

RESOLUTION NO. 30444

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH ERWIN MARINE RIVERFRONT, LLC, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE LEASE AND MANAGEMENT OF THE ROSS'S LANDING MARINA PROPERTIES, AS DEFINED IN THE LEASE AGREEMENT, FOR A TERM OF TEN (10) YEARS WITH THE OPTION TO RENEW FOR TWO (2) ADDITIONAL TERMS OF FIVE (5) YEARS EACH, WITH RENT AT A SUM EQUAL TO A PERCENTAGE OF THE ANNUAL GROSS REVENUE OF TENANT MADE FROM OR UPON THE PREMISES AT A RENT FACTOR OF THREE AND A HALF (3.5%) PERCENT OF GROSS REVENUE DERIVED FROM THE PREMISES.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Lease Agreement with Erwin Marine Riverfront, LLC, in substantially the form attached, for the lease and management of the Ross's Landing Marina Properties, as defined in the Lease Agreement, for a term of ten (10) years with the option to renew for two (2) additional terms of five (5) years each, with rent at a sum equal to a percentage of the annual gross revenue of tenant made from or upon the premises at a rent factor of three and a half (3.5%) percent of gross revenue derived from the premises.

ADOPTED: August 11, 2020

/mem

LEASE AGREEMENT

THIS LEASE AGREEMENT is dated as of the ____ day of _____ 2020, by and between the City of Chattanooga and Chattanooga, Tennessee, a municipal corporation, hereinafter referred to as “City”, and Erwin Marine Riverfront, LLC, a Tennessee Limited Liability Company, hereinafter referred to as “Tenant.”

In consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Parties: The parties to this Agreement are the City of Chattanooga, Tennessee, (“City”) a municipal corporation, and Erwin Marine Riverfront, LLC (“Erwin Marine”). If the term “City” is used, it shall mean that the City has that right, duty or responsibility. If the term “Tenant” is used, it shall mean that the Tenant has that right, duty or responsibility.

2. Premises: City leases to Tenant and Tenant accepts and leases from City, upon the terms and conditions hereinafter set forth, the premises which are known as Ross’s Landing Marina; the A-frame building which includes the offices, public restrooms, parking, etc.; the dock and mooring areas consisting of the Olgiati dock, the commercial “pier” dock, the Ross’ Landing “hardedge” & Aquarium docks; the bluff dock, and the marina dock; loading ramps; connecting sidewalks and grass plots together with the easements of ingress and egress necessary and adequate for the conduct of Tenant’s business as described on Exhibit "A" together with all current marina slips or appurtenant thereto (the "Premises").

3. Lease Term; Termination:

A. The term of this Agreement shall commence upon August 1, 2020 (the “Commencement Date”) and shall continue through July 31, 2030 (the “Initial Term”). The parties agree that upon execution of this Agreement, all terms and conditions shall be applicable and enforceable beginning August 1, 2020.

B. Provided Tenant is not in default under this Agreement, and the same shall not have been terminated by City for Convenience as provided in § 3E(2), below, Tenant and City shall have the mutually agreed upon option to extend the Initial Term for two (2) additional terms of five (5) years each (each, a "Renewal Term"). Tenant's occupancy of the Premises during any Renewal Term shall be governed by all of the terms, conditions, covenants, and provisions of the Agreement except the Tenant shall have no further option to extend the Lease Term after expiration of the last Renewal Term. If Tenant desires to exercise its option to extend the Initial Term or a Renewal Term, it must give City notice of its intent to do so at least sixty (60) days prior to the expiration of the Initial Term or the applicable Renewal Term. The phrase "Term" shall be deemed to refer to the Initial Term and any Renewal Term to the extent applicable.

C. The Rent Commencement Date shall mean August 1, 2020, or such later date that Tenant may be placed in possession of the Premises.

D. Each "Lease Year" shall be a period of twelve (12) consecutive calendar months, the first Lease Year beginning on the Rent Commencement Date or on the first day of the calendar month next succeeding the Rent Commencement Date if the Rent Commencement Date is not on the first day of a calendar month. Each Lease Year after the first Lease Year shall begin on the calendar day next succeeding the expiration of the immediately preceding Lease Year.

E. Upon expiration of the Term or any Renewal Term, Tenant shall surrender the premises and remove Tenant's personal property and provide a census/rent roll and copies of all rental or license agreements or usage agreements then in place with respect to boat owners and dockage fee. Consumables, such as fuel, shall be measured and accounted for and reported, with advance opportunities for City's participation in inventory and, upon completion, shall be reimbursed to Tenant, at Tenant's cost of purchase within ninety (90) days next following the end of the Term or Renewal Term. Otherwise, and except for continuance of any uncured (according to the time periods and conditions set forth herein) event of default, Tenant shall be entitled to peaceable continued possession of the leased premises during the original Term and/or, as applicable, any Renewal Term.

(1) Termination by Tenant. In the event City fails to comply with the repair and maintenance obligations set forth in Section 11(C) due to the lack of available funding, Tenant may, upon evaluating in its discretion the options of self-help to cure the failure on the part of the City, terminate this Agreement for convenience upon not less than one hundred eighty (180) days' written notice and vacate the premises without further liability to City for rent or license fees.

(2) Termination by City. City may terminate this Agreement for Convenience effective at the end of the first five (5) years of the Term provided, City shall have given not less than ninety (90) days, advance written notice to Tenant of intent to Terminate for Convenience. The City Council shall be provided notice by the Tenant on or before June 1, 2025 of its business operations so that the City Council may determine whether this Agreement should continue in the best interests of the City. Similarly, at the end of the ten-year Term, or any Renewal Term, City may terminate this Agreement for Convenience upon not less than ninety (90) days' advance written notice to Tenant and the City Council.

4. Rent:

A. Tenant shall pay to City for the Premises as rent, without demand, offset or deduction, a sum equal to a percentage of the annual Gross Revenue (as hereinafter defined) of Tenant made from or upon the Premises at a rent factor of 3.5% of gross revenue derived from the Premises (the "Percentage Rent"). The Gross Revenue will include income derived from boat rentals at the Premises and this income will be included with the permanent and daily rental income derived annually.

