

APPENDIX I: RFP PROCESS - 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 City's and Short-Listed Respondent's (including its Sub-Contractors') legal rights and obligations only with respect to this RFP and Proposal process. In no event will the legal terms and conditions of this Appendix I apply to the Contract formed between the City and the Developer (if any).

1.2 Definitions

In this Appendix I, the following terms have the following meanings:

- (a) "Contract" means any legal agreement between the City and the Developer (if any), including the Ground Lease and the Development Agreement.
- (b) "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).
- (c) "Sub-Contractors" includes any or all third parties that may assist a Short-Listed Respondent in this RFP and Proposal process.

2.0 GENERAL TERMS AND CONDITIONS OF RFP/PROPOSAL PROCESS

2.1 No Legal Obligation Assumed by City

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

Short-Listed Respondent's Name

Initial

2.2 Legal Rights and Obligations Suspended

Despite any other term of the RFP or Proposal (except only (where applicable) Section 5.2 - Short-Listed Respondent's Submission Confidential, and Section 5.5 - Declaration of Confidentiality), the City and Short-Listed Respondent 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 process will be absolutely and unconditionally subject to Section 4.0 - Protection of City Against Lawsuits, and the following:

(a) No Duty

The City has no legally enforceable duty or obligation to the Short-Listed Respondent unless and until the City signs a Contract.

(b) Short-Listed Respondent's Risk

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

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

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

(c) Short-Listed Respondent's Cost

The Short-Listed Respondent now assumes and agrees to bear all costs and expenses incurred by the Short-Listed Respondent in preparing its Proposal and participating in the RFP and Proposal process.

3.0 EVALUATION OF PROPOSALS

3.1 Compliance/Non-Compliance

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

3.2 Reservation of Complete Control Over Process

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

3.3 Discussions/Negotiations

The City may, at any time prior to or after 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 Short-Listed Respondents without having any duty or obligation to advise the Short-Listed Respondent or to allow the Short-Listed Respondent to vary its Proposal as a result of discussions or negotiations with other Short-Listed Respondents or changes to the RFP, and, without limiting the general scope of Section 4.0 - Protection of City Against Lawsuits, by way of example only, the City will have no liability to the Short-Listed Respondent as a result of such discussions, negotiations or changes.

4.0 PROTECTION OF CITY AGAINST LAWSUITS

4.1 Release

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

- (a) any alleged (or judicially imposed) breach by the City of the RFP (it being acknowledged and agreed that to the best of the parties' knowledge, the City has no obligation or duty under the RFP or Proposal process which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City occurring in the course of conducting this RFP and Proposal process;
- (c) the Short-Listed Respondent preparing and submitting its Proposal;
- (d) the City accepting or rejecting its Proposal or any other submission;
- (e) the manner in which the City:

- (i) reviews, considers, evaluates or negotiates any Proposal,
 - (ii) deals with or fails to deal with any Proposal or Proposals, or
 - (iii) decides to enter into a Contract or not enter into any Contract; and
- (f) the Short-Listed Respondent(s), if any, with whom the City enters into a Contract.

4.2 Indemnity

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

- (a) any alleged (or judicially imposed) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP or Proposal process which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially)),
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting this RFP or Proposal process, or
- (c) liability on any other basis related to this RFP or the Proposal process.

4.3 Limitation

In the event that, with respect to anything relating to this RFP or Proposal process (except only and to the extent that the City breaches the Contract (if any), Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Short-Listed Respondent's Submission Confidential, or Section 5.5 - Declaration of Confidentiality), the City or its officials, officers, agents or employees are found to have breached any duty or obligation of any kind to the Short-Listed Respondent or its Sub-Contractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Short-Listed Respondent or its Sub-Contractors or agents on any basis or legal principle of any kind, the City'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 City breaches the Contract (if any), Section 4.3 - Limitation, Section 4.4 - Dispute Resolution, Section 5.2 - Short-Listed Respondent's Submission Confidential, or Section 5.5 - Declaration of

Confidentiality) 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 Manager - Materials Management.
- (b) This Section 4.0 - Protection of City against Lawsuits will:
 - (i) bind the City, the Short-Listed Respondent and the arbitrator; and
 - (ii) survive any and all awards made by the arbitrator.
- (c) The Short-Listed Respondent will bear all costs of the arbitration.

5.0 ACCESS/OWNERSHIP OF PROPOSAL INFORMATION

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

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

5.2 Short-Listed Respondent's Submission Confidential

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

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

5.3 All City Data/Information is Confidential

The Short-Listed Respondent will not divulge or disclose to any third parties any

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

All material and information that has or will come into the Short-Listed Respondent'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 RFP.

