



REQUEST FOR PROPOSAL PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD

Proposals are to be addressed to the Purchasing Department of the Vancouver Board of Parks and Recreation and delivered to the Administration Office of the Vancouver Board of Parks and Recreation at 2099 Beach Avenue, Vancouver, British Columbia, V6G 1Z4 prior to 3:00pm, Vancouver Time on October 25th, 2011.

NOTES:

1. Proposals shall be in a sealed envelope or package marked with the proponent's Name, the RFP title and number.
2. The Closing Time and Vancouver Time will be conclusively deemed to be the time shown on the clock located at the Administration Office of the Vancouver Board of Parks and Recreation for this purpose.
3. *PROPOSALS SUBMITTED BY FAX OR EMAIL WILL NOT BE ACCEPTED.*

**All queries related to this RFP shall be submitted in writing
to the attention of:**

Cindy Mercer

Fax: 604-257-8426

Email: cindy.mercer@vancouver.ca

TABLE OF CONTENTS

PART A - INTRODUCTION	Pages [1-3]
1.0 Overview	
2.0 Background and Purpose	
3.0 Objectives	
4.0 Contractual Requirements	
5.0 RFP Service Requirements	
PART B - INSTRUCTIONS TO PROPONENTS	Pages [4-9]
1.0 Administrative Requirements	
2.0 Conduct of RFP - Inquiries and Clarifications	
3.0 Contract Requirements - Professional Services Agreement	
4.0 Pricing	
5.0 Consortium Proposals	
6.0 Submission of Proposal	
7.0 Format of Proposal	
8.0 Bid and Performance Security	
9.0 Conflict of Interest/Solicitation	
10.0 Opening of Proposals	
11.0 Evaluation of Proposals	
12.0 Deviation from Requirements or Conditions	
13.0 Proposal Approval	
14.0 Quantities - Intentionally Omitted	
15.0 Brand Names - Intentionally Omitted	
16.0 Alternates or Variations to Specifications	
17.0 Environmental Responsibility	
18.0 Freedom of Information and Protection of Privacy Act	
19.0 Confidentiality	
20.0 Advertising	
21.0 Special Conditions	
22.0 Non-Resident Withholding Tax	
23.0 Legal Terms and Conditions	
PART C - SPECIAL CONDITIONS	Pages [10]
1.0 Pricing	
2.0 Insurance Requirements	
3.0 Budget	
PART D - PROPOSAL FORM	Pages [PF1-3]
1.0 Required Documents	
2.0 Compliance	
3.0 Proponent's Declaration and Acknowledgment	
Attachment A - Proposal Form (Legal Terms and Conditions)	

SCHEDULES

- Schedule A - Requirements
- Schedule B - Pricing
- Schedule C - Deviations and Variations
- Schedule D - Sub-Contractors

APPENDICES

- Appendix 1 - Informational Meeting Attendance Form
- Appendix 2 - Response Notification Form
- Appendix 3 - Sample Lease Agreement
- Appendix 4 - Certificates of Insurance
- Appendix 5 - Site Description

PART A - INTRODUCTION

1.0 OVERVIEW

1.1 This Request for Proposal (“RFP”) identifies a business opportunity for the successful Proponent to provide **an aboriginal cultural centre and attraction**. The City of Vancouver as represented by the Vancouver Board of Parks and Recreation (“VPB”) is requesting proposals from interested firms with expertise in presenting **West Coast aboriginal culture and history. Expertise must include the translation of the cultures and values of local Coast Salish, and regional (British Columbia’s) Aboriginal peoples and their contribution to environmental and social values, into presentations which will be understandable and appealing to the diverse and multi-cultural public who visit Stanley Park.** The successful Proponent’s work on this project will consist of:

- a) The re-development of the proposed site formally occupied by the Stanley Park Farmyard into an an aboriginal cultural centre and attraction subject to the approval of the Vancouver Park Board.
- b) The daily operation of the site and all its requirements based on mutually agreed terms inclusive of operating months, days and hours.
- c) The site while in operation shall contain a combination of static and live performance based displays.
- d) Shall contain various historical and contemporary features showcasing aboriginal peoples represented within the local Coast Salish area and the Province of British Columbia.
- e) Shall promote for sale based on the approval of the Vancouver Park Board various authentic aboriginal goods.

1.2 The VPB 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, proposed innovative design, and operations and maintenance enhancements and any other evaluation criteria set out herein.

1.3 A proponents’ Informational Meeting (“**Informational Meeting**”) will be held:

Date: October 18th, 2011

Time: 3:00PM PST

Location: Stanley Park 2099 Beach Avenue, Vancouver BC, V6G 1Z4

The proponents’ Informational Meeting will include an overview of the RFP Requirements and an overview of the background documents and the RFP process. This meeting will also enable proponents to seek clarification on RFP issues in a communal forum.

1.4 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 prior to the Informational Meeting.

- 1.5 All prospective proponents are asked to pre-register for the Informational Meeting by submitting an Informational Meeting Attendance Form (Appendix 1) by fax to **604-257-8426** or e-mail to cindy.mercer@vancouver.ca by **October 14th, 2011**.
- 1.6 The VPB will in good faith attempt to give accurate verbal responses to questions during the Informational Meeting but proponents are advised that they may only rely on the formal written response/summary to be issued by the VPB following the Informational Meeting. The formal written response/summary will be issued by the VPB as soon as possible and faxed or e-mailed to the pre-qualified proponents as an addendum to this RFP.
- 1.7 Following the Informational Meeting, all prospective proponents who still intend to submit proposals are to complete and then submit the Response Notification Form (Appendix 2) prior to **October 12th, 2011**.
- 1.8 Key dates to be noted are:

Event	Time/Date
Release of RFP	October 11th, 2011
Deadline for submission of Informational Meeting Response Form	October 14th, 2011
Proponents' Informational Meeting	October 18th, 2011
Deadline for submission of Response Notification Form	October 19th, 2011
Deadline for Inquiries should be submitted to VPB	October 21st, 2011
RFP Closing Time	October 25th, 2011

2.0 BACKGROUND AND PURPOSE

2.1 Background

The Vancouver Park Board in late 2010 announced the closure of the Stanley Park Farmyard after operating in the park since the early part of the twentieth century. After the closure of the site all of the animals were adopted to various hobby farm operators through out the province. The site has been vacant since March of 2011. Located adjacent to the Stanley Park Miniature Train the site occupies approximately 1 acre of land and consists of two major outbuildings a ticket booth and some temporary enclosures totalling approximately 5000 square feet. The site is located on Pipeline Road just north of the Malkin Bowl. The Vancouver Park Board is seeking creative solutions that will transform the area into an aboriginal cultural centre and attraction and is seeking proposals from proponents with expertise in this area with a detailed plan outlining vision for how the proponent will achieve this objective.

2.2 Purpose

The Vancouver Park Board is issuing this RFP in order to identify a proponent with the best skills and experience who has the capabilities to achieve the objectives as outlined in section 1.1 of this document. The Vancouver Park Board anticipates that there will be no impact to existing landscaped areas inclusive of trees, plants, grasses, natural soil, and shrubs. Should an applicant anticipate changes to any of these landscaped areas it must be contained within the applicants proposal. All applicants are required to provide a detailed financial model outlining anticipated annual revenues expenses and contribution utilizing the form attached as Appendix 5. The financial model is to include a financial return to the Park Board either in the form of a monthly rental or a % of revenues. If the proposal contains capital upgrades the proponent is

also required to submit a capital plan outlining any investment that is to be considered by the Park Board and how it will be allocated.

2.3 Site Description

The site occupies approximately 1 acre of land and approximately 5000 square feet of building space including a primary contact barn, animal stall areas, bird barn, administrative office areas and staff areas and an entrance way structure.

2.4 Park Board Values

Proponents are encouraged to familiarize themselves with the VPB and its mission and values and ensure that their proposals are consistent with the mission and values. General information about the VPB is available at:

<http://www.city.vancouver.bc.ca/parks/info/aboutus/index.htm>

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 VPB 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 VPB's Professional Services Agreement outlining the VPB'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 3. 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*.

5.0 RFP SERVICE REQUIREMENTS

- 5.1 In support of the objectives as outlined above, the VPB has identified specific Requirements within Schedule A of this RFP, to which the Proponent should respond in detail as part of its Proposal.

PART B - INSTRUCTIONS TO PROPONENTS

NOTE: The definitions set out in Attachment A - *Legal Terms and Conditions* of the Proposal Form (Part D) or in the other parts of this RFP 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 Immediately after attending the Informational Meeting, please indicate whether or not you will be submitting a Proposal prior to the Closing Time by sending the Response Notification Form (Appendix 2).
- 1.2 Proponents are to submit Proposals 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 **Cindy Mercer** 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 each proponent to thoroughly examine these documents and satisfy itself as to the full requirements of this RFP. Inquiries are to be in written form only, faxed to **604-257-8426** or emailed to cindy.mercer@vancouver.ca to the attention of the Contact Person shown on the cover page before the deadline date. If required, an addendum will be issued and faxed or e-mailed to the pre-qualified proponents as noted in Part A - *Introduction*.

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 3, Section 12, page 9**.
- 3.2 Where the head office of the successful Proponent is located within the Vancouver Park Board and/or where the successful Proponent is required to perform any work at a site located within the Vancouver Park Board, 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 3. 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*).

While the VPB 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 VPB.

4.0 CONSORTIUM PROPOSALS

- 4.1 The VPB 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 VPB will consider such a consortium proposal, the VPB 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-contractors or sub-consultants, as the case may be.

- 4.2 A single person or company is to be identified as the Key Contact Person on the Proposal Form (Part D), and be prepared to represent the consortium to the VPB. The Key Contact Person will serve as the primary contact and take overall responsibility for all communications with the VPB during the proposal submission, evaluation, and any negotiation process.
- 4.3 Consortium proposals are to include proposed contract language describing each consortium member's roles and responsibilities and the proposed legal contract structure.
- 4.4 The VPB 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-contractors or sub-consultants. Each component of the consortium proposal should be priced out individually.

5.0 SUBMISSION OF PROPOSAL

- 5.1 Proponents should submit three (3) copies of their proposal, with each section tabbed and including all accompanying schedules, appendices or addenda 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.
- 5.2 Only the English language may be used in responding to this RFP.
- 5.3 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. The VPB may or may not elect to extend the Closing Time.
- 5.4 Amendments to a Proposal should be submitted in writing in a sealed envelope or package, marked with the proponent's name and the RFP title and number.
- 5.5 Proposals are revocable and should be withdrawn at any time before or after the Closing Time and are to be withdrawn by written notice delivered to the office of Cindy Mercer, 2099 Beach Avenue, Vancouver BC, V6G 1Z4, signed by the authorized signatory for the proponent(s).
- 5.6 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.

6.0 FORMAT OF PROPOSAL

- 6.1 Proponents are encouraged to submit clear and concise proposals. 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 is discouraged.
- 6.2 Proponent(s) should complete all forms included in this RFP, attaching any additional appendices that may be required. Proposals should be arranged as follows:

Title Page: The title page should show the RFP title and number, Closing Time and Date, proponent's name, address, telephone number and the name and title of the contact person.

Table of Contents: Page numbers should be indicated.

- Executive Summary:** A short summary of the key features of the proposal demonstrating the proponent's understanding of the scope of the Requirements.
- Proposal Form:** The proponent(s) should complete the Proposal Form and attached Attachment A - *Legal Terms and Conditions* included in this RFP in accordance with the instructions.
- Required Documents:** The proponent is to attach any required documents described in Section 1.0 - *Required Documents* of the Proposal Form.
- Schedules:** The proponent(s) should 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.
- Alternate Solutions:** Proponents may submit alternative solutions and should identify same as additional appendices within their proposal.
- Added Value:** Proponents may submit Added Value services above and beyond the scope of the work and are to identify same as additional appendices within their proposal.

7.0 BID AND PERFORMANCE SECURITY

- 7.1 No Bid Security is required since no irrevocable binding legal offer is made by submitting a proposal in response to this RFP.

8.0 CONFLICT OF INTEREST/SOLICITATION

- 8.1 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 United States of America,
- are fully and properly disclosed in Section 6.0 of Part D - Attachment A - *Legal Terms and Conditions*.
- 8.2 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.
- 8.3 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 VPB with respect to its proposal, whether before or after the submission of the proposal, the VPB will automatically disqualify such proponent.

9.0 OPENING OF PROPOSALS

- 9.1 The VPB reserves the right to open all proposals in a manner and at the time and place determined by the VPB. The VPB intends to disseminate proposal information as follows:

- (a) upon opening and registration of the proposals, the name of each proponent will be announced; and
- (b) upon completion of the evaluation of the proposals, the salient features of each proposal and the recommended proposal may be summarized and publicly reported on to the Vancouver Park Board of Commissioners should the value of the contract require Board approval.

10.0 EVALUATION OF PROPOSALS

- 10.1 Proposals will be evaluated by representatives of the VPB on the basis of the overall best value to the VPB based on quality, service, price and any other criteria set out in this RFP including, but not limited to:
- (a) the proponent's ability to meet the Requirements;
 - (b) the proponent's ability to deliver the Requirements when and where required;
 - (c) the proponent's skills, knowledge and previous experience;
 - (d) the proposed plan of approach and work schedule;
 - (e) the proponent's business reputation and capabilities;
 - (f) compliance with VPB's insurance requirements;
 - (g) environmental issues considered by the proponent;
 - (h) quality of proposal, including any innovative concepts; and
 - (i) The Financial offer submitted as part of the proponent's submission
 - (j) any other criteria set out in the RFP or otherwise reasonably considered relevant.
- 10.2 The VPB may elect to short list proponents in stages as deemed necessary.
- 10.3 Proponent(s) 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.
- 10.4 Samples of items, when required, should be submitted within the time specified and must be supplied at no expense to the VPB. They will be returned at the proponent's request and expense.
- 10.5 Prior to approval of a proposal, the VPB must be satisfied as to the proponent's financial stability. The proponent(s) may be asked to provide annual financial reports or a set of financial statements prepared by an accountant and covering the proponent's last two (2) fiscal years.
- 10.6 The VPB may request that any or all sub-contractors of the proponent(s) undergo the same evaluation process.

11.0 DEVIATION FROM REQUIREMENTS OR CONDITIONS

11.1 Any deviation from the Requirements or the conditions specified in this RFP, including the sample agreement attached as Appendix 3, should be clearly stated in the Proponent's Proposal within Schedule C - *Deviations and Variations*. The VPB will be the sole judge as to what constitutes an acceptable deviation. If no deviations are indicated in the Proponent's Proposal, the VPB will assume that the Proponent is proposing full compliance with the Requirements and conditions of this RFP.

12.0 PROPOSAL APPROVAL

12.1 Proposal approval is contingent on funds being approved and the proposal being approved by the Vancouver Park Board of Commissioners. The successful proponent(s) and VPB can then proceed to settle, draft and sign the necessary legal agreement.

12.2 The VPB will notify the successful proponent(s) in writing that its proposal has been approved in principle and invite the proponent(s) to proceed with discussions to settle, draft and sign a legal agreement.

12.3 The VPB is not under any obligation to approve any proposal and may elect to terminate this RFP at anytime.

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

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

13.0 QUANTITIES - Intentionally Omitted

14.0 BRAND NAMES - Intentionally Omitted

15.0 ALTERNATES AND/OR VARIATIONS TO SPECIFICATIONS

15.1 Proponents should clearly indicate any variances from the VPB's Requirements or conditions no matter how slight. The attachment of descriptive literature from which variations may be gleaned will not be considered as a sufficient statement of variations.

