

AGENDA FOR THE REGULAR FINANCE / POLICY COMMITTEE OF THE WHOLE MEETING
TO BE HELD IN THE BOARD ROOM, CITY HALL,
ON MONDAY, 2007-FEB-19, COMMENCING AT 4:30 P.M.

1. **CALL THE REGULAR FINANCE / POLICY COMMITTEE OF THE WHOLE MEETING TO ORDER:**
2. **INTRODUCTION OF LATE ITEMS:**
 - (a) Staff Report from Mr. A. C. Kenning, Deputy City Manager, re: Vancouver Island Conference Centre Operating Agreement, brought forward from the "IC" Special Meeting of Council held Monday, 2007-FEB-19 at 3:30 p.m.
3. **ADOPTION OF THE AGENDA:**
4. **ADOPTION OF MINUTES:**
 - (a) Minutes of the Regular Finance / Policy Committee of the Whole Meeting held in the Board Room, City Hall, on Monday, 2007-FEB-05 at 4:30 p.m.
5. **PRESENTATIONS:**
6. **DELEGATIONS PERTAINING TO AGENDA ITEMS: (10 MINUTES)**
 - (a) Delegations pertaining to the 2007-2011 Financial Plan.
7. **REPORTS OF ADVISORY BODIES:**
8. **STAFF REPORTS: (blue)**

COMMUNITY SERVICES:

- (a) **Emergency Public Notification Options**

Pg. 3-6

Staff's Recommendations: That Council direct Staff to take the following actions:

1. *that the City enter into a contract with Message Impacts Systems Inc. for a subscription based emergency phone service (Reverse 911);*

AND:

2. *that the existing emergency list of local media and primary receivers be expanded to include additional community agencies;*

AND:

3. *that the City develop a program for its website which would provide email notification on a subscription basis for important or urgent community messages;*

AND:

4. *that the City obtain a digital version of the Yellow Pages Group White Pages to upload to the Messaging System;*

AND:

5. *that the City provide a semi-annual campaign to advise the public on procedures for receiving important or urgent communications from the City.*

- (b) Vancouver Island Conference Centre Operating Agreement Pg. 6.1-6.35
[Supplemental]

Staff's Recommendation: That Council approve the proposed operating agreement for the Vancouver Island Conference Centre Management Company Limited (which is wholly owned by Atlicic inc.)

9. **CONSIDERATION OF LATE ITEMS / OTHER BUSINESS:**

10. **QUESTION PERIOD:** *(Agenda Items Only)*

11. **PROCEDURAL MOTION:**

STAFF REPORT

REPORT TO: G.D. BERRY, CITY MANAGER

FROM: A.W. LAIDLAW, GENERAL MANAGER COMMUNITY SERVICES

RE: EMERGENCY PUBLIC NOTIFICATION OPTIONS

STAFFS RECOMMENDATION(S):

That Council direct Staff to take the following actions:

1. That the City enter into a contract with Message Impacts Systems Inc. for a subscription based emergency phone service (Reverse 911).
2. That the existing emergency list of local media and primary receivers be expanded to include additional community agencies.
3. That the City develop a program for its website which would provide email notification on a subscription basis for important or urgent community messages.
4. That the City obtain a digital version of the Yellow Pages Group White Pages to upload to the Messaging System.
5. That the City provide a semi-annual campaign to advise the public on procedures for receiving important or urgent communications from the City.

EXECUTIVE SUMMARY:

Council, at its meeting on 2006-DEC-04, directed Staff to investigate emergency communication options which would reach the majority of the community as expeditiously as possible.

In November, elevated turbidity in Nanaimo's water supply resulted in a 'Boil Water Notice' being issued by Vancouver Island Health Authority (VIHA). The City issued the notice using the established protocols of a news release to media contacts and posted the information on the City's website. Telephone contact was made with Island Radio (the WAVE) to ensure that the information was broadcast at least hourly and that updates would be broadcast as received. The information was subsequently printed in local media the next day. Several telephone inquiries were received by Public Works over the duration of the advisory stating the information was obtained only through word-of-mouth and that many individuals do not listen to local radio, read newspapers or did not know to check the City's website as they were unaware of the events.

Being able to provide 'real time' information on important or urgent community information is very difficult. The water turbidity events of November identified for City Staff the difficulty in communicating important information in an expeditious manner.

There exists no single comprehensive or guaranteed method of dispatching critical information to the public quickly. Staff have been reviewing multi-media systems of communications which rely on new technology for distribution of information.

Existing Protocol and Procedures:

The Communication Officer maintains an emergency list of local media and primary receivers (including Snuneymuxw First Nations, Extension, NRGH, School District No. 68, Malaspina University and BC Ferries). Information is distributed via email with respect to the knowledge the City has of the event and what actions should be taken. Further, the information release advises

Committee of the whole
Open Meeting
In-Camera Meeting
Meeting Date: 2007-Feb-19

that people should listen to the local radio (WAVE) for further information, news and updates. Local radio stations are the most widely used media for emergency broadcasts. It is expected that the print media will follow up at the earliest time and advise the public. The City of Nanaimo updates its website and provides the same information (or additional where available) as to the status of the event.

The weakness in the system is that 'real-time' information it is dependent upon people hearing the radio broadcast and distributing the information word-of-mouth. This all takes time. In many cases individuals will not be aware of the information until they see it in the print media which is commonly the next day.

The advantage of the current system is that it is relatively simple and can be applicable in the case of minor events such as water turbidity but also functions in the event of an earthquake or larger event with the radio being the primary source of 'real time' information.

Staff have investigated various alternatives and additional methods to communicate to the public and believe these can supplement the current protocol and procedures.

- a) Message Impact Systems Inc. provides a web-accessed system for telephone, email, fax, and text messaging broadcast. Contacts are uploaded to the site where they can be organized by group for various forms of contact including a pre-recorded phone message that is sent through a 10,000 port system. This system is capable of notifying 30,000 Nanaimo telephones in as little as one hour. There is no charge for opening an account with the voice broadcasting service. Charges are incurred on a per completed call basis for approximately 13 cents per six-second increment. This means that a six-second call broadcast to 30,000 recipients would result in a cost of approximately \$4,000 total on a per-incident basis. For example, a message like: "The City of Nanaimo is issuing a boil water notice due to turbidity. Please tune to 102.3 The WAVE for further information," takes about six seconds to record.

There is no charge for incomplete calls, and a report is generated listing completed calls that can be downloaded for detailed records.

Calls can also be interactive, for example, requesting the recipient press 1 to acknowledge receipt of the call. The user can choose to let the message play when an answering machine is connected, or to play only for voice-connected calls. The system can also be set to redial numbers until answered.

Once the database is in place, a message can be composed via telephone to the system and immediately broadcast in a very short time. Message templates can be stored and re-used, or created off-line in a digital file and uploaded for use. Call broadcasts can also be initiated by toll-free telephone or by the web site from any location.

Email messages can also be composed and sent as quickly with a per-email charge.

The system is called VoiceREACH. It is a US company with a representative in Nanaimo. They provide telephone support and training for the system.

This system provides the same functionality as the Telus system with the exception of the GIS-based service at a fraction of the cost of the Telus system.

Both the Telus and Message Impact systems would require that we provide the database of numbers to be called. Gathering the data for these systems would involve staff time and resources to compile, which can be done through a combination of a user fill-in form

delivered via the City's Internet site, Tempest data, and obtain a white pages database from a listing supplier such as the Yellow Pages Group.

- b) Staff have reviewed the possibility of notification of the community through email based on a subscription available from its website. A form would be created and placed on the City website whereby individuals and businesses can enter email information which would be stored in a data base for automatic emailing with the same notification published via the news releases. A subscription service from the City for email notification can be established with minimal cost and could be quite effective. It relies on the individual to update their email information on the City's system and of course is subject to individuals checking on their email on a regular basis.
- c) Shaw Web Mail – Shaw has been most cooperative with the City and has reached an agreement in principle whereby they would relay a pre-composed (email) message to their Shaw.ca mail clients. This agreement would be redundant if option "a" is chosen.

Shaw has further agreed to scroll a message over the community channel, if the City is willing to subsidize purchase of an additional piece of equipment. In the event of a significant incident the message could be scrolled across all the standard cable channels. This service will assist Shaw clients; however, it would again be contingent on people checking their email and would not necessary include other ISP providers or persons with satellite TV. Staff will investigate further.

- d) Telus provides a system called 'Telus SafetyNet' which is a paid service of Telus using their GIS through a web-based tool. This could provide the same service as Shaw through providing an email and could potentially develop an automatic dialing service that would auto-dial a defined geographic area with a recorded message. This system is becoming more widely available in North America and is referred to as a 'Reverse 911'. The concept is that automatic calling machines would phone businesses and residences advising them of the emergency message. This service is costly and has not been widely adopted in Canada and is still subject to the weaknesses of individuals or businesses having to be by their designated phone at the time the call was made.

