



Corporate Report

NO: R274

COUNCIL DATE: December 15, 2005

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **December 13, 2005**
FROM: **General Manager, Parks, Recreation and Culture** FILE: **0850 - 01**
General Manager, Planning and Development
SUBJECT: **Operating Agreement for the Cloverdale Fairgrounds for 2006**

RECOMMENDATION

It is recommended that Council:

1. Receive this report as information; and
2. Approve the City entering into an Operating Agreement with the Lower Fraser Valley Exhibition Association for the year 2006 for the operation of the Cloverdale Fairgrounds, with said Operating Agreement attached as Appendix 1 to this report.

INTENT

The intent of this report is to provide Council with 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 year 2006 and to obtain Council's approval to enter into the Agreement.

BACKGROUND

On November 7, 2005, Council received Corporate Report R253 as attached in Appendix 2 and subsequently authorized staff to take all necessary actions to enter into an Operating Agreement with the Association that would allow the Association to continue operating and maintaining the Cloverdale Fairgrounds and Millennium Amphitheatre for the year 2006 on a similar basis to the current operation of such facilities.

Based on Council's direction to staff, a draft Operating Agreement has been developed based on input from Association staff.

DISCUSSION

Key Elements of the Agreement

The following provides a brief overview of the proposed Operating Agreement:

- I. **Broad Purpose** – The Agreement will serve to engage the Association to provide services for a one-year period in connection with the operation of the Cloverdale Fairgrounds, in accordance with the terms and conditions specified within the Agreement.
- II. **Duration** – The Agreement is proposed to run from January 1, 2006 until December 31, 2006.
- III. **Facilities and Grounds Covered by the Agreement** – The Agreement will cover the lands shown in Schedule “A” of the attached draft Agreement, and includes: the Millennium Amphitheatre; Shannon Hall; Alice McKay Building; Agriplex; Show Barn; First-Aid / Washroom Building; Stetson Bowl; and the Fairgrounds Works Yard Building and Shops.
- IV. **Uses** – The Agreement provides for the Association’s booking of trade fairs, livestock & domestic animal shows, recreational activities, agricultural activities, concerts, swap meets, flea markets and other community events. The Association would not be permitted to book the Fairground facilities for extreme martial arts or unsanctioned boxing matches.

The Agreement will allow the City free use of the Fairgrounds to host Canada Day at the Millennium Amphitheatre.
- V. **Funding** – The Agreement stipulates that the City will provide \$280,000 in operating funding to the Association, scheduled in two equal payments in January 2006 and March 2006, respectively. In addition, the City would be the co-signators with the Association on a \$100,000 line of credit, to be used as a contingency if the operating funding is insufficient to meet all of the Association’s needs during 2006. The Agreement provides that the City must approve all draws against the line of credit.

The Agreement provides for the City’s continuing involvement in providing certain specified operating functions and preventative/corrective maintenance programs for Fairgrounds buildings, the Millennium Amphitheatre, and city-owned underground utilities.
- VI. **Independence of the Operator** – The Agreement ensures that the Association is an independent contractor to the City, and does not create a relationship of employer and employee, nor of a partnership or joint venture. The Association will not have the authority to enter into any agreements or contracts on behalf of the City, except as expressly set out in the Agreement.
- VII. **Insurance and Damages** – The Agreement contains standard damage, insurance and indemnity clauses.
- VIII. **Termination** – Under the terms of the Agreement, the City may terminate the Agreement upon written notice to the Association, with provisions regarding

settlement. The Agreement also allows for termination by the Association under certain stipulated conditions.

Comments on Funding

The Agreement provides for similar levels of funding from the City to the amounts that were provided in the previous lease arrangement with the Association. The primary difference is that the lease contained a provision for an annual allotment of \$100,000 in capital, and \$180,000 in an operating grant, whereas in the Agreement, there is no capital provision, but the same total amount of \$280,000 is being provided as an operating fee to the Association.

The Association has stated to the City that its revenues have gradually been declining, while their operating costs have increased. For this reason, the City has proposed in the Agreement to establish a joint line of credit guaranteed by the City that may be drawn upon as an operating contingency, should the Association's revenue performance not be sufficient to allow the Fairgrounds to be operated until the end of the year at the expected service level. Each draw upon the line of credit must be pre-approved by the City.

Board Review of the Draft Agreement

The General Manager of the Association has reviewed the draft Agreement and will forward the Agreement to the Board for their consideration. The Board of Directors of the Association has convened a special meeting for December 14, 2005 to consider approval of the proposed Agreement. Information regarding their decision will be available on-table when Council receives this report.

