

## **LICENSE OF OCCUPATION**

### **GYRO & ROTARY BEACHES WATER ACTIVITY CONCESSIONS 2016 - 2018**

BETWEEN:

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

("the City")

OF THE FIRST PART

AND:

**OKANAGAN BEACH RENTALS**  
#1 - 1386 Parkinson Road  
Kelowna, British Columbia V1Z 3M6

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Mobile Concession services (the "Services") at Gyro Beach at 3400 Lakeshore Road, and Rotary Beach at 3696 Lakeshore Road.

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

#### **Services**

The Contractor shall provide services for the Works 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 -Gyro Beach
- Appendix E - Premise - Rotary Beach
- Appendix F -Gyro & Rotary Beach Water Activity Concession Bid
- Appendix G - Prime Contractor Agreement

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 & 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;

**“Prime Contractor Agreement”** means the Prime Contract Agreement, Contractor Coordination Program Guide, Prime Contractor Designation Form and Application for Safety Pre-Qualification documents;

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

**“Schedule”** means a schedule to this agreement;

## **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 Mobile Concession services, as set out in the Scope of Services attached as Appendix 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 Mobile Food Vending Concession Bid Package submitted by Okanagan Beach Rentals dated March 24, 2016, and attached as Appendix F 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 "Term".**

##### **5.2 Initial Term**

The term of the "Agreement" shall be for a four (4) month period running from May 15<sup>th</sup> to September 15<sup>th</sup> in 2016, May 15<sup>th</sup> to September 15<sup>th</sup>, in 2017 and May 15<sup>th</sup> to September 15<sup>th</sup>, in 2018, and will expire no later than September 15<sup>th</sup>, 2018, 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 15<sup>th</sup>, 2019**), the City may exercise an option to renew for an additional season in 2020, 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 unremedied 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 Mobile 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: Mike Olson, Manager, Property Management

City of Kelowna

1435 Water Street, Kelowna, British Columbia V1Y 1J4

Telephone: 250-469-8740

Fax No.: 250-862-3349

E-mail: molson@kelowna.ca

**Contractor Representative**

Barry & Kellie Planedin

Okanagan Beach Rentals

#1 - 1386 Parkinson Road, Kelowna, British Columbia V1Z 3M6

Ph: 250-862-6191

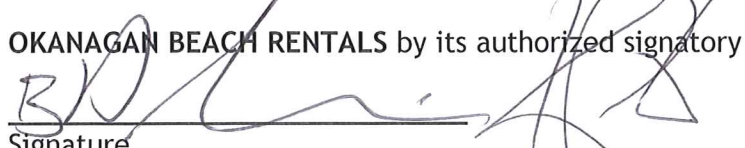
E-mail: okanaganeachrentals@shaw.ca

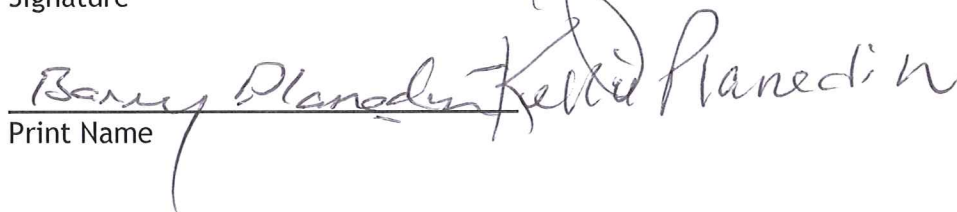
- 31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the 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 on behalf of:

OKANAGAN BEACH RENTALS by its authorized signatory

  
Signature

  
Print Name

CITY OF KELOWNA by its authorized signatories:

\_\_\_\_\_  
\_\_\_\_\_

Date Executed: \_\_\_\_\_

## **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 this lease agreement, 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 this lease agreement until the date of termination of the lease agreement 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 Comprehensive General Liability Insurance**

- (i) providing for an inclusive limit of not less than \$5,000,000 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 this lease agreement;
- (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) 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.

### **3. The City Named as Additional Insured**

The policies required by section 2.1 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. Certificates of Insurance**

The Contractor agrees to submit a Certificate of Insurance, in the form of Schedule B-1, attached hereto and made a part hereof, to the Risk Management Department of the City prior to the commencement date of this lease agreement. Such a Certificate shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellation of any such policy or policies.

**5. 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.

**6. Insurance Companies**

All insurance, which the Contractor is required to obtain with respect to this lease agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

**7. 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.

**8. Nonpayment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor shall not be held to waive or release the Contractor from any of the provisions of the Insurance Requirements or this lease agreement, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor 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 7.

**9. Hold Harmless and Indemnification**

The Contractor shall be responsible for all loss, costs, damages, and expenses whatsoever incurred or suffered by the city, its elected officials, officers, employees and agents (the indemnities) including but not limited to or loss of property and loss of use thereof, and injury to, or death of a person or persons resulting from or in conjunction with the performance, purported performance, or non-performance of this contract, excepting only where such loss, cost, damages and expenses are as a result of the sole negligence of the indemnities.

The Contractor shall defend, indemnify and hold harmless the indemnities from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this contract, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the indemnities.

City staff to complete prior to circulation

City Dept.: \_\_\_\_\_

Dept. Contact: \_\_\_\_\_

Project/Contract/Event: \_\_\_\_\_

**CERTIFICATE OF INSURANCE**

This Certificate is issued to:

The City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

**Insured**

Name: \_\_\_\_\_

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

**Broker**

Name: \_\_\_\_\_

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

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

1. Type of Insurance	Company & Policy Number	Policy Dates		4. Limits of Liability/Amounts
		2. Effective	3. Expiry	
<b>Section 1</b> Comprehensive General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Broad Form Property Damage;</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage \$ <b>5,000,000</b> Inclusive \$ _____ Aggregate \$ _____ Deductible
<b>Section 2</b> Automobile Liability				Bodily Injury and Property Damage \$ <b>5,000,000</b> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

- 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.
- The City of Kelowna is named as an Additional Insured.
- 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

## APPENDIX B - SCOPE OF SERVICES

### General Scope of Services of the Contractor

The Contractor will provide, equip and operate a water activity concession within the designated areas of Gyro and Rotary Beaches. Detailed maps of the locations are attached as Appendix E.

1. The Contractor will provide for use by the public watercraft propelled through the water by human power and can include but is not limited to paddleboards, canoes, kayaks, leg powered paddle boats etc. No inflatable structures will be permitted in the water lot. During the course of the contract any changes in the types or numbers of watercraft that are available or stored at the site must be approved by the City in advance.
2. The City will purchase and maintain one (1) beach wheelchair for the non-profit use of beach patrons with disabilities at each of Gyro and Rotary beaches. The Contractor will be required to store and secure the equipment for the term of the contract. There is to be no cost to the patron for the use of such beach wheelchairs.
3. The Contractor shall maintain all equipment to such standards as will ensure safety for operators.
4. The Contractor shall ensure that no persons too young to operate the boats are permitted to use them, and shall ensure that no persons operating boats do so in an unsafe manner or endanger persons swimming at Gyro & Rotary Park Beaches.
5. Any anchoring system proposed must be fully within the City of Kelowna water lot area as noted in the attached map and must be approved by authorities having jurisdiction.
6. The Contractor shall ensure that all participants wear personal floatation devices.
7. Operation of watercraft within the area delineated by swim buoys is prohibited under the Parks Bylaw. The Contractor will be responsible to inform patrons and gain their agreement that the watercraft must not be used in the swim buoy area. Patrons will only be allowed to enter and exit directly through the swim area as long as the watercraft is used responsibly and the area is clear of swimmers, but must not spend any length of time paddling within the swimming area.
8. The Contractor shall operate during the period of May 15<sup>th</sup> to September 15<sup>th</sup> of each year beginning May 15, 2016.
9. 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 (or dusk whichever is earlier), 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.

