

NO: R249

COUNCIL DATE: **DECEMBER 16, 2013**

---

## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **December 9, 2013**

FROM: **General Manager, Parks, Recreation  
and Culture  
General Manager, Finance &  
Technology**

FILE: **o850 - 01**

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

---

## RECOMMENDATION

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

1. Receive this report as information; and
2. Approve the execution by the appropriate City officials of the Operating Agreement between the City of Surrey and the Lower Fraser Valley Exhibition Association (the "Association"), a copy of which Agreement is attached to this report as Appendix I, for the operation of the Cloverdale Fairgrounds during the three-year period from January 1, 2014 to December 31, 2016.

## INTENT

The purpose of this report is to provide an overview of a proposed Operating Agreement (the "Agreement") between the City and the Lower Fraser Valley Exhibition Association (the "Association") for the operation of the Cloverdale Fairgrounds for the years 2014 through 2016, inclusive and to obtain approval to execute the Agreement.

## BACKGROUND

The City entered into a four-year operating agreement with the Association covering the period from January 1, 2010 to December 31, 2013. Staff has been in discussions with the Association executive over the last few months with a view to entering into a new agreement for the Association to allow the Association to continue to operate the Cloverdale Fairgrounds, which is owned by the City.

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: the 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 illustrated in Schedule A of the Agreement, which is attached to this report as Appendix 1.
- 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.

**Funding** – Under the 2010-2013 Agreement, the City provides an annual base payment of \$350,000 to the Association, adjusted for CPI in 2011 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 operating funding is 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 and Technology, in advance. The City is responsible for paying down any amounts used from the line of credit at the end of each year.

Under the proposed 2014-2016 Agreement, the City will provide an annual base payment of \$364,000 to the Association in 2014 and will adjust this payment in each of 2015 and 2016 by the change in the CPI for Vancouver 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 under the same provisions as the 2010-2013 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, the Millennium Amphitheatre, and city-owned underground utilities.

- IV. **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.
- V. **Insurance and Damages** – The Agreement contains standard damage, insurance and indemnity clauses.

- VI. **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. The new Cloverdale Youth Park is being constructed on a section of the Fairgrounds, which will reduce the area of the Fairground site that will be covered under the new Agreement.
2. The following house-keeping changes have been made:
  - Elimination of the detailed examples of permitted uses;
  - Detailed information relating to the Operator’s use of the Cloverdale Recreation Centre during the period of the annual Cloverdale Rodeo;
  - The percentage of any unused line of credit line that can be reserved for City purposed has been changed from 50% to 75<sup>0</sup>%;
  - The limit for capital expenditures requiring City approval has been changed from \$7,000 per purchase to \$10,000 per purchase;
  - The Agreement has been amended to allow the Association to purchase equipment up to a value of \$5,000 from operating fund, which is an increase from the current Agreement which such purchases to \$3,000;
  - An indemnity clause has been added;
  - The schedule that contains a list of equipment to be retained by the Association at the end of the Agreement has been eliminated;
  - Schedule ‘C’, the capital equipment list, has been updated;
  - Adjustment have been made to the snow removal area; and
  - A number of wording changes for the purpose of bringing more clarity to certain clauses of the Agreement have been made.

A copy of the proposed Agreement is attached to this report as Appendix 1.

The Association Executive is satisfied with the proposed Agreement which is attached as Appendix 1.

***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, thereby contributing to action item SC 13 of the City’s Sustainability Charter, being “to create a fully accessible City”. The Fairgrounds acts as the venue for several agriculturally-focussed exhibitions and shows over the course of each year, which act to support and promote agriculture, thereby supporting action item EC12 of the Sustainability Charter, being to support the City’s agricultural sector.

## CONCLUSION

Based on the above discussion, it is recommended that Council approve the execution by the appropriate City officials of the Operating Agreement between the City of Surrey and the Lower Fraser Valley Exhibition Association (the "Association"), a copy of which Agreement is attached to this report as Appendix I, for the operation of the Cloverdale Fairgrounds during the three-year period from January 1, 2014 to December 31, 2016.