Legal Services Review

The Legal Services Division has been directly involved in drafting the proposed Operating Agreement and is satisfied with its contents.

CONCLUSION

Based on the above discussion, it is recommended that Council approve the City entering into an Operating Agreement with the Lower Fraser Valley Exhibition Association for the year 2006 for the operation of the Cloverdale Fairgrounds, with said Operating Agreement attached as Appendix 1 to this report.



Laurie Cavan
General Manager,
Parks, Recreation and Culture



Murray Dinwoodie
General Manager,
Planning and Development

Attachments

- Appendix 1 – Cloverdale Fairgrounds Operating Agreement
- Appendix 2 – Corporate Report R253

- cc - City Manager
 - General Manager, Finance, Technology and Human Resources
 - Assistant City Solicitor



CLOVERDALE FAIRGROUNDS OPERATING AGREEMENT

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SCHEDULE A – LANDS

SCHEDULE B – OVERFLOW PARKING

CLOVERDALE FAIRGROUNDS OPERATING AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 200__.

BETWEEN:

CITY OF SURREY
14245 – 56 Avenue
Surrey, BC V3X 3A2

(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 and Fairgrounds Works Yard Building and Shops (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;

"**Fees**" has the meaning set out in Section 4.1;

"**Indemnitees**" has the meaning set out in Section 17.2;

"**Lands**" means that portion of the City-owned Fairgrounds lands 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;

"**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:

- (i) 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;
- (ii) the cost of insurance including deductibles for the Fairgrounds in accordance with this agreement;
- (iii) the expense for garbage removal within the Fairgrounds and immediate surrounding area, sanitary control and snow removal;
- (iv) 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;
- (v) all costs of supplies and equipment required for the administration and management of the Fairgrounds;
- (vi) accounting and other professional costs required for the administration and management of the Fairgrounds;
- (vii) any non-recoverable sales and excise taxes;
- (viii) 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;

- (ix) audit fees and disbursements;
- (x) computer software; and
- (xi) marketing, advertising/sponsorship costs.

These shall not be included in Operating Expenses:

- (i) the costs of arbitration;
- (ii) each party's own legal fees and disbursements and taxes;
- (iii) income taxes;
- (iv) interest expense;
- (v) extra work;
- (vi) 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,
- (vii) losses due to the Operator or its employees, independent operators or agent's theft; and
- (viii) 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; and
- (b) Schedule B – Overflow Parking Area.

The parties agree that all previous agreements for the Fairgrounds have been surrendered or terminated, including without limitation the following:

- (a) Lease between the City of Surrey and the Lower Fraser Valley Exhibition Association dated March 12, 1981;
- (b) Lease between the Lower Fraser Valley Exhibition Association and Surrey Meat Packers Ltd. dated September 6, 1995;

- (c) License between the Lower Fraser Valley Exhibition Association and 400596 B.C. Ltd. dated March 20, 1996;
- (d) Operating Agreement between the City of Surrey and the Lower Fraser Valley Exhibition Association dated March 18, 2005; and
- (e) Maintenance and Service Agreement between Real Estate and Facilities Management Division and the Cloverdale Rodeo & Exhibition undated.

The parties agree that this Agreement is the only Agreement dealing with the operation of the Fairgrounds between the parties.

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.

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

The Operator will provide the Services for the period commencing on January 1, 2006 and terminating on December 31, 2006 (the "Term").

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, trade shows as approved by the City, some examples of which are listed as follows:

- (a) Trade fairs;
- (b) Equestrian shows;
- (c) Automotive and boat shows;
- (d) Wrestling;

- (e) Circuses as permitted under City policy;
- (f) Dog/cat shows;
- (g) Auctions – cattle, horses, machinery;
- (h) Name entertainment;
- (i) Boxing matches that are sanctioned;
- (j) Indoor and outdoor rodeo;
- (k) Conventions;
- (l) Home shows;
- (m) 4-H activities;
- (n) Riding and driving horse shows;
- (o) Swap meets;
- (p) Flea markets;
- (q) Farmer's markets;
- (r) Horse racing;
- (s) Driver training programs; and
- (t) Recreational and agricultural activities.

and for no other purposes and specifically excluding extreme martial arts. The Operator agrees to provide the City with quarterly reports for the City's approval, 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 June 30 - July 2.

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.

