

## Rideau Canal Skateway Chalets

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# Plumbing Services Necessary for the Operation and Maintenance of Public Washroom Facilities

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## Statement of Work

NCC tender file #AL1685

December 2016

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## 1 Introduction

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The National Capital Commission is proceeding with an invitation to tender for the provision of services and materials required for the operation and maintenance of temporary washroom facilities on the Rideau Canal Skateway.

The NCC is contracting out the provision of these services and materials with the objective of obtaining high standards of service excellence.

### 1.1 Context

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#### 1.1.1 The Capital Stewardship Branch

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The National Capital Commission (NCC), through its Capital Stewardship (CS) Branch, manages the natural and built facilities and assets in the National Capital urban area. These facilities and assets contribute to Ottawa’s rich symbolic setting as the seat of national government. The CS Branch manages and protects these assets in order to provide a safe and enjoyable experience for all users.

The CS Branch manages contracts which provide high quality maintenance services for the Commission’s urban sites as well as summer and winter maintenance of major federal institutions in the Capital, such as Parliament Hill. Effective operation, protection, maintenance and lifecycle management is required for a diverse mix of urban assets ranging from urban conservation areas, green spaces, parkways, downtown parks, pathways, monuments and buildings of national significance. The overall objectives of the maintenance practices are to protect and preserve these for all Canadians. In achieving these objectives, the NCC is committed to planning, developing and implementing all of its programs and activities in a manner designed to minimize adverse effects on the environment and ideally enhance the environmental resources under its responsibility.

The CS Branch also delivers visitor products and services such as the Floral Program, the Rideau Canal Skateway and the Sunday Bikeday program. As part of its mandate, CS delivers support services to events that enhance the positioning of the Capital as a key destination for Canadians.

#### 1.1.2 Rideau Canal Skateway

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The pride of Canada’s Capital Region is the Rideau Canal, which stretches 202 kilometres from Ottawa to Kingston. It was designated a World Heritage Site by UNESCO (United Nations Educational, Scientific and Cultural Organization) in June 2007. Each winter a portion of this historic waterway is transformed into the world’s largest skating rink. Crowds of skaters and outdoor enthusiasts from all over Canada and the world enjoy the 7.8 kilometre ice surface that winds through the heart of Ottawa. In 2005, Guinness World Records confirmed that the Rideau Canal Skateway (RCS) was indeed the “Largest Naturally Frozen Ice Rink in the World”.

The RCS celebrated its 46<sup>th</sup> skating season in 2016, yet it is so much more than just a skating rink. You’ll find concession stands and other services including skate and sled rentals, shelters, washrooms and rest areas. The Skatetrack also serves as centre stage for Winterlude, the Capital’s internationally renowned festival and North America’s greatest winter celebration.

The Rideau Canal is one of Canada's nine heritage canals and is owned by Parks Canada. The Skatetrack portion is managed by the NCC during the winter months. The Rideau Canal makes an important contribution year-round to the beauty and spirit of Canada's Capital Region.

The skating season may start between Christmas and New Year's Day, weather permitting. The opening of the Skateway is determined by weather and ice conditions. The NCC Ice Safety Committee (ISC) assesses the ice thickness before the official opening of the RCS. This Committee continuously monitors ice conditions throughout the skating season.

The NCC created Winterlude in 1979 as a celebration of Canadian winter traditions. The 35<sup>th</sup> edition of Winterlude took place in 2013. Winterlude is the annual *rendez-vous* where Canadians and visitors discover, experience and celebrate Canadian winter in the National Capital Region. A number of Winterlude events take place on the RCS.

## 1.2 Term of Contract

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This upset limit Contract (based on submitted unit/hourly rates) is for a three (3) Year Term commencing on signing of the Contract (January 2017) and ending in March, 2020. During an average season, the RCS opens in early January and closes within the two (2) weeks following the end of Winterlude. The decision to open or close the RCS, in whole or in part, is taken unilaterally by the NCC, at its entire discretion and for any reason(s) deemed appropriate.

Note the unit rates remain fixed for the 3 year term.

## 1.3 Scope of Work

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Plumbing services are required for the Systems and Components contained in four (4) temporary washroom facilities located in rest areas along the RCS at the following locations:

Rideau rest area.  
Concord rest area.  
Fifth Avenue rest area.  
Bronson rest area.

Their exact locations can be found in Appendix 1 (GIS maps of the Rideau Canal Skateway). The services required are summarized below, but not limited to the following:

- Operation and maintenance of the plumbing Systems.
- Operation and maintenance of the compressed air Systems.
- Operation and maintenance of the septic Systems.
- Reactive (emergency) Maintenance for the aforementioned Systems.
- Preventive and Predictive Maintenance for the aforementioned Systems.
- Supply personnel, equipment, vehicles, materials and specialized tools as required by the tasks described herein.

## 1.4 Contract Boundaries

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The Contractor shall provide all services within the geographic boundaries as summarized on the maps presented in Appendix 1 (GIS Maps). Although not included on the maps, it is understood that the NCC warehouses at Woodroffe and Bayview are within the boundaries of this Contract.

## 2 Typical Terms and Conditions

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This section contains the typical terms and conditions of this Contract.

### 2.1 Interpretation

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#### 2.1.1 Definitions

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In this Contract, the following words, when presented with the first letter in upper case shall have the corresponding meaning:

**“Additional Services”** means any requirements added pursuant to 1.1.1 and not originally included in the Contract.

**“Applicable Laws”** means, at any time, with respect to any Person, property, transaction or event, all then applicable laws, by-laws, statutes, regulations, treaties, judgements, decrees and (whether or not they have the force of law) all then applicable official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any governmental authorities or Persons having authority over any of such Person, property, transaction or event and includes all Environmental Laws.

**“Business Day”** means Monday to Friday inclusive, statutory holidays in the Province of Ontario excepted. This definition applies to contract management, but is not applicable to the Work to be performed by the Contractor pursuant to this Contract.

