifetime membership \$171
Golden Ears Curling Club	\$160	\$324	\$324	\$193	Lifetime membership \$300 Annual membership \$100
Tsawwassen Tunnel town Curling Club	\$175	\$375	\$375	\$295	Membership fees included

#### Cloverdale Curling Club Membership:

2019/2020 – 542

2018/2019 – 601

2017/2018 – 525

2016/2017 – 577

2015/2016 – 594

**CLOVERDALE CURLING CLUB**

**Financial Statements**

**Year Ended May 31, 2019**

*(Unaudited - See Notice To Reader)*



HWG, Chartered Professional Accountants

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### NOTICE TO READER

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On the basis of information provided by management, we have compiled the statement of financial position of Cloverdale Curling Club as at May 31, 2019 and the statement of operations and changes in net assets for the year then ended.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

HWG

Surrey, BC  
October 22, 2019

CHARTERED PROFESSIONAL ACCOUNTANTS

A Partnership of Incorporated Professionals

Suite 200-17618 58th Ave, Surrey, BC, V3S 1L3  
Web Site: [www.hwgca.com](http://www.hwgca.com)



Phone: 604-576-9121 Fax: 604-576-2890  
E-mail: [hwgca@hwgca.com](mailto:hwgca@hwgca.com)

**CLOVERDALE CURLING CLUB**  
**Statement of Financial Position**  
**May 31, 2019**  
*(Unaudited - See Notice To Reader)*

	2019	2018
<b>ASSETS</b>		
<b>CURRENT</b>		
Cash	\$ 58,159	\$ 49,413
Term deposits	91,716	89,346
Accounts receivable	352	878
Inventory	25,895	25,874
Goods and services tax recoverable	1,370	646
Provincial sales tax recoverable	237	84
Prepaid expenses	2,661	4,000
	<b>\$ 180,390</b>	<b>\$ 170,241</b>
<b>LIABILITIES</b>		
<b>CURRENT</b>		
Accounts payable	\$ 12,123	\$ 3,428
Deposits received	667	250
Wages payable	-	121
Deferred income	6,202	4,805
	<b>18,992</b>	<b>8,604</b>
<b>NET ASSETS</b>		
<b>CAPITAL</b>	78,183	78,183
<b>CONTRIBUTED SURPLUS</b>	28,103	28,103
<b>SURPLUS</b>	55,112	55,351
	<b>161,398</b>	<b>161,637</b>
	<b>\$ 180,390</b>	<b>\$ 170,241</b>

APPROVED BY

\_\_\_\_\_ Director

\_\_\_\_\_ Director

**CLOVERDALE CURLING CLUB**  
**Statement of Operations and Changes in Net Assets**  
**Year Ended May 31, 2019**  
*(Unaudited - See Notice To Reader)*

	2019	2018
<b>RECEIPTS</b>		
Advertising	\$ 2,006	\$ 1,320
Bonspeils	12,835	11,977
Curling fees	160,902	141,743
Lounge	58,453	64,494
Pro shop	24,676	21,528
Rental and concession	23,206	26,678
Social events and sundry	5,720	7,415
	<u>287,798</u>	<u>275,155</u>
<b>DISBURSEMENTS</b> <i>(Schedule 1)</i>	<u>403,246</u>	<u>394,488</u>
<b>LOSS FROM OPERATIONS</b>	<u>(115,448)</u>	<u>(119,333)</u>
<b>OTHER ITEMS</b>		
Gaming grant	46,230	46,230
Municipal grant	68,979	67,626
	<u>115,209</u>	<u>113,856</u>
<b>NET LOSS</b>	(239)	(5,477)
<b>SURPLUS - BEGINNING OF YEAR</b>	<u>55,351</u>	<u>60,828</u>
<b>SURPLUS - END OF YEAR</b>	<u>\$ 55,112</u>	<u>\$ 55,351</u>

**CLOVERDALE CURLING CLUB****Disbursements****(Schedule 1)****Year Ended May 31, 2019***(Unaudited - See Notice To Reader)*

	2019	2018
Advertising and promotion	\$ 1,900	\$ 4,146
Awards	5,312	4,560
Bonspeils	14,041	13,726
Business taxes, licenses and memberships	13,640	12,437
Insurance	7,751	7,251
Interest and bank charges	4,230	3,325
Lounge	35,812	30,857
Miscellaneous	11,830	18,910
Office	4,879	4,292
Pro shop	22,637	18,539
Professional fees	1,400	1,480
Programs and services	51	526
Rental	-	1,403
Repairs and maintenance	60,546	38,205
Salaries and wages	116,101	116,454
Social events	3,049	1,946
Sub-contracts	45,000	44,984
Supplies	6,630	19,182
Telephone	1,991	2,038
Utilities	46,446	50,227
	<u>\$ 403,246</u>	<u>\$ 394,488</u>