10. The term of the contract 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 2016.
11. The Contractor will pay permits, taxes and licenses.
12. The Contractor will clean and maintain the area surrounding the concession to the satisfaction of the City, including clean-up of litter from immediate area (a radius of 30 meters from the concession.)
13. The Contractor shall comply with all regulations regarding fire, traffic, safety and shall acquire all necessary permits.
14. 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.
15. No outside advertising will be permitted without the consent of the City.
16. The City leases a food concession in the same park therefore no food or beverage sales will be permitted.
17. The Contractor will be responsible to communicate with the City of Kelowna Outdoor Events Committee and review the Outdoor Events Calendar to determine the dates the park will be closed for special events, and as a result closed for the concession, unless agreement can be reached with the event organizer.
18. There is an existing structure at Gyro Beach which may remain in the current location. The structure may not be moved or enlarged. There is no structure provided at Rotary Beach. If the Contractor wishes to provide a structure the Contractor will be required to meet all regulations and Bylaws and the design must be approved by the City's Infrastructure Planning and the Parks Dept.
19. There will be no power available; however, the City is open to extending power to the concession space at the vendor's expense and at the City's discretion.
20. 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.
21. The City will not provide on-site parking for the Contractor's vehicle and towing equipment.

22. The Contractor will be required to enter into a Prime Contractor Agreement with the City which is comprised of a Contractor Coordination Program Guide, Prime Contractor Designation Form and Application for Safety Pre-Qualification, as set out in Appendix G.
23. The Contractor will be required to follow Canadian Life Saving Society Standards for operation and supervision of the area.
24. The Contractor will be responsible for all additional swim/marker buoys to be installed in the lake to ensure a safe swimming area.
25. The Contractor must keep any promenades clear at all times.
26. On event days, the load in/load out of concession related equipment must be scheduled outside of event times so the promenade is clear and safe for participants.
27. The Contractor may not sublet, nor assign the contract without the written consent of the City. The minimum amount for such assignment shall be \$500.00.
28. The Contractor is required to supply a bid deposit 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".
29. The Contractor shall provide complete annual financial reports to the City within 45 days of the end of the season and no later than December 1<sup>st</sup> of each contract year. The statements will reflect the entire operating season, and a payment in the amount of 5% of the gross profits of the concession operating season will accompany the statements by December 1<sup>st</sup> of each contract year. For clarity, the gross profit payment is in addition to the bid contract price submitted by the Contractor.

## APPENDIX C - FEE SCHEDULE

### Initial Term - 2016

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$18,000.00 per annum for May 15<sup>th</sup> to September 15<sup>th</sup>, 2016 plus GST**. Payment will be on or before as follows:

		Total Instalment
June 1, 2016	\$4,500.00 + GST	= \$4,725.00
July 1, 2016	\$4,500.00 + GST	= \$4,725.00
August 1, 2016	\$4,500.00 + GST	= \$4,725.00
September 1, 2016	\$4,500.00 + GST	= \$4,725.00
December 1, 2016	5% of gross profits + 5% tax	= \$

### Initial Term - 2017

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$18,000.00 per annum for May 15<sup>th</sup> to September 15<sup>th</sup>, 2017 plus GST**. Payment will be on or before as follows:

		Total Instalment
June 1, 2017	\$4,500.00 + GST	= \$4,725.00
July 1, 2017	\$4,500.00 + GST	= \$4,725.00
August 1, 2017	\$4,500.00 + GST	= \$4,725.00
September 1, 2017	\$4,500.00 + GST	= \$4,725.00
December 1, 2017	5% of gross profits + 5% tax	= \$

### Initial Term - 2018

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$18,000.00 per annum for May 15<sup>th</sup> to September 15<sup>th</sup>, 2018 plus GST**. Payment will be on or before as follows:

		Total Instalment
June 1, 2018	\$4,500.00 + GST	= \$4,725.00
July 1, 2018	\$4,500.00 + GST	= \$4,725.00
August 1, 2018	\$4,500.00 + GST	= \$4,725.00
September 1, 2018	\$4,500.00 + GST	= \$4,725.00
December 1, 2018	5% of gross profits + 5% tax	= \$

## APPENDIX D - PREMISE

### Gyro Beach

The premises are those lands legally described as that portion of land, located at 3400 Lakeshore Road, Kelowna, BC



The existing building will remain in place for the term of the new contract. The building may not be expanded or moved.

## APPENDIX E - PREMISE

### Rotary Beach

The premises are those lands legally described as that portion of land, located at 3696 - 3726 Lakeshore Road, Kelowna, BC

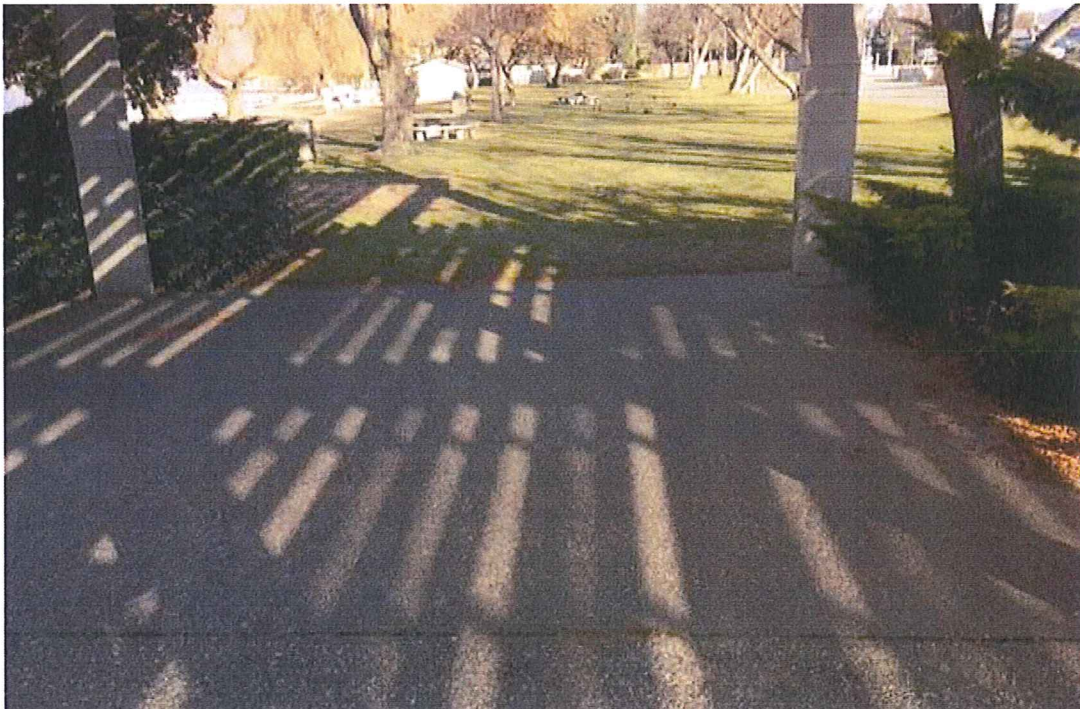


## Rotary Beach

New location for the concession operation



New location for the water activity concession is the concrete pad located at the north end of the gazebo area  
*(junipers and shrubs around this area will be removed to make the area more visible)*



**APPENDIX F - OKANAGAN BEACH RENTALS WATER ACTIVITY CONCESSION  
(GYRO & ROTARY BEACHES)**

# GYRO & ROTARY BEACH WATER ACTIVITY CONCESSIONS 2016 - Proposal



**OKANAGAN**  
**BEACH RENTALS**  
watercraft **FUN!** for the whole family



Submitted by: Barry & Kellie Planedin, Owner Operators  
[okanaganbeachrentals@shaw.ca](mailto:okanaganbeachrentals@shaw.ca) (250) 862-6191

## Introduction

Thank you for the opportunity to submit our proposal for the Water Activity Concessions at Gyro and Rotary Beaches. We are happy to accept all terms and conditions outlined in the bid package including entering into a Prime Contractor Agreement with the City and following the Canadian Lifesaving Society Standards for the area.

Owned by Barry and Kellie Planedin, Okanagan Beach Rentals is a family business providing fun recreational people-powered watercraft locally for over a decade. Our years of experience, coupled with our backgrounds in customer service and operational management has helped us to develop our proven systems for ensuring that renters are served properly, educated about safety and given clear instruction on the use of their chosen piece of equipment while still having their experience be upbeat and enjoyable. Our motto is “Watercraft Fun for the Whole Family” and our wide range of equipment ensures that anyone can enjoy getting out on the lake, be it for a quick distance tour in a kayak or a leisurely float in a pedal boat. Our commitment is to provide good, safe, recreational fun coupled with great service and value.

