



REQUEST FOR PROPOSAL NO. PS10066

CONSULTANT SERVICES FOR THE DESIGN AND CONSTRUCTION OF THE  
NON-MOTORIZED BOATING FACILITY AND FERRY TERMINAL

Proposals will be received in the City of Vancouver's ("City's") Purchasing Services Office, 3rd Floor, Suite #320, East Tower, 555 West 12th Avenue, Vancouver, British Columbia, Canada, V5Z 3X7 prior to the Closing Time: 3:00:00 P.M., Purchasing Services Office Clock Time (as defined in Note 2 below), Tuesday, June 8, 2010 and publicly opened and registered at 11:00:00 A.M. Wednesday, June 9, 2010.

**NOTES:**

1. Proposals are to be submitted in sealed envelopes or packages marked with the Proponent's Name, the RFP Title and Number.
2. Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the clock used by the City's Purchasing Services Office for this purpose.
3. The City's Purchasing Services Office is open on Business Days from 8:30 AM to 4:30 PM Vancouver Time and closed Saturdays, Sundays, and holidays.
4. DO NOT SUBMIT BY FAX OR E-MAIL.

All queries related to this RFP shall be submitted

in writing to the attention of:

Jim Lowood, C.P.P.

Contracting Specialist

FAX: 604.873.7057 E-MAIL: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca)

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PART A - INTRODUCTION

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1.0 Overview

- 1.1 This Request for Proposal (“RFP”) identifies a business opportunity for the successful Proponent to provide consulting services related to the design and construction of the Southeast False Creek (“SEFC”) Non-Motorized Boating Facility and Ferry Terminal, as further described in Section 2.2. The City of Vancouver (“City”) is requesting Proposals from interested firms with expertise in design and construction of boating facilities and terminals. The successful Proponent’s work on this project will consist of but not be limited to consultant services for:
- a) Conceptual Design;
  - b) Detailed Project Design;
  - c) Assisting with City staff in the preparation of future tenders ; and
  - d) Assisting City staff throughout the tender and construction process.
- 1.2 The City will consider Proposals that meet either all or part of the requirements (the “Requirements” as described in Schedule A - Requirements). The successful Proponent will be the Proponent who offers the best value, which will be assessed as a combination of experience, pricing, scope, duration and level of services offered, and proposed innovative design.
- 1.3 Proponents are encouraged to pre-read this RFP and submit any questions relating to this RFP document to the contact person listed on the cover page .
- 1.4 The City will in good faith attempt to give accurate verbal responses to any questions but Proponents are advised that they may only rely on the formal written response/summary to be issued by the City. The formal written response/summary will be issued by the City as soon as possible and will be posted to the City’s website as outlined in Part B - Instructions to Proponents.

2.0 Background

2.1 The City of Vancouver

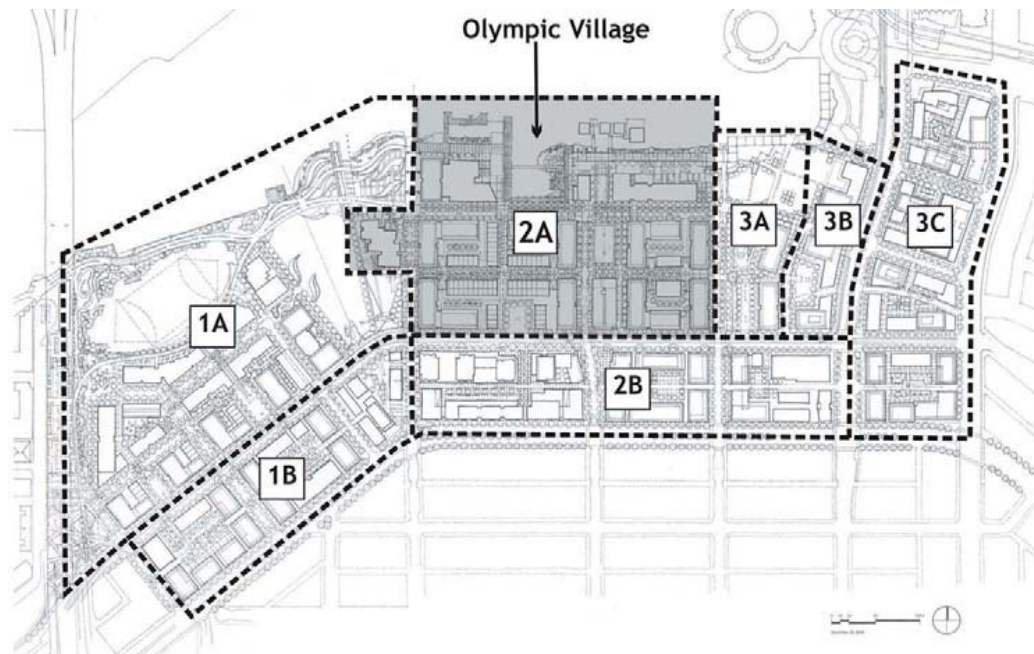
The City of Vancouver, with a population of approximately 560,000 lies in a region of more than two (2) million people. Vancouver is the largest city in the province of British Columbia and the third largest metropolitan area in Canada. As the main western terminus of Canada’s transcontinental highway and rail routes, as well as home to the Port of Vancouver, Vancouver is the primary city of western Canada and one of the nation’s largest industrial centres.

Vancouver is consistently rated as one of the most liveable cities in the world and was host city of the 2010 Olympic and Paralympic Winter Games.

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- 2.2 The SEFC is an eighty (80) acre site of former industrial land on the south shore of False Creek. The City owns approximately fifty (50) acres of the site located in areas 1A, 2A and 3A, indicated on the plan below.



The City created the SEFC Project Office (the “Project Office”) to facilitate construction of the City owned land. When fully occupied, SEFC will be a complete new community with 12,000 to 16,000 residents, parks, a community centre, childcare, an elementary school, and commercial centre.

SEFC Area 2A was used to temporarily house athletes and officials during the 2010 Olympic and Paralympic Winter Games (the “Olympic Games”).

The SEFC Public Realm Plan (the “Public Realm Plan”) was approved by Council on July 20, 2006. The Public Realm Plan provides a conceptual framework to guide the detailed design of the public realm in SEFC. This plan is available at: <http://vancouver.ca/commsvcs/southeast/documents/pdf/publicrealm.pdf>

### 2.3 Purpose

The City is planning to construct the Non-Motorized Facility and Ferry Terminal (collectively, the “Project”) prior to the 2011 boating season. To ensure this timeline is met, a full range of consulting services are required for the Project, from the conceptual design through design development to construction drawings and construction review. The total Project development cost is estimated to be approximately one million dollars (\$1,000,000).

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2.4 Site Description

Non-motorized, human-powered recreational boating is a growing sport in False Creek. Existing facilities are operating at capacity and a new SEFC boating Center is desired to service existing and new demand. The boating center is anticipated to add diversity of boating in SEFC, allow boaters easy access to facilities, cover all spectrums of boating from beginners to advanced, and animate the waterfront.

The SEFC boating center has two parts: (1) the non-motorized, human powered recreational boating facility (the “Non-Motorized Boating Facility”), currently adjacent to a newly constructed waterfront and a community center which is under construction; and (2) the water taxi float and shelter (the “Ferry Terminal”), which is located north of a plaza (currently under design) extending from the waterfront to the Salt Building, and east of a newly constructed inlet.

The Non-Motorized Boating Facility and Ferry Terminal will be located on a section of newly constructed seawall and will connect to existing piers. Please see “Southeast False Creek Concept Design Plan” (Appendix 6) for more information.

3.0 Objectives

3.1 The purpose of this RFP is to select a Proponent(s) with the capability and experience to efficiently and cost-effectively supply the RFP Requirements as set out in Schedule A - Requirements. The Requirements stated in this RFP are as envisioned by the City at the time of writing, but may change or be refined in the course of the evaluation and award process.

4.0 Contractual Requirements

4.1 A sample of the City’s Professional Services Agreement outlining the City’s contractual requirements for payment, deliverables, professional liability, insurance, WorkSafeBC coverage and compliance, change orders, and all other relevant business issues and risk allocations is attached as Appendix 4. Proponents are requested to review and confirm as part of their Proposal that they are agreeable to and can meet the requirements of all of the terms of the sample Professional Services Agreement or if they consider any part of the sample Professional Services Agreement to be inconsistent with their Proposal, to suggest alternative contractual language in Schedule C - Deviations and Variations.

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NOTE: The definitions set out in Attachment A - Legal Terms and Conditions of the Proposal Form (Part C) apply throughout this RFP, including this Part B of this RFP, except where otherwise expressly stipulated or the context otherwise requires.

1.0 Administrative Requirements

- 1.1 It is the sole responsibility of all Proponents to check the City's website at: <http://www.vancouver.ca/fs/bid/bidopp/openbid.htm> regularly for amendments, addenda, and questions and answers to this RFP.
- 1.2 Proponents are to submit their Proposal in accordance with instructions identified on the cover page and as provided within this Part B.

2.0 Conduct of RFP - Inquiries and Clarifications

- 2.1 The City's Director of Supply Management will have conduct of this RFP, and all communications are to be directed only to the contact person named on the cover page.
- 2.2 It is the responsibility of all Proponents to thoroughly examine these documents and satisfy themselves as to the full requirements of this RFP. Inquiries are to be in written form only, and e-mailed to [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca) or faxed to 604.873.7057 to the attention of the contact person shown on the cover page no less than five (5) Business Days prior to the Closing Time. If required, an addendum and/or amendment will be issued and posted on the City's website.

3.0 Contract Requirements

- 3.1 The term of the Contract shall be as per timeline set out in the sample agreement attached as Appendix 4.
- 3.2 Where the head office of the successful Proponent is located within the City and/or where the successful Proponent is required to perform any work at a site located within the City, the successful Proponent is required to have a valid City of Vancouver business license prior to Contract execution.
- 3.3 The successful Proponent will be requested to enter into a Contract substantially in accordance with the sample agreement provided as Appendix 4. If any of the terms set out in the sample agreement are unacceptable to the Proponent, the Proponent should identify such terms and provide suggested alternatives in its Proposal Form (Schedule C - Deviations and Variations).
- 3.4 While the City is not obligated to accept any alternatives, deviations or variations to the sample Professional Services Agreement, all suggested alternatives will be considered during the evaluation process, but may or may not be acceptable to the City.

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4.0 Pricing

- 4.1 Prices quoted are to be exclusive of applicable taxes, except where expressly requested.
- 4.2 Pricing shall be held firm for the term of the Contract, unless otherwise expressly agreed to by the City.
- 4.3 Prices are to be quoted F.O.B. Destination, including freight, unloading at destination, import duties, brokerage, royalties, handling, overhead, profit and all other costs included.
- 4.4 Prices are to be quoted in Canadian currency.

5.0 Consortium Proposals

- 5.1 The City will consider a Proposal from two (2) or more persons or companies having no formal corporate links who wish to form a joint venture or consortium solely for the purpose of submitting a Proposal in response to this RFP, provided they disclose the names of all members of the joint venture or consortium and all members sign the Proposal Form. While the City will consider such a consortium Proposal, the City has a strong preference for Proposals submitted by a single firm who would act as a prime contractor and then supplies any required specialist expertise via Sub-Consultants or sub-consultants, as the case may be.
- 5.2 A single person or company is to be identified as the Key Contact Person on the Proposal Form (Part C), and be prepared to represent the consortium to the City. The Key Contact Person will serve as the primary contact and take overall responsibility for all communications with the City during the Proposal submission, evaluation, and any negotiation process.
- 5.3 Consortium Proposals are to include proposed contract language describing each consortium member's roles and responsibilities and the proposed legal contract structure.
- 5.4 The City reserves the right to accept or reject any consortium as proposed or choose to negotiate a contract with individual consortium members separately, or to negotiate for the selection of one consortium member as a prime contractor with the other members acting as Sub-Consultants. Each component of the consortium Proposal should be priced out individually.

6.0 Submission of Proposal

- 6.1 Proponents are to submit five (5) hard copies of their Proposal in three-ring binders, with each section tabbed and including all accompanying schedules, appendices and addenda each binder. Proponents should also submit one (1) electronic copy of their Proposal in the same format described above on CD. All

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copies are to be submitted in a sealed envelope or package marked with the Proponent's name, the RFP title and number, prior to the Closing Time set out on the date and at the location shown on the title page of this RFP.

- 6.2 Only the English language may be used in responding to this RFP.
  - 6.3 Proposals received after the Closing Time or in locations other than the address indicated, may or may not be accepted and may or may not be returned.
  - 6.4 Amendments to a Proposal are to be submitted in writing in a sealed envelope or package, marked with the Proponent's name and the RFP title and number.
  - 6.5 Proposals may be withdrawn at any time before or after the Closing Time and are to be withdrawn by written notice delivered to the office of the Purchasing Office, #320-555 West 12<sup>th</sup> Ave., East Tower, V5Z 3X7 and signed by the authorized signatory for the Proponent.
  - 6.6 All costs associated with the preparation and submission of the Proposal, including any costs incurred by the Proponent after the Closing Time, will be borne solely by the Proponent.
- 7.0 Format of Proposal
- 7.1 Unnecessarily elaborate Proposals, beyond that sufficient to present a complete and effective response, are not required and unless specifically requested, the inclusion of corporate brochures and narratives are discouraged.
  - 7.2 Proponents should complete all forms included in this RFP, attaching any additional appendices that may be required. Proposals are to be arranged as follows:
    - a) Title Page: The title page will show the RFP title and number, Closing Time and Date, Proponent name, address, telephone number and the name and title of the contact person.
    - b) Executive Summary: A short summary of the key features of the Proposal demonstrating the Proponent understands the scope of the Requirements.
    - c) Proposal Form: The Proponent is to complete the Proposal Form and attached Attachment A - Legal Terms and Conditions included in this RFP in accordance with the instructions.
    - d) Required Documents: The Proponent is to attach any required documents described in Section 1.0 - Required Documents of the Proposal Form.

