

REPORT TO COUNCIL



Date: June 8, 2012

File: 2380-20

To: City Manager

From: Manager, Property Management

Subject: Activity Concession Awards - City Park & Waterfront Park (Tugboat Bay)

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into a one (1) year contract, with Cash JC Investments Inc. dba Kelowna Rent a Boat, to provide activity concession services at City Park (Site A) at 1600 Abbott Street, in the form attached to the Report of the Manager, Property Management, dated June 8, 2012;

AND THAT Council approve the City entering into a three (3) year Contract, with SUP Kelowna, to provide activity concession services at Waterfront Park (Tugboat Bay) (Site B) at 1220 Water Street, in the form attached to the Report of the Manager, Property Management, dated June 8, 2012;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute all documents associated with the contracts.

Purpose:

To obtain Council endorsement to award concession contracts to operate activity concessions at City Park and Waterfront Park (Tugboat Bay).

Background:

The Property Management branch of Real Estate & Building Services department issued Requests for Proposals for two (2) activity concession operations as shown on the attached map (Schedule A) and more specifically located at:

Site A - City Park

Site B - Waterfront Park (Tugboat Bay)

In May 2012, staff offered bid packages for both locations, on the City's website as well as advertisements in the local newspaper. Informational meetings were held for these opportunities with a closing date for the receipt of sealed bids on June 4, 2012 at 3:00 PM. Bids were then evaluated by a staff selection committee which led to the recommendations above.

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Bids were evaluated on the following criteria: (1) relevant experience, qualifications and successes; (2) proposed rental items and prices; (3) overall proposal for operating a high quality, service oriented venture; and (4) total value to the City.

Summary of Concession Opportunities recommended to be awarded:

Cash JC Investments Inc. dba Kelowna Rent a Boat - City Park: will be offering activity services for a one year term providing rentals, sales, lessons and tours of watercraft propelled by human power.

SUP Kelowna - Waterfront Park (Tugboat Bay): will be offering lessons and rentals of stand-up paddleboards and is also interested in stand-up paddleboard yoga and fitness classes. A goal for this operator is instructing stand-up paddleboard kids camps focusing on water safety and basic paddling skills.

Financial/Budgetary Considerations:

Cash JC Investments Inc. dba Kelowna Rent a Boat:

\$1,000 for 2012

(The activity concession at City Park is a new summer concession location, providing \$1,000 in new revenue).

SUP Kelowna:

\$1,000/year for 2012 - 2014

(The activity concession at Waterfront Park is a new summer concession location, providing \$1,000 per year in new revenue).

Internal Circulation:

- Park Services

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of these contracts.

Submitted by:



Ron Forbes, Manager
Property Management

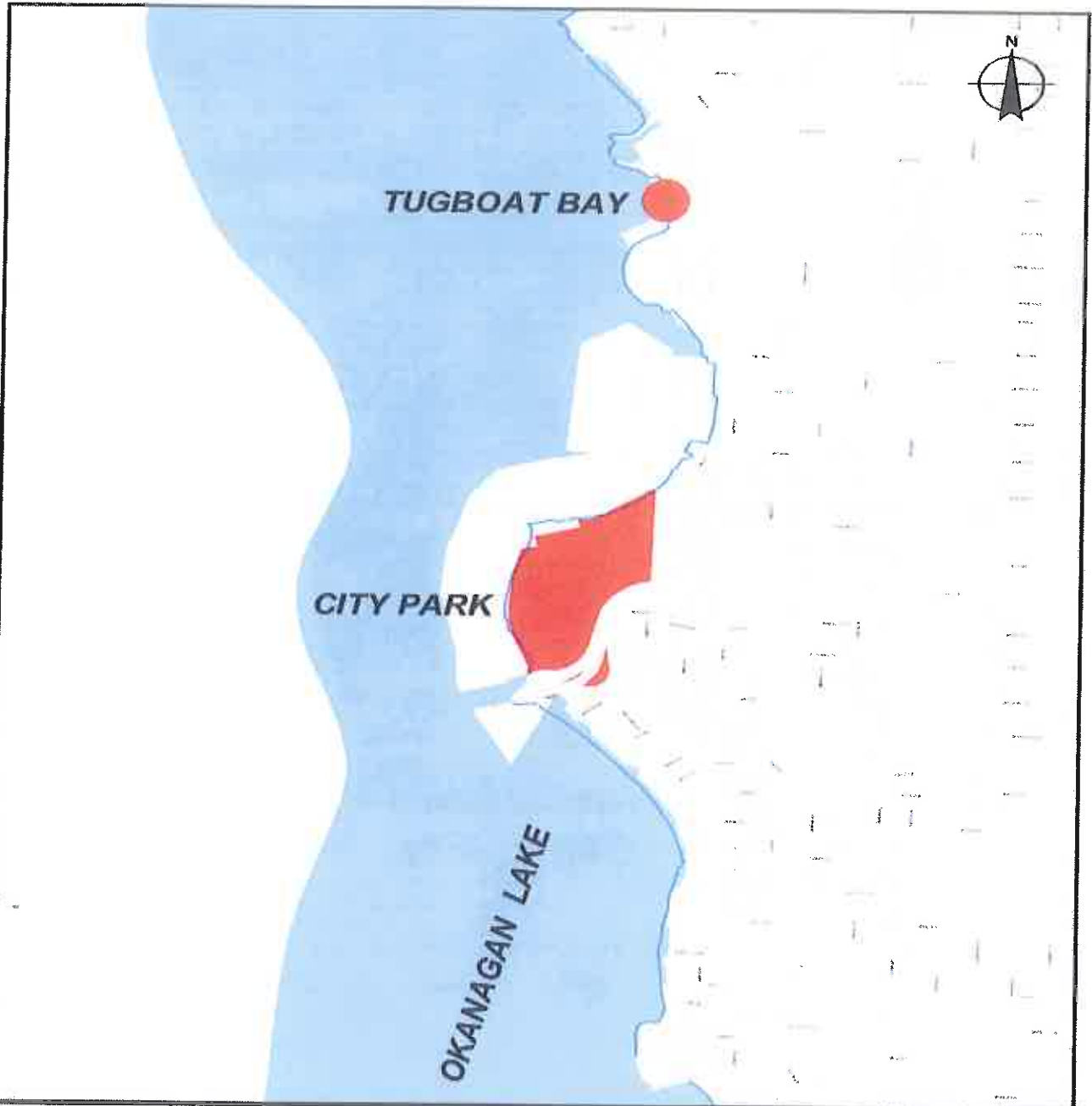
Approved for inclusion:



D. Edstrom, Acting Director, Real Estate & Building Services

cc: Director, Financial Services
Supervisor, Parks, Beaches and Sports Fields

SCHEDULE 'A'



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DATE:	
APRIL 03 / 2012	
SCALE:	
DRAWING NO.	REV

CITY PARKS AND TUGBOAT BAY



SITE A - City Park



SITE B - Waterfront Park (Tugboat Bay)



LICENSE OF OCCUPATION
Reference Activity Concession Service Package 2012
City Park & Waterfront Park (Tugboat Bay)

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

CASH JC INVESTMENTS INC.
811 Royal Pine Drive
Kelowna, British Columbia V1Y 9G3

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Activity Concession services (the "Services") at City Park at 1600 Abbott Street, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Bid Package - Cash JC Investments Inc.

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

"Agreement" means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

"Agreement Administrator" refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

"City's Representative" means the Manager, Property Management or his designate;

"Department" means the Real Estate & Building Services department of the City of Kelowna

"Department Representative" means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

"Event of Default" references Article 6.1(c);

"Force Majeure" shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

"G.S.T." means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

"H.S.T." means any Harmonized Sales Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

"Term" means the term as specified in Section 5.0;

"Schedule" means a schedule to this agreement;

"Seasonal Term" as used herein shall mean a three-month period from June 18th to September 15th, 2012, May 15th to September 15th for 2013 and May 15th to September 15th for 2014, in the Term.