15.2 If in addition to proposing goods and/or 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.

15.3 The VPB will, during its evaluation process, determine what constitutes allowable or acceptable variations or alternatives.

16.0 ENVIRONMENTAL RESPONSIBILITY

16.1 The VPB is committed to preserving the environment. Proponent(s) should provide environmentally sensitive products or services wherever possible. Where there is a requirement that the proponent supplies materials, and where such materials may cause adverse effects to the environment, the proponent shall indicate the nature of the hazard in its proposal.

16.2 The proponent is to advise the VPB 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 VPB is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) which imposes obligations on the VPB's consultants or contractors to protect all personal information acquired in the course of providing any service or work to the VPB.

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 VPB information without the VPB's prior written consent.

18.2 This RFP is the property of the VPB. Copies may not be made or distributed without the prior written approval of the VPB.

19.0 ADVERTISING

19.1 The approval of any proposal and the signing of an agreement do not allow a proponent to advertise its relationship with the VPB, in any way without the VPB's prior written authorization.

20.0 SPECIAL CONDITIONS

20.1 Proponents should note that if Part C - *Special Conditions* of this RFP conflict with Parts A and B of this RFP, the Part C - *Special Conditions* will govern over Parts A and B.

21.0 NON-RESIDENT WITHHOLDING TAX

21.1 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.

22.0 LEGAL TERMS AND CONDITIONS

22.1 No part of Part A - *Introduction*, this Part B - *Instructions to Proponents*, nor Part C - *Special Conditions* will be legally binding on the VPB 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.

PART C - SPECIAL CONDITIONS

1.0 PRICING

- 1.1 The proponent(s) should submit pricing information as per the requirements outlined in Schedule B - *Pricing*. Failure to follow these instructions may deem the proposal to be non-compliant or incomplete, and may or may not result in its disqualification.

2.0 INSURANCE REQUIREMENTS

- 2.1 Proponents are requested to review and ensure that they fully understand the VPB's insurance requirements as outlined within Appendix 4 - CERTIFICATE OF EXISTING INSURANCE.
- 2.2 Proponents should include in their proposal the amount of Professional Liability (Errors and Omissions) insurance currently carried by their proposed Sub-contractor(s). Depending on the amount of such coverage for a particular Sub-contractor(s), the VPB may want to negotiate the minimum limits for such coverage carried by a particular Sub-contractor(s) for the Project.
- 2.3 Proponents are to submit with their proposals a Certificate of Existing Insurance (in the form set out as Appendix 4) 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 Appendix of the sample agreement attached as Appendix 3, should they be selected as the successful Proponent.
- 2.4 The successful proponent will be required to file certificates of insurance with the VPB showing proof of all insurance requirements described in Appendix 1 of the sample agreement attached as Appendix 3 utilizing the "Certificate of Professional Liability Insurance" attached as Appendix 4 and "Certificate of CGL Insurance" also attached as Appendix 4. These certificates must be received and reviewed and approved by the VPB prior to or concurrently with the VPB entering into any Contract with the successful Proponent.

3.0 BUDGET - N/A

PART D - PROPOSAL FORM

Proponent's Name: _____
"Proponent"

Address: _____

Telephone: _____ Fax: _____

Key Contact Person: _____

E-mail: _____ Incorporation Date: _____

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

TO: VANCOUVER BOARD OF PARKS AND RECREATION

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, together with letter from Proponent's broker/agent (refer to Part C – <i>Special Conditions</i> , Section 2.3)	Yes	

To be initialled at Proposal Opening:

Contracting Specialist, **Cindy Mercer** or designate

Witness

2.0 COMPLIANCE

By initialling each item, the Proponent acknowledges it has read and understands the Requirements, has submitted the required addenda, has identified deviations or alternatives, and provided an explanation of where it does not comply with the Requirements.

Section Title	Understands Requirements	Will Comply	Does Not Comply	Variations, Alternatives or Explanation for Non-Compliance
<u>Part A</u> Introduction				
<u>Part B</u> Instructions to Proponents				
<u>Part C</u> Special Conditions				
<u>Part D</u> Proposal Form				

By initialling each item, the Proponent confirms it has completed and enclosed the following Schedules and any required addenda in its Proposal and has identified any deviations or items of non-compliance, providing an explanation of where it does not comply.

Section Title	Submitted	Variations, Alternatives or Explanation for Non-Compliance
<u>Part D - Attachment A</u> Legal Terms and Conditions		
<u>Schedule A</u> Requirements		
<u>Schedule B</u> Pricing		
<u>Schedule C</u> Deviations and Variations		
<u>Schedule D</u> Sub-contractors		

3.0 PROPONENT'S DECLARATION AND ACKNOWLEDGMENT

3.1 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 WHEREOF the Proponent has executed this Proposal Form:

Authorized Signatory for the Proponent

Date

Name and Title (*please print*)

ATTACHMENT A - PART D (LEGAL TERMS AND CONDITIONS)

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 VPB's and Proponent's/Sub-contractors' 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 VPB and the Contractor following the signing of the Contract (if any).

1.2 Definitions

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

- (a) **"Contract"** means any legal agreement, if any, entered into between the VPB and the successful proponent following the conclusion of the RFP process, approval of the Contract by the VPB, and the settlement, execution and delivery of same by each party to the Contract.
- (b) **"HST"** means the tax payable and imposed pursuant to Part IX of the Excise Tax Act (Canada) as amended, including any provincial component collected by Canada on behalf of British Columbia, and any successor legislation thereto;
- (c) **"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).
- (d) **"Project"** means the **Stanley Park Site Utilization - Farmyard**.
- (e) **"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.
- (f) **"Proposal"** means the package of documents consisting of this Proposal Form, as well as all Schedules, once completed and submitted to the VPB by the Proponent, and **"proposal"** means any proposal submitted by any other proponent, excluding or including the Proponent, depending on the context.
- (g) **"RFP"** means the documents issued by the VPB as Request for Proposal No. **PS20110451**, including all addenda.
- (h) **"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.

- (i) “Sub-contractors” includes any or all third parties listed in Schedule D of this Proposal Form.
- (j) 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 VPB

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 VPB assumes no legal duty or obligation in respect of this RFP or unless and until the VPB enters into a Contract. This RFP process is at all times contingent on funds being approved by the Vancouver City Council and a Contract being signed by the VPB.

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

(b) *Proponent’s Risk*

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

- (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 VPB 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 VPB at the VPB's sole discretion.

3.2 Reservation of Complete Control over Process

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

4.0 PROTECTION OF VPB AGAINST LAWSUITS

4.1 Release

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

- (a) any alleged (or judicially imposed) breach by the VPB of the RFP (it being acknowledged and agreed that to the best of the parties' knowledge, the VPB 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 VPB occurring in the course of conducting this RFP process;
- (c) the Proponent preparing and submitting its Proposal;
- (d) the VPB accepting or rejecting its Proposal or any other submission;
- (e) the manner in which the VPB:
 - (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
 - (iv) the proponent(s), if any, with whom the VPB enters a Contract.

4.2 Indemnity

Except only and to the extent that the VPB 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 VPB harmless from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its Sub-contractors or agents alleging or pleading:

- (a) any alleged (or judicially imposed) breach by the VPB or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the VPB 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 VPB 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

Except as expressly and specifically permitted in this RFP, no Proponent shall have any claim for any compensation of any kind whatsoever as a result of participating in this RFP and, by submitting a proposal, each Proponent shall be deemed to have agreed that it has no claim.

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the VPB 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 VPB 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-contractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its Sub-contractors or agents on any basis or legal principle of any kind, the VPB's liability is limited to a maximum of \$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 VPB 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 VPB and any proponent with whom the VPB 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 and the seat of arbitration will be Vancouver, British Columbia;
- (b) this Section 4.0 - *Protection of City against Lawsuits* will:
 - (i) bind the VPB, 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 - VPB's Property

- (a) All RFP packages and addenda provided to the Proponent by the VPB remain the property of the VPB and must be returned to the VPB upon request.
- (b) The documentation containing the Proposal, once submitted to the VPB, becomes the property of the VPB, and the VPB 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 VPB's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the VPB's Board of Commissioners on the proposal results or announcing the results of the proposals to the proponent(s), the VPB will treat all material and information expressly submitted by the Proponent (and the VPB'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 VPB in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the VPB 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 VPB Data/Information is Confidential

The Proponent will not divulge or disclose to any third parties any information concerning the affairs of the VPB 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 VPB'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 VPB of which the Proponent may gain knowledge in connection with or in the course of discussions or negotiations with the VPB.

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 VPB, which consent may be arbitrarily withheld unless it is information which the VPB has already 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 VPB in the course of publicly reporting to the VPB's Board of Commissioners 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 VPB 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 VPB'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 VPB's ability to engage in competitive procurement of goods and services, and result in undue financial loss to the Proponent and/or the VPB.

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-contractor'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 VPB; or
- (b) related to or has any business or family relationship with any elected official or employee of the VPB, 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 VPB,

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].

6.2 Declaration as to no Conflict of Interest Respecting Proposed Services

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

- (a) are currently engaged in providing (or are proposing to provide) - consulting services 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 VPB and the Proponent's or its Sub-Contractors' 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 proposed Sub-Contractors 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 SURVIVAL/LEGAL EFFECT OF PROPOSAL CONTRACT

7.1 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 VPB.

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:

Authorized Signatory for the Proponent

Date

Print Name and Title

SCHEDULE A - REQUIREMENTS

This Schedule identifies the Requirements to which the VPB 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-contractor 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 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 VPB contacting these references at its discretion, and consents to the VPB 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, and all roles and areas of responsibility.

2.4 Preference will be given to proponent's teams that demonstrate local (Coast Salish) as well as regional (British Columbia) knowledge and experience. Proponents must state the local and regional knowledge and experience of each proposed team member. For team members with limited or no local 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 April, 2012.

4.0 REQUIREMENTS OVERVIEW

4.1 In support of the objectives as outlined in Section 3.0 of Part A in this RFP, the VPB 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, the VPB is interested in proposals that will add value to the Project. Innovative ideas will be favorably 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 **Stanley Park Site Utilization - Farmyard** as contemplated by the VPB and outlined in section 1.1 of the introduction. 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-contractors.

5.3 In the Proposal, the Proponent should provide the following:

- (a) 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 a two week review period for VPB staff to provide comments on draft versions of all deliverables;

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

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

6.0 PROJECT TASKS

6.1 The following sections describe specific issues that have been identified by the VPB and the VPB's consultants for review by the Proponent as part of this Project.

- (a) **As outlined in section 1.1**
- (b) **Health and Safety.** The Consultant will be responsible for the health and safety of all the Consultants' and Sub-contractors' staff, either directly or indirectly. The Consultant will develop a health and safety plan for the Project and specify health and safety requirements.

7.0 COMMUNICATIONS

7.1 The Consultant will provide regular updates to the VPB throughout the Project. These updates will be through various means including phone conversations, written communications, face-to-face meetings and the like.

8.0 VALUE ADDED SERVICES

8.1 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.

9.0 REFERENCES

9.1 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 VPB contacting these references, and consents to the VPB 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

SCHEDULE C - DEVIATIONS AND VARIATIONS

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 3), such clauses should be attached to this Schedule C. The VPB will assume such clauses are in addition to those in the sample Professional Services Agreement unless otherwise indicated by the Proponent.

SCHEDULE D - SUB-CONTRACTORS

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

If no Sub-contractors will be used, indicate “Not Applicable”.

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

APPENDIX 1 - INFORMATIONAL MEETING ATTENDANCE FORM



VANCOUVER BOARD OF PARKS AND RECREATION

2099 Beach Avenue
Vancouver, British Columbia V6G 1Z4

**Request for Proposal No. PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD**

To acknowledge your intent to attend the Informational Meeting being held as per Part A *Introduction*, Section 1.2, and to ensure that you receive the required information, please submit this form to the person identified below before close of business day, October 14th, 2011

Cindy Mercer, Contracting Specialist
Fax: 604-257-8426
Email: cindy.mercer@vancouver.ca

Your details:

Proponent's Name: _____
"Proponent"

Address: _____

Telephone: _____ Fax: _____

Key Contact Person: _____

E-mail: _____ Incorporation Date: _____

Our company **WILL** / **WILL NOT** attend the informational meeting for

"RFP No. PS20110451 - STANLEY PARK SITE UTILIZATION - FARMYARD"

Authorized Signatory and Name of Company (Please print)

E-mail Address (Please print)

Date

APPENDIX 2 - RESPONSE NOTIFICATION FORM



VANCOUVER BOARD OF PARKS AND RECREATION

2099 Beach Avenue
Vancouver, British Columbia V6G 1Z4

**Request for Proposal No. PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD**

To acknowledge your intent to submit a proposal, and to ensure that you receive the required information, please submit this form to the person identified below before close of business day, **October 19, 2011**

Cindy Mercer, Contracting Specialist
Fax: 604-257-8426
Email: cindy.mercer@vancouver .ca

Your details:

Proponent's Name: _____
"Proponent"

Address: _____

Telephone: _____ Fax: _____

Key Contact Person: _____

E-mail: _____ Incorporation Date: _____

Our company WILL / WILL NOT submit a proposal for
"RFP No. PS20110451 - STANLEY PARK SITE UTILIZATION - FARMYARD"
by the Closing Time: October 25th, 2011, at 3:00pm

Authorized Signatory and Name of Company (Please print)

E-mail Address (Please print)

Date

**REQUEST FOR PROPOSAL NO. PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD
APPENDIX 3 – SAMPLE LEASE AGREEMENT**

[Note: Proponents should note that the City may, at its discretion, make changes to this form of lease during the RFP process by issuing an Addendum. This form of lease is not finalized but is intended to give Proponents an idea of the commercial terms and conditions that would be acceptable to the City. Proponents should carefully review any draft notes below, as indicated by “NTD”.]

LEASE

BETWEEN:

CITY OF VANCOUVER, represented by its
BOARD OF PARKS AND RECREATION
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

(the “**Landlord**”)

AND:

(the “**Tenant**”)

Premises:

CREEKSIDE COMMUNITY RECREATION CENTRE RESTAURANT

Parcel Identifier: _____

[The current Lot number is 324 but there is a proposed subdivision of Lot 324. Confirm Lot number when lease is finalized.]

Legal Description: _____

Initial Term:

[Insert when finalized - as set out in Section 1.02.]

Rent:

[Insert when finalized - as set out in Section 1.03.]

Option to Renew:

[Insert when finalized - as set out in Section 14.01.]