**“Business Hours”** means the hours between 8 a.m. and 5 p.m. on any Business Day. This definition applies to contract management, but is not applicable to the Work to be performed by the Contractor pursuant to this Contract.

**“Chalet(s)”** means a building that is temporarily installed on the RCS to provide washroom and/or shelter facilities for skaters.

**“Component”** means a constituent part of a System or a whole, which may or may not be part of an asset. Notwithstanding the aforementioned, a Component may also function on its own, independent of the System(s) in which it is a Component.

**“Condition based monitoring”** or **“CBM”** means observing and reporting (Monitoring, testing, etc.) the state of a System and its Components in order to determine when/if Maintenance is actually necessary.

**“Consumables”** means products that are routinely used up and purchased while a System or Component is in operation and are intended for recurrent replacement as recommended by the original equipment manufacturer and/or industry best practices. These items include but are not limited to: gaskets, rings, seals, sealants, tapes, adhesives, lubricants, motor oil, pipe thread compounds, cleaners, screws, bolts, washers, clamps, small electrical connectors, fuses, lamps, etc.

**“Contract”** means the Contract entered into between the Successful Contractor and the NCC, incorporating, with such changes as may be required by the context, all of these Terms and Conditions, pursuant to which the Successful Contractor agrees to perform all of the specific services in accordance with the standards of performance set out in sections 1 to 6, and other matters arising out of the successful Tender and accepted by the NCC, if any.

**“Contract Management Officer”** or **“CMO”** means an NCC employee or delegate whose function is to monitor the Contract on behalf of the NCC.

**“Contractor”** means the Successful Proponent.

**“Emergency Communication Services”** means the NCC 24-hour Emergency Communication Service (24 HECS) available 365 days/year at 613-239-5353.

**“Employees of the Contractor”, “Contractor’s Employees”, “Personnel of the Contractor” and “Contractor’s Personnel”**, whether in upper or lower case, all mean any person employed by the Contractor and include dependent contractors and any subcontractors of the Contractor as well as their employees.

**“Environmental Laws”** means:

- i. all federal, provincial, regional or municipal statutes and regulations with respect to environmental or occupational health and safety matters as they may be amended or replaced from time to time;
- ii. the jurisprudence with respect to environmental law and health and safety law; and
- iii. all environmental assessment procedures, rules, ordinances, policies (including, but not limited to, the NCC Environmental Protection Policies Statements set out in Appendix 6), guidelines, orders, approvals, notices, permits, judgements, directives, licences, decisions and requirements, with or without force of law, as they may be amended or replaced from time to time.

**“Event of Insolvency”** means any of the following events:

- i. if proceedings are instituted by or against the Contractor to cause it to be wound up, dissolved, liquidated and, in the case where such proceedings are instituted against the Contractor, the Contractor acquiesces in such proceedings, or the Contractor has its existence terminated or has any resolution passed therefore, or makes a general assignment for the benefit of its creditors or a proposal under any legislation dealing with insolvency or bankruptcy, or is declared bankrupt or insolvent, or files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors;
- ii. if a court of competent jurisdiction enters an order, judgement or decree approving a petition or proceedings filed against the Contractor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors; or
- iii. if a trustee in bankruptcy, receiver and manager, liquidator, administrator or any other officer with similar powers is appointed for the management of all or any substantial part of the property of the Contractor.

**“Force Majeure”** means any of the following events which (i) prevents the performance by the Contractor of its obligations pursuant to this Contract, and (ii) is not caused by and is beyond the control of the Contractor: acts of God, earthquakes, tidal waves, hurricanes, windstorms of extreme violence or intensity, other exceptional climatic condition of extreme violence or intensity, lightning, wars (whether declared or not), riots, insurrections, rebellions, civil commotions, sabotage, partial or entire failure of Utilities, strikes or other labour disruptions, shortage of and inability to procure labour, materials and supplies (after best efforts have been made by the Contractor to obtain replacements for such labour, materials and supplies) or orders, legislation, regulations and directives of any governmental authorities. With respect to: partial or entire failure of Utilities, strikes or other labour disruptions, shortages of and inability to procure labour, materials and supplies, or orders, legislation, regulations and directives of any governmental authorities, an increase in the cost on an annual basis of any such factor of less than twenty-five per cent (25%) compared to the amount budgeted for such factor in any approved payment schedule, or a delay of less than two weeks in the time for performance of any services required under the Contract, shall be deemed not to be, and shall not be claimed to constitute an event of Force Majeure.

**“GIS”** means the Geographic Information Systems.

**“Hourly Rate/Unit Price”** means cost allocated to the services listed in Appendix 2-A of the Contract to be provided by the Contractor in conformity with the standards of performance contained in this Contract.

**“Maintenance”** means any action taken to keep an asset in a state where it may be safely utilized for its designed or designated purpose. Notwithstanding the generality of the aforementioned, Maintenance also includes:

- i. **“Predictive Maintenance”** means the application of CBM (see definition), Monitoring or testing (including Unaided Testing) of assets for the purpose of early detection and elimination of equipment defects that could lead to unplanned downtime or unnecessary expenditures. Generally speaking, this type of Maintenance is conducted while the equipment is in normal operation, with little or no process interruption. The purpose of this type of Maintenance is to determine the condition of in-service equipment in order to predict when Maintenance should be performed.
- ii. **“Preventive Maintenance”** means all systematic, predetermined Work performed to a schedule with the aim of preventing the wear and tear or sudden failure of assets or Components. This type of Maintenance is proactive and usually involves the planned replacement of parts, Components and Consumables based on specifications provided by the manufacturer and/or the NCC and/or as specified in this Contract..
- iii. **“Reactive Maintenance”** means Maintenance required after an event, malfunction or failure. This type of Maintenance is usually (but not exclusively) triggered by equipment failure and requires immediate response and action from the Contractor as defined in this Contract.

**“Monitor” or “Monitoring”** means the systematic gathering of information and data through observation, Unaided Testing, Condition Based Monitoring or testing on a regular or scheduled basis in order to regulate, control and ensure the functionality of Component(s) and/or System(s). Monitoring can be Predictive and/or Preventive in nature. See Maintenance.

