

Bill No. 250
2012

By-law No. A.-

A By-law to approve the Amending Agreement to the Joint Venture Agreement between The Corporation of the City of London and Western Fair Association; and to authorize the Mayor and City Clerk to execute the Amending Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS The Corporation of the City of London and Western Fair Association entered into a Joint Venture Agreement dated September 1, 2000, regarding the Western Fair 4-Pad Arena Complex;

AND WHEREAS The Corporation of the City of London and Western Fair Association wish to amend the Agreement;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Amending Agreement to the Joint Venture Agreement entered into between The Corporation of the City of London and Western Fair Association attached as Schedule "A" to this by-law, is authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the Amending Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council June 12, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading - June 12, 2012
Second Reading - June 12, 2012
Third Reading – June 12, 2012

SCHEDULE "A"

THIS AMENDING AGREEMENT made as of June 12, 2012.

B E T W E E N:

WESTERN FAIR ASSOCIATION
(the "WFA")

- and -

THE CORPORATON OF THE CITY OF LONDON
(the "City")

WHEREAS the WFA and the City entered into a Joint Venture Agreement dated September 1, 2000 regarding the Western Fair 4-Pad Arena Complex (the "Agreement");

AND WHEREAS the WFA and the City wish to amend the Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants contained in the Agreement, and subject to the terms and conditions of this Amending Agreement, the parties agree as follows:

1.0 AMENDMENTS

1.1 The following new subsection 1.1(k.1) is added:

"1.1(k.1) "**Internally Restricted Surplus**" means the portion of the Joint Venture's surplus that is restricted by the Joint Venture for the purpose of financing capital repairs and capital expenditures to the Arena;"

1.2 Subsection 1.1(t) is deleted and replaced with the following new subsection 1.1(t):

"1.1(t) "**Reserve Fund**" shall mean the internally restricted surplus established by the Joint Venture for the purposes of financing capital maintenance, capital repairs and capital expenditures to the Arena;"

1.3 Subsection 1.2(c) is deleted and replaced with the following new subsection 1.2(c):

"1.2(c) any reference herein to generally accepted accounting principles shall mean accounting standards for not for profit organizations established by the Canadian Institute of Chartered Accountants, or any successor organization, which are of general application in the Province of Ontario, from time to time."

1.4 Section 2.8 is deleted and replaced with the following new section 2.8:

"2.8 Auditors.

The auditors for the Joint Venture shall be selected by the unanimous consent of the Management Committee."

1.5 Section 3.3 is deleted and replaced with the following new section 3.3:

"3.3 Appointment of Management Committee

WFA and the City shall appoint their representatives to the Management Committee and an alternate for each representative in the event that a representative is unable to attend a scheduled Management Committee meeting. WFA and the City expect that the members of the Management Committee will bring operational, financial or program expertise that will facilitate the efficient operations of the Arena complex. Any person proposed as a Joint Venture Partner's nominee to the Management Committee or as an alternate representative shall require the prior approval of the other Joint Venture Partner, such approval not to be unreasonably withheld. Notwithstanding the foregoing, any person who has been accepted as a representative or an alternative representative shall not require the approval of the other Joint Venture Partner if such

person is proposed to sit as an alternative representative or primary representative, as the case may be. A Joint Venture Partner may remove one or more of its representatives or alternates immediately upon written notice given to the other Joint Venture Partner. Until the formal appointment of the Management Committee by either Joint Venture Partner, the function of the Management Committee may be carried out jointly by a duly authorized representative or representatives of each Joint Venture Partner.”

1.6 Section 8.1 is deleted and replaced with the following new section 8.1:

“8.1 Establishment of Reserve Fund

The Management Committee shall establish a Reserve Fund as an asset of the Joint Venture intended to provide the means to effect capital repairs and replacements to the Arena, its plant and equipment. The rate of contribution to the Reserve Fund, once established, shall only be changed with the consent of the Joint Venture Partner. The rate of contribution is hereby established at an amount determined by the Management Committee, which will not be less than 1% annually of the Construction Costs, excluding site remediation and soft costs. The Reserve Fund shall be fully funded and invested in accordance with prudent investment guidelines established by the Management Committee from time to time. The Funding of the Reserve Fund shall commence for the fiscal year of the Joint Venture immediately following the third year of operation of the Arena, which is expected to be the fiscal year commencing July 1, 2004.”

1.7 Section 9.1 is deleted and replaced it with the following new section 9.1:

“9.1 Discretion of Management Committee

(a) Any distribution of Joint Venture Profit shall be determined using the following formula:

Distribution shall equal the net income as reported in the financial statements plus amortization minus principle debt repayments.

(b) Prior to any distribution, an amount agreed upon by the Management Committee shall be transferred to the Reserve Fund. Such amount shall not exceed the amount available for distribution. The remaining amount, if any, shall then be distributed to the Joint Venture Partners based on their equity interests as set out in section 2.2.”

1.8 Schedule “B” subsection 4.1(i)(ii) is deleted and replaced with the following new subsection 4.1(i)(ii):

“4.1 (i)(ii) statements of operations prepared in accordance with generally accepted accounting principles applied on a consistent basis for not for profit organizations.”

2.0 AGREEMENT BINDING

2.1 Except as amended by this Amending Agreement, the Agreement shall remain binding and in full force and effect.

2.2 This Amending Agreement shall be binding on the parties and their respective successors and assigns.

3.0 EXECUTION

3.1 The City and the WFA acknowledge that it has each read this Amending Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the City has signed this Amending Agreement by its authorized representatives and the WFA has hereunto affixed its corporate seal under the hands of its authorized officers.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON

Date:

Joe Fontana, Mayor

Catharine Saunders, City Clerk

WESTERN FAIR ASSOCIATION

Date:

Per:
Name:
Title:

Date:

Per:
Name:
Title:
I/We have authority to bind the Corporation.