

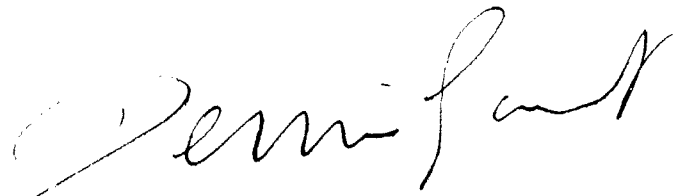
TO : CITY MANAGER DATE: 1996 NOVEMBER 07
FROM : DIRECTOR RECREATION AND CULTURAL SERVICES
SUBJECT : LICENCE AGREEMENT RENEWAL - BRITISH COLUMBIA SOCIETY OF
MODEL ENGINEERS
PURPOSE : To renew the licence agreement with the British Columbia Society of Model
Engineers for a further five-year term.

RECOMMENDATION:

1. THAT approval be given for renewal of the licence agreement with the British Columbia Society of Model Engineers for a further five year term commencing the 15th day of November 1996, and ending on the 14th day of November 2001, as outlined in the attached report.

REPORT

At its meeting of 1996 November 06, the Parks and Recreation Commission received the attached staff report on the above subject and adopted the two recommendations contained therein.



DENNIS GAUNT
DIRECTOR RECREATION
AND CULTURAL SERVICES

tc

Attachment

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cc: City Solicitor

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**SUBJECT: LICENCE AGREEMENT RENEWAL -
BRITISH COLUMBIA SOCIETY OF MODEL ENGINEERS**

RECOMMENDATIONS:

1. THAT approval be given for renewal of the licence agreement with the British Columbia Society of Model Engineers for a further five year term commencing the 15th day of November 1996, and ending on the 14th day of November 2001, as outlined in this report.
2. THAT Council be requested to concur.

REPORT

In November 1991 the City entered into a five year licence agreement with the B.C. Society of Model Engineers to facilitate the development and operation of a model railway at Confederation Park.

The miniature steam railway at Confederation Park was officially opened 1993 July 03, and continues to operate each weekend and statutory holiday between Easter and Thanksgiving. Rides for the public are provided between the hours of 10:00 a.m. and 4:00 p.m.

The original licence agreement allowed for construction of the facility and associated financial arrangements. This would be eliminated from the new agreement.

The renewal licence will continue to ensure that:

1. Further construction and development of the site is subject to City approval. (The Society has plans to construct a machine shop at their own expense, over the course of the next year to eighteen months, for which they will soon be requesting approval.)
2. The operating schedule and fees are approved by the City.
3. The Society will be responsible for repairing and maintaining the track, equipment, trains, bridges, tunnels and other facilities, and providing all janitorial services.
4. The Society will be responsible for all utility costs.
5. The City will be responsible for maintenance of the buildings, landscaping and fence.
6. Suitable liability and insurance components.

NOTE: This is not a complete list and is intended only as a summary of the key components.

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LICENCE AGREEMENT RENEWAL - MODEL ENGINEERS

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A copy of the previous agreement is attached for information.

The Society of Model Engineers continues to operate within the terms of the licence and provides not only a valuable service to the community, but a unique opportunity for residents and visitors alike.

The new five year term is for the period 1996 November 15 to 2001 November 14. It is recommended that approval be given for the renewal of the licence agreement, as outlined in this report.

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cc: City Solicitor

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LICENCE

THIS LICENCE made as of the 15th day of November, 1991

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

(hereinafter called the "Corporation")

OF THE FIRST PART

AND:

BRITISH COLUMBIA SOCIETY OF MODEL ENGINEERS
(Society No. 5434)
3651 Lynndale Crescent
Burnaby, B.C. V5A 3S5

(hereinafter called the "Engineers")

OF THE SECOND PART

WHEREAS the Engineers propose to install, operate and maintain a model steam railway and related facilities (hereinafter called the "Railway") on a portion of lands (hereinafter called the "Lands") located in Confederation Park, Burnaby, B.C. and owned by the Corporation, which Lands are shown outlined on the attached sketch marked Schedule "A";

AND WHEREAS the Engineers have requested that the Corporation grant a Licence to the Engineers to allow the construction and operation of the Railway on the Lands in accordance with this Licence;

AND WHEREAS the Corporation has agreed to grant a Licence to the Engineers upon the terms and conditions herein contained;

NOW THEREFORE in consideration of the covenants by each party to the other contained in this Licence the parties agree as follows:

1. The Corporation hereby grants a Licence to the Engineers for a five year term (the "Term") commencing on the 15th day of November, 1991 and ending on the 14th day of November, 1996 on the terms and conditions contained herein.