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- e) Schedules: The Proponent is to complete and provide the information within the respective schedules included in this RFP. If additional space is required to respond to the requirements as outlined, then additional pages can be attached.
- f) Added Value: Proponents may submit Added Value services above and beyond the scope of work and are to identify same as additional appendices within their Proposal.

8.0 Bid and Performance Security

- 8.1 Since no irrevocable offer is required under this RFP, no bid security is required.

9.0 Conflict of Interest

- 9.1 Proponent's are to ensure that:

- a) any and all conflicts or potential conflicts;
- b) any and all collusion, or appearance of collusion; and
- c) any and all corporate, individual and other entities affiliated with the Proponent who are registered as lobbyists under any lobbyist legislation in any jurisdiction in Canada or the Untied States of America, are fully and properly disclosed in Section 6.0 of Part C - Attachment A - Legal Terms and Conditions.

- 9.2 Failure to disclose this information may result in the rejection of the Proposal, the associated entity's Proposal, and/or the immediate cancellation of any contract should one be awarded in reliance on the information contained in the submitted Proposal.

- 9.3 If any director, officer, employee, agent or other representative of a Proponent makes any representation or solicitation to any officer, employee, agent or elected official of the City with respect to its Proposal, whether before or after the submission of the Proposal, the City will automatically disqualify such Proponent.

10.0 Opening of Proposals

- 10.1 The City reserves the right to open all Proposals in a manner and at the time and place determined by the City.

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11.0 Evaluation of Proposals

- 11.1 Proposals will be evaluated by representatives of the City on the basis of the overall best value to the City, based on quality, service, price and any other relevant criteria set out herein including, but not limited to:
- a) the Proponent's ability to meet the Requirements and the cost /expense for same;
  - b) proven experience in delivering a similar scope of work, including experience in designing boating facilities;
  - c) past experience with Burrard Environmental Review Committee;
  - d) past experience in working with Municipal, Provincial and/or Federal departments and agencies;
  - e) past experience in building dialogue and engagement with community stakeholder groups, including but not limited to consultation and consensus building;
  - f) the Proponent's ability to deliver the Requirements when and where required;
  - g) the proposed plan of approach and work schedule;
  - h) compliance with the City's insurance requirements;
  - i) the Proponent's and its Sub-Consultant's business and technical reputation and capabilities; experience and where applicable, the experience of its personnel, financial stability, track record, and references of current and former customers;
  - j) environmental issues considered by the Proponent;
  - k) quality of Proposal, including any innovative concepts; and
  - l) any other criteria set out in the RFP or otherwise reasonably considered relevant.
- 11.2 The City may elect to short list Proponents in stages as deemed necessary.
- 11.3 Short-listed Proponents may be asked to provide additional information or details for clarification, which may include attending interviews, making a presentation, supplying sample drawings, performing demonstrations, and/or furnishing additional technical data.
- 11.4 Prior to approval of a Proposal, the City must be satisfied as to the Proponent's financial stability. Proponents may be asked to provide annual financial reports

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or a set of financial statements prepared by an accountant and covering the Proponent's last two (2) fiscal years.

- 11.5 The City may request that any or all Sub-Consultants of the Proponent undergo the same evaluation process.

**12.0 Proposal Approval**

12.1 Proposal approval is contingent on funds being approved and the Proposal being approved by the City. Only then may the successful Proponent and the City proceed to settle, draft and sign the necessary legal agreement.

12.2 The City is not under any obligation to approve any Proposal and may elect to terminate this RFP at any time.

12.3 Notwithstanding any other provision in the RFP documents, the City has in its sole discretion, the unfettered right to:

- a) accept any Proposal;
- b) reject any Proposal;
- c) reject all Proposals;
- d) accept a Proposal which is not the lowest Proposal;
- e) accept a Proposal that deviates from the Requirements, Specifications or the conditions specified in this RFP;
- f) reject a Proposal even if it is the only Proposal received by the City;
- g) accept all or any part of a Proposal; and
- h) split the Requirements between one or more Proposals.

**13.0 Quantities - Intentionally Omitted**

**14.0 Brand Names - Intentionally Omitted**

**15.0 Alternate Solutions**

15.1 If in addition to proposing services which meet the Requirements, the Proponent wishes to offer an alternative, the alternative solution is to be submitted separately as an appendix within the Proposal.

**16.0 Environmental Responsibility**

16.1 The City is committed to preserving the environment. Proponents are to provide environmentally sensitive products or services wherever possible.

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Where there is a requirement that the Consultant supplies materials, and where such materials may cause adverse effects, the Proponent is to indicate the nature of the hazard in its Proposal.

- 16.2 The Proponent is to advise the City of any known alternatives or substitutes for such materials that would mitigate the effects of any adverse conditions on the environment.

17.0 Freedom of Information and Protection of Privacy Act

- 17.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's Consultants, Sub-Consultants or Contractors to protect all personal information acquired from the City in the course of providing any service to the City.

18.0 Confidentiality

- 18.1 Proponents should note that upon submitting their Proposal Form, they will be legally bound to certain confidentiality obligations not to disclose any City information without the City's prior written consent.
- 18.2 This RFP is the property of the City. Copies may not be made or distributed without the prior written approval of the City's Director of Supply Management.

19.0 Advertising

- 19.1 The approval of any Proposal and the signing of an Agreement does not allow a Proponent to advertise its relationship with the City, nor with the 2010 Olympics, in any way without the City's prior written authorization.

20.0 Non-Resident Withholding Tax

- 20.1 Please note that the *Income Tax Act* (Canada) requires that payments to non-residents for any services performed in Canada are subject to a Non-resident Withholding Tax of a specified percentage (depending on residency of the contractor). Exemption from this withholding tax is available in some circumstances, but the non-resident must apply directly to the Canada Revenue Agency ("CRA") at least thirty (30) days before commencing the service.

21.0 Legal Terms and Conditions

- 21.1 No part of Part A - Introduction, this Part B - Instructions to Proponents, nor Part C - Special Conditions will be legally binding on the City or Proponent(s). All legal terms and conditions of the process contemplated by this RFP are contained in Part D - Proposal Form, including without limitation, Attachment A - Legal Terms and Conditions to the Proposal Form.

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PART C - PROPOSAL FORM**

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Proponent's Name: \_\_\_\_\_  
"Proponent"

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Cheque Payable/Remit to Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_ E-mail: \_\_\_\_\_

GST Registration No.: \_\_\_\_\_ Incorporation Date: \_\_\_\_\_

City of Vancouver Business License Number: \_\_\_\_\_  
*(If your office is located in Vancouver or N/A if not applicable)*

WorkSafeBC Account Number: \_\_\_\_\_

Dunn and Bradstreet Number: \_\_\_\_\_  
*(or N/A if not applicable)*

*Attach additional pages immediately behind this page for Sub-Consultants, if applicable.*

To the City of Vancouver Supply Management Department,

The Proponent, having carefully examined and read the RFP, including the sample Professional Services Agreement and its Appendices (if any), now submits the following Proposal:

**1.0 Required Documents**

If the documents listed below do not accompany the Proposal at the time of opening, the Proposal may or may not be put aside and given no further consideration.

Description	Required	Received
Certificate of Existing Insurance	Yes	
Letter from Insurer/Broker indicating Proponent able to supply completed Appendix 2 and Appendix 3 upon receipt of Award	Yes	

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To be initialled at Proposal Opening:

\_\_\_\_\_  
Director, Supply Management or designate

\_\_\_\_\_  
Witness

2.0 Proponent's Declaration and Acknowledgment

The undersigned Proponent confirms that it has read and agreed to the Legal Terms and Conditions attached as Attachment A and agrees to be bound by the same.

IN WITNESS TO THE ABOVE, the Proponent has executed this Proposal Form and submits same with the attached Schedules:

\_\_\_\_\_  
Authorized Signatory for the Proponent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title (*please print*)

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PART C - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

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1.0 LEGAL TERMS AND CONDITIONS OF PROPOSAL PROCESS

1.1 Application of These Terms and Conditions

These legal terms and conditions set out the City's and Proponent's/Sub-Consultants' legal rights and obligations only with respect to the Proposal process. In no event will the legal terms and conditions of this Attachment A apply to the Contract formed between the City and the Consultant following the signing of the Contract (if any).

1.2 Definitions

In this Attachment A, the following terms have the following meanings:

- a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- b) "Contract" means any legal agreement, if any, entered into between the City and the successful Proponent following the conclusion of the RFP process, approval of the Contract by City staff, and the settlement, execution and delivery of same by each party to the Contract.
- c) "Consultant" means the successful Proponent who has entered into the contract with the City.
- d) "Losses" means in respect of any matter all
  - i) direct or indirect, as well as
  - ii) consequential,claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- e) "Project" means the RFP "No. P10066 Consultant Services for the Design and Construction of the Non-Motorized Boating Facility and Ferry Terminal".
- f) "Proponent" means the legal entity(ies) who has (have) signed and delivered this Proposal Form, and "Proponent" means any Proponent responding to the Instructions to Proponents, excluding or including the Proponent, depending on the context.
- g) "Proposal" means the package of documents consisting of this Proposal Form, as well as all Schedules, once completed and submitted to the City by the Proponent, and "Proposal" means any Proposal submitted by

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PART C - ATTACHMENT A - LEGAL TERMS AND CONDITIONS

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any other Proponent, excluding or including the Proponent, depending on the context.

- h) “RFP” means the documents issued by the City as Request for Proposal No. PS10066 including all addenda.
- i) “Services” means the services and work noted in Section 6.0 Project Tasks and Section 7.0 Communications of Schedule A - Requirements, that the Consultant will provide under the Contract.
- j) “Sub-Consultants” includes any or all third parties listed in Schedule D of this Proposal Form.

All other terms (capitalized or not) have the meanings given to them in the RFP.

## 2.0 GENERAL TERMS AND CONDITIONS OF PROPOSAL PROCESS

### 2.1 No Legal Obligation Assumed by City

Despite any other term of this Proposal Form (except only (where applicable) Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Proponent’s Submission Confidential, and Section 5.5 - Declaration of Confidentiality), the City assumes no legal duty or obligation in respect of this RFP or unless and until the City enters into a Contract. This RFP process is at all times contingent on funds being approved by the City and a Contract being signed by the City.

### 2.2 Legal Rights and Obligations Suspended

Despite any other term of this Proposal Form (except only (where applicable) Section 5.2 - Proponent’s Submission Confidential, and Section 5.5 - Declaration of Confidentiality), the City and Proponent agree that all of their respective rights and obligations at law and in equity, in contract and in tort, in all matters relating to the RFP and this Proposal will be absolutely and unconditionally subject to Section 4.0 - Protection of City Against Lawsuits, and the following:

#### a) No Duty

The City has no legally enforceable duty or obligation to the Proponent unless and until the City signs a Contract with the Proponent.

#### b) Proponent’s Risk

The Proponent acknowledges that the City is a public body required by law to act in the public interest. Accordingly, in no event does the City owe to the Proponent (as opposed to the public):

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- i) a contract or tort law duty of care, fairness, impartiality or procedural fairness in the Proposal process; or
- ii) any contract or tort law duty to preserve the integrity of the RFP process,

and the Proponent now waives and releases the City from all such duties and expressly assumes the risk of all Losses arising from participating in the Proposal process on this basis.

c) Proponent's Cost

The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the Proposal process.

### 3.0 EVALUATION OF PROPOSALS

#### 3.1 Compliance/Non-Compliance

Any Proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion.

#### 3.2 Reservation of Complete Control over Process

The City reserves the right to retain complete control over the RFP and Proposal process at all times until the execution and delivery of a Contract. Accordingly, the City is not legally obligated to review, consider or evaluate the Proposals and need not necessarily review, consider or evaluate the Proposals in accordance with the procedures set out in this RFP and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation process on any or all Proposals at any time without further explanation or notification to any of the Proponents subject only to the express legal terms and conditions which bind the City, which terms and conditions are expressly limited to those set out in Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Proponent's Submission Confidential, and Section 5.5 - Declaration of Confidentiality.

#### 3.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss/negotiate changes to the scope of the RFP, or any of the terms or conditions of the RFP with any one or more of the Proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of discussions or negotiations with other Proponents or changes to the RFP, and, without limiting the general scope of Section 4.0 - Protection of City

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Against Lawsuits, and by way of example only, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

#### 4.0 PROTECTION OF CITY AGAINST LAWSUITS

##### 4.1 Release

Except only and to the extent that the City is in breach of Section 5.2 - Proponent's Submission Confidential, or Section 5.5 - Declaration of Confidentiality, the Proponent now releases the City from all liability for any Losses in respect of:

- a) any alleged (or judicially imposed) breach by the City of the RFP (it being acknowledged and agreed that to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- b) any unintentional tort of the City occurring in the course of conducting this RFP process;
- c) the Proponent preparing and submitting its Proposal;
- d) the City accepting or rejecting its Proposal or any other submission;
- e) the manner in which the City:
  - i) reviews, considers, evaluates or negotiates any Proposal,
  - ii) deals with or fails to deal with any Proposal or Proposals, or
  - iii) decides to enter into a Contract or not enter into any Contract; and
- f) the Proponent(s), if any, with whom the City enters a Contract.