5. Audit and Examination of Financial and Other Records:

- (a) City may audit all financial and related records (including digital) associated with the terms of the Agreement including, if applicable, timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Tenant. City may further audit any records associated with the terms of the Agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by City) or to identify conflicts of interest.
- (b) Tenant shall at all times during the term of the Agreement and for a period of seven (7) years after the expiration or earlier termination of the Agreement, keep and maintain the foregoing records. Documents shall be maintained by Tenant necessary to clearly reflect all actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Tenant shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by City at all reasonable times and upon reasonable prior notice, however, that Tenant may condition the copying of such records on the payment by City of the reasonable costs of such copies.
- (c) The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Tenant and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Tenant's obligations to City under the Agreement.
- (d) Costs of any audits conducted in accordance with this Section and not addressed elsewhere will be borne by City unless the audit identifies significant findings that would benefit City. Tenant shall reimburse City for the actual and reasonable costs of an audit that identifies significant findings that would benefit City.
- (e) This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which City may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

6. Definition of Gross Revenue: The term "Gross Revenue" as used in this Agreement shall mean the commission earned on the sale of brokered boats, the gross selling price of all new and used boats, rental of new and used boats, transient docking fees, parts, fuel sales, accessories or services sold at the Premises by Tenant, excluding the following:

- a) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon, provided such selling price had previously been included in gross sales;
- b) The exchange of merchandise between stores or warehouses owned by or affiliated with Tenant, where such exchanges are made solely for the convenient operation of

Tenant's business and not for the purpose of consummating a sale which has theretofore been made at, in or from the Premises;

- c) Goods returned to shippers or manufacturers;
- d) Sums and credits received in the settlement of claims for loss of or damage to merchandise;
- e) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of acceptance thereof;
- f) Cash refunds made upon transactions included within gross sales, not exceeding the selling price of the merchandise returned by the purchaser and accepted by Tenant; and
- g) Sales taxes, so-called luxury taxes, consumers excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services.

7. Payment of Rent: Tenant shall pay the Percentage Rent and all other sums due under this Agreement to City at the address set forth in Paragraph 26, or at such other place or to such other person or persons as City may designate in writing. All sums due under this Agreement shall be payable in current legal tender of the United States of America.

8. Taxes: Real and personal property owned by the City are exempt from taxation. Leasehold and personal property taxes of property owned by Tenant will be the responsibility of the Tenant and shall be paid prior to delinquency.

9. Use of the Leased Premises; Scope of Services: Tenant may use the Premises for no purpose other than as a marina and marina related operations. These purposes shall include without limitation fueling, monthly slip rentals, transient docking, new boat sales, used boat sales, brokerage boat sales, boat rentals, parts and accessories merchandising, and servicing boats.

Tenant shall provide the services set forth on Exhibit "B" incorporated herein by this reference ("Scope of Services.")

10. Condition of Premises and Improvements:

A. City represents that as of the Rent Commencement Date and to the best of City's knowledge:

1. the Premises, and all of the electrical, plumbing, structural and HVAC systems shall be in good working condition and the roof and roofing system will be watertight;

2. the Premises are in compliance with all laws, rules and regulations governing its construction, condition, use and occupancy; the premises are free

from the contamination of hazardous wastes or materials, including but not limited to, asbestos and asbestos containing materials (collectively "Hazardous Materials"). For the purposes of this paragraph, Hazardous Materials shall include but not be limited to, substances defined, as "hazardous substances", "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et. seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.* and any applicable state laws, and the regulations adopted pursuant to said laws.

B. Tenant may make such non-structural alterations at its own cost to the interior of the Marina Office building as Tenant deems necessary or desirable so long as such do not adversely affect the structural integrity of the Premises. Tenant may make exterior and/or structural changes to the Premises only with City's prior written consent, which consent shall not be unreasonably withheld. If Tenant's structural changes are in excess of \$25,000, in addition to obtaining City's prior written consent, Tenant shall use licensed contractors. All licensed contractors shall be required to (i) maintain \$1,000,000 general liability insurance with City named as an additional insured; and (ii) provide worker's compensation insurance, if applicable. All work and alterations done to the Premises by Tenant shall be performed in a lien-free and good and workmanlike manner and in compliance with all applicable laws, including without limitation all requirements imposed by the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* Any alterations, additions or fixtures made or installed by Tenant, may, at the election of Tenant, be removed by Tenant prior to the expiration of the Term so long as Tenant repairs any damage caused to the Premises by such removal.

11. Maintenance and Repairs:

A. Subject to City's representations in Paragraph 10 and City's obligations in Paragraph 11.B, and the provisions of Paragraph 30, and to the exceptions set out hereinbelow, Tenant, at its own expense, shall subject to an annual Five Hundred Dollar (\$500.00) maximum expenditure per item, repair and or maintenance limitation, maintain in good order and repair the following:

1. Exterior:
 - a. Floating Docks and all components of the docks, including gangways, spud poles, floats, bumpers, etc.;
 - b. Plumbing and electrical (subject to subparagraph E below) on all included docks;
 - c. Signage;
 - d. Pump-out system;
 - e. Fuel pumps and fuel delivery system, however, the parties acknowledge and agree that the delivery side of the fuel system is obsolete and in need of repair, updating and in some instances, replacement. Tenant agrees to develop

cost estimates for same and to provide estimates to the City for possible inclusion in the next upcoming budgeting process; and

- f. Office building, landscaping.

2. Interior: (of the existing A-frame marina building only)

- a. Painting and wallcovering repairs and replacements;
- b. Routine plumbing repairs;
- c. Routine electrical repairs;
- d. Routine heating, cooling and refrigeration maintenance and repairs;
- e. Floor covering repairs and replacements;
- f. Glass repair and replacement; and
- g. Interior Doors.

B. Except that Lessee's maximum expenditure for any covered or specified item shall not exceed \$500 per repair. For all repairs and or maintenance items which exceed the sum of \$500, Lessee will develop dollar based cost estimates, with or without outside contractors for such repairs. Cost estimates will be presented to City for review and approval as to cost, scope of repair and outside contractor (if applicable) approval. Lessee shall assume responsibility to make and/or manage repair or to oversee outside contractors unless City shall determine to do so itself.

C. Except that the parties also acknowledge and agree that the fuel tank shall not be included in Lessee's obligation to maintain or repair. Lessee's sole financial obligation shall be to oversee operation, inspection and permitting, and to coordinate state mandated inspections and to report results to City when received. All other costs of fuel tank maintenance, repair and or as necessary, replacement, shall be the responsibility of City, subject to availability of funding.

D. Except and subject to the \$500 per item expenditure limitations set out hereinabove, the items for which Tenant shall be responsible in accordance with Paragraph 11.A. and except to the extent caused by the negligence or willful misconduct of Tenant or its agents, employees or invitees, or to damage resulting from willful misconduct of Tenant is not covered by the insurance that Tenant is required to maintain hereunder, City shall maintain in good order and repair, making all necessary replacements thereof, all portions of the Premises, exterior, structural and non-structural, including without limitation, the roof (including all leaks and sub-structure thereof), exterior walls, doors, parking areas, landscaping, building plumbing and electrical systems, heating and cooling, gas pumps, all fuel lines and tanks, bulkheads and all other improvements located on the Premises.

E. Except that the parties agree and acknowledge that the shore power system positioned on the static concrete Aquarium Dock surface floods every year with fluctuation of the river levels and which creates annual maintenance issues beyond the control of Lessee. Costs of required post flooding maintenance and repair shall be subject to the terms set forth in Section

11. B. Lessee will manage scheduling repairs and may, but shall not be required, to advance costs therefore and City shall promptly reimburse same. Lessee will further investigate the possibility and costs and feasibility of installation of reworking or replacing the present shore power system and report/advise City as to same.

12. Inspection by City: City may go upon the Premises during regular business hours.

13. Liens: Tenant shall, within ten (10) days, pay and discharge, or bond, all claims for work or labor done, supplies furnished or services rendered at the request of Tenant and will keep the Premises free and clear of all mechanic's and materialmen's liens in connection therewith; provided, however, Tenant shall have no authority or power, express or implied, to create or cause any mechanic's or materialmen's lien or encumbrance against the Premises.

14. Destruction of Premises:

A. If the Premises shall be damaged by fire or other casualty to the extent of less than twenty percent (20%) of its replacement cost, City shall promptly commence and thereafter diligently pursue the repair of the Premises (other than Tenant's personal property), provided that Tenant has caused the necessary insurance proceeds to be made available therefore.

B. If the Premises shall be damaged by fire or other casualty to an extent greater than twenty percent (20%) of its replacement cost, or if Tenant reasonably determines within thirty (30) days after the date of the damage that the damage cannot be economically repaired in tenants discretion within one hundred twenty (120) days from the date of the damage, then Tenant shall notify City either that (i) City shall repair the damage to the Premises provided that tenant has caused the necessary insurance proceeds to be made available therefore, or (ii) that Tenant has terminated this Agreement as of the date of the damage.

C. If City has not commenced construction of any repair or restoration work (which in determining such commencement shall include removal of damaged improvements and preparatory clean-up work) within thirty (30) days after actual receipt of the insurance proceeds with respect to such damage or destruction, or, if after the commencement of such repair or restoration work, such work ceases for a continuous period of fifteen (15) days other than by reason of causes or events beyond the reasonable control of City or City's contractor, then Tenant may terminate this Agreement by notice to City. Such termination shall be effective thirty (30) days after such notice is given, provided that such restoration has not commenced, or continued, as the case may be, on or before the expiration of such thirty (30) day period, in which event this Agreement shall continue in full force and effect.

D. If at any time during the last six (6) months of the Term there is any partial damage to the Premises the cost of repair of which exceeds \$20,000.00, either City or Tenant may elect to terminate this Agreement as of the day the damage occurred by giving written notice to the other party within thirty (30) days after the date of the occurrence of the damage. The Tenant shall not be relieved of the obligation to make any insurance proceeds available to make such repairs if it terminates this Agreement. Notwithstanding the foregoing, in the event that Tenant has an option to extend or renew this Agreement, and the time within which said option may be exercised has

not yet expired, Tenant shall have the right to exercise such option if it is to be exercised at all, no later than twenty (20) days after the occurrence of any damage during the last six (6) months of the Term. If Tenant duly exercises such option during said thirty (30) day period, City shall repair such damage pursuant to the procedures of Paragraph 14A, above. If Tenant fails to exercise such option during said thirty (30) day period, then City may at City's option terminate and cancel this Agreement as of the expiration of said twenty (20) day period by giving written notice to Tenant of City's election to do so within thirty (30) days after the expiration of said twenty (20) day period, notwithstanding any term or provision in the grant of option to the contrary.

E. Notwithstanding the foregoing, if destruction or damage of the Premises is caused by Tenant's intentional conduct, Tenant shall not have the ability to terminate this Agreement, as set forth in this Paragraph 14.

15. Condemnation:

A. If at any time during the Term, title to the whole or materially all of the Premises shall be taken by the exercise of the right of condemnation or eminent domain, or by agreement by City with those authorized to exercise such right, this Agreement shall terminate and expire on the date of such taking, and the rent required to be paid by Tenant shall be apportioned and paid to the date of such taking. For purposes of this paragraph "materially all of the Premises" shall be deemed to mean that so much of the Premises (including loss of parking) have been taken that Tenant's customary use thereof for its operations is materially altered in Tenant's reasonable judgment.

B. In the event of the taking of the whole or any part of the Premises at any time during the Term, the rights of City and Tenant to share in the net proceeds of any award for the Premises and damages upon any such taking, shall be as follows and in the following order of priority:

1. To Tenant, the value of fixtures and improvements owned by Tenant, and any other item of damage to Tenant, including the value of Tenant's leasehold, business interruption and relocation expenses. Tenant may join in City's action or pursue a separate action.

2. To City, all of the award except as provided in subparagraph (1) above.

C. If at any time during the Term, title to less than the whole or less than materially all of the Premises shall be taken as aforesaid, all of the award or awards resulting from said condemnation shall be applied by the parties and paid over to the cost of demolition, repair and restoration of that part of the Premises that are the responsibility of each party, as the case may be, substantially in the same manner and subject to the same conditions as those provided in Paragraph 15 with respect to insurance and other monies. Any balance remaining in the hands of City after payment of such costs of repair and restoration shall be kept by City.

D. If the temporary use of the whole or any part of the Premises shall be taken by any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to City, and the term of this Agreement shall not be reduced or affected in any way. Tenant shall continue to pay in full the rent and other charges required to be paid hereunder, without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payment made for such use.

16. Utilities: City represents that the Premises have meters separate from any other property for water and electricity. To wit: Four utility accounts which service the Premises, 3 EPB power accounts and 1 Tennessee American Water Company account:

- EPB power accounts and meter numbers
 - 260-0172.003 meter #580119 Public Restrooms
 - 260-0463-001 meter #622652 A Frame Offices
 - 260-0518-003 meter #656829 Fuel Dock and Marina Slips
- TNAW account # 1026-220012083499

In the event that any of the power pedestals on the docks are not separately metered, it is the responsibility of the Tenant to reimburse the City for use of water and electricity pursuant to the following formula:

\$0.15 per boat length foot per day and \$0.20 per boat length foot per day
For special events, such as Riverbend, July 4th Fireworks, etc. For example,
A 40 foot boat stays one night, (40 x .15 = \$6.00) for that particular boat.
For special events (40 x .20 = \$8.00) for that particular boat.

Tenant shall pay for all such water, telephone and electrical utilities on or before the dates when such payments shall be due and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever constituting a charge against the Premises arising from the nonpayment or a delinquency in payment for said utility services. The Tenant has the right to install additional metering as needed at its own expense. Tenant is also responsible for the payment of water quality fees during the Term of this Agreement.

17. Indemnification

Tenant shall indemnify and save harmless City for, from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against City by reason of any accident, injury, death or damage to any person or property arising out of Tenant's use, occupancy or maintenance of the Premises or any part thereof, unless caused by the intentional act or negligence, as determined by applicable principles of comparative fault of City. In case any action or proceeding is brought against City by reason of any such claim, Tenant, upon written notice from City shall at Tenant's sole cost and expense, defend such proceeding by counsel mutually approved by Tenant and City in writing.

Subject to the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. sections 29-20-101 *et seq.*, City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to property, caused by any activities conducted by City and or condition of the Premises, excepting any such injury, damage or loss caused, as determined by applicable principles of comparative fault, by the negligence, fault or willful misconduct of the Tenant and or its agents, vendors or invitees.

This section shall survive the termination or expiration of this Agreement.

18. Insurance:

A. Tenant shall, during the Term, keep in full force and effect, a policy or policies of commercial general liability insurance for personal injury (including wrongful death) and damage to property covering (a) any occurrence in the Premises, (b) any act or omission by Tenant, or by any of its invitees, agents, contractors, servants or employees anywhere on the Premises, (c) the business operated by Tenant in the Premises, and (d) the contractual liability of Tenant to City pursuant to the indemnification provisions of Paragraph 17, which coverage shall not be less than Five Million and No/100 Dollars (\$5,000,000.00), combined single limit, per occurrence. The liability policy or policies shall contain an endorsement naming the City of Chattanooga, Chattanooga Downtown Redevelopment Corporation and any other entity acting on behalf of the City such as RiverCity Company as additional insureds. Tenant will provide confirmation that Marina Operators Legal Liability coverage of Five Million and No/100 Dollars (\$5,000,000.00) combined single limit, per occurrence. Tenant will provide a certificate of insurance for Workers Compensation for the State of Tennessee with US Longshoremen and Harbor Workers Act endorsements. The Tenant will provide a certificate for automobile liability including hired and non-owned endorsements with limits of One Million and No/100 Dollars (\$1,000,000.00), combined single limit, per occurrence.

B. Tenant shall, during the Term, keep in full force and effect, a policy or policies of so called "All Risk" or "All Peril" insurance insuring the Premises and Tenant's furniture, personal property, fixtures and equipment in the Premises, with coverage in an amount equal to the replacement cost thereof. Tenant may, with City's prior written consent, elect to have a reasonable deductible in connection with such insurance. City consents to a Fifty Thousand Dollar (\$50,000.00) deductible. The City of Chattanooga shall be named as loss payee.

C. Each insurance policy and certificate thereof obtained by a party pursuant to this Agreement shall contain a clause that the insurer will provide the other party with at least thirty (30) days prior written notice of any material change, non-renewal or cancellation of the policy. Each such insurance policy shall be with an insurance company authorized to do business in the state in which the Premises are located, and reasonably acceptable to the other party. A certificate evidencing the coverage under each such policy, showing all named insureds as well as the beneficiaries of any waivers of subrogation, shall be delivered to the other party prior to commencement of the Term. Each such policy shall provide that any loss payable there under shall be payable notwithstanding (a) any act, omission or neglect by the other party or by any tenant or subtenant, or (b) any occupation or use of the Premises by Tenant or by any tenant or

subtenant for purposes more hazardous than permitted by the terms of such policy or policies, or (c) any foreclosure or other action or proceeding taken by any mortgagee or trustee pursuant to any provision of any mortgage or deed of trust covering the Premises, or (d) any change in title or ownership of the Premises. All insurance policies required pursuant to this Agreement shall be written as primary policies, not contributing with or in excess of any coverage which the other party may carry and shall either name the other party as an additional named insured or contain a waiver of subrogation against the other party. Each party shall procure and maintain all policies which are its responsibility entirely at its own expense and shall, at least thirty (30) days prior to the expiration of such policies, furnish the other party with renewal certificates thereof. A party shall not do or permit to be done anything which shall invalidate the insurance policies maintained by the other party or the insurance policies required pursuant to this Paragraph 18 or the coverage there under.

D. Notwithstanding anything to the contrary contained in this Agreement, whenever (a) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Agreement in connection with the Premises, and (b) such party is then covered (or is required under this Agreement to be covered) in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases and waives the other party, its employees, agents and contractors from any liability it may have on account of such loss, cost, damage or expense and waives any right of subrogation which might otherwise exist on account thereof; provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage. The release and waiver contained in this paragraph is intended to expressly release and waive the liability of each party from the consequences of its negligent acts or omissions, subject to the terms of this Section. City and Tenant shall use all reasonable efforts to obtain a release and waiver of subrogation from their respective insurance carriers and obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waiver. The terms and provisions of this Section shall survive the termination or expiration of this Agreement.

19. Signage: To the extent Tenant changes, alters or replaces any current signage, Tenant shall provide City with the signage plans or a description of any signage to be installed on the Premises prior to installation of such signage. Within twenty (20) days following City's receipt of the signage plans or description of the signage, City must provide Tenant with its approval or objections to the signage, which approval shall not be unreasonably withheld. If City objects to the signage, City shall deliver written notice of its specific objections within such twenty (20) day period. Following City's delivery of its written objections, City and Tenant shall meet and confer, as often as is necessary, to resolve any disagreements pertaining to the signage. Tenant acknowledges that all signage on the Premises is subject to all governmental regulations. At the expiration of the Term, Tenant shall remove all such signage and repair any resulting damage.

20. Assignment and Subletting: Tenant may assign or sublet all or any portion of this Agreement or the Premises to an affiliate, parent or subsidiary corporation or other business entity, or to any successor by merger or consolidation. Tenant shall not otherwise assign this Agreement, nor sublet the Premises or any part thereof, without the prior written consent of City.

Tenant shall remain primarily liable for the payment of the rent herein reserved and for the performance of all the other terms of this Agreement required to be performed by the Tenant notwithstanding any assignment or sublease.

21. Surrender: At the expiration of this Agreement, Tenant shall peaceably and quietly surrender the Premises to City in a broom-clean and sanitary condition and in essentially the same order, condition and repair as of the Rent Commencement Date, ordinary and reasonable wear and tear excepted. Any improvements, fixtures or personal property left on the Premises by Tenant at the termination of this Agreement shall belong to City or, at City's election, be removed from the Premises at Tenant's expense.

22. Default - Grounds: The occurrence of any of the following events shall constitute an Event of Default on the part of Tenant:

A. Failure to pay any installment of rent or any other sum due and payable hereunder within thirty (30) days after written notice of failure to pay on its due date;

B. Default in the performance of any of Tenant's agreements or obligations hereunder where such default is (except default in the payment of any installment of rent or other payment of money) continuing for thirty (30) days after written notice thereof from City to Tenant, provided that if such default is other than the payment of money and cannot be cured within such thirty (30) day period, then Tenant will not be in default hereunder if Tenant, within such thirty (30) day period, commences curing of such default and diligently and in good faith prosecutes the same to completion;

C. Tenant shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder; provided, however, Tenant shall not be in default hereunder if any involuntary petition, action or appointment is discharged within ninety (90) days after its commencement or appointment;

D. In the event Tenant shall default in the performance of any of Tenant's agreements or obligations hereunder four (4) or more times in any twelve month period which have resulted in written notice to Tenant, even though the individual events of default have been or are being cured as provided in Paragraph B, such repeated failure in Tenant's performance shall constitute an additional event of default which shall authorize City to any of the default remedies set forth in Paragraph 23 without affording Tenant the opportunity to cure.

23. Default - Remedies: Upon the happening of any such Event of Default, City, at any time thereafter, may in addition to all other remedies provided at law or in equity not otherwise waived below:

A. with notice declare the Term hereof ended and through court proceedings only, City hereby waiving any right of "self-help", re-enter the Premises or any part

thereof and expel or remove therefrom Tenant and all parties occupying the same or any of them, and again repossess and enjoy the same and be entitled to recover as liquidated damages, and not as a penalty, a sum of money equal to the total of (a) the cost of recovering the Premises (including attorneys' fees and costs of suit), (b) the unpaid rent earned at the time of termination, plus interest thereon as set out herein, (c) the present value (discounted at the rate of ten percent (10%) per annum) of the balance of the rent for the remainder of the Term less the present value (discounted at the same rate) of the fair market rental value of the Premises for said period and (d) any other sum of money owed by Tenant to City, including City's reasonable out of pocket costs, expenses, and reasonable attorneys' fees in connection with the preparation of the Premises for reletting and for the reletting itself, excluding any costs of remodeling for a new tenant. City and Tenant further agree that the damages caused by the Tenant's default would be difficult or impossible to estimate accurately and that this measure of damages is a reasonable pre-estimate of City's probable loss resulting from Tenant's breach;

B. Provided however, upon re-entry by City and dispossession of Tenant, through court proceedings only, City hereby waiving any right of "self-help", without declaring the Term ended, City shall make due and diligent effort to relet the whole or any part thereof for the account of Tenant on such terms and conditions and at such rent as City may then deem desirable collecting such rent and applying it monthly on the amount due from Tenant hereunder and on the out of pocket expense of reletting (including, but not limited to, advertising expenses and real estate commissions reasonably required in order to relet the Premises, but, excluding any costs of remodeling for a new tenant), recovering from Tenant the difference between the proceeds of such reletting and the amount of the rentals reserved hereunder, which sum Tenant agrees to pay upon demand. Conditioned upon Tenant having satisfied the provisions of Section 23(A), supra with respect to liquidated damages, Tenant shall be entitled to any surplus funds generated by such reletting. City will not, by any re-entry, be deemed to have terminated this Agreement, and the liability of Tenant for the total rent and other charges thereafter accruing and for damages shall continue until Tenant is notified in writing that this Agreement has been terminated. Such reletting shall not be construed as an election on the part of City to terminate this Agreement unless a written notice of such intention be given to Tenant by City. Notwithstanding any such reletting without termination, City may at any time thereafter elect to terminate this Agreement for such previous breach;

C. City may, after written NOTICE and as opportunity afforded to Tenant of at least thirty (30) days to cure such default, rectify any defaults of Tenant, by entering onto the Premises or otherwise without being liable for trespass or any damages, and add to the rent to be paid hereunder, and to any installment or installments thereof thereafter becoming due, all of City's reasonable expense in so doing, including attorneys' fees, plus interest on any such sum at the rate of ten percent (10%) per annum from the date of such expenditure until repaid;

D. If any installment of rent or any other payment is not paid promptly within thirty (30) days next following the due date, the grace period, it shall bear interest at the rate of ten percent (10%) per annum from the expiration of the grace period until paid;

E. All rights and remedies of City herein or existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other except as specifically waived herein.

24. Holding Over: If Tenant holds over the Premises beyond the end of the Term, this Agreement will be deemed a month to month tenancy and Tenant shall be liable to pay one hundred twenty-five percent (125%) of the rent, together with all other charges or payments contemplated in this Agreement at the times specified herein.

25. Estoppel Statements: Each party will at any time and from time to time within fifteen (15) days after written request by the other, execute, acknowledge and deliver to the other, a written statement certifying that this Agreement is unmodified and in full force and effect if such is the fact (or, if there has been any modification thereof, stating the modification), the dates to which the rentals and other charges have been paid in advance, if any and that there are not any uncured defaults or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser of City, or by any mortgagee or assignee of City or Tenant, or by the trustee or beneficiary of any deed of trust constituting a lien upon the Premises or on the leasehold interest of the Tenant.

26. Notices - Manner of Giving: All notices required to be given hereunder are to be in writing. Such notice shall be personally delivered (which shall include private express courier) against receipt or sent by United States certified mail, return receipt requested, postage prepaid, addressed as follows:

to City: City of Chattanooga
ATTN: Real Property of ECD
101 E. 11th Street, G-4
Chattanooga, TN 37402

City of Chattanooga
Public Works Parks Division
1503 Middle Street
Chattanooga, TN 37408

with copy to: Office of the City Attorney
100 E. 11th Street, Suite 200
Chattanooga, TN 37402
(423) 643-8250
(423) 643-8255

to Tenant: Erwin Marine Riverfront, LLC
ATTN: KAYO ERWIN
3001 Kings Point Road
Chattanooga, TN 37416

(423) 622-1978

And to

Erwin Marine Riverfront, LLC
ATTN: MARC GENTRY
3001 Kings Point Road
Chattanooga, TN 37416
(423) 622-1978

And to

President, Erwin Marine Sales, Inc.
3001 Kings Point Road
Chattanooga, TN 37416
(423) 622-1978

with copy to:

Arnold A. Stulce, Jr.
McKoon, Williams, Atchley & Stulce, PLLC
633 Chestnut Street, Suite 1500
Chattanooga, TN 37405
(423) 756-6400

or to such other place as the respective addressee may have designated in a written notice to the other party. Service by mail will be deemed to have occurred forty-eight (48) hours after deposit of said notice in the United States mail. Personal delivery will be effective upon receipt or upon refusal to accept the notice. Notices may be given by each party's respective counsel.

27. Waiver: No waiver of any default by either party hereunder will be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver will affect any default other than the default specified in the waiver, and then such waiver will be operative only for the time and to the extent therein stated. A waiver by either party of any provision hereof will not be construed as a waiver of any subsequent breach of the same provision, nor will the consent or approval by either party to or of any act by the other be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

28. Time: Time is of the essence hereof.

29. Subordination: This Agreement shall be subject and subordinate (or at City's option, superior) to any and all mortgages or deeds of trust now or hereafter placed upon the Premises and to all future modifications, consolidations, replacements, extensions and renewals of, and all amendments and supplements thereto. Notwithstanding such subordination, this Agreement, so long as Tenant is not then in default of any of the terms, covenants and provisions

hereof, shall not terminate or be divested by foreclosure or other default proceedings under such mortgages or obligations secured thereby, and Tenant shall attorn to and recognize the City, mortgagee (which term shall include the beneficiary under any deed of trust) or the purchaser at the foreclosure sale in the event of such foreclosure or other default proceeding, as Tenant's lessor for the balance of the Term of this Agreement, subject to all of the terms and provisions hereof. Tenant shall execute, acknowledge and deliver any and all documents required to effectuate the provisions of this paragraph. Notwithstanding the foregoing, Tenant shall not be obligated to take possession, or if possession is taken, pay rent or any other charges hereunder unless Tenant receives a nondisturbance agreement from any and all existing mortgagees and/or ground lessors essentially providing that Tenant's occupancy under this Agreement shall not be disturbed so long as Tenant is not in default hereunder and such mortgagee or ground lessor agrees to be bound by each and all of the terms hereof; provided any successor-in-interest to City shall not be liable for any default of City under this Agreement occurring before such party takes title to the Premises, but shall assume and covenant to perform the obligations, duties and liabilities of the City under this Agreement arising from and after such date and such successor-in-interest shall not be bound by any payment of rent for more than one month in advance or any amendment or modification of this Agreement made without the written consent of such successor-in-interest after the date of such non-disturbance and attornment agreement. Furthermore, this Agreement shall not be subordinate to any future mortgage, ground lease or deed of trust unless and until Tenant has received a nondisturbance agreement from any and all future mortgagees and/or ground lessors essentially providing that Tenant's occupancy under this Agreement shall not be disturbed so long as Tenant is not in default hereunder; provided any successor-in-interest to City shall not be liable for any default of City under this Agreement occurring before such party takes title to the Premises, but shall assume and covenant to perform the obligations, duties and liabilities of the City under this Agreement arising from and after such date and such successor-in-interest shall not be bound by any payment of rent for more than one month in advance or any amendment or modification of this Agreement made without the written consent of such successor-in-interest after the date of such non-disturbance and attornment agreement.

30. Force Majeure.

The parties shall not be deemed to have defaulted or failed to perform hereunder if that party's default or inability to perform shall have been caused by an event or events beyond the control and without the fault of that party, including (without limitation) acts of God, acts of government, fire, flood, explosions, strikes, , labor disputes, or sabotage, acts of war or a public enemy, terrorist acts, civil riots or commotions, or acts of military authority, epidemic or pandemic (each, a "Force Majeure Occurrence"). If the Force Majeure Occurrence continues more than sixty (60) days or otherwise materially affects a party's or the parties' ability to perform its obligations as contemplated by this Agreement, then the parties will negotiate in good faith as to whether this Agreement shall be terminated or otherwise modified to account for the Force Majeure Occurrence. In the event this Agreement is terminated due to a Force Majeure Occurrence, then (i) each party hereby waives any claim for damages or compensation from the other party by reason of such termination and (ii) neither party shall be liable to the other for failure to perform their obligations as a result of a Force Majeure Occurrence and such obligations hereunder shall be fully excused without any additional obligations.

31. Invalidity: If any provision or any part thereof shall be determined to be invalid, unenforceable or illegal, then such provision shall be deemed severed from this Agreement, and shall not affect the remaining provisions hereof.

32. Quiet Enjoyment: Tenant, upon paying the rent and all additional rent herein provided for and in observing and performing all the terms, agreements, and provisions of this Agreement on Tenant's part to be kept, observed and performed, shall quietly have and enjoy the Premises during the term of this Agreement.

33. Construction: This Agreement shall be strictly construed neither against City nor Tenant.

34. Attorneys' Fees: To the extent allowed by law, in the event that it becomes necessary for any party to employ an attorney to enforce any of the terms or provisions of this Agreement, the prevailing party shall be entitled to all of its reasonable attorneys' fees and court costs (if any) in connection therewith, the amount to be fixed by the court without a jury.

35. Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the parties, their heirs, personal representatives, successors and assignees. The obligations of the parties shall be joint and several.

36. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

37. Tenant's Use: Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, except for such Hazardous Materials as are necessary or useful to Tenant's business and in all events in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Materials. If Hazardous Materials are used, stored, generated or disposed of on or in the Premises by Tenant or if the Premises become contaminated in any manner by Tenant, its agents, employees, contractors or invitees, Tenant shall indemnify and hold City harmless from any and all claims, demands actions, liabilities, costs, expenses, damages, fines, reimbursement, restitution, response cost, cleanup cost and obligations (including investigative responses and attorneys' fees) of any nature arising directly or indirectly as a result thereof or as a result of the failure by Tenant to comply with any and all environmental laws. Without limitation of the foregoing, if Tenant causes or permits its agents, employees, contractors or invitees to cause the presence of any Hazardous Material on the Premises which results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Material on the Premises. Tenant shall first obtain City's approval for any such remedial action. The terms of this Section shall survive the termination or expiration of this Agreement.

38. City Transfer: City and Tenant mutually covenant and agree that City shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in

the Premises. In the event of any transfer of title to the Premises, upon notification to Tenant of such transfer the transferor shall be and hereby is entirely freed and relieved of all future covenants, obligations and liabilities of City hereunder, and it shall be deemed and construed as a covenant running with the land without further agreement between the parties or their successors in interest, or between the parties and the transferee of title to the Premises, provided that such successors in interest or transferee has assumed and agreed to carry out any and all such covenants, obligations and liabilities of City hereunder, and Lessee agrees to attorn to any such transferee of purchaser upon all terms and conditions of this Agreement.

39. Corporate or Partnership Authority: If Tenant executes this Agreement as a corporation or partnership (general or limited) or limited liability company, each person executing this Agreement on behalf of Tenant hereby personally represents and warrants that: (a) Tenant is a duly authorized and existing corporation or partnership (general or limited) or limited liability company; (b) Tenant is qualified to do business in the state in which the Premises are located; (c) the corporation or partnership (general or limited) or limited liability company has full right and authority to enter into this Agreement; (d) each person signing on behalf of the corporation or partnership (general or limited) or limited liability company is authorized to do so; and (e) the execution and delivery of the Agreement by Tenant will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which Tenant is a party. If City executes this Agreement as a corporation or partnership (general or limited) or limited liability company, each person executing this Agreement on behalf of City hereby personally represents and warrants that: (a) City is a duly authorized and existing corporation or partnership (general or limited) or limited liability company; (b) City is qualified to do business in the state in which the Premises are located; (c) the corporation or partnership (general or limited) or limited liability company has full right and authority to enter into this Agreement; (d) each person signing on behalf of the corporation or partnership (general or limited) or limited liability company is authorized to do so; and (e) the execution and delivery of this Agreement by City will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which City is a party.

40. Counterparts: This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument binding on the parties hereto when each party has executed at least one counterpart.

[signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF CHATTANOOGA

By: _____
ANDY BERKE, *Mayor*

**TENANT:
ERWIN MARINE RIVERFRONT, LLC**

By: _____
LOUIS H. "KAYO" ERWIN, *President and Manager*

LIST OF EXHIBITS

Exhibit "A" - Legal Description of Premises

Exhibit "B" - Scope of Services

EXHIBIT "A"

Page 1 of 2

LEGAL DESCRIPTION OF PREMISES

PREMISES: For the acknowledged consideration, City rents and leases to Tenant and Tenant rents and leases from City the following described premises located in the City of Chattanooga, Hamilton County, Tennessee, to wit:

Within the confines of the area known as Ross's Landing Marina, the A-frame building which includes the offices, public restrooms, parking, etc.; the dock and mooring areas consisting of the Olgiati dock, the commercial "pier" dock, the Ross' Landing "hardedge & Aquarium docks; the bluff dock and marina dock; loading ramps; connecting sidewalks and grass plots together with the easements of ingress and egress necessary and adequate for the conduct of Lessee's business as hereinafter described.

EXHIBIT "A"
Page 2 of 2

INSERT DRAWING OF THE PREMISES

EXHIBIT "B"
Scope of Services

It is the responsibility of the Tenant to fully manage, operate, and maintain the City's Marina facilities as outlined herein in accordance with the policies and procedures established by the City ordinances and in accordance with industry standards and best practices.

The tenant shall provide, as a minimum, professional services and adequately experienced dedicated personnel necessary to perform the following:

Task 1 – Marina Operations

A. Leasing

- a. Tenant shall use its reasonable discretion to establish the terms and conditions of occupancy by boat slip and other users.
- b. Tenant shall have full management responsibility of all docks, regardless of term length for use of the areas.
 - i. An area will need to be made available to the general public for the hourly use of specified mooring location; this location will need to be reviewed and approved by designated City representative.
- c. Establish and maintain a current and complete database of all marina users and accounts
- d. Ensure all leases and agreements have been properly executed
- e. Collect rental and utility fees from Marina users and deposit per established agreement determines
- f. Track and follow up on late payments
- g. Coordinate with the City Attorney's Office and PW Department to prepare appropriate paperwork to initiate and complete unlawful detainer actions and/or liens on vessels, as needed
- h. Track, collect, and distribute facility and mail keys from tenants and guests, if applicable.

B. Marina User Services

- a. Sewer Services
 - i. Provide sewer pump-out services to users on a regular schedule and as needed for transient boaters.
- b. Marina User Requests
 - i. Respond to and address any service requests received from marina users
- c. Water Services
 - i. Perform monthly reads of water meters for billing purposes
- d. Electricity Services

- i. Perform monthly reads of electricity meters for billing purposes
- e. Safety
 - i. Maintain the safety and security of the marina for marina users and guests
 - 1. Tenant agrees to provide, at its sole cost and expense, a 24 hour mechanized or internal based security system for the Premises. The complete system will include security cameras, motion detectors and gates as needed to prevent unauthorized access to the Premises. This provision shall not be construed to require the presence of security personnel or 24 hours per day active monitoring of the security system.
 - 2. If the Tenant chooses, they shall also provide on-site after hours and special event security personnel at their own expense
 - ii. Enforce marina operating rules, regulations, and standards
- f. Fuel Sales
 - i. Ensure fuel sales are available during daylight hours.
- g. Mail
 - i. Provide an on-site point of contact for user mail and packages, if applicable
- h. Public Restrooms
 - i. Tenant agrees to provide access to the restroom facilities each day from 9:00 AM to 6:00PM for general public use and 24 hour access to transient boaters via a combination lock.
 - ii. Ensure the area is kept clean and sanitary.