Other systems which the City could use in the event of an emergency include:

- RCMP Patrol Loud Hailers – this would be appropriate with an event impacting a small geographic area where immediate notification of a pre-composed short message would be delivered.
- Reader Board Display – reader boards (i.e. Beban Park Sign) could be deployed in high traffic areas carrying a notice. These could be rented or purchased and put in high visibility areas. The system would take some time to deploy and its saturation rate is limited.
- Voice/Siren System – systems are available (Whelen System) to deploy radio controlled siren or voice signals. These systems are primarily intended for events such as hurricanes, tsunamis, chemical releases, etc. and would not be recommended for instances such as turbidity notifications. Sirens do not identify the nature of the event and tend to be more suitable for small communities.
- The Emergency Program provides public education initiatives for personal and neighbourhood preparedness. Recently, there has been discussions to reach the broader market through producing a video for the media and website. The methods of emergency public notification could be added to this production to improve community awareness.

Depending upon the notification options Council directs Staff to take, approximately \$10,000 is available from the Tsunami Grant that was provided by the Provincial Government last year. While

considerable staff time has been invested at this juncture, accounting associated to notification systems is also applicable within the scope of the grant. Other budgetary commitments may be necessary.

Staff considered a number of ideas with respect to public notification and believe efforts should be focused on identifying the local radio station as a primary source of real-time information in the event of emergency notification. We also believe that a subscription to the City's website for an emergency notification would contribute to the distribution of information on a timely basis. Both of these concepts will need a public awareness campaign which will be repeated semi-annually to advise the public.

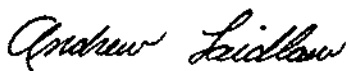
Staff have reviewed various options with respect to public notification during emergencies or critical information needs. As noted, there are no guaranteed systems of public communication in an emergent event. However, staff are recommending a number of changes to policy and additional methods which we believe will greatly increase the likelihood of public communications.

Staff are recommending a number of actions which include:

- Contracting with Message Impact Systems for a subscription based phone service.
- Increasing the existing emergency list of local media and primary receivers.
- Development of a City website for emergency messages on a subscription basis.
- Semi-annual advertising campaign to advise the public on procedures for receiving important or urgent communications from the City. We would anticipate an educational video component may supplement this objective.

It is expected that implementing these procedures will greatly increase the likelihood of communicating information in a timely manner. These recommendations we believe are cost effective and can generally be carried out with the existing resources in addition to the costs identified in this report.

Respectfully submitted,



A.W. Laidlaw
General Manager Community Services

G.D. Berry
City Manager

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2007-FEB-12

"IN CAMERA"

STAFF REPORT

TO: G.D. BERRY, CITY MANAGER

FROM: A.C. KENNING, DEPUTY CITY MANAGER

RE: VANCOUVER ISLAND CONFERENCE CENTRE OPERATING AGREEMENT

RECOMMENDATION:

That Council approve the proposed operating agreement for the Vancouver Island Conference Centre with Vancouver Island Conference Centre Management Company Limited (which is wholly owned by Atlic Inc.).

EXECUTIVE SUMMARY:

This report provides a summary of the proposed agreement between the City and the Vancouver Island Conference Centre Management Company Limited (wholly owned by Atlic Inc.) for the operation of the VICC. Staff continue to support the principal that the VICC be operated by an expert in this business and believe that the proposed operator has the required expertise. There is some uncertainty about the status of the hotel that results in uncertainty for the City and the proposed operator. Notwithstanding this uncertainty, staff believe it is very important that the operators be on board and underway with sales and marketing and operational planning.

BACKGROUND:

While the Amended Partnering Agreement between the City and the Suro/Millennium Joint Venture has now been terminated, it is important to be aware that the selection of Atlic as the potential operator was originally made by the Joint Venture in accordance with the terms of the agreement.

The former Agreement made the following statement:

- 16.1 The Hotel, Conference Centre and Auditorium will be managed by a professional hotel manager retained by Suro. Suro will not select a manager until it has first obtained the written approval from the City to the choice of the manager, such approval not to be unreasonably withheld.

In January 2006 the City approved a Letter of Intent with Atlic (copy attached). The Letter of Intent confirmed the intent of the parties to enter into a mutually satisfactory agreement for

the management of the conference centre. During the past year Atlific has provided valuable input into the design and finishing of the Vancouver Island Conference Centre. In addition, they are continuing the sales and marketing efforts commenced by the City and they have met with existing City hotel operators to develop policies and procedures for bookings and accommodation referrals. In staff's view, Atlific has acted professionally and diligently in all respects.

DISCUSSION:

The proposed management agreement between the City and VICC Management Company Limited (a related company of Atlific) includes the following key components:

- The management company shall have exclusive authority and responsibility for the day-to-day management and operation of the conference centre (subject to the owner's rights under the agreement and subject to the owner-approved booking policies).
- Either party may terminate the agreement if the management company has not entered into a management agreement with the owner of the hotel within one year or if the management agreement with the hotel is terminated.
- Termination by the City is possible if the management company fails to meet the performance threshold in any two consecutive years following the first two full years of operations. (A material adverse change in local market economic conditions affecting the conference centre is an exclusion as are other force majeure type items.) The performance threshold means 80% of the projected revenue for the conference centre as set out in the September 2004 Grant Thornton Market Feasibility Study.
- Despite the approved booking policies, the City may book the auditorium for Council meetings and Council-approved events.
- The conference centre is to be operated to the same standards required by the franchise agreement for the hotel.
- While the City retains full discretion with regard to sponsorships at the conference centre, it agrees not to enter into a naming agreement if the naming rights granted will interfere or conflict with agreements made between the management company and other parties in connection with the provision of goods and services to the conference centre.
- The City agrees to indemnify the management company against all losses and claims (except if the claims result from the negligence or wilful misconduct or a breach of the terms of the agreement by the management company).
- The management company indemnifies the City in relation to claims caused by negligence, wilful misconduct or breach of the management agreement by the management company.

- The agreement has a five-year term, however, following the expiry of the term the City shall not enter into any new management agreement for the conference centre with any other party unless that party has been hired as the operator for the hotel.
- The fees to be paid to the management company are consistent with the fees agreed to in the Letter of Intent:
 - base management fee of 3% of gross revenues (estimated at \$112,262/year in year five)
 - sales and marketing fee of 4% of room rental (estimated at \$32,000/year in year five)
 - incentive management fee of 15% on the increase in positive net operating income compared to the previous year (not applicable where there are operating losses)
 - 2% of gross revenue for shared supervision, accounting and administration with the hotel (estimated at \$57,000/year in year five)
 - pre-opening fee of \$2,200. per month plus out-of-pocket expenses (plus the costs of all employees hired to work at the centre)
 - a repair and equipment reserve shall be established to fund replacements and renewals into which shall be paid 4% of budgeted gross revenues (up to \$100,000.)
- Requirements for monthly financial reporting and annual audits.
- Requirements for annual budgets and five-year forecasts (City approval required).
- The City is required to provide all working capital and to fund all operating losses.
- All personnel shall be employees of the management company (not the City).
- Booking policies included as an exhibit to the agreement summarized as follows:
 - mandate of VICC is to generate economic benefit to the City of Nanaimo focussed on non-resident delegate days. This is to be achieved by focussing on City-wide conferences and on multi-day conferences which typically require accommodation

Multi-Day Conference Booking Priorities

200+ delegates	can confirm any time
100 – 199 delegates	can confirm within 18 months of event
under 100 delegates	can confirm within 12 months of event (during priority periods)

Single Day Events

with up to 25 room nights	can confirm within six months of event
without room requirements	can confirm within three months of event

Consumer and Trade Shows

can confirm within 12 months of event
(during priority periods)

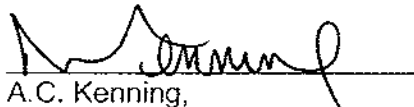
- all City-wide accommodation "leads" generated by the sales department will be handed immediately to the City or Tourism for distribution to all accommodation partners.

CONCLUSION:

One of the realities the City is currently facing is that the hotel construction has been delayed. There is also the possibility that the City's eventual hotel partner will propose some other operating model for the eventual hotel. It is likely, therefore, that the management company will be in a position to terminate this agreement in one year if the hotel has not proceeded (or it proceeds with a different operator). It is also likely the City will want to terminate the agreement if the Joint Venture selects another operator for its hotel. Even though these risks exist, staff believe it is essential that an operator be in place at this time so that the necessary steps can be taken so that the facility is ready for operation as soon as possible once construction and fit-out is complete. Discussions with Atlicic have provided some comfort that they will be willing to negotiate terms under which they would continue as operators even if the hotel does not proceed. They have provided the attached letter which outlines the addendum to the Agreement they will propose to deal with this changeable situation.

Atlicic has demonstrated to City staff that it is likely to be competent at completing the required tasks. As noted, a specific pre-opening fee has been negotiated that will apply until the VICC opens.

