

**CITY OF CORPUS CHRISTI**

**BI-0151-09**

**MARINA FUEL STATION & SOUVENIR,  
RESTAURANT OR RELATED MARINE  
DEVELOPMENT**

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# **SECTION 1**

## **Notice of Request for Proposal**

### **1.1 Request for Proposal**

The City of Corpus Christi “City” issues this request for proposals “RFP”. The City is interested in proposals from Proposers that can provide MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT as defined in this RFP. Proposers may propose only a Marina Fuel Station. Alternatively, Proposers may propose a Marina Fuel Station and a souvenir shop, restaurant or related marine development. In either case, at a minimum, Proposer must propose a Marina Fuel Station.

The City hereby designates Paul Pierce as the Procurement Officer with overall responsibility for procurement and administration of this service. Mr. Pierce’s information is as follows:

**Paul Pierce**  
**Procurement Manager**  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277  
1201 Leopard Street, 4<sup>th</sup> Floor, Purchasing, 78401-2825  
Phone: (361) 826-3164  
Fax: (361) 826-3174  
[paulp@cctexas.com](mailto:paulp@cctexas.com)

All inquiries or requests regarding this RFP must be submitted, in writing, to the Procurement Officer as indicated above, or his duly authorized designee, as specified in writing. Other employees do not have the authority to respond for the City in writing and any attempt to question other employees regarding this RFP may result in the City disqualifying that Proposer. Only written responses from the Procurement Officer or his duly authorized designee will be binding with regard to inquiries requesting clarification or additional information. The Procurement Officer’s or his duly authorized designee’s written responses will be forwarded simultaneously to all prospective Proposers.

A pre-proposal conference will be held on the date and at the time and location specified therefor in Section 1.3 of the RFP.

1. The purpose of the pre-proposal conference is to provide an opportunity for prospective Proposers to discuss, pose questions and obtain clarification from the City regarding this RFP. Additionally, Proposers will be afforded a tour of the site.
2. All questions and requests for clarification from the City shall be received, in writing, by the Procurement Officer specified herein by the date and time specified therefor in Section 1.3 of this RFP. Questions and requests for clarification received after such time shall be deemed late and shall not be considered. Questions and requests for clarification may be transmitted to the Procurement Officer regular mail, private courier, facsimile or electronic mail service or by delivery in person. Facsimile and electronic mail service is provided by the City as a convenience and the City makes no guarantees, express or implied, regarding the functionality of said services. It is solely the responsibility of the

Proposer to ensure questions and requests for clarification are received by the Procurement Officer by the deadline for same detailed herein. The electronic time-stamp in the Purchasing Division of the City of Corpus Christi at City Hall, 1201 Leopard Street, Corpus Christi, Texas, shall be the official time stamp and shall maintain the official time for the purpose of this Request for Proposal.

3. The City shall provide written responses to all prospective Proposers in the form of written addenda, if such information is necessary to Proposers in submitting proposals or if the lack of such information would be prejudicial to uninformed Proposers. Oral explanations or instructions provided by the City before the award of the contract shall not be binding upon the City.

## **1.2 Submission of Proposal**

The Proposer must submit one (1) original and ten (10) copies of its proposal in response to this RFP to the City of Corpus Christi, as specified below. All proposals must be complete and accurate and must be in City approved format referenced in Section 4.2

The City will review and evaluate written proposals submitted in response to this RFP. The City may conduct additional interviews with selected Proposers for the purpose of further exploring and clarifying the Proposer's response. The City will rank the Proposers based on the suggested evaluation criteria set forth in the Evaluation Model of this RFP. The City will then negotiate the applicable terms and conditions into the final form of the Contract. If contract negotiations are not successful with the selected Proposer, the City will begin negotiations with the next highest ranked Proposer on the list. Award(s) will be made considering the best overall value to the City. The City intends to award one contract to one Contractor.

The City will utilize an Evaluation Model specifically designed for this analysis. The Evaluation and Selection process will be based upon: 1) Development Concept, 2) Proposer's Profile & Qualifications, 3) Financial Information and 4) Fee Structure. The weights assigned to each of these parameters will be designated by the Evaluation Committee.

Proposals should be returned in a sealed envelope or container marked with the Proposer's name, address and the RFP number. Proposals will be received until the submission deadline specified therefor in Section 1.3 of this RFP. Without exception, proposals received after this deadline are considered non-responsive and will not be considered.

Proposers may mail the Proposal to the following address:

*City of Corpus Christi (1 original and 10 copies)  
Purchasing Division  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277*

**OR**, Proposers may deliver the proposal in person or have the proposal delivered via courier to the following addresses:

*City of Corpus Christi (1 original and 10 copies)  
Purchasing Division  
4<sup>th</sup> Floor, City Hall  
1201 Leopard St.  
Corpus Christi, Texas 78401-2825*

Delivery to or receipt in any other area of the City will not satisfy the requirement for delivery to the Purchasing Division.