**“National Capital Region”** (NCR) has the meaning ascribed thereto in the Act.

**“NCC”** means the National Capital Commission and its successors and assigns.

**“NCC Records”** means any records in the custody of the NCC in existence on the commencement date of the Term, pertaining to the Subject Matter and all information, data and records prepared by the Contractor during the Term in relation to the Subject Matter and all reports of same including any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, digitally recorded data, and any other documentary material, regardless of physical form or characteristics.

**“Person”** means any individual, corporation, partnership, trust, other legal entity, other incorporated association or a government or political body.

**“RCS”** means the Rideau Canal Skateway.

**“Subject Matter”** means the Chalets, their Systems, fixed assets and all duties and/or services related thereto, to be performed pursuant to the Contract.

**“System”** means a set of interacting and/or inter-dependent Components forming an integrated whole.

**“Term”** means the period commencing upon the signing of this Contract and terminating as per 1.2.

**“Terms and Conditions”** means the Contract and the expressions hereof, herein, hereto, hereunder, hereby and similar expressions referring to these Terms and Conditions; unless otherwise indicated, references to articles, sections and recitals are to articles, sections and recitals in these Terms and Conditions.

**“Unaided Testing”** or **“Unaided Inspection”** refers to methods of testing or inspection that involve the senses of sight, smell, sound and touch. Instruments that are used as part of Unaided Inspections generally augment the Contractors senses, as previously listed.

**“Winterlude”** means a winter festival held over a period of three weekends (Fridays, Saturdays and Sundays) usually beginning on the first Friday of February and including the Family Day holiday Monday.

**“Woodroffe”** means the NCC warehouse facility located at the Greenbelt Research Farm, 1740 Woodroffe Avenue in Ottawa.

**“Work”** means the whole of the goods, services, materials, equipment, matters and things required to be done, or performed by the Contractor with respect to the Subject Matter in accordance with the terms of this Contract and as more specifically set out in the Contract.

**“Year”** means for the first term the period following the signature of the Contract and terminating on August 31<sup>st</sup>. For subsequent terms, a period of twelve consecutive months, from September 1<sup>st</sup> of one calendar year to August 31<sup>st</sup> in the next calendar year.

## 2.2 Extended Meanings

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### 2.2.1 Governing Laws and Forum

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This Agreement shall be governed by, construed and interpreted in accordance with the applicable laws in force in the province of Ontario. Any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts of the province of Ontario (Canada).

### 2.2.2 Headings & Table of Contents

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The inclusion of headings and table of contents in this Contract is for convenience of reference only and shall not affect the construction or interpretation of the provisions set out in these Terms of Reference.

## 2.3 Alterations

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### 2.3.1 Change of Dates

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The NCC may, at its sole discretion, change deadlines for any operational requirements. The NCC shall notify the Contractor in advance of any changes to deadlines. The Contractor shall modify his/her work plan accordingly and then provide all Work respecting the revised deadlines as determined by the CMO.

### 2.3.2 Length of the RCS Season

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The NCC offers no guarantees as to the duration of the skating season on the RCS. Each year, the Contractor and the NCC make every effort to open the Skateway as quickly as possible and to extend the skating season for as long as ice conditions, weather and operational factors permit. The Contractor, by virtue of this Contract, shall share those objectives. The NCC may at any time and for any reason, at its sole discretion, with or without consulting the Contractor, open or close all or part(s) of the Rideau Canal Skateway.

## 2.4 Contractor's Obligations

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The Contractor agrees to use best practices, in compliance with the Terms and Conditions of this Contract and with any laws in effect during the Term. The Contractor agrees to take, or have taken, any steps required to fulfill his obligations under this Contract and to consider and comply with the terms of this Contract at all times, completely and faithfully. The scope of the Contract is established by the body of services required in each section. The Contractor will ensure that he provides the services required in each section of this Contract even though individual tasks are not specifically identified but are required to provide the services requested.

### 2.4.1 Invoicing

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The Contractor is required to invoice the NCC for the operations conducted and approved by the NCC. The Contractor will have the right to receive payments within 30 days after the CMO has delivered a certificate indicating that the invoice is authentic and exact, that the Contractor has performed the said work in a satisfactory manner during the mentioned period and has observed the terms of the Contract.

### 2.4.2 Limitation on NCC Financial Obligations

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The NCC shall have no obligation, and the Contractor shall not represent to third parties that the NCC has any such obligation, on account of reimbursement of expenses, overhead costs, administrative expenses, or salaries and benefits of employees, except to the extent that such amounts have been invoiced as per 2.4.1.

### 2.4.3 Environmental Laws

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In performing each of the operational duties identified in the Contract, or in complying with the requirements of any part of this Contract, the Contractor shall comply fully, at its own expense, with all requirements imposed by Environmental Laws.

### 2.4.4 Warranty

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The Contractor warrants that he is competent to perform the Work required under this Contract in that he has the necessary qualifications including, without limitation any licensing or certification requirements imposed by the applicable laws as well as the knowledge, skill and ability to perform the Work. Any work and/or service provided by the Contractor must be consistent with the established and generally accepted standards for supplies and services of the type covered by this Contract, in full compliance with the requirements and free from defect in material and workmanship.

#### 2.4.5 Commitments Made in Contractor's Tender

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In addition to the obligations contained in this Contract, the Contractor hereby undertakes to fulfil the commitments made in its Tender which is incorporated by reference into this Contract. If there are any inconsistencies between the terms and conditions of this Contract and those set out in the Tender, the document containing the most extensive obligations on the part of the Contractor shall prevail.

#### 2.4.6 Identification

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All personnel and company vehicles must be properly identified with its company logo. No other logo can be displayed without the written consent of the NCC. The Contractor may also need to identify the NCC as the service provider. If such is the case, the needed materials identifying the NCC as the service provider will be remitted to the Contractor for the Term.

#### 2.4.7 Prohibition

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The Contractor shall not incur any expenditure or enter into any contract on behalf of the NCC except on an arm's length basis.

#### 2.4.8 Sub-Contracting

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The Contractor shall advise the NCC of any part of the Work that it wishes to subcontract prior to contracting for such Work and shall allow the NCC to review the terms of reference for such contract. If the scope of Work identified in the terms of reference for such contract or any other part of such contract is not satisfactory to the NCC, the Contractor shall make any modifications that the NCC requires. Any subcontractor used by the Contractor for the purpose of providing services hereunder shall respect all requirements of this Contract.

#### 2.4.9 Denial of Agency

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Nothing contained in this Contract creates any relationship of agency, partnership, joint enterprise or any relationship other than a contractual one. In all respects the Contractor is acting in his own capacity, and all debts and liabilities to third persons incurred by the Contractor are and shall be exclusively for the account of the Contractor.

#### 2.4.10 Ownership & Access to Records

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All information, data and records prepared by the Contractor during the Term in relation to the Subject Matter, and all reports of same shall be the property of the NCC. The NCC shall have the right at any time or times during the Term and thereafter to unrestricted access to all such information, data, records and reports.

#### 2.4.11 NCC's Audit

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The NCC, or the NCC's auditor may, without prior notice but during Business Hours, inspect, take extracts from, audit and review all the books and records of the Contractor and obtain such other information as may be available to the NCC in order to enable the auditor to establish activities performed on the RCS, amounts expended on operating or capital expenditures, or any computation or matter relevant to the determination of any fee or other compensation paid or to be paid to the Contractor. These rights are extended to the NCC throughout the Term and for a period of twenty-four months after the expiration of the Term or earlier termination of this Contract.

#### 2.4.12 Confidentiality

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The Contractor agrees to ensure the confidentiality of the NCC Records and information contained therein which are in the Contractor's custody. The Contractor hereby agrees to indemnify and save the NCC harmless from any claim or loss of any kind whatsoever arising out of any breach of the obligation.

#### 2.4.13 Return of NCC Records on Termination

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On the expiry of the Term or earlier termination of the Contract, the Contractor shall return the NCC Records, updates thereto, all original leases or agreements and all other documents created during the Term to the custody of the NCC.

#### 2.4.14 Unconditional Obligation to Perform

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The Contractor covenants and agrees to take, or cause to be taken, such action as may be necessary to cause the Contractor, at all times fully and faithfully, to perform and discharge its obligations under this Contract and each part hereof, and to comply with the Terms and Conditions hereof.

#### 2.4.15 Forbearance Not to Constitute Estoppel

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No neglect or forbearance of the NCC in endeavouring to obtain payment of any amount required to be made under the provisions of the Contract as and when the same become due, no delay of the NCC in taking steps to enforce performance or observance of the several covenants, provisos or conditions contained in the Contract to be performed or observed by the Contractor, no extension or extensions of time which may be given by the NCC from time to time to the Contractor, and no other act or failure to act of or by the NCC shall release, discharge or in any way reduce the obligations of the Contractor hereunder.

#### 2.4.16 Outright Assignment Prohibited

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The Contractor shall not assign any of its rights and benefits, or any of its duties or obligations hereunder or arising out of this Contract without the prior written consent of the NCC, which consent may be arbitrarily withheld. Every assignment or sub-contract, if any, shall incorporate all the Terms and Conditions of this Contract which can reasonably be applied thereto.

### 2.4.17 Exceptions

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Notwithstanding the provisions of clause 2.4.16, the Contractor may assign its interest in the amounts to be paid by the NCC to the Contractor hereunder as security for a borrowing related to the financing of the activities contemplated herein. The right to give such assignment as security is subject to the Contractor being in good standing hereunder at the time of such assignment as security.

## 2.5 Termination

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The Contract shall terminate on the expiry of the Term or any extension thereof provided that on the occurrence of an Event of Insolvency or any other default hereunder, the NCC, in addition to such other remedies that it may have hereunder or at law or in equity, may elect to terminate the Contract.

In accordance with section 40 of the Financial Administration Act, R.S.C. 1985, c.F-11, this Contract is subject to there being a parliamentary appropriation for the fiscal year in which a commitment is made under this Contract. If there is no parliamentary appropriation, the NCC shall have the right to deliver notice in writing to the Contractor terminating this Contract in its entirety and the NCC shall not be liable for any damages suffered by the Contractor as a result of such termination.

### 2.5.1 Deliveries on Termination

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On termination:

- a) The Contractor shall within fifteen (15) days thereof deliver a final accounting to the NCC;
- b) The Contractor shall immediately surrender to the NCC all NCC Records and keys;
- c) The Contractor shall immediately return to the NCC all portable and operational assets, equipment and miscellaneous assets owned by the NCC together with an inventory of same, including any additions or replacements to such inventory;
- d) The Contractor shall immediately return in good working order to the NCC all fixed assets owned by the NCC including any additions or replacements to such inventory.

### 2.5.2 Rights on Termination

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Any termination of the Contract shall release the parties from any further obligations hereunder, except rights and obligations in respect of amounts owing, or to remedies with respect to any defaults or to matters with respect to which indemnities have been given hereunder.

## 2.6 Default Provisions

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If the Contractor:

- a) Fails to keep, perform or observe any of the covenants, agreements, conditions or provisions contained in this Contract that are to be kept, performed or observed by the Contractor and such failure continues for, or is not remedied within:
  - 1 hour of a verbal notice for public safety situations;
  - 24 hours of a written notice for all others.

If the Contractor has recurrent failures related to the same activity, covenant, agreement, condition or provision of this Contract the NCC only needs to notify the Contractor of the first incident before having recourse to the default and remedy provisions set out in this Contract.