**REQUEST FOR PROPOSAL NO. PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD
APPENDIX 3 – SAMPLE LEASE AGREEMENT**

INDEX

ARTICLE I

- 1.01 Term
- 1.02 Intentionally Omitted
- 1.03 Rent
- 1.04 Payments Generally
- 1.05 Utilities
- 1.06 Use of Premises
- 1.07 Licence to Use Licence Areas
- 1.08 Conduct of Business
- 1.09 Prohibited Activities/Products
- 1.10 Install Tenant's Furniture, Furnishings, Equipment and Continuously Operate
- 1.11 Interest on Arrears
- 1.12 Security Deposit
- 1.13 Property Taxes
- 1.14 Applicable Sales Tax

ARTICLE II

- 2.01 Revenue Report
- 2.02 Accounting Procedures and Controls
- 2.03 Audited Revenue Reports

ARTICLE III

- 3.01 No Damage
- 3.02 Snow Removal from the Leased Area and Sidewalks
- 3.03 Alterations
- 3.04 Maintenance
- 3.05 Repairs to Premises
- 3.06 Repairs to Building
- 3.07 Liens and Encumbrances
- 3.08 Signage

ARTICLE IV

- 4.01 Limitation of Liability
- 4.02 Exclusion of Liability
- 4.03 Indemnification

ARTICLE V

- 5.01 Definitions
- 5.02 Suitability of the Premises
- 5.03 Tenant's Inspection of the Premises
- 5.04 Release and Indemnification⁰⁴
- 5.05 Removal of Hazardous Substances
- 5.06 Breach of Laws Relating to Hazardous Substances
- 5.07 Enquiries Pertaining to Hazardous Substances
- 5.08 Landlord's Inspection of Goods
- 5.09 Ownership Remains with Tenant
- 5.10 Environmental Covenants Survive Termination

**REQUEST FOR PROPOSAL NO. PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD
APPENDIX 3 – SAMPLE LEASE AGREEMENT**

ARTICLE VI

- 6.01 Tenant's Construction Insurance
- 6.02 Tenant's Insurance (Post-Construction)
- 6.04 General Requirements of Insurance
- 6.05 Evidence of Insurance

ARTICLE VII

- 7.01 Termination Damage or Destruction
- 7.02 Repair of Damage or Destruction
- 7.03 Abatement of Rent
- 7.04 No Effect on Repair Obligations
- 7.05 Tenant to Notify Promptly

ARTICLE VIII

- 8.01 Assignment
- 8.02 Subleasing
- 8.03 Assignment of Lease Rent
- 8.04 Mortgaging by Tenant
- 8.05 Tenant Liable for Rent, Property Taxes Notwithstanding Mortgage
- 8.06 Mortgage subject to Landlord's Rights under Lease
- 8.07 Notice to and Remedies of Mortgagee

ARTICLE IX

- 9.01 Bankruptcy

ARTICLE X

- 10.01 Statutes and By-laws
- 10.02 Quiet Enjoyment
- 10.03 Performance of Obligations
- 10.04 Registration of Lease
- 10.95 Landlord's Rules and Regulations

ARTICLE XI

- 11.01 Breach of Covenants
- 11.02 Distraint
- 11.03 Right to Re-let
- 11.04 Forfeiture
- 11.05 Remedies Generally
- 11.06 Expenses
- 11.07 Landlord May Remedy Tenant's Default
- 11.08 Security Agreement

ARTICLE XII

- 12.01 Vacant Possession
- 12.02 Trade Fixtures
- 12.03 Overholding

ARTICLE XIII

- 13.01 For Showings/Inspections
- 13.02 Landlord's Access to Records
- 13.03 Emergency Access

**REQUEST FOR PROPOSAL NO. PS20110451
STANLEY PARK SITE UTILIZATION - FARMYARD
APPENDIX 3 – SAMPLE LEASE AGREEMENT**

ARTICLE XIV

14.01 Option to Renew

ARTICLE XV

**15.01 Landlord Released
15.02 Tenant's Covenant
15.03 Status Statement**

ARTICLE XVI

**16.01 Delivery of Notices
16.02 Administration of Lease
16.03 Covenants Survive Termination
16.04 Time is of the Essence
16.05 Captions and Headings
16.06 Interpretation
16.07 Joint and Several
16.08 Waiver
16.09 Entire Agreement
16.10 Governing Law
16.11 Severability
16.12 Relationship between Landlord and Tenant
16.13 Force Majeure
16.14 Permanent Public Park
16.15 Parking
16.16 No Promotion
16.17 Trade and Domain Names**

DRAFT

WITNESSES THAT WHEREAS:

A. The Landlord is the owner of certain lands situate in the City of Vancouver, in the Province of British Columbia, which are legally described as:

Parcel Identifier: _____

Legal Description: _____

on which lands exist the Creekside Community Recreation Centre (the "**Building**"), a building over which the Vancouver Board of Parks and Recreation has exclusive jurisdiction and control;

B. In response to a request for proposals issued by the Landlord the Tenant submitted a proposal to operate on the Premises in the Building and the Landlord accepted the Tenant's proposal, modified as agreed by the Landlord and Tenant;

C. The portion of the Building outlined in bold black attached as Schedule A -Lease Area (the "**Premises**") and the deck and patio portion of the Building outlined in bold black attached as Schedule A.1 - Licence Areas (the "**Licence Areas**") have been constructed for use as a restaurant including sit down restaurant and bar service on both levels;

D. The Landlord has agreed to:

(i) lease the Premises to the Tenant as hereinafter provided; and

(ii) grant a licence to the Tenant to use the Licence Areas as hereinafter provided;

E. The Tenant has agreed to supply all furniture, furnishings and equipment required for the proper and efficient operation of the Premises as a restaurant in conjunction therewith; and

F. The Landlord's Board of Parks and Recreation, by resolution made at its meeting on _____, 20____, resolved to lease the Premises to the Tenant upon the terms and conditions hereinafter set out.

NOW THEREFORE in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord by these presents does demise and lease the Premises unto the Tenant and the Tenant does hereby take and rent the Premises upon and subject to the conditions set out hereunder.

ARTICLE I

Section 1.01 Definitions

In this lease, the following words and expressions will have the following meanings:

(a) "**Commencement Date**" means the date immediately following the expiry of the Tenant Improvement Phase.

(b) "**Gross Revenue**" means the entire amount of the total sale prices whether for cash or credit of all sales of food, beverages (including alcoholic beverages) and merchandise and the entire amount of all other receipts from all of the food service operations including any take out service operations, and includes all receivables whatsoever of all business conducted at, in, on

or from the Premises by the Tenant and any affiliate of the Tenant, including receipts and receivables in respect of services provided at the Premises even though the orders for such services are not made at or through the Premises, but excluding:

- (i) income derived from meals provided to staff;
- (ii) gratuities from patrons;
- (iii) all sums collected and paid out for any direct retail sales tax imposed by any government authority, including HST;
- (iv) the "free" food portion of any bona fide coupon promotion, public relations or promotional program applicable to the food services operations, including Entertainment Book, Solid Gold, Gastronomic, Budget Rent-A-Car or any other discount promotion applicable to the food services operations; and
- (v) proceeds of insurance in reimbursement of any losses, damages or claims suffered by the Tenant, except for reimbursement for loss of revenue which will be included in Gross Revenue;

less:

- (vi) refunds to patrons, excluding refunds to patrons for parking validation, which will not be deducted from Gross Revenue; and
 - (vii) any credit card fees, including charges for rejected credit cards.
- (c) **"Lease Year"** means the date upon which this lease commences and continuing for a full calendar year.
- (d) **"Rent"** means the monthly payments that the Tenant will pay to the Landlord which, for each month of the Term, will be the greater of:
- (i) _____, based upon an annual rental rate of \$_____ which will be adjusted annually for inflation in accordance with [to be determined]; and
 - (ii) _____ percent of the Gross Revenue for the immediately preceding month.
- In this lease, "rent" means, as the context requires, any additional rent, fees, charges or other expenses for which the Tenant is obligated to pay.
- (e) **"Tenant Improvement Phase"** has the meaning set out in Section 1.03.

Section 1.02 Term

In consideration of the rents, covenants and conditions herein on the part of the Tenant to be performed and observed, the Landlord hereby leases the Premises to the Tenant to have and to hold the same from the Commencement Date until 11:59 p.m. on the _____ day of _____, 20____ (the "Term").

Section 1.03 Rent

Tenant Improvement Phase

[NTD: Depending upon proposals, the City may negotiate a fixed price for the Tenant Improvement Phase provided that the restaurant will be in commercial operation by a specified date. Timing of such payments is to be determined.]

Prior to the commencement of the Term, the Tenant will be granted access to the Premises for a period of time commencing on [insert date] to install all improvements, furniture, furnishings and equipment required for the proper and efficient operation of the Premises as a restaurant, provided that such period will automatically terminate upon the earlier of (i) the date upon which the restaurant is in commercial operation and (ii) [insert date upon which the Tenant Improvement Phase must be completed] (the "**Tenant Improvement Phase**"). The Landlord shall not be liable to the Tenant for any loss, damage or inconvenience resulting from any delay in delivering possession of the Premises for the purposes of the Tenant Improvement Phase.

During the Tenant Improvement Phase, the Tenant will not be required to pay Rent or Property Taxes, but the Tenant will be required to comply with and observe all other terms of this lease including, without limitation, the Tenant's obligation to obtain and maintain the insurance in Section 6.01 and to pay all charges, rates and levies on account of utilities including heat, electricity, gas, water, garbage collection, telephone and all other expenses and outgoings relating to the Premises when due and, upon request, the Tenant will provide the Landlord with receipts evidencing such payments.

Payment of Rent during Term

[NTD: The final form of lease will set out notice provisions and procedures to allow the City to inspect the Premises prior to the commencement of the Term to ensure compliance with the terms of the lease.]

The Tenant will pay the Rent for the immediately preceding month commencing on the 15th day of the second month of the Term, and continuing on the 15th day of each remaining month during the Term and on the 15th day of the month following the month in which this lease is terminated, provided that each such payment will be accompanied by a Revenue Report prepared and submitted in accordance with Section 2.01.

For greater certainty, if the period between the date upon which the Term commences and the 15th day of the second month of the Term is not a full calendar month, the first payment of Rent will be adjusted on a pro rata basis.

Section 1.04 Payments Generally

All payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this lease will be:

- (a) paid to the Landlord by the Tenant in lawful currency of Canada;
- (b) made when due hereunder, without prior demand therefor and without any setoff, compensation or deduction whatsoever at the office of the Vancouver Board of Parks and Recreation specified in Section 16.01 or such other place as the Landlord may designate from time to time in writing to the Tenant, provided that upon the request of the Landlord, the Tenant will deliver to the Landlord a series of post-dated cheques, each in the amount of the additional rent as reasonably estimated by the Landlord, for the next ensuing twelve (12) months, and the Tenant will continue to do so upon each yearly anniversary thereafter during the Term. The failure of the Tenant to comply in any way with the provisions of this subsection will be deemed to be default under this lease and will entitle the Landlord to exercise any and all remedies available to the Landlord under this lease;
- (c) applied towards amounts then outstanding hereunder, in such manner as the Landlord may see fit;

- (d) deemed to be rent, in partial consideration for which this lease has been entered into, and will be payable and recoverable as rent, such that the Landlord will have all rights and remedies against the Tenant for default in making any such payment which may not be expressly designated as rent as the Landlord has for default in payment of rent; and
- (e) deemed to accrue from day to day, and if for any reason it becomes necessary to calculate for irregular periods of less than one (1) month or at some other interval, an appropriate pro-rata adjustment will be made on a daily basis in order to compute rent for such irregular period.

Section 1.05 Utilities

[NTD: The City expects that the Tenant will pay for all utilities during the Term. The final form of lease may need to be adjusted to account for shared utilities but the Tenant will pay a proportionate share for any shared utilities.]

The Tenant will pay all charges, rates and levies on account of utilities including heat, electricity, gas, water, garbage collection, telephone and cablevision and all other expenses and outgoings relating to the Premises when due and, upon request, the Tenant will provide the Landlord with receipts evidencing such payments. Invoicing of those utilities for which separate meters have been installed for the Premises will be based on actual consumption plus applicable taxes.

Section 1.06 Use of Premises

The Tenant will not use or occupy, nor suffer or permit the use of the Premises or any part thereof for any purpose other than for a restaurant with a liquor licence (the "**Permitted Use**"). Without limiting the generality of the foregoing, the Tenant will not at anytime suffer, permit or allow any person to:

- (a) use the Premises and the Tenant's equipment on the Premises in connection with any operations not deemed by the Landlord, acting reasonably, to be part of the on-site operation of the restaurant; or
- (b) occupy the Premises for residential purposes.

The Tenant will not use, or suffer or permit the use of, any part of the Premises in such a manner as to cause, suffer or permit any annoying noises or offensive odours to emanate from any part of the Premises.

By agreeing to the Tenant using the Premises for the Permitted Use, the Landlord is agreeing as the owner of the Premises only and is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Permitted Use is a permitted use under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto and other relevant by-laws. Nothing in this Section 1.06 affects the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to Section 10.01 of this lease.

Section 1.07 Licence to Use Licence Areas

The Landlord hereby grants to the Tenant a licence to use the Licence Areas, provided that the Tenant has no interest in the land in the Licence Areas, which licence will be concurrent with the term of this lease, provided that all the terms and conditions of this lease will apply to the Licence Areas as if they were a part of the Premises, including the payment of Rent based on Gross Revenue and the insurance requirements set out in Article VI, except that:

- (a) the Licence Areas will not be included in the calculation of the square footage of the Premises for the purpose of calculating the Property Taxes; and

- (b) [NTD: Depending on proposals, the City may require further restrictions on the Licence Areas. Proponents should note that the City anticipates that the patio and /or deck will need to close at 10:00 p.m. due to the proximity of adjacent condominiums. The City will provide further details during the RFP process. The liquor licence will be for the entire premises and will be food primary.]

Section 1.08 Conduct of Business

The Tenant agrees that the following will apply to the conduct of the business at the Premises:

- (a) the Tenant will manage and operate the restaurant in an efficient and professional manner, including maintaining an inventory of food, goods and supplies as may be necessary and appropriate for the efficient operation of the restaurant and supplying all necessary working capital for the effective operation of all services;
- (b) the Tenant will operate the restaurant in a manner that caters to people of all ages, and will obtain the prior written approval of the Landlord for any change to the style of service to customers;
- (c) the Tenant will not apply for nor request any change to any liquor licence for the restaurant without the consent of the Landlord, such consent not to be unreasonably withheld;
- (d) the Tenant will operate the restaurant year round with hours of operation consistent with other similar restaurants in the Southeast False Creek and downtown Vancouver area;
- (e) the Tenant will ensure that its employees will be at all times of neat, clean and professional appearance;
- (f) at the reasonable request of the Landlord, the Tenant will attend any meeting requested by the Landlord to deal with concerns of the surrounding neighbourhood; and
- (g) within six (6) months of the fifth anniversary of the commencement date of the Term and within six (6) months of every fifth anniversary thereafter, the Tenant, at its cost, will engage a professional inspection company approved by the Landlord acting reasonably to conduct a maintenance inspection of the Premises to determine the condition of the Premises, including without limitation, the structural, mechanical and electrical elements of the Premises and the finishes inside and outside of the Premises, and the Tenant will promptly provide to the Landlord a copy of that company's report, will promptly implement all of the recommendations contained in such report, and in any event will have implemented all of such recommendations within six (6) months of the Tenant's receipt of such report, with the cost of such repairs being paid by the Landlord and Tenant in accordance with their respective repair and maintenance obligations as set out in Article III of this lease.

Section 1.09 Prohibited Activities/Products

The Tenant acknowledges and agrees that its business in the Premises is being conducted within a city park and that therefore the Tenant must conduct its business in and from the Premises in a manner consistent with the best interests of Southeast False Creek as a whole, as determined from time to time by the Landlord, and the following will apply:

- (a) the Tenant will not enter into any sponsorship agreements without obtaining the Landlord's prior written consent. The Tenant acknowledges that the Landlord has entered into or may enter into certain corporate sponsorship and supply agreements with various third parties for certain Vancouver parks, including Southeast False Creek. The Tenant acknowledges that the existing corporate sponsorship and supply agreement is a Supply Agreement (the "**Coca-Cola Agreement**") dated October 1, 2006 with Coca-Cola Bottling Ltd. with respect to all cold

beverage products, including without limitation soda, juice and bottled water. As required by the Coca-Cola Agreement, the Tenant confirms and agrees that it will not sell or advertise cold beverage products contrary to such agreement. The Landlord will make reasonable efforts to ensure that the Tenant is provided with similar price advantages and levels of service that the Landlord receives from the sponsor for the product or service, excluding commissions, royalties, bonuses or other incentives which the Landlord receives as part of the Coca-Cola Agreement. On any extension or renewal of the Coca-Cola Agreement, the Landlord will exclude the Premises from the application of such extended or renewed Coca-Cola Agreement.