Respectfully submitted,



A.C. Kenning,
Deputy City Manager

ACK/jdk
Council: 2007-FEB-16 (NNCAC)
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HOSPITALITY MANAGEMENT FROM COAST TO COAST

Robert Leoppky, Regional Operations Manager, Western Canada - Direct: (604) 623-6854 - rleoppky@atlific.com

February 09 2007

City Of Nanaimo
455 Wallace Street
Nanaimo, BC, V9R 5J6

RECEIVED

FEB 15 2007

CITY OF NANAIMO
DEPUTY CITY MANAGER

Alastair Kenning
Deputy City Manager



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10100 Côte de Liesse
Montréal (Québec) H8T 1A3
T: (514) 403-1000
F: Accounting: (514) 403-2932
F: Administration: (514) 403-2930

Eastern Region — Ottawa
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F: (613) 231-1108

Eastern Region — Toronto
17 Reading Court
Toronto, Ont. M9W 7R7
T: (416) 674-3444
F: (416) 674-3400

Western Region — Vancouver
1110 Howe Street
Vancouver, B.C. V6Z 1R2
T: (604) 623-6852
F: (604) 684-9970

www.atlific.com
1-888-285-4342
info@atlific.com

Vancouver Island Conference Center
Atlific Hotels and Resorts Management

Atlific Hotels and Resorts were asked to consider the management of The Vancouver Island Conference Center in conjunction with the proposed adjoining hotel in January of 2005.

Since that time, our company has worked diligently to negotiate a pre opening interim agreement which has allowed us to provide the City of Nanaimo with valuable operational assistance in the design, construction and preliminary marketing for the center. We have also worked with various local entities to construct a framework for conference center operations policy that would ensure the maximum economic impact by focusing on non resident delegate visits in conjunction with local hotels and other industry stakeholders.

We have presented a comprehensive management agreement for the management of The Vancouver Island Conference center by our affiliate company, VICC Management Company, which has been negotiated over the past twelve months in conjunction with city staff, the development consortium for the hotel and legal counsel.

These agreements have recognized the valuable contribution and support of local industry stakeholders by enshrining the policies and procedures as part of this agreement, while recognizing that the development of an adjoining hotel is critical to the long term success of the new facility.

With the delay of the hotel component, we need to recognize and respond to how that affects the management agreement presented for the operations of the center.

The existing agreement calls for the right to cancel the management agreement for the center in the event that the hotel development is delayed longer than one year.

The City needs to have a competent and experienced operator to market, sell and manage the new Center.

While certain synergies may not be immediately available as contemplated in the original agreement, we continue to be committed to management of the center while working with the city and the developers of the adjoining hotel, and suggest that the concept of the two entities being managed by an experienced management company continues to be a sound principle. While some synergies with the adjoining hotel may not be available, our fundamental business approach to the operation of the Center has always been to utilize the resources of our management services to create the most productive and cost effective solutions for the center as is the practice with all our operations. We believe this can still be achieved using our proven systems. In addition, it will be our intent to look at the business model to combine some functions and compare the services which might be contracted to others in the community for the maximum benefit of the center.

You have asked us to consider what changes might be necessary to the existing agreement in light of the reality that the hotel will be delayed past one year.

As time is of the essence, we suggest that the current agreement be ratified as contemplated.

Once that is completed, we would suggest that we enter into negotiations to mutually agree on the terms of an addendum to operate that center in the absence of, and until, the eventual completion of the adjoining hotel.

We contemplate that addendum would need to include the following additional terms:

Reduction in Fees

Additional language to hold in abeyance the fees to be paid to the hotel for shared services. (Those services to be combined with existing positions planned for the center as an expense of the owner)

Minimum Fee

As the revenue forecasts may be affected by the availability of hotel space, the fees paid to Atlific for its services would carry a minimum monthly fee of \$8,500 per month (Combined)

Clauses to be Amended/Modified

2.2

(i) Remove the time stipulation of one year and or replace with a new date of thirty months.

(e) Performance clause to be held in abeyance until after the hotel opening or amended to a new formula.

4.2

New language to ensure that the agreement may be terminated by either party in the event that the hotel is not built or under construction within Thirty months, or is operated by a company other than the manager of the VICC.

7.2

2% fee payable to the hotel for shared services not payable until the hotel opens.

10.2

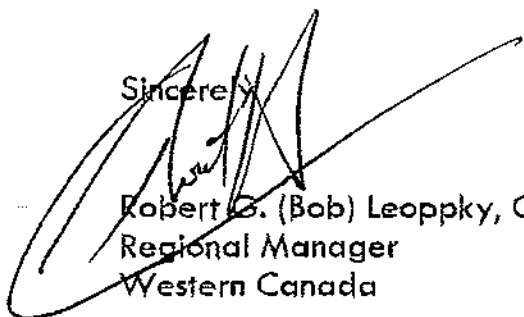
Employee costs shared by the hotel. As there will be no shared costs until the hotel opens, all employee costs would be an expense of the VICC.

Please tell us if this principal meets with your approval.

As time is of the essence, we trust you will be able to respond to this at council's next meeting in order to ensure the critical work required for the Vancouver Island Conference Center is taken to the next phase.

Should you have any questions, please feel free to call me direct.

Sincerely,

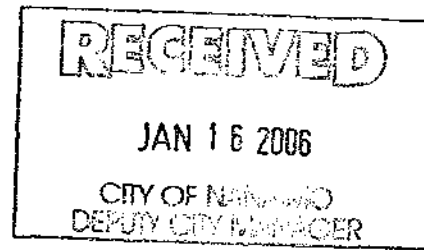


Robert G. (Bob) Leoppky, CHA
Regional Manager
Western Canada



January 09, 2006

Suro Development Company
C/O Triarc International Inc.
As Agent for the City of Nanaimo
Two Stamford Landing
68, Southfield Avenue
Stamford, Connecticut



Head Office — Montréal
10100 Côte de Liesse
Montréal (Québec) H8T 1A3
T: (514) 403-1000
F: Accounting: (514) 403-2332
F: Administration: (514) 403-2330

Attention: Melvin Katz
President

**Letter of Intent to appoint Atlific Hotels and Resorts
As Manager for The Vancouver Island Conference Center**

Dear Mr. Katz;

Eastern Region — Toronto
221 Carlingview Drive
Toronto, Ont. M9W 5E8
T: (416) 674-3444
F: (416) 674-3400

This letter will confirm the intent of Suro, Atlific and The City of Nanaimo to enter into a mutually satisfactory agreement for the Management of The city owned Conference Center, subject to the acceptance of Atlific by the City of Nanaimo.

Western Region — Vancouver
1110 Howe Street
Vancouver, B.C. V6Z 1R2
T: (604) 684-9940
F: (604) 684-9970

The terms of those agreements shall generally be based on the letters of interest to manage exchanged between Atlific Hotels, Triarc and Suro on October 27, 2005 (Nanaimo Conference Center), generally summarized as:

www.atlific.com
1-888-285-4342
info@atlific.com

- The operating cost of the center will be paid by the City of Nanaimo generally according to a budgeted cost to be agreed by both parties.
- The cost will include all expenses for the sales, operation, and maintenance of the center plus management fees.
- Atlific Hotels and Resorts base management fee shall be 3% of Gross Revenue for the provision of regional management services, accounting and national food and beverage support, with a minimum fee of \$5,000 per month.
- Atlific will charge 4% of room rental revenue for national sales and marketing support, with a minimum of \$1,500 per month. These fees will not include direct expenses incurred by Atlific or The Marriott Courtyard hotel for the Vancouver Island Conference Center.
- Atlific will be entitled to an Incentive management fee based on the stabilized income stream after three years of operation. That incentive shall be 15% of the increase to gross operating profit compared to the previous year.

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Letter Of Intent
Vancouver Island Conference Center
Page Two

- The Marriott Courtyard will provide shared services for supervision, administration and financial management. The fee for these shared services shall be 2% of Gross revenue.

The parties hereto acknowledge that this letter does not contain all terms which may be contained in a final agreement, which must be mutually agreed upon.

The parties mutually agree to the following terms as part of this letter of intent.

Suro Agrees:

- That Atlific is the manager of choice for this project.
- That Suro will use its best efforts to conclude the appointment of Atlific.
- That the final mutually satisfactory agreement for management is anticipated to be concluded by February 15, 2006.
- That the terms of Atlific's engagement will encompass its pre opening fees. The Pre opening fees for the Vancouver Island Conference Center will be \$1,000 per month for operational support and \$1,200 per month for national sales support.
- That if, through no fault of Atlific, a final agreement is not concluded, Atlific will be entitled to the prorated share of its pre opening fees plus reasonable expenses incurred.

Atlific Agrees:

- That it will use its best efforts to conclude a mutually satisfactory agreement.
- That it will conduct pre opening activities pending a final agreement
- That the final appointment is subject to acceptance by The City of Nanaimo.
- That it will conclude a draft agreement by January 30, 2005
- That it will use its best efforts to conclude the final agreement by February 15, 2006.
- That it will work in the best interest of The Vancouver Island Conference Center and the City of Nanaimo to create the best economic impact for the community as a whole.
- That it will begin the process of creating booking policies that will reflect the best economic impact for The City of Nanaimo and its constituents.