Laurie Cavan  
General Manager,  
Parks, Recreation and Culture

Vivienne Wilke, CGA  
General Manager,  
Finance & Technology

Attachment:

Appendix 1 – Proposed Operating Agreement (2014 – 2016) between the City and the Lower Fraser Valley Exhibition Association



**SURREY**  
CITY OF PARKS

## **CLOVERDALE FAIRGROUNDS OPERATING AGREEMENT**

2014-2016

## TABLE OF CONTENTS

<b>1. INTERPRETATION</b> .....	<b>1</b>
1.1 Definitions.....	1
1.2 Schedules.....	3
1.3 Surrender .....	4
<b>2. SERVICES</b> .....	<b>4</b>
2.1 Services.....	4
2.2 Amendment of Services.....	4
2.3 Standard of Care .....	4
2.4 Term.....	4
<b>3. USE</b> .....	<b>4</b>
3.1 General Uses.....	4
3.2 Canada Day.....	5
3.3 Alcohol.....	5
3.4 Emergency Social Services .....	5
3.5 Use of City's Arena, Curling Rink and Cloverdale Recreation Centre.....	5
<b>4. FEES</b> .....	<b>6</b>
4.1 Fees .....	6
4.2 Adjustment of Fees.....	7
<b>5. OPERATING EXPENSES</b> .....	<b>7</b>
5.1 Operating Expenses .....	7
5.2 Utilities.....	8
<b>6. APPROPRIATION</b> .....	<b>8</b>
<b>7. CAPITAL EXPENDITURES</b> .....	<b>8</b>
7.1 No Capital Expenses .....	8
7.2 Damage.....	8
7.3 Equipment .....	8
7.4 Approval .....	9
<b>8. AMPHITHEATRE</b> .....	<b>9</b>
<b>9. BOOKS OF ACCOUNT</b> .....	<b>9</b>
<b>10. PROVISION OF FINANCIAL INFORMATION</b> .....	<b>10</b>
<b>11. OPERATION AND MAINTENANCE</b> .....	<b>10</b>
11.1 The Operator's Responsibilities and Control of the Work .....	10
11.2 Inspection .....	10
11.3 Maintenance .....	10

11.4	Parking .....	11
11.5	Bookings and Advertising .....	12
11.6	Concession.....	12
11.7	Sponsors .....	12
11.8	Banners and Flags.....	12
<b>12.</b>	<b>EMERGENCY AND EVACUATION PROCEDURES .....</b>	<b>12</b>
<b>13.</b>	<b>OCCUPATIONAL HEALTH AND SAFETY.....</b>	<b>13</b>
<b>14.</b>	<b>WORKERS COMPENSATION BOARD COVERAGE.....</b>	<b>14</b>
<b>15.</b>	<b>PERSONNEL.....</b>	<b>14</b>
15.1	Qualified Personnel .....	14
15.2	Replacement of Personnel or Sub-Contractors.....	14
15.3	Assignment.....	15
15.4	Agreements with Sub-Contractors .....	15
<b>16.</b>	<b>LIMITED AUTHORITY .....</b>	<b>15</b>
16.1	Agent of City .....	15
16.2	Independent Contractor .....	15
<b>17.</b>	<b>INSURANCE AND DAMAGES .....</b>	<b>15</b>
17.1	Structure and Personal Property.....	15
17.2	Operator's Insurance Policies .....	16
17.3	Insurance Requirements.....	16
17.4	Waiver of Subrogation .....	17
17.5	Additional Insurance .....	17
17.6	Notice of Claims .....	17
17.7	Hold Harmless and Indemnity.....	17
<b>18.</b>	<b>TERMINATION .....</b>	<b>18</b>
18.1	By the City .....	18
18.2	By the Operator .....	18
18.3	Termination for Cause .....	18
18.4	Curing Defaults.....	19
<b>19.</b>	<b>APPLICABLE LAWS, BUILDING CODES AND BY-LAWS .....</b>	<b>19</b>
19.1	Applicable Laws.....	19
19.2	Codes and By-Laws.....	19
<b>20.</b>	<b>CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.....</b>	<b>20</b>
20.1	No Disclosure .....	20
20.2	Freedom of Information and Protection of Privacy Act .....	20
<b>21.</b>	<b>LIAISON.....</b>	<b>20</b>
<b>23.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>21</b>
23.1	Dispute Resolution Procedures.....	21

**24. JURISDICTION.....21**

**26. GENERAL.....22**

26.1 Clear Title .....22

26.2 Entire Agreement.....22

26.3 Amendment .....22

26.4 Survival of Obligations .....22

26.5 Cumulative Remedies.....22

26.6 No Interest in Land .....22

26.7 Notices .....22

26.8 Unenforceability .....23

26.9 Headings .....23

26.10 Singular, Plural and Gender.....23

26.11 Waiver .....23

**SCHEDULE A – LANDS**

**SCHEDULE B – OVERFLOW PARKING**

**SCHEDULE C – CAPITAL EQUIPMENT TO BE RETURNED TO THE CITY**

**SCHEDULE D – POTENTIAL ONE TIME LUMP SUM PAYMENT**

**SCHEDULE E – PRO-RATA CALCULATION OF FEES PAYABLE BY THE CITY TO THE  
SOCIETY UPON TERMINATION BY THE CITY**



## CLOVERDALE FAIRGROUNDS OPERATING AGREEMENT

THIS AGREEMENT dated the \_\_\_\_ day of \_\_\_\_\_, 2013

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:

“**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's Representative**” has the meaning set out in Section 21(a) (ii);

“**Dispute**” has the meaning set out in Section 22.1;

“**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 Fairground 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.