We know that our little family business can have a big impact on a visitor’s experience of Kelowna. We make sure we do it right so that our customers have great memories, not only of our rentals but of the Kelowna area as well. We see ourselves as ambassadors for our Valley and feel we are privileged to share our love of the Okanagan with visitors and locals as we are reminded daily to see our beautiful area with “tourist eyes”.

We have always maintained high safety standards and first aid preparedness for our customers, staff and the general public. We are qualified paddlers, swimmers and First Aid, CPR and AED Certified. As “Water-Smart” operators we have kept binoculars and an industrial first aid kit on hand and are ready to respond quickly if needed. Staff are pro-active in maintaining safety, are trained in our operational procedures and are also required to have their first aid certification (though we’ve never had an incident).

All equipment receives regular maintenance to ensure that customers are safe while having a great experience. We have always carried appropriate liability insurance and have never needed to use it which we believe is due to our high operational standards, safety protocols and the safe and stable nature of our equipment. Each renter must sign a waiver, which helps to ensure that those too young to operate equipment are not permitted to do so. We provide clear instruction and will also communicate to all renters, verbally and with signs, that they are required to enjoy our equipment outside of the swim areas, ensure the safety of swimmers and other beach users, and wear the PFDs provided.

We pride ourselves on being responsible operators, caring stewards of the beach and park, and have always maintained our concession areas in a tidy manner. We can often be found raking the grass and the shoreline after a storm to ensure the area meets ours and our customers’ standards. We believe in being a good example for our staff and the young park users, and in creating a community of care.

## Staff, Community, Programs and Classes

We're proud of the development of our staff over the years. Some of our crew of ten have been with us for the full five years at Rotary Beach, moving from mid-teens into their early twenties. They have gained leadership skills and a great work ethic while enjoying sun, sand and working with the public. We believe it's our responsibility as business owners to help coach our staff as they grow into adulthood and would be thrilled to be able to provide them with employment over the next five years as they help to lead our new crew and grow their management skills. Our team members earn \$12.00 – \$12.50 per hour and the shift leaders this year will be starting at \$13 per hour. We recognize that ensuring safety and enjoyment for our customers means we must invest in the training, development and wages of our crew while compensating them for their hard work and commitment. Last year we paid out nearly \$20,000 in wages that was then put toward education, travel and spent in the local community. Many of our staff are pursuing post secondary education in the Okanagan and their jobs with us help them to pay their way through school.

We have always found it important to help support our local charities when possible. Okanagan Beach Rentals provided equipment, services and the Grand Prize for the First Annual Brain Trust Paddle for Prevention fund raiser held in the park last summer, which we will continue to support going forward as well. We've also provided substantially discounted watercraft fleets for non-profit organizations to assist in their recreation programs and for School Programs to help young people experience the joy of being on the water. Of course, we will continue giving back to our community by supporting the various charities, sporting events and recreation programs using our parks by contributing, educating and providing equipment & services.

Over the years we've seen a steady increase in water activities participation amongst seniors. This year we are adding a seniors program (half price rentals weekdays from 10:00 to noon) as we have had great feedback regarding our ability to provide support and instruction along with our very stable and user friendly watercraft. It's always our goal to ensure a safe and successful outing plus provide the support that some seniors need to get in and out of the boats. Regular paddling and pedaling can help our seniors maintain flexibility, strength and muscle tone while enjoying a social time with friends and family.

We have also established programs designed to encourage gaining and developing paddling skills. Our very popular twice-weekly SUP Discovery Classes have allowed many nervous paddlers to go from new to confident in just one session. Also available are Kayak Discovery Classes, SUP Fitness and SUP Lessons for skill development as well as customized classes as needed.

Encouraging regular fitness, we offer Frequency Use Packages for kayak and SUP rentals that can be shared, as well as Family Packs which allow for discounted use of any of our watercraft. We also encourage outdoor adventure with our party package "Pedal, Paddle and Play" which provides a custom selection of equipment and instruction at a discounted rate.

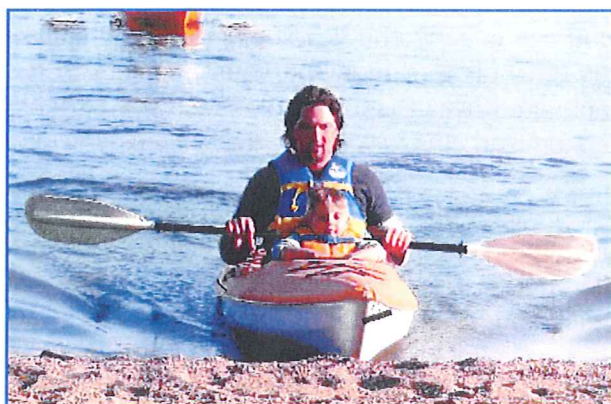
## Equipment, Safety and Operation

Our 'get-on-and-go' water equipment model provides a great cross section of activity for everyone! We have developed this diverse fleet over our years of experience in offering safe, fun and easy to operate 'people powered' recreational watercraft. Our kayaks and SUPs are designed to be beginner friendly while also satisfying the seasoned paddler. They are easy to use first time while still being fun once a new paddler has developed their skills.

Of course, all of our rental equipment includes the appropriate safety gear. All customers using our equipment are provided with, and are told they are required to wear the PFDs supplied and to enjoy the equipment outside of the swim areas. Instruction is always included for both safety and the successful operation of watercraft thereby creating happy customers who really benefit from their rental experience.

Each year starts with a new SUP fleet as we find that keeping our equipment *and* area in tip-top condition encourages customers to take care of the boards and to be mindful of their surroundings while using the equipment. Many people have commented on how they prefer renting our fleet as it's cleanliness and condition makes for a more pleasant experience while the performance of the equipment encourages the development of skills beyond the beginner level. Additionally, rarely do we ask for monetary deposits, relying instead on customer connection, and in over a decade of operating we have never had a customer abuse this.

Being sensitive to the concerns that the City has regarding the envelope used by the rental fleets at both parks we are trimming our fleet for this proposal, removing some of the larger equipment and reducing quantities of others. In addition, we have developed new systems to reduce our operational envelope by focusing on equipment that can stack, hang and rack when we're open. We want to be clear that we are happy to adjust fleet items and quantities if needed to ensure that we are working with the City and the Parks Department so that everyone is happy.



## Kayak Rentals

Our wide range of recreational kayaks are super easy to operate, very stable, comfortable and fun! We offer both sit-in and sit-on-top single and tandem kayaks in a variety of lengths allowing us to pair riders to their perfect boat.

### Kayak Rental Rates:

Single Kayaks 9' to 14'  
(sit-in or sit-on-top)

1 hour \$23.81 + gst = \$25

2 hours \$38.10 + gst = \$40

Tandem Kayaks 13' to 15'  
(sit-in or sit-on-top)

1 hour \$33.33 + gst = \$35

2 hours \$52.38 + gst = \$55

Kids Kayaks 6'

(sit on top)

1 hour \$14.29 + gst = \$15.00



## SUP Rentals

We specialize in Stand Up Paddling! Matching the best board for rider ability and skill level, and providing detailed instruction with our demonstration. Our great selection of SUPs from 8' boards for the kids, right on up to 12' all-rounders for larger riders means that everyone can get on and go, stand up and paddle! Novice to experienced, young to old, everyone loves the ride!!

### Stand Up Paddleboard Rental Rates:

All Round Boards.

(will carry one adult and a child)

1 hour \$23.81 + gst = \$25

2 hours \$42.86 + gst = \$45

Boards for Kids.

(will carry two kids)

1 hour \$19.05 + gst = \$20

2 hours \$33.33 + gst = \$35



## Pedal Boat Rentals

Our three pedal boats sizes can accommodate up to five for a leisurely trip along our pristine shoreline. Stable, safe and easy to operate, these boats are a favorite with visitors who want to get out on the water without getting wet! Terrific for playing Bumper-Boats too!

### Pedal Boat Rental Rates:

Will seat up to 2 adults + 3 kids.