Initial W

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Letter Of Intent
Vancouver Island Conference Center
Page Three

- That it will support the concept of an additional Tourism Tax as an all inclusive room tax in support of the future marketing of the city and the center.

The developer, Suro Development Company, the manager Atlific Hotels and Resorts, and The City of Nanaimo hereby agree to use reasonable diligence in order to execute and deliver mutually satisfactory agreements in this matter.

Limited Liability

Other than to the extent that Atlific shall be reimbursed for its pre opening activities, plus reasonable expenses, this letter of intent shall not impose any liability on any of the parties should a final agreement not be concluded.

Confidentiality:

Both parties agree to keep all negotiations in this matter confidential and will not disclose any part of that agreement or negotiation without the prior written consent of the other. Further it is agreed that should a final agreement not be concluded, all information, documents, pro forma, marketing information shall be the property of the originator and will not be used by one for the other.

I

Agreed By:

For: Atlific Hotels and Resorts

For: The City Of Nanaimo

BY: SURO DEVELOPMENT COMPANY
AS AGENT

Signature

Signature

Date January 13, 2006

President

Loivancouverislandconference09jan06

6.11

MANAGEMENT AGREEMENT

This Management Agreement (the "**Management Agreement**") dated this ____ day of January, 2007 made between the City of Nanaimo (the "**Owner**") with a mailing address at 455 Wallace Street, Nanaimo, British Columbia, V9R 5J6, and VICC Management Company Limited (the "**Management Company**"), with a mailing address at 10100 Côte de Liesse, Montréal, Québec, H8T 1A3.

RECITALS

- A. The Owner owns the Real Property, on which the Owner's Conference Centre will be constructed;
- B. The Management Company, through its Affiliates, has years of experience in the hotel, food, beverage and special events management business; and
- C. The Owner desires to have the Management Company market, manage, control and operate the Conference Centre including food, beverage and special events and operations related thereto in conjunction with the operation and management of the Hotel. Subject to the terms and conditions contained and set forth herein, the Management Company is willing to perform such services for the Owner on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1 DEFINITION OF TERMS

1.1. Definition of Terms

The following terms when used in this Management Agreement shall have the meanings indicated:

- (a) "**Annual Operating Budget**" shall mean an annual operating budget for the Conference Centre to be prepared by the Management Company and delivered to the Owner pursuant to Section 7.3 hereof;
- (b) "**Affiliate**" has the meaning given to that term in the *Canada Business Corporations Act*;
- (c) "**BCICAC**" shall mean the British Columbia International Commercial Arbitration Centre;
- (d) "**Business Day**" means Monday to Friday, inclusive, of any week, excluding statutory holidays in the Province of British Columbia;

- (e) **"Chain Services"** shall mean services provided by the Management Company in connection with the management of the Conference Centre that can be performed better and more efficiently on a central or regional basis, rather than at each operation, including advertising, training, computer payroll and accounting and similar services;
- (f) **"Claims"** shall have the meaning ascribed to it in Section 3.1;
- (g) **"Conference Centre"** shall mean the development known as the Vancouver Island Conference Centre, to be constructed on the Real Property, including the conference facilities, auditorium and related facilities contained therein but not including any retail or other commercial premises or space to be sold or leased by the Owner at its sole discretion to a third party, or the parking facility;
- (h) **"Effective Date"** shall mean the date of execution of this Agreement;
- (i) **"Equipment"** shall mean all equipment acquired and used in connection with the operation of the Conference Centre;
- (j) **"FF&E"** shall have the meaning ascribed to it in Section 6.1;
- (k) **"Fifteen Day Period"** shall have the meaning ascribed to it in Section 2.5;
- (l) **"Fiscal Year"** shall mean the calendar year ending December 31 of every year;
- (m) **"Gross Revenues"** shall mean, with respect to any period of time, all revenues and income (from both cash and credit transactions) of any kind, net of rebates, discounts, credits or refunds to Conference Centre patrons or guests, properly accrued during the Term and derived, directly or indirectly, from the Conference Centre, its operations, and catering and other operations conducted from the Conference Centre, including without limitation, all revenues derived from the sale during such period of meeting rooms, food and beverages, sales from shops, restaurants or other income generating activities such as vending machines, exhibit or sales space, telephone services, rents or fees payable by tenants, licences and concessionaires, connected with the Conference Centre which are managed by the Management Company for the Owner, and without taking into account any costs incurred in respect of such sales, other than reserves for bad debts, and including proceeds from use and occupancy or business interruption or other loss of income, insurance but only to the extent actually collected during such period (after deduction of expenses of adjustment and collection), subsidy payments or awards from any source whatsoever, properly attributable to such period, excluding, however:
 - (i) operating receipts of tenants, licensees and concessionaires (but not excluding, as above indicated, rents, fees and charges received from such tenants, licensees and concessionaires, which shall be included in Gross Revenues);

- (ii) Federal, Provincial and Municipal excise, sales, and use tax collected directly from patrons or guests as part of the sales price of any goods, services, or displays, such as transient occupancy tax, room admission, cabaret or equivalent taxes;
 - (iii) proceeds from the sale or other disposition (other than in the ordinary course of business of the Conference Centre) of the Conference Centre or any part of the Conference Centre or any other assets used in connection with or forming part of the Conference Centre, including the Equipment;
 - (iv) proceeds from damage recoveries and casualty insurance proceeds (but not excluding, as indicated above, proceeds from the loss of income, and/or business interruption insurance which shall be included in Gross Revenues);
 - (v) proceeds from any financing, refinancing, capital contributions, or advances from the Owner;
 - (vi) expropriation awards;
 - (vii) tips, gratuities to Conference Centre personnel, or service charges levied in lieu of such gratuities;
 - (viii) any amounts paid to the Management Company or a subcontractor in reimbursement for expenses reimbursed by third parties; and
 - (ix) interest earned on any operating accounts, reserve accounts or other similar deposit accounts;
- (n) **"Hotel"** shall mean the full service Marriott hotel to be constructed on the lands adjacent to the Conference Centre;
 - (o) **"Management Indemnified Parties"** shall mean the Management Company and its affiliates, officers, directors, stock holders, agents, accountants, lawyers and employees and their respective successors and assigns;
 - (p) **"Liens"** shall have the meaning ascribed to it in Section 3.3;
 - (q) **"Management Company"** shall have the meaning ascribed to it in the Preamble, and its successors and assigns as provided hereunder;
 - (r) **"Net Operating Income"** shall mean the net operating income of the Conference Centre determined pursuant to generally accepted accounting principles, exclusive of and without reduction for:
 - (i) debt service (including principal reduction) payable with respect to any mortgage which encumbers the Conference Centre;

- (ii) depreciation and amortization;
- (iii) property and similar taxes; and
- (iv) expenses for non-routine repair, maintenance and replacement of the Conference Centre;
- (s) **"Objection Notice"** shall have the meaning ascribed to it in Section 2.5;
- (t) **"Opening Date"** means the opening date of the Conference Centre;
- (u) **"Owner"** shall have the meaning ascribed to it in the Preamble, and its successors and assigns as provided hereunder;
- (v) **"Owner Indemnified Parties"** means the Owner and its elected and appointed officials, employees, contractors, accountants, lawyers and agents;
- (w) **"Performance Threshold"** means 80% of the projected revenue for the Conference Centre set forth in the Market Feasibility Study for the Conference Centre prepared by Grant Thornton LLP and delivered to the City under cover of a letter dated September 30, 2004, excluding parking revenue and commercial lease revenue;
- (x) **"Real Property"** means the property described in Exhibit A;
- (y) **"Repairs and Equipment Reserve"** shall have the meaning ascribed to it in Section 6.2(b) hereof;
- (z) **"Reply Notice"** shall have the meaning ascribed to it in Section 2.5;
- (aa) **"Stabilized Income"** shall mean Net Operating Income of the Conference Centre following the date that is three (3) years from the Opening Date;
- (bb) **"Term"** shall have the meaning ascribed to it in Section 4.1;
- (cc) **"Termination"** and **"Terminated"** shall mean the expiration or other proper cessation of this Management Agreement strictly in accordance with the terms hereof;
- (dd) **"Uniform System of Accounts"** shall mean the Uniform System of Accounts for Hotels, as published by the Hotel Association of New York City, Inc., as amended and modified from time to time; and
- (ee) **"Working Capital"** shall mean funds which are reasonably necessary for the day-to-day operation, maintenance and repair of the Conference Centre as contemplated by this Agreement including, without limitation, amounts sufficient for the maintenance of change and petty cash funds, operating bank accounts,

receivables, payroll, prepaid expenses and funds required to maintain inventories, subject to seasonal variations, less accounts payable and accrued current liabilities.