- (b) the Tenant will not permit the use of the Premises for any of the following businesses or activities:
- (i) sale of firecracker or fireworks of any kind;
 - (ii) any gambling device or game of chance or gambling whatsoever;
 - (iii) an auction, flea market, pawn shop, bulk sale, liquidation sale, distress sale, going-out-of-business sale, bankruptcy sale, sheriff's sale, receivership sale, or any other sale which in the Landlord's opinion suggests that business operations are to be discontinued in the Premises; and
 - (iv) the sale or supply of any service which would, in the Landlord's opinion reasonably held:
 - (1) tend to lower the high quality character of the Building;
 - (2) constitute unethical, deceptive or fraudulent advertising, dishonest procedures or practices;
 - (3) be objectionable; or
 - (4) be a nuisance; and
- (c) except for the Premises, the Tenant will not, without the prior written consent of the Landlord, use any part of Southeast False Creek, including any other area outside the Premises, for merchandising displays, decorations, signs, entertainment and structures (including, without limitation, kiosks, carts and other installations), permanent or otherwise, including for example, catering or special features of non-commercial or commercial activities.

Section 1.10 Install Tenant's Furniture, Furnishings, Equipment and Continuously Operate

The Tenant will occupy the Premises on the first day of the Tenant Improvement Phase and will continuously, actively and diligently install all improvements, furniture, furnishings and equipment required for the proper and efficient operation of the Premises, so that such furniture, furnishings and equipment will be installed and operational by the end of the Tenant Improvement Phase.

From and after the first day of the Term, the Tenant will continuously, actively and diligently operate the restaurant in the Premises during the Term.

Section 1.11 Interest on Arrears

Whenever and so long as the rent or any other amounts payable hereunder by the Tenant to the Landlord will be in arrears, such amounts will bear interest at the rate of three percent (3%) per annum above the "prime rate" (hereinafter defined), per annum calculated monthly not in advance, from the date due until paid irrespective of whether or not the Landlord has demanded payment. In this lease, "prime rate" means the floating annual percentage rate of interest established from time to time by

the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its prime rate; provided that if a court declares or holds the prime rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be fourteen percent (14%) per annum calculated monthly not in advance from the date due until paid. The Landlord will have all the remedies for the collection of such interest as in the case of rent in arrears, but this provision for interest will not prejudice or affect any other remedy of the Landlord under this lease. The Tenant will also pay the Landlord's standard charge levied on N.S.F. cheques.

Section 1.12 Security Deposit

The Landlord may require that the Tenant will lodge with the Landlord a security deposit of fifty thousand dollars (\$50,000.). At all times the deposit will stand charged with a lien in favour of the Landlord which will be in priority to any claims of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. The Landlord may satisfy any claims it may have against the Tenant arising hereunder, whether liquidated or otherwise, by forthwith applying the deposit or any portion thereof to payment of such claims. In the event that the Landlord appropriates all or any portion of the deposit in payment of such claims, the Tenant will forthwith replenish the deposit upon notice from the Landlord and failing such replenishment the Landlord may terminate this lease. Subject to any claims by the Landlord, upon termination of this lease the balance of the deposit will be remitted to the Tenant PROVIDED HOWEVER no interest will be payable on the deposit. The Landlord will not be obliged to apply any or all of the deposit to any claims it may have against the Tenant before terminating this lease or having recourse to any other remedy. The deposit will not be refundable upon assignment. The assignor and assignee between themselves will make whatever adjustment they deem appropriate.

Section 1.13 Property Taxes

Notwithstanding the preceding terms of this lease, in addition the Tenant will pay monthly as additional rent in each and every month of the Term a sum on account of the annual general, school and local improvement charges and taxes and any charges and taxes levied under or by virtue of the *Hospital District Finance Act*, R.S.B.C. 1996, c. 203, as amended or substituted from time to time, the *Municipal Finance Authority Act*, R.S.B.C., 1996, c. 325, as amended or substituted from time to time, and any and all other statutes, laws, enactments, regulations and ordinances of the federal or provincial governments or other competent authority, or any modifications or re-enactments thereof which, except for any exemption allowed by law, would in the ordinary course have been lawfully imposed against the Premises, and against all machinery in and about the Premises for each year of the Term (the "**Property Taxes**"), as follows:

- (a) for the period between the Commencement Date and December 31, 20____, [\$6.25] per square foot of the Premises, prorated for the portion of the calendar year, to be reconciled upon acceptance of the RFP;
- (b) for the next nine (9) calendar years of the Term and the portion of the remaining calendar year until the expiry of the Term, the Landlord will review and, if necessary, revise effective January 1st in each such calendar year the rate for calculation of Property Taxes to reflect any change in property tax assessments for businesses in Vancouver;
- (c) Property Taxes will be paid monthly and the Tenant will, for each month of the Term, pay to the Landlord an amount equal to one-twelfth of the Property Taxes for the calendar year, such amount to be paid on or before the 1st day of the month;
- (d) at the option of the Landlord, the Landlord may require that the Property Taxes be paid semi-annually in two lump sums on dates to be specified by the Landlord; and

- (e) the parties agree that the square footage of the Premises for the purpose of calculation of the Property Taxes will be 6,065 square feet.

Should the Premises or any portion thereof or any trade fixtures or chattels therein for any reason become subject to taxation, then the Tenant will pay all such taxes, provided that the Tenant will not be required to pay any portion of such taxes in addition to the Property Taxes if such portion is included in the calculation of the Property Taxes.

Section 1.14 Applicable Sales Tax

The Tenant will pay when due all applicable provincial and harmonized sales taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments which are from time to time payable by the Tenant or the Landlord as a result of or that would not be payable but for the rights and obligations contained in this lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Tenant to the Landlord, but excluding any taxes personal to the Landlord or dependant on the income or capital of the Landlord. Any loss, costs, charges and expenses which relate to such taxes, rates, levies and assessments suffered by the Landlord may be collected by the Landlord as additional rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

ARTICLE II

Section 2.01 Revenue Report

The Tenant will deliver to the Landlord the following Revenue Reports during the Term:

- (a) commencing on the 15th day of the second month of the Term and continuing on the 15th day of each remaining month during the Term, a Revenue Report for the previous month, together with the Rent payable pursuant to Section 1.03;
- (b) a Revenue Report for each Lease Year, to be delivered on or before ninety (90) days after the end of the Lease Year, together with the balance of the Rent payable if such Revenue Report indicates that, based on the Gross Revenue for the Lease Year, the amount owing on account of the Rent exceeds that paid for that Lease Year pursuant to Section 1.03;
- (c) within sixty (60) days of the date of the expiry or earlier termination of this lease, a Revenue Report for the period between the most recently submitted Revenue Report for a Lease Year and the date of expiry or earlier termination, together with the balance of the Rent payable if such Revenue Report indicates that, based on the Gross Revenue for that period, the amount owing on account of the Rent exceeds that paid for such period pursuant to Section 1.03;
- (d) if any Revenue Report for a Lease Year indicates that, based on the Gross Revenue for that period, the amount owing on account of the Rent was less than that paid by the Tenant for such period pursuant to Section 1.03, the Landlord will forthwith reimburse to the Tenant the amount of such overpayment; and
- (e) **"Revenue Report"** means a report on revenue collected by the Tenant from the business at the Premises, provided by the Tenant to the Landlord, which report must:
- (i) be in writing and certified by its author as being complete and true as to its contents;
- (ii) indicate both the actual revenue and the Gross Revenue collected by the Tenant from the business at the Premises for all of the reporting period and separately indicate:

- A. the value of all meals and other products and services at the Premises provided to staff of the Tenant;
 - B. the value of all meals and other products and services at the Premises provided for promotional purposes;
 - C. all refunds to patrons;
 - D. the Gross Revenue derived from the sit down restaurant service (if any); and
 - E. the Gross Revenue derived from the take out service; and
- (iii) indicate the Rent for the reporting period based on the Gross Revenue from the business at the Premises.

Section 2.02 Accounting Procedures and Controls

The Tenant will maintain a commercially reasonable standard of internal accounting procedures and controls over all revenues collected by the Tenant in the operation of the business at the Premises and will ensure that all revenues collected with respect to the business at the Premises are clearly and accurately accounted for in accordance with the terms of this lease. The Tenant will maintain records for the business at the Premises which are separate from the records which the Tenant maintains for other businesses conducted by the Tenant.

Section 2.03 Audited Revenue Reports

The Tenant will, at its expense, prepare and submit to the Landlord an audited Revenue Report for each Lease Year during the Term and the following will apply:

- (a) such audited Revenue Report must be submitted on or before ninety (90) days after the end of the Lease Year and for any partial Lease Year to the expiry or earlier termination of this lease, within ninety (90) days of such expiry or earlier termination;
- (b) the audit must be certified by an independent Certified General Accountant or a Chartered Accountant who is in good standing in the Province of British Columbia and is acceptable to the Landlord acting reasonably;
- (c) the audit report must be unqualified and state that the auditor has examined the Revenue Report and that such examination included a general review of the Tenant's accounting procedures and such tests of the Tenant's books and records and other supporting evidence as the auditor considers necessary in the circumstances and must be in the form recommended by the Canadian Institute of Chartered Accountants for such an engagement;
- (d) the audit report must be supplemented by a management letter prepared by the auditor that states whether the Revenue Report presents fairly and accurately the Gross Revenue for that reporting period in accordance with the provisions of this lease and generally accepted accounting principles applied on a basis consistent with that used for the immediately preceding Lease Year, if any, or, if the Revenue Report is inaccurate, sets out the correct Gross Revenue for that reporting period and identifies and comments on any internal control weaknesses regarding the collection and reporting of revenue and, if no such weaknesses are identified, the audit report must be supplemented by a letter from the auditor in which this is indicated;
- (e) the Tenant will retain possession of all documents pertaining to the business at the Premises or at the Tenant's head office in the Province for not less than seven (7) years;

- (f) the Landlord reserves the right to:
- (i) audit the books, records and accounts of the Tenant with respect to the business at the Premises at any reasonable time, provided that the Landlord will give the Tenant at least 24 hours' notice, and the Tenant will make available to the Landlord, at any reasonable time, all documents pertaining to the operation of the business at the Premises; and
 - (ii) require that the Tenant submit audited statement of revenue of the Tenant for each Lease Year during the Term, and the requirements with respect to the audited Revenue Reports set out in this Section 2.03 will apply to such audited financial statements;
- (g) if any audit conducted by the Landlord discloses that the actual Gross Revenue for any Lease Year is greater by two percent (2%) or more than that disclosed by the audited financial statements provided by the accountant for the Tenant, the Tenant will pay the cost of such audit forthwith on demand by the Landlord; and
- (h) if any audit conducted by the Landlord discloses that the actual Gross Revenue for any Lease Year is greater by five percent (5%) or more than that disclosed by the audited financial statements provided by the accountant for the Tenant, if in the reasonable opinion of the General Manager of the Park Board the misstatement of Gross Revenue is intentional, the Landlord, in addition to its other rights in this lease, may terminate this lease on thirty (30) days' written notice to the Tenant.

ARTICLE III

Section 3.01 No Damage

The Tenant will not suffer, cause nor permit any damage or injury to the Premises other than reasonable wear and tear.

Section 3.02 Snow Removal from the Premises and Sidewalks

The Tenant covenants that it will keep the Premises clear of snow and ice and will keep the adjacent sidewalks, if any, clear of snow and ice to comply with the requirements of the Street and Traffic By-law of the City of Vancouver and that it will indemnify and save harmless the Landlord from all costs, loss, damages, compensation and expenses suffered by the Landlord and sustained or caused by the Tenant's failure to remove snow and ice from the Premises PROVIDED THAT if the Tenant does not remove snow and ice as required by the Street and Traffic By-law, the Landlord may clear the sidewalks and the cost of such removal will be paid by the Tenant to the Landlord.

Section 3.03 Alterations

The Tenant will not carry out or cause to be carried out any additions, renovations or alterations to the Premises ("**Alterations**") without the Landlord's prior written consent and in the giving of such consent the Landlord may attach whatever conditions, directions, stipulations, prohibitions or deadlines as it deems appropriate and the same will be conditions of this lease, provided that the Tenant will not require the consent of the Landlord to redecorate the interior of the Premises from time to time if the Tenant does not carry out any Alterations. All such works will be wholly at the Tenant's expense but will be the Landlord's absolute property except to the extent that the same may be reasonably categorized as trade fixtures.

By consenting to any Alterations, the Landlord is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Alterations are permitted under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto, the City of Vancouver Building By-law No. 6134 and amendments thereto, and other relevant by-laws. No consent

given by the Landlord (and no failure to enforce this Section of this lease) will affect the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to Section 10.01 of this lease.

Section 3.04 Maintenance

The Tenant will maintain the Premises in a sanitary, neat, tidy and safe condition and free from nuisance at all times and will clean the Premises daily and will redecorate the interior of the Premises at reasonable intervals, and the following will apply:

- (a) the Tenant will not obstruct the hallways, entrances, stairways and driveways leading to the Premises or suffer same to be used by the Tenant's employees or invitees for any purpose other than ingress to and egress from the Premises, and the Tenant agrees not to place in the hallways, entrances, stairways and driveways any waste paper, dust, garbage, refuse or anything whatsoever that would tend to make such areas appear untidy or filthy;
- (b) the Tenant will employ the services of a commercial garbage and refuse removal company or that service provided by the City and will ensure that refuse, garbage and solid waste is removed as required in order to maintain the cleanliness of the Premises; and
- (c) the Tenant will follow good environmental practices whenever possible and conform to the Landlord's policies in use at other similar operations.

Section 3.05 Repairs to Premises

The Tenant will, at the Tenant's sole expense, keep and maintain the Premises in good repair as would a reasonable and prudent owner of such premises (including, without limitation, wiring, piping, lighting and plumbing fixtures, operating equipment, as well as the electrical, plumbing, sprinkler, sewage, heating, ventilating and air-conditioning systems within the Premises), reasonable wear and tear and structural elements or defects excepted, and the Landlord will have access to the Premises for purpose of inspection during normal business hours and the Tenant will repair according to notice. Without limiting the generality of the foregoing, the Tenant will, at its sole expense, maintain and repair all materials and finishes in the interior of the Premises (excluding landscaping) and the building envelope, including without limitation painting, sealing, staining and weather-proofing the exterior of the Premises and promptly replacing all damaged glass, plate glass, doors and windows (whether exterior or interior) within the Premises unless such damage is caused by the negligence of the Landlord and the following will apply:

- (a) if the Tenant fails to promptly commence repairs and diligently prosecute same to completion after receipt of notice from the Landlord requiring repairs, then the Landlord may carry out or cause to be carried out such repairs, the costs of which will be payable by the Tenant, and the Landlord and its employees, agents, contractors and subcontractors will not be liable to the Tenant for any inconvenience, annoyance, disruption, loss of income or liability suffered or incurred by the Tenant by reason of the Landlord effecting such repairs unless caused by the negligence of the Landlord or those for whom the Landlord is responsible in law; and
- (b) with respect to any substantial repair or replacement made to the Premises by the Tenant the life of which will outlast the Term or renewal term, as the case may be, provided that:
 - (i) the Tenant has obtained the prior written consent of the Landlord for such substantial repair or replacement to the Premises;
 - (ii) a professional inspection company approved by the Landlord acting reasonably has determined that the reasonable life of such substantial repair or replacement will outlast the Term or renewal term, as the case may be; and
 - (iii) the Tenant completes such substantial repair or replacement at its own cost;

then the Landlord will reimburse the Tenant for the amount expended by the Tenant which is proportionate to the remaining life cycle value of such substantial repair or replacement on expiry of the Term or renewal term, as the case may be, by reducing the monthly Rent during the final two (2) years of the Term or renewal term, as the case may be, by an amount equal to the proportionate amount of the remaining life cycle value of such substantial repair or replacement divided by 24.