1 hour \$20.95 + gst = \$22  
2 hours \$33.33 + gst = \$35  
Half Day \$52.38 + gst = \$55

### Canopied Boats:

1 hour \$23.81 + gst = \$25  
2 hours \$38.10 + gst = \$40  
Half Day \$57.14 + gst = \$60



## Aqua Bike Rentals

Stable, safe, silly and fun!! Those looking for splashes and giggles just love our floating water bikes! Popular with the little ones and even more so with the young at heart! These bikes have been a staple on Kelowna Mission beaches for over 25 years and are often rented by parents who want to share their memories of riding them with the next generation.

### Aqua Bike Rental Rates:

Will seat 2 + toddler.

1 hour \$20.95 + gst = \$22  
2 hours \$33.33 + gst = \$35  
Half Day \$52.38 + gst = \$55



## Canoe Rentals

We're proud to provide a true Canadian experience to be enjoyed by our visiting voyageurs. Take a traditional lake paddle in the wide open comfort of a recreational canoe. Our canoes are stable, comfortable and green.

### Canoe Rental Rates:

3 Seat Canoe 16'  
(keel or flat bottom)  
Will seat 2 + child.

1 hour \$33.33 + gst = \$35  
2 hours \$52.38 + gst = \$55  
Half Day \$71.43 + gst = \$75



## Beach Stuff

For anyone who forgot to bring their gear or didn't know they'd end up on the beach, no worries... we've got it covered!

We have chairs, umbrellas, frisbees, volleyballs, soccer balls, footballs, bocce balls, and more!

Per hour \$1.90 + gst = \$2.00



Marilyn W  
West Kelowna, BC

Level 4 Contributor

43 reviews

11 attraction reviews

17 helpful votes

### *"Kayaking IS for Everyone"*

Reviewed 23 August 2015

We enjoyed our first ever kayak experience at Rotary Beach in Kelowna, BC. The staff are friendly and helpful; they assured us that there were always enough kayaks or boards available, and we were signed up and off! It is well located for paddling along the shoreline in either direction for as long as you choose. The gear was clean and well maintained.

We found the views from the water give a different perspective of the lake and surrounding mountains. (We live overlooking the lake, so it was interesting to see this ) The kayaks are simple to steer and propel, and very stable. Can't wait to go again!

Visited July 2015

## Equipment List and Footprint

We've taken a good look at our fleet, paring it down to the most flexible and utilized pieces. Then we focussed on reducing our operational footprint. We've chosen kayaks that can stack or hang, boards we can rack or stack, and reduced the number of aqua bikes to use up less space. We feel that the number and quantity of items chosen are the best for meeting customer's needs, but are happy to adjust the fleet if requested.

### Rotary Beach

#### Kayaks

- 2 - 6' kids sit-on-top kayaks (solo)
- 2 - 10' teen sit-on-top kayaks (fury)
- 2 - 12' sit-on-top single kayaks (tetra)
- 3 - 13'6 sit-on-top tandem kayaks (tribe)
- 4 - 14' sit-in single kayaks (pursuit)
- 2 - 13'6 sit-in tandem kayaks (twin otter)
- 1 - 15'6 sit-in tandem kayak (twin otter)

#### Stand Up Paddleboards (SUP)

- 2 - 8' kids SUP
- 2 - 10' teen/small adult SUP
- 8 - 11'6 adult SUP
- 4 - 12' large adult SUP

- 4 - inflatable SUP (overflow reserve)

#### Pedal Power

- 6 - pedal boats
- 3 - aqua bikes

#### Canoes

- 1 x 16' Canoe  
(available for both locations)

### Gyro Beach

#### Kayaks

- 2 - 6' kids sit-on-top kayaks (solo)
- 2 - 9' teen sit-on-top kayaks (jazz)
- 2 - 13' sit-on-top tandem kayaks (tribe)
- 4 - 13' sit-in kayaks (conduit)
- 2 - 13' sit-in tandem kayaks (twin otter)

#### Stand Up Paddleboards (SUP)

- 2 - 8' kids SUP
- 2 - 10' teen/small adult SUP
- 6 - 11'6 adult SUP
- 2 - 12' large adult SUP
- 4 - inflatable SUP (overflow reserve)

#### Pedal Power

- 6 - pedal boats
- 3 - aqua bikes

#### Canoes

- 1 x 16' Canoe  
(available for both locations)

We will have radios at each location so that we can check for available equipment, satisfy groups, and share safety information. Due to the restricted storage we will have both Canoes available for both locations. Both locations will have the City provided wheelchairs which we will store, care for and administer at no cost to the clients or the City.

## Operational Envelope

### Rotary Beach

At Rotary Beach we have substantially reduced the operational envelope to 150 m<sup>2</sup>, as illustrated on provided map (p. 10). We are proposing that our closed envelope will consist of a structure plus approximately 14 m<sup>2</sup> outside for pedal boats and aqua bikes.

The proposed structure at Rotary Beach will serve as the concession building and will house our accessories, fleet, and the City provided beach wheelchair. Access in and out of the building would be located on the north side and a concession window for serving customers would face the lake. This will also allow for optimal visibility of renters on the water and have the least impact to those using the picnic tables under the south side of the pergola. Gaining approval of both the Parks and Planning Departments, this concession building would be designed to compliment the existing washroom building, fitting nicely under the pergola and placed directly onto the east portion of the concrete pad provided. This would allow for maintaining public access to the pergola from the north end and also provide easy removal of the structure at a later date if needed. Outdoor storage for pedal boats and aqua bikes would be either on the sand in front of the existing cedars or against the concession building.

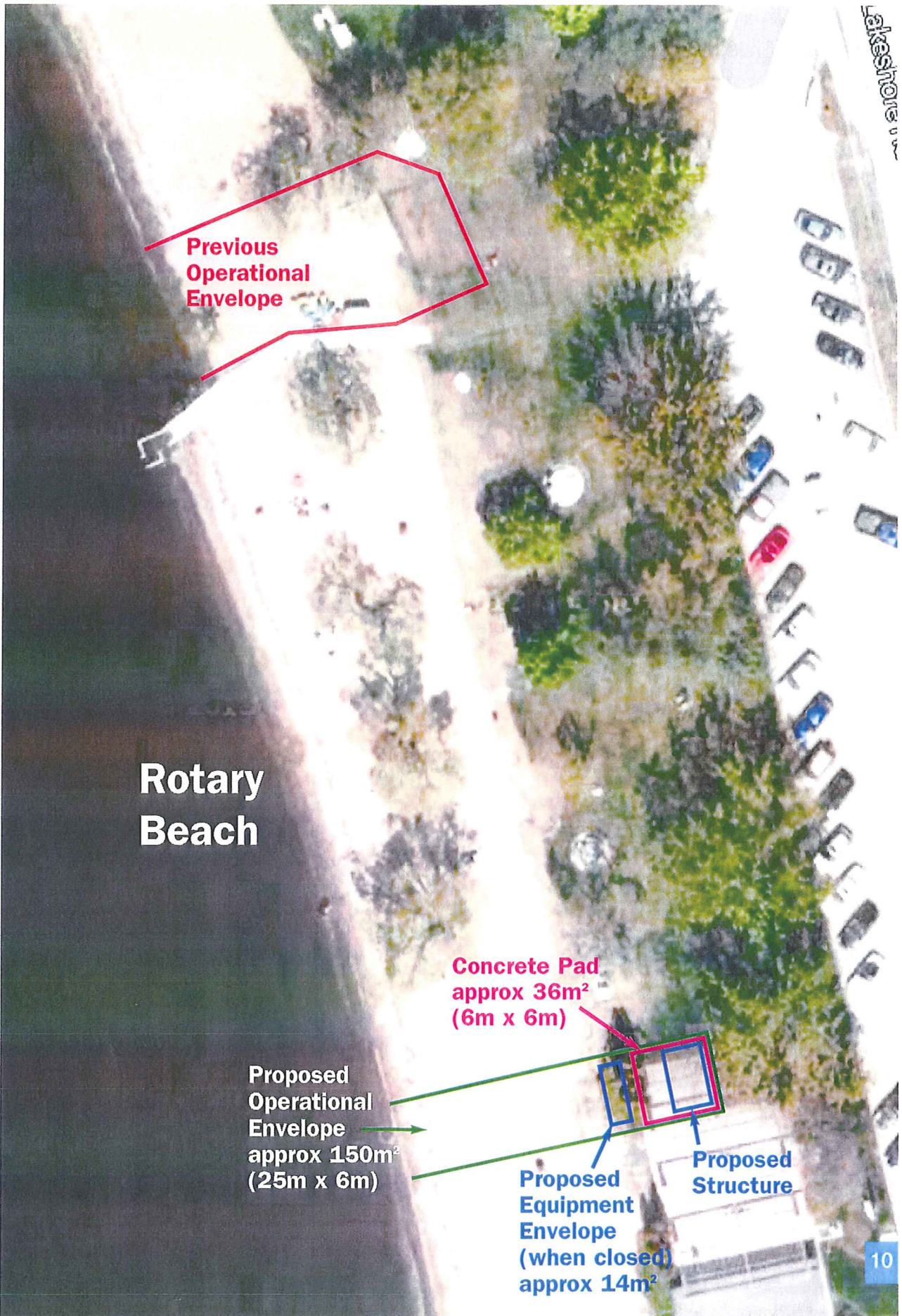
We understand that shrubs, junipers and possibly cedars will be removed to allow a better visual of the operation but hope that we could have some input in hopes of preserving some of the mature landscaping in the area and the existing cedars next to the beach.