##### 4.2 Indemnity

Except and only to the extent that the City breaches Section 5.2 - Proponent's Submission Confidential or Section 5.5 - Declaration of Confidentiality, the Proponent now indemnifies and will protect and save the City harmless from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its Sub-Consultants or agents alleging or pleading

- a) any alleged (or judicially imposed) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially)),

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- b) any unintentional tort of the City or its officials or employees occurring in the course of conducting this RFP process, or
- c) liability on any other basis related to this RFP or the Proposal process.

#### 4.3 Limitation

In the event that, with respect to anything relating to the RFP or this Proposal process (except only and to the extent that the City breaches Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Proponent's Submission Confidential, or Section 5.5 - Declaration of Confidentiality), the City or its officials, officers, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its Sub-Consultants or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its Sub-Consultants or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of one hundred dollars (\$100), despite any other term or agreement to the contrary.

#### 4.4 Dispute Resolution

Any dispute relating in any manner to this RFP or the Proposal process (except only and to the extent that the City breaches Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Proponent's Submission Confidential, or Section 5.5 - Declaration of Confidentiality, and also excepting any disputes arising between the City and any Proponent with whom the City has entered a Contract) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- a) The arbitrator will be selected by the City's Director of Legal Services.
- b) This Section 4.0 - Protection of City against Lawsuits will:
  - i) bind the City, Proponent and the arbitrator; and
  - ii) survive any and all awards made by the arbitrator.
- c) The Proponent will bear all costs of the arbitration.

### 5.0 ACCESS/OWNERSHIP OF PROPOSAL INFORMATION

#### 5.1 Proposal Documents Remain/Proposal Becomes - City's Property

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- a) All RFP packages and addenda provided to the Proponent by the City remain the property of the City and must be returned to the City upon request.
- b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal.

**5.2 Proponent's Submission Confidential**

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council on the Proposal results or announcing the results of the Proposals to the Proponent(s), the City will treat all material and information expressly submitted by the Proponent (and the City's evaluation of it) in confidence in substantially the same manner as it treats its own confidential material and information.

The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

**5.3 All City Data/Information is Confidential**

The Proponent will not divulge or disclose to any third parties any information concerning the affairs of the City which may be communicated to the Proponent at any time (whether before or after the closing date and time of this RFP process). Recognizing the need for confidentiality of the City's data, files and other confidential information, the Proponent will not use, exploit or divulge or disclose to third parties any confidential or proprietary information of the City of which the Proponent may gain knowledge in connection with or in the course of discussions or negotiations with the City.

All material and information that has or will come into the Proponent's possession or knowledge in connection with this Proposal process is confidential and may not be disclosed or utilized in any way except in accordance with the Instructions to Proponents and this Proposal Form.

**5.4 Disclosure Requires Prior Consent**

The Proponent may not divulge any information respecting the Proposal process to any third party without the prior written consent of the City, which consent may be arbitrarily withheld unless it is information which the City has already

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made public or has been required to disclose pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

5.5 Declaration of Confidentiality

The Proponent now declares and agrees that, except for the information disclosed by the City in the course of publicly reporting to the Vancouver City Council or any public Proposal opening:

- a) the information supplied by the Proponent in response to the RFP is expressly provided in strict confidence;
- b) any records made of the evaluation of this Proposal and all other submissions will be the property of, and private to, the City and will not be disclosed to the Proponent nor anyone else;
- c) the disclosure of the information in items (a) and (b) above to anyone outside of the City's staff would reveal the Proponent's trade secrets or proprietary commercial information concerning its private business affairs; and
- d) the disclosure of the information in items (a) and (b) above, could reasonably be expected to harm the Proponent's competitive position, harm the City's ability to engage in competitive procurement of goods and services, and result in undue financial loss to the Proponent and/or the City.

6.0 DECLARATION - NO CONFLICT OF INTEREST / NO COLLUSION

6.1 Declaration as to no Conflict of Interest in RFP Process

The Proponent now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Proponent's or Sub-Consultant's organizations (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is:

- a) an elected official or employee of the City; or
- b) related to or has any business or family relationship with any elected official or employee of the City, such that there would be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of this Proposal by the City,

except as set out below:

*[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any or all relationships which*

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*might give rise to a conflict of interest or an appearance of a conflict of interest].*

6.2 Declaration as to no Conflict of Interest Respecting Proposed Services

The Proponent now confirms and warrants that neither the Proponent nor its proposed Sub-Consultants

- a) are currently engaged in providing (or are proposing to provide) Consultant Services for the Design and Construction of the Non-Motorized Boating Facility and Ferry Terminal of any kind to the Federal Government, Provincial Government, the Greater Vancouver Regional District (aka Metro Vancouver), or any member local governments of Metro Vancouver,
- b) such that entering into the Professional Services Agreement pursuant to this RFP would create a conflict of interest or the appearance of conflict of interest between the Proponent's duties to the City and the Proponent's or its Sub-Consultants' duties of loyalty to the organizations noted in (a) above, except as set out below:

*[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any or all relationships which might give rise to a conflict of interest or an appearance of a conflict of interest].*

6.3 Declaration as to Collusion

The Proponent now confirms and warrants that:

- a) the Proponent has no affiliation, whether legal or financial, with any other entity which is in the business of providing the same type of goods or services which are the subject of this RFP; and
- b) the Proponent is not competing within this RFP process with any entity which it is legally or financially associated or affiliated,

except as set out below:

*[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any and all affiliations or relationships which might give rise to collusion or an appearance of collusion].*

6.4 Declaration as to Lobbyist Status

The Proponent now confirms and warrants that neither it nor any officer, director, shareholder, partner, or employee of the Proponent or any of its

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proposed Sub-Consultants is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America, except as set out below:

*[The Proponent is conclusively deemed to have declared "none" unless the Proponent deletes this note and describes any or all lobbyist registrations of the type described above]*

**7.0 NO PROMOTION OF OLYMPIC RELATIONSHIP**

7.1 The successful Proponent must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials, without the express prior written consent of the City (except as may be necessary for the successful Proponent to perform the successful Proponent's obligations under the terms of the Contract). The successful Proponent undertakes not to use "VANOC", "Vancouver 2010", the official emblem, logo or mascot of the 2010 Games or any reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the successful Proponent undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between the successful Proponent and the International Olympic Committee, the Olympics or the Olympic Movement.

**8.0 SURVIVAL/LEGAL EFFECT OF PROPOSAL CONTRACT**

8.1 All of the terms of this Attachment A to this Proposal Form which by their nature require performance or fulfilment following the conclusion of the Proposal process will survive such issuance and will remain legally enforceable by and against the Proponent and City.

AS EVIDENCE OF THE PROPONENT'S INTENT TO BE LEGALLY BOUND BY THIS ATTACHMENT A, THE PROPONENT HAS EXECUTED AND DELIVERED THIS ATTACHMENT A AS AN INTEGRAL PART OF ITS PROPOSAL FORM IN THE MANNER AND SPACE SET OUT BELOW:

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Authorized Signatory for the Proponent

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Date

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Name and Title *(please print)*

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This Schedule identifies the Requirements to which the City is seeking a solution or a response. Proponents are to address, but are not limited in their response to, the respective issue(s). Proponents may submit their solution or response on a separate sheet. However, the same number sequence is to be used.

1.0 Company Profile

- 1.1 Provide a description of the Proponent's company, purpose and history of successes including number of years in business, major projects, and what is most responsible for the Proponent's success to date. Include a company brochure or resume for each member of any consortium as well as each key personnel employed by any named proposed Sub-Consultant to the Proponent.

2.0 Key Personnel

- 2.1 Identify and provide resumes for the key personnel in the Proponent's proposed team and outline what their roles and resource availability will be in servicing this Project.
- 2.2 Include a list of at least three (3) relevant and successfully completed projects, with references and telephone numbers for each. By submitting a Proposal, the Proponent consents to the City contacting these references at its discretion, and consents to the City also contacting any other organization for the purposes of evaluating the Proposal.
- 2.3 Include an organization chart for the Proponent's proposed Project team, identifying the team leader or project manager, if applicable and all roles and areas of responsibility and lines of communication between these roles and areas.
- 2.4 Preference will be given to Proponent's consulting teams that demonstrate knowledge and experience involving design and construction of boating facilities. Proponents must state the knowledge and experience of each proposed team member, including all Sub-Consultants. For team members with limited or no knowledge and experience, Proponents must describe these team members' roles in the Project, and how the rest of the team will support these team members.

3.0 Project Timeline

- 3.1 Proponents must develop a schedule to ensure that the Project is completed by the end of March 2011.
- 3.2 No additional payments will be made to the Consultant as a result of any delays in implementing the Project.

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4.0 Requirements Overview

- 4.1 The City has identified key requirements, which the Proponent is to address in its Proposal.
- 4.2 Although it is necessary that the Proponent submit a detailed response to the following requirements, including, but without limitation to, a work program and maximum total fee for the scope of services described in this RFP, the City is interested in Proposals that will add value to the Project. Innovative ideas will be favourably considered in evaluating all Proposals.

5.0 General Methodology and Work Program

- 5.1 Section 6.0 - Project Tasks describes the scope of the Proponent's work for the Consultant Services for the Design and Construction of the Non-Motorized Boating Facility and Ferry Terminal as contemplated by the City. Proposal submissions should comment on the scope of work, indicate any proposed changes, and outline the resources expected to be devoted by the Consultant.
- 5.2 Proponents are to provide a detailed plan of approach and description of the services proposed, including the details of the services, if any, that the Proponents intend to obtain by using Sub-Consultants.
- 5.3 Proponents are to include in their Proposal an itemized work program grouped by Project Task (as hereinafter defined) with a description of each task and City approval proposed. Project Tasks must include all of the tasks outlined in Section 6.0 below. Activities identified in this section should be carried forward to a Gantt chart and task/cost schedule, to be included in the "Schedule and Financial Proposal" sections of the submission.
- 5.4 In the Proposal, the Proponent should provide the following:
  - a) a breakdown of the sub-tasks necessary to complete each of the Project Tasks as described in Section 6.0 and a detailed plan of approach and description of the services proposed;
  - b) a work schedule outlining milestone dates for completion of each sub-task and each Project Task as described in Section 6.0, as well as all dates of meetings, workshops and consultations described in this RFP or referred to in the Proponent's Proposal. The work schedule should incorporate an acceptable review period for City staff to provide comments on draft versions of all deliverables;
  - c) a description of the methods to be employed to perform and co-ordinate the work, and to control the scope, quality, schedule and cost of the services provided by the Consultant for the Project;

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- d) a clear and thorough description of all assumptions underlying their Proposal in terms of the amount of project management and other project resources that the Proponent would require from City staff in the performance of their services pursuant to their Proposal. These would be made in addition to but not in lieu of those set out in Section 5.5 and Section 5.6 below;
- e) a description of the methods to be employed to perform and co-ordinate the work, and to control the scope, quality, schedule and cost of the services provided by the Consultant for the Project; and
- f) a brief indication of special challenges or considerations foreseen by the Proponent and proposed solutions for each.

5.5 Proponents are to identify activities that the City is expected to undertake in the description of each Project Task.

5.6 Proponents are required to state deviations from the scope of services specified in these RFP documents.

## 6.0 Project Tasks

The following are the specific issues that the City requires the Consultant to investigate as part of the Project to be provided by the Consultant. These issues are the Project Tasks (the “Project Tasks”, individual “Project Task”), and the City expects that completing each Project Task will require a combination of review of existing data, field investigations and, in some cases, modelling.

Each Project Task should be considered a project milestone. Draft conclusions for each Project Task are to be provided to the appointed City representative who is responsible for the execution of the Project on behalf of the City, (“Project Manager”) in writing once the Project Task has been completed. Some of the Project Tasks may need to be completed sequentially, while others do not rely on the results of other Project Tasks and can be completed in parallel. Proponents must identify in their Proposals which tasks will be completed in parallel, and which will be completed in sequence.

In their Proposals, Proponents should state their understanding of the Project Tasks and comment on the feasibility of meeting the City’s objectives and requirements.

The following sections describe specific issues that have been identified by the City and the City’s Consultants for review by the Proponent as part of this Project.

### 6.1 Introduction

- a) The Consultant will act as the “City’s Consultant” with respect to all construction Contracts for the duration of the Project. This review will include a high level cost and performance analysis. The cost analysis

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will include both initial capital construction costs as well as long-term maintenance cost impacts. The Consultant will be required to select the most cost-effective method of construction, keeping in mind long term operational and maintenance costs.

- b) The Consultant may be required to select and enter into contracts with other Consultants as Sub-Consultants satisfactory to the Consultant and the City. It is expected that the Consultant and the Sub-Consultants (collectively, the “Consultant Team”) will be required to include at a minimum the following:
  - (i) Marine/Structural Engineering;
  - (ii) Technical Engineering, including:
    - A. Civil Engineering
    - B. Electrical Engineering
    - C. Geotechnical Engineering;
  - (iii) Architectural Consulting;
  - (iii) Site inspection; and
  - (iv) Construction contract administration

## 6.2 Functional Requirements

The Consultant should be aware that the City’s plans are that the SEFC Non-Motorized Boating Facility and Ferry Terminal will deliver the following basic functions, at a minimum:

- a) floating docks for Non-Motorized recreational boating and water taxi terminal;
- b) boat shed for canoes, kayaks, and gear storage;
- c) boat shed for rowing skulls;
- d) permanent moorage for dragon boats;
- e) water taxi shelter;
- f) boating center utility service needs including water and power;
- g) incorporation of public art; and
- h) meeting accessibility requirements.