- b) Suffers an Event of Insolvency;
- c) Has made a false representation or warranty;

- d) Purports to make any transfer or assignment of this Contract other than in compliance with the terms of this Contract; or
- e) Delays in the performance of one of a series of periodic services;

then the NCC shall have the following rights and remedies, which are cumulative and not alternative, and are in addition to and not in substitution for any rights or remedies that the NCC may have hereunder and/or pursuant to Applicable Laws:

- i) To remedy or attempt to remedy any default of the Contractor under the Contract for the account of the Contractor. The NCC shall not be liable to the Contractor for any loss, injury or damage caused by acts of the NCC in remedying or attempting to remedy such default and the Contractor shall pay to the NCC all expenses incurred by the NCC in connection with remedying or attempting to remedy such default, together with all of the NCC's reasonable administrative expenses;
- ii) To recover from the Contractor all damages and expenses incurred by the NCC as a result of any breach by the Contractor;
- iii) To terminate the Contract without further notice to the Contractor, in which case the Contractor will not be entitled to claim payments under this Contract ;
- iv) To withhold, in whole or in part, any payments otherwise due to the Contractor hereunder until such default has been remedied;
- v) To set-off from any amount payable under the Contract an amount equal to the value of any obligations not performed or periodic obligations delayed by the Contractor.

### 2.6.1 Remedies Generally

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Mention in this Contract of any particular remedy of the NCC in respect of the default by the Contractor does not preclude the NCC from any other remedy in respect thereof, whether available at law or in equity or expressly provided for in this Contract. No remedy shall be exclusive of or dependent upon any other remedy, but the NCC may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.

### 2.6.2 Extended Meanings

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Unless otherwise indicated, references to articles, sections and recitals are to articles, sections and recitals in this Contract. Changes in grammar, gender, number and syntax required by the identity, structure or nature of the parties shall in all cases be assumed as though in each case fully expressed.

## 2.7 General Provisions

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### 2.7.1 Notice

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Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by priority post, personal delivery, facsimile transmission, or electronic mail as hereinafter provided. Any such notice or other communication, if delivered by post at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fifth Business Day following the day on which the notice was sent, if personally delivered shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee, and if transmitted by facsimile transmission or by electronic mail on the next Business Day following the date of transmission. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lockout or otherwise, notices or other communications shall be personally delivered or sent by fax or e-mail and shall be deemed to have been received in accordance with this section. Notices and other communications shall be addressed as follows:

a) if to the NCC:

National Capital Commission,  
202-40 Elgin Street,  
Ottawa, Ontario  
K1P 1C7

Attention: Director, Urban Lands and Transportation, Capital Stewardship Branch

b) if to the Contractor: At the address and to the person specified in the Contractor's Tender.

The word "notice" in this paragraph shall be deemed to include any request, statement or other writing in these Terms and Conditions provided or permitted to be given by the NCC to the Contractor or by the Contractor to the NCC.

### 2.7.2 Time of the Essence

Time is of the essence of these Terms and Conditions and of the Contract.

### 2.7.3 Joint & Several Liability

If the Contractor comprises more than one Person, the liability of each such Person shall be joint and several.

### 2.7.4 Deduction Where Services Omitted Owing to Force Majeure or Default

In the event that any of the Contractor's obligations hereunder are not performed because of the occurrence of an event of Force Majeure or default, then there shall be no corresponding payment and the Contractor shall have no claim for damages for loss of profit, loss of business or business opportunity, funding, sponsorship, clientele or otherwise by reason of or directly or indirectly arising out of or in connection with the occurrence of an event of Force Majeure or default.

### 2.7.5 Paramourcy of Federal Authority

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Notwithstanding anything contained in this Contract relating to any provincial or municipal statute, by-law, regulation or other enactment, the NCC hereby declares that no such reference shall be interpreted or implied as recognition by the NCC that the Province of Ontario, any municipality, or any other provincial or municipal statute, by-law, regulation or other enactment, has any jurisdiction over the NCC, or the Subject Matter, provided, however, that nothing in this section shall release the Contractor from compliance with any provincial or municipal law as it applies to the Contractor.

### 2.7.6 Denial of Partnership

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It is understood and agreed that neither the provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship of agency partnership, joint venture or common enterprise other than a contractual one. In all respects the Contractor is acting in its own capacity and all debts and liabilities to third parties incurred are and shall be exclusively for the account of the Contractor.

### 2.7.7 Successors

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The rights created by this Contract extend to the permitted successors and assigns of each of the NCC and the Contractor, and the liabilities created herein extend to and bind all successors and assigns of each of the NCC and the Contractor.

### 2.7.8 Representation & Warranty Regarding Authority

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The NCC and the Contractor each represent and warrant to the other party that they have full right, power and authority to enter into the Contract and to perform its obligations there under.

### 2.7.9 Access to Information

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The Contractor acknowledges that the NCC is subject to the provisions of the *Access to Information Act (Canada)* and may therefore be required to release information pertaining to these Terms and Conditions and the Contract which is the subject of a formal request under that act and which is not exempt from disclosure under the provisions of that act.

### 2.7.10 No Offer

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No contractual or other rights shall exist between the NCC and the Contractor as a result of the negotiation of the Contract until all parties have executed and delivered the Contract, notwithstanding that the NCC may have delivered to the Contractor an unexecuted copy of the Contract. Such delivery shall be for examination purposes only and does not and shall not create any interest by the Contractor in these Terms and Conditions and the Contract, or raise any estoppels against the NCC. Execution of the Contract by the Contractor and its return to the NCC shall not create any obligation on the NCC, notwithstanding the lapse of any time interval, until the NCC has in fact executed and delivered the Contract to the Contractor.

### 2.7.11 Disputes

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It is the non-binding intention of the parties that where a dispute arises between the parties in connection with the Contract, the parties shall attempt to resolve the dispute by negotiating in good faith and where possible by retaining an expert to help resolve the dispute, provided that failure to do so shall in no way affect the jurisdiction of an arbitrator to arbitrate such a dispute. Notwithstanding the intention of the parties to negotiate, any bona fide dispute or question arising over any of the provisions of the Contract, its interpretation or effects shall be submitted to arbitration and not to any other forum. Any arbitration proceeding initiated in relation to these Terms and Conditions and the Contract shall be held in Ottawa, and in accordance with the provisions of the *Commercial Arbitrations Act* (Canada) as it may be amended from time to time, and any legislation in replacement thereof. The arbitrators shall determine the process of the arbitration having due regard to the intention of the NCC and the Contractor that the arbitration be completed as expeditiously as possible in all the circumstances. An award by the sole arbitrator or panel of arbitrators, as the case may be, shall be final and binding upon the parties. The parties will each pay 50% of the arbitrator's fee unless the arbitrator finds that one of the parties acted in bad faith throughout the arbitration process, in which case the arbitrator may determine how the payment should be apportioned between the parties.