### Gyro Beach

The Gyro Beach operational envelope, in our proposal, has also been substantially reduced to 150 m<sup>2</sup> as shown on the map provided (p.11). The closed envelope will consist of the existing building plus approximately 14 m<sup>2</sup> outside for pedal boats and aqua bikes.

The concession structure at Gyro is very familiar to us as we owned it six years ago, selling it to the last operators for \$400 at the beginning of their first season. Should they be so kind as to return the favour, we would commit to the following improvements: Spring of 2016 we would clean up and paint out the structure and trim. Fall of 2016 we would replace the currently sagging roof with a new low slope roof to compliment the proposed Rotary building, strengthen the structure by replacing all the siding with new exterior panels and trim as well as adding structural support within the building. Of course the grandfathered building footprint would not be enlarged or moved.

Should we be unable to acquire/purchase the concession building we would therefore need to bring our equipment in daily. We would still store the pedal boats and aqua bikes onsite but could trailer in everything else, including the wheelchair provided by the City. Of course this would create logistic challenges that, although manageable, would certainly be less than ideal.



**Rotary  
Beach**

**Previous  
Operational  
Envelope**

**Concrete Pad  
approx 36m<sup>2</sup>  
(6m x 6m)**

**Proposed  
Operational  
Envelope  
approx 150m<sup>2</sup>  
(25m x 6m)**

**Proposed  
Equipment  
Envelope  
(when closed)  
approx 14m<sup>2</sup>**

**Proposed  
Structure**

# Gyro Beach

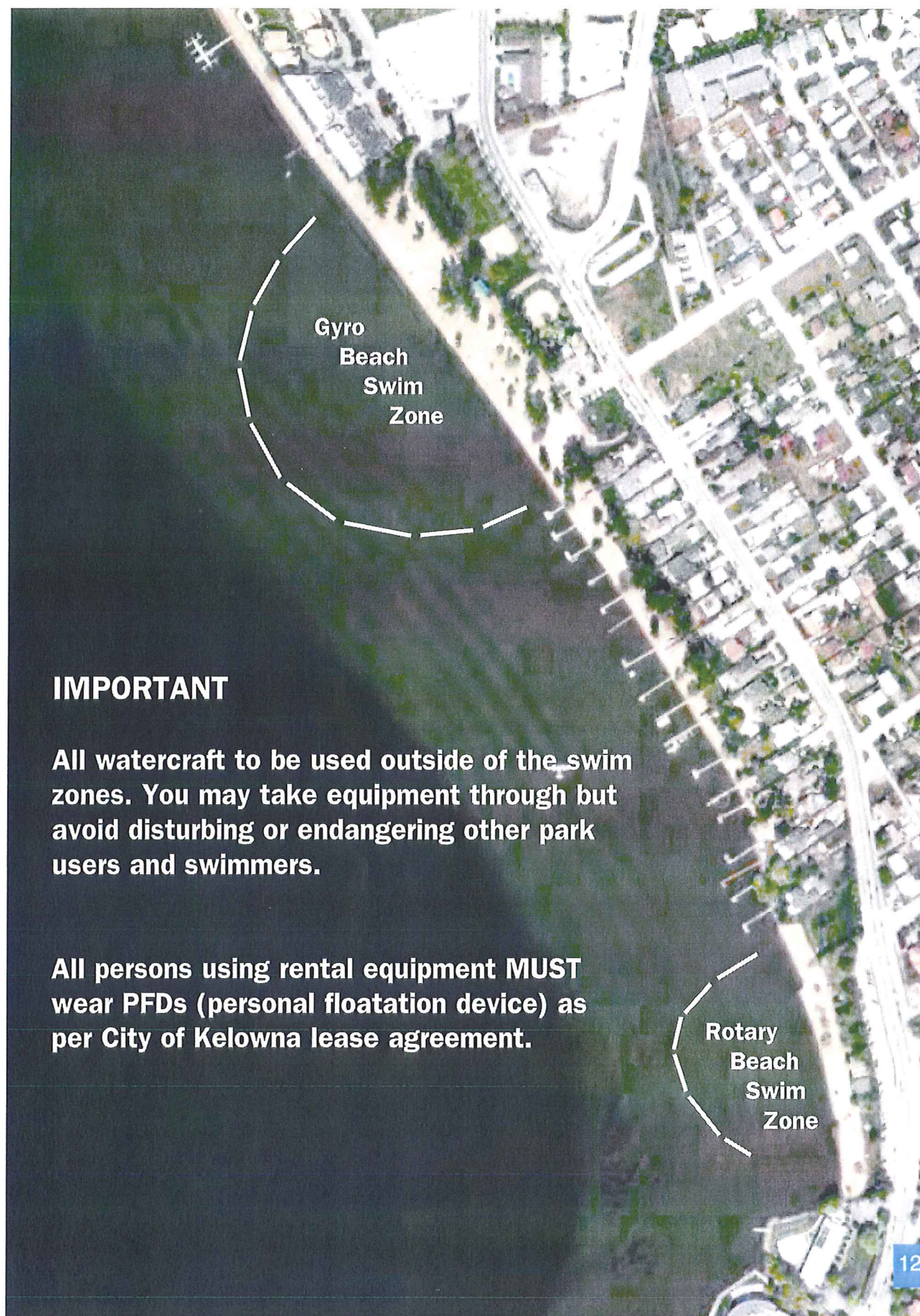
Previous  
Operational  
Envelope

Proposed  
Operational  
Envelope  
approx 150m<sup>2</sup>  
(24m x 6.25m)

Existing  
Shed

Closed  
Equipment  
Envelope  
(when closed)  
approx 14m<sup>2</sup>

Example of sign posted at both Concession windows.



## IMPORTANT

**All watercraft to be used outside of the swim zones. You may take equipment through but avoid disturbing or endangering other park users and swimmers.**

**All persons using rental equipment MUST wear PFDs (personal floatation device) as per City of Kelowna lease agreement.**

## Bid, Commitments & Assurances

Along with our bid of \$18,000 per year for the concession and the 5% of our gross profits we would also like to offer to you the following commitments and assurances:

We commit to maintaining our operational size as outlined in this proposal. We have taken the steps needed to ensure that we can operate with terrific equipment in a smaller envelope while still satisfying our customers. If required, we will bring in small cone soccer markers to help define the operational space and anchored floats to create a lane-way through the swim zone which we would remove off-season. We would, of course, consult with the Parks Department for authorization and placement of any such markers and/or floats.

We commit to maintaining the cleanliness of our area in the same manner we have for the last decade. We have consistently cleaned up our area by raking grass, sand and shoreline, often going beyond our perimeter to help clear the beach for park users. We have dealt with the log-jam outflow from Mission Creek, clearing the shoreline daily until nature moves the rest along. We have pulled garbage and glass from the lake in front of our operation and from further when paddling. We always clean up goose droppings from grass and sand as no-one likes to encounter it. Our commitment to cleanliness includes our equipment and buildings, when opened and closed. We have always kept both in good form, operationally and visually. Although we have never been tagged, we keep paint on hand in case of graffiti and will paint over it as soon as discovered.