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**6.3 Sustainability**

The City is committed to the principles of sustainability. In this Project it is desirable to visibly demonstrate sustainability, through material selection to energy efficiency. The Consultant may investigate the opportunities to meet the principles of sustainability and identify any barriers to achieving those principles.

**6.4 Site Investigations**

The Consultant will conduct site investigations to facilitate detailed design for the Project, including the site plan, shoreline and sediment conditions, geotechnical information for the Non-Motorized Boating Facility and Ferry Terminal, and other site investigations, as required.

**6.5 Schedule and Key Milestones**

The Non-Motorized Boating Facility and Ferry Terminal should be completed by March 2011. The Project schedule objectives are outlined in the table below:

Event	Target Date for Completion
RFP Closes	June 8, 2010
Acceptance of Proposal in Principle	June 16, 2010
Kick off Meeting (agenda to include budget and goals for Project)	Week of June 21, 2010
Review Committee Meeting (to discuss scope and possible scope changes)	Week of June 28, 2010
Stakeholder Meeting (1)(review concept design)	Week of July 12, 2010
Stakeholder Meeting (2)(review revised concept design)	Week of July 26, 2010
Review Committee Meeting (concept design approval)	Week of August 2, 2010
Submit Burrard Environmental Review Committee ("BERC") Application	Week of August 9, 2010
Submit Development Permit Application	Week of August 9, 2010
50% Design Review	Week of August 16, 2010
95% Design Review	Week of August 30, 2010
Submit Building (and other pertinent) permit applications	Week of August 30, 2010
Contract Preparation	Month of September, 2010
Construction Tendering	Month of October, 2010
Construction Inspections / Payment Certification	November 2010 - March 2011

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6.6 Conceptual Design

- a) Programming requirements, BERCC principles, basic accessibility principles, budgets, goals and programming will be discussed during the kick-off meeting and first review committee meeting. Following these meetings, the Consultant will develop a conceptual design(s) for the Non-Motorized Boating Facility and Ferry Terminal based on the principals discussed at these meetings and a design that is consistent with the SEFC Public Realm Plan. The conceptual design process will be an iterative process where the Proponents original concept(s) are modified and fine tuned to account for budget constraints, programming priorities, and input from stakeholders.
- b) This process will also include reviewing the cost implications of meeting specific functional requirements. Cost implications shall include both initial capital construction costs as well as long-term maintenance cost impacts. The Consultant will be required to analyze the overall cost of various options.
- c) Once a conceptual design has been finalized, the Consultant will determine the overall Project cost for the proposed design.
- d) The conceptual design will be reviewed with stakeholder groups. The Consultant will prepare a minimum of five (5) display boards to be used at the stakeholder meeting.

6.7 Detailed Project Design, Tendering and Permits

- a) The Consultant will be responsible for completing the detailed designs (including “issued for construction” [“IFC”]} drawings) for the Non-Motorized Boating Facility and Ferry Terminal based on the conceptual design work. The Consultant will prepare fifty percent (50%) and ninety five percent (95%) detailed design drawings for review by the appropriate City staff (“Boating Facility Review Committee”).
- b) The Consultant will prepare revised cost estimates at each detailed design stage that will include both initial capital construction costs as well as long-term maintenance cost impacts.
- c) Items requiring detailed design (including specifications) may include, but are not limited to and are presented by way of example only:
  - i) design of floats including decking, handrails, piles, and all other structural and functional components;
  - ii) accessible gangways including connection to existing pier, handrails, piles, and all other structural and functional components;

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- iii) boating center services including lighting, power, and water, including design from upland utilities; and
- iv) development of security requirements and implementation measures.
- d) The Consultant will explore alternatives where required to ensure that the detailed design meets the City's sustainability and other objectives.
- e) The Consultant will make application for and carry out all duties required to obtain and fulfill development, building, and other permits as may be required by City by-laws.
- f) A significant amount of time has been allotted in the schedule for the Consultant to prepare and complete the detailed design and specifications. It is anticipated that during the concept and design phase, submissions and applications will be made to BERC. Permit review process and scheduling requirements will be determined during the design process. The Consultant will be required to assist the City in preparing documents for these submissions. The City will engage an environmental firm to liaise with and make application to BERC, but the Consultant may be required to assist in this process.
- g) The Consultant will prepare all technical specifications and issued for construction drawings for the Project.
- h) The Consultant, in consultation with the City, will determine the most effective manner to construct the Project.
- i) The Consultant will also be required to:
  - i) work with City staff to prepare tender documents and contract documents;
  - ii) be responsible for all technical specifications, special conditions, design drawings, all tender forms and any other technical concepts in the tender documents;
  - iii) be required to review the entire tender document package(s);
  - iv) be listed as the City's Consultant in the tender documents and will attend and answer any technical questions at all site meetings required in the tender process(es);
  - v) respond to all technical questions during the tender process(es); and
  - vi) with City Staff evaluate tenders and make recommendations to the City.

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6.8 City's Responsibilities for Project

- a) providing copies of the City drawings of the site, showing existing structures and services. It will be the Consultant's responsibility to verify the existing structures and services through a site survey;
- b) management of the tender process including preparing the legal documents and general conditions for the tender document package(s) and the contract(s);
- c) producing copies of the tender document(s) package(s), advertising tenders, and receiving tenders;
- d) registering tenders, and with the Consultant evaluating and shortlisting the Tenderers(s); the City will award the Contract(s); and
- e) based in part on the Consultant's advice, and in part on the Consultant's role as payment certifier, reviewing and approving or rejecting Change Orders to the construction contract.

6.9 Construction Phase Responsibilities

The Consultant will act as the "City's Consultant" and Contract Administrator with respect to all construction contracts for the duration of the Project. The City will be issuing all payments to the Contractor based on reviewed claims, suggested for approval forwarded by the Consultant. The Consultant's responsibilities for this task will include but will not be limited to:

- a) Attend all pre-construction meetings with the Contractor(s) and City representatives. The Consultant will be required to record the minutes of the meeting, note the action items and distribute the minutes of the meeting.
- b) Identify potential problems with the Project and advise the Project Manager prior to construction.
- c) Perform Project site visits to ensure the progress and the execution of the construction conforms with the scope and intent of the construction contract.
- d) Provide qualified on site project inspection and be responsible for their performance and confirm that these staff and the Consultant's Sub-Consultants comply with all City of Vancouver procedures and regulations, as well as Worksafe requirements.
- e) Ensure that the construction Contractors establish a detailed schedule within five (5) calendar days after award of the construction Contract and regularly monitor and update such schedule, with weekly

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- construction meetings and with summaries made available to the Project Manager.
- f) Review and make recommendations from requests by the Contractor for substitutions or alternatives for specified materials, subject to City staff approval or rejection.
  - g) Review specifics of Project for general conformity with the construction contract, and approve or return for correction shop drawings, product samples, etc., as necessary to complete the Project. Provide the Project Manager with two (2) copies thereof.
  - h) Be responsible for issuing Site Instructions and available to answer technical inquiries during construction.
  - i) Immediately advise Project Manager and take appropriate action (after approval of Project Manager) with Contractor to rectify any possible overrun of estimated costs and quantities.
  - j) Act as payment certifier, to recommend monthly, interim and final payments to the construction Contractor and obtain statutory declarations from the Contractor. Submit the progress claims recorded on "Details of Estimate" forms to the Project Manager for approval.
  - k) Recommend to the Project Manager any necessary changes or alternatives during construction and prepare "Requisitions for Change" for approval by the Project Manager, including obtaining written quotations from the Contractor for any contract changes.
  - l) Administer regular construction meetings as required during construction including preparation of meeting minutes.
  - m) Make recommendations regarding any claims outside of any contractual agreements submitted by the construction Contractor.
  - n) Regularly forecast final construction costs and promptly advise the Project Manager if the forecast of final construction costs will exceed the Contract amount.
  - o) Carry out final inspections with the Project Manager and identify deficiencies to ensure that the work is acceptable and in good operating condition prior to acceptance by the Project Manager and City staff.
  - p) Attend all interim and final acceptances at the site.
  - q) As payment certifier, prepare certificates certifying that deficiencies have been rectified and that all installations have been completed and

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tested for compliance as required by the construction Contract. Submit this information to the Project Manager for review and approval.

- r) Ensure that the “as built” drawings are updated on a weekly basis. Upon completion of construction, the Contractor must submit a complete set of drawings revised to record all changes to be labeled “as built” and signed by the Consultant. The Consultant must submit record drawings prior to the Contractor being issued Substantial Completion Notice(s).

#### 6.9 Project Wrap-Up Report

Once construction of the Project has been completed with all deficiencies rectified and all payments made to contractors (including any holdbacks), the Consultant will prepare a detailed “Project Wrap-Up Report”. The Project Wrap-Up Report will at a minimum include:

- a) all as-built drawings for the Project (including electronic copies of same);
- b) a detailed photographic log of the Project;
- c) a summary and explanation of all Project expenditures compared to the budget;
- d) a detailed written summary of the Project appendices, including Project meeting notes, inspection reports, permit copies; and
- e) certification of the completed work.

The Consultant will provide to the City:

- three (3) copies of the draft Project Wrap-Up Report for the City’s review and recommendation on revisions/changes;
- five (5) copies of the final Project Wrap-Up Report; and
- one (1) electronic copy (in pdf format) of the final Project Wrap-Up Report.

#### 7.0 Project Review Team and Stakeholders

7.1 The City’s “Project Review Team” will consist of SEFC Project Office, Park Board and other City staff. The Project Review Team will provide input, ideas, feedback and review during design and construction.

7.2 Stakeholders will include property owners, recreational boating groups and harbour ferry operators. SEFC Project Office staff will seek input and design review from these stakeholders.

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8.0 Communications

- 8.1 The Consultant will provide regular updates to the City throughout the Project.
- 8.2 The Consultant will provide written results of each Project Task to the City for approval prior to proceeding to the next Project Task, unless otherwise agreed to in writing by the City.
- 8.3 Formal Project meetings will include:
  - a) Project kick-off meeting with the City's Project Review Team;
  - b) meetings with the Project Review Team every two (2) weeks from the start of the conceptual design phase until completion of the conceptual design;
  - c) two (2) public open houses;
  - d) detailed design review meetings at fifty percent (50%) and ninety five percent (95%) stages;
  - e) meetings with the City and Project contractors every two weeks from the start of construction until all of the Project contractors have achieved "Substantial Completion", as defined in the *Builders Lien Act* (British Columbia); and
  - f) a draft Project Wrap-Up Report review meeting.

9.0 Value Added Services

- 9.1 Within its response to Schedule A, the Proponent has the opportunity to offer and describe any value added services, products or items not specifically asked for and detail as to what the Proponent is prepared to supply as part of the Contract. Unless otherwise stated, it is understood that there are no extra costs for these services; however, if there are any additional costs pertaining thereto, the summary and explanation of those costs should be appended to the Schedule B - Pricing Sheet.

10.0 Insurance Requirements

- 10.1 Proponents are to submit with their Proposals a Certificate of Existing Insurance (in the form set out as Appendix 1) duly completed and signed by their insurance agent or broker as evidence of their existing insurance, along with a letter from their insurance broker or agent indicating whether or not (and if not then to what extent) they will be able to comply with the insurance requirements set out in this section should they be selected as the successful Proponent.

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10.2 The successful Proponent will be required to file certificates of insurance with the City showing proof of all insurance requirements described utilizing the “Professional Liability Insurance Certificate” attached as Appendix 2 and “General Insurance Certificate” attached as Appendix 3. These certificates must be received and reviewed and approved by the City prior to or concurrently with the City entering into any Contract with the successful Proponent.

10.3 Required Types/Amounts

Prior to commencing the Services, the Consultant will obtain at its own expense,

- a) a Professional (Errors and Omissions) Liability insurance policy with limits of not less than two million dollars (\$2,000,000) per occurrence with an aggregate of not less than three million dollars (\$3,000,000) and a deductible of not more than fifty thousand dollars (\$50,000), protecting the Consultant against all claims for loss or damage arising out of any wrongful act or error or omission of the Consultant or Consultant’s Personnel in the performance of the Services.
- b) a Comprehensive General Liability insurance policy with limits of not less than two million dollars (\$2,000,000) per occurrence, and a deductible of not more than five thousand dollars (\$5,000), protecting the Consultant and Consultant’s Personnel against all claims for personal injury, death, bodily injury or property damage arising out of the operations of the Consultant or the actions of the Consultant or Consultant’s Personnel. The policy will contain a cross liability clause in favour of the City and will name the City and City’s Personnel as additional insured.
- c) a standard owner’s form automobile policy for licensed vehicles providing third party liability and accident benefits insurance as provided by the Insurance Corporation of British Columbia (Autoplan) in accordance with The Automobile Insurance Act, RSBC 1979, Ch. 204, the minimum limits as follows:  
Bodily injury and property damage (third party limit) inclusive limit five million dollars (\$5,000,000).

10.4 Required Policy Terms

All required insurance policies will remain in full force and effect at all times until completion of the Services and for a period of not less than two (2) years following the completion of the Services and will,

- a) be obtained and issued by insurance companies authorized to carry on business in British Columbia, on terms satisfactory to the City’s Director of Supply Management,

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- b) be primary insurance in respect to the City and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies,
- c) contain a provision that such insurance coverage will not be cancelled without the insurer giving the City at least 30 days' prior written notice by registered mail,
- d) contain a clause that waives the insurer's right of subrogation against the City and City's Personnel.
  - i) The Consultant and each of its Sub-Consultants will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.
  - ii) Neither the providing of insurance by the Consultant or Sub-Consultants in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Consultant from any other provisions of the Contract Documents with respect to liability of the Consultant or otherwise.

#### 10.5 Insurance Certificate

Prior to the Effective Date, the Consultant will provide the City's Project Manager with evidence of all required insurance to be taken out in the form of the Certificate of Insurance supported by a certified copy(s) of the policy(s). The Certificate of Insurance will identify the Contract title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of a Certificate of Insurance or certified copies of all insurance policies will be made available to the City's Director of Supply Management at any time during the performance of the Services immediately upon request. The Certificate of Insurance will not contain any disclaimer whatsoever.

#### 10.6 Sub-Consultant's Insurance

The Consultant will provide in its agreements with its Sub-Consultants clauses in the same form as in this Agreement. Upon request, the Consultant will deposit with the City's Director of Supply Management detailed Certificates of Insurance for the policies it has obtained from its Sub-Consultants and a copy of the applicable insurance clauses from its Sub-Consultant agreements.

#### 11.0 WorkSafeBC Requirements

##### 11.1 Maintain Coverage - General

The Consultant will carry and pay for full WorkSafeBC coverage for itself, the Consultant's personnel, the Sub-Consultant and the Sub-Consultant's personnel

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engaged in or on the Services, failing which the City has the unfettered right to set off the amount of any unpaid premiums and assessments for such WorkSafeBC coverage against any amounts owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until WorkSafeBC premiums, assessments or penalties in respect of the Services have been paid in full.

**11.2 Provide Evidence of Coverage - General**

The Consultant will provide the City with the Consultant's WorkSafeBC registration number and a letter from WorkSafeBC confirming that the Consultant is registered in good standing with WorkSafeBC and that all assessments have been paid to date prior to the City having any obligation to pay any invoice under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged in the performance of the Services or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.

**11.3 Special WorkSafeBC Requirements Where Services Are Provided on City of Vancouver Sites**

- a) Prior to commencing any Services on any City Site, the Consultant must provide updated evidence to the City's Project Manager that it is in good standing with WorkSafeBC. The Consultant is responsible for having the City Site secured in accordance with WorkSafeBC Regulations and ensure the safety of the City Site during the performance of the Consultant, and the Sub-Consultant's Services on the City Site.
- b) The Consultant is now appointed and now accepts appointment as the Prime Consultant for the purpose of this Agreement during the performance of the Consultant's and their Sub-Consultant's Services on the City Site, and as such, has the responsibility to:
  - i) ensure the Services are performed in a safe manner that complies with all WorkSafeBC Regulations,
  - ii) direct and coordinate the work activities related to the health and safety of all of the Consultant and their Sub-Consultants within the City Site,
  - iii) obtain from the City written information on hazards and conditions and the methods to address the hazards and conditions and circulate this information to the Consultants and the Sub-Consultants staff in the City Site.
- c) Prior to the Consultant, and their Sub-Consultants commencing any Services on the City Site, the Consultant must,

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- i) have its own safety program and have written safe work procedures specific to the Services being performed available at the City Site, and
- ii) ensure the safety program meets the requirements of WorkSafeBC Regulations.
- d) During the performance of the Consultant's, and their Sub-Consultant's Services on the City Site, the Consultant must also,
  - i) advise the City of any accidents or incidents at the City Site that must be reported to WorkSafeBC, and
  - ii) inform all personnel performing the Consultant and Sub-Consultant Services on the City Site of the health and safety requirements at that workplace.
- e) At all times the Consultant will ensure that its personnel, the Sub-Consultant's personnel and all other workers engaged or indirectly engaged by the Consultant and Sub-Consultant coming onto the City Site will comply with
  - i) WorkSafeBC Regulations,
  - ii) the Consultant's safety program, and all work site safety requirements.

**11.0 Dun & Bradstreet**

11.1 The Consultant should provide the City with the Consultant's D-U-N-S registration number.

**12.0 References**

12.1 The Proponent is to describe the Proponent's relevant experience with similar engagements for similar work over the last two (2) years as well as references for same by completing the table below. The Proponent may, at its own discretion, expand on the number of references and information that it deems necessary to support its Proposal. By submitting a Proposal, the Proponent consents to the City contacting these references, and consents to the City also contacting any other organization for the purposes of evaluating the Proponent's company and Proposal.

Name and Address of Company	Contact Name and Telephone Number	Brief Description of Work and Date Performed

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SCHEDULE B- PRICING**

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**1.0 Pricing**

1.1 The Proponent should provide the following information:

- a) a total maximum fee for the Services, inclusive of all disbursements and taxes (except applicable taxes, which are to be shown separately), showing all costs associated with the Project Tasks and deliverables as outlined in Schedule A - Requirements;
- b) the hourly charge out rates for Project team members;
- c) a breakdown of the total maximum Project fee into the costs associated with each team member, inclusive of fees and disbursements (except all applicable taxes);
- d) a description of all disbursements, including a maximum amount for each;
- e) a description of all costs associated with Sub-Consultants; and
- f) a description of all costs, organized as above, for any additional proposed scope of work related to this Project. For example, where additional meetings are requested by the City, describe how these would be charged to the City.

1.2 The Proponent should copy and customize the Pricing Table set out below for inclusion in their RFP submission:

Estimated Fees/Disbursements						
Work Task/Phase/ Deliverable	Team Members	Activity/Role	Estimated Hours	Hourly Rate	Estimated Fee	Estimated Disbursements
Conceptual Design						
Detailed Project Design						
Tendering and Permits						
Construction Phase						

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Project Wrap Up and Reports						
Maximum Fees/Disbursements						

**2.0 Terms of Payment**

2.1 The City's standard payment terms are Net Thirty (30) days after receipt of approved invoice; however and discounts or more favourable terms which may be offered by the Proponent will be taken into consideration in the financial evaluation. Please indicate in your response if other than Net Thirty (30).

2.2 Describe if Electronic Fund Transfer (EFT) is available.

**3.0 Alternative Pricing Solutions**

3.1 Proponents may offer alternative pricing options.

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SCHEDULE C - DEVIATIONS AND VARIATIONS

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Proponent(s) should use this Schedule C to detail any deviations and/or variations from the terms and conditions set out in this RFP and if applicable, detail proposed amendments.

Where the Proponent is proposing the use of contract language or clauses other than those set out in the sample Professional Services Agreement (Appendix 4), such clauses should be attached to this Schedule C. The City will assume such clauses are in addition to those in the sample Professional Services Agreement unless otherwise indicated by the Proponent.

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SCHEDULE D - SUB-CONSULTANTS**

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The Sub-Consultants shown below are the Sub-Consultants that the Proponent proposes to use to carry out the Requirements. The City expects that the Proponent will engage the listed Sub-Consultants and no others in their stead without prior written authorization of the City. (For contractual requirements, Proponents should note the relevant sections of the sample Professional Services Agreement.)

The City reserves the right to object to any of the Sub-Consultants listed in a Proposal. If the City objects to a listed Sub-Consultant then the City will permit a Proponent to, within seven (7) calendar days, propose a substitute Sub-Consultant acceptable to the City. A Proponent will not be required to make such a substitution and, if the City objects to a listed Sub-Consultant, the Proponent may, rather than propose a substitute Sub-Consultant, consider its Proposal rejected by the City and by written notice withdraw its Proposal.

If no Sub-Consultants will be used, indicate "Not Applicable".

Company Name, Address	Contact Name and Telephone Number	Area of Responsibility

Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.*

2. **NAMED INSURED** *(must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)*

**BUSINESS TRADE NAME or DOING BUSINESS AS**

**BUSINESS ADDRESS**

**DESCRIPTION OF OPERATION**

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

INSURER _____	<b>Insured Values (Replacement Cost) -</b>
TYPE OF COVERAGE _____	Building and Tenants' Improvements \$ _____
POLICY NUMBER _____	Contents and Equipment \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

Including the following extensions:	INSURER _____
√ Personal Injury	POLICY NUMBER _____
√ Property Damage including Loss of Use	POLICY PERIOD From _____ to _____
√ Products and Completed Operations	<b>Limits of Liability (Bodily Injury and Property Damage Inclusive) -</b>
√ Cross Liability or Severability of Interest	Per Occurrence \$ _____
√ Employees as Additional Insureds	Aggregate \$ _____
√ Blanket Contractual Liability	All Risk Tenants' Legal Liability \$ _____
√ Non-Owned Auto Liability	Deductible Per Occurrence \$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

INSURER _____	<b>Limits of Liability -</b>
POLICY NUMBER _____	Combined Single Limit \$ _____
POLICY PERIOD From _____ to _____	<i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i>

6.  **UMBRELLA OR**  **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**

INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE**

INSURER _____	<b>Limits of Liability</b>
POLICY NUMBER _____	Per Occurrence/Claim \$ _____
POLICY PERIOD From _____ to _____	Aggregate \$ _____
	Deductible Per Occurrence/Claim \$ _____

*If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: \_\_\_\_\_*

8. **OTHER INSURANCE**

TYPE OF INSURANCE _____	<b>Limits of Liability</b>
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

TYPE OF INSURANCE _____	<b>Limits of Liability</b>
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE**

Dated \_\_\_\_\_

**PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER**

Section 4 – City staff to select the required # of days Written Notice before sending out for completion  
Section 2, 3 & 4– to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policy as listed herein has been issued to the Named Insured(s) and is in full force and effect as of the effective date of the agreement described below.*
2. **NAMED INSURED:** *[must be the same name as the Permittee/Licensee or Party(ies) to Contract and is/are either an individual(s) or a legally incorporated company(ies)]*

MAILING ADDRESS:

LOCATION ADDRESS:

DESCRIPTION OF OPERATION/CONTRACT:

**3. PROFESSIONAL LIABILITY INSURANCE**

**LIMITS OF LIABILITY:**

INSURER: \_\_\_\_\_ Per occurrence/claim: \$ \_\_\_\_\_  
POLICY NUMBER: \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_  
POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_ Deductible per occurrence/claim: \$ \_\_\_\_\_

*If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date:* \_\_\_\_\_

**4. POLICY PROVISIONS:**

*Where required by the governing contract, agreement, permit or license, it is understood and agreed that SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to the policy listed herein, either in part or in whole, will be given by the Insurer to the Holder of this Certificate. The exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply.*

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE**

\_\_\_\_\_  
Dated: \_\_\_\_\_  
**PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER**

**GENERAL CERTIFICATE OF INSURANCE**

Section 8 b) – City staff to select the required # of days Written Notice before sending the certificate out for completion  
 Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
*and certifies that the insurance policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.*
2. **NAMED INSURED:** *[must be the same name as the Permittee/Licensee or Party(ies) to Contract and is/are either an individual(s) or a legally incorporated company(ies)]*

**MAILING ADDRESS:** \_\_\_\_\_

**LOCATION ADDRESS:** \_\_\_\_\_

**DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE:** \_\_\_\_\_

3. **PROPERTY INSURANCE** naming the City of Vancouver as a Named Insured and/or Loss Payee with respect to its interests and shall contain a waiver clause in favour of the City of Vancouver.  
**(All Risks Coverage including Earthquake and Flood)**
- |   |  |
|---|--|
| INSURER: _____<br>TYPE OF COVERAGE: _____<br>POLICY NUMBER: _____<br>POLICY PERIOD: From _____ to _____ | <b>INSURED VALUES: (Replacement Cost)</b><br>Building and Tenants' Improvements: \$ _____<br>Contents and Equipment: \$ _____<br>Deductible Per Loss: \$ _____ |
|---|--|

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**  
 Including the following extensions:
- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Personal Injury<br><input checked="" type="checkbox"/> Products and Completed Operations<br><input checked="" type="checkbox"/> Cross Liability or Severability of Interest<br><input checked="" type="checkbox"/> Employees as Additional Insureds<br><input checked="" type="checkbox"/> Blanket Contractual Liability<br><input checked="" type="checkbox"/> Non-Owned Auto Liability<br>INSURER: _____<br>POLICY NUMBER: _____<br>POLICY PERIOD: From _____ to _____ | <b>LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)</b><br>Per Occurrence: \$ _____<br>Aggregate: \$ _____<br>All Risk Tenants' Legal Liability: \$ _____<br>Deductible Per Occurrence: \$ _____ |
|--|--|

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles
- |  |   |
|--|---|
| INSURER: _____<br>POLICY NUMBER: _____<br>POLICY PERIOD: From _____ to _____ | <b>LIMITS OF LIABILITY:</b><br>Combined Single Limit: \$ _____<br><i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i> |
|--|---|

6.  **UMBRELLA OR**  **EXCESS LIABILITY INSURANCE**
- |  |  |
|--|--|
| INSURER: _____<br>POLICY NUMBER: _____<br>POLICY PERIOD: From _____ to _____ | <b>LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)</b><br>Per Occurrence: \$ _____<br>Aggregate: \$ _____<br>Self-Insured Retention: \$ _____ |
|--|--|

7. **OTHER INSURANCE** (e.g. Boiler & Machinery, Business Interruption, Crime, etc.) – Please specify Name of Insurer(s), Policy Number, Policy Period, and Limit

8. **POLICY PROVISIONS:**  
*Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:*
  - a) *The City of Vancouver, its officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license;*
  - b) *SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies listed herein, either in part or in whole, will be given by the Insurer(s) to the Holder of this Certificate; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply;*
  - c) *The insurance policy (policies) listed herein shall be primary with respect to all claims arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver shall be in excess of this insurance and shall not contribute to it.*