4. FEES

4.1 Fees

The City will pay to the Operator fees in the maximum amount of \$280,000.00, including all taxes (the "Fees") in two equal payments of \$140,000.00 on or within 15 days after the following dates: January 3, 2006 and March 1, 2006. In addition, as an operating contingency should the \$280,000 in fees not be sufficient to operate the Fairgrounds for 2006, the Operator covenants and agrees to the following:

- (a) that it has no debts,

- (b) that the current balance on Line of Credit No. _____ (the "Line of Credit") is nil and the maximum limit of borrowing on the Line of Credit is _____,
- (c) that it will add the City as an authorized signatory to the Line of Credit to ensure that no expenditures are made without the City's written consent, and
- (d) that it will not borrow any monies other than as authorized by the City on the Line of Credit.

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. On or before December 31, 2006, the City will pay up to a maximum of \$100,000.00 to Coast Capital Savings to be applied against the Line of Credit in exchange for return of the City's Letter of Credit.

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 approved by the City. 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 and lighting at the entrance plaza which are currently metered separately.

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 thirty (30) days after such non-appropriation becomes final provided that if no consensus ad idem is reached between the parties, this Agreement is

terminated effective thirty (30) 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 Operator's 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.

7.3 Approval

All Capital Expenditures greater than \$2,000.00 must be pre-approved by the City 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 \$2,000 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 review 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.

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 one (1) day 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 Term, 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 Fairgrounds 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; and
- (h) Vandalism repair.

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

- i. Mechanical equipment directly related to building systems;
- ii. Equipment associated with the heating, ventilation, and air conditioning systems;
- iii. Electrical equipment directly associated with building systems;
- iv. Plumbing systems;
- v. Security systems, fire prevention systems, and fire fighting systems and equipment;
- vi. Indoor and outdoor lighting systems, excluding parking lot lighting;
- vii. Building envelope including roof systems
- viii. City infrastructure associated with underground City utilities such as water, sanitary sewer and storm sewer, but excluding hydro and gas.

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.

11.6 Concession

The Operator to have the right to operate a mobile 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 pre-approve 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 Millenium Amphitheatre site.

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, including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hour written notice to the Operator, install such devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case 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 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.

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, 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 Indemnity

The Operator will indemnify and save harmless the City and all of its elected and appointed officials, officers, employees, servants, representatives and agents (collectively the "Indemnitees"), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any

of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Operator of any obligation of this Agreement, or any wrongful or negligent act or omission of the Operator or any employee or agent of the Operator.

17.3 Survival of Indemnity

The indemnity described in Section 17.2 will survive the termination or completion of this Agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the Indemnitees.

17.4 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.

17.5 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.

17.6 Waiver of Subrogation

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

17.7 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.

17.8 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.

18. TERMINATION**18.1 By the City**

The City may at any time and for any reason by written notice to the Operator terminate this Agreement before the completion of all the Services. Upon receipt of such notice, the Operator will perform no further Services other than the work which is reasonably required to terminate the Services and return the City's property to the City. If the City terminates this Agreement before the completion of all the Services, the City will pay to the Operator all amounts owing under this Agreement for Services provided by the Operator up to and including the date of termination, plus reasonable termination costs in the amount as determined by the City. Upon payment of such amounts 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.

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.

At the end of the Term, whether by the passage of time or otherwise, the Operator shall deliver up all capital equipment 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.

18.2 By the Operator

The Operator may, by 60 days written notice to the City, terminate the Agreement before the completion of all services provided that the Operator is in the process of legally voluntarily winding up its affairs.

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 five (5) 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) if the total cost to complete the Services exceeds the amount owing to the Operator, charge the Operator the balance, which amount the Operator will forthwith pay.

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 five (5) 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, building codes 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, 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 a representative ("Operator's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of 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.

22. DISPUTE RESOLUTION

22.1 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.

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 by-law or other enactment.

24. GENERAL

24.1 Clear Title

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

24.2 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 Sgreement 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.

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 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.

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 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
Realty Services Division
7452 – 132 Street
Surrey, BC V3W 4M7

Attention: Manager, Realty Services
Facsimile No.: (604) 501-5501

To the Operator:

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

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

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 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.