### 2.7.12 Conflict between Provisions

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In case of any discrepancy whatsoever between parts of this Contract or within a particular section, the part containing the more extensive obligations on the part of the Contractor shall prevail.

### 2.7.13 Health and Safety

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To enable the Contractor to establish its health and safety plan, the NCC is including a list of known and/or foreseeable health and safety risks relating and inherent to the typical work/sites involved in this Contract. The Contractor shall be responsible for completing this list and notifying the NCC if it discovers other risks.

The tasks required under this Contract are performed on the RCS. It is in this environment that the Contractor's employees must work, sometimes at night, in remote or isolated places and in difficult climatic conditions namely extreme cold. The Contractor shall ensure that its employees possess the aptitudes/experience, protective clothing, tools and equipment to allow them to perform the tasks assigned to them. The Contractor shall provide its employees with appropriate communication equipment. The Contractor shall inform its employees and subcontractors about known or foreseeable risks inherent in the tasks assigned to them, and establish the necessary control measures.

The Contractor must at all times ensure supervision, methods and training to ensure the occupational health and safety of its employees and the subcontractors it hires under this Contract. The Contractor must offer its employees satisfactory occupational health and safety conditions.

**As part of this Contract, the following is a list of activities representing known and/or foreseeable inherent risks associated with the Work:**

- Operating (or being a passenger in) a vehicle on the naturally formed ice surface that floats over a body of water (collisions, drowning, hypothermia, etc.);



- Walking on rugged terrain and icy surfaces (falls, dislocations, fractures, etc.);
- Using dangerous chemical products such as solvents, paint, gas, oil, cleaning products, de-icing agents (eye and skin irritation, respiratory problems or long-term health effects);
- Working with electrical, mechanical, water systems (electrocution, burns, being crushed, etc.);
- Working in difficult climatic conditions (dehydration, hypothermia, etc.);
- Working in confined spaces (harmful gas, asphyxia, explosion, etc.);
- Exposure to contaminated waste (grey water, feces, etc.)
- Working during snowstorms or other types of storms (skidding, falling, being dragged, being struck by a falling object, etc.);
- Working at night (falls, physical assault, illegal activities such as drug use, etc.);
- Working with or in proximity to mechanical devices and/or motorized vehicles (injury, cuts, laceration, deafness, asphyxia due to inhaling harmful gases, etc.);
- Performing exhausting physical work (back injuries, cardio-vascular ailments, etc.).

### **3 General Requirements**

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This section identifies the general requirements of the Contract. These activities support the provision of services described in sections 4 (Operational Services).

#### **3.1 Employees**

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##### **3.1.1 General**

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Any employee hired by the Contractor shall be competent and qualified, fluent in one of the two official languages of Canada, and act in a manner that does not adversely affect the reputation of the Subject Matter and/or the NCC.

##### **3.1.2 Replacement of Employees**

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Any employee hired by the Contractor will be relieved of his/her duties and immediately replaced by the Contractor, if in the opinion of the NCC, this employee is unqualified or is acting in a manner contrary to the best interests of the NCC or if the employee does not meet the requirements stated above.

##### **3.1.3 Art of Trade and Certification**

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Furthermore, the Contractor shall respect all trade certification when required by law, the Work or this Contract. Any Work to be performed by the Contractor or by a subcontractor working on behalf of the Contractor must be done in accordance with the art of the trade and must follow any and all guidelines, requirements and specifications as set out by such trade. The Contractor will operate in accordance with all federal, provincial and municipal codes and standards. Proper safety precautions must be exercised at all times, with extra precautions taken to protect the general public.

Upon request, the Contractor shall supply the NCC with a copy of certification for Employees and subcontractors.

#### **3.2 Hours of Work**

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All applicable municipal by-laws with respect to hours of work, including those related to noise or other issues, must be followed except in emergency situations. Work on sites must be coordinated in consideration of visitors and the operational requirements of the RCS.

#### **3.3 Vehicles, Materials & Assets**

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The Contractor shall supply at his cost the necessary vehicles, equipment, tools, materials necessary to implement all the activities as described in the Contract.

### 3.3.1 Vehicles

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The Contractor shall provide all vehicles required to fulfill the contractual obligations of this Contract. This includes any vehicles required for transportation purposes and/or for providing control services as requested in this Contract. The Contractor shall assume all risks inherent to the use of general or specialized vehicles. All vehicles used by the Contractor shall be kept in a clean and presentable condition, have no major exterior blemishes or structural anomalies, be exempt of rust and mechanical problems (leaks, fumes, etc.), and shall meet all provincial safety standards. The company name shall be prominently displayed on all road and off-road vehicles (including personal vehicles used on Contract related business). The NCC may refuse access to the RCS to any vehicle that, in its opinion, may pose a threat to the environment (leaks and fumes) or the safety of the public. The NCC expects the Contractor to maintain the mechanical integrity and general appearance of his fleet. To this end, the Contractor should keep and maintain a service record for each vehicle, which the NCC may ask to consult at any point during the life of the Contract

Contractor vehicles shall be parked only in designated areas. Parking and driving vehicles on turf areas, snow areas, RCS and pathways must be kept at a minimum. Use of off-road motor vehicles is to be limited at all times exclusively to carrying out the Contractor's contractual responsibilities. No vehicles may be used by the Contractor or anyone acting on his behalf for recreational purposes or any other purposes not required by this Contract.

To the extent possible the Contractor will minimize unnecessary idling of vehicles which can result in the wastage of fuel and creation of greenhouse gases (refer to municipal by-laws). When replacing fleet vehicles, the NCC encourages the Contractor to select energy efficient and environmentally responsible equipment (small pick-ups, 4-stroke motors, alternate fuels, etc.). Any repairs or maintenance of vehicles and other assets must be done off NCC property.

### 3.3.2 Materials

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#### 3.3.2.1 Standards

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All materials and parts supplied by the Contractor must be new and conform to applicable standards of Canada Government Standards Board, Standards Council of Canada, Canadian Standards Association (CSA), Underwriters Laboratory of Canada (ULC), National Building Code and any standards contained in documents or technical specifications supplied by the NCC. The Contractor shall not use an alternate type or lower quality material, nor shall the Contractor mix types or qualities of materials.

#### 3.3.2.2 Substitution

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When the material to be used is in question and/or if the Contractor is unable to find materials and equipment identical to those specified or being replaced, the Contractor shall present samples to the NCC for prior approval.

### 3.3.3 Unresolved or Recurrent Issues

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In the case of any unresolved or recurrent issues, the NCC may at its own discretion record the matter on an unsatisfactory performance report (UPR). The Contractor shall respect and implement all recommendations indicated on the UPR to the full satisfaction of the NCC (for any unresolved or recurrent issues, the NCC may also wish to exercise its rights and remedies under the default clause).

The NCC reminds the Contractor of the importance of compliance with all of the performance standards associated with each of the required services outlined in the Contract.

The Contractor may submit to the NCC a written submission containing any information that the Contractor deems appropriate that the alleged failure or default is in no way the responsibility of the Contractor or of his representatives, of his employees, or of any subcontractor whom he has hired to perform work.

### 3.4 Change of Schedules

The NCC may, at its sole discretion, change deadlines for any operational requirements which are contained in this Contract. The NCC shall notify the Contractor in advance of any changes made to deadlines. The Contractor shall modify his/her Work plan accordingly and provide all services respecting the revised deadlines as determined by the NCC.

### 3.5 Public Safety

The Contractor shall take all necessary precautions and/or measures to provide services that are safe for the public. This includes ensuring that all work, activities or operations undertaken by the Contractor to fulfil the obligations of this Contract are accomplished in a manner that does not compromise public safety. Furthermore, the Contractor shall secure any area within the Chalets that might (or has) become a safety hazard. Any such incident shall immediately be reported to the NCC.

### 3.6 Damage Caused by Contractor

The Contractor shall be responsible for any damages that he/she causes to NCC property, assets, Components or Systems. Any damage is to be reported immediately to the NCC on an occurrence report. Repairs and replacements required as a result of damage caused by the Contractor shall be completed within 12 hours of the occurrence unless otherwise approved by the NCC. If not, the NCC may conduct the repairs at the Contractor's expense. In cases where the safety of the public is threatened, the Contractor shall rectify the situation immediately.

### 3.7 Media Relations

The Contractor shall not act as a spokesperson for the NCC in dealing with the media. All requests for interviews or information on NCC matters made by the media must be forwarded to the NCC. The Contractor shall not give interviews without prior written approval from the NCC. The Contractor shall not allow for interviews and/or media events not related to NCC matters to take place on the RCS within the boundaries of this Contract without prior approval from the NCC.

### 3.8 Transition

The Contractor shall ensure a seamless transition at the beginning, renewal (if any), and termination of this Contract. Furthermore, the Contractor shall provide assistance to the future contractor as well as to the NCC by ensuring continued services during the transition period. The Contractor shall make himself available, at no additional cost to the NCC, until at least 60 working days after the termination of the Contract for any post evaluation reports, special meetings or other tasks requested by the NCC.

### 3.9 Site Accessibility

The Contractor must ensure that his/her staff follows all of the access guidelines printed on the vehicle access passes that will have been issued to him by the NCC.

The Contractor shall provide assistance to any third party requiring access to Chalets. This entails dispatching one of his/her own employees to the Chalet(s) to allow access to personnel authorized by the NCC. The designated Contractor employee shall also close the Chalet(s) once access is no longer required. In other cases, it also includes remaining on site with the third party until the work or the inspection is completed. The NCC shall provide reasonable notice to the Contractor. Most requests for access are during regular work hours.

### 3.10 Volunteers

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The contractor will not be permitted to recruit volunteers to complete the deliverables of this Contract.

### 3.11 Response Plan for Toxic Spills

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The Contractor will establish a response plan for toxic spills. This plan will be submitted to the NCC for approval within thirty days of Contract commencement. Any modifications to this plan must be presented to the NCC. A report for each toxic spill must be forwarded to the NCC as soon as possible.

### 3.12 Unsatisfactory Performance Report

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The unsatisfactory performance report is to be commented on by the Contractor each time the NCC completes one for any work included in the Contract that has not been provided or has been provided in an unsatisfactory manner.

### 3.13 Carbon Footprint

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At the end of each season, the Contractor must provide the NCC with details of its contract-related activities that contribute to the carbon footprint of the RCS. These data include, but may not be limited to, the following: types of vehicles used and total kilometres traveled for all activities related to this Contract; type of vehicles used and total fuel consumed for activities related to the Contract.

## 4 Operation and Maintenance Requirements

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The Chalets facilities are used by hundreds of thousands of people every season. Weekday attendance is lower and can vary significantly from a few thousand visits, to twenty or thirty thousand per day. As would be expected, Winterlude weekends are the busiest. On those days, daily total visits regularly exceed 50,000 and have been known to reach 100,000 over a 32 hour period. The NCC's research has shown that on average, visitors will spend slightly less than 2 hours on the RCS during each of their visits. It is also worth noting that on average, fifty to sixty per cent of the total weekly visits to the RCS take place on weekends.

It is possible for each Chalets washroom facility to experience a volume of 300 patrons per hour<sup>1</sup> or more. Because the temporary closing of one or more washroom can have a significant impact on the RCS patron experience, it is important that the facilities remain open at all times and function at peak efficiency. It is the Contractors responsibility to ensure the Chalets and their Systems remain operational at all times during the hours of operation of the RCS.

### 4.1 General

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The NCC washroom Chalets are directly hooked up to City sewer and fresh water lines, with the exception of the Bronson and Concord Chalets. They are equipped with holding tanks which are Monitored and regularly emptied and/or re-filled. As previously described in the Contract, these facilities are used by hundreds of thousands of people during the RCS season. The Contractor must provide services for the plumbing and pneumatic (air) Systems in the Chalets, including but not limited to the following Components;

1. **Distribution:** all sanitary piping, ABS, copper, holding tanks, flex-hose, air hose, etc.
2. **Controls:** valves, floats, sensors, alarms, disconnects, photocells, switches, timers, motion detectors, relays, etc.
3. **Fixtures:** urinals, basins, faucets, toilets, etc.
4. **Mechanical:** motors, pumps and compressors.

### 4.2 On-site Staff Training in Year one

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Though the plumbing Components and Systems in the NCC Chalets are not unique, the way they are used and/or assembled will require some orientation. In order to allow the Contractor's staff to familiarize itself with some of the unique features of the Chalets septic Systems, the NCC will allow a one-time fee in Year one of the Term. This one-time fee will serve as compensation to the Contractor for the provision of on-site training and orientation for his/her Staff and subcontractors.

### 4.3 Pre-season Inspection and Maintenance

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Once the Chalets are in place on their respective gravel pads, seven (7) days before they are opened to the public or when requested by the NCC, the Contractor shall:

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<sup>1</sup> 10 stalls x 2 minutes per visit = 300 visits per hour

- i. Thoroughly inspect<sup>2</sup> the plumbing Components and Systems in each of the Chalets. As part of this inspection, Components are to be cleaned, lubricated and tightened, when and where applicable;
- ii. Adjust or reprogram timers as required or as directed by the NCC;
- iii. Report findings, anomalies or deficiencies to the NCC in a written form. Make detailed (include monetary and time estimates) recommendations regarding Maintenance.
- iv. Provide Reactive Maintenance services as required or requested by the NCC.

**Note:** The Contractor is not responsible for the start-up and close-down procedures as described in Appendix 3 and Appendix 4.

#### 4.4 Post-season Inspection and Maintenance

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No longer than ten (10) days following the official closing of the RCS, the Contractor shall:

- i. Thoroughly inspect<sup>3</sup> the plumbing Components and Systems in each of the Chalets. As part of this inspection, Components are to be cleaned, lubricated and tightened, when and where applicable;
- ii. Report findings, anomalies or deficiencies to the NCC in a written form. Make detailed (include monetary and time estimates) recommendations regarding Maintenance.

#### 4.5 Reactive Maintenance During the Skating Season

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Work that is required after an unforeseen event, malfunction or failure is Reactive Maintenance. It requires immediate response and action from the Contractor and may affect or involve any of the Chalets plumbing Components or Systems.

The Contractor shall provide Reactive Maintenance services from the moment the Chalets have been inspected and maintained per 4.3, until they have been inspected and maintained per 4.4.

The Contractor will provide Reactive Maintenance service and be available to respond to NCC calls seven (7) days per week, between the hours of 0500 and 2300. The said service shall include a telephone line equipped with voice mail for calls made outside the hours stated above. During the aforementioned hours, the Contractor must return all calls received within thirty (30) minutes. The telephone number for the Reactive Maintenance service shall remain the same for the duration of the Term of this Contract and shall be given to the CMO, the NCC Call Centre and the NCC Emergency Communication Service.

##### 4.5.1 Response Time

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The Contractor will respond to requests for Reactive Maintenance services within the following time requirements:

- i. Between the hours of 0500 and 2300, the Contractor shall answer all calls received within thirty (30) minutes.
- ii. Messages left by the NCC on the Contractor's voice mail between 2300 and 0500 will be deemed to have been received by the Contractor at 0500.
- iii. Sixty (60) minutes on-site response time(\*) between 0500 and 1800.

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<sup>2</sup> By using Condition Based Monitoring, Unaided Testing and other appropriate Monitoring techniques.

<sup>3</sup> By using Condition Based Monitoring, Unaided Testing and other appropriate Monitoring techniques.

- iv. Ninety (90) minutes on-site response time(\*) between 1800 and 2300.

(\*) On-site response time is calculated from the time the Contractor returns the call to the NCC CMO, or after the 30 minutes described in 4.5.1i.

Once on site, the Contractor shall;

- v. Assess the situation and identify the problem(s).
- vi. Contact the NCC CMO (if he/she is not already on site) in order to discuss his/her findings.
- vii. The Contractor will propose Reactive Maintenance measures which the NCC may, at its sole discretion, approve or reject.

When responding to Reactive Maintenance calls, the Contractor should prioritize his/her response and the subsequent Work in the following way;

1. Public safety.
2. Environmental impacts.
3. Operational Systems and/or Components that are used by RCS patrons.
4. All other requirements or considerations.

When in doubt, the Contractor should consult with the NCC.

Unless Reactive Maintenance is of an urgent nature, the NCC requires the Contractor to submit a written estimate which clearly describes the Reactive Maintenance being proposed, the methods/products/trades to be used, an estimate of costs and a proposed schedule for the execution of the work. Where the proposed Work is of an urgent nature, the NCC CMO may choose to give verbal approval to the Contractor, with or without a written estimate.

The NCC CMO will make timely decisions that facilitate the Work that is proposed by the Contractor and will not unreasonably withhold approval.

The Contractor must respond to all Reactive Maintenance calls equipped with the appropriate tools and Consumables.

#### 4.5.2 Regular Monitoring During the Skating Season

Once the pre-season inspections (4.3) have been completed and thereafter as described below, until the end of the season, the Contractor shall inspect the plumbing Systems and Components two (2) times per week, according to a schedule that will have been approved by the NCC. The frequency and the time spent on weekly inspections may be increased or decreased by the NCC.