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE** \_\_\_\_\_

**PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER** \_\_\_\_\_ **Dated:** \_\_\_\_\_



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date"),

BETWEEN:

CITY OF VANCOUVER  
453 West 12th Avenue  
Vancouver, British Columbia  
V5Y 1V4  
(the "City")

AND:

[CONSULTANT NAME AND ADDRESS]

(the "Consultant")

(The City and the Consultant are hereinafter sometimes referred to individually as "Party" and collectively as "Parties")

BACKGROUND:

- A. The City requires the professional services described herein, and desires to engage the Consultant to perform said services.
- B. The Consultant has agreed to perform the said services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises made by the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE. 1 INTERPRETATION

- 1.1 In this Agreement, including the recitals, schedules and appendices to this Agreement, the following words and terms, unless the context otherwise requires, shall have the meanings set out below:
- 1.1.1 “Agreement” means this agreement inclusive of all schedules, appendices or exhibits attached hereto, as amended from time to time;
  - 1.1.2 “Applicable Laws” means all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Consultant, any Sub-Consultant and the Services, including the Vancouver Building By-law, the British Columbia Building Code, and the British Columbia Fire Code, all as may be in force from time to time;
  - 1.1.3 “City’s Site” means any land and/or premises owned by the City on which or in respect of which the Services are performed by the Consultant;
  - 1.1.4 “City’s Project Manager” means the City’s employee, or his/her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the Services, or to make decisions in connection with this Agreement;
  - 1.1.5 “Contract Documents” means this Agreement, the Proposal and the RFP;
  - 1.1.6 “Deliverables” has the meaning set out in Article 17;
  - 1.1.7 “GST” means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), as amended, and any successor legislation thereto;
  - 1.1.8 “Project Team” has the meaning set out in subsection 2.2.3;
  - 1.1.9 “Proposal” means the proposal submitted by the Consultant in response to the RFP, a copy of which is attached hereto as Appendix B;
  - 1.1.10 “PST” means provincial sales tax administered under the *Social Services Tax Act* (British Columbia) and any successor tax or levies therefor in force from time-to-time;
  - 1.1.11 “RFP” means Request for Proposal PS10066 Consultant Services for the Design and Construction of the Non-Motorized Boating Facility and Ferry Terminal and all addenda;

- 1.1.12 "Services" has the meaning set out in Section 2.1;
- 1.1.13 "Sub-Consultant" has the meaning set out in Section 4.1; and
- 1.1.14 "Term" means the term of this Agreement as specified in Section 12.1.
- 1.2 The terms and conditions of the Contract Documents, whether or not attached to this Agreement will be deemed to be incorporated into this Agreement. The Contract Documents are complementary and what is called for by any one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order of priority, from highest to lowest:
- 1.2.1 this Agreement, excluding Appendix B;
- 1.2.2 the RFP; and
- 1.2.3 the Proposal.
- 1.3 In this Agreement, including the recitals, schedules and appendices to this Agreement, except as expressly stated to the contrary or the context otherwise requires:
- 1.3.1 the recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement;
- 1.3.2 the terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer, unless otherwise specified, to this Agreement taken as a whole (including any and all attached appendices) and not to any particular section, subsection or other subdivision;
- 1.3.3 each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- 1.3.4 each reference to a rule, guideline, policy, regulation or directive is deemed to be a reference to any successor or replacement of such rule, guideline, policy, regulation or directive;
- 1.3.5 words importing the singular include the plural and vice versa and words importing gender include all genders;
- 1.3.6 references to time of day or date mean the local date or time in Vancouver, British Columbia;
- 1.3.7 all references to money mean lawful currency of Canada;

- 1.3.8 the word “written” includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and “in writing” has a corresponding meaning; and
- 1.3.9 the words “include” and “including” are to be construed as meaning “including, without limitation”.

## ARTICLE. 2 CONSULTANT'S SERVICES TO THE CITY

- 2.1 The Consultant will provide and be fully responsible for the following services (the “Services”):
  - 2.1.1 the services described in the RFP;
  - 2.1.2 the services which the Consultant agreed to provide in the Proposal; and
  - 2.1.3 all services not specifically included in Articles 2.1.1 and 2.1.2 but which are necessary or incidental to the completion of the Services.
- 2.2 The Consultant will be fully responsible for:
  - 2.2.1 coordinating the Services with the City’s Project Manager, or her delegate, and ensuring that the performance of the Services does not adversely impact the design or construction schedule for the project or the work and/or services provided by the City’s other consultants;
  - 2.2.2 taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Appendix A - *Insurance Requirements*; and
  - 2.2.3 maintaining and supervising its employees and Sub-Consultants (the “Project Team”) described in Section 3.1.
- 2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the reasonable satisfaction of the City.
- 2.4 The Consultant will perform the Services: (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered; (b) in accordance with sound current professional practices and design standards; and (c) in conformance with any and all Applicable Laws.
- 2.5 The Consultant will commence the Services promptly and will use every reasonable effort to carry out the Services in accordance with (a) the requirements and appendices of this Agreement, or (b) where no date is specified for the provision of any component of the Services by this Agreement, such completion dates as are reasonably specified from time to time by the City.

- 2.6 The Consultant will not permit, do or cause anything to be done at any time which could allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the City's Site or any other City property.

### ARTICLE. 3 PROJECT TEAM

- 3.1 Subject to Section 3.2 below, the Consultant will utilize only the Project Team members noted in the Proposal.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section 3, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Consultant, its Sub-Consultant or their affiliates.
- 3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

### ARTICLE. 4 SUB-CONSULTANTS

- 4.1 Unless expressly permitted pursuant to Section 3 above, the Consultant may not engage any contractor or consultant (in each case a "Sub-Consultant") for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.2 The Consultant will administer, coordinate, and manage all Services provided by any Sub-Consultants, and will assume full responsibility to the City for all work performed by the Sub-Consultants in relation to the Services and will pay all fees and disbursements of all Sub-Consultants, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.

- 4.3 Where a Sub-Consultant is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-Consultant to comply with this Agreement.
- 4.4 Nothing in this Agreement will create any contractual relationship between a Sub-Consultant and the City.

ARTICLE. 5 BASIS OF PAYMENT TO THE CONSULTANT

- 5.1 In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms hereof, the City will pay the Consultant the fees and reimbursable expenses prescribed herein, plus GST and/or PST, as applicable.
- 5.2 Subject to Section 5.3, payment to the Consultant will be based on hours worked by employees of the Consultant or by the Sub-Consultants multiplied by the applicable hourly charge-out rates in the Proposal.
- 5.3 If there are limiting amounts for fees and disbursements indicated below for the Services or parts thereof, then notwithstanding anything to the contrary in this Agreement the maximum fees and disbursements to be paid by the City to the Consultant for the Services or portions of the Services will not exceed those amounts. Where additional fees are to be paid by the City to the Consultant for increases in the scope of the Services provided by the Consultant, they will not exceed the amount of said fees mutually agreed upon under Article 6. This limit on the fees to be paid by the City to the Consultant will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.

The fees for the Services are set out in [Schedule B]. Subject to Article 6, the total professional fees payable to the Consultant for the Services (not including GST or disbursements) will not exceed \$\_\_\_\_\_.

Subject to Article 6, the total disbursements for which the City will reimburse the Consultant in respect of the Services will not exceed \$\_\_\_\_\_ (the "Fixed Disbursement Amount").

Notwithstanding anything to the contrary contained in this Agreement, save for Article 6, the maximum liability of the City hereunder (the "Maximum Fees and Disbursements") will be \$\_\_\_\_\_, plus GST, as applicable.

Subject to the Fixed Disbursement Amount, the City will reimburse the Consultant for disbursements reasonably incurred by the Consultant in the performance of the Services. Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit. If the Consultant has engaged Sub-Consultants, then the Consultant will make full payment to said Sub-Consultants for work performed in relation to the Services.

Subject to Section 5.3, the City will reimburse the Consultant for payments made to Sub-Consultants at amounts equal to such actual payments without any additions for overhead and profit to the Consultant.

- 5.4 The Consultant will submit invoices to the City on or before the 10th day of each month. Each invoice will list the names, hours worked and pay rates of all employees of the Consultant and Sub-Consultants that have worked on the Services during the previous month, the total amount of previous payments made by the City, and the percentage of the Services that are complete. Each invoice will show separately the amount of GST applicable.

Attached to each invoice will be:

- 5.4.1 copies of invoices for all disbursements claimed;
- 5.4.2 confirmation of payments made to Sub-Consultants for the previous month; and
- 5.4.3 a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete the Services.

Notwithstanding anything to the contrary contained in this Agreement, the City will never be obligated to pay the Consultant a greater percentage of the Maximum Fees and Disbursements than the degree of percentage completion of the total of the Services.

- 5.5 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Consultant's invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a sixty (60) day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within thirty (30) days of approval.

- 5.6 The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Consultant and by such other means as will be reasonably necessary or advisable.

## ARTICLE. 6 CHANGES TO SCOPE OF SERVICES

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case and where this Agreement contains delivery dates and/or limits as to the Maximum Fees and Disbursements to be paid to the Consultant pursuant to Section 5.3 for all or any part of the Services, such delivery dates and/or limits will be adjusted as agreed to by both Parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant will provide the City's Project Manager with notice in writing within ten days of such request or instruction. If the Consultant does not deliver written notice to the City within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.
- 6.3 The City's Project Manager will consider the Consultant's written notice within a further ten days of receipt of the Consultant's notice and determine and advise as to whether the request constitutes a change in the scope of the Services and, if necessary, the method by which the variation will be scoped and reimbursed. If the City determines that the professional fees payable to the Consultant should be increased due to an increase in the scope of the Services then any such increases will be based on the hourly rates set out in Section \_\_\_ of the Proposal.

#### ARTICLE. 7 RELEASE AND INDEMNIFICATION

- 7.1 The Consultant now releases the City, its officials, officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, its Sub-Consultants, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.
- 7.2 In undertaking the Services, the Consultant acknowledges that the Consultant has inspected the City's Site, agrees to accept the City's Site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Consultant to perform the Services.

- 7.3 Despite the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City of Vancouver and its successors, assigns and authorized representatives and each of them (in each case an "Indemnified Party") from and against all costs, losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, its Sub-Consultants, or their respective officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of an Indemnified Party.
- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.
- 7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.

**ARTICLE. 8 INSURANCE**

- 8.1 The Consultant will comply with the insurance requirements set out in Appendix A - *Insurance Requirements*.

**ARTICLE. 9 WorkSafeBC**

- 9.1 The Consultant agrees that it will procure and carry and pay for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafeBC coverage against any monies owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the WorkSafeBC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.
- 9.2 The Consultant will provide the City with the Consultant's and each Sub-Consultant's WorkSafeBC registration number and clearance letters from WorkSafeBC confirming that the Consultant and each Sub-Consultant are registered in good standing with WorkSafeBC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under this Agreement. The Consultant will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafeBC assessments owing from any person or corporation engaged by the Consultant in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafeBC, including penalties levied by WorkSafeBC.

- 9.3 Whenever the Consultant is required or permitted to perform any Services on any City sites, the Consultant is now appointed and now accepts appointment as the Prime Contractor in connection with such Services.

**ARTICLE. 10 CITY INFORMATION/APPROVALS**

- 10.1 No reviews, approvals or inspections carried out or information supplied by the City will derogate from the duties and obligations of the Consultant (with respect to designs, reviews, inspections, approvals or otherwise), and all responsibility related to the Services will be and remain with the Consultant. For greater certainty, any information provided by the City to the Consultant, whether under the RFP or under this Agreement, including any studies, reports, plans, drawings, or specifications, is provided to the Consultant for information purposes only and may not be relied upon by the Consultant.

**ARTICLE. 11 COMMUNICATION BETWEEN CONSULTANT AND CITY**

- 11.1 The City appoints \_\_\_\_\_ as the City's Project Manager for the purposes of this Agreement.

In the event of the revocation in writing of \_\_\_\_\_'s appointment as the City's Project Manager by the City, \_\_\_\_\_ will have no further authority under this Agreement, except as may be specifically designated in writing by the City and agreed to in writing by \_\_\_\_\_, and all references to the City's Project Manager in this Agreement will thereafter be deemed to be a reference to the City or to such other person designated in writing by the City to the Consultant.

The City's Project Manager may from time to time delegate to a representative the performance of or the authority to perform the duties, responsibilities, rights and obligations of the City in respect of which the City's Project Manager has been designated and appointed its sole and exclusive agent.

- 11.2 The Consultant appoints \_\_\_\_\_ as its representative for the purposes of this Agreement (the "Consultant's Project Manager").

- 11.3 Unless otherwise agreed to in writing by the Parties, all material communication between the Consultant and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Consultant's Project Manager.

**ARTICLE. 12 TERM OF AGREEMENT**

- 12.1 This Agreement will commence on the Effective Date and will expire on the completion of the Services, which Services must be completed by March 31, 2011 (the "Term").

**ARTICLE. 13 TERMINATION**

- 13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Consultant in whole or in part by giving 10 days prior written notice (signed by the City's Project Manager) to the Consultant. If termination is not for cause, the Consultant will be paid for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind up costs incurred, if any, in closing out the Services or the part terminated.
- 13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind up costs incurred" pursuant to Section 13.1 exceed \$1,500 (including all taxes).