2. It is a condition of this Licence and the Engineers hereby agree that forthwith upon commencement of the Term it will

undertake, wholly at its own expense (subject to clause 3) and to the satisfaction of the Corporation, the construction and building of the Railway which shall include:

- landscaping
- a fire and service access road to a standard in accordance with the specifications of Building Department approved plans
- a depot (the "Depot"), being a replica of a railway station to a standard and in accordance with the specifications of Building Department approved plan number B73282; the Depot shall contain a meeting room for use by the public as provided in clause 13
- a car barn for storing trains, to a standard and in accordance with the specifications provided in building construction plan B73283
- a ticket booth to a standard and in accordance with the specifications of Building Department approved plan number B73284
- an eight (8') foot fence (the "Fence") around the entire perimeter of the Lands
- minimum of 1800 feet of track

(hereinafter collectively called the "Works").

The Engineers shall provide on-site supervision as required by the Corporation.

3. The Corporation agrees to reimburse the Engineers to a maximum amount of \$154,000 for invoices submitted for the following work (providing such work is undertaken to the satisfaction of the Corporation): site preparation, installation of Hydro, sewer, water and gas services, the Fence, and landscaping of the Lands. The balance of the said \$154,000, if any, shall be applied towards construction costs of the Depot.

4. The Engineers shall proceed to promptly apply for and obtain all necessary municipal, provincial and federal approvals for the Works and shall ensure that the Works proceed in a prompt, diligent and timely fashion so that the Railway and related facilities are fully operational and open to the public on or before the 1st day of May 1993.

5. It is the contemplation of the parties hereto that further construction and development will occur on the Lands during the Term, the particulars of which will be negotiated by the parties.

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6. The Engineers shall promptly pay all amounts for work, service and material when due and shall forthwith remove any builders' liens or other liens or other charges registered against the Lands or any buildings thereon, or any part thereof on account of the Works. And the Engineers shall not permit or suffer any charges or builders' lien or other liens for labour, compensation, services or materials to be registered against the Lands or any buildings thereof.

7. The Corporation reserves the right throughout the Term to enter upon the Lands for, inter alia, the purpose of affixing notices pursuant to the Builders Lien Act, R.S.B.C. 1979, c.40, s.13. The form, size and location of posting such notices shall be in the sole discretion of the Corporation.

8. The Engineers covenant and agree to post, and keep posted, the notices, in the form provided by the Corporation's Municipal Solicitor, in two conspicuous places on the Lands obvious to workmen, materialmen, contractors and subcontractors from the date the construction of any improvements is commenced until the date which is forty-five (45) days next following the date on which such improvements are substantially completed.

9. The Engineers shall, in any event, pay, satisfy, release and discharge same within forty-two (42) days after the day of registration of any lien against the Lands or any buildings thereon at the Land Title Office, provided however, that in the event of a bona fide dispute by the Engineers of the validity or correctness of any such claim, the Engineers shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court or otherwise satisfying the Court as to security for the claim as the Court may direct and obtaining and registering a Court Order directing cancellation of such claim, or otherwise providing security in an amount and form as the Corporation may in writing approve in order to secure cancellation and discharge of any lien. The Engineers shall at all times defend and conduct such action in a prompt and diligent manner. If the Engineers fail to promptly discharge or cause any such lien to be discharged, or fail to conduct a diligent, prompt or bona fide dispute of same, then in addition to any other rights or remedies of the Corporation, the Corporation may, but shall not be obligated to, discharge the lien by paying the amount claimed to be due into Court or directly to the lien claimant, and the amount so paid and all costs and expenses (including legal costs on a solicitor-client basis and expenses) shall be immediately due and payable by the Engineers to the Corporation.

