



This is the 1st affidavit
of Aurora Faulkner-Killam in this case
and was made on 12/APR/2022

NO. S-217202
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL
MARINA LTD., ETERNALAND YUHENG INVESTMENT HOLDING LTD. AND
0736657 B.C. LTD.

RESPONDENTS

AFFIDAVIT

I, Aurora Faulkner-Killam, barrister and solicitor, of 3rd Floor, 26 Bastion Square, Victoria, British Columbia, AFFIRM THAT:

1. I am a partner at Cox Taylor, counsel for the Alvarez & Marsal Canada Inc. in its capacity as Receiver for the Respondents (the "**Receiver**") in relation to certain matters arising from Vic Reg Vic-S-S-190234 and related Arbitration under CCDC-14 Design-Build Stipulated Price Contract made April 21, 2016 (the "**Action**"). Prior to being counsel for the Receiver, Cox Taylor had acted as counsel to the Respondents, Community Marine Concepts Ltd. and 0736657 BC Ltd. in the Action and on other matters, and now acts for the Receiver with the consent of all parties. As such, I have personal knowledge of the facts herein after deposed to except where stated to be on information and belief, in which case I verily believe them to be true.
2. This affidavit is sworn in support of the application to be made in these proceedings, seeking, among other things, approval of the fees and disbursements of Cox Taylor in its capacity as legal counsel to the Receiver for the period from December 2021 to April, 2022 (the "**Period**") and anticipated fees to discharge the Receiver if the expected refinancing of the Respondents' obligations to the Petitioner (the "**Refinancing**") is approved by this Court and closes within the timeline anticipated by the parties.

3. An application to approve the Refinancing was filed on April 7, 2022. The application to approve fees and disbursements is made to facilitate the wrap up of the receivership and discharge of the Receiver in the event that the Refinancing is approved by this Court and closes as anticipated.
4. I was called to the Bar and admitted as a barrister and solicitor in the Province of British Columbia in May 2010.
5. Since 2010, I have primarily acted in civil litigation including construction, contractual and commercial disputes.

A. Cox Taylor's Activities

6. The petition commencing these proceedings was filed in August 2021, and the Receiver was appointed on December 13, 2021, by operation of a consent receivership order entered November 1, 2021.
7. I received notice of the Receivership in November 2021, and Cox Taylor was retained as counsel for the Receiver in December 2021.
8. Cox Taylor has assisted the Receiver with the Receiver's work with respect to the Receiver's general activities (the "**Activities**"). With respect to the Activities, and noting that the Receiver retains and has not waived solicitor-client privilege with respect to same, Cox Taylor has:
 - (a) attended calls and online meetings and corresponded with the Receiver and others regarding the history of the Action, advice sought on outstanding litigation by and against the Respondents, and operational issues arising from the Action;
 - (b) drafted and revised documents;
 - (c) reviewed various matters and issues and reported to the Receiver;
 - (d) attended calls with stakeholders, including counsel for shareholders of the Respondents, and others; and
 - (e) facilitated negotiation of priority or security agreements for claims of builder's lien to allow for the redemption of the Receivership by the shareholder.
9. In addition to continuing with the above activities, Cox Taylor will:
 - (a) communicate with counsel in the Action; and
 - (b) assist in wrapping up the receivership and the duties of the Receiver.

B. Cox Taylor's Fees

10. In connection with the Activities, during the Period, Cox Taylor incurred fees in the amount of \$6,812.50 plus taxes in the amount of \$817.51, and projected fees, taxes and disbursements of \$4,850.00 to wrap up the receivership, for a total of \$12,480.01.
11. In connection with the Activities, in the course of performing its duties, Cox Taylor's personnel have expended 23.1 hours during the Period. The average hourly rate of all Cox Taylor's personnel billed in connection with the services performed during the Period is approximately \$294.91.
12. It is expected that approximately 10 hours will be required to assist in the activities required to be able to wrap up the receivership as anticipated by the Refinancing, which led to the estimate of projected fees and disbursements described in this affidavit. These activities include negotiating and facilitating the subordination or security of claims of builder's lien at issue in the Action. If the Refinancing does not close as anticipated, I expect that the Receiver and its counsel will have to file a further application for approval of fees and activities.
13. Cox Taylor will issue itemized invoices in respect of additional work done after the Period to be billed against the estimate of projected fees and disbursements. To the extent any amount is not actually billed, funds will be returned to the Receiver and will not be retained by Cox Taylor. If fees exceed the estimate, then in consultation with the Receiver, further Court approval will be sought, or such fees will be written off and not collected. Cox Taylor will not seek payment of any amounts not approved by this Court in accordance with the order appointing the Receiver.
14. In connection with the Activities, Cox Taylor has issued the following invoices in respect of the work performed in connection with this matter during the Period (collectively, the "Invoices"):

| Invoice Date | Invoice Amount | Amount Paid by Alvarez & Marsal Canada Inc. |
|------------------|------------------------|---|
| January 4, 2022 | \$1,377.60 | \$1,377.60 |
| January 31, 2022 | \$1,512.00 | \$1,512.00 |
| March 2, 2022 | \$1,646.40 | \$1,646.40 |
| March 31, 2022 | \$3,094.01 | -- |
| April 2022 | Anticipated \$4,850.00 | -- |
| TOTALS: | \$12,480.01 | \$4,536.00 |


15. Copies of the Invoices, which have been redacted to protect solicitor-client privilege, are attached collectively as **Exhibit "A"** hereto.
16. As of the date of the receivership, the Respondents owed Cox Taylor a total of \$10,002.30 in accounts receivable. The Receiver paid this amount to Cox Taylor on February 14, 2022.
17. A list of the outstanding invoices which were paid by the Receiver and provided in a summary format to protect solicitor client privilege is attached as **Exhibit "B"** hereto.
18. I verily believe that the time expended and the legal fees charged are reasonable in light of the services provided and prevailing market rates for legal services of this nature, specifically:
 - (a) Cox Taylor has assisted the Receiver with all Activities, providing legal advice with respect to the Action and related matters;
 - (b) Cox Taylor has assumed significant responsibility during the Period and has worked closely with the Receiver throughout;
 - (c) Cox Taylor has staffed its legal team with experienced lawyers and properly delegated legal tasks to members of the legal team that had the skills to complete each activity in a cost-effective manner;
 - (d) in working with the Receiver, Cox Taylor has helped the Receiver, parties to the Action, and stakeholders to resolve disputes, and progress towards a transaction that would see creditors paid and the business of the Respondents continue; and
 - (e) Cox Taylor has been transparent regarding its fees and the Receiver believes that Cox Taylor's fees are reasonable in the circumstances.
19. To the best of my knowledge, information, and belief, the information contained in the Invoices as to:
 - (a) the amount of hours worked;
 - (b) the nature of work performed;
 - (c) the identity of the individuals who performed the work; and
 - (d) the rates charged for the work performed,is true and correct in all respects.
20. The incurred fees set out in the Invoices were charged at Cox Taylor's standard billing rates in effect from time to time. Disbursements were charged in amounts which were less

than or equal to standard charges in accordance with the firm's disbursement policy for clients.

21. Further, to the best of my knowledge, information, and belief, the fees and disbursements of Cox Taylor are fair and reasonable as:

- (a) Cox Taylor's professional fees and disbursements were properly incurred;
- (b) the work completed by Cox Taylor was delegated to the appropriate professionals in Cox Taylor with the appropriate seniority and hourly rates;
- (c) Cox Taylor's fees in this matter are consistent with the market for similar firms with the capacity to handle a file of comparable size and complexity;
- (d) each of the invoices was reviewed for reasonableness at the time of billing;
- (e) the Invoices were provided to the Receiver when rendered and all have been approved by the Receiver; and
- (f) the services were performed by Cox Taylor in a prudent and economical manner.

AFFIRMED BEFORE ME at Victoria, BC on
12/APR/2022.


A Commissioner for taking Affidavits within
British Columbia


AURORA FAULKNER-KILLAM

NEIL CARFRA
Barrister & Solicitor
Third Floor, Burnes House
26 Bastion Square
Victoria, BC V8W 1H9

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This is **Exhibit "A"** referred to in the Affidavit #1
of **AURORA FAULKNER-KILLAM** sworn this
12th day of April, 2022.


A Commissioner for taking Affidavits
for British Columbia



COX TAYLOR
BARRISTERS | SOLICITORS | NOTARIES

THIRD FLOOR - BURNES HOUSE, 26 BASTION SQUARE
VICTORIA, BRITISH COLUMBIA V8W 1H9

[ACCOUNT]

TELEPHONE 250.388.4457
FACSIMILE 250.382.4236
HST/GST NO. R122146350

4 January 2022
FILE - C01162008

COMMUNITY MARINE CONCEPTS LTD.

240-730 View Street
Victoria, BC V8W 1J8

Attention: Craig E. Norris

Re: Design-Build Contract with Blue Water Systems

FEEES AND OTHER CHARGES

Summary

| Lawyer Name | Initials | Hours | Rate | Amount |
|---------------------------|----------|-------|--------|------------|
| Aurora L. Faulkner-Killam | AFK | 4.10 | 300.00 | \$1,230.00 |

Time Details

| Date | Initials | Description of Service | Hours | Rate | Amount |
|------------|----------|------------------------|-------|--------|------------|
| 11/08/2021 | AFK | | 0.30 | 300.00 | \$90.00 |
| 12/01/2021 | AFK | | 0.30 | 300.00 | \$90.00 |
| 12/07/2021 | AFK | | 0.40 | 300.00 | \$120.00 |
| 12/13/2021 | AFK | | 0.40 | 300.00 | \$120.00 |
| 12/14/2021 | AFK | | 1.30 | 300.00 | \$390.00 |
| 12/16/2021 | AFK | | 0.50 | 300.00 | \$150.00 |
| 12/19/2021 | AFK | | 0.50 | 300.00 | \$150.00 |
| 12/22/2021 | AFK | | 0.40 | 300.00 | \$120.00 |
| Fees: | | | 4.10 | 300.00 | \$1,230.00 |

TAXES

Goods and Services Tax (5.0%)
on Fees

\$61.50

Goods and Services Tax (5.0%)

Total Goods and Services Tax: \$61.50

Provincial Sales Tax (7.0%)

on Fees \$86.10

Total Provincial Sales Tax: \$86.10

STATEMENT OF ACCOUNT

Total Current Account \$1,377.60

Previous Balance \$169.46

| | |
|--------------------------------|------------|
| AMOUNT DUE & OWING AS OF TODAY | \$1,547.06 |
|--------------------------------|------------|

COX, TAYLOR

Per:

Aurora L. Faulkner-Killam

E&OE

Account is due upon receipt. Amounts outstanding over 30 days will be charged 1.0% interest per month (12.56% per annum).

(A)



COX TAYLOR
BARRISTERS SOLICITORS NOTARIES

THIRD FLOOR - BURNES HOUSE, 26 BASTION SQUARE
VICTORIA, BRITISH COLUMBIA V8W 1J8

[ACCOUNT]

TELEPHONE 250.388.4457
FACSIMILE 250.382.4236
HST/GST NO. R122146350

31 January 2022
FILE - C01162008

COMMUNITY MARINE CONCEPTS LTD.

240-730 View Street
Victoria, BC V8W 1J8

Attention: Craig E. Norris

Re: Design-Build Contract with Blue Water Systems

FEES AND OTHER CHARGES

Summary

| Lawyer Name | Initials | Hours | Rate | Amount |
|---------------------------|----------|-------|--------|-----------|
| Aurora L. Faulkner-Killam | AFK | 4.50 | 300.00 | \$1350.00 |

Time Details

| Date | Initials | Description of Service | Hours | Rate | Amount |
|------------|----------|------------------------|-------|--------|----------|
| 01/04/2022 | AFK | | 0.40 | 300.00 | \$120.00 |
| 01/05/2022 | AFK | | 1.00 | 300.00 | \$300.00 |
| 01/06/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 01/10/2022 | AFK | | 1.00 | 300.00 | \$300.00 |
| 01/12/2022 | AFK | | 0.30 | 300.00 | \$90.00 |
| 01/14/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 01/18/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 01/20/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 01/21/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 01/24/2022 | AFK | | 0.80 | 300.00 | \$240.00 |
| 01/27/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 01/27/2022 | AFK | | 0.20 | 300.00 | \$60.00 |

Fees: 4.50 300.00 \$1,350.00

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TAXES

| | | |
|--|---------|---------|
| Goods and Services Tax (5.0%) on Fees | \$67.50 | |
| Total Goods and Services Tax: | | \$67.50 |
| Provincial Sales Tax (7.0%) on Fees | \$94.50 | |
| Total Provincial Sales Tax: | | \$94.50 |

STATEMENT OF ACCOUNT

| | |
|-----------------------|------------|
| Total Current Account | \$1,512.00 |
| Previous Balance | \$1,547.06 |

| | |
|--------------------------------|------------|
| AMOUNT DUE & OWING AS OF TODAY | \$3,059.06 |
|--------------------------------|------------|

COX, TAYLOR

Per:

Aurora L. Faulkner-Killam

E&OE

Account is due upon receipt. Amounts outstanding over 30 days will be charged 1.0% interest per month (12.56% per annum).

Payment options: For payment by Interac e-transfer, send to accounting@coxtaylor.ca and include your file number in the message. For payment by Visa or Mastercard, please call our receptionist and quote your file number. File number can be found on top right corner of your invoice.



COX TAYLOR
BARRISTERS SOLICITORS NOTARIES

THIRD FLOOR - BURNES HOUSE, 26 BASTION SQUARE
VICTORIA, BRITISH COLUMBIA V8W 1H9

[ACCOUNT]

TELEPHONE 250.388.4457
FACSIMILE 250.382.4236
HST/GST NO. R122146350

2 March 2022
FILE - C01162008

COMMUNITY MARINE CONCEPTS LTD.

240-730 View Street
Victoria, BC V8W 1J8

Attention: Pinky Law, Alvarez & Marsal Canada Inc.

Re: Design-Build Contract with Blue Water Systems

FEES AND OTHER CHARGES

Summary

| Lawyer Name | Initials | Hours | Rate | Amount |
|---------------------------|----------|-------|--------|------------|
| Aurora L. Faulkner-Killam | AFK | 4.90 | 300.00 | \$1,470.00 |

Time Details

| Date | Initials | Description of Service | Hours | Rate | Amount |
|------------|----------|------------------------|-------|--------|----------|
| 02/06/2022 | AFK | | 0.30 | 300.00 | \$90.00 |
| 02/07/2022 | AFK | | 1.10 | 300.00 | \$330.00 |
| 02/08/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 02/11/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 02/14/2022 | AFK | | 0.30 | 300.00 | \$90.00 |
| 02/16/2022 | AFK | | 0.70 | 300.00 | \$210.00 |
| 02/17/2022 | AFK | | 0.40 | 300.00 | \$120.00 |
| 02/17/2022 | AFK | | 0.40 | 300.00 | \$120.00 |
| 02/18/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 02/23/2022 | AFK | | 0.70 | 300.00 | \$210.00 |
| 02/24/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 02/24/2022 | AFK | | 0.50 | 300.00 | \$150.00 |

Fees: 4.90 300.00 \$1,470.00

TAXES

Goods and Services Tax (5.0%)
on Fees

\$73.50

Total Goods and Services Tax:

\$73.50

Provincial Sales Tax (7.0%)
on Fees

\$102.90

Total Provincial Sales Tax:

\$102.90

STATEMENT OF ACCOUNT

Total Current Account

\$1,646.40

AMOUNT DUE & OWING AS OF TODAY

\$1,646.40

COX, TAYLOR

Per:

Aurora L. Faulkner-Killam

E&OE

Account is due upon receipt. Amounts outstanding over 30 days will be charged 1.0% interest per month (12.56% per annum).

Payment options: For payment by Interac e-transfer, send to accounting@coxtaylor.ca and include your file number in the message. For payment by Visa or Mastercard, please call our receptionist and quote your file number. File number can be found on top right corner of your invoice.



COX TAYLOR
BARRISTERS SOLICITORS NOTARIES

THIRD FLOOR - BURNES HOUSE, 26 BASTION SQUARE
VICTORIA, BRITISH COLUMBIA V8W 1H9

[ACCOUNT]

TELEPHONE 250.388.4457
FACSIMILE 250.382.4236
HST/GST NO. R122146350

31 March 2022
FILE - C01162008

COMMUNITY MARINE CONCEPTS LTD.

1 Cooperage Place
Victoria, BC V9A 7J9

Attention: Pinky Law, Alvarez & Marsal Canada Inc.

Re: Design-Build Contract with Blue Water Systems

FEES AND OTHER CHARGES

Summary

| Lawyer Name | Initials | Hours | Rate | Amount |
|---------------------------|----------|-------|--------|------------|
| Aurora L. Faulkner-Killam | AFK | 4.90 | 300.00 | \$1,470.00 |
| Matthew Wehrung | MW | 4.70 | 275.00 | \$1,292.50 |

Time Details

| Date | Initials | Description of Service | Hours | Rate | Amount |
|------------|----------|------------------------|-------|--------|----------|
| 03/01/2022 | AFK | | 0.60 | 300.00 | \$180.00 |
| 03/03/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 03/04/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 03/09/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 03/15/2022 | MW | | 2.70 | 275.00 | \$742.50 |
| 03/15/2022 | MW | | 1.70 | 275.00 | \$467.50 |
| 03/16/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 03/17/2022 | AFK | | 0.10 | 300.00 | \$30.00 |
| 03/17/2022 | AFK | | 0.90 | 300.00 | \$270.00 |
| 03/17/2022 | MW | | 0.20 | 275.00 | \$55.00 |
| 03/18/2022 | AFK | | 0.70 | 300.00 | \$210.00 |

Time Details

| Date | Initials | Description of Service | Hours | Rate | Amount |
|------------|----------|------------------------|-------|--------|------------|
| 03/21/2022 | AFK | | 0.40 | 300.00 | \$120.00 |
| 03/24/2022 | MW | | 0.10 | 275.00 | \$27.50 |
| 03/24/2022 | AFK | | 0.30 | 300.00 | \$90.00 |
| 03/25/2022 | AFK | | 0.50 | 300.00 | \$150.00 |
| 03/30/2022 | AFK | | 0.20 | 300.00 | \$60.00 |
| 03/30/2022 | AFK | | 0.50 | 300.00 | \$150.00 |
| Fees: | | | 9.60 | | \$2,762.50 |

TAXES

| | | |
|--|----------|----------|
| Goods and Services Tax (5.0%) on Fees | \$138.13 | |
| Total Goods and Services Tax: | | \$138.13 |
| Provincial Sales Tax (7.0%) on Fees | \$193.38 | |
| Total Provincial Sales Tax: | | \$193.38 |

STATEMENT OF ACCOUNT

| | |
|---|-------------------|
| Total Current Account | \$3,094.01 |
| Previous Balance | \$1,646.40 |
| AMOUNT DUE & OWING AS OF TODAY | \$4,740.41 |

COX, TAYLOR

Per: 

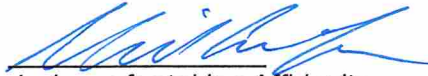
Aurora L. Faulkner-Killam

E&OE

Account is due upon receipt. Amounts outstanding over 30 days will be charged 1.0% interest per month (12.56% per annum).

We accept payment by cheque payable to Cox Taylor, by eTransfer to accounting@coxtaylor.ca, and by Credit Card over the phone or online at pay.coxtaylor.ca. Please quote your file number when submitting your payment.

This is **Exhibit "B"** referred to in the Affidavit #1
of **AURORA FAULKNER-KILLAM** sworn this
12th day of April, 2022.



A Commissioner for taking Affidavits
for British Columbia



COX TAYLOR

BARRISTERS | SOLICITORS | NOTARIES

THIRD FLOOR - BURNES HOUSE, 26 BASTION SQUARE
VICTORIA, BRITISH COLUMBIA V8W 1H9

(11)
[STATEMENT]

TELEPHONE 250.388.4457
FACSIMILE 250.382.4236
HST/GST NO. R122146350

FILES – C-1162-3, 4, 8

Community Marine Concepts Ltd.

Summary of Accounts Receivable Paid by Alvarez & Marsal Canada

Summary of Accounts Issued for the above referenced matters:

C-1162-3 re: Development Permit:

| | | | Balance |
|-------------|--------------------------------------|-----------|-------------|
| 30/MAR/2020 | Account Rendered | 8,316.00 | 8,316.00 |
| 14/FEB/2022 | Payment from Alvarez & Marsal Canada | -8,316.00 | <u>0.00</u> |

C-1162-4 re: General Matters:

| | | | Balance |
|-------------|--------------------------------------|-----------|-------------|
| 30/NOV/2020 | Account Rendered | 1,248.04 | 1,248.04 |
| 02/JUN/2021 | Account Rendered | 100.80 | 1,348.84 |
| 29/JUN/2021 | Account Rendered | 168.00 | 1,516.84 |
| 14/FEB/2022 | Payment from Alvarez & Marsal Canada | -1,516.86 | <u>0.00</u> |

C-1162-8 re: Blue Water Systems:

| | | | Balance |
|-------------|--------------------------------------|---------|-------------|
| 31/AUG/2021 | Account Rendered | 336.00 | 336.00 |
| 10/DEC/2021 | Payment (partial) received from CMC | -267.34 | 68.66 |
| 02/NOV/2021 | Account Rendered | 100.80 | 169.46 |
| 14/FEB/2022 | Payment from Alvarez & Marsal Canada | -169.46 | <u>0.00</u> |

| | |
|--|---------------------|
| TOTAL ACCOUNTS RECEIVABLE PAID BY ALVAREZ & MARSAL: | \$ 10,002.32 |
|--|---------------------|