**ARTICLE. 14 ASSIGNMENT**

- 14.1 The Consultant will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned. Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Consultant will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Consultant have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Consultant, provided always that the Consultant first provides the City with:
- 14.1.1 reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and
- 14.1.2 a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

**ARTICLE. 15 CONFIDENTIALITY**

- 15.1 The Consultant acknowledges that in performing the Services required under this Agreement, it will acquire information about certain matters which are confidential to the City, and such information is the exclusive property of the City. The Consultant undertakes to treat as confidential all information received by reason of its position as Consultant, and agrees not to disclose same to any third party either during performance of the Services or after the expiry or earlier termination of this Agreement.

**ARTICLE. 16 NO PROMOTION OF RELATIONSHIP**

- 16.1 The Consultant will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, websites, internet domain names, press releases, brochures or other written materials (the “Communications”) without the express prior written consent of the City (except as may be necessary for the Consultant to perform its obligations under this Agreement).
- 16.2 Furthermore, the Consultant undertakes and will cause all of its Sub-Consultants to undertake not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Consultant and the City, the International Olympic Committee (“IOC”), the 2010 Olympic and Paralympic Winter Games, the Olympic Movement or the Vancouver Organizing Committee for the 2010 Olympic & Paralympic Winter Games (“VANOC”). Without limiting the generality of the foregoing, the Consultant will not refer to “VANOC”, “Vancouver 2010”, the “2010 Games”, the “Games”, the “IOC”, “Host City”, “Olympic Village”, “Athlete’s Village”, the “Village” or “Olympics” and will not use any website, domain name, official emblem, logo or mascot of the City of Vancouver, VANOC, or the 2010 Olympic and Paralympic Winter Games in any Communications, without the express prior written consent of the City.

#### ARTICLE. 17 DELIVERABLES

- 17.1 As a result of or as part of providing the Services, the Consultant may receive, create, produce, acquire or collect one or more of the following:
- 17.1.1 products, goods, equipment, supplies, models, prototypes and other materials;
  - 17.1.2 information and data;
  - 17.1.3 reports, drawings, plans, designs, depictions, specifications and other documentation; and
  - 17.1.4 any other items identified in this Agreement as deliverables;
- (collectively, the “Deliverables”).
- 17.2 Deliverables are deemed not to include;
- 17.2.1 any item not required to be produced by the Consultant or supplied to the City as part of or together with the Services, provided that if the City has paid or is liable to pay for any portion of such item’s creation, production, acquisition or collection then such item shall be deemed to be a Deliverable;
  - 17.2.2 any item produced as a result of the Services, which is specified in this Agreement as being excluded from the Deliverables category; and

- 17.2.3 any item which pre-existed the effective date of this Agreement, that is owned by a third party or that is used by the Consultant as part of the services provided to any of its other customers (the “Pre-Existing Materials”).
- 17.3 All Deliverables will be owned solely by the City unless otherwise expressly provided herein. The City shall have the complete and unfettered right to use and deal with the Deliverables for its own benefit in any way it sees fit without limitation, and without accounting in any way to the Consultant.
- 17.4 The Consultant will keep accurate records and provide regular reports to the City about the Deliverables as they are created or acquired, and grant to the City access to the Deliverables at all times on reasonable notice. The Consultant will treat each Deliverable as subject to the confidentiality provisions set out in \_\_\_\_\_ unless advised otherwise by the City
- 17.5 Each Deliverable, as to the whole or that portion of the Deliverable then existing, will be delivered by the Consultant to the City on the earliest of each of the following events:
- 17.5.1 the date specified in this Agreement for the delivery of such Deliverable;
- 17.5.2 immediately on the date of expiration or sooner termination of this Agreement; or
- 17.5.3 the date specified by written notice of the City requesting delivery of all or any part of the Deliverable.
- 17.6 The Consultant transfers to the City, free of all liens and encumbrances, ownership of each Deliverable, and assigns all of its world-wide present and future rights, title and interest in and to each Deliverable, including copyright, effective as of the date of creation or acquisition of such Deliverable by the Consultant. The Consultant irrevocably waives, in favour of the City, all moral rights in the Deliverables. The Consultant will obtain from its employees and any independent contractors, all required assignments and releases of intellectual property, and waivers of moral rights, in the Deliverables. The Consultant will not assert any rights to or interests in, or apply for or register any copyright or other rights or interests in, the Deliverables, or assist any other person in doing so. The Consultant shall provide to the City, during and after the term of this Agreement, any reasonable assistance required for the City to obtain, perfect and enforce its ownership of and rights in the Deliverables, including without limitation execution of assignments and

transfers of the Deliverables. This Section does not apply to Pre-Existing Materials.

- 17.7 The Consultant will not incorporate any Pre-Existing Materials in any Deliverable without first:
  - 17.7.1 advising the City, in writing, of the nature of the Pre-Existing Materials and their proposed use and obtaining the City's written consent to do so;
  - 17.7.2 acquiring from each third-party owner of such Pre-Existing Materials, a fully paid-up, perpetual, non-exclusive license, in writing, for the City to use the Pre-Existing Materials as part of the Deliverable; and
  - 17.7.3 granting, in writing, to the City with respect to such Pre-Existing Materials that the Consultant owns, a fully paid-up, perpetual, non-exclusive license to use the Pre-Existing Materials as part of the Deliverable.
- 17.8 The Consultant represents and warrants that the Deliverables will not infringe, misappropriate or misuse any copyright, patent, trade-mark, trade secret, or confidential or proprietary information of a third party. The Consultant shall defend, indemnify and hold the City harmless from and against any and all damage, liability, cost and expense incurred by the City in connection with any claim by a third party that a Deliverable infringed, misappropriated or misused its copyright, patent, trade-mark, trade secret, or confidential or proprietary information.

ARTICLE. 18 NOTICES

- 18.1 Any notice required or permitted to be given to the Consultant will be sufficiently given if delivered in writing by the City's Project Manager to the Consultant's Project Manager personally or, if mailed, by registered mail to the last known address of the Consultant.
- 18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Consultant's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager).

ARTICLE. 19 NO CONFLICT OF INTEREST

- 19.1 The Consultant agrees that during the Term the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Consultant's. Without limiting the general scope of this Section 19.1 and by way of example only, the Consultant is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a request for proposal or invitation to tender, or otherwise giving that person an unfair competitive advantage over other proponents or tenderers responding to a request for proposal or invitation to tender by the City. The Consultant now acknowledges that a breach of this Section 19.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act* (Canada) and *Criminal Code of Canada*, and accordingly, could be punishable as a crime (as well as a breach of contract).
- 19.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is (a) an elected official or employee of the City or (b) related to or has any business or family relationship with an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

ARTICLE. 20 NON-RESIDENT WITHHOLDING TAX

- 20.1 If the Consultant is, at any time, a non-resident of Canada, within the meaning of the *Income Tax Act* of Canada as amended, then, and the Consultant hereby so agrees, the City may deduct from all monies payable under this Agreement and remit to the Receiver-General of Canada, the Government of Canada or Canada Revenue Agency, as applicable, sums not greater than the greater of:
- 20.1.1 25% of all monies payable under this Agreement; and

20.1.2 sums required to be withheld and remitted by the *Income Tax Act* of Canada as amended.

The City will receive full credit under this Agreement for monies withheld as of and from the date of the withholding (regardless of when or whether remitted) and no interest will be payable by the City on sums withheld, not remitted as aforesaid, and later paid directly to the Consultant.

**ARTICLE. 21 COMPLIANCE WITH LAW**

21.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid business license throughout the duration of this Agreement.

21.2 The Consultant agrees that it will during the Term comply with all Applicable Laws.

**ARTICLE. 22 GOVERNING LAW**

22.1 This Agreement will be governed by the laws of the Province of British Columbia and the courts of British Columbia will have exclusive jurisdiction to determine all disputes arising under this Agreement and the Parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

**ARTICLE. 23 INDEPENDENT CONSULTANT**

23.1 This Agreement is a contract for services and the Consultant, its permitted Sub-Consultants, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Consultant and its permitted Sub-Consultants are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.

23.2 The Consultant will not represent to anyone that the Consultant has any authority to bind the City in any way or that the Consultant is an employee or agent of the City.

**ARTICLE. 24 INDEPENDENT LEGAL ADVICE**

24.1 The Consultant acknowledges that the Consultant has been given the opportunity to seek independent legal advice before executing this Agreement.

**ARTICLE. 25 TIME FOR PERFORMANCE**

25.1 Time of the Essence. Time shall be of the essence of this Agreement.

- 25.2 Unavoidable Delay. Notwithstanding Section 25.1, except for the performance of obligations to pay money, the time periods for the City and the Consultant to perform under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this Section, an “Unavoidable Delay” means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, strikes/lockouts, acts of God, war or other strife or governmental action) but expressly excludes any and all delays caused by the Consultant’s lack of financial resources or insolvency or strikes, lockouts or other withdrawals of services arising out of a labour dispute (including a strike, lockout, or other labour dispute involving the Vancouver Board of Parks and Recreation and/or the City of Vancouver and their respective employees) or labour affiliations of the Consultant’s employees or Sub-Consultant’s employees, or governmental action taken in the enforcement of law specifically against the Consultant or its Sub-Consultant. If an Unavoidable Delay occurs, the non-performing party will, as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement.

#### ARTICLE. 26 GENERAL

- 26.1 No Waiver. No action or failure to act by the City shall constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the City.
- 26.2 Severability. The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.
- 26.3 Remedies Cumulative. The remedies of the Parties provided for in this Agreement are cumulative and are in addition to any remedies available to the Parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a Party to any other remedies against the other Party and a Party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.
- 26.4 Further Assurances. Each Party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.

- 26.5 Entire Agreement. The Contract Documents constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof.
- 26.6 Amendment. This Agreement shall not be amended except as specifically agreed in writing by both the City and the Consultant.
- 26.7 Joint and Several Liability of Joint Venture Participants. If the Consultant is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the entities who comprise the Consultant shall be joint and several.
- 26.8 Schedules and Appendices. The schedules and appendices attached hereto are incorporated by reference in and form an integral part of this Agreement.
- 26.9 Set-Off. The City may at its option, withhold and set-off against any amount owing to the Consultant (whether under this Agreement or otherwise) any amounts payable by the Consultant to the City (whether under this Agreement or otherwise) and the amount of any damages suffered or claims made or to be made by the City as a result of any other claim it may have against the Consultant, whether such claim is at law or in equity or tort or on any other basis.
- 26.10 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and the Consultant and their respective successors and permitted assigns.

As evidence of their agreement to be bound by the above contract terms, THE CITY and THE CONSULTANT each have executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER

BY: \_\_\_\_\_  
Director of Legal Services

[CONSULTANT]

BY: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Print Name & Title

SAMPLE

SAMPLE

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PRIME CONTRACTOR AGREEMENT FORM

1.0 DEFINITIONS

- (a) "OH&S Regulation" means the Occupational Health & Safety Regulation (British Columbia Regulation 296/97) enacted pursuant to the WCA, and any successor legislation, all as such Regulation is amended or re-enacted from time to time;
- (b) "Owner" means City of Vancouver;
- (c) "Place of the Work" means the work site at [LOCATION ADDRESS OF THE WORK SITE REQUIRED];
- (d) "Prime Contractor" means the Contractor, who is designated pursuant to Article 3 below by the Owner to be the Prime Contractor for the Project with respect to occupational health and safety for the purposes of WCB Legislation;
- (e) "Project" means [INSERT DESCRIPTION OF THE PROJECT] at [INSERT STREET LOCATION], as contemplated by the Contract Documents, and includes all the Work;
- (f) "WCA" means the *Workers Compensation Act*, R.S.B.C. 1996, Chapter 492, and any successor legislation, as such Act is amended or re-enacted from time to time;
- (g) "WCB" means the Worker's Compensation Board of British Columbia; and
- (h) "WCB Legislation" means the WCA and all regulations thereto including the OH&S Regulation, and all rules, regulations and requirements of WorkSafeBC, and any successor legislation, rules, regulations and requirements, all as amended or re-enacted from time to time; and
- (i) "WorkSafeBC" means the British Columbia Provincial governmental organization by that name which is responsible, inter alia, for promoting workplace health and safety for the workers and employers of British Columbia, and for working with the affected parties to provide return-to-work rehabilitation, compensation, health care benefits and a range of other services, in the event of work-related injuries or diseases suffered by workers in British Columbia.

All other capitalized terms used in this Prime Contractor Agreement have the meanings given to them in the Contract Documents of which this Prime Contractor Agreement is a part, as applicable.

2.0 PRIME CONTRACTOR'S RESPONSIBILITIES

#### Proof of Qualification to act as Prime Contractor

- The Prime Contractor is to provide a current copy of its WorkSafeBC “Clearance Letter”, a signed copy of this Prime Contractor Agreement and all other documents requested by the Owner prior to commencement of the Work.
- The Prime Contractor is to notify the Owner of any changes of status with WorkSafeBC or the WCB during the course of the Project.