Section 3.06 Repairs to Building

Without in any way limiting the Landlord's and Tenant's obligations, rights and remedies contained elsewhere in this lease:

- (a) the Landlord is responsible for all repairs to the structural elements of the Building, including, without limitation, the foundations, load-bearing walls and the roof; and
- (b) the Tenant is responsible for:
 - (i) adequately protecting the structural elements of the Building located on the Premises; and
 - (ii) any repair to or replacement of the structural elements of the Building located on the Premises required due in whole or in part to the Tenant's failure to meet its obligations contained in Section 3.06(b)(i).

Section 3.07 Liens and Encumbrances

In connection with all labour performed in, or materials supplied for, the making, erection, installation or alteration of any work or installations made by or for the Tenant in the Premises, the Tenant will comply with all the provisions of the *Builders Lien Act*, as amended or substituted from time to time, and other statutes from time to time applicable thereto, including any provision requiring or enabling the retention of any sum as a holdback.

The Tenant will be entitled to grant in favour of a Mortgagee a security interest in this lease and the Tenant's leasehold improvements, inventory, fixtures, equipment and trade fixtures, in accordance with Article VIII.

If and whenever any builders lien or other lien for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable, or claims therefor arise or are filed against title to the Premises, the Tenant will, within thirty (30) days after receipt of notice thereof, procure the discharge thereof, including any certificate of pending litigation or other notation or charge registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law. Provided however, that in the event of a bona fide dispute by the Tenant of the validity or correctness of any claim for any such lien, the Tenant will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct, or otherwise posting security as may be satisfactory to the Landlord. This Section will not prevent the Tenant mortgaging or encumbering its chattels, inventory, trade fixtures or equipment which are not fixtures.

Pursuant to Section 3(2) of the *Builders Lien Act*, the Landlord may file in the Land Title Office notice of its fee simple interest in the land on which the Premises are located, as is required by law to ensure that the Landlord's title does not become charged with liens related to this lease.

Section 3.08 Signage

The Tenant will not erect on the outside of the Building (or any part of the interior of the Premises which is visible from the outside, any sign, picture, device, photograph, marking, pole, tower or other structure without first having obtained the consent in writing of the Landlord, which consent may be unreasonably withheld.

ARTICLE IV**Section 4.01 Limitation of Liability**

The Landlord and its officials, officers, employees and agents will not be responsible in any way for:

- (a) any personal injury, death or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Tenant or by any other person who may be in or about the Premises; or
- (b) any loss or damage of any nature whatsoever, however caused, to the Premises, any property belonging to the Tenant or to any other person while such property is in or about the Premises,

whether in the course of the performance of the Landlord's obligations under this lease or otherwise, unless resulting from the negligence of the Landlord or those for whom the Landlord is responsible at law.

Section 4.02 Exclusion of Liability

The Landlord and its officials, officers, employees and agents will not under any circumstances be liable or responsible in any way for:

- (a) any personal injury, death or consequential damage of any nature whatsoever, that may be suffered or sustained by the Tenant or by its officers, employees or agents or any other person who may be in or about the Premises, or any loss or damage of any nature whatsoever to the Premises or to any property belonging to the Tenant or to its officers, employees or agents or to any other person while such property is in or about the Premises,
 - (i) caused by failure, by reason of breakdown or any other cause, to supply adequate drainage, or by interruptions for any reason of any utility or other services, including without limitation heating, plumbing and electrical services, or by steam, water, rain, snow, or other substances leaking, entering, issuing or flowing onto or into any part of the Premises or by reason of breakage or want of repair of any pipes, plumbing, equipment or other machinery serving the Premises; or
 - (ii) however caused, if the Landlord or its officials, officers, employees or agents enter upon the Premises in the case of an emergency;
- (b) any loss or damage of any nature whatsoever, however caused, to books, records, files, money, securities, negotiable instruments, papers or other valuables of the Tenant or its officers, employees or agents;
- (c) any business, economic or indirect loss or damage suffered or sustained by the Tenant or its officers, employees or agents of any nature whatsoever, however caused; or
- (d) any loss which the Tenant is obligated to insure against hereunder or has insured against.

Section 4.03 Indemnification

The Tenant agrees to indemnify and save harmless the Landlord and its officials, officers, employees and agents in respect of all claims for bodily injury or death, property damage or other loss or damage arising from the conduct of any work by, or any act or omission of, or relating to or arising from the occupation or possession of the Premises by the Tenant, and in respect of all costs, expenses and liabilities incurred by the Landlord in connection with or arising out of all such claims, including the expenses of any action or legal proceeding pertaining thereto and the liabilities or obligations incurred or sustained by or imposed upon the Landlord or in respect of any of its officials, officers, employees or agents, and in respect of any loss, cost, expense or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this lease, PROVIDED HOWEVER the Tenant's covenant to indemnify and save harmless the Landlord and its officials, officers, employees and agents will not apply to the extent that the loss or damage is caused by negligence or wilful misconduct on the part of the Landlord or its officials, officers, employees and agents.

ARTICLE V

Section 5.01 Definitions

In this lease, the following words and expressions will have the following meanings:

- (a) **"Environment"** has the meaning given to it in the *Canadian Environmental Protection Act, 1999* (Canada) as of the date of this lease;
- (b) **"Hazardous Substances"** means any Substance capable of creating harm to people, property and/or the Environment including, without limitation, any flammable liquids, flammable or reactive solids, oxidizers, poisons, gases (compressed, liquefied or dissolved), explosives, radioactive materials, ureaformaldehyde, asbestos materials, underground tanks, compounds known as chlorobiphenyls or polychlorinated biphenyls (PCBs), Pollutants, contaminants, hazardous, corrosive or toxic Substances, Hazardous Waste or waste of any kind, including, without limitation, any Substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is prohibited, controlled, regulated or licensed by any federal, provincial or municipal authority;
- (c) **"Hazardous Waste"** has the meaning given to it in the *Environmental Management Act, S.B.C. 2003, c. 53*, as amended or substituted from time to time;
- (d) **"Medium"** means any land, water or air and includes the Premises;
- (e) **"Pollute"** is a verb which means to Release into or onto any Medium any Substance that:
 - (i) alters the physical, biological or chemical nature of that Medium;
 - (ii) alters the capacity of the Medium to support any living thing, whether animal or plant life;
 - (iii) injures or is capable of injuring the health or safety of a person in, on or near the Medium;
 - (iv) injures or is capable of injuring property or any life form in, on or near the Medium;
 - (v) interferes with or is capable of interfering with visibility or the dispersion of light or any photochemical activity within the Medium;

- (vi) interferes with or is capable of interfering with the normal conduct of business in, on, near or from the Medium;
- (vii) causes or is capable of causing physical discomfort to a person in, on or near the Medium;
- (viii) damages or is capable of damaging the Environment; or
- (ix) is Hazardous Waste,

and "Polluted" is an adjective, and "Pollution" and "Pollutant" are nouns, which have meanings that correspond to the meaning contained in this paragraph;

- (f) "Release" includes release, spill, leak, pump, pour, dump, abandon, emit, empty, discharge, spray, inoculate, deposit, seep, throw, place, exhaust, inject, escape, leach, dispose, infuse or introduce; and
- (g) "Substance" has the meaning given to it in the *Canadian Environmental Protection Act, 1999* (Canada) as of the date of this lease.

Section 5.02 Suitability of the Premises

The Tenant acknowledges and agrees that the Landlord, either itself or through its officials, officers, employees or agents, has not made and the Tenant has not relied upon any representations or warranties from the Landlord or its officials, officers, employees or agents as to:

- (a) the state of repair of the Premises;
- (b) the suitability of the Premises for any business, activity or purpose whatever;
- (c) the suitability of the Premises for use by the Tenant;
- (d) the existence, nature or extent of any Pollution on or of the Premises; or
- (e) the need to take any remedial action in relation to any Pollution on or of the Premises.

Section 5.03 Tenant's Inspection of the Premises

The Tenant acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Premises and all relevant documentation in respect thereof and to carry out such audits, investigations, tests and surveys as it considers reasonably necessary to ascertain:

- (a) the state of repair of the Premises;
- (b) the suitability of the Premises for use by the Tenant;
- (c) the existence, nature or extent of any Pollution on the Premises; and
- (d) the need to take any remedial action in relation to any Pollution on or of the Premises;

and the Tenant has independently made all such inspections, audits, investigations, tests and surveys as it regards as being necessary for the above purposes. It is understood and agreed that the Premises are being leased to the Tenant, and the Permission is being granted to the Tenant, on an "as is" basis.

The Tenant hereby assumes any and all duties, obligations or liabilities under any relevant law in respect of the Premises, including but not limited to any costs, expenses or liabilities for any remedial action for any Pollution of the Premises caused by the Tenant during the Term.

Section 5.04 Release and Indemnification

The Tenant hereby releases the Landlord and its officials, officers, employees and agents from any and all costs, expenses, damages, losses or liabilities that may be incurred or suffered by the Tenant by reason of or resulting from or in connection with or arising in any manner whatsoever out of:

- (a) the Premises not being suitable for use by the Tenant;
- (b) the Premises being, or being found to be at any time, Polluted; or
- (c) the need to take any remedial action and the taking of such action as a result of such Pollution on or off the Premises .

The Tenant will indemnify, defend and save harmless the Landlord in respect of all claims for bodily injury (including death), property damage or other loss or damage, including damage to property outside the Premises, arising out of or in any way connected with the manufacture, storage, transportation, handling and discharge of Hazardous Substances on or from the Premises by the Tenant or any one for whom the Tenant is responsible in law.

Section 5.05 Removal of Hazardous Substances

The Tenant will not bring upon the Premises or any part thereof, or cause or suffer the bringing upon the Premises or any part thereof, any Hazardous Substances, except those that are required by the Tenant for day to day maintenance of the Premises, and then only in reasonable quantities, only if such Hazardous Substances are not prohibited by any federal, provincial or municipal authority, and only if such use is in compliance with all statutes, by-laws, regulations or orders relating to Hazardous Substances. If at any time there is any Hazardous Substances upon the Premises or a part thereof in breach of this covenant, the Tenant will, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Article;
- (b) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all laws and regulations governing the movement of the same; and
- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord verification of the complete and proper removal of the Hazardous Substances from the Premises or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provisions of this Section 5.05.

Section 5.06 Breach of Laws Relating to Hazardous Substances

Without limiting the generality of Section 5.05, the Tenant will immediately give written notice to the Landlord of the occurrence of any event on the Premises constituting an offence under or a breach of any statutes, by-laws, regulations or orders from time to time enforced relating to Hazardous Substances, and at its own cost and expense, comply with all laws and regulations from time to time in force relating to the Landlord, the Tenant, the activities carried out on the Premises relating to Hazardous Substances and the protection of the Environment and will immediately give written notice to the Landlord of the occurrence of any event on the Premises constituting an offence thereunder or a

breach thereof and, if the Tenant will, either alone or with others, cause or suffer the happening of such event, the Tenant will, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Section 5.06;
- (b) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all laws and regulations governing the movement of the same; and
- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord a report verifying the complete and proper removal thereof from the Premises or, if such is not the case, a report as to the extent and nature of any failure to comply with the foregoing provisions of this Section 5.06.

The Tenant will, at its own expense, remedy any damage to the Premises caused by such event within the Premises or by the performance of the Tenant's obligations under this Section 5.06 as a result of such occurrence.

If any governmental authority having jurisdiction will require the cleanup of any Hazardous Substances held, Released, spilled, abandoned or placed upon the Premises or Released into the Environment from the Premises during the Term, then the Tenant will, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work and will keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's requirements with respect to such plans. AND the Tenant agrees that if the Landlord determines, in its sole discretion, that the Landlord, its property or its reputation is placed in any jeopardy by the requirement for any such work, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant, pursuant to Section 11.07 of this lease.

Section 5.07 Enquiries Pertaining to Hazardous Substances

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to the Tenant, the Tenant's activities on the Premises and the Premises including without limitation laws and regulations pertaining to Hazardous Substances and the protection of the Environment; and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may require in order to facilitate the obtaining of such information.

Section 5.08 Landlord's Inspection of Goods

The Landlord may at any time and from time to time inspect the Tenant's goods upon the Premises and the Tenant's records relating thereto for the purpose of identifying the nature of the goods and the existence or absence of any Hazardous Substances and the Tenant will assist the Landlord in so doing.

Section 5.09 Ownership Remains With Tenant

If the Tenant will bring or create upon the Premises any Hazardous Substances or suffer the bringing or creation upon the Premises of any Hazardous Substances or if the conduct of the Tenant's business will cause there to be any Hazardous Substance upon the Premises then, notwithstanding any rule of law or equity to the contrary, such Hazardous Substance will be and remain the sole and exclusive property of the Tenant and will not become the property of the Landlord and notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Premises and notwithstanding the expiry or earlier termination of this lease.

Section 5.10 Environmental Covenants Survive Termination

The obligations of the Tenant in this Article V will survive the expiry or earlier termination of this lease save only that, to the extent that the performance of those obligations requires access to or entry upon the Premises or any part thereof the Tenant will have such entry and access only at such times and upon such terms and conditions as the Landlord may from time to time specify; and the Landlord may, at the Tenant's cost and expense, undertake the performance of any necessary work in order to complete such obligations of the Tenant; but having commenced such work, the Landlord will have no obligation to the Tenant to complete such work.