1.2. Exhibits

The following Exhibits are attached to this Management Agreement and form part hereof and all defined terms used in this Management Agreement shall have the same meaning when used in the Exhibits hereto:

Exhibit "A" – Civic Address and Legal Description of Real Property

Exhibit "B" – Booking Policies

Exhibit "C" – Examples of Chain Services

ARTICLE 2 APPOINTMENT OF MANAGEMENT COMPANY

2.1. Appointment

The Owner hereby appoints and employs the Management Company to supervise, direct and control the management, operation and marketing of the Conference Centre and the Management Company shall have the exclusive authority and responsibility for the day-to-day management and operation of the Conference Centre for and during the Term subject to the Owner's rights under this Agreement. The Management Company accepts said appointment. Nothing in this Management Agreement shall be construed as creating (or shall operate to create), as between the Owner and the Management Company or with any third party, a relationship of partnership, joint venture, agency agreement, bailment or any relationship other than owner and independent contractor. In addition, it is specifically understood and agreed that the total and complete relationship of the Owner and the Management Company is fully described and set forth in its entirety in this Management Agreement and no other relationship, common law or otherwise, shall be implied or applied to the parties; any other relationship which may hereafter arise between the parties shall only be effective, actionable, or binding against the Management Company or its Affiliates if such agreement is reduced to written form and executed and delivered by the parties.

2.2. Termination

It is specifically understood and agreed that this Management Agreement may only be terminated:

- (a) by the Owner, in the case of gross negligence or wilful misconduct of the Management Company, as determined by arbitration pursuant to Article 13 hereof;
- (b) by the Owner, in the case of breach of this Agreement by the Management Company that the Management Company has failed to cure on sixty (60) days' written notice from the Owner or, in the event that such breach is not capable of

being cured within such sixty (60) day period, if the Management Company has not taken all commercially reasonable steps to cure such breach as soon as possible;

- (c) upon the Owner's election to terminate this Management Agreement in the event that the Conference Centre is destroyed and not rebuilt, pursuant to Section 8.1(e) hereof;
- (d) if either:
 - (i) the Management Company has not entered into a management agreement with the owner of the Hotel within one year following the Effective Date; or
 - (ii) the management agreement (or any replacement thereof) between the Management Company and the owner from time to time of the Hotel is terminated;
- (e) in the event of the failure of the Conference Centre to meet the Performance Threshold in any two consecutive Fiscal Years following the first two full Fiscal Years of operations, save and unless the Conference Centre fails to meet the Performance Threshold due to any strike, lock-out, civil commotion, invasion, rebellion, hostilities, sabotage, government regulations or controls, acts of God, inability to obtain materials or services, a material adverse change in local market economic conditions affecting the Conference Center, or for reasons otherwise beyond the control of the parties; or
- (f) in the event of the filing of a petition in bankruptcy or insolvency by the Management Company, the application by the Management Company for an arrangement for the benefit of creditors or seeking re-organization or appointing a receiver, trustee or liquidator of all or a substantial part of the assets of the Management Company, whether under the *Companies Creditors Arrangements Act* or any similar law of Canada or any province of Canada; the seizure, by writ or lawful order, of all or a substantial part of the assets of the Management Company; or the commencement of proceedings to wind up or dissolve the Management Company.

2.3. Authority

The operation of the Conference Centre shall be under the exclusive authority, responsibility and operational control of the Management Company subject to the Owner's rights under this Agreement. Subject to the Owner's rights under this Agreement, the Management Company shall have complete discretion and control and exclusive authority and responsibility for the day-to-day management of the Conference Centre, subject to the booking policies approved by the Owner free from interference, interruption or disturbance, in all matters relating to management and operation of the Conference Centre. The Conference Centre booking policies attached as

Exhibit "B" shall form part of this Management Agreement and may be amended from time to time upon the approval of the Owner.

2.4. **Council Events and Council Approved Events**

Despite the approved booking policies, the Owner may book the auditorium at the Conference Centre for Council meetings and Council approved events. The Owner will cooperate with the Management Company to minimize conflicts regarding use of the auditorium during conferences.

2.5. **Operational Policies and Practices**

If the Owner disagrees with a policy and/or practice of the Management Company, it may deliver to the Management Company a written notice (an "**Objection Notice**") which sets forth, with particularity, the policies and/or practices of the Management Company with which the Owner disagrees. In the event that the Management Company receives an Objection Notice and fails to advise the Owner, in writing, within fifteen (15) days from the date that the Management Company receives the Objection Notice (the "**Fifteen-Day Period**") of one or more matters set forth in the Objection Notice with respect to which the Management Company disagrees, the Management Company shall be deemed to be in agreement with the contents of the Objection Notice and the Management Company shall implement the matters set forth in the Objection Notice. If the Management Company furnishes written notice to the Owner during the Fifteen-Day Period (the "**Reply Notice**"), of one or more matters set forth in the Objection Notice with respect to which the Management Company disagrees and the Management Company and the Owner are unable to agree, in writing and within thirty (30) days from the date that the Owner receives the Reply Notice, concerning the resolution of the disagreements to which reference is made in the Reply Notice, the parties shall resolve such dispute pursuant to Article 13 hereof.

2.6. **Inspection by Owner**

The Owner may at all reasonable times and from time to time inspect the Conference Centre.

2.7. **No Covenants or Restrictions**

The Owner represents and warrants to the Management Company that, to the best of the Owner's knowledge and belief, as of the Effective Date there are no covenants or restrictions which would prohibit or limit the Management Company, after the necessary licenses and permits therefor have been obtained, from operating the Conference Centre including other facilities customarily a part of or related to the Conference Centre. The Owner shall upon request by the Management Company, sign promptly and without charge, applications for licenses, permits or other instruments requiring the signature of the Owner as owner of the Real Property (specifically, but not limited to, the liquor license) in connection therewith necessary for operation of the Conference Centre. All licenses and permits necessary for the operation of the Conference Centre shall be applied for and taken out by the Management Company, in the name of the Owner and to the extent required, the Management Company shall obtain any third party operator permits, all at the cost and expense of the Owner.

2.8. Services

The Management Company agrees to:

- (a) provide pre-opening services including operational support, sales and marketing, preparation for opening, and national sales support; and
- (b) manage, operate and market the Conference Centre for and during the Term to the applicable standards required by the franchise agreement for the Hotel.

2.9. Naming Rights

The Owner retains the full discretion in relation to the naming of the Conference Centre or any part of the Conference Centre, provided however that:

- (a) the Owner will advise the Management Company in advance of any proposals to enter into agreements with third parties with respect to the naming of all or any portion of the Conference Centre; and
- (b) the Owner shall not enter into any such agreements if, in the reasonable opinion of the Management Company, the naming rights granted pursuant to such agreements will interfere or conflict with agreements made between the Management Company and other parties in connection with the provision of goods and services to the Conference Centre pursuant to the terms of this Agreement.

ARTICLE 3 INDEMNITY

3.1. Indemnification of Management Company

Commencing on the Effective Date and throughout the Term, the Owner shall indemnify, defend and save harmless the Management Indemnified Parties from and against all losses, costs, liabilities, damages, termination fees, claims, suits, actions and expenses of every kind, nature and description, including reasonable legal costs (collectively, "**Claims**"), arising out of or resulting from the management, operation, marketing or use of the Conference Centre or of any other business conducted on or in connection with the Conference Centre by the Management Company or because of any act or omission of employees, with the exception of any Claims arising as a result of the negligence or wilful misconduct by the Management Company or a breach by the Management Company of the terms of this Agreement. The Management Company is not intended to nor shall it have any personal liability of whatever kind, nature or description for any Claims or claims made against the Conference Centre, save and except in the event of the negligence or wilful misconduct of the Management Company or a breach by the Management Company of the terms of this Agreement. The Management Company shall have the right through counsel of its choice at the Owner's expense, paid monthly, to control the defence or respond to any Claim made against the Management Indemnified Parties against which the Management Indemnified Parties are indemnified pursuant to this Section 3.1. Under

no circumstances shall the Management Indemnified Parties be required to suffer a liquidated loss or be obliged to seek recovery from third parties, but save for those exceptions, the Management Indemnified Parties shall use commercially reasonable efforts to mitigate their losses. This indemnification shall survive the expiration or Termination of this Management Agreement.

3.2. Indemnification of Owner

Commencing on the Effective Date and throughout the Term, the Management Company shall indemnify, defend and save harmless the Owner Indemnified Parties from and against Claims arising out of or resulting from the management, operation, marketing or use of the Conference Centre or any other business conducted on or in connection with the Conference Centre by the Management Company, to the extent that such Claims are caused by the negligence, wilful misconduct or breach of this Management Agreement by the Management Company. The Owner is not intended to nor shall it have any personal liability of whatever kind, nature or description for any Claims or claims made against the Conference Centre arising from the negligence or wilful misconduct of the Management Company or breach by the Management Company of the terms of this Agreement. The Owner shall have the right through counsel of its choice at the Management Company's expense, paid monthly, to control the defence or respond to any Claim made against the Owner Indemnified Parties against which the Owner Indemnified Parties are indemnified pursuant to this Section 3.2. Under no circumstances shall the Owner Indemnified Parties be required to suffer a liquidated loss or be obliged to seek recovery from third parties, but save for those exceptions, the Owner Indemnified Parties shall use commercially reasonable efforts to mitigate their losses. This indemnification shall survive the expiration or Termination of this Management Agreement.