We commit to continued safety for our customers and other beach users. We have always been proactive in ensuring that customers are fitted to the right equipment for their size and skill level, that they understand clearly how to safely operate it, that they are informed about any safety concerns like expected winds, and that they respect the safety of others. We will verbally and with signs, like the ones attached, delineate the swim areas and expected use of PFDs.

We offer our assurance that we are financially able to take on this Concession. We have most of the equipment listed already in our possession and are able to take care of any new expenses like building sheds and purchasing any equipment shortfalls. We have been in this business for many years and understand the pattern of cash flow with a seasonal business. We are homeowners with the same address for over 25 years.

Finally we want to offer our assurance that we will work with the City, Parks Department, Planning and Real Estate to ensure that your expectations are being met. We are flexible in our proposal, happy to adjust our fleet items, quantity and footprint if needed. We see ourselves as an asset to the city and hope that you do as well.

Thank you again for the opportunity to bid on this concession. Looking forward to seeing you on the beach.

Sincerely,

Barry and Kellie Planedin

## Equipment Images

### Kayaks



### Stand Up Paddleboards



### Pedal Boats



### Aqu Bikes and Canoes



## APPENDIX G - PRIME CONTRACTOR DESIGNATION



# Contractor Coordination Program Guide

Certificate of Recognition - Element 4

August 2012



## POLICY

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To ensure that workers of The City of Kelowna and other employers who are working at The City of Kelowna workplaces are not placed at risk because of a lack of knowledge of workplace hazards, or a lack of coordination of workplace safety.

The City of Kelowna will do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the Workers Compensation Amendment Act and the WCB OH&S Regulations at all workplaces within the City of Kelowna.

The City of Kelowna will ensure that all employers and workers at the City of Kelowna workplaces are aware of any pre-existing workplace hazards.

The City of Kelowna will ensure co-ordination of occupational health and safety activities on all multiple employer workplaces, or ensure that a Prime Contractor does so.

## SCOPE

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This program applies to every situation where workers other than City of Kelowna workers are performing their job duties at a City of Kelowna workplace.

### Exception for Short Term Workplace Visits

The WCB Prevention Manual offers the following guidance on workplace visits: "Virtually all workplaces will be visited by workers of other employers. For example, workers may deliver or pick up mail, goods, and materials or enter to inspect premises. Short term visits of this type, even if regular, do not make the workplace a "multiple-employer workplace" for the purposes of section 118(1)."

## DEFINITIONS

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<b>Construction Project:</b>	Any erection, alteration, repair, dismantling, demolition, structural or routine maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, concreting, the installation of any machinery or any other work deemed to be construction by the WCB. (WCB OH&S Regulation Section 20.1)
<b>Contractor:</b>	Includes a contractor, subcontractor, utility company, government agency or a service company providing/assigning workers and/or services/equipment within the workplace.
<b>Contractor Safety Program:</b>	A contractor's Occupational Health and Safety program as required by WCB OH&S Regulation.  Multiple employer workplaces are created when workers of two or more employers are working at the same location.
<b>Multiple Employer Workplace:</b>	In this type of workplace workers of one employer do not actually have to come into contact with the workers of the other employer. They do not even have to be in the same place at the same time. What is important is whether or not the workers' activities could affect the health and safety of another employer's workers. This is true even if the workers on the workplace are workers of City of Kelowna and a contractor.  Short term visits by couriers, inspectors, and suppliers etc. are not regarded as workers at the workplace.

<b>Notice of Project:</b>	The Notice of Construction Project given by the Prime Contractor, or Owner, to the Workers' Compensation Board as defined in and required by Section 20.2 (2) and (3) of the WCB OH&S Regulation.
<b>Prime Contractor:</b>	In relation to a multiple-employer municipal workplace, the contractor, employer or other person who enters into a written agreement with the City of Kelowna to be the Prime Contractor.
<b>Qualified Co-ordinator:</b>	Applies where a Prime Contractor has been designated. On a construction workplace, means the person appointed by a Prime Contractor to co-ordinate occupational health and safety activities within the workplace.
<b>Qualified Person:</b>	Applies to every contractor hired whether it is a single employer workplace or a multi-employer workplace. On a construction workplace, means a person designated by a contractor (other than the Prime Contractor) to be responsible for that employer's health and safety activities and responsibilities.
<b>Single Employer Workplace:</b>	A defined area in which there are workers of only one employer.
<b>Contract Administrator:</b>	Applies where a Prime Contractor has not been designated and the City of Kelowna assumes Prime Contractor Status. There will be a person designated by City of Kelowna to co-ordinate workplace safety on multiple employer workplaces and to receive/review a contractor's safety program, records, documentation, safety performance, etc.
<b>Contract Liaison:</b>	Applies where a Prime Contractor has been designated. The person designated by the City of Kelowna to inspect, and be the City contact person for the Prime Contractor. The Contract Liaison will alert and explain any pre-existing hazards to the Prime Contractor and receive/review a contractor's safety program, records, documentation, etc.

## CO-ORDINATION - OVERVIEW

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City of Kelowna can decide to coordinate safety activities at a multiple employer workplace or to designate this responsibility, in writing, to a Prime Contractor to perform the duties of coordination.

### On a multiple employer workplace:

The Contract Administrator/Prime Contractor (Qualified Coordinator) must also:

- Ensure that all of the workers at the workplace are aware of any pre-existing hazards on the workplace.
- Identify any hazards on the workplace that are created by the work.
- Have a workplace drawing that shows where first aid is located, emergency transportation system for injured workers, and evacuation marshaling points.
- Have written procedures outlining safe work procedures to be followed by all workers at the workplace.
- Have a workplace drawing showing where all employers at the workplace are working, where first aid is located, emergency transportation system for injured workers, and evacuation marshaling points.

## RESPONSIBILITIES

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City of Kelowna is responsible to determine whether a workplace includes the workers of other employers and whether this is a multiple employer workplace or a single employer workplace.

### **Responsibilities: Single Employer Workplace, City of Kelowna**

City of Kelowna is responsible to ensure that the contractor at the workplace is aware of all pre-existing workplace hazards and has the information on how to eliminate or control the hazards.

### **Contract Administrators:**

Contract Administrators are responsible to ensure the following Pre-Qualification Items are filled out by the potential contractor:

- Conduct the Pre-Qualification questionnaire that includes items such as WCB Coverage, Liability Insurance, Proof of Safety Program (Policy, Risk Assessments, Inspections, Incident Reporting, Qualifications, etc)
- Decide whether the contractor should be designated, in writing, as a Prime Contractor or falls under the City of Kelowna's Health & Safety Management System

Contract Administrators are responsible to ensure the following Contractor Coordination occurs after completing the Contractor Pre-Qualification and have been awarded contract:

- Designate the Prime Contractor (Sign off on Prime Contractor Status Form)
- Hold pre-job conferences to confirm contractor understanding of compliance with safety requirements and awareness of the City of Kelowna specific hazards, and to review job plan of hazardous work.
- Meet with the contractor and explain any hazards peculiar to the City of Kelowna worksites the contractor is likely to encounter while performing the work. Establish that work must be done safely in accordance with WCB and City of Kelowna standards. (Standard contract documents identify the contractor is responsible for the enforcement of regulations).
- Ask the contractor if he/she has any questions related to the safety of the work or what is expected during the contract period.
- Reinforce the point that the contractor is responsible for the health and safety of his/her workers and for ensuring compliance by his workers with the City of Kelowna Occupational Health and Safety Program and WCB regulations.
- Monitor contractor safety performance (Observations of contractor's work procedures, finished products, etc. Should be diarized by noting the contractor's name, date, time, and location and briefly noting observations. Follow up action can be based on these diaries.
- Check that contractor has copies of required safety information and supplementary instructions covering the work to be performed (provide if necessary).
- Monitor contractor safety performance through regular inspections or audits, as appropriate. Doing so without directing work on site otherwise Prime Contractor will revert back to the owner and in this case that would be the City of Kelowna.
- Document inspections of contractor performance.
- If necessary, coordinate safety on multiple employer sites.

### **Contractor:**

Note: Applies to a contractor to City of Kelowna and to service providers such as BC Hydro or gas distribution companies.

The contractor is responsible to ensure the safety of his/her workers. The contractor must inspect his worksites in accordance with WCB requirements to ensure compliance with WCB and City of Kelowna regulations.