ARTICLE VI**Section 6.01 Tenant's Construction Insurance**

The Tenant will, without limiting any of its obligations or liabilities under this lease, obtain and continuously carry during the Tenant Improvement Phase, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Wrap up liability insurance issued in the joint names of the Contractor, the Consultant, (Architect, Engineers if applicable), the Tenant, and the Landlord protecting all other participants, including Subcontractors and their respective agents and employees, in all activities pertaining to the installation of Tenant's Improvements, furniture, fixtures and equipment, with limits of not less than Five Million Dollars (\$5,000,000) on an occurrence basis for bodily injury, death and property damage losses including loss of use thereof. This insurance shall be maintained continuously throughout the Tenant Improvement Phase, and thereafter, in the case of completed operations coverage, for a further period of not less than two (2) years. and shall contain the following extensions of coverage:
 - i) Broadform Property Damage and Completed Operations
 - ii) Personal Injury
 - iii) Blanket Contractual Liability
 - iv) Cross Liability and Severability of Interest Clause
 - v) Contingent Employer's Liability
 - vi) Non-Owned Auto Liability
 - vii) Shoring, blasting, excavating, underpinning, demolition, removal, piledriving and grading, as applicable;
 - viii) Hoist liability
 - ix) Operation of attached machinery
- (b) All risks course of construction insurance issued in the joint names of the Contractor, the Tenant and the Landlord on the Tenant's Improvements to the Premises (including building materials, equipment and machinery, labour and supplies of any nature belonging to the insured and others, for which the Insured may have assumed responsibility, to be used both during which and after construction against fire, earthquake and all other perils from time to time customarily included in the usual all risks builder's form policy to the full contract value thereof and which will cover the risk during the different phases of construction. All insurance monies shall be applied to repairing and restoring the damage to the Tenant's Improvements;
- (c) all insurance policies shall be obtained and issued by insurance companies that are duly licensed or authorized to conduct business in the Province of British Columbia;
- (d) all insurance policies shall contain a provision that coverages afforded will not be suspended, voided, reduced or materially altered or changed without the insurance company(s) giving at least thirty (30) days prior written notice by registered mail to the Landlord;

- (e) all the forgoing insurance shall be primary. Any insurance or self-insurance maintained by the Landlord shall be in excess of this insurance and shall not contribute to it;
- (f) all insurance policies shall contain a clause that waives the insurer's right of subrogation against the Landlord or its officers, employees, servants or agents;

Section 6.02 Tenant's Insurance (Post-Construction)

The Tenant will, without limiting any of its obligations or liabilities under this lease, obtain and continuously carry immediately following the Tenant Improvement Phase, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Commercial General Liability insurance with limits of not less than five million dollars (\$5,000,000) per occurrence or such higher limit of coverage as the Landlord's Director of Risk Management may require from time to time and the policy will:
 - (i) indemnify and protect the Tenant, its employees, agents and contractors against all claims for loss, damage, injury or death to any person or persons and for damage to the Premises or to any public or private property occurring within or about the Premises or arising by virtue of the Tenant's occupation or possession of the Premises;
 - (ii) contain a cross liability clause insuring the Tenant, the Landlord and their respective officers, employees and agents in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
 - (iii) add the Landlord, its officials, officers, employees and agents as additional insureds;
 - (iv) include Tenants Legal Liability (Broad Form) insurance for an amount not less than \$1,000,000, such coverage to include the activities and operations conducted by the Tenant and Third Parties in the Premises.
 - (v) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this lease: and
 - (vi) provide for a limit of deductibility not greater than five thousand dollars (5,000) or such other limit as the Landlord's Director of Risk Management may sanction from time to time.
 - (vii) include liquor legal liability with limits of not less than five million dollars (\$5,000,000) per occurrence
- (b) All Risk (Broad Form) insurance on property of every description and kind owned by the Tenant or for which the Tenant is legally liable or installed by or on behalf of the Tenant (and which is located in the Premises), including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device within the Premises in an amount not less than ninety percent (90%) of the full replacement cost thereof;
- (c) insurance for the replacement of all glass in the Premises for any damage howsoever caused.
- (d) Insurance for all damages to the Premises sustained due to burglary or attempt thereat on the Premises.

- (e) If applicable, Broad Form Boiler and Machinery insurance on a blanket repair and replacement basis with limits of each accident in an amount not less than the full replacement cost of all Leasehold Improvements and of all boilers, pressure vessels, heating, ventilating and air conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Premises or relating to or serving the Premises.
- (f) Business interruption insurance on a Profits Form basis with at least 12 months period of indemnity.
- (g) Comprehensive Dishonesty Disappearance & Destruction Crime coverage with limits of not less than \$ 250,000 Employee Dishonesty Form A, \$ 20,000 Inside or Outside Hold-up, \$ 20,000 Money Orders and Counterfeit Paper Currency, \$20,000 Depositor's Forgery.

and these insurance policies will:

- (iv) provide for a limit of deductibility not greater than five thousand dollars (\$5,000.) per occurrence with respect to all perils except earthquake, and the deductible for any claim will be paid by the Tenant; and
- (v) carry a loss payable clause stating that the proceeds of any claim against the insurer will be payable to the Landlord and the Tenant as their interests appear.

Section 6.03 General Requirements of Insurance

The following will apply to all insurance policies:

- (a) the policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory from time to time and acceptable to the Landlord's Director of Risk Management and will provide the Landlord with sixty (60) days prior written notice of material change or cancellation. Notice will be given to the Vancouver Board of Parks and Recreation, Attention: Insurance Administrator. Notice must identify the name of the Tenant as set out in this lease and the location or address of the Premises;
- (b) neither the providing of insurance by the Tenant in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Tenant from any other provisions of this lease with respect to liability of the Tenant or otherwise;
- (c) the insurance coverage will be primary insurance as respects the Landlord and any insurance or self-insurance maintained by or on behalf of the Landlord, its officials, officers, employees or agents will be excess of this insurance and will not contribute with it; and
- (d) subject to the provisions of this Article VI, the Tenant will provide at its own cost any additional insurance which the Tenant is required by law to provide or which the Tenant considers necessary to protect its own interest or such further other insurance as deemed to be necessary and required by the Landlord's Director of Risk Management.

Section 6.04 Evidence of Insurance

Prior to the commencement of the Agreement, the Tenant will provide evidence of each policy of insurance required to be taken out by the Tenant in the City's standard certificate form of Insurance attached hereto as Appendix 2. Each certificate of insurance must identify the contract title, number, policy holder and contract subject-matter. Similar evidence of renewals, extensions or replacement of said policies must be made available to the General Manager of Vancouver Board of Parks and Recreation at any time upon request. If at any time, the Tenant fails to adduce satisfactory proof of

such coverage being in full force and effect, the City and the Board may, but is not obligated to or liable for the manner in which it does so, secure such insurance and the Tenant will pay the cost of all incurred expenses as additional rent.

ARTICLE VII

Section 7.01 Termination on Damage or Destruction

If the Premises are substantially damaged or destroyed to the extent that the Premises or a substantial area of the Premises are rendered unusable by the Tenant or convenient access to the Premises cannot be had, all as determined by the Landlord in its sole discretion, the Landlord may, at its option, elect to not rebuild or repair the Premises and may terminate this lease and the Tenant's liability for rent will end as of the date of such damage or destruction but such termination will not operate so as to relieve the Tenant of any liability arising from such damage or destruction. There will be no compensation to the Tenant on account of such termination.

Section 7.02 Repair of Damage or Destruction

If the Landlord elects to rebuild or repair the Premises, the Landlord will commence rebuilding or repairing within sixty (60) calendar days of the occurrence of the damage or destruction. If the Landlord does not initiate the rebuilding or repairing within such time period or, having commenced rebuilding or repairing, does not prosecute same to completion with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) calendar days notice of the termination of this lease but such termination will not operate so as to relieve the Tenant of any liability arising from such damage or destruction. There will be no compensation to the Tenant on account of such termination.

Section 7.03 Abatement of Rent

In the event of damage or destruction to the Premises to the extent that the Premises or part of the Premises are rendered unusable or convenient access to the Premises cannot be had, which in either case is not caused by the default or negligence of the Tenant or those for whom it is responsible in law, the rent will abate in the same proportion that the area of which the Tenant is deprived bears to the total area as determined in the opinion of the Landlord and such abatement will continue only so long as the Landlord determines its continuance to be reasonable.

Section 7.04 No Effect on Repair Obligations

Other than as set forth in Section 7.01 of this lease, nothing in this Article VII will alter the parties' respective repair obligations as set out in Article III of this lease.

Section 7.05 Tenant to Notify Promptly

The Tenant will give immediate notice to the Landlord in the event of fire or accident or other damage or destruction to the Premises.

ARTICLE VIII

Section 8.01 Assignment

The Tenant shall not assign its leasehold interest in the Premises save and except upon the written consent of the Landlord, which consent the Landlord may not unreasonably withhold but nevertheless if there are personal covenants herein on the part of the Tenant which, in the opinion of the Landlord's solicitors will not run with the lease, then the Landlord may withhold its consent to assignment unless the prospective assignee covenants with the Landlord to be bound by such personal covenants as if such covenants had been made between the Landlord and the prospective assignee.

If the Tenant is a corporate entity, then any amalgamation of the Tenant with any other party, and any change of effective control of the Tenant, will constitute an assignment of the Tenant's interest under this lease and will be subject to all of the provisions of this Section 8.01. Change of effective control of the Tenant includes any transfer, voluntary or involuntary, direct or indirect, which results in a change in the person or persons exercising or who might exercise effective control of the Tenant or the business required to be carried on in the Premises.

Section 8.02 Subleasing

The Tenant shall not sublease, license, set over or otherwise part with possession of the Premises or let any third party into possession of the Premises save and except upon written consent of the Landlord, which consent the Landlord may not unreasonably withhold.

Section 8.03 Assignment of Lease Rent

Notwithstanding Section 8.02 hereof, the Tenant hereby assigns to the Landlord all rents and fees payable to the Tenant under any lease, license or occupation agreement with any third party, which assignment will supersede any provisions regarding the Tenant in bankruptcy and any claims of the creditors of the Tenant whether by execution, attachment, garnishing order or otherwise PROVIDED HOWEVER the Landlord agrees to refrain from enforcing the said assignment so long as the Tenant will not be in default in the payment of rent or the performance or observance of its covenants hereunder. Upon the Tenant falling into default in the payment of its rent or the performance or observance of its other covenants hereunder, the Landlord may forthwith direct the sublessee, licensee or such other third party to pay to the Landlord the lease rent, license fees or other monies as would otherwise be owing to the Tenant from time to time and the payment of such monies to the Landlord will pro tanto discharge the sublessee's, licensee's or other third party's obligations to the Tenant and the Landlord will apply such monies to the rent and the performance and observance of the Tenant's covenants hereunder notwithstanding any claims on the part of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. If the sublessee, licensee or other third party fails to abide by the Landlord's directions in this behalf then, at the Landlord's election, the lease, license or other third party agreement will cease and determine and the Landlord may forthwith re-enter the leased, licensed or occupied portion of the Premises and arrange for new occupants thereof whose occupation will be subject to the provisions of this paragraph.

Section 8.04 Mortgaging by Tenant

Subject to Sections 8.05 and 8.06 and subject to the Landlord's prior written consent, which consent may be unreasonably or arbitrarily withheld, the Tenant may mortgage its leasehold interest in the Premises to a Mortgagee for the purpose of financing or refinancing the costs of designing, developing, constructing, furnishing, repairing, or replacing the Premises, but not otherwise. For the purposes of this lease and in particular this Article VIII, the following definitions will apply:

- (a) **"Mortgage"** means a mortgage or mortgages upon or in respect of the interest of the Tenant in the Premises or any part thereof and the lease and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder; and
- (b) **"Mortgagee"** means an institutional mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder.

Section 8.05 Tenant Liable for Rent, Property Taxes Notwithstanding Mortgage

Nothing contained in this lease will be construed to prevent or prohibit the assignment or subletting by the Tenant of this lease or the leasehold interest of the Tenant in the Premises by way of Mortgage as provided in Section 8.04, subject to the prior written consent of the Landlord, provided however that in the event of and notwithstanding any such assignment or subletting, the Tenant will be and remain

liable for the payment of all Rent, additional rent and Property Taxes and the performance of all the terms, covenants and conditions of this lease which are the Tenant's responsibility to perform.

Section 8.06 Mortgage Subject to Landlord's Rights under Lease

Subject to the provisions of Section 8.07, every Mortgage will be made expressly subject to the rights of the Landlord under this lease.

Section 8.07 Notice to and Remedies of Mortgagee

(a) No re-entry, termination or forfeiture of this Lease by the Landlord will be valid against the Mortgagee who has filed with the Landlord notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article XVI, unless the Landlord has given to the Mortgagee prior written notice of the default or contingency entitling the Landlord to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating the Landlord's intention to take such proceedings and requiring the Mortgagee:

- (i) to cure the default or contingency specified in the notice within a period of thirty (30) days from the date of receipt of that notice by the Mortgagee; or
- (ii) if the default or contingency is other than the failure to pay Rent or additional rent or Property Taxes or any other sums required to be paid to the Landlord by any provision of this lease, and if the default or contingency cannot reasonably be cured within such thirty (30) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency,

and the Landlord hereby grants the Mortgagee access to the Premises for that purpose. If the default or contingency is cured within the period specified, the Mortgagee will be entitled to continue as tenant of the Premises and licensee of the Licence Area for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this lease until such Mortgagee as Tenant assigns its leasehold estate as permitted by this lease and delivers to the Landlord an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the effective date of the assignment and by which the assignee agrees with the Landlord to attorn as tenant to the Landlord and to be bound by and to perform the covenants and agreements of this lease. If the Mortgagee consists of more than one mortgagee each having a separate charge upon the Tenant's interest in this lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Landlord hereby agrees to permit curing of the default or contingency specified as aforesaid, by that mortgagee which is willing to cure the default or contingency and attorn as tenant as aforesaid and whose charge ranks in priority over the charge or charges held by the other mortgagee or mortgagees willing to cure and assume as aforesaid; except that in the event any Mortgagee has commenced a foreclosure action, the provisions of Section 8.07(b) will apply.

(b) In the event the Mortgagee commences foreclosure proceedings against the Tenant, whether or not the Tenant is in default of the performance of its covenants and agreements with the Landlord under this lease at the time such foreclosure proceedings are commenced, the Landlord will not re-enter, terminate or forfeit this lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Landlord to re-enter, terminate or forfeit this Lease if the Mortgagee:

- (i) first gives to the Landlord written notice of the foreclosure proceedings;
- (ii) is actively prosecuting the foreclosure proceedings without undue delay;

- (iii) cures the default or contingency within a period of thirty (30) days from the date of receipt of notice from the Landlord specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or additional rent or Property Taxes or any other sums required to be paid to the Landlord by any provision of this lease and if such default or contingency cannot reasonably be cured within such thirty (30) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
- (iv) performs and observes all of the Tenant's covenants and agreements under this lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

In the event that the Mortgagee acquires the Tenant's leasehold interest in the Premises pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Tenant under this lease, provided it attorns to the Landlord as tenant and undertakes to be bound by and perform the covenants and agreements of this lease until such Mortgagee as Tenant assigns its leasehold estate as permitted by this lease and delivers to the Landlord an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the effective date of the assignment and by which the assignee agrees with the Landlord to attorn as tenant to the Landlord and to be bound by and to perform the covenants and agreements of this lease. If the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this Section 8.07(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing Mortgagees.

- (c) If this lease is subject to termination or forfeiture pursuant to Article IX by reason of the bankruptcy or insolvency of the Tenant and the Mortgagee has filed with the Landlord a notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article XVI, the Landlord will give to the Mortgagee notice of the bankruptcy or insolvency of the Tenant entitling the Landlord to terminate or forfeit this lease and stating the Landlord's intention to take such proceedings and requiring the Mortgagee to cure the Tenant's default and the Tenant's default will be deemed to have been sufficiently cured if the Mortgagee:
 - (i) takes possession and control of the Premises, or causes a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, who takes possession and control of the Premises, and the Landlord hereby grants the Mortgagee or such receiver access to the Premises for that purpose;
 - (ii) cures every default within a period of thirty (30) days from the date of receipt by the Mortgagee of the notice from the Landlord of the bankruptcy or insolvency of the Tenant, or if such default or defaults are other than the failure to pay Rent or additional rent or Property Taxes or any other sums required to be paid to the Landlord by any provision of this lease and if such default or defaults cannot reasonably be cured within such thirty (30) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or defaults;
 - (iii) attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this lease until such Mortgagee as Tenant assigns its leasehold estate as permitted by this lease and delivers to the Landlord an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the effective date of the assignment and by which the assignee agrees with the Landlord to attorn as tenant to the Landlord and to be bound by and to perform the covenants and agreements of this lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges.

- (d) Any re-entry, termination or forfeiture of this lease made in accordance with the provisions of this lease as against the Tenant will be valid and effectual against the Tenant even though made subject to the rights of any Mortgagee to cure any default of the Tenant and to continue as tenant under this lease.
- (e) No entry into the Premises by the Mortgagee pursuant to this Section 8.07 for the purpose of curing any default or defaults of the Tenant will release or impair the continuing obligations of the Tenant.