After the Prime Contractor has been designated and before Work has commenced, the Prime Contractor shall:

- Conduct all necessary and appropriate inquiries of all relevant Owner staff and records in order to verify in writing to the Owner that the Owner has given to the Contractor all information known to the Owner that is necessary to identify and eliminate or control hazards to the health and safety of persons at the Place of the Work.
- Conduct a pre-contract hazard assessment and carefully review, and plan to address, all hazards identified in that assessment.
- Inform all other employers whose employees are providing services for the Project at the Place of the Work, that it is the Prime Contractor.
- Establish and maintain a system or process to ensure all employers, employees and visitors at/to the Place of the Work comply with the WCA, the OH&S Regulation and the requirements of WorkSafeBC. The Prime Contractor will thus be responsible for site orientation and hazard communication.
- Review and complete a “Pre-Job Meeting Form” if the Owner requests.
- For construction projects, post the Notice of Project on the Place of the Work and deliver a copy to WorkSafeBC at least twenty-four (24) hours before construction commences.
- Comply with Section 20.2 of the OH&S Regulation in respect of the Notice of Project.
- Identify and set expectations for each subcontractor’s safety contact.
- Coordinate all safety-related activities, from site orientations to safety committee meetings and toolbox talks, to inspections and incident reviews.
- Inform employers and workers of the workplace hazards associated with the Place of the Work.
- At the Place of the Work, provide the information listed in Section 20.3(4) of the OH&S Regulation.
- In all other respects strictly comply with, and strictly enforce compliance by others, as applicable, with, the WCA, the OH&S Regulation, the requirements of WorkSafeBC, the safety policies and procedures of the

Owner and the terms and conditions of the Contract Documents applicable.

Throughout the term of the Project, the Prime Contractor shall:

- Ensure that all hazards are promptly and appropriately identified and addressed.
- Ensure the health and safety of the workers on the Project.
- Maintain a current list of persons that each sub-trade (employer) has designated to be responsible for that employer's health and safety activities.
- Ensure provision of first aid equipment and services as required by the OH&S Regulation.
- Coordinate all occupational health and safety activities for the Project.
- Prepare, and communicate to all workers on the Place of the Work, an emergency response plan, taking into account the number of people onsite, the people who work outside regular hours and the types of emergencies that may arise. This plan should also describe subcontractor and individual worker responsibilities (e.g. responding to a fire) and provide for any necessary training and equipment, including first aid supplies as work processes change over the course of the Project, this emergency response plan must be updated as appropriate.
- Make and maintain detailed notes and reports in respect of the initial site safety meeting, safety committee meetings, reviews of contractors' safety systems, inspection and incident investigations, first aid records and orientation and training.
- On any site where workers of two (2) or more employers are working at the same time and the combined workforce is greater than five (5), identify and designate a "Qualified Coordinator" to coordinate health and safety activities.
- In all other respects strictly comply with, and strictly enforce compliance by others, as applicable, with, the WCA, the OH&S Regulation, the requirements of WorkSafeBC, the safety policies and procedures of the Owner and the terms and conditions of the Contract Documents applicable.

Prime Contractor's Qualified Coordinator, if applicable, (Construction Only) responsibilities:

- Comply with all requirements listed in Section 20.3(3) of the OH&S Regulation and on page 13 of the Owner's Multiple Employer Workplace/Contractor Coordination Program (2003).
- Coordinate all health and safety activities for the Project.
- Post workplace drawings showing where first aid is located, the emergency transportation system for injured workers and evacuation marshalling points.

- Ensure that regular workplace safety meetings are held and documented.
- Know who all other contractors' "Qualified Persons" are.
- Ensure that all workers at the Place of the Work are informed of workplace hazards, from both the pre-contract hazard assessment and from ongoing work activities of all employers at the Place of the Work, and ensure that hazards are properly and punctually addressed throughout the duration of the Project.

### 3.0 DESIGNATION AS PRIME CONTRACTOR

By signing this Prime Contractor Agreement, the undersigned Contractor accepts all responsibilities of a Prime Contractor as outlined above and in the Owner's Contractor Coordination Program (2003), Part III of the WCA and the OH&S Regulation, as well as any other responsibilities required by WorkSafeBC.

As a Contractor signing this Prime Contractor Agreement with the Owner, the undersigned company agrees that the company and its management staff, supervisory staff and workers will comply with the all WorkSafeBC requirements, the OH&S Regulation and Part III of the WCA.

Any violation of a requirement of WCB Legislation by the Prime Contractor may be considered a breach of the Contractor's Contract with the Owner resulting in possible termination or suspension of the Contract and/or any other actions deemed appropriate at the discretion of the Owner.

Any penalties, sanctions or additional costs levied against the Owner, as a result of an action or inaction of the Prime Contractor in its capacity as such, are the sole responsibility of the Prime Contractor, as set out in the Contract.

I, the undersigned, acknowledge that I have read and understand the information above. By signing this Prime Contract Agreement, I agree as an authorized representative of the Contractor to accept all responsibilities of the Prime Contractor for this Project.

Date \_\_\_\_\_

Contract # \_\_\_\_\_

Name of Contractor \_\_\_\_\_

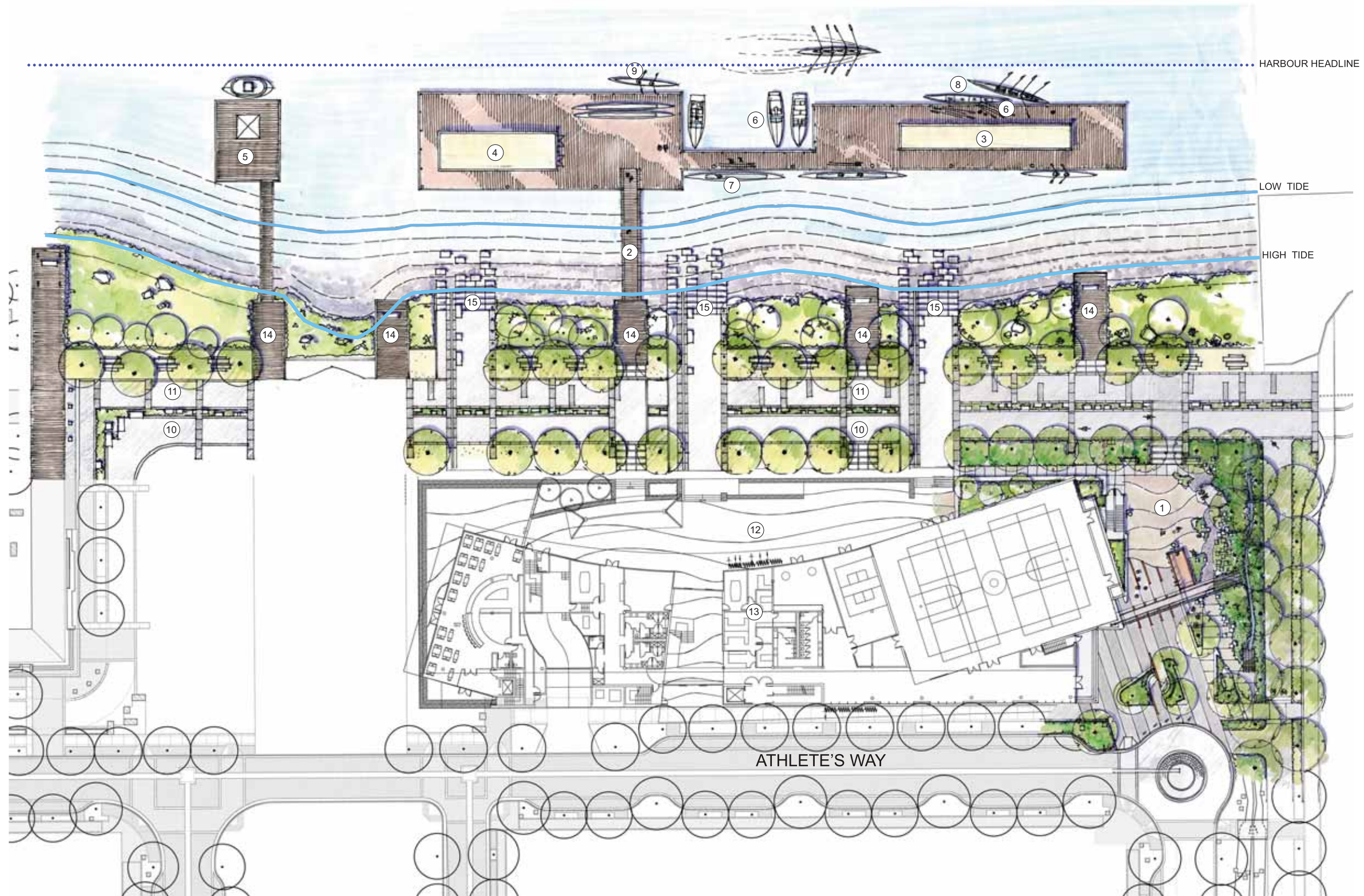
Qualified Coordinator's Name \_\_\_\_\_ (Construction Only)

Signature of Authorized Representative \_\_\_\_\_

Print Name and Title

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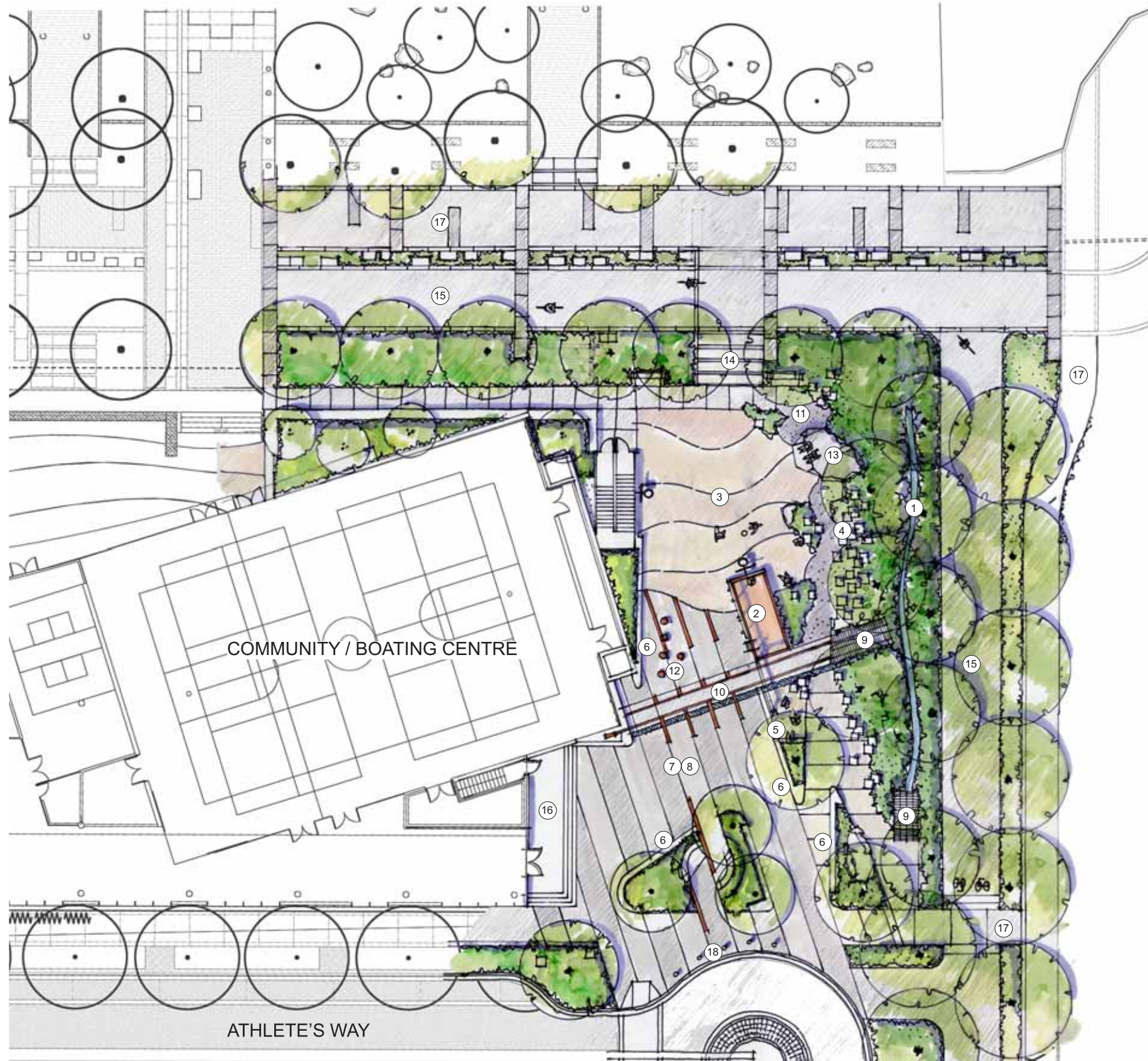
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LEGEND

- ① Community Centre Park
- ② Gangway to float
- ③ Boat shed for kayaks and canoes
- ④ Boat shed for rowing skulls
- ⑤ Water taxi float and shelter
- ⑥ Coach boats
- ⑦ Dragon boats
- ⑧ Rowing skulls
- ⑨ Kayaks
- ⑩ Bike Path
- ⑪ Seawall promenade
- ⑫ Community / Boating Centre courtyard
- ⑬ Community / Boating Centre
- ⑭ Timber Piers
- ⑮ Terraced Granite Blocks





LEGEND

- ① Bioswale
- ② Emergency supplies container with basketball hoop, climbing wall and ladder access to viewing platform above
- ③ Multi-purpose play area including basketball and other hard surface oriented play
- ④ Granite blocks for spectator seating
- ⑤ Children's sandbox with accompanying seating for parents
- ⑥ Concrete seat wall and planter
- ⑦ Community Centre forecourt with seating
- ⑧ Designated loading area
- ⑨ Riparian viewing platforms
- ⑩ Historical rails and drainage runnel imbedded in pavement
- ⑪ Aggregate surfacing
- ⑫ Historical nautical bollards
- ⑬ Large boulder for sitting and viewing
- ⑭ Emergency vehicle access route
- ⑮ Designated bikeway
- ⑯ Community Centre entrance
- ⑰ Pedestrian promenade
- ⑱ Bollard separation for utility vehicles