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10. The Engineers covenant and agree with the Corporation:
- (a) That the Engineers shall, at their own expense, as a minimum period, operate for the use and benefit of the public, the Railway on Saturdays, Sundays and public holidays between Easter and Thanksgiving inclusive during each year of the Term. The Engineers shall forward to the Corporation on or before the 1st day of March of each year of the Term an operating schedule, prior to opening, which schedule shall be subject to the prior approval of the Corporation.
 - (b) The Engineers shall supply and operate sufficient trains to ensure no undue delay for persons who wish to ride the Railway.
 - (c) The Engineers may charge a fee to the public for use of the Railway but such fee shall be subject to the Corporation's prior approval.
 - (d) The Engineers shall provide adequate personnel to safely operate the train or trains and in any event shall have a minimum of two (2) attendants on any train.
 - (e) The Engineers shall ensure and maintain adequate standards of safety (including, without limiting the generality of the foregoing, adequate standards of safety in relation to the operation of locomotive steam boilers), cleanliness (including, without limiting the generality of the foregoing, ensuring that the platform and other public areas are kept in a clean, safe and tidy condition), security, fire protection and crowd control.
 - (f) That the Engineers shall provide adequate guards, fences and safety devices to ensure that the public will not contact any machinery or other mechanical devices which may occasion accident, injury or damage to persons or property coming in contact with them.
 - (g) That the Engineers shall indemnify and save harmless the Corporation from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever suffered, made, brought or prosecuted and howsoever caused, in any manner based upon, occasioned by or attributable to the execution or

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performance of this Licence by the Engineers or any action taken or thing done or maintained by virtue or in consequence hereof or omitted to be so taken, done or maintained, or the exercise or purported exercise in any manner of rights arising hereunder.

- (h) That the Engineers shall insure and keep insured while this Licence is in force, with such companies and on such terms as are acceptable to the Corporation, at the Engineers' expense, Comprehensive General Liability insurance coverage covering premises and operations liability; and Automobile Liability Insurance (owned and non-owned, or hired units); a Tenant's Legal Liability. The limits of liability for bodily injury and property damage (including Tenant's Legal Liability) shall be in such amount as is reasonably specified by the Corporation.

The Corporation shall be added as an additional named insured under the Comprehensive General Liability, Tenant's Legal Liability and Non-owned Automobile Liability Insurance.

A cross liability clause shall be made part of the Comprehensive General Liability Insurance.

All policies shall provide that they cannot be cancelled, lapsed or materially changed without at least 30 days notice to the Corporation by registered mail.

On or before March 15 of each year of the Term the Engineers shall submit to the Corporation, in a form satisfactory to the Corporation, written evidence of the current insurance policy or policies, which shall be delivered to the Corporation's Municipal Solicitor at the following address:

Legal Department
The Corporation of the District of Burnaby
4949 Canada Way
Burnaby, B. C.
V5G 1M2

Should the Engineers neglect to obtain and/or maintain insurance as aforesaid, or deliver such policy or policies to the Corporation, then it shall be lawful for

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the Corporation to obtain and/or maintain such insurance and the Engineers hereby appoint the Corporation their true and lawful attorney to do all things necessary for this purpose. All monies expended by the Corporation for insurance premiums under the provisions of this clause shall be charged to the Engineers and be payable forthwith on demand.

- (i) That the Engineers shall not erect any signs on the Lands without the prior written approval of the Corporation and the approval of any other authorities if appropriate.
- (j) That the Engineers shall obtain at their own expense any permits, licences, inspections and approvals required for their operations from any Federal, Provincial or Municipal Governments.
- (k) That the Engineers shall, at their own expense, carry out all repairs and maintenance of the tracks, equipment, rolling stock, bridges, tunnels and other facilities, when needed, and at their own expense, and to the satisfaction of the Corporation; without restricting the generality of the foregoing, the Engineers shall, at least once a year, inspect the tracks, equipment, rolling stock, bridges, tunnels and other railway facilities and shall promptly provide written confirmation thereof to the Corporation on or before April 1, of each year of the Term.
- (l) The Engineers shall keep adequate financial records and shall provide to the Corporation, in a form satisfactory to the Corporation, a financial statement as of the 15th day of January of each year of the Term indicating the revenue and expenses of the Engineers relating to their operations under this Licence, and shall make all financial records available for audit by the Corporation.
- (m) That the Engineers shall not operate any public address system except at the times and in the manner and volume as authorized by the Corporation.

11. The Engineers shall throughout the Term, at its own expense, provide all janitorial services, clean all washrooms,

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windows of buildings, sweep the sidewalks, remove garbage, sweep and mop station floors, etc. The Engineers shall construct and maintain a residential suite for a caretaker.