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

**LOWER FRASER VALLEY EXHIBITION
ASSOCIATION**

Per: _____

Per: _____

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**SCHEDULE B
OVERFLOW PARKING**



PRODUCED BY ENGINEERING, GIS SECTION: November 29, 2005, KPW

Date of Aerial Photography: April 2005



"OVERFLOW PARKING"

**REALTY
DIVISION**

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

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Corporate Report

NO: R253

COUNCIL DATE: November 7, 2005

REGULAR COUNCIL

TO: Mayor & Council DATE: December 13, 2005
FROM: General Manager, Planning and Development FILE: 0850-01
General Manager, Parks, Recreation and Culture
SUBJECT: Operating Agreement for the Cloverdale Fairgrounds for 2006

RECOMMENDATION

It is recommended that Council:

1. Receive this report as information;
2. Authorize staff to take all necessary actions to enter into an Operating Agreement with the Lower Fraser Valley Exhibition Association (the "Association") that would allow the Association to continue operating and maintaining the Cloverdale Fairgrounds and Millennium Amphitheatre for the year 2006 on a similar basis to the current operation; and
3. Authorize staff to take all necessary actions to terminate, at the end of 2005, the current Lease Agreement between the City and the Association, including any necessary actions to address sub-leases and/or tenants on the Fairgrounds site.

INTENT

The intent of this report is to seek Council authority to prepare an Operating Agreement that, if approved, will allow the Association to operate and maintain the Cloverdale Fairgrounds and Millennium Amphitheatre through the year 2006. The current Lease Agreement between the City and the Association expires at the end of 2005.

BACKGROUND

The City owns an area of land amounting to 136.5± acres east of 176 Street, between 60 and 64 Avenues. This property contains the Fraser Downs Race Track and Casino, the Millennium Amphitheatre, the Curling Rink, the Ice Arena and the Fairgrounds.

The Fairgrounds occupy an area of 92.6± acres that is presently under lease by the City to the Association. The Lease with the Association, which expires on December 31, 2005, was approved by Council under the Lower Fraser Valley Exhibition Association Land Leasing By-law, 1981, No. 6566 and has been renewed several times over the years.

The Association operates and maintains several facilities within the leased area, including the Stetson Bowl, the Agriplex, the Showbarn, the Alice MacKay Building and Shannon Hall. During the course of an average year, the Cloverdale Rodeo, animal shows, trade fairs and many other events are held on the site. The Association also administers several sub-leases for commercial and non-profit operations within the Fairgrounds.

Under an Operating Agreement that is separate from the Lease, the Association has booked the Millennium Amphitheatre for community events for several years and has taken responsibility for some aspects of maintenance at the Amphitheatre site.

City staff is currently working on a master strategy for the Cloverdale Fairgrounds that will result in recommendations for capital improvements, such as new community recreation facilities, a trade and consumer show complex and other amenities, and other recommendations regarding how the operation of the enhanced Fairgrounds should be managed. This work is not yet complete, but a Corporate Report will be forwarded to Council for consideration in the next few months that will seek Council approval of a proposed master strategy.

Based on the fact that significant new facilities are expected to be constructed on the site and to leave sufficient flexibility relative to Council's consideration of options on how best to manage the site and the new facilities on the site, the current Lease Agreement between the City and the Association should not be renewed. Therefore, in accordance with the provisions of the Lease, the City served notice to the Association that the Lease will not be renewed when it expires on December 31, 2005.

DISCUSSION

Current Lease and Agreements with the Association

Lease surrender documents need to be produced to legally terminate the current Lease and all other agreements that exist between the City, the Association and its tenants and sub-lessees. Appropriate by-laws to accomplish this will be brought forward to Council before the end of 2005.

Proposed Fairgrounds Operating Model for 2006

To ensure that events can continue to be held on the Fairgrounds while the master strategy for the Fairgrounds is being finalized, it is recommended that the City enter into an Operating Agreement with the Association to continue to maintain and operate the site through 2006. A aerial photograph illustrating the area to be covered under the Operating Agreement is attached as Appendix I. This recommendation is based on the Association's availability and their expertise in operating and maintaining the Fairgrounds.

It is recommended that a single Operating Agreement be drafted with the Association that runs from January 1, 2006 to December 31, 2006, that allows for the ongoing operation of the site on a similar basis to the current operation. The Operating Agreement would be a contract, which would act in place of the existing Lease. Subject to Council approval of the recommendations of this report, staff will immediately commence the process of drafting the Agreement with the Association.

Legal Services staff has reviewed this report and has no concerns.

CONCLUSION

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

- Authorize staff to take all necessary actions to enter into an Operating Agreement with the Association that would allow the Association to continue operating and maintaining the Cloverdale Fairgrounds and Millennium Amphitheatre for the year 2006 on a similar basis to the current operation; and
- Authorize staff to take all necessary actions to terminate, at the end of 2005, the current Lease Agreement between the City and Association, including any necessary actions to address sub-leases and/or tenants on the Fairgrounds site.