The contractor is responsible for:

- Reviewing the City of Kelowna's Contractor Pre-Qualification and submitting all relevant documentation for this program.

- Review and sign off on the City of Kelowna's Prime Contractor Designation Form. If the contractor is not capable of assuming prime they will fall under the City of Kelowna's Health & Safety Management System and be required to attend a contractor orientation that will explain all of the relevant forms and processes that are expected from the contractor.
- Ensuring compliance with the Workers Compensation Act and the WCB OH&S Regulation.

**City of Kelowna Supervisors:**

Supervisors must:

- Ensure that all workers know that a contractor has been designated for projects in their areas.
- If during the normal site visits for contract administration, a City of Kelowna employee observes the work being done by the contractor and hazards are observed, corrective action must follow.
- Ensure they do not assign duties, which take City of Kelowna workers into the contractors work area.
- Contact the Contract Administrator if any worker reports that they must enter the contractor's work site to do their job.

**City of Kelowna Workers:**

All workers are responsible to ensure that their duties do not take them into the single employer workplace. If they must enter the workplace, they must inform their supervisor.

**Other Contractors (Sub-Contractors or Multiple Contractors at same site):**

Other contractors are responsible to deliver to the Prime Contractor's Qualified Coordinator the name of the person who supervises their workers.

On a construction workplace, the contractors must designate a Qualified Person to be responsible for that contractor's health and safety activities. That contractor must give the name of this Qualified Person to the Prime Contractor.

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**PROGRAM DETAILS**

This program is designed to help ensure that when contractors are working at a City of Kelowna workplace, the work is performed safely and there is no unnecessary increase in liability for City of Kelowna as a result of their actions.

**Situation Identification**

There are two types of situations where workers of another employer are performing duties at a City of Kelowna workplace.

The first of these, and most difficult for the organization to control, are workers who are not performing contract work for City of Kelowna. They may include the workers of a utility company, a government agency or Service Company. The typical example might be workers of a gas utility company who have set up traffic control to do repair work on the gas distribution system. They are at a workplace, and City of Kelowna workers may be working on the same workplace.

It is the responsibility of City of Kelowna to ensure that the workplace is safe and that all workers, including contractors and their employees, are aware of the workplace hazards of which the organization has knowledge as owners of the workplace. As long as there are no interactions, or overlap between workplaces that would create hazards for the workers of the contractor or for the workers of City of Kelowna there is no further action required.

The second situation is one that the organization is most familiar with. This is a situation where a contractor has come onto a workplace to perform work for City of Kelowna. In this situation, there is still the responsibility to ensure that the workplace is safe, and that the contractor is aware of pre-existing hazards.

Any other workplace hazards must also be identified.

Providing methods to eliminate or control workplace hazards will include providing the contractor with the City of Kelowna safety program and procedures. If the contractor is going to do work that is not covered by the safety program, it is important that once the hazards are identified, the contractor provides the written procedures for the work.

#### **Multiple Employer Workplaces**

Multiple employer workplaces are created when the workers of two or more employers are working at the same location. They do not have to both been working all of the time.

If they are both at the workplace and the activities of either employer can affect the health and safety of workers of the other employer, then the workplace becomes a multiple employer workplace. This is true even if the workers on the workplace are workers of the contractor and City of Kelowna.

When City of Kelowna has contractors on a multiple employer workplace; there is a requirement for coordination of activities.

The Contract Administrator can fulfill this coordination role, or it can be delegated to a contractor, who is designated as Prime Contractor in writing.

Contractors must give Contract Administrator or the Prime Contractor the names of the individuals who will be supervising their workers.

#### **Prime Contractor Designation**

In the past contracted work was much simpler than it is today. A project was developed and put out to bid. The successful bidder hired other contractors. These contractors were subcontractors to the successful bidder. In these cases the successful bidder was usually referred to as the "Principal" or "Prime Contractor".

As a result of amendments to the Workers Compensation Amendment Act and the WCB OHS Regulation, it is now very important that City of Kelowna carefully decides whether to designate a contractor in writing as the Prime Contractor. The decision on whether to designate a Prime Contractor rests with Contract Administrator otherwise the City of Kelowna assumes Prime contractor Status and all contractors would then be mandated to follow the City of Kelowna's Health & Safety Management System.

The responsibility for coordination of activities at the workplace, and for ensuring compliance with the Workers Compensation Amendment Act and the WCB OHS Regulation will rest with the Prime Contractor.

It is also very important that these contractors are made aware of all of the pre-existing workplace hazards that might put their workers at risk. They must also be given the information that they need on how to eliminate or control those hazards.

If the City of Kelowna appoints a Prime Contractor the affected contractor(s) will be given written notice in the form of the Prime Contractor Designate Form.

### **WORKPLACE SAFETY REQUIREMENTS**

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The Prime Contractor has the responsibility to:

- Ensure work is done in a safe manner that complies with all regulatory requirements.
- Direct and co-ordinate the work activities related to the health and safety of all contractors and any other workers on the workplace.
- Have a supervisor readily available at the workplace. This supervisor will have the necessary skills, qualifications and experience to co-ordinate the health and safety activities of the workers.
- Obtain from the organization written information on hazards and conditions and the methods to address the hazards and conditions and will circulate this information.

- Ensure first aid facilities are provided and maintained on the workplace in accordance with Part 33 of the WCB OHS Regulation.
- Take all reasonable steps to ensure that the occupational health and safety activities of all Contractors and their workers comply with the WCB OHS Regulation.
- Immediately give Contract Administrator the name of any contractor who does not co-operate, assist or do what the qualified co-ordinator requires regarding co-ordination of health and safety activities within the workplace.

**All Contractors:**

Prior to starting any work at the workplace, the Contractor must:

- Have its own Safety Program or follow the City of Kelowna's Health & Safety Management System.
- Ensure the safety program meets the requirements of Part 3 of the Workers' Compensation Act and Part 3 of the WCB OHS Regulation.
- Ensure there is a supervisor at the workplace that has the necessary skills and experience to run the Contractor's Safety Program.
- At the start of work, the Contractor will provide Contract Administrator or Contract Liaison in writing, the names of all supervisors.
- Contract Administrator or Prime Contractor, must be immediately informed of any changes.

The Contractor must:

- Ensure that a Joint Health and Safety (JHS) Committee is formed for the workplace if required by the Workers Compensation Amendment Act, and that the activities of the JHS Committee meet the requirements of the of the Workers Compensation Act.
- Advise Contract Administrator or the Prime Contractor, of any accidents or incidents at the workplace that must be reported to the Workers' Compensation Board.
- Inform all persons working on the workplace of the health and safety requirements at the workplace.
- At all times the contractor will ensure that its workers and subcontractors, and all other workers coming onto the workplace will:
- Comply with the Workers Compensation Amendment Act and the WCB OHS Regulation.
- Comply with the contractor's safety program or the City of Kelowna's Health & Safety Management Program
- Comply with Contract Administrator (or Prime Contractor's) safety requirements for the work activities within the workplace.
- Provide occupational health and safety records and documentation to Contract Administrator or Prime Contractor.
- Follow the directions of Contract Administrator or the Prime Contractor on all matters relating to occupational health and safety.
- Inform Contract Administrator or the Prime Contractor of any information that they require to co-ordinate each employer's work activities within the workplace.

**PRIME CONTRACTOR'S HEALTH AND SAFETY RECORDS**

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The Prime Contractor must:

- Maintain all occupational health and safety documentation at one location at or near the workplace and make these documents available to Contract Administrator or Contract Liaison.
- Ensure that its Qualified Co-ordinator collects records of all JHS Committee proceedings at the workplace and distributes them to other qualified persons working within the workplace and to the WCB.
- In the event of an accident that requires notification to the Workers' Compensation Board, at the same time, notify Contract Administrator or Contract Liaison about the accident.
- If requested, provide information on the progress of the investigation and co-ordinate all responses to requests for information with City of Kelowna.

**Contract Liaison**

If a Prime Contractor is appointed, Contract Liaison will be the City of Kelowna workplace representative and have duties and responsibilities that include but are not limited to the following:

- To ensure all contractors are informed of appointment of the Prime Contractor.
- To inform the Prime Contractor that they must be copied in all communications.
- To monitor the Prime Contractor's compliance with the safety requirements of the contract.
- To ensure that City of Kelowna workers do not direct or supervise any contractor's workers on the workplace.
- To receive and/or distribute all necessary documentation.
- To ensure that all pre-existing hazards of the workplace and procedures for addressing the hazards are conveyed to the Prime Contractor.