5.4 Disclosure Requires Prior Consent

The Short-Listed Respondent may not divulge any information respecting the Proposal process to any third party without the prior written consent of the City, which consent may be arbitrarily withheld unless it is information which the City has already 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 Short-Listed Respondent now declares and agrees that, except for the information disclosed by the City in the course of publicly reporting to the Vancouver City Council:

- (a) the information supplied by the Short-Listed Respondent in response to the RFP is expressly provided in strict confidence;
- (b) any records made of the evaluation of this Proposal and all other submissions will be the property of, and private to, the City and will not be disclosed to the Short-Listed Respondent nor anyone else;
- (c) the disclosure of the information noted in this Section 5.5 (a) and (b) above to anyone outside of the City's staff would reveal the Short-Listed Respondent's trade secrets or proprietary commercial information concerning its private business affairs; and
- (d) the disclosure of the information noted in this Section 5.5 (a) and (b) above could reasonably be expected to harm the Short-Listed Respondent's competitive position, harm the City's ability to engage in competitive procurement of goods and services, and result in undue financial loss to the Short-Listed Respondent and/or the City.

6.0 DECLARATIONS

6.1 Declaration as to Conflict of Interest

The Short-Listed Respondent now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Short-Listed Respondent'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 City;
- (b) an official, director, officer or employee of VANOC; or
- (c) related to or has any business or family relationship with any elected official or employee of the City or with any official, director, officer or employee of VANOC, such that there would be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of this Proposal by the City, except as set out below:

[The Short-Listed Respondent is conclusively deemed to have declared "none" unless the Short-Listed Respondent describes any or all relationships which might give rise to a conflict of interest or an appearance of a conflict of interest in its response to Section 5.2(a)ii of the RFP].

6.2 Declaration as to Collusion

The Short-Listed Respondent now confirms and warrants that:

- (a) the Short-Listed Respondent 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 Short-Listed Respondent 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 Short-Listed Respondent is conclusively deemed to have declared "none" unless the Short-Listed Respondent describes any and all affiliations or relationships which might give rise to collusion or an appearance of collusion in its response to Section 5.2(a)ii of the RFP].

6.3 No Promotion of Relationship with the City or the Olympics

- 6.3.1 The Short-Listed Respondent now confirms and warrants that the Short-Listed Respondent shall not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, press releases, brochures

or other written materials (the "Communications") without the express prior written consent of the City (except as may be necessary for the Short-Listed Respondent to respond to this RFP or to perform its obligations in a Contract as the Developer).

6.3.2 Furthermore, the Short-Listed Respondent confirms and warrants that the Short-Listed Respondent undertakes not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Short-Listed Respondent and the International Olympic Committee, the 2010 Olympic and Paralympic Winter Games, the Olympic Movement or the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (also known as "VANOC"). Without limiting the generality of the foregoing, the Short-Listed Respondent confirms and warrants that the Short-Listed Respondent shall not refer to "VANOC", "Vancouver 2010", the "2010 Games", the "Games", "Host City", "Olympic Village", "Athlete's Village" or "Olympics" and shall not use any official emblem, logo or mascot of the 2010 Games in any Communications, without the express prior written consent of the City.

6.4 Security Checks

The Short-Listed Respondent confirms and warrants that the City, in conjunction with the RCMP and in cooperation with any applicable local, national and/or international police forces or security agencies, may at any time and from time to time, whether prior to, during or after the Closing Time, conduct a criminal records search, police history information search and/or such other security checks and searches as the City may require (collectively, "Searches") pertaining to any person performing services for or participating with the Short-Listed Respondent in the RFP and Proposal process. The Short-Listed Respondent confirms and warrants that it shall (upon the City's request at any time and from time to time) cause any of its employees and employees of its Sub-Contractors or agents, providing such services or so participating, to execute any "Security Clearance Form" and/or such other documents or consents as the City may require in order to permit the City to have the Searches conducted.

The Short-Listed Respondent acknowledges that the City reserves the right to exclude from the Proposal process and/or deny access to the Olympic Village to any person in the event that the City determines, in its sole discretion, that the outcome of the Searches is not satisfactory.

7.0 SURVIVAL/LEGAL EFFECT OF PROPOSAL CONTRACT

All of the terms of this Appendix I which by their nature require performance or fulfilment following the conclusion of the Proposal process will survive such process and will remain legally enforceable by and against the Short-Listed Respondent and City.

The undersigned Short-Listed Respondent confirms that it has read and agreed to the Legal Terms and Conditions of this Appendix I, and agrees to be bound by the same.

IN WITNESS TO THE ABOVE, the Short-Listed Respondent has executed this Appendix I and submits same with his/her Proposal:

Authorized Signatory for the Short-Listed Respondent

Name and Title (please print)

Date