*"has the meaning set out in subsection 4.1(b); (eliminate "line of credit" in favour of "operating carry forward"*

**"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 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 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.

**"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– Capital Equipment to be returned to the City;
- (d) Schedule D – Potential one time lump sum payment; and
- (e) Schedule E – Fees payable to 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 Sections 4.1, 4.2 and 18.1, the Operator will provide the Services for the period commencing on January 1, 2014 and terminating on December 31, 2016 (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 subdivision or development and agrees that there will be no adjustment to the Fees as a result of any 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 licensing requirements and/or City Council's beer garden license arrangement.

### **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 hour on the Friday of the event until 1800 hours on the Monday following the event.

#### **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 as follows:

- (a) THREE HUNDRED AND SIXTY-FOUR THOUSAND (\$364,000.00) DOLLARS for the period commencing January 1, 2014 and ending December 31, 2014, payable in two equal payments of \$182,000 on or within 15 days after the following dates: January 3, 2014 and March 1, 2014; and
- (b) THREE HUNDRED AND SIXTY-FOUR THOUSAND (\$364,000.00) DOLLARS, plus an adjustment equal to the Statistics Canada Consumer Price Index (CPI) increase calculated for 2014 for the Vancouver area, for the period commencing January 1, 2015 and ending December 31, 2015 payable in two equal payments on or within 15 days after the following dates: January 3, 2015 and March 1, 2015.
- (c) THREE HUNDRED AND SIXTY-FOUR THOUSAND (\$364,000.00) DOLLARS, plus an adjustment equal to the CPI increase calculated for 4.1 (b), compounded by the CPI calculated for 2015 for the Vancouver area, for the period commencing January 1, 2016 and ending December 31, 2016 payable in two equal payments on or within 15 days after the following dates: January 3, 2016 and March 1, 2016.
- (d) 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 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 and Technology acting reasonably for the purposes of this Agreement with a maximum limit of \$200,000 for each year of the Term, (the "City's Line of Credit"), on the condition that the Operator covenants and agrees to the following:

- (i) that it has no debts,
- (ii) that it will pay all net revenues to the City throughout the Term to reduce the balance on the City's Line of Credit, and
- (iii) 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 should the maximum of the Line of Credit, \$200,000, not be used in any year of the Term that the balance of the unused portion, minus any amount up to 75% of this unused portion that the City may choose to reserve, will be carried forward and added to the \$200,000 that is being made available on the Line of Credit in the subsequent 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. At the end of the Term, provided that the Operator has no debt, and the Operator has not used 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 the City. Should the Operator choose to move the rodeo and exhibition from Surrey, these monies must be returned to the City.

#### **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 up to a maximum of the amount specified in Schedule D may be solely determined by the City's auditors provided that any recapture through additional use is discounted. In addition, the City may terminate this Agreement in 120 days by providing notice in writing to the Operator. The date of the notice in writing will define the start of the 120 day notice period. If such termination occurs, the City can take over the operation of the Fairgrounds and may use all the bookings of the Operator.

### **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 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.

## **5.2 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.

## **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 No Capital Expenses**

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

### **7.2 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.

### **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. Any capital 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.

The City shall have the right to use the portable stage, at no cost, for Winter Fest (three days in February), 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.

#### **7.4 Approval**

All Capital Expenditures greater than \$10,000.00 must be pre-approved by the City's General Manager, Finance and Technology 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 \$5,000 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.

#### **8. 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 of up to 10,000 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 to be effected 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.

#### **9. 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.

**10. PROVISION OF FINANCIAL INFORMATION**

The Operator is to provide the City with quarterly financial summaries. 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 December 31<sup>st</sup>, the Operator shall furnish a statement in writing signed and verified by the Operator and reviewed by the auditors 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 payment year.

**11. OPERATION AND MAINTENANCE**

**11.1 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.

**11.2 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.

**11.3 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 the following on 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;
- (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; and
- (i) 62 Avenue and 62A Avenue and its associated ditches;
- (j) Patching of asphalt parking lots, to a maximum of \$3,000 in each year of the Term, upon request by the Operator;

#### **11.4 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.

#### **11.5 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.

All events that are likely to involve two hundred and fifty or more persons attending the event shall be referred to the City's Festival and Event Support Team (FEST) for comment prior to the event being booked.