2.0 Interpretations

- (a) "Authorized", "directed", "required", "requested", "approved", "ordered", "sanctioned", and "satisfactory" shall, unless some other meaning is obvious from the

context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) "Determination" shall mean the written documentation of a decision of the City's Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;

- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of Contractor, to the City in connection with this Agreement is materially correct and accurate;
- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;

- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Activity Concession services, as set out in the Scope of Services attached as Schedule "B";
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Mobile Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Mobile Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the

Activity Vending Concession Bid Package submitted by Cash JC Investments Inc. dated June 1, 2012 and attached as Schedule "E" and cooperate fully with the various departments and act in good faith towards the City;

- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the "Seasonal Term".

5.2 Initial Term

The term of the "Agreement" shall be for a three (3) month period running from June 18th to September 15th in 2012, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of two (2), one (1)-year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (May 15th, 2013), the City may exercise an option to renew for an additional season in 2013, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this

Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, "Event of Default" shall mean any one or more of the following:
 - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Food Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor's performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement ("Dispute") using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

- 8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.

9.0 Independent Contractor

- 9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

- 9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

- 10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor's Representative; and
- The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative.

- 10.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations

hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.

14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

- 22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.
- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

31.0 Service of Notices

31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Ron Forbes

Manager, Property Management

City of Kelowna

1435 Water Street, Kelowna, British Columbia V1Y 1J4

Telephone: 250-469-8669

Fax No.: 250-862-3349

E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Barbie Lynn Gervias

Cash JC Investments Inc.

811 Royal Pine Drive, Kelowna, British Columbia V1Y 9G3

Telephone 250-448-4478

Fax No.: 1-866-203-5587

E-mail: Barbie@kelownaRentaBoat.com

31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted and executed on behalf of the parties this 13th day of June 2012

CASH JC INVESTMENTS INC.
by its authorized signatories:

TC RATHBURN

CITY OF KELOWNA
by its authorized signatories:

Appendix A - Insurance Requirements

1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
 - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
 - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

- 2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.
3. **The City Named As Additional Insured**
The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
4. **Contractor's Subcontractors**
The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.
5. **Certificates of Insurance**
The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.
6. **Other Insurance**
After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.
7. **Additional Insurance**
The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.
8. **Insurance Companies**
All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
9. **Failure to Provide**
If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX A-1



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ 2,000,000 Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ 2,000,000 Inclusive

- It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:
1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
 2. The City of Kelowna is named as an Additional Insured.
 3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____ Title _____ Company (Insurer or Broker) _____

Signature of Authorized Signatory _____ Date _____

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a concession within the designated area of the concession building during the period of May 15th to September 15th of each year, with the exception that the first year begins June 18th, 2012. The Contractor will provide service at the concession location at a minimum between 10:00am to 8:00pm, 7 days per week, weather permitting, during the core season from the last weekend in June until Labour Day in September. The shoulder season operation will be from 12:00pm to 4:00pm daily, weather permitting. The Contractor is to supply this service for a one (1) year period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City.

1. The Contractor will provide for use by the public: rentals, sales and/or lessons of watercraft propelled through the water by human power and can include but is not limited to stand-up paddleboards, canoes, kayaks, leg powered paddle boats etc.
2. The Contractor shall maintain all equipment to such standards as will ensure safety for operators.
3. The Contractor shall ensure that no persons too young to operate the proposed activity are permitted to use them, and shall ensure that no persons operating the proposed activity do so in an unsafe manner or endanger persons swimming at any of the beaches.
4. At a minimum the Contractor shall operate during the period of May 15th to September 4th of each year of the Term, with the exception of the first year which will begin June 18th, 2012.
5. The park is open from 6 am to 11 pm each day and the contractor will provide service in the parks between 10 am and 8 pm, 7 days per week, weather permitting for the core season starting the last weekend of June until Labour Day in September. During the shoulder season the Contractor will supply concession service between the hours of 12:00pm to 4:00pm, 7 days per week, weather permitting.
6. The Term of the contract for City Park will be for a one (1) year with an option to renew for two (2) additional one (1) year terms at the City's sole discretion:
 - a. Any extension, if offered, will retain all of the terms and conditions of the original contract or subsequent extension;
 - b. Such option period will be negotiated at the sole option of the City on the basis of the rental rate not being less than the rent bid for 2012.
7. The Contractor will pay permits, taxes and licenses.
8. The Contractor will clean and maintain the area surrounding the concession to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the concession).
9. The Contractor shall comply with all regulations regarding fire, traffic, safety and shall acquire all necessary permits.
10. No outside advertising will be permitted without the consent of the City.

11. The City leases a food concession in the same park(s) so no food will be allowed to be provided.
12. Solicitation of the public is not allowed.
13. The Contractor must seek to minimize any conflict with adjacent property owners and any other users of the park.
14. The Contractor may not sublet, nor assign the contract without the written consent of the City. If approved by the City the minimum amount for such assignment shall be \$500.00 payable by the Contractor to the City.
15. The Contractor is required to supply a bid deposit per location in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a "performance deposit".
16. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
17. There will be no structure provided. If the Contractor wishes to provide a structure the Contractor will be required to meet all regulations and Bylaws and any design must be approved by the City's Infrastructure Planning department.
18. There will be no power available.
19. Prior to awarding the bid to the successful Proponent, the Proponent must prove to the City ownership of the activity equipment listed in the proposal.
20. Special events take priority over Waterfront Park and City Park. The Contractor acknowledges that the City may allow special events up to a maximum of five (5) days per season. For a list of all the current events in the City of Kelowna, please go to: <http://www.kelowna.ca/CM/Page2494.aspx>

APPENDIX C - FEE SCHEDULE

2012

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$1,000.00 for June 18th to September 15th, 2012 plus HST. Payment will be on or before as follows:

		Total Instalment
July 15, 2012	\$350 + 12% (tax) \$42	= \$392.00
August 15, 2012	\$350 + 12% (tax) \$42	= \$392.00
September 15, 2012	\$300 + 12% (tax) \$36	= \$336.00

APPENDIX D - PREMISE



Appendix E - Concession Bid from Cash JC Investments Inc.

City Park
Activity Concession

CITY OF KELOWNA
REQUEST FOR BID
City Park Activity Concession

2012-06-01

Please accept this as our bid submission on behalf of Barbie Lynn Gervais of Cash JC Investments Inc., for City Park Activity Concession. Barbie Lynn Gervais of Cash JC Investments will also be submitting a bid for the Waterfront Park Tug Boat Bay Activity Concession. It is in our greatest interest to acquire both locations, as explained in the overall proposal for operating a high quality, service oriented venture. We are established professional entrepreneurs in Kelowna with a combined 34 years of experience. Approaching 8 years of success and growth in our existing businesses on the Kelowna Waterfront, we have made it our mandate and mission to deliver a safe and fun environment in the tourism industry, specifically in the heart of the city. Which we feel is Kelowna's Waterfront from City Park to Waterfront Park.

We possess the dedication, time and passion to commit to the Activity Concessions.

We feel that with our combined executive profiles that we are not only qualified, however have anticipated and planned both with confidence, dedication and passion, to expand our career along Kelowna's Waterfront as our city grows.

With this project in mind, we have prepared and have invested our own capital and operating resources to operate the Activity Concessions. Offering all of the services as outlined in the proposal package, rentals, sales, lessons and tours of watercraft propelled through the water by human power. We will offer the sales of retail items pertaining to the activities with the exception of food and beverage. We own all equipment and accessories necessary for the Activity Concession. We agree to meet all the mandatory criteria as laid out in The Activity Concession Bid Package.

We understand and will honour the environmental aspects of this project; we understand the importance of the timely development and efficient management of such a program in year one, opening June 15th, 2012. We understand the importance and acceptance of collaboration with the City of Kelowna and any additional participant utilizing the parks and beaches. We have created and trained a team of professionals that are qualified in all areas of the activity concession.

We look forward to the development and growth in our existing business Kelowna Rent a Boat, Kelowna Rent a Boat staff is Coast Guard Certified, First Aid Certified, and presently operating in a high tourism area, encompassing Kelowna's downtown waterfront and Lakeshore Rd. Our rentals fleet, lessons, tours and programs are appealing to visitors, City of Kelowna, Environment Canada and Residents alike.

With sincere thanks for your time and consideration,

Cash JC Investments Inc

Barbie Lynn Gervais



Cash JC Investments Inc

811 Royal Pine Drive, Kelowna, BC V1Y 9G3

Phone 250 448 4478

1) Proponent's Team Relevant Experience, Qualifications and Successes

Cash JC Investments INC is the corporation in which JC Rathwell (President) and Barbie Gervais (Vice President) who are both shareholders, Cash JC Inc dba Kelowna Rent a Boat .com has provided secure financing and equipment for the Waterfront Park (Tugboat Bay) Activity Concession.

JC Rathwell is a successful business owner and operator on the waterfront for the last 7 years, and has qualified staff to run and maintain his existing business allowing the dedication and time necessary during both development and operational stages.

Barbie Lynn Gervais is a successful business owner and operator on the waterfront for the last 18 years

Barbie Lynn Gervais will be the Operations Manager / Marketing for the Activity Concession.

Barbie Lynn Gervais has qualified staff to run and maintain existing business allowing the dedication and time necessary during both development and operational stages.

Proponent's expertise and experience with similar projects:

Together President JC Rathwell and Vice President Barbara Gervais bring over 40 years combined experience in the Marina and Waterfront Tourism Industry. Their interest in the promotion and growth of Kelowna Tourism as a destination city is part of their professional and personal mandate.

- We have established ourselves as reliable and responsible tenants with the City of Kelowna and are known to have paid our rent upto 6 months in advance.
- We have a strong vested interest in the success of the activity concession, as we own 4 of the existing businesses located on the waterfront.
- Our combination of experience, career profiles and commitment to our community cannot be surpassed.
- We have a strong commitment to the success of the Kelowna as a Tourist Destination
- We employ a staff of 20 or more who return each and every year to help us run our various businesses. Our staff is highly trained, knowledgeable and professional in all areas of the marine industry.
- We will employ locally and purchase locally to keep Kelowna's businesses in business
- We have researched and taking into consideration the feedback, demands and needs of the waterfront for the past 8 years on a daily basis from both Tourists and Residents.
- We had a very successful first year opening Kelowna To Do.com Visitor Information / Ticket Sales Kiosk for all Attractions. Research done from tourists and residents tracked daily has given us accurate knowledge of the needs and demands on the waterfront.
- Kelowna Rent a Boat has been operating this season since May 1, 2012

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

City Park
Activity Concession

We believe that with our experience, commitment, professionalism and career profiles, this would be a great partnership for Cash JC Investments Inc., dba Kelowna Rent a Boat with the City of Kelowna.

JC Rathwell Related Experience

- 5 years as a Licensed Property Manager managing upto 50 Residential and Commercial properties.
- As Captain, he has logged more than 500 days captaining vessels from the Passenger Ship Wharf in the last 3 years alone.
- Assisted in the Build - Design - Operation and the start up of Trappers Landing Marina and gas dock on the Shuswap Lake from 1991-1994
- Founded Executive Houseboat Charters, which has been the longest running, largest and busiest dinner cruise boat on Lake Okanagan for the past 6 years.
- Managed over 30 Homefinders Offices across Canada for the last 20 years.
- Started 6 Different businesses in the last 20 years, all of which are still open and running
- JC has the most experience of any captain operating on the Okanagan Lake.

Barbara Gervais Related Experience

Barbara has been involved in the marina / charter industry for the last 25 years,
Growing up and worked every summer in the family marina in Grand Beach, Manitoba 1987 - 1994

- Pedal boat, Windsurf and Personal Watercraft Rentals
- Marine Fuel and Petroleum Product Sales
- Concession Stand with food and beverage
- Retail Sales of Beach Clothing and related accessories
- Retail Sales and Production of the first personal watercraft on the market
- Retail Sales of Marine, Water Sport Apparel and related Accessories.

Starting the first Marina at The Delta Grand Hotel, now presently as Lakefront Sports Center 1994 – 2008

- Initial lease negotiation
- Initial set up with building docks
- Acquiring Rental Fleet and all necessary safety gear, accessories for Rentals
- Rental Fleet consisted of 6 boats, 6 Seadoos, Wake Board/ Water Ski Boat, Pedal Boats, Water Bikes, knacks, and Canoes and Land Rentals Roller Blades and Bikes.
- Acquiring all Coast Guard Certifications
- Responsible for drafting Insurance and Lawyer Approved Liability Waivers, Rental Contracts, Damage Waivers and Orientations, Temporary Rental Licensing
- Yearly renewal and upgrade with stats and requirements of Canadian Coast Guard and Transportation Canada
- Human resources in hiring qualified staff in all areas of a Marina
- Responsible for expansion & growth in both Marina Services & Financial Growth over 18 yrs

Cash JC Investments Inc.
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

City Park
Activity Concession

- Kelowna Dinner Cruises 2008 - present
- Kelowna Yacht Charters 2009 - present
- Co - Founder of Global To Do Marketing Inc
- The Beach Boutique 2011 -- present
- Kelowna To Do.com Ticket and Visitor Information Kiosk located in the subject area
- Kelowna Rent a Boat 2011 - present

Both JC Rathwell and Barbara Gervais are 100 % Bondable. Both can submit bonding documents if necessary.

Cash JC Investments INC. has a team of highly skilled proposed personal. Our main corporate team members include:

- Captain Kelly Quinn
- Barbie Lynn Gervais
- JC Rathwell
- Alanna Ekkert -- resume attached
- Dave Myers -- resume attached

Cash JC Investments dba Kelowna Rent a Boat

- will provide for the use by the tourism public and residents of Kelowna rentals, sales, lessons and tours of watercraft propelled by human power
- will provide for the consumer the sales of retail items pertaining to the Activity Concession
- will ensure all equipment is maintained and up to safety standards for the operators according to the coast Guard Regulations
- will ensure no person too young or under any unsafe influence will operate the equipment.
- Will ensure all participants will have a safety orientation including respecting and keeping all swimmers at the beaches safe and uninterrupted
- Will open at a minimum of May 15th to Sept 4th of each year of the term
- Will provide service from 10am until 8pm, 7 days a week, weather permitting
- Will pay permits, taxes and licences
- Will maintain and clean the surrounding area of the activity concession
- Will and agree to all points of reference 1 through 19 in the Activity Concession bid package.
- Will meet all submission requirements.

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

City Park
Activity Concession

2) Proposed Rental Items, Tours and Prices

- SUPS – Stand Up Paddle Boards x 6
- Kayaks, Single x 2, Double x 4, Triple x 2 and Kids x 6
- Dry Case for Valuables x 12
- Wet and Dry Suits x 8
- Life Jackets Mandatory x 48 – no charge
- Safety Equipment, - no charge
- Dry Case for I phones, Camera's and other electronics
- Pop Up Change rooms – no charge
- Locker Bags
- SUP s Intro Lessons, Intro Lessons, Tours, Fitness and Yoga
- Kayak beginner to intermediate Lessons and Tours

Rental Price attached

SUP / Kayak Lessons & Tours Attached

Watercraft Rentals
No License Required

For Reservations
250-448-4478

KelownaRentaBoat.com



Reservations booked in person thru KelownaToDo.com
located in the heart of downtown
at 210 Bernard Avenue, Kelowna
just steps away from the famous
Sails Sculpture located on the waterfront

Rental Fleet
Hourly & Daily rates

Watercraft Rental Rates
Life Jackets Included, No Boat Licence Required

	1 Hr	2 Hr	4 Hr	6 Hr
18ft Bowrider	\$99	\$170		
18ft Bowrider	\$99	\$160	\$340	\$460
20ft Bowrider	\$125	\$240	\$440	\$560
PWC				
INCLUDES FUEL	\$69	\$109		
PWC Seadoo / Waverunner				
INCLUDES FUEL	\$100	\$169		
Kayaks Single 9am - 11am	\$20	\$35		
Kayaks Single	\$25	\$35	\$45	
Kayaks Double 9am - 11am	\$30	\$45	\$55	
Kayaks Double	\$35	\$45		
Stand Up Paddle Boards	\$20	\$40	\$80	
Accessory Rentals Wakeboard, Skis, Tubes	\$20	\$40	\$60	

- ▲ Boats
- ▲ Seadoos
- ▲ Wakeboard
- ▲ Wakesurf
- ▲ Waterski
- ▲ Kayaks
- ▲ Stand-up Paddleboards
- ▲ Lake Tours 250.215.2779
- ▲ Dinner Cruises
250.215.2779

- Fuel not included in Boat Rentals. Fuel is included in Personal Watercraft Rentals (Seadoos).
- Rentals are subject to 12% tax.
- Must be 21 years of age or older as the renter, valid photo ID and credit card required
- Prices and equipment subject to change without notice.

info@KelownaRentaBoat.com

www.KelownaRentaBoat.com

250 448 4478

City Park
Activity Concession

3) Overall Proposal for operating a high quality, service orientated venture

Cash JC Investments dba Kelowna Rent a Boat is an established business presently renting non motorised watercraft. Our equipment is New 2012, including life jackets and safety equipment. Kelowna Rent a Boat is a sponsor with Vital Waters and Out of the Cold (Homeless Fundraiser) Kelowna Rent a Boat advertising run every weekend of the Summer

on 4 Kelowna Radio Stations

Please visit our website KelownaRentABoat.com.



OPPORTUNITIES / Positive Attributes

We intend to stay aware of public demand and pursue avenues that will be of interest to visitors and residents alike. We intend to provide the services as listed in the bid package, but see the following as important opportunities to focus on:

- Increasing the opportunity for people to get out on the water and enjoy water sports such as Canoes, Kayaks, SUPS, combined with the latest trends of fitness / yoga on non motorised water craft.
- Cash JC Investments dba Kelowna Rent a Boat presently has 89 plus certified and trained staff and tour guides.
- By attaining this location and the possibility of both, we can increase our fleet to service the large corporate market in Kelowna. Cash JC Inc. has a great networking and working relationship with Kelowna Tourism, Chamber Of Commerce, Event Companies and all Hotels and Accommodations.

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

PLEASE READ CAREFULLY THIS DOCUMENT RESTRICTS YOUR RIGHT TO SUIT

1 ASSUMPTION OF RISK, RELEASE, WAIVER AND INDEMNITY AGREEMENT

I, the undersigned: (A) of my own free will, motivation and desire and without coercion of any kind by Kelowna Rent A Boat (the "Company") or any agent or representative thereof, have requested to be permitted to ride and otherwise enjoy and participate in watersports and other activities (collectively, the "Activities") operated and conducted by the Company and to use, operate and enjoy all equipment, accessories, facilities and other apparatus or things whatsoever (collectively, the "Equipment and Facilities") used and/ or otherwise incorporated by the Company in any way whatsoever in connection with the Activities; (B) have been fully advised by the Company that the Activities involve numerous and varied inherent risks and potential dangers and hazards, known and unknown (collectively, "Risks") and am fully aware of and understand the gravity and nature of the Risks and further understand that the Risks may be prevalent at all times during participation in the Activities; (C) acknowledge that in order for me to be permitted to participate in the Activities, I have agreed to fully accept and assume all Risks, even if arising from the negligence of the Company and/or its directors, officers, owners, employee's, representatives, agents and assigns (collectively, the "Releasees"), including, but not limited to, Risks potentially resulting in but not limited to property damage, personal injury or even death. In consideration of the Company permitting my participation in the Activities and my use of the Equipment and Facilities, I hereby: (D) agree to waive and release any and all claims, rights and/or causes of action whatsoever (collectively, "Claims") which I may have against the Releasees for any and all injuries, losses or other damages (financial or otherwise) (collectively, "Damages") which I may suffer, whether caused by the negligence of the Releasees or otherwise, and which relate in any way whatsoever to: (i) any attempt by me, whether successful or not, to ride, use, operate, or otherwise enjoy or participate in connection with the Equipment and Facilities and/ or the Activities (as the case may be); or (ii) any instruction or other information or advice provided to me concerning the Activities and/ or the Equipment and Facilities; (E) agree to indemnify and hold harmless the Releasees, from and against any and all Claims for Damages and/ or damage or loss of any kind or amount to the Equipment and/ or Facilities or other property (whether caused by the negligence of the Releasees or otherwise); (F) acknowledge and confirm that: (i) I am in good physical condition and am physically capable of operating and using the Equipment and Facilities; (ii) I am sufficiently familiar with the characteristics, operation and use of the Equipment and Facilities, such that I am willing to operate and/ or use the Equipment and Facilities and participate in the Activities, at my own risk absolutely; (iii) no warranties, either expressed or implied, have been given to me by the Releasees concerning the safety of the Activities, or of the fitness, operation and/ or use of the Equipment and Facilities; (iv) the terms of this document shall be binding upon me and upon my permitted heirs, executors, administrators, successors and assigns and (v) the agreement created by this document shall be governed in all respects by and interpreted in accordance with the laws of the Province of British Columbia. To better secure the Company against loss in the event of loss or damage caused directly or indirectly by me to some or all of the Equipment and Facilities, I irrevocably direct and authorize the Company to charge the aggregate amount of such loss or damage to my credit card:

(Credit Card #) _____, Expiry _____ / _____

By my signature below, I confirm I have read and fully understand the entirety of this document and its contents

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

Date: _____ Name(Print) _____ (ID#) _____ Signature: _____

I, the undersigned (if applicable), confirm that I am a parent or legal guardian of the below noted individual(s) who is less than 19 years old and that I have read and understand and do consent to their signing of this document and that I for myself, my heirs, assigns and next of kin, hereby agree to be bound by and shall honor the covenants and representations set out in subclauses (A) through (F) above.

Name(Print): _____ Relationship: _____

Date: _____ Signature(Parent or Guardian): _____

I, the undersigned (if applicable), confirm that I am a parent or legal guardian of the below noted individual(s) who is less than 19 years old and that I have read and understand and do consent to their signing of this document and that I for myself, my heirs, assigns and next of kin, hereby agree to be bound by and shall honor the covenants and representations set out in subclauses (A) through (F) above.

Name(Print): _____ Relationship: _____

Date: _____ Signature(Parent or Guardian): _____

Kelowna Rent a Boat dba
Cash JC Investments Inc.
103 3530 Alcan Rd
V1X 7R4
250 448 4478

Kayak/SUPS

Damage/Loss

I agree to pay the full retail value of items rented if the equipment is lost or stolen, or in the case of damage the total cost of repair. I also agree to pay for the cleaning of the equipment should cleaning be required. I accept full responsibility for the care of the equipment listed on this rental agreement.

I understand that Kayaking/Watersports activities can be hazardous activities. I also understand that Kayaking/Watersports activities have inherent risk of injury to any part of the user's body that reasonable care, caution, instruction and expertise cannot eliminate. I hereby agree freely, voluntarily and expressly to assume and accept all risks of injury to any parts of the users body when participating in Kayaking/Watersports activities. The term "Watersports" in this agreement applies to Kayaking, Tubing, Wakeboard, etc.

I understand that the equipment being furnished may form part of a life support system. As with any Watersport equipment it is not possible to predict every situation in which the equipment will or will not properly or sufficiently operate and that its use cannot guarantee the user's safety or freedom from injury while participation in Watersports.

I hereby forever release and discharge Kelowna Rent a Boat from any and all responsibility or legal liability for any injuries or damages to any user of any equipment listed on this form whether or not such injuries or damages are caused by the negligence of Kelowna Rent A Boat. I agree not to make claim against or sue Kelowna Rent a Boat for any injuries or damages relating to Watersports and/or the use of this equipment and I will accept full responsibility for those injuries or damages.

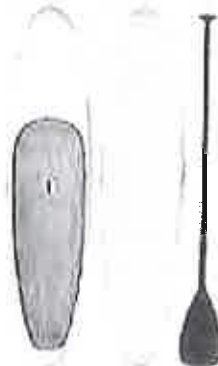
I acknowledge that Kelowna Rent a Boat itself provides no warranties express or implied and this equipment is accepted "As Is". I have carefully read this agreement and release of liability and fully understand its contents. This document constitutes the final and entire agreement between Kelowna Rent a Boat and the undersigned.

I have carefully read this agreement. I am aware that this is a binding contract, which provides a comprehensive release of liability. However it is not intended to assert any claims or defenses that are prohibited by law. The specific legal rights of parties may vary from province to province. I have also read the next section of this form and will be responsible for obtaining all of the information referred to in that section and providing it to the use of this equipment.

I understand how this Watersports equipment works and have been fully instructed in its proper use. Any questions I have had about this Watersports equipment have been satisfactorily answered. I agree to check this equipment before each use and that I will not use this equipment if any parts are worn, damaged or missing. I will notify Kelowna Rent a Boat of any parts that are worn, damaged or missing or in any way noted to be defective.

Users Signature

Date



____ Life Jackets

____ Paddles ____ Pump

____ Throw ____ Paddle Float

____ Whistle ____ Misc.

Parents Signature If User is A Minor

City Park
Activity Concession

- Cash JC Investment Inc dba Kelowna Rent a Boat has an existing website, client base of 3000 plus, and social media networks which will increase the traffic to the local areas helping local business
- Cash JC Investments dba Kelowna Rent a Boat offers a Punch Card for all residents at a discounted rate to focus on resident involvement and enjoying what Kelowna has to offer them in terms of the beauty of our lake and recreation
- Cash JC Investments dba Kelowna Rent a Boat owns motorised watercraft in which 1 boat is always available as a chase boat for safety of participants
- Creating a more "user" friendly area
- Providing an Environmental friendly downtown waterfront

Please find attached our Rental Waiver / Safety Checklist & Tour & Lesson Guides

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

JC Rathwell

811 Royal Pine Drive Kelowna BC V1Y 9G3
Business Experience Resume

- 1988 Completed a Business Administration course at Kelowna College.
- 1990 Earned a Property Management Licence. Assisted in starting up a property management company (Active Property Management) building up the company rent roll to a level of managing over 50 different residential and commercial properties in the interior of BC.
- 1991 Assisted in the design, build, operation and management of Trappers Landing Marina, a gas dock, boat sales and boat rental Marina on Shuswap Lake.
- 1992 Founded Homefinders franchise business which expanded to more than 50 cities across Canada in the next 10 years, becoming the largest Rental information franchise in Canada.
- 2003 Instituted the formation of Daisy Productions Society, in memory of his beloved Basset hound, Daisy. Also filmed, edited, directed and produced a video which helped raise money for the victims of the 2003 Mountain Park fire. (www.kelownafirestorm.ca)
- 2005 Initiated operation of the Boardroom, which is now the longest running, largest and busiest dinner cruise boat on Okanagan Lake (www.KelownaDinnerCruises.com) located in the Marina Development Project Area.
- 2008 Opened a local limo company, currently in operation. (www.KelownaLimo.com)
- 2009 Added a 42' luxury Yacht to his rental fleet (www.LimoOnTheLake.com) located in the Marina Development Project area.
- Designed and developed Flow Oxygen bar which qualified him for an appearance on CBC Dragon's Den in Toronto (www.Flow02.com)

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

City Park
Activity Concession

- 2010 CEO and co-founder of GlobalToDo marketing, developing a web site and APP which provides a list of the top things ToDo in 7 cities in 2 countries including www.KelownaToDo.com in Kelowna.
- 2011 Opened KelownaToDo.com Ticket and Visitor Information Kiosk located in the Marina Development Project area, and did over \$100,000.00 in Ticket sales in the first 6 months.
- 2011 Facilitated and aided in the opening of the Beach Boutique selling clothes, sunscreen and souvenirs to locals and tourists; also located in the Marina Development Project area.

City Park
Activity Concession

Professional Resume
Barbara Lynn Gervais
811 Royal Pine Drive, Kelowna BC V1Y 9G3

Career Focus

As an experienced executive specializing in small business development and strategic planning it is a natural synergy to accomplish the desire to attain the Waterfront Development Project. Demonstrating commitment and passion to the tourism industry in Kelowna BC for 18 years, my experience shows in-depth knowledge of waterfront tourism operations at all levels.

Summary of Skills

Accomplished with demonstrated ability to deliver results in the following areas:

- Business, Start up, meeting deadlines, acquiring necessary document and permits
- Leadership and communication
- Human resources management
- Background in Sales, Tourism, Rentals, Concierge and Event Bookings
- Retail Sales and Management
- Inventory Management & Purchasing
- Comprehensive knowledge and experience in customer service and client satisfaction
- Comprehensive knowledge in marketing and advertising

Business Development:

Spearheaded acquisition of 4 successful companies currently in operation, in which on a daily basis

- Established and managed partner relationships on a daily basis.
- Managed team of 20 or more professionals.
- Created new revenue streams through
- Developed new marketing strategy which increased customer base and increase in financial growth consistently year after year
- Handled all functions related to marketing and advertising

Professional Experience

1989 Graduation, Private School with Honors Winnipeg, Manitoba
1989 – 1992 Businesses Administration / Modeling, Winnipeg, Manitoba
1992 – 2000 Attained certifications in Modeling, Spa Therapy, Personal Training, Fitness & Nutrition Vancouver BC
1994 – 2008 Design, Build Operation and Management of Lakefront Sports Centre. Marina at The Grand Hotel, Kelowna BC

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

City Park
Activity Concession

- 2000 – 2008 Opened SHE Couture a boutique, Kelowna BC
- 2008 Kelowna Dinner Cruises
- 2009 Limo On The Lake
- 2010 Co-Founder of Global To Do marketing, developing a website and APP which provides a list of top things to do in 7 cities in 2 countries including www.kelownatodo.com
- 2011 Opened KelownaToDo.com Ticket and Visitor Information kiosk located in the marina development project area
- 2011 Opened The Beach Boutique selling clothing, sunscreen and souvenirs to residents and tourists also in the marina development project area.

3) Total Value of proposal to the City of Kelowna

Cash JC Investments is proposing to pay \$1000 per term for the Activity Concession.

Cash JC Investments Inc
811 Royal Pine Drive, Kelowna, BC V1Y 9G3
Phone 250 448 4478

**LICENSE OF OCCUPATION
Reference Activity Concession Service Package 2012
City Park & Waterfront Park (Tugboat Bay)**

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

SUP KELOWNA
#304 - 1441 Sutherland Avenue
Kelowna, British Columbia V1Y 5Y4

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Activity Concession services (the "Services") at Waterfront Park at 1220 Water Street, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Bid Package - SUP Kelowna

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

"Agreement" means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“Agreement Administrator” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“G.S.T.” means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“H.S.T.” means any Harmonized Sales Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this agreement;

“Seasonal Term” as used herein shall mean a three-month period from June 18th to September 15th, 2012, and four (4) month terms from May 15th to September 15th for 2013, May 15th to September 15th for 2014, May 15th to September 15th for 2015, and May 15th to September 15th for 2016 in the Term.

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the

context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) "Determination" shall mean the written documentation of a decision of the City's Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;

- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of Contractor, to the City in connection with this Agreement is materially correct and accurate;
- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;

- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Activity Concession services, as set out in the Scope of Services attached as Schedule "B";
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Mobile Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Mobile Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the

Activity Vending Concession Bid Package submitted by SUP Kelowna dated June 1, 2012 and attached as Schedule "E" and cooperate fully with the various departments and act in good faith towards the City;

- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the "Seasonal Term".

5.2 Initial Term

The term of the "Agreement" shall be for a three (3) month period running from June 18th to September 15th in 2012, May 15th to September 15th, in 2013 and May 15th to September 15th, in 2014, and will expire no later than September 15th, 2014, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of two (2), one (1)-year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (May 15th, 2015), the City may exercise an option to renew for an additional season in 2015, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of

Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, "Event of Default" shall mean any one or more of the following:
- (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Food Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor's performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement ("Dispute") using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.

9.0 Independent Contractor

9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

- Contractor shall appoint a representative (“Contractor’s Representative”) who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor’s Representative; and
- The City shall appoint a representative (“City’s Representative”) who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City’s Representative.

10.2 Each party’s representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party’s obligations

hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.

14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

- 22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.
- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

31.0 Service of Notices

31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Ron Forbes

Manager, Property Management

City of Kelowna

1435 Water Street, Kelowna, British Columbia V1Y 1J4

Telephone: 250-469-8669

Fax No.: 250-862-3349

E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Clare Brandley

SUP Kelowna

#304-1441 Sutherland Avenue, Kelowna, British Columbia V1Y 5Y4

Telephone 250-763-1620

Fax No.: 250-448-0886

E-mail: clarebrandley@gmail.com

31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted and executed on behalf of the parties this 12 day of June 2012

SUP KELOWNA

by its authorized signatories



CITY OF KELOWNA

by its authorized signatories:

Appendix A - Insurance Requirements

1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
 - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
 - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

- 2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.
3. **The City Named As Additional Insured**
The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
4. **Contractor's Subcontractors**
The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.
5. **Certificates of Insurance**
The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.
6. **Other Insurance**
After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.
7. **Additional Insurance**
The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.
8. **Insurance Companies**
All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
9. **Failure to Provide**
If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. **Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a concession within the designated area of the concession building during the period of May 15th to September 15th of each year, with the exception that the first year begins June 18th, 2012. The Contractor will provide service at the concession location at a minimum between 10:00am to 8:00pm, 7 days per week, weather permitting, during the core season from the last weekend in June until Labour Day in September. The shoulder season operation will be from 12:00pm to 4:00pm daily, weather permitting. The Contractor is to supply this service for three (3) years period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City.

1. The Contractor will provide for use by the public: rentals, sales and/or lessons of watercraft propelled through the water by human power and can include but is not limited to stand-up paddleboards, canoes, kayaks, leg powered paddle boats etc.
2. The Contractor shall maintain all equipment to such standards as will ensure safety for operators.
3. The Contractor shall ensure that no persons too young to operate the proposed activity are permitted to use them, and shall ensure that no persons operating the proposed activity do so in an unsafe manner or endanger persons swimming at any of the beaches.
4. At a minimum the Contractor shall operate during the period of May 15th to September 4th of each year of the Term, with the exception of the first year which will begin June 18th, 2012.
5. The park is open from 6 am to 11 pm each day and the contractor will provide service in the parks between 10 am and 8 pm, 7 days per week, weather permitting for the core season starting the last weekend of June until Labour Day in September. During the shoulder season the Contractor will supply concession service between the hours of 12:00pm to 4:00pm, 7 days per week, weather permitting.
6. The Term of the contract for Waterfront Park will be for three (3) years with an option to renew for two (2) additional one (1) year terms at the City's sole discretion:
 - a. Any extension, if offered, will retain all of the terms and conditions of the original contract or subsequent extension;
 - b. Such option period will be negotiated at the sole option of the City on the basis of the rental rate not being less than the rent bid for 2012.
7. The Contractor will pay permits, taxes and licenses.
8. The Contractor will clean and maintain the area surrounding the concession to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the concession).
9. The Contractor shall comply with all regulations regarding fire, traffic, safety and shall acquire all necessary permits.
10. No outside advertising will be permitted without the consent of the City.

10. No outside advertising will be permitted without the consent of the City.
11. The City leases a food concession in the same park(s) so no food will be allowed to be provided.
12. Solicitation of the public is not allowed.
13. The Contractor must seek to minimize any conflict with adjacent property owners and any other users of the park.
14. The Contractor may not sublet, nor assign the contract without the written consent of the City. If approved by the City the minimum amount for such assignment shall be \$500.00 payable by the Contractor to the City.
15. The Contractor is required to supply a bid deposit per location in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a "performance deposit".
16. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
17. There will be no structure provided. If the Contractor wishes to provide a structure the Contractor will be required to meet all regulations and Bylaws and any design must be approved by the City's Infrastructure Planning department.
18. There will be no power available.
19. Prior to awarding the bid to the successful Proponent, the Proponent must prove to the City ownership of the activity equipment listed in the proposal.
20. Special events take priority over Waterfront Park and City Park. The Contractor acknowledges that the City may allow special events up to a maximum of five (5) days per season. For a list of all the current events in the City of Kelowna, please go to: <http://www.kelowna.ca/CM/Page2494.aspx>

APPENDIX C - FEE SCHEDULE

2012

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$1,000.00 for June 18th to September 15th, 2012 plus HST. Payment will be on or before as follows:

		Total Instalment
July 15, 2012	\$350 + 12% (tax) \$42	= \$392.00
August 15, 2012	\$350 + 12% (tax) \$42	= \$392.00
September 15, 2012	\$300 + 12% (tax) \$36	= \$336.00

2013

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$1,000.00 for May 15th to September 15th, 2013 plus HST/GST. Payment will be on or before as follows:

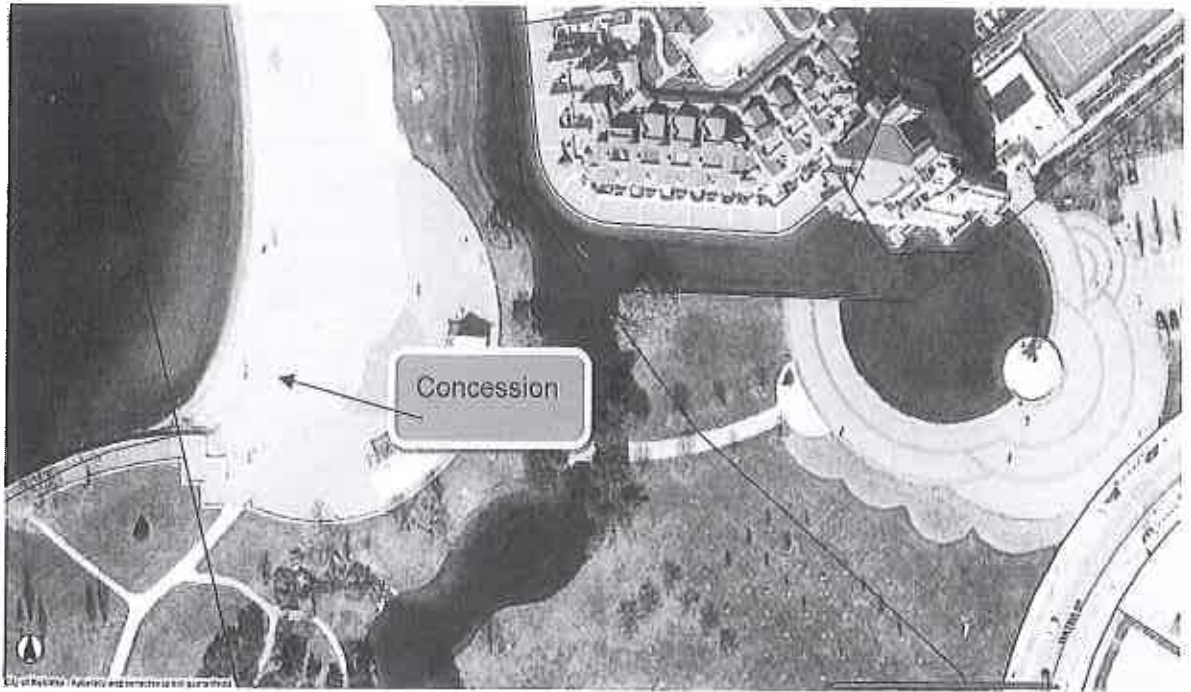
		Total Instalment
June 1, 2013	\$250 + 12% (tax) \$30	= \$280.00
July 1, 2013	\$250 + 12% (tax) \$30	= \$280.00
August 1, 2013	\$250 + 12% (tax) \$30	= \$280.00
September 1, 2013	\$250 + 12% (tax) \$30	= \$280.00

2014

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$1,000.00 for May 15th to September 15th, 2014 plus HST/GST. Payment will be on or before as follows:

		Total Instalment
June 1, 2014	\$250 + 12% (tax) \$30	= \$280.00
July 1, 2014	\$250 + 12% (tax) \$30	= \$280.00
August 1, 2014	\$250 + 12% (tax) \$30	= \$280.00
September 1, 2014	\$250 + 12% (tax) \$30	= \$280.00

APPENDIX D - PREMISE



Appendix E - Concession Bid from SUP Kelowna

SUP KELOWNA

STAND-UP PADDLE BOARDING CONCESSION BY KELLOWNA BAY



Bid for activity concession at Waterfront Park (Tugboat Bay)

Thank you for the opportunity to bid on an activity concession with the City of Kelowna.