3.3. Builders Liens

The Management Company shall, throughout the Term, at the cost and expense of the Owner, cause any and all builders liens and other liens for labour, services or materials alleged to have been furnished during the Term with respect to the Conference Centre, which may be registered against title to or otherwise affect the Conference Centre or the Real Property ("**Liens**"), to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Owner in the Real Property) or vacated, save and except for any Liens which arise as a result of the negligence, wilful misconduct or a breach of this Agreement by the Management Company, which shall be paid, satisfied, released or vacated by the Management Company at its expense, provided that the Management Company shall be entitled to defend against any such Liens in any proceedings brought in respect thereof, subject always to its obligations to indemnify and save harmless the Owner under Section 3.1.

ARTICLE 4 TERM

4.1. Term

The term ("Term") of this Management Agreement shall commence on the Effective Date and will be for a period of five (5) years, unless sooner Terminated pursuant to the provisions of this Management Agreement.

4.2. Subsequent Management Agreements

The Owner covenants and agrees with the Management Company that following the expiry or Termination of this Management Agreement, the Owner shall not enter into any management agreement for the Conference Centre with any party other than the Management Company, unless such party has, at such time, an existing written and binding agreement with the owner from time to time of the Hotel to provide management services for the Hotel. This covenant and agreement shall survive the expiry or earlier Termination of this Management Agreement, save and except in the event that this Agreement is Terminated pursuant to Section 2.2 hereof.

4.3. Compliance and Enforceability against Owner

The Owner represents and warrants to the Management Company that the Owner has taken all necessary steps and complied with all applicable requirements of the British Columbia *Local Government Act* and *Community Charter* in connection with entering into this Agreement and that all terms and conditions of this Agreement are fully enforceable by the Management Company against the Owner.

4.4. Enforceability against Management Company

The Management Company represents and warrants to the Owner that the Management Company has taken all necessary corporate steps in connection with entering into this Agreement and that all terms and conditions of this Agreement are fully enforceable by the Owner against the Management Company.

ARTICLE 5 COMPENSATION OF MANAGEMENT COMPANY

5.1. Management Fee

- (a) In consideration for the services performed under this Management Agreement during the Term, the Management Company from and after the Opening Date shall retain monthly as its base management fee a sum equal to Three Percent (3%) of the Gross Revenues, or Five Thousand Dollars (\$5,000.00) whichever is greater.
- (b) In consideration of the national sales and marketing services provided by the Management Company from and after the Opening Date, the Management

Company shall retain monthly an amount equal to Four Percent (4%) of ~~Gross~~ ^{Room rental revenue} Revenues, or Fifteen Hundred Dollars (\$1,500.00), whichever is greater.

- (c) In addition to the base management fee as described in Section 5.1(a), the Management Company shall receive an incentive management fee equal to Fifteen Percent (15%) on the increase in positive Net Operating Income compared to the previous year, on the Stabilized Income, beginning with the fourth fiscal year of operation.
- (d) Prior to the Opening Date, the Owner shall pay the Management Company the sum of Two Thousand, Two Hundred Dollars (\$2,200.00) per month as the fee for all Services rendered by the Management Company in connection with the Conference Centre prior to the Opening Date, together with:
 - (i) all out-of-pocket expenses incurred by the Management Company, as budgeted or approved by the Owner, such approval not to be unreasonably withheld; and
 - (ii) all costs of employees engaged for such activities, as contemplated pursuant to Section 10.2.

The Owner shall pay the foregoing amounts within 30 days following delivery of an invoice therefor by the Management Company, notwithstanding Section 10.2.

- (e) Fees are subject to adjustment in the event of an overpayment or underpayment based on an error made by the Management Company in the financial statements for the Conference Centre prepared by the Management Company pursuant to Section 7.1

5.2. Chain Services

The Management Company may furnish or cause to be furnished Chain Services to the Conference Centre. The cost of Chain Services shall be allocated by the Management Company on a fair and equitable basis among the locations benefiting from the Chain Services, which basis for allocation shall be explained in the Annual Operating Budget and will be subject to the approval of the Owner as provided herein. The cost of Chain Services shall be a deduction in determining Net Operating Income hereunder. Examples of Chain Services are set forth in Exhibit "C" hereto.

5.3. Transactions with Affiliates

The Management Company may purchase goods and services directly from or through any Affiliate and such purchasing may include payment of a fee for services, provided that such purchases are made on terms that are substantially the same as similar purchases made from or through unaffiliated third parties on an arm's-length basis and only where obtaining such services represents best value. The Management Company will disclose to the Owner the identity of any Affiliate doing business with the Conference Centre. The Management Company will furnish

the Owner, on request, evidence of its compliance with this Section 5.3. The Owner may audit the Management Company's books and records from time to time to determine the Management Company's compliance with this Section 5.3 provided that reasonable notice shall be given to the Management Company of the Owner's intention to conduct such an audit and that the audit shall be carried out at the offices of the Management Company and at the sole expense of the Owner. In the event that such an audit discloses that an Affiliate has provided services or goods in connection with the management, operation or marketing of the Conference Centre at a cost that is greater than ten percent (10%) more than the cost of similar goods or services provided by unaffiliated third parties, the Management Company shall pay all of the Owner's costs of carrying out such audit and without prejudice to any other remedy that the Owner may have at law, the Owner may direct that the Manager purchase goods and services from an alternate supplier specified by the Owner.

ARTICLE 6

REPAIRS, MAINTENANCE AND REPLACEMENTS

6.1. Repairs and Maintenance and Reserve

The Management Company shall maintain the Conference Centre in good repair and condition as a first class conference centre and shall make or cause to be made such routine maintenance, repairs and minor alterations, as it, from time to time, deems necessary. The cost of non-routine and routine repairs and maintenance, either to the buildings or fixtures, furniture, furnishings, signage, computer, electronic systems, software and any other Equipment ("FF&E") shall be paid for from Gross Revenues, Working Capital and/or in the manner described in Section 6.2. At the expiry of the Term the Management Company shall turn over to the Owner the Conference Centre and all FF&E and any other property of the Owner acquired under this Agreement in good repair and condition, reasonable wear and tear excepted.

6.2. Estimate and Reserve

- (a) The Management Company shall prepare an estimate of the expenditures necessary for:

- (i) replacements and renewals to the Conference Centre FF&E; and
- (ii) repairs to the Conference Centre buildings of the nature described in Section 6.1,

during the ensuing Fiscal Year and shall submit such estimates to the Owner at the same time it submits the Annual Operating Budget described in Section 7.3.

- (b) The Management Company shall, no sooner than the Opening Date, establish an escrow reserve account (the "**Repairs and Equipment Reserve**") in a bank account situated in the City of Nanaimo, British Columbia designated by the Owner to cover the cost of:

- (i) replacements and renewals to the FF&E of the Conference Centre; and

- (ii) repairs and maintenance to the Convention Centre building which are capitalized under generally accepted accounting principles. The Management Company shall not make any payments out of the Repairs and Equipment Reserve, except in accordance with the approved Annual Operating Budget or as otherwise approved by the City.

During each Fiscal Year, the Management Company shall transfer from the Convention Centre bank account described in Section 7.2(a) into the Repairs and Equipment Reserve, on a monthly basis, an amount equal to four percent (4%) of budgeted Gross Revenues, up to a maximum of One Hundred Thousand Dollars (\$100,000) per Fiscal Year and up to a total maximum at any time during the Term of Five Hundred Thousand Dollars (\$500,000). Subject to the foregoing limitations, at the end of each Fiscal Year, any amount remaining in the Repairs and Equipment Reserve shall be carried forward to the next Fiscal Year.

ARTICLE 7

BOOKKEEPING AND BANK ACCOUNTS

7.1. Books and Records

Books of control and accounts, which the Management Company acknowledges belong to the Owner, shall be maintained at the Conference Centre and at the office of the Management Company and shall be kept on an accrual basis and in all material respects in accordance with the Uniform System of Accounts, except as otherwise provided in this Management Agreement. The Owner may at reasonable intervals, after forty-eight hours prior notice, during the Management Company's normal business hours, examine such records at the location at which such records are maintained. Such right may be exercised through any designated agent or employee of the Owner or by any outside independent accountant designated by the Owner. Within one hundred twenty (120) days following the close of each Fiscal Year, the Management Company shall furnish to the Owner, an audited statement (at the Owner's expense and paid from Gross Revenues) in reasonable detail summarising the Conference Centre operations for such Fiscal Year. The Management Company shall provide financial statements by the 20th day of the end of each month for the previous month. If the Owner does not object within sixty (60) days, the statement shall be conclusively deemed to have been accepted by the Owner as true and correct.

7.2. Conference Centre Accounts, Expenditures

- (a) All income derived from operation of the Conference Centre shall be deposited by the Management Company in bank accounts of a bank in the City of Nanaimo designated by the Owner and approved by the Management Company, which approval shall not be unreasonably withheld. Except for reasonable petty cash funds maintained at the Conference Centre, all Conference Centre funds shall be maintained in Conference Centre bank accounts.