C. On-Site Personnel

Among the administrative responsibilities of the Tenant are the following items:

- a. Personnel Administration: Tenant will provide staff to undertake the operation, maintenance, administration, customer service, and other services of the Marina as outlined herein. Tenant will be required to supply adequate staff, as reviewed by and agreed to by the City, to successfully perform the services as listed herein. The City encourages the retention of current employees of the Downtown Marina. Tenant will be responsible for the selection, bonding (where applicable) and training of all employees. Tenant shall assume primary liability for the acts, negligence and omissions of its employees.
 - i. Tenant shall employ persons who are fully trained, competent, and qualified with the skills and experience necessary to provide the services during the term of the contract.
 - ii. Tenant will have access to an adequate labor pool within twenty-five (25) miles of the City.
 - iii. Tenant is required to do background checks and drug testing on all employees prior to employment and provide proof of such to the City

- upon request. Marina personnel will demonstrate high ethical standards of conduct and will observe all written rules and regulations concerning their work assignments as provided by the Company.
- iv. Tenant will ensure that all Marina personnel wear City approved uniforms and be properly groomed while on duty. The uniform must display approved insignia that clearly identifies the wearer as being responsible for City marina services.
- b. The Tenant shall have an on-duty, full-time two person management team which shall oversee the operation and employees of the Tenant, who shall manage and control the operation, ensuring high quality service and employee performance. The Marina Management team will:
- i. Provide some on-site supervision during daylight hours (approximately 4 hours per day more or less) Mondays – Fridays, excepting holidays.
 - ii. Receive and respond to all complaints, disputes, problems, and all other matters requiring Marina Manager attention
 - iii. Attempt in good faith to resolve and settle such complaints, disputes, or problems
 - iv. Develop and maintain a good relationship with users
 - v. Provide any information City is required or elects to furnish to users
 - vi. Continuously manage and coordinate the ordinary and usual business and affairs pertaining to the operation, maintenance, and management of the property and whether or not present and on-site
 - vii. Take all responsibilities and obligations, and perform and take all services and actions customarily performed or taken by property managers of properties which are similar in nature, location, and character to the City property
 - viii. Maintain detailed documentation of expenses via invoices and receipts
 - ix. Maintain all historical records (paid invoices, leases, inspection reports, etc.)
 - x. Understand and abide by the latest local, state and federal legislation that applies to renting and maintaining Marina facilities, including but not limited to environmental regulations pertaining to Marina operations and U.S. waterways.

Task 2 – Marina Maintenance

A. Custodial Services

- a. Clean, stock, and inspect Marina facilities on a daily basis during the work week so that they are in good working order. Facilities include restrooms, offices, and dock areas
- b. Maintain outdoor areas by removing trash and debris

- B. Docks
 - a. Perform minor repairs and general upkeep of docks, slips, and fingers
 - b. Perform regular bi-weekly inspections of health and safety conditions of premises
- C. Emergency Services
 - a. Set in place emergency protocols to provide emergency services at the Marina when requested by tenants and/or the City. Emergency services may include:
 - i. Emergency pumping for boats taking on water
 - ii. Towing assistance
 - iii. Oil spill containment assistance
 - iv. Storm damage assistance
- D. Repairs, subject to the provisions and monetary limitations in Section 11 of the Lease:
 - a. Perform minor repairs to docks, facilities, and general areas to maintain safe upkeep of the Marina
 - i. Major repairs must be discussed with Director of Park Maintenance to determine best course of action and responsibility
 - b. Establish a preventative maintenance policy to identify and deal with repair needs in the Marina
 - c. Maintain and monitor a 24-hour emergency repair hotline
- E. Capital Improvements
 - a. Work with City to develop a Capital Improvement Plan and identify possible funding.
 - i. Capital improvements to be submitted by December 31, annually.
- F. Marina Office Building “A-frame building”
 - a. Offices, public restrooms and all other portions within the structure will be the full responsibility of the proposer. This is inclusive of all maintenance and cleaning functions.
 - b. Grounds and landscape maintenance to outdoor area around office building
 - c. Debris removal of Marina office parking lot

Task 3 – Other Administrative Duties

- A. City Liaison
 - a. Monthly Marina Report
 - i. Provide a monthly report to the City by the 10th day of each month for the preceding month regarding all operations of the Marina, including but not limited to the following:
 1. Record of inspections and maintenance performed
 2. Condition of premises (facilities, parking, safety, etc.)
 3. Schedule showing when pump-outs, water meter reads, electricity meter reads, and dock inspections were performed
 4. Safety and security issues

5. User/guest complaints or problems and resolutions
- ii. Attached to the report should be a detailed monthly invoice for each task, invoices will detail:
 1. Hourly labor rate and total hours worked per task (or per employee)
 2. Itemized breakdown of materials used
 3. Separate line item for any material mark up
- b. Annual Maintenance Budget
 - i. Prepare an annual maintenance budget, including capital improvements for review and approval by the City, no later than December 31 annually
- c. Notifications and Communication
 - i. Tenant shall communicate any issues or events that occur at the City Marina to the City in a timely manner
 - ii. Advise the City of any violations of Marina operating rules, regulations, and standards
 - iii. Notify the City of any necessary major repairs to infrastructure or facilities on the property
 - iv. Provide recommendations to the City on maintenance issues, sub-contractor scope of services, selection of sub-contractors, and other duties necessary to maintain a public marina
- d. Vessels
 - i. Upon request by the City, assist with the sale, donation, or disposal of lien and/or abandoned vessels
- e. Other
 - i. Assist City with other project related duties as assigned
 - ii. Lead and/or assist City and others with activation of waterfront area
 1. Work closely with special events teams for coordination of waterfront use and activation
 2. Participate in waterfront event meetings as needed