**Proposer shall comply with the additional detailed instructions regarding submission of Proposals found in Section 4.0 of this RFP.**

### **1.3 Schedule**

The following is a schedule of project evaluation and selection activities:

<b>Date</b>	<b>Project Activity</b>
<b>June 26, 2009</b>	<b>Proposed date Request for Proposal issued</b>
<b>July 8, 2009</b>	<b>Pre-Proposal Conference: 3:00 p.m. Central Time (CT) Boaters' Center #68 Cooper's Alley L-Head Corpus Christi Marina Corpus Christi, Texas</b>
<b>July 13, 2009</b>	<b>5:00 PM CT deadline for submission of: 1) written questions 2) Acknowledgment of Receipt and Notice of Intent to Submit Proposal</b>
<b>July 31, 2009</b>	<b>Proposals due by 5:00 PM CT</b>
<b>September 15, 2009</b>	<b>Proposed Date of Award of Contract by City Council</b>
<b>September 22, 2009</b>	<b>Proposed Alternate Date of Award of Contract by City Council</b>

**It is important that the City is able to verify prospective Proposers' receipt of this RFP. The following ACKNOWLEDGMENT OF RECEIPT AND NOTICE OF INTENT TO SUBMIT PROPOSAL ("NOTICE") must be completed and returned as soon as possible, but no later than the date and time specified therefor in Section 1.3 of this RFP. Failure to return said Notice by this deadline may prevent a prospective Proposer from receiving amendments, responses to questions, etc.**

**1.4 Acknowledgement Form**

**ACKNOWLEDGMENT OF RECEIPT  
AND NOTICE OF INTENT TO SUBMIT PROPOSAL**

REQUEST FOR PROPOSAL <b>BI-0151-09</b>
MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT

In acknowledgment of receipt of this Request for Proposal, the undersigned agrees that a complete copy of this RFP has been received and offers notice of their intention to submit a proposal to provide MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT outlined in this RFP.

This Acknowledgment of Receipt and Notice of Intent to Submit Proposals to this RFP should be signed by an authorized representative and returned to the Procurement Officer by the date and time specified therefor in Section 1.3 of this RFP. This will assure that any addenda or additional information and written answers to questions will be forwarded to you. **Proposers who choose to mail this form should send it by registered or certified U.S. mail to the address set forth in Section 1.1 of this RFP, or fax to (361) 826-4374 Attention:—Paul Pierce, Procurement Manager, or by e-mail to [paulp@cctexas.com](mailto:paulp@cctexas.com).** Facsimile and E-mail services are provided as a courtesy to proposers, however, the City assumes no responsibility for documents transmitted via facsimile or E-mail and not received by the Procurement Officer in a timely manner.

The person named herein shall also serve as the contact person who must be available, with little or no notice, to answer questions posed by the Evaluation Committee during the evaluation process.

COMPANY NAME: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

FACSIMILE #: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

# **SECTION 2**

## **Conditions Governing the Procurement**

### **2.1 Acceptance of General Requirements**

The Proposer must specifically accept the project requirements by paragraph number contained within Sections 2.0, Conditions Governing the Procurement and 3.0, Scope of Work, in the transmittal letter as set forth in Section 4.3 of this RFP.

### **2.2 RFP Notice Requirement**

In accordance with City procedures, notice of Request for Proposal shall be published in the Corpus Christi Caller-Times once a week for two consecutive weeks. The date of the first publication will be at least fourteen (14) days prior to the Proposal due date.

### **2.3 RFP Procedural and Content Questions**

Any Proposer requiring further clarification of the Request for Proposal procedures contained herein should submit specific questions in writing to the Procurement Officer at the address set out in Section 1.1 of this RFP.

During a review of this RFP and preparation of the Proposal, certain errors, omissions, or ambiguities may be discovered. If so, or if there are doubts or concerns about the meaning of any part of this RFP, written questions should be submitted, by the date and time specified therefor in Section 1.3 of this RFP, to the Procurement Officer at the address set out in Section 1.1 of this RFP. This will allow time to answer the questions and distribute those answers to all prospective proposers so that each will have the benefit of the revised information.

### **2.4 Basis for Proposal**

Only the information contained in this RFP, addenda hereto and information supplied by the City in writing through the Procurement Officer identified herein should be used in the preparation of the Proposer's proposal.

### **2.5 Opening of Proposals**

Proposals shall be returned in a sealed envelope or container marked with the Proposer's name, address and RFP number BI-0151-09. Proposals shall be received through the date and time specified therefor in Section 1.3 of this RFP. Proposals must be mailed or delivered in accordance with the instructions and to the addresses set out in Section 1.2 of this RFP.

By means of time stamp, the Purchasing Division will record receipt of the Proposal and forward it to the Procurement Officer. The official time for closing of this RFP is the date and time specified

therefor in Section 1.3 of this RFP per the Purchasing Division's date/time stamp. A formal opening of the Proposals will not occur.

## **2.6 Proposal Terms and Conditions**

The Proposer must submit, with each copy of the Proposal, a complete set of any additional terms and conditions proposed for inclusion in the sample Contract enclosed herein.