- (b) All payments made by the Management Company hereunder shall be made from Conference Centre bank accounts, petty cash funds, or from Working Capital provided by the Owner pursuant to Section 7.4. The Management Company shall pay all amounts to continue the Conference Centre operation and comply with all terms from such funds. The Management Company shall provide the Owner with electronic internet access to the Management Company's records with respect to all incomings and outgoings from the Conference Centre's bank accounts, provided that the Owner shall be responsible, at its cost, to provide any computer hardware required in order to obtain such access. The Management Company shall not be required to make any advance or payment to or for the account of Owner except out of such funds, and the Management Company shall not be obligated to incur any liability or obligation whatsoever for the Owner's account without assurances that necessary funds for the discharge thereof will be provided by the Owner. It is specifically understood and agreed that the Management Company shall have the absolute and unconditional right of set-off with respect to any funds of the Owner within its control hereunder to secure the payment of the Management Fee and any funds advanced by the Management Company on behalf of the Owner from the assets of the Management Company pursuant to the terms hereof. Debts and liabilities incurred by the Management Company in the ordinary course of business as a result of its operation and management of the Conference Centre pursuant to the terms hereof, whether asserted before or after the Termination or expiration of this Management Agreement, will be paid by the Owner to the extent funds are not available for that purpose from the operation of the Conference Centre and shall be expressly subject to the indemnification provisions of Section 3.1. It is specifically understood and agreed that the Management Company shall have no liability or obligation whatsoever for sums due and payable by the Owner to third parties with respect to the Conference Centre where such liabilities or obligations have been properly incurred by the Management Company pursuant to the terms of this Agreement.
- (c) In consideration of the shared services for supervision, administration and accounting provided by the Management Company pursuant to its management of the Hotel, the Management Company shall retain, from Gross Revenues, a monthly fee equal to Two Percent (2%) of the Conference Centre's Gross Revenues, which shall be paid by the Management Company to the owner of the Hotel from and after the opening of the Hotel.
- (d) After payment of all Conference Centre costs, expenses, and any additional amounts due by the Conference Centre to any person or entity and after retaining all amounts due for reserves and for a reasonable working capital retainage, taking into consideration current and future operations and seasonal fluctuations, any surplus shall be paid annually to the Owner or more frequently (to a maximum of monthly) at the Owner's request and the Management Company shall provide to the Owner a monthly statement.

7.3. Annual Operating Budget

The Management Company shall submit the Annual Operating Budget and a five year forecast to the Owner for its review by September 30th of the year prior to the year in which the Opening Date is projected to fall and, thereafter, thirty (30) days prior to the beginning of each Fiscal Year. The Annual Operating Budget for any Fiscal Year shall require the written approval of the Owner, not to be unreasonably withheld or delayed. The Annual Operating Budget shall project the estimated Gross Revenues, departmental profits, and operating profit and any Working Capital required or expenditures from the Repairs and Equipment Reserve for the forthcoming Fiscal Year for the Conference Centre, taking into account the Conference Centre market area. The Management Company shall use reasonable efforts to adhere to the Annual Operating Budget. It is understood, however, that the Annual Operating Budget is an estimate only and that unforeseen circumstances such as, but not limited to, the costs of labour, material, services and supplies, casualty, operation of law, revenue fluctuations, or economic and market conditions may make adherence to the Annual Operating Budget impracticable, and the Management Company shall be entitled to depart therefrom due to causes of the foregoing nature to a maximum of Ten Thousand Dollars (\$10,000.00) per year without obtaining the written approval of the Owner, not to be unreasonably withheld. Each five year forecast shall be an estimate of the potential financial performance of the Conference Centre based on information regarding future market conditions available to the Management Company at the time that each five year forecast is prepared. The Owner acknowledges that a five year forecast is an estimate only and shall not form the basis of any measurement of the performance of the Management Company hereunder.

7.4. Working Capital

The Owner shall provide all amounts required on account of Working Capital and shall from time to time advance, upon the request of the Management Company (but not more than monthly), any additional funds necessary to maintain the Working Capital, at levels determined by the Management Company and the Owner in connection with the maintenance, operation and repair of the Conference Centre as required from time to time, provided that the Management Company provides ninety (90) days prior written notice of any requirement for an advance of additional funds by the Owner on account of Working Capital. Working Capital so advanced by the Owner shall remain the property of the Owner throughout the Term. Upon the Termination of this Management Agreement, the Owner shall retain any of its unused Working Capital.

7.5. Operating Losses

To the extent there is an operating loss, additional funds in the amount of any such deficiency shall be provided by the Owner within ten (10) days after the Management Company has given written notice to the Owner of such operating loss (but not more than monthly). The Management Company shall provide the Owner with estimates of any operating loss quarterly and shall include any operating loss forecasted for the next quarter.

7.6. **Owner's Property**

All FF&E and any other property (including intellectual property) acquired during the Term by the Management Company from funds from the Conference Centre bank accounts, Working Capital, Repairs and Equipment Reserve, or any other amounts advanced or paid by the Owner shall be the property of the Owner.

ARTICLE 8
INSURANCE

8.1. **Property Insurance**

- (a) During the Term, the Owner shall procure and maintain such policies of insurance coverage as are reasonably required by the Management Company, the holder of any mortgage on the Real Property and the Conference Centre and any agreement to which the Conference Centre is subject to; provided, however, that the Owner shall, to the extent such insurance is available, procure and maintain at a minimum, the following insurance:
 - (i) insurance on the Conference Centre (including contents) against loss or damage by fire, lightning and all other risks covered by the usual standard extended coverage endorsements, with commercially-reasonable deductible amounts, all in an amount not less than ninety percent (90%) of the replacement cost thereof;
 - (ii) insurance against loss or damage from explosion of boilers, pressure vessels, pressure pipes and sprinklers, to the extent applicable, installed in the facility; and
 - (iii) business interruption insurance covering loss of profits and necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to elsewhere herein.
- (b) All policies of insurance required under this Section 8.1 shall be carried in the name of the Owner, the Management Company, the holder of any first mortgage on the Conference Centre and any subsequent financing approved by the Owner; any losses thereunder shall be payable to the parties as their respective interests may appear.
- (c) Subject to the terms of any agreement respecting the Conference Centre, proceeds of the insurance policies required to be carried under this Section 8.1 shall be available for repair and restoration of the Conference Centre, provided that if the Conference Centre is destroyed to 75% or more of its value above its foundations the Owner may elect not to reconstruct.
- (d) The Owner agrees to be responsible for payment of any deductible amounts of self-insured retention due after insurance has been applied on any claim or loss.

This covenant shall survive the expiry or Termination of this Management Agreement.

- (e) The Owner reserves the right to cancel this Management Agreement in the event that the Conference Centre is destroyed to the extent set out in Section 8.1(c) and not rebuilt.

8.2. **Operational Insurance**

During the Term, the Management Company shall, at the Owner's sole cost and expense and to the extent available to the Management Company, procure and maintain the following policies of insurance:

- (a) workers' compensation and employer's liability insurance as may be required under applicable laws, covering all of the Management Company's employees at the Conference Centre, with such deductible amounts and limits of liability as are generally established by the Affiliates of the Management Company at the hotels it manages;
- (b) Commercial General Liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Conference Centre, and automobile insurance on vehicles operated in conjunction with the Conference Centre, with a combined single limit of not less than Three Million Dollars (\$3,000,000) for each occurrence/annual aggregate (where applicable);
- (c) Liquor Liability Insurance;
- (d) Fidelity Bond Coverage on all employees similar to hotels or other conference centres managed by the Affiliates of the Management Company;
- (e) medical and pension benefits as required; and
- (f) such other insurance and in such amounts as the Owner in its reasonable judgement deems advisable for protection against claims, liabilities and losses arising out of or connected with the operation of the Centre.

The Owner shall be responsible for all claims or losses not covered by insurance which are not caused by the negligence, breach of contract or wilful misconduct of the Management Company, as determined by arbitration pursuant to Article 13 hereof.

8.3. **Policies and Endorsements**

- (a) Where permitted, all insurance provided under this Article 8 shall name the Management Company and the Owner as insureds. The Owner shall deliver to the Management Company the certificates of insurance required under Section 8.1 and the Management Company shall deliver the certificates of the insurance obtained by the Management Company under Section 8.2, including, respectively,

existing, additional and renewal policies and, in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies no less than five (5) days prior to the respective dates of expiration.

- (b) All policies of insurance provided for under this Article 8 shall, to the extent obtainable, have attached thereto an endorsement that such policy shall not be cancelled or materially reduced without at least thirty (30) days prior written notice to the Management Company and the Owner.
- (c) Insurance under Section 8.2 shall contain a waiver of subrogation in favour of the Owner.
- (d) All policies of insurance provided for under this Article 8 shall be with insurers properly licensed to carry on the business of insurance in British Columbia.
- (e) If either the Owner or the Management Company fails to take out and maintain the insurance required under this Article 8, the Management Company or the Owner shall be entitled to take out and maintain such insurance, all at the cost and expense of the Owner.