If there is no designated Prime Contractor on a multiple employer workplace the responsibility to coordinate the activities of all employers at the workplace lies with Contract Administrator which is the City of Kelowna.

Contract Administrator will also watch for situations where the work of one contractor or a worker of City of Kelowna could cause a hazard to the workers of another contractor. It is Contract Administrator's responsibility to ensure that these situations are controlled.

Contract Administrator will ensure that contractors coming onto the workplace bring with them their written procedures. If the contractors do not bring written procedures, Contract Administrator must develop those procedures.

**TRAINING REQUIREMENTS**

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**Goal**

To ensure that no workers will be put at risk and no liability will accrue to the organization as a result of workers of another employer performing duties on a workplace owned by the organization.

**Objectives**

As a result of this training, workers and supervisors will:

- Understand the organization's policy on contractor coordination including the pre-qualification, designation of prime contractor status and potential for the city of Kelowna to be the prime contractor
- Know what their responsibilities are, and understand the responsibilities of other people.

**Summary of Training**

- Why workplace safety coordination is necessary.
- The responsibilities for workplace safety coordination.
- How to determine if workplace coordination is required.
- The effects of the Workers' Compensation Amendment Act on contractor coordination.
- The definitions used in the contractor coordination program.
- When to designate a Prime Contractor or for the City to assume prime themselves.
- Typical hazards that must be addressed.
- How to complete forms and documentation.
- Correct responses to typical situations.

**PROGRAM MAINTENANCE**

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Annual review of this program will focus on the number of situations when other employers were on the organization's workplace, and whether any liability accrued to the organization as a result.

## DOCUMENTATION

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The documentation for this program includes:

- Contract template that includes language concerning Prime Contractor.
- Safety program with names or positions of those responsible for coordination.
- Completed reviews of contractor safety programs.
- Documentation of discussions with contractors regarding supervision.

**PRIME CONTRACTOR DESIGNATION FORM**

PRIME CONTRACTOR APPLICATION FOR SAFETY-PRE-QUALIFICATION

# Prime Contractor Designation Form

COR - Element 4

## PROJECT

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After the City of Kelowna has awarded tender/contract it is necessary to see if the contractor can assume the Prime Contractor role. If the municipality must be deemed the prime contractor they will cover all safety related items with a City of Kelowna orientation. This orientation will cover all city requirements with OH&S regulations as a minimum.

This process will ensure that all contractors are suitably qualified to manage health and safety issues on complex work sites that involve multi-employer relationships. Financial strength, bonding, insurance, technical ability, and expertise will also be taken into consideration. This process is intended to be the Municipality's designation of Prime Contractor status, where appropriate.

### Coordination at multiple-employer workplaces

118

(1) In this section:

"multiple-employer workplace" means a workplace where workers of 2 or more employers are working at the same time;

"prime contractor" means, in relation to a multiple-employer workplace,

(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or

(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.

(2) The prime contractor of a multiple-employer workplace must

(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.

(3) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

## DESIGNATION OF PRIME CONTRACTOR STATUS

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The City of Kelowna recognizes that some organizations may not meet requirements necessary to be designated as a prime contractor. Organizations that do not meet these conditions will be given a City of Kelowna orientation and the City will act as the Prime Contractor.

The preferred qualifications for designation of Prime Contractor status are:

- ☐ COR
- ☐ Prime Contractor Training Course
- ☐ Construction Safety Training System

**PRIME CONTRACTOR PROCEDURE**

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Please provide the following items:

**History**

- A. A list of current projects in which your organization has been designated as Prime Contractor.
- B. A list of past projects in which your organization has acted as Prime Contractor.

**PRIME CONTRACTOR ACCEPTANCE**

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THE UNDERSIGNED further states that they have carefully read the foregoing agreement (Contractor Coordination Program Guide) and know the contents thereof, and by signing same as accept the designation of Prime Contractor.

Dated at ....., B.C., this .....day of....., 2013

**Prime Contractor**

**City of Kelowna Representative (Witness)**

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

PRIME CONTRACTOR APPLICATION FOR SAFETY-PRE-QUALIFICATION





Occupational Health & Safety Branch

# Application for Safety Pre-Qualification

COR - Element 4

## APPLICATION FOR SAFETY PRE-QUALIFICATION

### Submissions, Program Content and Inquiries:

Contractors are invited to apply for Safety Pre-Qualification by completing and submitting the "City of Kelowna Application for Safety Pre-Qualification."

### 1. COMPANY IDENTIFICATION

Business Name: \_\_\_\_\_

Full Address: \_\_\_\_\_

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

(if different)

Phone: \_\_\_\_\_

(Office/Cell)

Fax: \_\_\_\_\_

The Company is:

☐ Sole Proprietorship

☐ Partnership

☐ Limited Company

Number of years in business: \_\_\_\_\_

### 2. INSURANCE & WORKERS COMPENSATION

- a) Attach documents demonstrating your coverage for damages to and incidents involving their parties including general liability insurance, automotive, umbrella policies, etc.
- b) Is your company in good standing under the workers compensation board or authority of each jurisdiction in which it performs work? ☐ YES or ☐ NO

If YES provide clearance letter to substantiate, if NO please explain.

### 3. SAFETY PROGRAM

- a) Does your company have a written Health & Safety Policy signed by Management?  
☐ YES or ☐ NO

If YES please submit with questionnaire.

- b) Does your company have written safety policies and procedures including clearly defined safety responsibilities for managers, supervisors and workers? ☐ YES or ☐ NO

If YES please submit with questionnaire.

- c) How do you communicate your Safety Policies and Procedures?

- d) How often do managers/executives visit the worksite? Provide details.

**4. ATTACHMENTS**

- 1) Please submit a description of your on-site inspection program, including how often inspections are conducted, what they cover and who conducts them.
- 2) Please attach a description of your risk assessment procedures and form(s)
- 3) Please attach a description of your incident reporting and investigation procedures, including how near misses are reported.
- 4) Please attach a list of names and qualifications of all supervisors that you use to oversee work.
- 5) Do you provide on the job training to all workers? ☐ YES OR ☐ NO

Please attach a description of your health and safety training program, including how often training is provided, in what format, topics covered and who provides the training? If easier submit certificates of staff rather than list.

- 6) Please attach a description of how you notify workers of job specific hazards.
- 7) Do you discipline workers for committing health and safety violations? ☐ YES OR ☐ NO  
Please describe:

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- 8) Please attach a description of your health and safety committee/representative (or an explanation as to why you don't have one), including its activities, frequency of meetings, etc.
- 9) Do you have a preventative maintenance program for tools and machinery? ☐ YES OR ☐ NO  
Please describe:

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- 10) Please attach a description of how you incorporate subcontractors' workers into your health and safety training and other programs.
- 11) Please attach a description of other programs, activities or information that you believe demonstrates that your company carries out its projects safely and in accordance with all health and safety requirements.

**5. SAFETY PERFORMANCE**

Please complete the following charts current to the last 3 years)

Year	Hrs	F	LTI	TR	TRF

**Sub-Contractors (Combined Total)**

Year	Hrs	F	LTI	TR	TRF

**Safety Performance Calculation Instructions:**

<b>HRS =</b> Total hours worked	<b>F = Fatalities</b>	<b>LTI =</b> Lost time injuries, loss by a worker at least 1 day of work	<b>LTF =</b> Lost time frequency Number of incidents x 200,000 divided by hours worked.	<b>TR= Total</b> recordables Medical aid +restricted duty+ LTI	<b>TRF= Total</b> recordable frequency Number of recordable incidents x 200,000, divided by hours worked
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Has your company received any Occupational Health & Safety stop-work orders, charges, convictions or fines in the last 3 years? ☐ YES OR ☐ NO

Please describe:

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Name of Contractor's  
Safety Coordinator:

Contact Information:

Date:

Signature:

**6. DECLARATION:**

I, the undersigned, in application for Safety Pre-Qualification with the City of Kelowna for construction work and / or other duties, do hereby certify that all information contained in this application is accurate to the best of my knowledge.

Print Name:

Position:

Signature:

Date:

