



Where History and Innovation Thrive

This document has been amended to reflect the comments and suggestions made by members of Council at the meeting held on February 21, 2006.

REQUEST FOR PROPOSAL

Large Venue Entertainment Centre

Operator

SG-LVEC-01-2006

Please submit complete proposal using the attached forms, in a sealed envelope quoting above proposal number and closing date; and forward before 3:00:00 p.m. local time, Wednesday, April 5, 2006 to:

City of Kingston
Office of the City Clerk
216 Ontario Street
KINGSTON, Ontario
K7L 2Z3

Closing Date: Wednesday, April 5, 2006 3:00:00 p.m.

Proposals must be received before the above mentioned time and date, and in accordance with the attached RFP forms, Specifications, Instructions to Vendors, and Standard Terms and Conditions.

Contacts:

Don Gedge
Director, Large Venue Entertainment Centre Project
Sustainability & Growth Group
Fax No: (613) 546-3497
Email address: dgedge@cityofkingston.ca

City of Kingston

REQUEST FOR PROPOSAL – RFP No. SG-LVEC-01-2006

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A. THE PROJECT AND PROPOSALS

1.0 INTRODUCTION

The City of Kingston is seeking proposals from proponents who are capable of operating a sports and entertainment complex which will serve as a signature landmark for the City of Kingston and a catalyst for increased vibrancy and economic vitality of Downtown Kingston.

This Request for Proposal (RFP) will provide the short-listed RFI respondents with the information needed to provide competitive proposals aimed at meeting the City of Kingston's perceived needs for operating the Large Venue Entertainment Centre (LVEC).

A description of the proposed Large Venue Entertainment Centre is in the original prequalification document, RFI No. CAO-LVEC 1-2005 which was provided to all pre-qualified proponents under this RFP.

2.0 TERM OF THE PROJECT

It is anticipated at the time of the issuance of this RFP that the construction of the LVEC will begin in August 2006 and will be substantially completed on November 1, 2007.

The term contemplated for this agreement is five years. During the negotiating process this term may be lengthened.

3.0 RFP SCHEDULE

The RFP process will be governed according to the following schedule. Although every attempt will be made to meet all dates, the City reserves the right to modify any or all dates at its sole discretion

Release of RFP	February 24, 2006
Information Meeting	March 1, 2006
Deadline for Submitting Questions:	March 15, 2006
Deadline for Responding to Questions:	March 22, 2006
RFP Closes:	April 5, 2006
Final Selection:	May 16, 2006

4.0 PROJECT AUTHORITY AND INVOLVEMENT

This Request for Proposal is administered by the Sustainability & Growth Group, Don Gedge, Director, Large Venue Entertainment Centre Project. The Project Authority for the LVEC Project is the City of Kingston's Council. The selection of any successful Proponent will be by Kingston City Council upon review and recommendation made to it by the Technical Evaluation Committee. Final approval rests with City Council.

All inquiries regarding this Request for Proposal must be directed as specified in Section A 6.0 of this document.

5.0 PROJECT STAKEHOLDERS

The decision making process authority rests with the Corporation of the City of Kingston. There are no other stakeholders in this RFP.

6.0 INQUIRIES

All inquiries and requests for clarification shall be made in writing to and only to the LVEC Project Director. All questions will be formally answered and distributed to all Proponents. Requests for clarification shall be in the form of letter, fax or electronic media. The LVEC Project Director can be reached at the above City of Kingston address or by fax at 613-546-3497 or by email at dgedge@cityofkingston.ca.

Any clarification of this document or request for additional information must be received by 3:00 p.m. March 21, 2006 in writing by fax or email to:

Don Gedge, LVEC Project Director
Large Venue Entertainment Centre Project, Sustainability & Growth Group
Fax No: (613) 546-3497
Email address: dgedge@cityofkingston.ca

7.0 PROPOSAL CONTENT

Each proposal submitted must include a demonstrated understanding of the objectives, scope and particulars of the goods and services required as well as a clear statement as to the actual total price, including the following:

- a. Submissions shall include the legal name and form of the firm, a company profile, specify the parent company if applicable, including years in business.
- b. Provision of statement of cost reflecting the total all inclusive upset cost in Canadian dollars including applicable taxes.
- c. Each submission should be accompanied by a covering letter confirming an understanding of the RFP contents, an acceptance of the process and confirmation that the Respondent can and will, if asked, provide bonding and insurance requests outlined in this RFP.
- d. Each submission should be bound or in a 3-ring binder, preferably double-spaced on single sided pages, on 8.5"by 11" or A4 size paper. Submissions should be page numbered with text divided into sections addressing the requirements as set out in this document.
- e. Respondents to this RFP are required to submit the information considered necessary to demonstrate to the Evaluation Committee that the respondent will make the best long term partner with the City and that their proposal differentiates their services from the other proponents. Respondents should not assume that members of the Evaluation Committee are familiar in any way with the Respondent. Respondents are not permitted to communicate with any members of the Evaluation Committee. RFP proposals must be as complete and comprehensive as possible to ensure that all relevant information is in the hands of the Evaluation Committee.
- f. Proposals will address the following topics:
 - i. Review of Design-Build Specifications and Participation in the Selection of Design-Build Team

Describe previous experience in constructing similar facilities
Provide resume(s) of the individual(s) who will represent you in this process.
 - ii. Sale of Suite and Club Seat Licenses, Naming Rights and Sponsorship/Advertising

Describe previous experience

Discuss your marketing plan, including timing, packaging, pricing and expected sales prior to the LVEC opening
Provide resume(s) of the individual(s) who will represent you in this process

iii. Furniture, fixtures and equipment (FF&E) to be purchased and installed by the Operator

Describe previous experience in outfitting an event facility
Provide your list of potential FF&E items and their costs, including build-out of concessions and restaurant
Provide an outline of a plan and schedule for acquiring and installing FF&E items
Provide resume(s) of the individual(s) who will represent you in this process
Describe how FF&E requirements will be met so that the LEED® Silver design goal can be achieved (see below).

iv. Achievement of LEED® Design Goals

The City of Kingston anticipates that the LVEC will be constructed to a LEED® Silver standard or better. The LEED® Pre-Assessment Report is attached as Appendix F and provides guidance on how the facility's FF&E procurement and operational procedures must conform to allow for successful LEED® certification.

Design goals for the facility's net energy efficiency should be 42% better than the Modal National Energy Building Code. To meet these objectives, the Operator will be required to operate the systems in place to obtain specified energy efficiencies. Operators will be responsible for providing a detailed plan on how they will operate the systems to meet energy efficiency. The plan must also demonstrate how energy savings will be reflected to achieve the City's payback on capital costs.

Proponents must provide a detailed description of how the FF&E requirements of the project will be met so that the LEED® design goals can be achieved.

Proponents must provide a detailed description of how the operational requirements of the project (housekeeping, waste management, maintenance, etc.) will be met so that the LEED® design goals can be achieved.

Proponents must provide a detailed description of how building automation systems (BAS) will be used to measure, verify and report out on building system performance so that the LEED® design goals can be achieved.

Proponents must provide a detailed description of how they will accommodate third party design verification and re-commissioning of the building within one year of project completion so that the LEED® design goals can be achieved.

v. Pre-Opening Services

Describe previous experience
Up to one month after substantial completion, outline a plan and schedule and anticipated out of pocket costs which would be capitalized. Exclude from this analysis any management fees
Provide resume(s) of the individual(s) who will be responsible for this process and describe the involvement of these individuals in the ongoing operations of the facility

vi. Facility Management

Describe your company's management philosophy/concept of operation

Describe how your company will differentiate itself from other management companies and will optimize service and earnings to the stakeholders
Provide an organization chart, including all staffing. Discuss individual staff roles, responsibilities, qualifications and other applicable terms and conditions
Provide a narrative delineating the Respondent's ability to perform in the following areas as they relate to facility management:

- a. Administration
- b. Marketing including Event Production
- c. Approach to Ticketing Operations
- d. Financial Management
- e. Sponsorship and Advertising
- f. Stakeholder relations including the community, the City, the tenant(s), suite and club seat licensees, sponsors/advertisers and other City cultural venues/events
- g. Tourism including working with the Kingston Accommodation Partners (KAP), the Kingston Economic Development Corporation (KEDCO) and the Downtown Business Improvement Association (DBIA)
- h. Other - A description of other special resource skills or services your company may have which are not addressed in this RFP and will be available as part of the management agreement

vii. Repairs and Maintenance

Describe your approach to annual repairs and maintenance, preventive maintenance and replacement capital expenditures.

viii. A financial proposal must be attached. The proposal should include:

- A schedule, resource commitment and costing for work prior to the opening of the facility (points f(i) to f(iv) inclusive).
- Based on a five-year term which would be renewable on mutual agreement between the Operator and the City and managing only the LVEC, the proposed compensation plan, terms and conditions of the contract
- Based on an investment by the proponent in the LVEC, the proposed terms and conditions of the contract.
- Based on the management of the LVEC and the Food and Beverage operations and Sponsorship and Advertising contracts, the incremental compensation plan, terms and conditions.

In addition, Respondents should comment on any of the City's proposed contractual terms which the Respondent does not view as being reasonable.

- g. Each proponent must fully address each point of this RFP. In addition, alternative bids may be proposed. The City is not obligated to consider or accept all or any part of an alternative bid.

8.0 EVALUATION OF PROPOSALS

A Technical Evaluation Committee will use the established evaluation criteria listed below to evaluate and compare all submissions. The Technical Evaluation Committee will be made up of representatives from the Steering Committee, the LVEC Project Director, City Staff and other consultants as required.

No assumptions should be made that information regarding a Respondent or its members or experience, expertise and performance on other projects is known to the City of Kingston except as provided in the RFI and RFP Submissions.

The City of Kingston will select the Qualified Proponent who demonstrates the greatest combination of qualifications, financial capability, experience, vision and commitment to operate the LVEC in a way which develops a sound business case and maximizes value for money, generates local economic development and spin-off and reflects the preferences of Kingston City Council.

If a Submission is determined to be unclear or deficient in some aspects, but these deficiencies are capable of being clarified or remedied, the Contact Person may prepare a list of questions for the Respondent, to provide the Respondent with an opportunity to clarify its Submission. If these clarifications and amendments do not overcome the deficiencies, the City of Kingston may decide to reject the Submission.

The Respondents may be expected to present the Submissions to the Technical Evaluation Committee during the evaluation process at the request of the Technical Evaluation Committee.

The evaluation will be conducted in the manner described in this section. Upon completing the evaluation in accordance with the evaluation criteria, the Technical Evaluation Committee will recommend the preferred proponent (proponent with the highest number of points) and present its evaluation rationale to Council. The selection of the successful Proponent will be by Council.

8.1 Evaluation review

The evaluation criteria will assist the Technical Evaluation Committee in rating each submission in a consistent and fair fashion. Submissions will be evaluated using two different types of criteria:

Pass/Fail Criteria stipulating material required as outlined in section 7 – Proposal Content. Submissions that do not meet the requirements of these criteria may result in a rejected Submission.

Rated Criteria Submissions will be awarded points based on their relative merit using the scoring matrix in section 8.

8.2 Pass/Fail Assessment

SUBMISSION COMPLETENESS REVIEW		
	PASS	FAIL
Submissions from Qualified proponents will be reviewed to ensure they meet all the material required in section 7 – Proposal Content. Submissions that don't meet this criteria will be subject to disqualification		

8.3 Scored Criteria

1. Price and Related Costs (40%)

A detailed financial proposal must be submitted. The proposal should include:

- A schedule, resource commitment and costing for work prior to the opening of the facility.
- Based on a five-year term which would be renewable on mutual agreement between the Operator and the City and managing only the LVEC, the proposed compensation plan, terms and conditions of the contract.
- Based on a possible investment (if applicable) by the proponent in the LVEC, the proposed terms and conditions of the contract.

- The incremental compensation plan, terms and conditions to carry out the management of the LVEC and the Food and Beverage operations and Sponsorship and Advertising contracts

2. Submission Content and Subsequent Discussions (50%)

Submissions must demonstrate the Proponent clear and coherent strategy and vision and understanding of operating the LVEC in a manner that meets all the needs of the stakeholders in a financially efficient way, allowing for future expansion and flexibility in programming.

Areas that should be addressed in the Submission include:

- Proponent's management philosophy/concept of operation
- Description of how the Proponent differentiates itself from other management companies and optimizes service and earnings to the stakeholders
- Corporate make-up and responsibilities of proponent members, clearly showing the entity that will be ultimately responsible for operating the LVEC
- Management structure showing reporting relationships and control, and demonstrating the roles of the key personnel and delineating their responsibilities and authorities.
- Approach to annual repairs and maintenance, preventive maintenance and replacement capital expenditures
- Narrative delineating the Proponent's ability to perform in the following areas as they relate to facility management:
 - a. Administration
 - b. Marketing including Event Production
 - c. Approach to Ticketing Operations
 - d. Financial Management
 - e. Sponsorship and Advertising
 - f. Stakeholder relations including the community, the City, the tenant(s), suite and club seat licensees, sponsors/advertisers and other City cultural venues/events
 - g. Tourism including working with the Kingston Accommodation Partners (KAP), the Kingston Economic Development Corporation (KEDCO) and the Downtown Business Improvement Association (DBIA)
 - h. Other - A description of other special resource skills or services your company may have which are not addressed in this RFP and will be available as part of the management agreement and other relevant factors the respondent would like considered.

The Proponents will be expected to discuss and present the Submissions to the Technical Evaluation Committee during the evaluation process at the request of the Committee. The presentations will be based on clarification questions asked by the evaluation team and should include only information that was provided in the Submissions.

3. Demonstrated Experience and References (10%)

Submissions should demonstrate a Proponent's clear record of success in the areas of expertise required for operating a sports and entertainment centre of similar nature, size, scope and complexity. Demonstrated Experience should include:

- Operation and marketing of sport and spectator facilities;
- Design and construction of sport and entertainment facilities;
- Schedule adherence on previous projects;
- Previous experience with Sale of Suite and Club Seat Licenses, Naming Rights and Sponsorship/Advertising in similar centres;
- Previous experience in outfitting an event facility;
- Previous experience in pre-opening services;
- Budget/Cost adherence on previous projects;
- Experience and expertise of key project personnel in designing and building sports facilities;
- Track record of the Respondent team

- a) working together;
- b) record of creativity/innovation; and
- c) budget and schedule compliance.
- Previous experience in repairs and maintenance of similar sized sports and entertainment facility.

Three client references (names and telephone numbers) should be included. References should substantiate the experience of respondent company and individuals. In particular, respondents should submit previous experience with references detailing the following:

- the name of the sports and entertainment centre;
- scheduled and actual completion date;
- the prime members involved and the involvement of these members in the LVEC project.

In accordance with Section 7 (Proposal Content) of this RFP, proponents must provide resume(s) of the individual(s) who will be responsible for each area (as described in Section 7) and describe the involvement of these individuals at various stages of this project including the ongoing operations of the facility.

4. Evaluation Criteria

The evaluation criteria will assist the Technical Evaluation Committee in rating each submission in a consistent and fair fashion. The evaluation criteria will be rated and weighted as shown in the Table below.

EVALUATION CRITERIA	WEIGHT
Pricing and Related Cost Prices quoted in Canadian Dollars Provide detail of all costs including applicable taxes and other costs Provide pricing detail on any available or optional analysis	40%
Submission Content and Subsequent Discussions Credibility and Comfort Level with the Proposal and Proponent	50%
Demonstrated Experience and References	10%

An information meeting will be held in Kingston to which all Proponents will be invited. The Project Team may, at its own discretion, including in response to a request of a Respondent, convene further information meetings. Any additional information or clarification that the Project Team decides is required will be covered by written addenda. The information meeting will include high level presentations from key project personnel. Attendance at this meeting is optional. The Project Team strongly encourages Respondents to attend this meeting as it will provide background information on the City's expectations. The information meeting will be held on March 1, 2006 at 11:00 a.m. and will be held at City Hall, 216 Ontario Street, Kingston, Ontario. Please RSVP to Don Gedge via email by February 27, 2006 including expected number of participants.

9.0 SUBMISSION OF PROPOSALS

Proposal responses, irrevocable offer (Section "D"), and required content as per Section A 7.0 **must** be submitted in a complete proposal package. Brochures may be included in the proposal package. Failure to comply will result in rejection of the proposal.

One signed original and fifteen (15) copies of your proposal in sealed envelopes, clearly marked as to contents "**Request for Proposal No. SG-LVEC-01-2006**" will be received not later than 3:00:00 p.m. Local Time, Wednesday, April 5, 2006 and shall be addressed to:

Office of the City Clerk
City Hall
216 Ontario Street
Kingston, Ontario
K7L 2Z3

Proposals received after the above due date and time will not be considered.

Respondents should submit one original and fifteen additional copies of their submissions. One of the copies should be unbound and in a form which allows reproduction. It is preferred that Respondents provide this extra copy in digital format on CD-ROM in MS Word 97-2003 readable format mirroring the content of the paper version of the submission.

B. PROJECT REQUIREMENTS

1.0 INTRODUCTION

The LVEC facility will be an expandable 5,000 seat sports and entertainment ice arena complex. It will be located on City-owned property in the City of Kingston bounded by Ontario Street on the east, Barrack Street to the south, King Street to the west and Place D'Armes to the north.

This RFP will provide the short-listed RFI respondents with the information needed to provide competitive proposals aimed at meeting the City of Kingston's perceived needs for operating the LVEC and providing certain defined needs for other planned and existing recreation arenas.

2.0 PROJECT COSTS

Each proposal submitted in response to this RFP must show the total all inclusive upset cost in Canadian dollars (including applicable taxes).

3.0 BACKGROUND OF THE PROJECT

Various Councils for the City of Kingston have, since the early nineties, been contemplating the development of a new major sports and entertainment facility to host an Ontario Hockey League Major Junior A franchise and provide a suitable venue for live shows, concerts, related sporting events, trade shows and conventions.

In late 2003, Council passed a resolution to support the Large Venue Entertainment Centre Task Force established by the Mayor. Its mandate was to study and evaluate opportunities for the establishment of a Large Venue Entertainment Centre (LVEC) to meet the sporting and entertainment event and activity needs of the community, appropriate site locations and financing models for a LVEC. The recommendations of the LVEC Task Force are summarized in its March 21, 2004 Report to the Mayor.

The City of Kingston proceeded with the basic recommendations for the creation of the new entertainment facility and, after evaluating the merits and risks associated with a potential site on Anglin Bay and receiving the Business Plan and Market Study, concluded that an alternate site be considered for the LVEC facility. The downtown site known as the "North Block" was studied and found to be suitable for accommodating the program established for the LVEC facility. The Business Plan and Market Study established the basic parameters for the LVEC and recommended a process for the design, construction and operations of the facility.

The proposed LVEC, to be located on the North Block site, will serve as a major catalyst for the development of the south-east downtown corridor. It is to be planned, designed and constructed as a signature sports and entertainment facility.

Background materials pertaining to the LVEC which are attached to this document are as follows:

- a. Appendix B: LVEC Business Plan, including the financial model
- b. Appendix C: LVEC Market Study
- c. Appendix D: LVEC Site
- d. Appendix E: Naming Rights Policy
- e. Appendix F: LVEC LEED® Pre-Assessment Report

Further general background information about the LVEC Project can be found on the City of Kingston's website at: www.cityofkingston.ca/lvec

4.0 AVAILABLE CITY RESOURCES

No resources of the City of Kingston will be made available to parties preparing submissions in response to this RFP other than those set out herein.

5.0 OBJECTIVES

The following are the objectives of the Corporation of the City of Kingston in issuing this RFP and entering into a contract with a private firm for operational management services in relation to the LVEC:

- a. To help optimize the functional design of the LVEC in a cost-effective manner.
- b. Prior to the opening of the LVEC, to complete the sale of projected suite and club seat licenses, naming rights and projected sponsorship and advertising.
- c. To manage the purchasing and implementation of FF&E that is compliant with the objective of obtaining LEED® Silver certification or better.
- d. Through pre-opening services, to ensure a smooth transition from substantial completion to opening of the facility.
- e. To maximize the utilization of the facility and its revenue-generating capacity while minimizing the cost to the City.
- f. To book a mix of community-oriented events providing economic and cultural benefits to the City, which by their nature involve all segments of the community and may not lead to direct profits to the facility.
- g. To provide a broad array of cultural, educational, entertainment, sporting and other activities and events to meet the demands of residents of Kingston and the adjacent communities.
- h. To coordinate the LVEC's activities with other cultural and recreation venues in the City. The City reserves the right to determine how this coordination is to take effect.
- i. To involve as much as practical, the local community in the business and employment opportunities associated with the facility and its events.
- j. To protect the City of Kingston's investment in the LVEC through a high level of maintenance standards which are diligently implemented through the life of the Management Agreement.
- k. In addition to responsibility for day to day facility operations, comprehensive responsibility for the facility includes sales/marketing and events management, helping promote tourism, community relations, community programming, fiscal and human resource planning and management.

6.0 ASSUMPTIONS/REQUIREMENTS

The following assumptions apply to this RFP and must be taken into account by all proponents in preparing their responses:

- a. The approach taken in developing new sports and entertainment centres has typically been one of issuing one RFP asking for proponents to assemble a team made-up of a design-build team, an operator and a financing specialist. In practice, with the exception of a limited amount of equity financing, the City has had to guarantee the debt financing and/or the payments on the debt financing. As such, relative to the City raising debt financing either on its own or through a third party, there has been no discernable advantage from the privately raised senior debt. In addition, the interest of the design-build team, composed of a general contractor and an architectural firm, in the project is short-term. They want to complete the project, earn their fees and move on to the next project. The operator's goal is to secure a long term contract for managing the sports and entertainment centre. As

a result, the operator's objectives in the construction and operation of the new facility are more goal congruent with the City.

- b. For the above reasons this RFP has been separated from the design-build RFP. The relationship with the operator is viewed as an important City partnership. The credibility of this venture in the community and the financial success of the LVEC will, to a large degree, depend on the success of this partnership. The successful proponent will be involved in:
- i. Reviewing the design-build specifications
 - ii. The selection of the design-build team
 - iii. The sale of suite and club seat licenses, naming rights and sponsorship and advertising
 - iv. All aspects of FF&E, including the build-outs of food and beverages services
 - v. The management of all pre-opening activities
 - vi. Ongoing operations
 - vii. Booking of recreational ice time for use by community groups
- c. In addition, each Respondent shall concisely describe its plans and strategies for attracting, servicing and repeat scheduling of leading arena, theatre, sports and conference events at the LVEC. Specifically, each of the following categories shall be addressed separately by the Respondent:
- i. Major rock, country, or and pop arena concerts;
 - ii. Family shows such as ice shows and circuses;
 - iii. Conference and trade shows;
 - iv. Consumer shows;
 - v. Private events such as business meetings, weddings, and banquets;
 - vi. Amateur and professional sporting events.

The Respondent shall include specific examples of its ability to attract and successfully service and implement the kinds of events listed. The Respondent shall include any available evidence and examples of networking among the Respondent's clients or other means used to enhance programming and describe the extent to which such means would be available at the LVEC. City events shall have scheduling priority, and the Proposal shall describe how the Respondent plans to meet the City's needs and coordinate City events with outside events.

- d. Included in the LVEC Business Plan are projected cash flow statements. Supplementing this work is the LVEC Market Study which was completed by Deloitte & Touche. It is an independent peer review of the event revenue projections in the LVEC Business Plan. Also included in the study is an assessment of the potential impact of the LVEC events on other Kingston cultural venues. The LVEC Market Study concludes the revenue projections are realistic and, in fact, that the number of events may be significantly higher. In interviews carried out by Deloitte & Touche, both the House of Blues and ClearChannel Entertainment believe there are many similarities between Kingston and London. For this reason they feel the annual number of eleven concerts in the LVEC Business Plan could be as high as twenty to twenty-five.
- e. The cash flows in the LVEC Business Plan are an important component of the project financing. The intent in structuring the compensation component of the Management Agreement with the LVEC Operator is to make the compensation performance-based. The LVEC Business Plan projections will obviously play a role in structuring incentives in the Management Agreement. When reviewing the LVEC Business Plan it is reasonable to assume the agreement with the Kingston Frontenacs will reflect the assumptions in the LVEC Business Plan.
- f. This RFP assumes the term of the Management Agreement will be for five years, with no investment required from the LVEC Operator. However, the City will look favorably at an investment by the LVEC Operator. In the event a proponent does propose making an investment, to facilitate comparing proposals, the term of the contract and other terms and conditions should be clear from the outset.

- g. Further, every party submitting a response to this RFP must take into account the following assumptions:
- i. The LVEC is planned to be located in downtown Kingston on a site in Kingston's Central Business District bounded by Place D'Armes, Ontario Street, King Street and Barrack Street. A drawing of the site is attached as Appendix D.
 - ii. The LVEC is intended to be a highly energy efficient building, certified to a LEED® Silver standard. The operator of the LVEC will have specific responsibilities for FF&E, operation and maintenance that are critical to obtaining and maintaining LEED® certification.
 - iii. No assumptions should be made that information regarding a Respondent or its members or experience, expertise and performance on other projects is known to the City except as provided in the Submissions.
 - iv. The City of Kingston will select a Respondent who it deems, in its sole and absolute discretion, demonstrates the greatest combination of qualifications, experience, vision and financial capability to design and construct the LVEC.
 - v. This RFP is issued and shall be administered in accordance with the provisions of the Purchasing Bylaw of the City of Kingston, Bylaw 2000-134.
- h. Proponents and/or submissions may be disqualified at the sole and absolute discretion of the City for a variety of reasons including but not restricted to the following:
- i. If the submission includes or a Proponent makes false or misleading statements or claims,
 - ii. If a Proponent makes contact with any person other than the LVEC Project Director, including members of Council, during the RFP process up to and including contract award,
 - iii. If a Proponent is found to be insolvent,
 - iv. If a Proponent issues a press release describing all or part of their Proposal.

7.0 RESOURCE REQUIREMENTS

All parties submitting in response to this RFP must assume that any successful submitter will provide all resources set out in this RFP without the assistance of the City and included expenses in relation to the preparation of this RFP. The City of Kingston shall not be liable for any costs in relation to any submission made in response to this RFP.

8.0 MILESTONES AND RESULTS

All timing in relation to this RFP and any resulting contract remains in the sole discretion of the City of Kingston

Release of RFP	February 24, 2006
Information Meeting	March 1, 2006
Deadline for Submitting Questions:	March 15, 2006
Deadline for Responding to Questions:	March 22, 2006
RFP Closes:	April 5, 2006
Final Selection of Operator	May 16, 2006
Construction Start Date	End of July 2006
Construction: Substantial Completion	November 2007

9.0 INTERIM AND FINAL REPORTING

The City of Kingston reserves the right to determine interim and final reporting requirements during the term of the contract.

10.0 FORMAL CONTRACT

- a. Subject to the provisions of Section C.6 and the right of the City of Kingston to provide for otherwise, any proponent subsequently offered the Contract will be required to enter into a Formal Contract satisfactory to the Legal Division of the City of Kingston, which is expected to include, but shall not be limited to, provisions set out in this Request for Proposal, including especially those terms set out in Appendix A.
- b. The contents of the Request for Proposal and the proposal submitted by any successful proponent shall become be included in and form a part of any contract or agreement signed by the Operator and the City, except where specifically modified by the terms and conditions of a resulting contract or agreement.

C. GENERAL TERMS AND CONDITIONS

The following terms and conditions are deemed accepted by all submitters of proposals in response to this RFP and are deemed incorporated into every contract resulting from this RFP:

1. **Improper Delivery.** Electronic, telegraphic, telephone, or facsimile submissions in response to this RFP will not be accepted. Late submissions in response will also not be accepted.
2. **Signing Requirements.** Submissions that are not signed will be rejected. Signing of submissions shall be in the form set out in Appendix A which shall be attached to the proposal. If the submitter of a proposal is an incorporated company, the proposal must be executed by the signing officer(s) of the company with the company seal placed beside the signature(s). If the submitter of a proposal is not an incorporated company, the submitter of a proposal should sign his or her own name in the presence of a witness who should sign beside the submitter of a proposal's name.
3. **Applicable Law.** This RFP, each submission and the Project itself are each subject to the provisions of all applicable law, including:
 - the *Municipal Freedom of Information and Privacy Act*, RSO 1990, c. M54,
 - Occupational Health and Safety Act, R.S.O. 1990, c.0.1
 - the *Fairness is a Two-Way Street Act (Construction Labour Mobility)*, 1999, S.O. 1999, c. 4 and
 - *Ontarians with Disabilities Act, 2001*, S.O. 2001, c.32, section 13 of which statute states:

In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the council of every municipality shall have regard to the accessibility for persons with disabilities to the goods or services.

This RFP, each submission and the Project itself are also each subject to the provisions of the Purchasing Bylaw 134-2000 of the Corporation of the City of Kingston as amended.

4. **City not liable for RFP costs.** The Corporation of the City of Kingston is not liable for any costs incurred by the submitter of a proposal in responding to this "Request for Proposal".
5. **Required Warranties.** Each submitter of a proposal is deemed to expressly declare and warrant in the proposal that:
 - i. the prices in this Proposal have been arrived at independently from those of any other submitter of a proposal,
 - ii. the prices in this Proposal have not been knowingly disclosed by the submitter of a proposal, and will not knowingly be disclosed by the submitter of a proposal prior to award, directly or indirectly, to any other submitter of a proposal or competitor,
 - iii. no attempt has been made, nor will be made, to induce any other person to submit or not to submit a proposal for the purpose of restricting competition,
 - iv. this proposal is in all respects fair and without collusion or fraud.
 - v. there has been no violation of copyrights or patent rights in manufacturing, producing or selling the materials and/or services shipped or ordered as a result of this proposal, and the seller agrees to hold the purchaser harmless from any and all liability, loss, expense, action or suit occasioned by any such violation.
 - vi. all materials and/or services proposed to be supplied to the Corporation of the City of Kingston conform in all respects to the standards set forth by Federal and Provincial agencies.
 - vii. The submitter of the proposal is:
 - a. competent to perform the work described in this RFP ["the work"];
 - b. has the necessary qualifications, including knowledge, skill and experience to perform the work, together with the ability to use those qualifications effectively for that purpose;
 - c. shall supply everything necessary for the performance of the work;
 - d. shall carry out the work in a diligent and efficient manner;
 - e. ensure the work is of proper quality, material and workmanship; is in full conformity with the specifications; and meets all other requirements of this RFP and any subsequent contract.
 - viii. The submitter waives all rights of lien which might arise in relation to any contract from this RFP under section 3(1) of the *Repair and Storage Liens Act*, R.S.O. 1990, c. R.25.

- ix. The submitter has and follows a health and safety plan for employees and representatives who will be present on the property of the Corporation of the City of Kingston as part of any contract arising from this RFP.
 - x. The submitter confirms that the price proposed is an upset limit above which the City is not required to pay and that where there is uncertainty as to the price proposed, the unit price shall govern.
6. **No Obligation to Contract.** Submissions made in response to this Request for Proposals do not constitute the acceptance of a contract with the City of Kingston. Submissions constitute offers which the City may or may not accept on its sole discretion. The Corporation of the City of Kingston further reserves the right to accept or reject any or all proposals or parts of proposals, to order additional units at the price submitted, or to accept any proposal considered in its best interest, and to request re-proposals on the required materials and/or services. The Corporation of the City of Kingston also reserves the right to waive irregularities and technicalities and to do so in its sole discretion. The Corporation of the City of Kingston further reserves the right to award the contract on a split-order basis, lump-sum or individual-item basis, or such combination as shall best serve the interests of the City in the opinion of the City. Each submission of a signed proposal is deemed an irrevocable offer which may be accepted, at the sole option of the Corporation of the City of Kingston and after negotiation, only by entering into a formal contract upon such acceptance the terms, responsibilities, and specifications as required by the Corporation of the City of Kingston including but not limited to those set out herein.
7. **Contract Payments.** Unless otherwise specified, should the Corporation of the City of Kingston enter into a contract relating to the Project, it will make payment of accounts within thirty (30) days of either the date on which the materials and/or services have been accepted to the satisfaction of the Corporation of the City of Kingston, or the date on which the invoice is received, whichever is later.
8. **Limitation of Liability.** Unless otherwise agreed, should the Corporation of the City of Kingston enter into a contract relating to the Project, the other contracting party shall agree to hold the Corporation of the City of Kingston harmless from any and all liability, claim, loss, expense, action or suit arising from the Project.
9. **Dispute.** In cases of dispute as to whether or not deliverables meet the requirements of the Corporation of the City of Kingston, the decision of such agent as the Corporation of the City of Kingston may appoint will be final and binding.
10. **No Assignment.** Unless otherwise agreed, should the Corporation of the City of Kingston enter into a contract relating to the Project, the other contracting party shall not, without the written consent of the Corporation of the City of Kingston, assign or subcontract any aspect of the Project or the deliverables.
11. **Fit for Use.** All things supplied under the Project shall be fit for the use specified in the governing documents whether or not detailed specifications on the various components are not set out in the documents.
12. **No implied Waiver.** The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect his right thereafter to otherwise enforce such provision or to seek damages for the breach thereof.
13. **Governing Law.** All submitter of proposals, including those outside the Province of Ontario, agree that the rights of all parties shall be governed by the laws of the Province of Ontario and that the venue for dispute shall be within the Province of Ontario. Proponents must be able to demonstrate their ability to perform the work under the law of the Province of Ontario and provide such security as might be required and enforceable under the law of the Province of Ontario.
14. **Force Majeur.** Neither party shall be held responsible for any remedy arising from delay or failure to perform obligations under this RFP or the Project when such delay or failure is due to fires, strikes, floods, acts of God or the Queen's enemies, lawful acts of public authorities, or delays or defaults caused by common carriers, which cannot reasonably be foreseen or provided against.
15. **Deemed Satisfaction as to Submission.** The submission of a proposal shall be deemed conclusive proof that the submitter of a proposal has satisfied itself as to all the requirements set out in the RFP, all the conditions which may be encountered, what materials and/or services he/she will be required to supply, or any other matter which may enter into the carrying out of the Project. No claims will be entertained by the Corporation of the City of Kingston based on the assertion by the submitter of a proposal that it was uninformed as to any of the requirements of the proposal.
16. **Default under Project.** In case of a default of performance of the Project, the Corporation of the City of Kingston reserves the right to transfer the Project to another source. All additional expenses arising from such transfer will be charged to the original submitter of a proposal or contractor and are due forthwith.
17. **Title and IP Right to the Work.** Title and intellectual property interest ["IP"] to the work described in this RFP ["the work"] and any part thereof vests in the City upon delivery and acceptance thereof by or on behalf of the City. The risk of loss or damage to the work or part thereof so vested shall remain with the successful proponent Contractor until its delivery of the work in full. Any vesting of title or IP shall not constitute acceptance by the City of the work and shall not relieve the successful proponent of its obligation to perform the work. The successful proponent shall indemnify and save harmless the City and its employees and agents against any claim, action, suit or other

proceeding for any payment or enforcement of any right or remedy that results from or is alleged to result from the creation of or provision of the work or the use or disposal of anything furnished in relation to the work.

- 18. Insurance.** Any selected proponent shall be required to take out sufficient Commercial General Liability Insurance, structured on a “per occurrence” basis, and motor vehicle liability, in the amount of no less than two million dollars (\$2,000,000.00), to cover all risks. WSIB coverage shall be provided as required by law. Additional insurance may also be required depending on the nature of bids submitted. Policies shall be in a form satisfactory to the City and shall be kept in full force during the complete period with proof of which provided to the City on demand. The City shall be named as an additional Insured on the policy, and any successful proponent shall provide evidence of all insurance coverages required by completing the Insurance Certificate provided by the City before the City shall enter into of a contract in relation to this Request for Proposal. Any successful proponent shall provide proof of WSIB coverage before the City shall enter into of a contract in relation to this Request for Proposal.
- 19. Enforcement.** Any successful proponent will have to enter into a legally binding agreement with the Corporation of the City of Kingston. Where any breach of the terms of that agreement should occur, the City shall review all legal remedies available to it and use any appropriate remedies to protect the interests of the Corporation of the City of Kingston including law suit or application before the appropriate court or tribunal. All submitters of proposals in response to this RFP hereby acknowledge and attorn to the jurisdiction of the choice of the City of Kingston in any such legal process.
- 20. Opening Process.** The following processes shall be used when RFP submissions are opened:
- a. Over \$50,000 - only the name of each proponent will be released at the time of opening. The pricing component and the ranking of all accepted submissions will be reported to council.
 - b. Less than \$50,000 - The prices of the successful proponent may be released after award. The pricing submitted from unsuccessful proponents will not be released.

D. FORM OF IRREVOCABLE OFFER

I hereby offer to provide the requirements under RFP No. SG-LVEC-01-2006 the Corporation of the City of Kingston according to the terms set out in this proposal as well as in the RFP including the requirement for and acceptance by a formal contract acceptable to the Corporation of the City of Kingston. I also agree that this irrevocable offer shall be open to acceptance by the Corporation for a period of one hundred twenty (120) days from the closing date for the receipt of proposals.

WITNESS _____

OR

(Affix Company Seal if applicable)

SIGNED _____

NAME _____

TITLE _____

VENDOR NAME _____

ADDRESS _____

CITY/PROV. _____

POSTAL CODE _____

TELEPHONE _____

FAX NO. _____

APPENDIX A

Terms and Conditions to be Incorporated

Subject to the provisions of Section C.(6) and the right of the City of Kingston to provide for otherwise, any proponent subsequently offered the Contract will be required to enter into a Formal Contract satisfactory to the Legal Division of the City of Kingston, which is expected to include, but shall not be limited to, provisions set out in this Request for Proposal, including especially those terms set out as follows.

1.0 City Authority

- a. The City of Kingston is the Owner of the LVEC and retains final and exclusive authority to approve and reject events proposed to be held in the LVEC.
- b. The Operator's appointment of the LVEC General Manager will be subject to the approval of the City.
- c. The Operator shall have authority over the operation of the LVEC and shall be subject to any policies and guidelines established by the City. The policies and guidelines shall be consistent with the purpose and goals of the facility and shall not unreasonably impede or impair the ability of the Operator to effectively and soundly manage the LVEC.
- d. No business of any type other than that described in the resulting contract will be permitted in the facility without prior written consent of the City.
- e. This restriction includes but is not limited to any of the Operator's subsidiary companies or parent companies.
- f. The City will reserve the right to terminate the contract without cause.

2.0 Governance

- a. It is contemplated that the City will appoint a Committee/Board to oversee the City's cultural venues to ensure events and activities are coordinated in such a way as to ensure events and activities are complementary and, when applicable, to achieve economies of scale in certain activities such as advertising to maximize the overall benefits to the City, including its residents and businesses.
- b. The Operator will be subject to the mandate given to this Committee/Board, including delegated City responsibilities.
- c. It is also contemplated that the Operator will work very closely with this Committee/Board.

3.0 Right to Terminate

- a. The City shall have the right to terminate the agreement without liability if, in the sole discretion of the City, it is determined by the City that the performance of the Operator is unsatisfactory, if the Operator breaches the agreement, if the Operator defaults in its performance of the agreement, or the City does not have adequate funds, through appropriations or otherwise, for the City to continue the agreement. The City will also have the right to terminate the agreement without cause and without liability upon ninety (90) days' advance notice if the City deems such termination to be in its best interest as it determines in its sole discretion.
- b. The City may terminate the contract upon written notice to the Operator and his surety if:
 - i. The Operator violates the terms of the contract and the violations are not corrected within fourteen (14) calendar days.
 - ii. The Operator abandons the work to be performed under the contract.

- iii. The Operator is adjudged bankrupt.
- iv. The Operator makes an assignment for the benefit of its creditors.
- c. In the event of any termination of the agreement, the City will have ownership and possession of all records maintained by the Operator in relation to the LVEC, and the City will have the right to receive at its request, copies of any and all of the Operator's records pertaining to the management of the LVEC which are maintained off the premises of the LVEC.
- d. Upon notice of termination, the City may have the right to take over and perform the contract.
- e. In providing these services, the City may take over materials, equipment and vehicles in possession of the Operator.
- f. The Operator, by signing the contract, will give the City right to use the above-mentioned articles to execute the required services.

4.0 Indemnification; Responsibility

- a. The Operator shall indemnify and hold harmless the City, its trustees, officers, employees, agents and representatives from and against all suits, actions, causes of action, claims, losses, costs (including attorney's fees), damages, expenses or liabilities arising out of or in connection with any action, error or omission (including, but not limited to, alleged actions, error or omissions) of the management company, its directors, officers, employees, subcontractors, agents and representatives; the management company shall pay all attorney's fees, damages, court costs and other expenses arising out of any aforementioned litigation or claims incurred in connection therewith and shall, at its own expense, satisfy and cause to be discharged such judgements as may be obtained against the City or any of its trustees, officers, employees or agents pursuant to such litigation.
- b. The Operator assumes sole and entire responsibility and liability for losses, expenses, damages, demands and claims arising out of or in connection with any injury including death, alleged injury, property damage or alleged property damage arising in connection with, or alleged to have risen in connection with, the actions, errors or omissions of the management company, its directors, officers, employees, agents or subcontractors.

5.0 Insurance and Performance Bond

1. All proponents are responsible for Comprehensive General Liability coverage. Comprehensive general liability must have a limit of coverage no less than \$5M with deductibles not to exceed \$25,000.
 - a. \$5M per occurrence
 - b. City as an additional insured
 - c. Primary and non contributory

All proponents are also to provide specific details of comprehensive general liability coverage from the proposed insurer for LVEC venue housing up to 6,000 people. All proponents are also asked to provide separate optional pricing of comprehensive general liability coverage of \$10M with all other characteristics of the coverage being the same.

2. All proponents are also responsible for the following
 - a. Commercial crime coverage: must have a limit of coverage no less than \$50,000 to \$1M with deductibles not to exceed \$25,000.

- b. Automobile liability: \$1M with deductibles not to exceed \$25,000.
 - c. Insurance on any property owned by the Operator which is on site.
 - d. Sexual misconduct coverage, if available.
 - e. Comprehensive Business Interruption insurance.
 - f. Contractors equipment, Installation Floater and other forms of insurance proposed and/or deemed appropriate by the City of Kingston in its sole discretion.
3. Proponents are also requested to submit separate cost estimates for the following categories of insurance coverage in relation to the purchasing and installing FFE including deductible level:
- a. Builders Risk - limit of coverage to be to be specified at no less than the quoted cost of the project. Deductibles not to exceed \$25,000.
 - b. Wrap up Liability - limit of coverage to be specified and is subject to further negotiation depending on the nature of the FFE proposal. Deductibles not to exceed \$25,000.
 - c. Contractors Pollution Liability - limit of coverage to be to be specified at no less than \$2M. Deductibles not to exceed \$25,000.

The City of Kingston, as it deems appropriate based on the separate costs submitted, reserves the option of obtaining the above categories of coverage directly deducting the submitted cost as applicable or requiring any successful proponent to acquire it for the cost submitted as part of the total upset limit quoted.

Proponents must also specify each of the following for Builders Risk, Wrap Up Liability and Contractors Pollution Liability coverage:

- a. the premiums for each separate coverage
- b. the deductibles for each separate coverage
- c. the company that will be providing the coverage (policy wordings are different depending on the company)
- d. confirmation that the Wrap Up Liability coverage must include 24 months of completed operations
- e. that, if the owner provides the coverage, the general contractor will be responsible to pay the deductible in the event of a claim.

6.0 Assignments; Subcontracts

- a. The Operator shall not assign the agreement or any portion thereof to any other party without the prior written approval of the City. All subcontracts for services to be entered into by the Operator must have the prior approval of the City.
- b. Rights and privileges granted to the Operator hereunder shall not be assigned or transferred in any manner whatsoever without written approval of the City.

7.0 Independent Contractor

- a. The Operator is, shall be and remain an independent contractor with respect to all services performed under the agreement and shall have full and exclusive responsibility for its employees. The Operator shall accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment benefits, pensions and annuities nor or hereafter imposed under any Provincial or Federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by the management company on work performed under the agreement.
- b. The Operator shall obey or satisfy all rules, regulations and requirements issued or promulgated pertaining to such payments. The Operator shall indemnify and hold

harmless the City from any contributions, taxes or liability referred to herein. The Operator is not authorized to bind the City to any contracts or other obligations.

- c. At all times during the term of the contract the Operator shall act as an independent contractor and at no time shall the Operator be considered an agent or partner of the City.
- d. Action or agreements of the Operator shall not be binding on the City of Kingston.

8.0 Confidentiality

The Operator shall keep the terms and conditions of the agreement confidential and shall not make public any records or information pertaining to the City, LVEC or services provided by the Operator without the specific prior written approval of the City. The Operator shall use any information regarding the City and the LVEC only for the provision of services under this agreement and shall return any such information and any copies thereof upon receiving any notice of termination under this Agreement or upon reaching of the end of the term of the Agreement.

9.0 Conflict of Interest

During the duration of the agreement, no employee or officer of the Operator shall have or acquire any direct or indirect personal interest which is incompatible or in conflict with the discharge and fulfilment of his or her functions and responsibilities with respect to the Operator's obligations under the agreement. The Operator warrants that no officer, member or employee of the City has any personal or financial interest, direct or indirect, through the Operator in this agreement or in the services to be provided under this agreement, and will not in any manner or form benefit from this agreement.

10.0 Governing Law; Entire Agreement; Amendments

The agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario. The agreement represents the entire agreement between the City and the Operator and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral. The agreement may be amended only by written agreement of the City and the Operator.

11.0 Records and Accounts

- a. Appropriate accurate and complete financial records shall be maintained by the Operator in accordance with sound accounting and business practices. Such books and records shall delineate all activities and operations of the facility and shall be subject to inspection and approval of the City and its representatives.
- b. The Operator shall establish a separate commercial bank account or accounts in the City of Kingston diverse from any other accounts which it may have, which shall be involved in any resulting contract. The Operator shall provide, and keep in force at all times, a written authorization to the depository bank(s) for the City to obtain information and records from the bank concerning any and all accounts and to inspect the same.
- c. The Operator, at intervals and in methods to be agreed upon by the City and the Operator or required by the City Auditor, shall provide detailed reports and records relating to all revenues and expenditures resulting from the management and operation of the LVEC.
- d. At the end of each year of operation the Operator shall submit to the City a report on compliance with contractual provisions and financial activities resulting from this contract.

Such report shall be certified in accordance with generally accepted auditing standards by the City of Kingston's external auditor, and shall be hand delivered to the City not later than October 31st of each year. Each year's operations shall cover the period from September 1 through August 31.

- e. The City reserves the right to and may request additional financial or statistical reports with respect to the LVEC, its management and operation, and the Operator agrees to promptly provide such reports. Such request will be reasonable with respect to timing and repetition.

12.0 Budgeting

- a. The Operator shall submit to the City each year during the term of this agreement a detailed operating budget by June 1st of each year in the format and schedule specified by the City.
- b. The Operator shall have the right to seek additional sums beyond those provided for in the annual budget and the contract for extraordinary expenses. Should such request become necessary, the Operator shall receive such additional funds only if written approval for advancement of the same is given by the City. Such request shall be made prior to any expenditure.
- c. The Operator may submit written request to obtain funding for capital improvement projects on the date and in the format prescribed by the City.
- d. For the first year under the term of the agreement, the Operator together with the City, shall review the existing contract and, depending on timing of the execution of the agreement and on the proposed or approved budget for the LVEC, shall mutually agree on certain adjustments which may be necessary within the authorized funding level.

13.0 Permits and Licenses

The Operator shall obtain and pay for all Permits, Licenses, Federal, Provincial and Local taxes chargeable to its operation as an independent management company.

14.0 Changes or Additions to the Facility

- a. Changes or additions to the facility, fixtures or equipment may be made by the Operator only with the written approval of the City. The City reserves the right to make any changes, modifications, or additions it may feel necessary or in the City's best interest.
- b. Any changes, additions or modifications proposed or made by the Operator shall be of a design and/or décor compatible with the existing design and/or décor of the facility and consistent with the LEED® status of the building. Detailed drawings of proposed alterations, changes, additions or modifications must be submitted and approved, in writing, prior to any action being undertaken.

15.0 Promotion, Sponsorship and Advertising Materials

The City reserves the right to authorize all promotional and advertising materials within the facility. Percentages of discounts, trade outs, and fees shall be shown on monthly and yearly reports.

16.0 Miscellaneous

- a. The Operator may negotiate and enter into service contracts which are reasonably necessary and required in the ordinary course of business in operating the LVEC.
- b. The Operator may not enter into contracts or agreements which extend beyond the term of the City's agreement with the Operator, nor any contract which may obligate the City without prior written consent of the City.
- c. The Operator shall promptly turn over to the City any parts, fixtures, equipment or other assets taken out of service in accordance with the City's established surplus property regulations.
- d. The Operator shall abide by or honour any and all existing contractual commitments or agreements of the City to include scheduled performances at the rates of payment or rental established by the agreement unless through written consent of the City such agreements are modified.
- e. No contracts relating to the facility may be entered into between the Operator and any of its subsidiary, related, sister or parent corporations, or entities, except upon prior written approval of the City.
- f. With the approval of the City and as certain agreements may allow, the City may assign certain agreements to the Operator. In such cases, with prior written approval of the City, various terms and conditions of such agreements may be modified when in the best interest of the City.
- g. Authorized City representatives have the right of access to all portions of the LVEC during normal business hours or by appointment.
- h. The City is interested only in the results obtained from the agreement and the manner and means of performing the requirements of the agreement. The Contractor shall complete this Agreement according to its own means and methods of work, which shall be in the exclusive charge and control of the Contractor which shall not be subject to control or supervision by the City except as to the results of the work. Contractor, for all purposes arising out of this agreement, shall be an independent contractor, and it shall not be deemed an employee of the City. It is expressly understood and agreed that neither the Contractor nor any of its agents and employees shall be entitled to any benefits to which City employees are entitled including, but not limited to, overtime, any retirement benefits, Worker's Compensation benefits, and injury leave or other benefits.

APPENDIX B
LVEC Business Plan, Including the Financial Model

APPENDIX C
LVEC Market Study

APPENDIX D
LVEC Site

APPENDIX E

Naming Rights Policy

APPENDIX F
LVEC LEED® Pre-Assessment Report