## **2.7 Disclosure of Proposal Contents**

Proposals will be opened in a manner that avoids disclosure of the contents to competing Proposers and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract(s) are awarded, however, trade secrets and confidential information in the proposals are not open for public inspection. **It is specifically provided, however, that each Proposer must identify any information contained in its proposal which it asserts is either a trade secret or confidential information.** Such material must be conspicuously identified by marking each page containing such information as "confidential" or "proprietary". **If such material is not conspicuously identified, then by submitting its proposal, a Proposer agrees that such material shall be considered public information.**

## **2.8 Late Proposals**

Without exception, proposals must be submitted in sufficient time to be received and date/time stamped in the Purchasing Division on or before the deadline specified in Section 1.3. Any proposal received after the time and date specified therefor in Section 1.3 is late and shall not be considered.

## **2.9 Signing of Proposals**

By submitting and signing a proposal, the Proposer indicates its intention to adhere to the provisions described in this RFP.

1. **Proposals, signed for a partnership**, shall be signed in the Proposer's name by at least one partner or in the Proposer's name by an attorney-in-fact. If signed by an attorney-in-fact, there should be attached to the Proposal a Power of Attorney evidencing authority to sign Proposals, dated the same date as the Proposal, and executed in accordance with the legal requirements of the Proposer.
2. **Proposals, which are signed for a corporation**, shall have the correct corporate name thereon and shall bear the president's or a vice-president original signature and title written below the corporate name. Any other signature must be accompanied by a resolution of the Board of Directors authorizing such signature to contract in the corporation's name. The title of the office held by the person signing for the corporation shall appear below the signature of the officer.

## **2.10 Cost of Proposal**

This RFP does not commit the City to pay any costs incurred by a Proposer for preparation and/or submission of a Proposal or for procuring or contracting for the items to be furnished under this RFP. All costs directly or indirectly related to preparing and responding to this RFP, including all costs incurred for supplementary documentation, shall be borne solely by the Proposer.

## **2.11 Minority Business Enterprise Information Form**

The City of Corpus Christi requires all persons or Proposers seeking to do business with the City to provide the Minority Business Enterprise Information Form on the City-supplied form included herewith. Every question must be answered. If the question is not applicable, answer with N/A.

## **2.12 Disclosure of Interest**

The City of Corpus Christi Code of Ordinances, Section 2-349, as amended, requires all persons or Proposers seeking to do business with the City to provide the Disclosure of Interest information on the City supplied form included herewith. Every question must be answered. If the question is not applicable, answer with N/A. Proposers are obligated to provide updated information concerning the disclosure of interests, as warranted, throughout the time the Proposals are being considered.

## **2.13 Equal Employment Opportunity**

Proposers are expected to comply with the Affirmative Action Policy Statement of the City, in file with the Human Relations Department, with respect to its provisions concerning Proposers. Any complaints filed with the City alleging that a Proposer is not an Equal Opportunity Employer, due to activities arising during a previous City contract, will be referred to the Human Relations Commission (“**Commission**”) of the City for the purpose of review and recommendation.

Summaries of reports by the Human Relations Administrator or the Commission may be considered in any future bid awards by the City. The City expressly reserves the right to consider such reports in determining the best Proposal.

## **2.14 Ownership of Proposals**

All documents submitted in response to this Request for Proposal and timely received shall become the property of the City of Corpus Christi.

## **2.15 Disqualification or Rejection of Proposals**

Proposers may be disqualified for any of the following reasons:

- There is reason to believe that collusion exists among the Proposers;
- The Proposer is involved in any litigation against the City;
- The Proposer is in arrears on an existing contract or has defaulted on previous contracts with the City;
- The Proposer lacks financial stability;
- The Proposer has failed to perform under previous or present contracts with the City;
- The Proposer has failed to use the City’s approved forms;
- The Proposer has failed to adhere to one or more of the provisions established in this RFP;
- The Proposer has failed to submit its Proposal in the format specified herein;
- The Proposer has failed to submit its Proposal on or before the deadline established herein;
- The Proposer has failed to adhere to generally accepted ethical and professional principles during the Proposal process; or,
- The Proposer has failed to provide a detailed fee schedule in the Proposal.

## **2.16 Rejection of Proposals**

Proposals may be rejected if they show any alteration of words or figures, additions not called for, conditional or uncalled-for alternate Proposals, incomplete Proposals, erasures, or irregularities of any kind. Proposals tendered or delivered after the official time designated for receipt of Proposal shall be deemed non-responsive and shall not be considered.

### **2.17 Right to Waive Irregularities**

Proposals shall be considered as being “irregular” if they show any admissions, alterations of form, additions or conditions not called for, unauthorized alternate Proposals, or irregularities of any kind.

The Procurement Officer reserves the right to waive minor irregularities and mandatory requirements, provided that all responsive Proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right shall be exercised at the sole discretion of the Procurement Officer.

### **2.18 Withdrawal of Proposals**

Proposals may be withdrawn by written notice received by the City Purchasing Division prior to the exact hour and date specified for receipt of Proposals. A Proposal may be withdrawn (in person) by a Proposer or his/her authorized representative, provided his/her identity is made known and he/she signed a receipt for the Proposal, but only if the withdrawal is made prior to the exact hour and date set for the receipt of Proposal.