12. The Engineers may operate a retail concession on the Lands provided that the quantity, price and kind of merchandise is subject to the prior approval of the Corporation.

13. The Engineers shall construct and maintain a meeting room to accommodate no less than 101 persons in the Depot. The meeting room shall be available for use by the general public in accordance with a schedule determined between the Corporation and the Engineers.

14. In recognition of the proximity of the Lands to residential dwellings, the Engineers undertake to observe all requirements of the Corporation in respect of steam, whistles, bells, engines and other sources of noise and shall, at the direction of the Corporation, desist or modify their activities regardless of whether such activities are within accepted noise levels of municipal bylaws or other Acts or regulations. The foregoing is subject to any safety requirements in respect of the operation of the railway.

15. The Corporation shall maintain the building structure of all buildings; the Corporation shall maintain the natural and planted landscaping and the Fence.

16. The Engineers shall pay all utilities including electricity, water and telephone. The Engineers shall, unless the Lands and improvements are declared exempt from property taxes, also pay all property taxes in respect of the Lands and in the event that the Lands have not been entered on the tax roll or for any other reason, taxes, rates or assessments are not formally levied, the Engineers shall pay to the Corporation the monetary equivalent of the said taxes, rates or assessments as if they had been formally levied.

17. The Engineers accept and acknowledge that it is a condition of this Licence that the Lands shall be used for the purpose of operating a model railway which includes use of same by the public.

18. It is mutually understood, agreed and declared by and between the parties hereto:

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- (a) That this Licence is not assignable or transferable by the Engineers.
- (b) That in the event of the Engineers at any time not complying, in the opinion of the Corporation, with the provisions of this Licence, or in case the Engineers shall not well and truly perform and observe all the stipulations, covenants and agreements on its part in these presents contained or in the case of bankruptcy or insolvency of the Engineers or in the case of their entering into any arrangement or composition with their creditors or in case the Engineers shall endeavour to assign this Licence or any part thereof, then in all, either or any of such cases the Corporation may thereupon cancel and terminate this Licence by giving the Engineers thirty (30) days written notice, but without prejudice to the Corporation's remedies in respect of any breach. In the event that the Corporation becomes aware of a potentially hazardous situation of an emergency nature, it may at its sole discretion order the Railway operations to cease forthwith. In the event that the Corporation becomes aware of a potentially hazardous situation of a non-emergency nature, it shall consult with the Engineers' executive with regard to the necessary remedial measures or the necessity to cease the railway operations. No determination as aforesaid shall give rise to any claim against the Corporation by the Engineers on account of or arising out of such termination.
- (c) The Engineers shall within ninety (90) days of the expiry or cancellation of this Licence remove equipment, track and rolling stock owned by the Engineers from the Lands at their own expense, and in the event of their failure to do so the Corporation may remove such equipment and charge the Engineers for any of the expense involved. All buildings and the Fence shall remain the property of the Corporation.
- (d) That any notice required or desired to be given under or in respect of any of the terms of this Licence may be given by mailing the same in a pre-paid registered envelope addressed to the party to whom the same is to be given as follows:

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If given to the Corporation:

The Corporation of the District of Burnaby
4949 Canada Way
Burnaby, B. C. V5G 1M2

If given to the Engineers:

Secretary
British Columbia Society of Model Engineers
3651 Lynndale Crescent
Burnaby, B.C. V5A 3S5

or to such other address as either party may notify the other in writing, and any notice so given shall be deemed to have been given when in the ordinary course of post it should have been delivered.

Wherever the singular or masculine are used in this Licence they will be construed as meaning the plural or feminine or the body corporate when the context or the parties hereto so require.

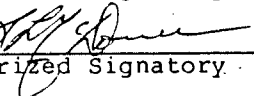
IN WITNESS WHEREOF the parties hereto have caused these presents to be executed as of the day and year first above written.

THE CORPORATE SEAL OF THE CORPORATION OF THE DISTRICT OF BURNABY WAS HEREUNTO AFFIXED IN THE PRESENCE OF:


Municipal Clerk-Authorized Signatory

THE SEAL OF BRITISH COLUMBIA SOCIETY OF MODEL ENGINEERS WAS HEREUNTO AFFIXED IN THE PRESENCE OF:


Authorized Signatory


Authorized Signatory

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