



Corporate Report

NO: R046

COUNCIL DATE: March 1, 2004

REGULAR

TO: **Mayor & Council** DATE: **March 1, 2004**

FROM: **City Solicitor** FILE: **0930-30-178**

SUBJECT: **Lease of City Land at Cloverdale Fairgrounds to
Orangeville Raceway Limited**

RECOMMENDATION

That Council authorize the execution of the new lease of "42.25 acres of City owned land located within the Cloverdale Fairgrounds to Orangeville Raceway Limited (the "Tenant") for a term of 20 years with a 10 year renewal term commencing April 1, 2004 (the "Lease") a copy of which is available at the City Solicitor's office), subject to each of the following:

- (a) Council giving fourth reading to By laws No. 15238 and 15239 to permit a Casino on PID 002 370 743, Lot 4 Except: Firstly: The Easterly 400 feet except Parcel "A" (Bylaw Plan 47274) Secondly: Part Subdivided by Plan 67299, Thirdly: Parcel "A" (Bylaw Plan 47274) Section 8 Township 8 New Westminster District Plan 3612 ("Lot 4");
- (b) the execution of the Lease by the Tenant before the above noted fourth reading;
- (c) the execution by the Tenant of a Servicing Agreement satisfactory to the City;
- (d) the posting by the Tenant with the City of appropriate security required with the Servicing Agreement; and
- (e) the execution of the Operating Agreement between the British Columbia Lottery Corporation (the "BCLC") and the Tenant.

BACKGROUND

The City currently owns ±135 acres of land bounded between 176 Street (Highway 15) on the west, 180 Street and Lord Tweedsmuir School on the east, 60 Avenue on the south, and 64 Avenue to the north. With the exception of one single family residential lot, the City owns all lands within this area. The majority of these lands are currently encumbered under an agreement with the Lower Fraser Valley Exhibition Association, who operates the Fairgrounds for the City. This agreement has been in place since 1981 and expires on February 1, 2006.

The Tenant has leased a ±50 acre portion of these lands from the City since 1974 for the purposes of a horse racing track and ancillary uses. The current lease with the Tenant expires on April 15, 2005 and has provision for a further 10 year renewal term. The rent payable to the City under this agreement is based on a percentage of the pari mutuel racing revenue and parking revenues. These lands are presently property tax exempt.

Property Description

The proposed new lease area (see attached Appendix I) involves ± 42.25 acres to allow the City to retain lands not utilized by the racetrack operation for future development purposes.

Zoning Plan Designations and Land Use

The subject property is currently zoned CD, which permits horse racing and ancillary uses. The Official Community Plan designates the property as Urban. The surrounding lands uses are multiple family and commercial to the south, single family residential and institutional to the east and west, with industrial development north of 64 Avenue.

Council has given third reading of By laws No. 15238 and 15239 to allow for a casino use to be located on Lot 4 shown on the attached Appendix I. In order to allow for this use and to ensure a fair market return on the land, the City and the Tenant have negotiated a new lease, subject to Council approval.

DISCUSSION

The proposed Lease is based on the conditions contained in a MOU approved by Council on November 3, 2003. It includes a 20 year term with a 10 year renewal period. Rent for the renewal period is to be renegotiated, subject to binding arbitration on the amount of renewal rent if the parties cannot agree.

As a requirement of the rezoning and lease agreement, the Tenant will construct approximately \$25,000,000 worth of improvements. In addition to a new building, recladding of the existing racetrack building and servicing costs, these improvements include 1,200 parking stalls and landscaping. These improvements are to be completed within 15 months of the lease taking effect on April 1, 2004. During construction of the proposed facility, the Tenant will operate a temporary casino within the existing building along with the horse race track.

In order to accommodate parking for the new facility and the existing buildings located within the Fairgrounds (Shannon Hall, Museum, Alice McKay Building), the City and the Tenant have agreed to cross parking easements. These agreements will help to ensure that adequate parking is available to both the City and the Tenant during peak usage times. Through negotiations, the City has reduced the size of the lease area from ± 50 acres to about ± 42.25 acres by severing areas not utilized by the Tenant.

Under the terms of the current lease, the Tenant has been paying a small (0.20%) percentage of the pari-mutuel revenues received from the race track operation, as well as one-half of the parking revenues (if any) received. On average, the City has been receiving about \$200,000 per annum under this rental structure and no property taxes. The proposed rental structure of the new lease will allow the City to increase the revenues received from the horse racing operations, as well as share in the revenues generated from the casino operation. The proposed rent for the Lease is as follows:

Base Rent

The base rent for the lease is structured on the pari-mutuel revenues received from the horse races conducted on the premises and the associated gaming machines related to the horse races.

- Year 1: \$225,000 per annum
- Year 2: \$250,000 per annum
- Years 3 - 5: an amount equal to the annual base rent for the previous year increased (but not decreased) by the

annual rate of inflation for Canada (CPI) for the previous 12 months.

- Year 6: an amount equal to \$300,000 or the 5th lease year base rent amount, whichever is greater.
- Year 7 - 20: the annual base rent for each lease year shall be increased (but will not be decreased) based on the base rent amount for lease year 6 increased by the greater of the increase in the CPI since the end of lease year 5 to the end of the immediately preceding lease year or the percentage increase in the pari-mutuel gross revenue (horse racing) and the revenue received by the tenant for off track betting and any electronic pari mutuel betting since the end of lease year 5 to the end of the immediately preceding lease year.

Percentage Rent

In addition to the base rent, the Tenant will pay an annual percentage rent, which is based on the performance (net win) of the casino aspect of the premises. The percentage rent is to be paid monthly and calculated in accordance with the following formula:

- 1% of the net win up to and including \$38,500,000;
- 2% of the net win between \$38,500,000 and \$43,800,000; and
- 4% of any amount of the net win greater than \$43,800,000.

We are advised there will be 200 slot machines permitted in the temporary Casino, which the BCLC will increase to 400 in the permanent facility. The proposed rent structure for the premises is a combined base rent with a percentage rent calculated on the net win proceeds from the Casino operation. This will ensure that the City receives a proportional rental increase if the BCLC approves additional electronic gaming machines for the premises in the future.

The proposed Lease is a "net" lease, with the Tenant being responsible for all costs associated with the Casino operation, including property taxes and ongoing site, building maintenance and capital improvements.

Key Differences between the new Lease and the November 3, 2003 Memorandum of Understanding (the "MOU")

The new Lease differs from the new MOU attached as Appendix II to this report as follows:

- Base Rent – In the seventh and subsequent years base rent will be increased by the greater of the percentage increase in:
 - (i) the Consumer Price Index; or
 - (ii) the increases in the Tenant's on premises and off track pari mutuel betting revenue including any received through electronic pari mutuel gaming machines that are used to bet on any other world wide track events or are used to electronically access the Tenant's racetrack;
 - (iii) was not included in the MOU, but is in favour of the City.

- Percentage Rent – The MOU had a rent cap initially set at \$1.55 million on the combined casino and racetrack revenue. This has been negotiated out of the Lease on the understanding that the number of slot machines may be greater than 300. The number of machines permitted is controlled by the BCLC Operating Agreement with the Tenant.
- Construction of the new Casino is to begin within 90 days after the April 1, 2004 Lease Commencement Date versus 60 days after the rezoning under the MOU. On the April 1, 2004 Lease Commencement Date, a building permit and development permit shall have been issued by the City and fourth reading of By laws No. 15238 and 15239 to permit a casino use on Lot 4 is to have occurred. The Tenant has one year from the Lease Commencement Date to complete the new building versus one year and 60 days under the MOU.

Host Financial Assistance Agreement

Before the Tenant's temporary casino opens for business the City shall have executed a Host Financial Assistance Agreement with the Province. This agreement requires the Province to pay 10% of the net gaming income from the Casino in the City for any purpose that would be of public benefit to the City. Net gaming income is defined as the win (gross bets minus payments to patrons) of the Casino less the management fees paid to the Tenant under the BCLC Operating Agreement with the Tenant. Also deducted from the net win are BCLC's administration and operating costs of conducting the Casino. City staff have been advised by the BCLC that the City's percentage will be approximately 6% of the net gaming income.

CONCLUSION

The City currently leases lands within the Cloverdale Fairgrounds to the Tenant for the operation of a horse race track. The Tenant has applied for rezoning of a portion of the site to allow for a new casino use that incorporates electronic gaming machines. In order to allow for this use and to ensure a fair market return, the City and the Tenant have negotiated a new lease, subject to Council approval.

Craig MacFarlane
City Solicitor

CM/KSW/mpr

Appendices:

- I. Aerial Photograph of Site
- II. Memorandum of Understanding

c.c. General Manager, Planning & Development
General Manager, Engineering
General Manager, Finance, Technology & HR