### **2.19 Amending of Proposals**

A Proposer may submit an amended Proposal, however, such amended Proposals must be received prior to the exact hour and date set for receipt of proposal deadline, must be complete replacements of a previously submitted Proposal, and, furthermore, such amended Proposals must be clearly identified as such in the transmittal letter. The City will not merge, collate, or assemble Proposal materials for a Proposer.

### **2.20 Proposal Offer Firm**

By submission of its proposal, the Proposer affirms that its proposal is firm for one hundred eighty (180) days after the due date for receipt of proposals.

### **2.21 Proposer Qualifications**

The Evaluation Committee “Committee”, as set out in Section 5.1 of this RFP, may make such investigations as necessary to determine the ability of the Proposer to adhere to the requirements specified within the RFP. The Procurement Officer will reject the Proposal of any Proposer who is not a responsible Proposer.

### **2.22 Exceptions to RFP Specifications**

Although the specifications in the following sections represent the City’s anticipated needs, there may be instances in which it is in the City’s interest to permit exceptions to specifications and accept alternatives.

It is extremely important that the Proposer make very clear where exceptions are taken to the specifications and how the Proposer will provide alternatives.

*Therefore, exceptions, conditions or qualifications to the provisions of the City's specifications must be clearly identified as such, together with reasons for taking exception and inserted in the Proposal at that point. In addition the Proposer must provide responses on the "Exceptions" page to address any and all items found in all bid documents that the Proposer cannot meet or provide. If the Proposer does not make clear that an exception is being taken, the City will assume the Proposer, is, in its' proposal, responding to and will meet the specifications of this RFP.*

## **2.23 Consideration of Proposals**

Discussions may be conducted with responsible Proposers capable of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. In discussions, there shall not be disclosure of any information derived from Proposals submitted by competing Proposers. Until award of the Contract is made by the City, City reserves the right to reject any or all Proposals, to waive technicalities, to re-advertise for new Proposals, or to proceed with the work in any manner as may be considered in the best interest of the City. Should the City require clarification from the Proposer, the City shall contact the individual named in the ACKNOWLEDGMENT OF RECEIPT AND NOTICE OF INTENT TO SUBMIT PROPOSAL.

Evaluation of the proposal is the first step in a series of evaluation steps that will be conducted by the Committee.

## **2.24 Termination of RFP**

The City reserves the right, to cancel the RFP at any time. The City reserves the right to reject any or all Proposals submitted in response to this RFP.

## **2.25 Contract**

The fully executed contract, as amended; the request for proposal, as clarified via addenda and the proposal constitute the agreement, in its entirety, between the City and the Contractor. Any other terms and conditions shall be null and void.

## **2.26 Precedence of Contract Documents**

In case of a conflict in the contract documents, first precedence shall be given to the fully executed contract, as amended; second precedence will be given to the request for proposal, as clarified via addenda and third precedence will be give to the proposal.

## **2.27 Governing Law**

The laws of the State of Texas will govern any Contract resulting herefrom. The applicable law for legal disputes arising out of the Contract shall be the law of the State of Texas.

## **2.28 No Obligation**

This RFP in no manner obligates the City or any of its agencies to the eventual services offered until confirmed by an executed written Contract approved by the Corpus Christi City Council.

## **2.29 Contract Deviations**

Any additional terms or conditions, which may be the subject of negotiation, will be discussed only between the City and the qualified Proposer.

### **2.30 Sufficient Appropriation**

Any Contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the Proposer. The City's decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Proposer as final.

### **2.31 Award of Contract**

The City reserves the right to withhold final action on Proposals for a reasonable time not to exceed one hundred eighty (180) days subsequent to the deadline for receipt of proposals.

The award of the Contract, if an award is made, will be to the most responsible and responsive Proposer that give the City "Best Value" and who's Proposal meets the requirements and criteria set forth in the Request for Proposal.

### **2.32 Execution of Contract**

The City Council shall authorize award of the Contract to the successful Proposer and shall designate the successful Proposer ("**Contractor**") as the City's Proposer. The City will require the Contractor to sign the necessary documents entering into the required Contract with the City and to provide the necessary evidence of insurance as required under the Contract documents.

No contract for this project may be signed by the City without the authorization of the City Council. No contract shall be binding on the City until it has been approved, as to form by the City Attorney or her designee, and executed by the City Manager or his designee.

### **2.33 Disputes**

In the case of any doubt or difference of opinion with regard to the items to be furnished by a Proposer or the interpretation of the provisions of this RFP, the decisions of the City shall be final and binding upon all parties.

### **2.34 Change In Contractor Representative**

The City reserves the right to negotiate a change in Contractor representatives if the assigned representatives are not, in the opinion of the City, adequately meeting the needs of the City.

### **2.35 Term**

The term of the Agreement resulting herefrom shall be a minimum of fifteen years. Thereafter, the Agreement shall become month-to-month until a new lease has been re-negotiated. By submission of its proposal, the Proposer agrees that the fee schedule information quoted in its proposal is fixed and firm for the duration of the term of the agreement resulting herefrom.