ARTICLE 9 TAXES AND CHARGES

All real estate and personal property taxes, levies, assessments and similar charges on or relating to the Conference Centre during the Term shall be paid, if funds are available to the Management Company, as a cost of the Conference Centre, by the Management Company, on behalf of the Owner, unless payment thereof is in good faith being contested and enforcement thereof is stayed. The Owner shall, immediately as such become available, furnish the Management Company with copies of official tax bills and assessments.

ARTICLE 10 CONFERENCE CENTRE EMPLOYEES

10.1. Employees

- (a) All personnel employed at the Conference Centre shall at all time be the employees of the Management Company and/or the employees of one or more third parties designated by the Management Company. Except as otherwise specifically provided herein to the contrary, subject to the Approved Annual Operating Budget and the organization chart approved under 10.1(b), the Management Company shall have absolute discretion to hire, promote, supervise, direct and train all employees at the Conference Centre, to fix their compensation, benefits, and, generally establish and maintain all policies relating to employment. All out-of-pocket, third party expenses of the Management Company expended for the benefit of the Conference Centre, including but not limited to travel expense, shall be reimbursed to the Management Company.

- (b) The Owner shall have the right (acting reasonably) to approve the organization chart for the Conference Centre and the appointment of the Operations/ General Manager and the Director of Sales for the Conference Centre.
- (c) Despite Section 10.1(a), compensation, benefits and other employment policies will be reasonably consistent with compensation, benefits and policies prevailing in similar employment settings in British Columbia.

10.2. Employee Costs

All costs, charges and expenses of all personnel employed at the Conference Centre, including without limitation, all compensation, benefits, severance pay and termination expenses shall be borne exclusively by the Owner and shall be paid from Gross Revenues or Working Capital. To the extent that any personnel employed by the Manager are also employed at the Hotel, the Manager shall apportion the associated costs of such employees between the Conference Centre and the Hotel on a fair and equitable basis.

ARTICLE 11 WAIVER AND PARTIAL INVALIDITY

11.1. Waiver

The failure of either party to insist upon a strict performance of any of the terms or provisions of this Management Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

11.2. Partial Invalidity

If any portion of this Management Agreement shall be declared invalid by final order, decree of judgement of a court of competent jurisdiction, this Management Agreement shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship on the Management Company or the Owner or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Management Agreement. Any invalid or unenforceable provision shall be replaced with a provision which is valid and enforceable and most nearly reflects the original intent of the invalid or unenforceable provision as agreed upon by the parties.

ARTICLE 12 ASSIGNMENT

12.1. Assignment

The Management Company shall not assign or transfer or permit the assignment or transfer of this Management Agreement without the prior written consent of the Owner; provided, however,

that the Management Company shall have the right, with the consent of the Owner (such consent not to be unreasonably withheld), to assign its interest in this Management Agreement to any Affiliate, provided, however, that such assignee agrees in writing to operate the Conference Centre pursuant to this Management Agreement, and any such assignee shall be deemed to be the Management Company for the purposes of this Management Agreement.

ARTICLE 13

DISPUTE RESOLUTION AND ARBITRATION

13.1. Negotiation and Mediation

If any dispute arises between the parties with respect to this Agreement, then, within seven (7) days of written notice from one party to the other, or within such other period as agreed to by both parties, the representatives of the parties will participate in good faith discussion in order to resolve and settle the dispute. In the event that such representatives are unable to resolve the dispute within fourteen (14) days of the first written notice, or such other time period agreed to by both parties, each party will appoint a senior representative that has not been previously involved in the matter in dispute, to attempt to resolve the dispute. If the senior representatives of the parties are unable to resolve the dispute within fourteen (14) days of their appointment, they will agree upon the selection of a qualified independent mediation practitioner versed in the resolution of commercial disputes in order to assist the parties in the resolution of the dispute, and who will attempt to so assist the parties for a period of thirty (30) days from the date of his or her appointment. Each party will bear their own costs of the formal mediation process and will share equally the general costs of mediation.

If the dispute is not settled through the process and within the time frames provided under this section, or if the parties are unable to agree upon the selection of a mediator, then unless the parties mutually agree to extend the time frame for dispute resolution provided under this section, the dispute will be referred to arbitration under Section 13.2.

13.2. Arbitration

Any dispute which is to be submitted to arbitration pursuant to the terms of this Management Agreement shall be referred to and finally resolved by arbitration, on the following basis:

- (a) the arbitration shall be conducted pursuant to the Domestic Commercial Arbitration Rules of Procedure of the BCICAC;
- (b) the arbitration shall be administered by the BCICAC;
- (c) the place of arbitration shall be the City of Vancouver, British Columbia;
- (d) the language of the arbitration shall be English and the cost of the arbitrator shall be shared equally between the Owner and the Management Company; and
- (e) the arbitrator shall be selected by mutual agreement of the Owner and the Management Company and in the event that the parties have not mutually agreed

to such selection within five (5) Business Days following the commencement of the arbitration, the arbitrator shall be selected pursuant to the Domestic Commercial Arbitration Rules of Procedure of the BCICAC.

ARTICLE 14

MISCELLANEOUS

14.1. Right to Make Agreement

Each party warrants, with respect to itself, that neither the execution of this Management Agreement nor the finalisation of the transactions contemplated hereby shall violate any provision of law or judgement, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or require any consent, vote or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken. Each party covenants that it has and will continue to have throughout the Term, the full right to enter into this Management Agreement and perform its obligations hereunder.

14.2. Consents

Wherever in this Management Agreement the consent or approval of the Owner or the Management Company is required, such consent or approval shall not be unreasonably withheld or delayed, shall be in writing and shall be executed by a duly authorised representative or agent of the party granting such consent or approval. Except to the extent otherwise provided herein, if either the Owner or the Management Company fails to respond within thirty (30) days to a written request by the other party for a consent or approval, such consent or approval shall be deemed to have been unconditionally given.

14.3. No Reliance

The Owner, as a material inducement to the Management Company to execute this Management Agreement, hereby specifically warrants and represents to the Management Company that it has acted based upon its independent professional and financial advice and has not acted in reliance on any representation made by the Management Company or its agents, employees, stockholders, officers, directors or Affiliates.

14.4. Applicable Law

This Management Agreement shall be construed under and shall be governed by the laws of the Province of British Columbia and venue for any action or proceeding related to or arising out of this Management Agreement shall be in British Columbia.

14.5. Headings/Construction

Headings of Articles and Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Articles or Sections to which they refer.

The parties acknowledge that each party and its counsel have reviewed this Management Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Management Agreement or any amendments or exhibits hereto.

14.6. Notices

Notices, statements and other communications to be given under the terms of this Management Agreement shall be in writing and hand delivered against receipt or sent by certified or registered mail, postage prepaid, return receipt requested:

- (a) To the Owner:

City of Nanaimo
455 Wallace Street
Nanaimo, BC V9R 5J6

Attn: Al Kenning

- (b) To the Management Company:

10100 Côte de Liesse
Montréal (Québec)
H8T 1A3

Attn: Robert Chartrand

Or at such other address as is from time to time designated by the party receiving the notice.

Notices shall be deemed to be given upon actual receipt or first refusal to accept delivery.

14.7. Entire Agreement

This Management Agreement, together with other writings signed by the parties expressly stated to be supplemental hereto and together with any instruments to be executed and delivered pursuant to this Management Agreement constitute the entire agreement between the parties and supersedes all prior understandings and writings.

14.8. Counterparts

This Management Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall together constitute one and the same agreement.

14.9. Costs of Enforcement

If for any reason it becomes necessary for a party to initiate any legal or equitable action to secure or protect its rights under this Management Agreement, the prevailing party shall be

entitled to recover from the non-prevailing party all costs incurred by it, including, without limitation, reasonable attorney's fees at all trial and appellate levels.

14.10. Jury Trial Waivers

The Owner and the Management Company hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation (including but not limited to, any claims, cross-claims or third-party claims) based hereon or arising out of, under, or in connection with, this Management Agreement or any document executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party. The Owner hereby certifies that no representative or agent of the Management Company or Management Company's counsel has represented, expressly or otherwise, that the Management Company would not, in the event of such litigation, seek to enforce this waiver of right to jury trial provision. This provision is a material inducement to the execution of this Management Agreement by the Management Company and shall survive during the entire Term of this Management Agreement.

IN WITNESS WHEREOF, the Owner and the Management Company have caused this Management Agreement to be executed.

CITY OF NANAIMO

By: _____
Authorized Signatory

**VICC MANAGEMENT COMPANY
LIMITED**

By:  _____
Authorized Signatory

EXHIBIT "A"

CIVIC ADDRESS AND LEGAL DESCRIPTION OF REAL PROPERTY

1. Civic Address

101 Gordon Street, Nanaimo, British Columbia

2. Legal Description

Parcel Identifier: 026-458-942

Lot A, Section 1, Nanaimo District and of the Bed of the Public Harbour of Nanaimo,
Plan VIP79754