#### **11.6 Concession**

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

#### **11.7 Sponsors**

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

#### **11.8 Banners and Flags**

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

#### **12. Emergency and Evacuation Procedures**

- (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;
  - (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.

13. **OCCUPATIONAL HEALTH AND SAFETY**

- (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.

**14. workers compensation board coverage**

- (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; and
- (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.
- (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.

**15. Personnel**

**15.1 Qualified Personnel**

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

**15.2 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.

### **15.3 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.

### **15.4 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.

## **16. Limited Authority**

### **16.1 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.

### **16.2 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.

## **17. INSURANCE and Damages**

### **17.1 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.

## 17.2 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:
- Blanket contractual;
  - Employees as additional insureds;
  - Non-owned automobile;
  - 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 two million (\$2,000,000) dollars per occurrence for bodily injury, death and damage to property.

## 17.3 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.



#### **17.4 Waiver of Subrogation**

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

#### **17.5 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.

#### **17.6 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.

#### **17.7 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.

## **18. Termination**

### **18.1 By the City**

- (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. 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. In the event the parties cannot agree on the adjustment to the Fees within 120 days of the notice, the parties agree that the amount payable by the City will be the amount specified in Schedule E, despite which year in the Term the notice of termination is given by the City.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 C attached hereto, 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 listed in Schedule C would revert to the City for its sole use and disposition

### **18.2 By the Operator**

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

### **18.3 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.

#### **18.4 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.

### **19. Applicable Laws, Building Codes and By-Laws**

#### **19.1 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.

#### **19.2 Codes and By-Laws**

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

## **20. Confidentiality and DISCLOSURE OF INFORMATION**

### **20.1 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.

### **20.2 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.

## **21. 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.

## **23. Dispute Resolution**

### **23.1 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.

## **24. 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.

**26. General**

**26.1 Clear Title**

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

**26.2 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.

**26.3 Amendment**

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

**26.4 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.

**26.5 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.

**26.6 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.

**26.7 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 – 104<sup>th</sup> 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

**26.8 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.

**26.9 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.

**26.10 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.

**26.11 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: \_\_\_\_\_  
          :  
          M. Dinwoodie, City Manager

Per: \_\_\_\_\_  
          President

\\file-server3\annex\park-rec\wpcentre\corprpts\2013\cloverdale fairgrounds operating agreement.docx  
12/12/13 10:09 AM