The stand-up paddle boarding industry is experiencing tremendous growth; stand-up paddle boarding originated in Hawaii in the 1950's and after gaining huge global popularity in recent times, it is now the fastest growing water surf activity.

This growth is expected to continue and since SUP boarding does not require waves, it is ideal for the Okanagan region. SUP boarding also comes with amazing health benefits, it is a great form of cross training working the core, legs and upper body all at the same time, all whilst having fun and enjoying the scenery in the picturesque setting of Kelowna.

SUP Kelowna will be a new company specializing in lessons, and rentals of stand-up paddle boards. In addition to this I am currently looking into organizing and instructing SUP Kids camps throughout the summer season focusing on water safety, basic paddling skills with fun and games on the lake. I have been coaching children's soccer for some time and really enjoy teaching.

I am also looking into providing a SUP Yoga & Fitness class for adults. This is fast becoming very popular with SUP boarding. SUP boarding is so versatile; there are many different ways to enjoy it. SUP Kelowna will be a place tourist's & local residents will flock to for all their paddle boarding needs.

I am a Paddle Canada Certified, Stand-Up Paddle Board / Flat Water Instructor. I have my own small fleet of brand new stand-up paddle boards, fully equipped with adjustable paddles, leashes and PFD's. I will be mainly instructing lessons and offering rentals. Please see attached for my proposed rates.

There is no other business like this in Kelowna where lessons for stand-up paddle boarding are offered and I'm very confident there is a huge desire and need for this.

I have been in business talks with Barry and Kellie Planedin owner/ operators of Okanagan Beach rentals; and they have sold me a great fleet of SUP boards to get started. They agree this would be very beneficial to everyone as they have been inundated with customer requests to take SUP board lessons during the previous summer season and didn't know of anywhere in Kelowna that provided this service. They expressed that they would now be happy to be able to recommend SUP Kelowna in the future to customers that ask for this service. We have also discussed should a customer(s) want to purchase a board(s) I would gladly direct them to Okanagan Beach rentals for the sale.

In addition to SUP lessons and rentals, I am looking into possibly selling and renting additional beach items such as shade umbrellas, beach towels and kids beach and floatation toys, subject to approval.

I am a very passionate Paddle Canada qualified, Instructor & stand-up paddle boarder with a customer service background that expands over 12 years.

SUP Kelowna will be structured as a sole proprietorship with myself Clare Brandley as the sole owner & manager, but if and when required, I will have the additional help of a part time employee and good friend who will assist with rentals and customer service when I am conducting a SUP board lesson or class. She too is coming from a customer service background and family business.

My first choice for SUP Kelowna is Waterfront Park (Tugboat Bay) as this is an ideal setting for Stand up Paddle Boarding naturally providing some shelter from wind and calm waters.

But I will also be putting in a bid for City Park as a second choice should I not get approval for Tugboat Bay. Sup Kelowna is offering \$1000 per season/year of the contract to the City of Kelowna.

Please find attached, Photographs of my equipment, proposed rental and lesson rates and a certified cheque for \$1000.

Rental Rates...

1 Hour \$25

2 Hours \$35

1/2 Day \$45

Full Day \$65

Lesson's...

Intro to SUP \$60

Group (3 or more) \$40 pp

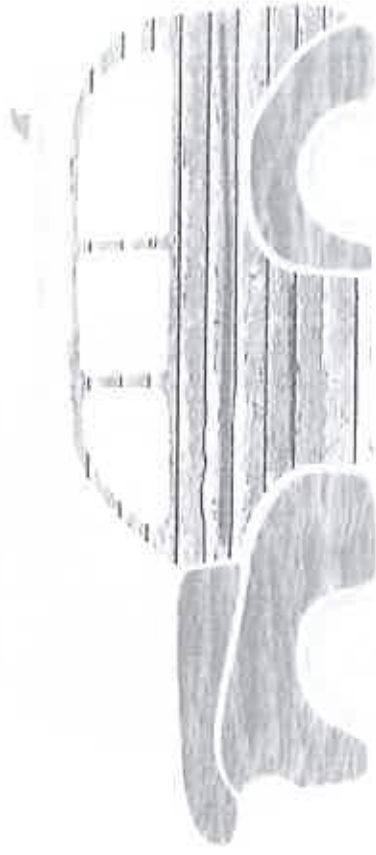
Advanced SUP \$65

Group (3 or more) \$40 pp

FUN FACT:

30 minutes of stand up paddle boarding can offer the same benefits of running six miles.

SUP KELOWNA



Stand up paddle boarding in Kelowna

250 7631620 / 250 8990506

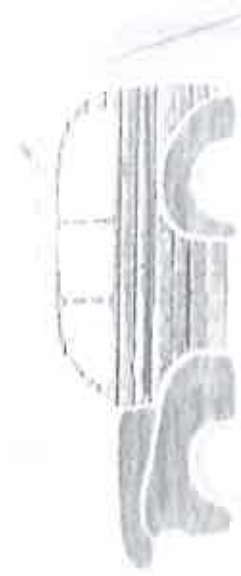
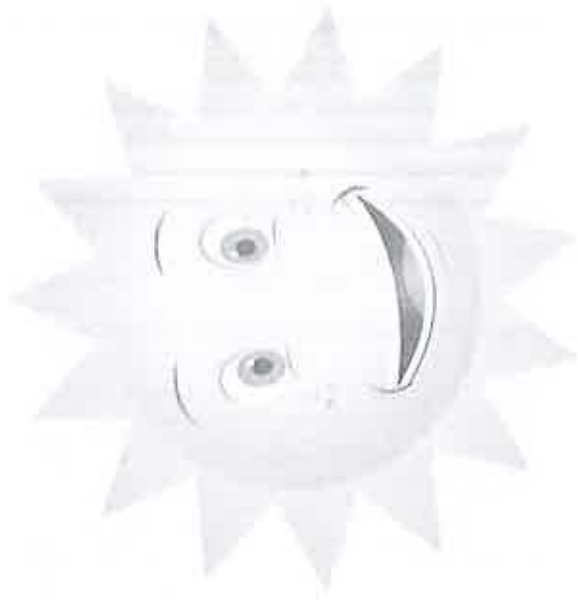
SUPKELOWNA.COM

SUP KIDS!

SUP KIDS CAMP for ages 10+ \$190

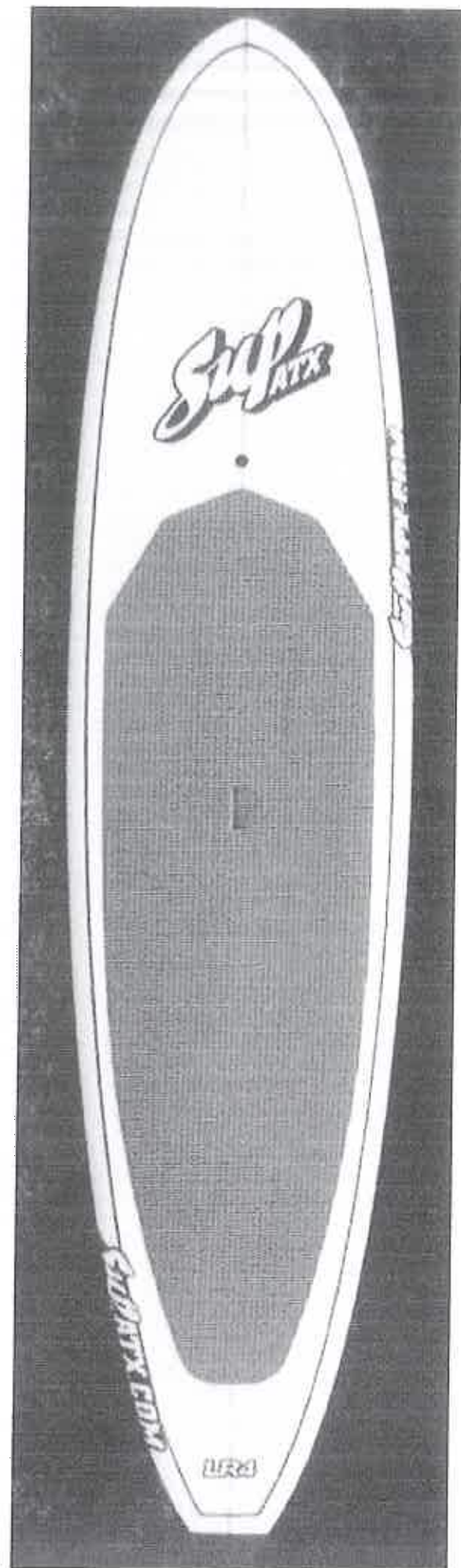
Get the kids out on the water this summer learning the newest fastest growing water activity whilst making new friends and having fun!!!

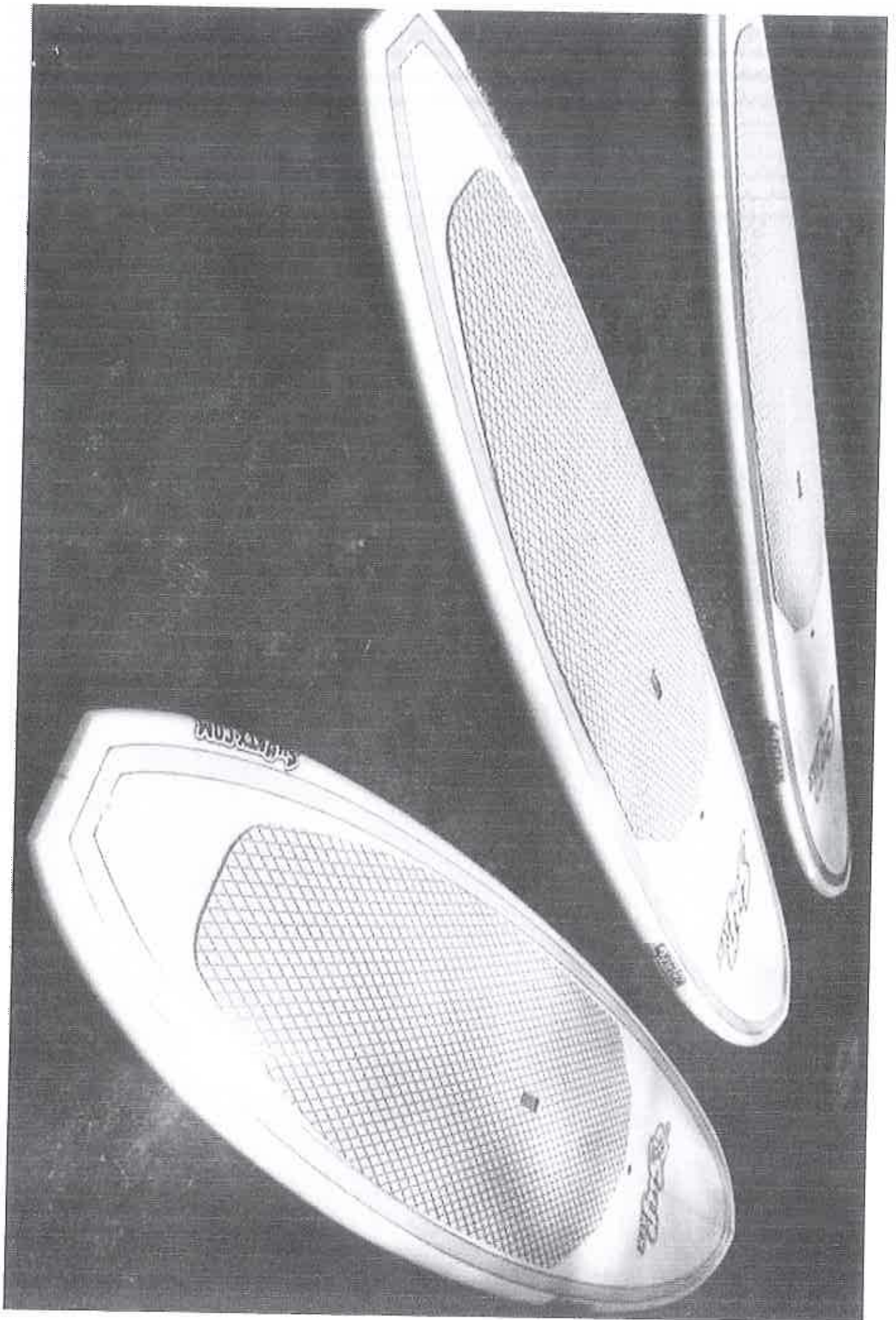
*Focusing on water safety, basic paddling skills and fun & games on the lake.
camp runs 12-3 Monday -Friday*

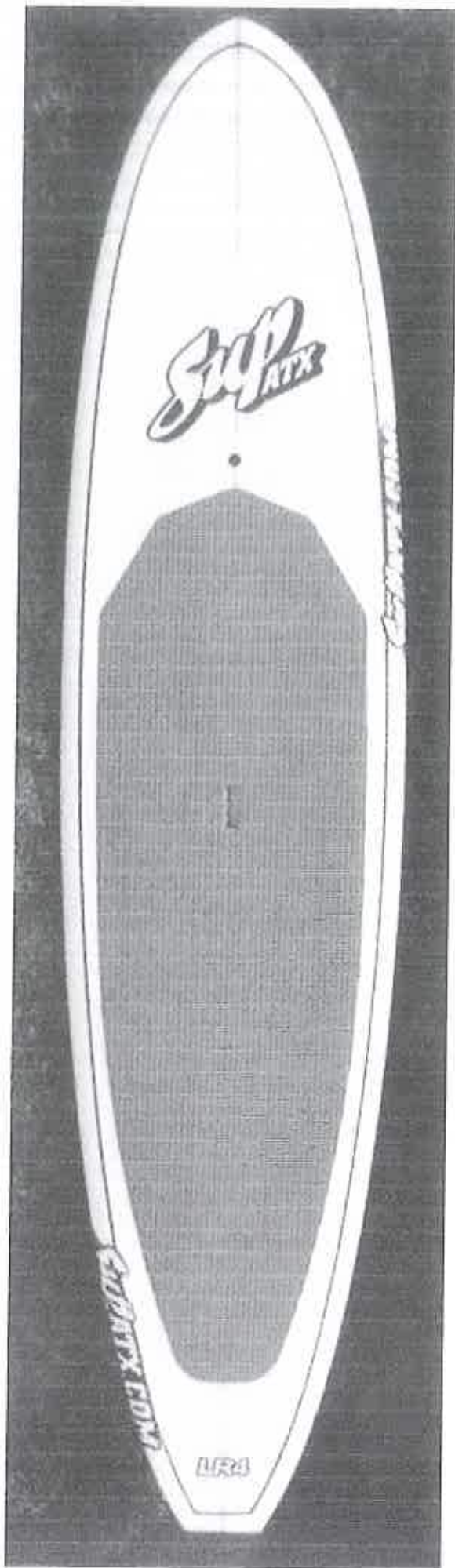


SUP KELOWNA

Stand up paddle boarding in Kelowna







PADDLE CANADA PAGAIE CANADA

CLARE BRANDLEY

Participant Name / Nom du participant

HAS SUCCESSFULLY COMPLETED
THE REQUIREMENTS FOR
A COMPLÉTÉ AVEC SUCCÈS
LES ÉXIGENCES POUR

Stand up Paddle Boarding/Flat Water Instructor

May 2012

Course date / Date de cours

84609

Course ID / Numéro de cours / Identificateur de cours

Course / Cours

Mike Darbyshire

Instructor Name / Nom de l'instructeur



Authorized Signature / Signature autorisée

Paddle Canada | Pagaie Canada
PO Box 126 Stn Main Kingston, ON K7L 4V6
1-888-252-6292 | 1-613-547-3196
www.paddlecana.com
info@paddlecana.com