ARTICLE IX

Section 9.01 Bankruptcy

If during the Term, any of the goods or chattels of the Tenant are at any time seized or taken in execution by any creditor of the Tenant, or if the Tenant makes a general assignment for the benefit of creditors, or if the Tenant institutes proceedings to have the Tenant adjudicated as bankrupt or insolvent, or if the Tenant becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction adjudging the Tenant bankrupt or insolvent, or if the Tenant is unable to meet all debts as they fall due for a period of not less than three (3) months, or if the Tenant or its directors will pass any resolution authorizing the dissolution or winding-up of the Tenant, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Tenant's property will be appointed or applied for by the Tenant or by one or more of the Tenant's creditors, then the Landlord will be so notified and the then current rent plus an additional three (3) months current rent will immediately become due and be paid and the Landlord may immediately claim the same together with any arrears of rent and, at the option of the Landlord, the Term is subject to termination forthwith. If the Tenant becomes defunct or amalgamates with any other body without obtaining the prior written consent of the Landlord or if a committee is appointed under the *Patients Property Act*, R.S.B.C. 1996, c.349, as amended or substituted from time to time, to lawfully deal with the Tenant's estate then at the option of the Landlord the Term will forthwith terminate. If the Tenant surrenders up its certificate of incorporation or otherwise ceases to exist the Term terminates as of such surrender or dissolution. If the Tenant is a natural person, at any time after the Tenant's death the Landlord may terminate the Term upon sixty (60) days notice to any executor or administrator of his estate.

ARTICLE X

Section 10.01 Statutes and By-laws

The Tenant covenants to promptly and faithfully observe and comply with all federal, provincial or civic statutes, by-laws, regulations and orders now or hereafter which are in force and in effect which touch and concern the Premises or the Tenant's activities within the Premises, including, without limitation any applicable environmental guidelines, and any amendments thereto, which deal with environmental protection and safety and/or Hazardous Substances. If any such statutes, by-laws, regulations, orders or guidelines are directed at owners, the Tenant will perform and observe same at its own expense in the place and stead of the Landlord.

Section 10.02 Quiet Enjoyment

Subject to the provisions of this lease and subject to the provision that nothing contained or implied herein will prejudice or affect the Landlord's rights and powers in the exercise of its functions pursuant to the *Vancouver Charter*, S.B.C. 1953, c.55, as amended or substituted from time to time, and the rights and powers of the Landlord under all of its public and private statutes, by-laws and regulations,

all of which may be as fully and effectively exercised in relation to the Premises as if this lease had not been executed and delivered by the Landlord and the Tenant, the Landlord covenants with the Tenant for quiet enjoyment.

Section 10.03 Performance of Obligations

The Tenant covenants with the Landlord to faithfully and promptly pay the rent and perform and observe its obligations herein.

Section 10.04 Registration of Lease

The Landlord will deliver this lease in registrable form and the Tenant, at its cost, will have the right to register this lease in the Land Title Office.

Section 10.05 Landlord's Rules and Regulations

The Tenant shall at all times comply with all reasonable rules and regulations made by the Landlord in respect to the Tenant's use and occupation of the Premises which are not inconsistent with the terms of this Lease.

ARTICLE XI

Section 11.01 Breach of Covenants

The Landlord and Tenant agree that subject to the provisions of Section 8.07, if and whenever:

- (a) any Rent payment or any part thereof is not made on the day appointed for payment thereof and such default continues for seven (7) days following notice thereof; or
- (b) the Tenant is in default in the payment of any money, other than Rent, required to be paid by the Tenant under the terms of this lease and such default continues for ten (10) days following any specific due date on which the Tenant is to make such payment or, in the absence of such specific due date, for ten (10) days following notice requiring the Tenant to pay the same; or
- (c) the Tenant defaults in performing or observing any of the provisions of this lease other than those requiring payment of money to the Landlord and such default continues for a period of twenty (20) days after notice thereof to the Tenant, except for a default which to be cured with all due diligence would require a longer period, then after such longer period, or if the Tenant fails to proceed promptly and diligently and continuously after the service of such notice to cure same; or
- (d) the Premises are vacated or unoccupied for ten (10) or more consecutive days while the Premises can be used for the Permitted Use, without the consent of the Landlord; or
- (e) the Premises are abandoned by the Tenant; or
- (f) this lease is terminated;

then and in every such case, it will be lawful for the Landlord at any time thereafter without notice or demand, with or without process of law and by forceable entry if necessary, to re-enter into and upon the Premises, and to terminate this lease by leaving upon the Premises notice in writing of such termination. If the Landlord terminates this lease pursuant to this Section, or otherwise as a result of default of the Tenant, there will immediately become due and owing to the Landlord, in addition to any other sums payable to the Landlord hereunder as damages suffered by the Landlord as a result of the Tenant's breach, the then current month's rent, together with the rent accruing for the remainder

of the Term. This provision for notice and termination will not be construed so as to delay or supersede any specific remedy to which the Landlord may have recourse in this lease.

Section 11.02 Distraint

The Tenant waives and renounces the benefit of any present or future law taking away or limiting the Landlord's rights against the property of the Tenant and, notwithstanding any such law, the Landlord may seize and sell all the Tenant's goods and property, whether within the Premises or not, and apply the proceeds of such sale towards any arrears of rent (including amounts deemed to be rent under this lease) and the costs of the seizure and sale. The Tenant further agrees that if it abandons the Premises and any arrears of rent remain unpaid, the Landlord, in addition to any remedy otherwise provided by law, may seize and sell the goods and property of the Tenant at any place to which the Tenant or any other person may have removed them from the Premises, in the same manner as if such goods and property had remained in, about or upon the Premises.

Section 11.03 Right to Re-let

If the Landlord becomes entitled to re-enter the Premises the Landlord will have the right, if it thinks fit, to enter the Premises as the agent of the Tenant either by force or otherwise without being liable for any prosecution therefor, and as agent of the Tenant to re-let the Premises or any part or parts thereof at the risk of the Tenant and, as agent for the Tenant, to receive the rent therefor and, as agent for the Tenant, to take possession of any furniture, equipment and other property therein and sell the same at public or private sale without notice. Such rent and proceeds from the sale of the furniture, equipment and other properties will be allocated first to the Landlord's cost of so entering and re-letting, then to interest on amounts due by the Tenant to the Landlord hereunder and unpaid, and then to the payment of such unpaid sums. The balance of such rent and proceeds, if any, may be applied by the Landlord on account of the rent due hereunder to the Landlord.

Section 11.04 Forfeiture

The Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event the Tenant will be evicted or dispossessed from the Premises for any cause, statutory or otherwise, or if the Landlord re-enters the Premises following the occurrence of any default by the Tenant hereunder, or if this lease is terminated before the expiration date thereof originally fixed herein.

Section 11.05 Remedies Generally

Mention in this lease of any particular right or remedy of the Landlord in respect of the default by the Tenant will not preclude the Landlord from any other right or remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this lease. No right or remedy will be exclusive or dependent upon any one or more of such rights or remedies independently or in combination, such rights or remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed or performed, the Tenant's only remedy (except where another remedy is expressly provided herein, in which event the Tenant will be restricted to that remedy) will be for such damages as the Tenant will be able to prove in a court of competent jurisdiction that the Tenant has suffered as a result of a breach (if established) by the Landlord in the observance and performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed and performed. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of the Landlord and the Tenant created hereby, the Tenant's use or occupancy of the Premises or any claim for any injury. In the event the Landlord commences any action or proceeding for non-payment of rent, the Tenant agrees not to interpose any counterclaim of any nature or description in any such action or proceeding. In the event of any breach or threatened breach by the Tenant of any of the

terms and provisions of this lease, the Landlord will have the right to injunctive relief as if no other remedies were provided herein for such breach. The Tenant hereby expressly waives any right to assert a defense based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein will bar the Landlord from bringing any subsequent action or proceeding from time to time. If the Tenant will default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, whether by a renewal or extension option herein contained or by separate agreement, the Landlord may cancel such option or agreement for renewal or extension of this lease, upon written notice to the Tenant.

Section 11.06 Expenses

If any legal proceeding is brought for recovery of possession of the Premises, for the recovery of rent or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, the Tenant will pay to the Landlord as additional rent, upon demand, all costs and expenses incurred therefor (including without limitation, all professional and consultant fees, and all legal fees on a solicitor and his own client basis, disbursements, and all court costs and expenses of any legal proceeding; and the term "proceeding" will include, without limitation, any arbitration, administrative, governmental, quasi-governmental or any other mediation proceeding and the term "costs" will include the pro-rata portion of the wages, salaries and all other remuneration of the Landlord's officers and employees reasonably attributed to the matter).

Without limiting the generality of the immediately preceding paragraph or any other provisions of this lease, the Tenant will pay to the Landlord, as additional rent upon demand, all costs and expenses (including, without limitation, those fees, disbursements, costs and expenses set out in the bracketed insert in the immediately preceding paragraph of this Section 11.06) which the Landlord may incur or pay out by reason of, or in connection with:

- (a) any proceeding by the Landlord to terminate this lease or for the recovery of possession of the Premises or for the recovery of rent;
- (b) any other proceeding by the Landlord against the Tenant or any indemnitor;
- (c) any distress levied by the Landlord against the Tenant's goods, chattels and inventory or any of them on the Premises for the recovery of rent;
- (d) any default by the Tenant in the observance or performance of any obligations of the Tenant under this lease whether or not the Landlord commences any proceeding against the Tenant or any indemnitor;
- (e) any proceeding brought by the Tenant against the Landlord (or any officer, employee or agent of the Landlord) in which the Tenant fails to secure a final judgment against the Landlord;
- (f) any other appearance by the Landlord (or any officer, employee or agent of the Landlord) as a witness or otherwise in any proceeding whatsoever involving or affecting the Landlord, the Tenant, this lease, the indemnity agreement (if any) or the Premises;
- (g) any amendment, modification or change in any of the terms of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such amendment, modification or change is finally agreed on);
- (h) any renewal, extension, surrender, or release of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such renewal, extension, surrender or release becomes effective);
- (i) any transfer of this lease (and any request or negotiations pertaining thereto, whether or not such transfer is approved and finally agreed on); and

- (j) any Alterations of or to the Premises (and any request or negotiations pertaining thereto, whether or not such Alterations are approved and finally agreed on).

The Tenant's obligations under this Section 11.06 will survive the expiration or earlier termination of this lease.

Section 11.07 Landlord May Remedy Tenant's Default

If the Tenant fails to pay, when due and prior to the expiration of any curative period provided for in this Lease, any amount required to be paid by the Tenant pursuant to this lease, the Landlord, after giving two (2) days' notice in writing to the Tenant, may, but will not be obligated to, pay all or any part of it. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of rent required to be paid by the Tenant pursuant to this lease) and the applicable curative period has expired, the Landlord may from time to time after giving such notice as it considers sufficient (or without notice in the case of an emergency) having regard to the circumstances applicable, perform or cause to be performed any of such covenants or obligations, or any part thereof, and for such purpose may do such things as may be required, including, without limitation, entering upon the Premises and doing such things upon or in respect of the Premises or any part thereof as the Landlord considers requisite or necessary. All expenses incurred and expenditures attributable to or made (including all employee, overhead and other internal costs) pursuant to this Section 11.07, will be paid by the Tenant to the Landlord as additional rent upon demand. The Landlord will have no liability to the Tenant or any other person for any claims resulting from any such action, entry or performance of any work by the Landlord upon the Premises.

Section 11.08 Security Agreement

- (a) The Tenant hereby grants to the Landlord a security interest (the "**Security Interest**") in all of the Tenant's personal property of any kind including, without limiting the generality of the foregoing, all goods, chattels, trade fixtures, furniture, equipment, inventory, stock-in-trade, chattel paper, instruments, documents of title, supplies, securities, the business on the Premises, accounts receivable, book debts and intangibles (collectively, the "**Collateral**") which are or may be at any time hereafter on the Premises or elsewhere, to secure the payment of all rent and the fulfillment of the other obligations of the Tenant under this lease. Except for the Security Interest, the Tenant agrees that all Collateral on the Premises shall be the unencumbered property of the Tenant. The Tenant agrees to enter into, on the Landlord's request, a separate security agreement, mortgage or similar other charge or security instrument, in addition to this security agreement, or to document separately the Security Interest hereby granted, containing such terms as the Landlord shall reasonably require, on all of the Collateral at any time during the Term, including all after-acquired items forming part of the Collateral, as security for the payment of rent and performance by the Tenant of all of its other obligations pursuant to this lease. Whether or not any additional or separate security agreement, mortgage, charge or other security instrument is requested by or given to the Landlord as aforesaid, the Tenant confirms and agrees that the Security Interest is complete and valid without the necessity of the Tenant's giving any other or further documentation in respect thereof. The Tenant agrees that the Security Interest shall attach to the Collateral immediately upon the execution of this lease and that, to the extent necessary to give full effect to this Section 10.08, this lease is intended to constitute a security agreement as defined in the *Personal Property Security Act*, R.S.B.C. 1996 c.359 as amended or substituted from time to time. This security agreement is separate from and shall survive the termination, expiry or disclaimer of this lease.
- (b) On default by the Tenant under this lease, the Landlord may itself, or by its agents or employees, or by a receiver or any replacement thereof appointed in writing by Landlord, take possession of the Collateral, carry on the business on the Premises, in such manner as Landlord or such receiver determines, and realize upon the Collateral and enforce its rights under the Security Interest by any remedy or proceeding authorized or permitted hereby or at law

including, without limitation, all rights and remedies available to a secured party under the *Personal Property Security Act* and any other similar statutes; included in such rights of the Landlord is the right to recover the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral and all other reasonable expenses, including legal costs, incurred by the Landlord, the Landlord may exercise any rights as provided by this Section 10.08 on the Premises and for such purpose may lock the Premises, change any locks on the Premises and by any means exclude the Tenant from all or any parts of the Premises and the Landlord shall not thereby be terminating this lease in the absence of express written notice terminating this lease.

- (c) This Security Interest shall not be deemed to have been satisfied, discharged or redeemed by reason of the Tenant not being indebted to the Landlord at any time or from time to time and no payment shall reduce the amount secured by this Security Interest except to the extent expressly approved by the Landlord in writing.
- (d) This Security Interest is given in addition, and not as an alternative, and may be exercised by the Landlord without prejudice to any other rights of the Landlord under this lease or at law including, without limitation, the Landlord's right of distress.

ARTICLE XII

Section 12.01 Vacant Possession

Upon termination of the Term, whether by the passage of time or otherwise, the Tenant will deliver up vacant possession of the Premises and will leave the Premises in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish and stock-in-trade and will ensure that the Premises are to the standard of repair and decoration required of the Tenant pursuant to Article II hereof.

Section 12.02 Trade Fixtures

- (a) If the Tenant is not in default hereunder at the expiration of the Term, the Tenant will have the right to remove its trade fixtures from the Premises but will make good any damage caused to the Premises resulting from the installation or removal thereof.
- (b) If the Tenant fails to remove any of its trade fixtures and restore the Premises as provided in Section 12.02(a), all such trade fixtures will become the property of the Landlord except to the extent that the Landlord requires removal thereof pursuant to Section 12.02(d).
- (c) If the Tenant abandons the Premises or this lease is terminated before the proper expiration of the Term due to a default on the part of the Tenant, as of the moment of such default by the Tenant, all trade fixtures and furnishings of the Tenant (whether or not attached in any manner to the Premises) will, except to the extent the Landlord requires the removal thereof pursuant to Section 12.02(d), become and be deemed to be the property of the Landlord, without compensation to the Tenant but without prejudice to any other right or remedy of the Landlord at law or in equity.
- (d) Notwithstanding that any trade fixture is or may become the property of the Landlord, the Tenant will forthwith remove all or part of the same and will make good any damage caused to the Premises resulting from the installation or removal thereof, all at the Tenant's expense, should the Landlord so require by notice to the Tenant.
- (e) If the Tenant, after receipt of a notice from the Landlord pursuant to Section 12.02(d), fails to promptly remove any trade fixture in accordance with such notice, the Landlord may enter into the Premises and remove therefrom all or part of such trade fixture and make good any damage caused to the Premises resulting from the installation or removal thereof, without any

liability accruing against the Landlord and at the expense of the Tenant, which expense will forthwith be paid by the Tenant to the Landlord.