### **2.36 Change Requests**

The contract time and/or contract price and any other changes may only be made by an amendment to the contract resulting herefrom, and executed in writing by the City and the Contractor. A request for an extension of the contract period or adjustment of the contract price shall only be considered if

such request, with supporting data, is received by the City in writing ten (10) working days prior to the event giving rise to the request.

### **2.37 Termination of Contract**

The City may terminate the Contract immediately, for cause, upon written notice to the Contractor. The City may terminate the Contract, with or without cause, upon sixty (60) days written notice to the Contractor. The contractor may terminate this contract, with or without cause upon one hundred twenty days (120) prior written notice to the City.

### **2.38 Ownership of Documents**

All materials, work papers, meeting notes, patient files, or other documents produced by the Contractor during the course of the Contract shall be the property of the City. The original and one copy of all such documents shall be indexed and placed in appropriately labeled binders and delivered by the Contractor to the City within 30 days of the City's request for said documents.

### **2.39 Required Insurance Provisions**

- (A) *To the extent allowed by Texas law and in consideration of allowing Lessee to lease the Premises, Lessee ("Indemnitor") covenants to fully indemnify, save, and hold harmless the City, its officers, agents, representatives, and employees (collectively, "Indemnitees") from and against any and all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments asserted against or recovered from the City on account of injury or damage to persons or property (including, without limitation on the foregoing, premises defects, workers' compensation, and death claims), to the extent any injury, damage, or loss may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part: (1) Lessees' performance pursuant to this Lease; (2) Lessees' use of the Premises and any and all activities associated with the Premises pursuant to this Lease; (3) the violation by Lessee, its officers, employees, agents, or representatives or by Indemnitees of any law, rule, regulation, ordinance, or government order of any kind pertaining directly or indirectly to this Lease; (4) the exercise of rights under this Lease; or (5) an act, omission, or criminal violation on the part of Lessee 's, its officers, employees, agents, representatives, contractors, patrons, guests, licensees, or invitees entering upon the Premises with or without the express or implied invitation of Lessee, or of Indemnitees, pertaining to this Lease, regardless of whether the injury, damage, loss, violation, exercise of rights, act, omission, or criminal violation is caused or is claimed to be caused by the sole, contributing, or***

**concurrent negligence of Indemnitees, but not if such damage or injury results from the gross negligence or willful misconduct of the Indemnitees.**

**(B) Lessee covenants and agrees that, if the City is made a party to any litigation against Lessee or in any litigation commenced by any party, other than Lessee relating to this Lease, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation and at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions based thereon with legal counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from any said claims, demands, actions, damages, losses, costs, liabilities, expenses, or judgments.**

**(C) The provisions of this section survive the earlier termination or expiration of this Lease.**

D. Lessee must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Lessee must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

E. Lessee must furnish to the City’s Risk Manager or designee, 2 copies of Certificates of Insurance, showing the following minimum coverage by an insurance company(s) acceptable to the City’s Risk Manager. The City must be named as an additional insured on the General liability policy, and a blanket waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
<b>30 day written notice of cancellation, material change, non-renewal is required on all certificates</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
Marina Owners’ Liability coverage including: 1. Premises Liability – Broad Form CGL 2. Products/ Completed Operations 3. Contractual Liability 4. Fire Legal Liability 6. Personal & Advertising Injury	\$1,000,000 Combined Single Limit
Business Auto Liability – owned, non-owned or rented	\$1,000,000 Combined single Limit
Environmental Impairment Liability to include: Broad Form Pollution Liability Coverage Third Party Clean up (AST/ UST coverage)	\$1,000,000 per claim

Worker's Compensation	<b>Applicable if employs any one other than himself/herself</b> Which Complies with the Texas Workers' Compensation Act and Section II of this Exhibit
Employers' Liability	\$500,000/ \$500,000 / \$500,000
Property Insurance	Proposer will be responsible for their insurable interest in their property and any and all damage to equipment used regardless if owned, rented, leased or borrowed.

- F. In the event of accidents of any kind, Lessee must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.
- G. Lessee must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met.
- H. Lessee's financial integrity is of interest to the City; therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by the City, Lessee shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Lessee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII).
- I. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Lessee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Lessee shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Management  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
(361) 826-4555- Fax #

- J. Lessee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities

of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
  - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- K. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Lessee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- L. In addition to any other remedies the City may have upon Lessee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Lessee to stop work hereunder, and/or withhold any payment(s) which become due to Lessee hereunder until Lessee demonstrates compliance with the requirements hereof.
- M. Nothing herein contained shall be construed as limiting in any way the extent to which Lessee may be held responsible for payments of damages to persons or property resulting from Lessee's or its subcontractors' performance of the work covered under this agreement.
- N. It is agreed that Lessee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- O. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

## **2.40 Right to Publish**

Throughout the duration of the procurement process and resulting Contract term, potential Proposers and Contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by the RFP or the resulting Contract. Failure to adhere to this requirement may result in disqualification of the Proposer's Proposal or termination of the Contract.

## **2.41 Ethical Behavior**

Proposer must indicate through Proposer's written promise **within the proposal cover letter**, that Proposer's officers, employees, or agents will not attempt to lobby or influence a vote or recommendation related to the Proposer's proposal submitted in response to this RFP, directly or

indirectly, through any contact with the City Council members or other City officials between the deadline for submission of proposals and the date a contract(s) resulting herefrom is awarded by the City Council. Such behavior will be cause for rejection of the Proposer's proposal at the discretion of the City Manager or his designee.

## **SECTION 3**

### **Scope of Work**

#### **3.1 City of Corpus Christi and Marina - General Information**

- A. The City of Corpus Christi, Texas (the "City") is seeking proposals from proposers capable of constructing and operating a MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT and related operation to be located in the Northeast Corner of the Cooper's Alley L-Head at the Corpus Christi Marina. Proposers may propose only a Marina Fuel Station. Alternatively, Proposers may propose a Marina Fuel Station and a souvenir shop, restaurant or related marine development. In either case, at a minimum, Proposer must propose a Marina Fuel Station.
- B. A fuel station with related marina enterprise opportunities has been operated at the Corpus Christi Municipal Marina since the early 1950s. A new MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT is needed with all necessary enhancements to support and accommodate a successful operation for the twenty-first century related to enhancement of the marina and quality service to tenants, boaters and tourists.
- C. The new MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT will be an exclusive contract with the City of Corpus Christi Municipal Marina for fuel supply. This will require a flexible floor plan capable of supporting marina fueling operations, sanitary pump-out and contaminated bilge water pump-out facility, marina-related supplies and a food and beverage facility supporting local events.
- D. The selected Proposer will be expected to disseminate factual information related to the project to the media and interested community groups and citizens to ensure that accurate information is available concerning the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT.
- E. The City of Corpus Christi will be the Owner of any permanent construction related to the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT Complex with a long-term lease assigned to the constructor/operator.
- G. Due to the project's complexity and variety of expertise required, the Proposer may elect to team with other firms or utilize sub-consultants.
- H. Proposers are advised that the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT Project is contingent on private funding. Should the Proposer's anticipated investment not materialize, this initiative together with all agreements, representations and commitments regarding this RFP are null and void.

- I. The Marina has approximately 618 wet slips available for commercial, pleasure and transient boats. The piers include floating as well as set piers. Amenities for boaters include air-conditioned showers, restrooms and laundry, boat ramps, dry storage, haul-out facilities, marine fuel service facility and a sanitary pump-out station.
- J. The Marina is within walking distance to 2,000+ downtown hotel rooms with high visibility from the largest properties overlooking the marina.
- K. Tourism attractions along Shoreline Drive are as follows: American Bank Convention Center with a 10,000 seat Arena, Art Museum of South Texas, Art Center, Museum of Science and History, Museum of Asian Cultures, Whataburger Field Baseball Stadium, the Texas State Aquarium and the USS Lexington Museum (Aircraft Carrier). These offer pre- and post-event marketing opportunities and packaging opportunities for tourism marketing.
- L. A number of citywide festivals take place on Shoreline Blvd. and in the marina, including Buccaneer Days, Bayfest, Texas International Boat Show, National and World-Class Sailing Regattas. Entertainment and athletic events are frequent occurrences at Cole Park, which is approximately 1 mile from the marina down Shoreline Blvd.

### **3.2 Requirements**

- A. The City of Corpus Christi's Goals and Objectives for the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT are:
  - 1. Maximize the use of the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT through the provision of a broad mix of items appealing to all segments of the community.
  - 2. Create a positive impact on the local economy, the immediate area and stimulate growth.
  - 3. Staff, manage, maintain and operate the facility to the highest industry standards and in the best interest of the City of Corpus Christi.
  - 4. Operate the facility in the public interest with complete, accurate, public financial records and business transactions.
  - 5. Protect the City of Corpus Christi's capital investment through high-quality maintenance and supervision of all repairs as they arise.
  - 6. Effectively involve all sectors of the community in the business and employment opportunities which will become available as a direct or indirect consequence of the operation of the center.
  - 7. Establish collaborative efforts with related industries such as the boating industry, special events, sports, hospitality and entertainment.
  - 8. Ensure full training of staff and compliance with all federal, state and city laws, regulations and ordinances governing the supply, storage and dispensing of fuel in a marine environment.
- B. Proposers should personally visit and evaluate the Marina and nearby facilities.
- C. The structure of the transaction between the selected development team and the City will be in the form of a long-term operations and management contract and ground/slip lease.

- D. Proposer shall comply with all federal, state and local laws, regulations and ordinances pertaining to transportation, maintenance and the dispensing/sale of fuel and related supplies.
- E. Proposers may propose only a Marina Fuel Station. Alternatively, Proposers may propose a Marina Fuel Station and a souvenir shop, restaurant or related marine development. In either case, at a minimum, Proposer must propose a Marina Fuel Station.

### **3.3 Development Concept**

- A. It is of significant importance that the City be convinced that the development team can, and actually will, complete the project as proposed, including realization of timelines. Please specify timelines.
- B. Provide a conceptual site plan indicating scope, major components and illustrations, drawings and renderings and a thorough description of the proposed development concept.
- C. Provide an organizational chart for the facility showing the hierarchical structure (e.g., divisions, departments, manager titles and worker classifications). The chart should show the direct reporting relationships of the facility to the City or to other contracting entity. The chart should include and identify all subcontractors. Note services provided by personnel that are not employees of the management firm or its subcontractors. Examples of these personnel may include operating staff, parking staff, fuel/hazmat staff, temporary staff hired for special events, etc.
- D. Provide a copy of the facility's projected marketing plan.
- E. Provide copies of the projected fuel supply and scheduling policies and procedures to be implemented.
- F. Provide a preliminary work program outlining the steps you will take to assist the City in providing information to interested community groups and local media regarding the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT, the type of events and revenue streams that can be brought, the economic benefits to the community and other pertinent information.
- G. Provide the names and a description of the background and experience on any media, advertising or public relations consultants you will use on this project.
- H. Describe the assistance your firm can provide in terms of development and design of the proposed MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT facility and outline a preliminary work program that includes recommended facilities for the new marina fuel station facility.
- I. Provide sample copies of facility brochures and other collateral materials for the selected facility.

### **3.4 Proposer's Profile and Qualifications**

- A. Provide a history of your organization, including the year the firm was established, type of

incorporation, ownership and the number of years in the marina fuel business and fuel business in general.

- B. Provide the City with a comprehensive list of both private and public marina fuel facilities currently operated by the Proposer. Include name, location, type of facility and duration of operation.
- C. Identify the team leader, architect/planner and engineer. For each, provide relevant experience with similar projects.
- D. Identify development team members, qualifications, and relevant management and project experience. Provide relevant experience with similar projects for each.
- E. Provide the total anticipated number and the titles of full-time and part-time employees to be employed in the proposed facility.
- F. Provide details of your experience in rendering assistance to Cities in the preparation and publication of information for community organizations and news media with regard to the development of public marina fuel station facilities.
- G. Provide a listing of all law suits currently pending against Proposer and for which a final disposition has not been reached, either in or out of court.
- H. Provide a copy of Proposer's most recently audited financial statements.
- I. Using the format outlined below, the Proposer should provide five references for which the same service is provided. This information will be used to determine the extent to which the Proposer is able to provide the services described herein to an entity the size of the City of Corpus Christi, as well as the level of customer service exhibited by the Proposer.

**a. Reference 1**

Organization name:	Contact and title:
Address:	Phone number:
Construction Value:	Gross Revenues for Calendar Yr. 2008:
Description of services provided:	

**b. Reference 2**

Organization name:	Contact and title:
Address:	Phone number:
Construction Value:	Gross Revenues for Calendar Yr. 2008:
Description of services provided:	

**c. Reference 3**

Organization name:	Contact and title:
Address:	Phone number:
Construction Value:	Gross Revenues for Calendar Yr. 2008:
Description of services provided:	

**c. Reference 4**

Organization name:	Contact and title:
Address:	Phone number:
Construction Value:	Gross Revenues for Calendar Yr. 2008:
Description of services provided:	

**c. Reference 5**

Organization name:	Contact and title:
Address:	Phone number:
Construction Value:	Gross Revenues for Calendar Yr. 2008:
Description of services provided:	

### **3.5 Financial Information**

- A. What is the total anticipated cost of development?
- B. What is the cost of operating and maintaining the development during the first three years?
- C. Provide financial resources and identify financial consultant to be used.
- D. Provide an explanation of potential sources of interim- and long-term financing for the proposed project operations and development.
- E. Provide pro forma financials.

### **3.6 Fee Structure**

- A. The City expects to be compensated a fair market lease rate for the use of the Marina property. The City also expects to share income based on gross revenues derived from operating the MARINA FUEL STATION & SOUVENIR, RESTAURANT OR RELATED MARINE DEVELOPMENT. Therefore, the Proposer will pay whichever of the following is greater:
  - 1. monthly base lease rate of \$\_\_\_\_\_ to be paid to the City, or
  - 2. \_\_\_\_\_ percentage of monthly “Gross Sales”.

## **SECTION 4** **Proposal Format & Organization**

This section provides specific instructions on format and organization of the proposal to be submitted by the Proposer. Each Proposer may submit only one Proposal in a totally self-supporting format without reference to any other proposal(s).

### **4.1 General Instructions**

- A. **Excluding forms required herein, your proposal shall be a maximum of fifty pages.**
- B. To provide for ease and uniformity and to aid in the evaluation of proposals, Proposers shall comply with the sequence outlined herein. **IN NUMBERING THE PROPOSAL, THE PROPOSER SHALL USE THE SAME SECTION NUMBERS AND TITLES AND SHALL PROVIDE ITS RESPONSES IN THE SAME ORDER AS EACH QUESTION IS**

**NUMBERED AND ORDERED HEREIN.** Failure to comply may result in rejection of the proposal. The proposal shall be completed in sections, which are described below. For ease in handling, Proposers shall submit the Proposal on 8.5” x 11” paper (larger paper is permissible for charts, maps or spreadsheets) and place the proposal in binders with tabs delineating each section.