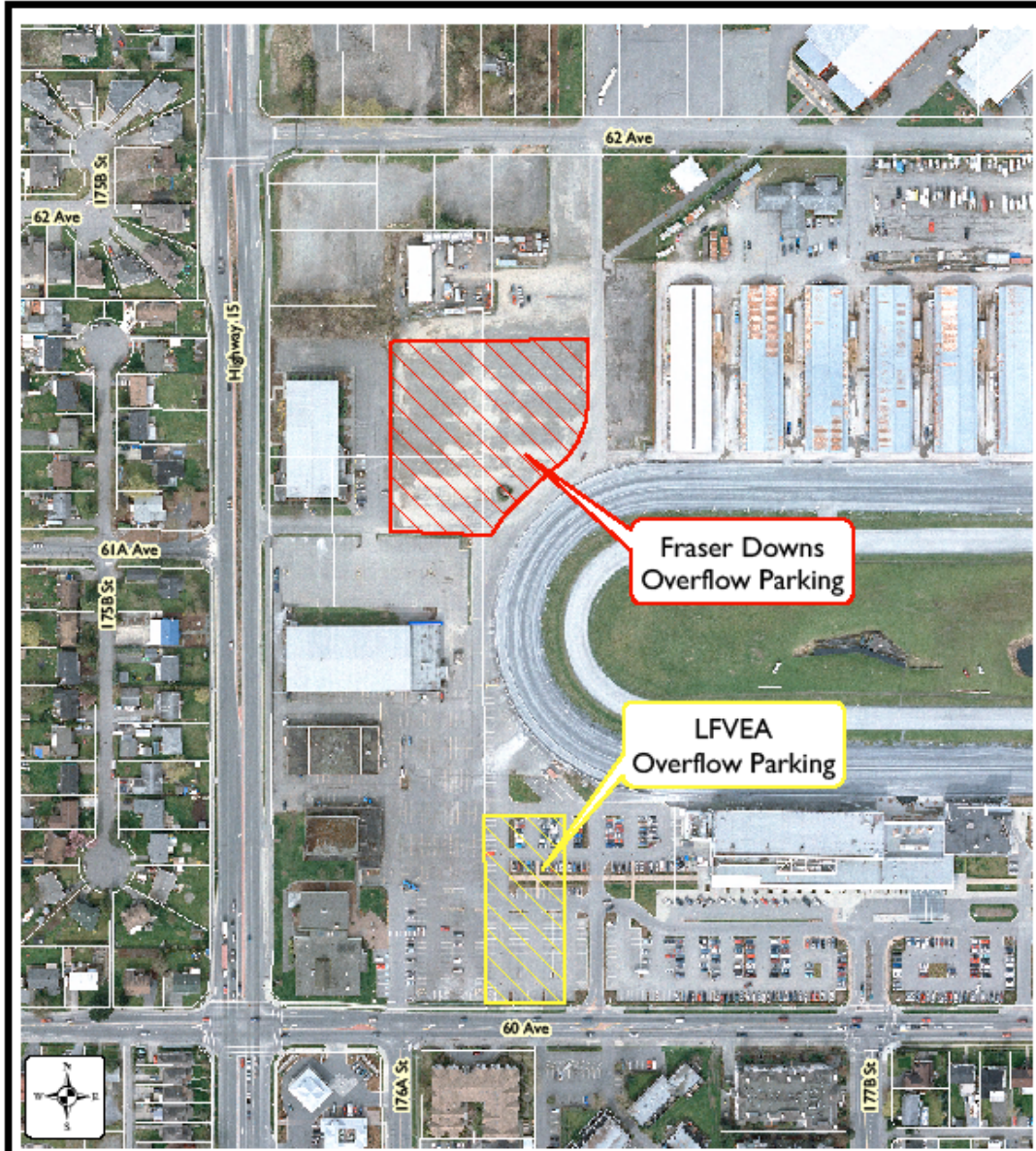


SCHEDULE A

LANDS



SCHEDULE B  
OVERFLOW PARKING



PRODUCED BY ENGINEERING, GIS SECTION: March 9, 2009, JJR

Date of Aerial Photography: April 2008



Schedule B  
"OVERFLOW PARKING"

GIS  
SECTION

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.

G:\MAPPING\GIS\MAPS\  
CORPORATE REPORTS\Really\  
KenWoodward\_CityofSurreyFairgrounds-B.mxd

**SCHEDULE C  
EQUIPMENT LIST  
CAPITAL EQUIPMENT TO BE RETURNED TO THE CITY AT END OF TERM**

Equipment type	Year	unit #	serial #	comments	Model
combi tool	2008	08kk215			km110r
combi tool	2008	A12016			km110r
blower	2008	A1220			br600
pressure washer		A1221			
Dodge Dakota	2003				
Masey Ferguson	1996		5021____ 15016	Tractor	
Dae woo			e-321344	forklift	g30p
John Deere	2009	09j429		loader tractor	110
John Deere	2007	07g500		skid steer	320
Ford	2003	36076		dump truck	f350
Western	2006	06m076		snow [plow	
Stihl			200059367		fs250
Stihl			282802504		fs250
Stihl			285930630	blower	br600
Stihl			285930623	blower	br600
Honda			maga-1581836	mower	hrx217
Stihl			282802503		fs250
Stihl			277499078		fs130
Stihl			282802525		fs250
Stihl			288859366		fs250
Stihl			282802513		fs250
Stihl			277499066		fs130
Stihl				chain saw	ms260
trailtech				gooseneck	h360
John Deere gator			w004x2x066046	4x2	
John Deere mower			m0x520a040153	with grass catcher	x520
John Deere mower				no catcher	48c
Honda trash pump		A1227	waaj-1025838	with hoses	wt20x
John Deere gator			__04x2x017699	4x2	
carry all 2					
10 light towers					
portable stage	2010				
Dodge	2008				caliber

**SCHEDULE D**

**POTENTIAL ONE TIME LUMP SUM PAYMENT**

**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 E**

**PRO-RATA CALCULATION OF FEES PAYABLE BY THE CITY TO THE OPERATOR UPON  
TERMINATION BY THE CITY**

<b>Month</b>	<b>Amount</b>	<b>Cumulative Total</b>
January	\$30,300	\$30,000
February	\$30,300	\$61,000
March	\$30,300	\$91,000
April	\$30,300	\$121,000
May	\$30,300	\$152,000
June	\$30,300	\$182,000
July	\$30,300	\$212,000
August	\$30,300	\$243,000
September	\$30,300	\$273,000
October	\$30,300	\$303,000
November	\$30,300	\$334,000
December	\$30,300	\$364,000