Section 12.03 Overholding

If the Tenant continues to occupy the Premises after the expiration of the Term, and the Landlord will accept rent, the new tenancy thereby created will be a tenancy from month to month and not from year to year, and will be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month, and will be determined by one (1) month's prior notice in writing.

ARTICLE XIII

Section 13.01 For Showings/Inspections

The Landlord or its agents have the right to enter the Premises at any reasonable time (and upon not less than forty-eight (48) hours written notice to the Tenant) to examine them (or within the last sixty (60) days of the Term if not renewed or any renewal term if not further renewed, to show them to prospective purchasers or tenants) and to enter the Premises at times mutually agreed between the Landlord and the Tenant (or on reasonable prior notice but except in the case of emergency not less than forty-eight (48) hours notice) to make such repairs as the Landlord may deem necessary or desirable and the Landlord will be allowed to take all required material into and upon the Premises without such entry constituting an eviction of the Tenant in whole or in part nor a breach of the Landlord's obligations and the rent reserved will in no way abate by reason of loss or interruption of the business of the Tenant or otherwise while the repairs are being made, provided the Landlord takes all commercially reasonable steps to perform the work outside of the normal operating hours of the Tenant's business on the Premises and expeditiously and with as little inconvenience to the Tenant as is possible in the circumstances.

Section 13.02 Landlord's Access to Records

The Landlord may at any reasonable time and upon forty-eight (48) hours written notice to the Tenant enter (or permit governmental authorities to enter) the Premises or any other office of the Tenant's for the purpose of ensuring the Tenant's compliance with this lease, including without limitation, by auditing the Tenant's environmental and financial records and by conducting soil, water and other tests, provided that the Landlord takes reasonable steps to avoid interfering with the Tenant's use and occupation of the Premises.

Section 13.03 Emergency Access

If and when for any reason an emergency exists or is reasonably contemplated, the Landlord or its agents may enter the Premises by a master key, or may forcibly enter them, provided reasonable care is exercised, without rendering the Landlord or such agent liable, and without in any manner affecting the Tenant's obligations under this lease. However, despite the above, the Landlord has no obligation, responsibility or liability, for the care, maintenance or repair of the Premises except as otherwise specifically provided.

ARTICLE XIV

Section 14.01 Option to Renew

If:

- (a) the Tenant pays the rent as and when due and punctually observes and performs the terms, covenants and conditions to be observed and performed by it in accordance with the terms of this lease; and

- (b) the Tenant gives the Landlord not less than twelve (12) months and not more than eighteen (18) months written notice prior to the expiration of the Term of the Tenant's exercise of each option to renew;

then the Landlord shall grant to the Tenant a renewal lease upon the expiration of each term for a period of _____ years (the "Renewal Term") on the same terms and conditions as set out in this lease except that:

- (d) with respect to such Renewal Term, the Landlord shall have no obligation to pay or provide to the Tenant any allowance, concession or inducement of any nature, or provide any free rent or discounted rent of any nature, or provide any fixturing period, or do or perform any Landlord's work in, on, to or for the Premises;
- (e) the parties will, by agreement in writing signed by both parties or their agents, determine the market rental value of the Premises and such determination shall be the Rent payable by the Tenant during the Renewal Term;
- (f) if the market rental value of the Premises for the Renewal Term has not been determined in the manner described in the immediately preceding subparagraph, on or before the commencement date of the Renewal Term, then either of the parties may elect to arbitrate the issue by so notifying the other in writing of such election, whereupon each party shall forthwith appoint one (1) arbitrator and the two (2) arbitrators so appointed shall appoint a third arbitrator and the three (3) arbitrators shall determine the market rental value of the Premises, which will be the Rent payable by the Tenant for the Renewal Term, and the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c.55, as amended or substituted from time to time, shall apply to the selection of the arbitrators and the arbitration PROVIDED HOWEVER if the parties can agree upon a single arbitrator then the arbitration shall be conducted by a single arbitrator;
- (g) if the Rent reserved for the Renewal Term has not been determined on the 1st day of the Renewal Term, then, until such determination is made, the Tenant shall continue to pay monthly in advance and without deduction, the Rent applicable on the last day of the Term, PROVIDED HOWEVER that when the Rent reserved for the Renewal Term has been determined as aforesaid, the parties, within ten (10) business days of such determination having been made, shall make such payment or repayment as may be necessary to ensure that the Tenant has then paid the same amount that he would have paid if such determination had been made on the 1st day of the Renewal Term. Any amounts payable by the Tenant to the Landlord pursuant to this Section 14.01 shall bear interest at the rate of three percent (3%) per annum above the prime rate, per annum, calculated monthly not in advance, from the 1st day of the Renewal Term until paid; and
- (h) provided always that the Rent payable by the Tenant during the Term shall not be relevant in determining the market rental value of the Premises for the Renewal Term.

ARTICLE XV

Section 15.01 Landlord Released

In the event of the sale or lease by the Landlord of the Premises or the assignment by the Landlord of its interest in this lease, the Landlord will without further written agreement be released and relieved of and from such liabilities and obligations.

Section 15.02 Tenant's Covenant

The Landlord may sell, transfer or otherwise dispose of the Premises, or any portion of the Premises, to any party and upon the conveyance to such party of the Premises or any portion of them, the Tenant

will, upon receipt of written acknowledgement from such party of this lease and the Tenant's rights under this lease, attorn to and become the Tenant of such party under the terms of this lease and the Tenant will provide such party with an acknowledgment in writing binding upon the Tenant that it will perform the obligations and satisfy the liabilities of the Tenant, and any indemnifier or covenantor will execute and deliver a new covenant or indemnity agreement to such party on the same terms as any existing agreement with the Landlord.

Section 15.03 Status Statement

The Landlord and the Tenant will provide to the other, within three (3) days of such party's request, a status statement confirming the particulars of the Lease, addressed to the other and any potential buyer or mortgagee, binding upon the Tenant or the Landlord, as the case may be, confirming:

- (a) in the case of the Tenant, that the Tenant has accepted possession of the Premises;
- (b) whether or not any party hereto has carried out all of its obligations pursuant to this lease;
- (c) that this lease constitutes the whole of the agreement between the parties (or setting out such other agreements);
- (d) that this lease is in full force and effect and that there are no defences or set offs which the Tenant claims against the Landlord (or setting out any such claims) or vice versa; and
- (e) such other matters as may be reasonably required by the requesting party or any potential or actual purchaser or mortgagee of the Premises.

ARTICLE XVI

Section 16.01 Delivery of Notices

Any notice required to be given hereunder must be in writing and the sender must deliver it by hand or by telecopier or by mail to the party to which it is to be given, as follows:

- (a) to the Tenant:

Attention: _____

Fax No.: _____

(b) to the Landlord:

Vancouver Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia V6G 1Z4

Attention: Director, Stanley District

Fax No.: 604-257-8501

or to such other address or telecopier number as the party may designate and will be deemed to have been received on the day of delivery or telecopying if within business hours on a business day and otherwise on the next succeeding business day and, if mailed, the 5th day after mailing, provided that if there is between the time of mailing and the actual receipt of the notice a mail strike, slow-down or other labour dispute which might affect delivery of such notice then such notice will only be effective if actually delivered.

Section 16.02 Administration of Lease

Where this agreement requires or permits on the part of the Landlord any authority, reservation, discretion, disallowance, approval or other act of supervision or the giving of any notice, such act or action will be well and truly performed on the part of the Landlord when performed by the Director, Stanley District of the Vancouver Board of Parks and Recreation or his nominee.

Section 16.03 Covenants Survive Termination

The covenants herein on the part of the Landlord and the Tenant which, as of termination of this lease or the Term whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as there is any liability or indebtedness by either party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything herein to the contrary.

Section 16.04 Time is of the Essence

Time will be of the essence of this lease, save as herein otherwise specified.

Section 16.05 Captions and Headings

The captions and headings throughout this lease are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this lease nor in any way affect this lease.

Section 16.06 Interpretation

Words herein importing the singular number or the masculine gender only will include more persons, parties or things of the same kind than one, and females or corporations as well as males, and the converse whenever the context requires; these presents will extend to, be binding upon and enure to the benefit of the Landlord and the Tenant and the successors and assigns of the Landlord and the heirs, executors, administrators, successors and permitted assigns of the Tenant.

Section 16.07 Joint and Several

Any covenant, agreement, condition or proviso made by two (2) or more persons will be construed as several as well as joint.

Section 16.08 Waiver

No waiver of or neglect to enforce any provision of this lease upon a default by the Tenant will be deemed to be a waiver of any such right upon any subsequent similar default. Without limiting the generality of this Section 16.08, the acceptance by the Landlord of part payment of any sums, including rent, required to be paid under this lease will not constitute a waiver or release of the Landlord's right to payment in full of such sums.

Section 16.09 Entire Agreement

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, terms or conditions expressed or implied relating to this lease or the Premises except as expressly set out in this lease, and that this lease may not be modified except by an agreement in writing executed by both the Landlord and the Tenant.

Section 16.10 Governing Law

This lease will be governed by and interpreted in accordance with the laws of British Columbia and the parties irrevocably attorn to the jurisdiction of the courts of British Columbia.

Section 16.11 Severability

If any provision or provisions of this lease are determined by a court to be illegal or not enforceable, it or they will be considered separate and severable from this lease and the remaining provisions of this lease will remain in full force and be binding upon the parties.

Section 16.12 Relationship between Landlord and Tenant

Nothing contained in this lease nor any acts of the Landlord or the Tenant will be deemed to create any relationship between the Landlord and the Tenant other than the relationship of landlord and tenant, and the Tenant will throughout the Term take all reasonable steps to inform the public that the Tenant is the operator of the Premises as an independent contractor and not as employee or agent of the Landlord.

Section 16.13 Force Majeure

Despite anything contained in this lease to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this lease because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the party delayed or of its officers, employees or agents, the doing of the thing is excused for the period of the delay and the party delayed will promptly do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Tenant from payment of rent or the Landlord from payment of amounts, if any, that it is required to pay, in the amounts and at the time specified in this lease.

Section 16.14 Permanent Public Park

Notwithstanding anything contained in this lease, if the Building is part of a permanent public park within the meaning of section 490 of the *Vancouver Charter*, S.B.C. 1953, C. 55, as amended, and ceases to be part of such a permanent public park, then this lease will be terminable at the option of

the Landlord but all obligations of the Tenant up to the date of any such termination will survive such termination. Upon termination pursuant to this Section 16.14, at the option of the Tenant, subject to the approval of Council, the City of Vancouver will enter into a lease with the Tenant on the same terms and conditions of this lease, including Rent and the right of renewal, for the balance of the Term or renewal term, as the case may be, that was remaining on this lease immediately prior to the effective date of termination.

Section 16.15 Parking

The Landlord agrees that during the Term it will not reduce the number of public parking stalls available in the public underground parking lot (the "**Public Parking Lot**") to less than the number of public parking stalls required for the use of the Premises as a restaurant as set out in development permit number _____.

Section 16.16 No Promotion

The Tenant must not disclose or promote its relationship with the City of Vancouver, 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 of Vancouver (except as may be necessary for the Tenant to perform the Tenant's obligations under the terms of this lease). The Tenant 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 of Vancouver. Furthermore, the Tenant undertakes not to disclose or promote its relationship with the City of Vancouver in any communication or manner whatsoever as a basis to create an association, express or implied, between the Tenant and the International Olympic Committee, the Olympics or the Olympic Movement.

Section 16.17 Trade and Domain Names

The Tenant will not use any trade names for the Restaurant in any medium, including, without limitation, print, radio, internet or television advertisements, or register any internet domain names for the Restaurant, without the prior written approval of such trade or domain names by the VPB, which approval will not be unreasonably withheld. If, at any time, the VPB requests that the adopted trade or domain name for the restaurant be changed, the Tenant will promptly submit a detailed estimate of the costs of changing the trade or domain name to the VPB for approval. Once the VPB has approved the estimate, the Tenant will promptly comply with such request and will submit an invoice to the VPB for the actual costs of the change, which invoice will be paid by the VPB within sixty (60) days of receipt. The VPB reserves the right to refuse to reimburse for any actual costs that exceed the approved estimate by an amount equal to or greater than ten percent (10%) of the approved estimate.

IN WITNESS WHEREOF the parties hereto have executed this lease as of the day and year first above written.

CITY OF VANCOUVER

By: _____
Authorized Signatory

CITY OF VANCOUVER as represented by its VANCOUVER BOARD OF PARKS AND RECREATION

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Approved by resolution of the Landlord's Vancouver Board of Parks and Recreation on _____,
20____.

This is the signatory page of a Lease between the City of Vancouver as represented by its Vancouver Board of Parks and Recreation as Landlord and _____
as Tenant concerning the Creekside Community Recreation Centre Restaurant (the Premises).

SAMPLE

APPENDIX A - INSURANCE REQUIREMENTS

SAMPLE

APPENDIX B - PROPOSAL

SAMPLE

APPENDIX C - RFP



PROFESSIONAL LIABILITY INSURANCE CERTIFICATE



Section 4 – 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 as represented by its Board of Parks & Recreation
2099 Beach Avenue, Vancouver, BC, V6G 1Z4

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 the 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) – 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, as represented by its Board of Parks & Recreation
2099 Beach Avenue, Vancouver, BC, V6G 1Z4

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 the 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 and its Board of Parks & Recreation as Named Insureds and/or Loss Payees with respect to their interests and shall contain a waiver clause in favour of the City of Vancouver and its Board of Parks & Recreation (All Risks Coverage Including Earthquake and Flood) INSURED VALUES: (Replacement Cost)
 INSURER: _____ Building and Tenants' Improvements \$ _____
 TYPE OF COVERAGE: _____ Contents and Equipment: \$ _____
 POLICY NUMBER: _____ Deductible Per Loss: \$ _____
 POLICY PERIOD: From _____ to _____

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

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

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. 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 and its Board of Parks & Recreation, their 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 and its Board of Parks & Recreation 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: _____

APPENDIX 5 -

Stanley Park Farmyard Capital Investment Outline		
Item Number	Description of Capital Investment Item	Investment Dollars
1		
2		
3		
4		
5		
6		
7		
8		
9		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
Total		

Financial Summary

	January		February		March		April		May		June		July		August		September		October		November		December		Total Year		
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	
Revenue Admissions																											
Revenue Merchandise																											
Revenue Other																											
Total Revenue																											
Direct Labour																											
Fringe Benefits																											
Total Labour																											
Marketing																											
Advertising																											
Maintenance Bldg																											
Maintenance Site																											
Utilities																											
Depreciation																											
Finance Costs																											
Direct Expenses Other																											
Total Direct Expenses																											
% Return Park Board																											
Rent Return Park Board																											
Total Return Park Board																											

Note - Please complete as if operating a full year. If closures are anticipated please note as comment. Please round dollars to nearest \$.5.