Laurie Cavan
General Manager,
Parks, Recreation and Culture

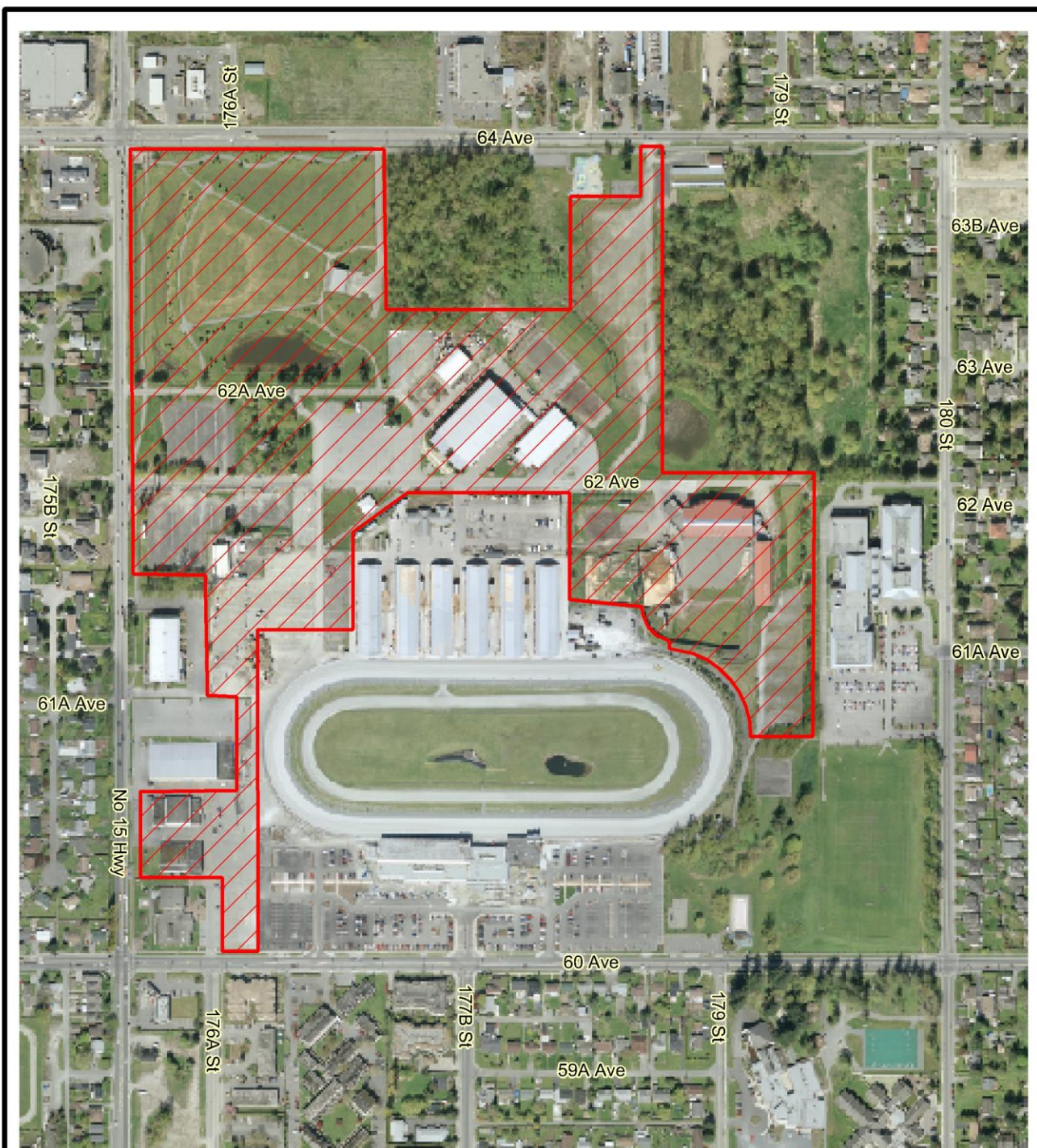


Murray Dinwoodie
General Manager,
Planning and Development

OC:saw

Attachment

Appendix I – Aerial Photograph



PRODUCED BY ENGINEERING, GIS SECTION: November 4, 2005, KPW

Date of Aerial Photography: April 2005



**LOWER FRASER VALLEY
ASSOCIATION LICENSE AREA**

**REALTY
DIVISION**

The data provided is compiled from various sources and IS NOT warranted as to its accuracy or sufficiency by the City of Surrey.
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