- C. Proposers should be aware that all technical and operational specifications, equipment descriptions and marketing material submitted or made available will be incorporated by reference into any contract(s) resulting herefrom. The City discourages the inclusion of general marketing material or equipment manuals unless they are used to provide specific information or specifically requested by the City. This information may be submitted under separate cover from the proposal.
- D. The Proposer shall provide one (1) original and ten (10) identical copies of their proposal to the location specified in Section 1.2 on or before the closing date and time for receipt of proposals. **Proposals transmitted orally, telephonically, electronically or via facsimile shall not be considered.**
- E. **Proposer shall submit its proposal, in Microsoft Word or .pdf format, on one compact disc or flash (thumb) drive.**

Please refer to the following web page for an electronic version of the RFP:  
[http://www.cctexas.com/purchasing/admin/webprt\\_bidscurrent.cfm](http://www.cctexas.com/purchasing/admin/webprt_bidscurrent.cfm)

## **4.2 The Proposal Format**

This section outlines the minimum requirements for preparation and presentation of a response.

**The Proposer shall define the capabilities of their organization to supply and maintain the services as requested in this RFP. The response should be specific and complete in every detail and prepared in a simple and straightforward manner.**

Proposers are expected to examine the entire RFP including all specifications, standard provisions and instructions. Failure to do so will be at the Proposer’s risk. Proposers should provide their best pricing on each type of service.

## **4.3 Transmittal Letter**

The transmittal letter shall indicate the intention of the Proposer to adhere to the provision described in the RFP without modification. The letter of transmittal **MUST**:

1. Be presented on company letterhead;
2. Identify the submitting organization;
3. Acknowledge receipt of any addenda to this RFP;
4. Reference the City of Corpus Christi Minority Business Enterprise Information Form and Disclosure of Interest Form, the completed versions of which should follow the transmittal letter;
5. Identify, by name and title, and be signed by the person authorized by the organization to obligate the organization contractually; and
6. Provide a statement of interest and a brief synopsis of the development you propose.

#### 4.4. Table of Contents

A table of contents, listing titles, sections, and major sub-sections shall follow the Disclosure of Interest form referenced above. All pages shall have a unique identifier and be numbered sequentially within each section.

## SECTION 5 Proposal Evaluation

The City of Corpus Christi will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. Each Proposal will first be analyzed to determine overall responsiveness and completeness as defined in Section 4.0 Proposal Format and Organization and Section 5.2 Evaluation Criteria. Failure to comply with the instructions or submissions of an incomplete Proposal that does not satisfy Section 4.0 and 5.2 will result in the proposal being deemed non-responsive and may, at the discretion of the Committee, as defined in Section 5.1 below, be eliminated from further consideration.

#### 5.1 Evaluation Committee

An Evaluation Committee (“**Committee**”) has been established to assist the City in the selection of a qualified Proposer. The Committee is comprised of representatives from various City departments. The Committee will determine the responsiveness and acceptability of each Proposal. The Committee will then engage in a detailed review of each Proposal to evaluate the response in relation to the four (4) major evaluation factors identified in Section 5.2.

#### 5.2 Evaluation Criteria

A. The proposal evaluation and selection process will be based on the following criteria: 1) Development Concept, 2) Proposer’s Profile & Qualifications, 3) Financial Information and 4) Fee Structure. The final weight assigned to each of these parameters will be determined by the Evaluation Committee and will be within the ranges for each criterion as indicated below. **Each Proposer shall provide detailed responses, including reference to any existing “in-house” procedures, policies, etc. as they relate to the requirements of this RFP. In determining “Best Overall Value”, the Evaluation Committee will evaluate the entire proposal, including, but not limited to, the criteria enumerated in Section 3.0 of this RFP and any exceptions taken.**

<b>Development Concept (Section 3.3)</b>	<b>Proposer’s Profile &amp; Qualifications (Section 3.4)</b>	<b>Financial Information (Section 3.5)</b>	<b>Fee Structure (Section 3.6)</b>	<b>Total</b>
20-35%	20-40 %	15-25%	5-15%	100%

B. The Evaluation Committee shall determine the final percentage assigned to each proposed evaluation criterion. In no case shall the percentage assigned to each criterion be smaller or

greater than the stated minimum or maximum, respectively. The sum of the final percentages for all criteria shall equal 100%.

- C. The Proposer's failure to provide information relative to the above criteria may result in the City deeming such proposal non-responsive and may, at the discretion of the Committee, as defined in the paragraphs above, result in elimination of said proposal from further consideration. The Committee reserves the right to conduct other evaluation and measurements of the proposals as may be necessary to make an informed decision.

# EXCEPTIONS FORM

Proposer: \_\_\_\_\_

## Document Exceptions

Proposer shall clearly state the exception and the reason for taking exception. Proposer shall describe each item and state clearly any price consequences.

**Important Note:** The Proposer **must** complete this form. If the Proposer has no objection or exception, the Proposer should indicate “**NONE**” on this page. The completed form must be included with each copy of the proposal submitted.

Please note exceptions if any, separately for each line of coverage.

Proposer Authorized Signature \_\_\_\_\_

Name of Proposer's Authorized Representative

(Print) \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**LEASE AGREEMENT  
BETWEEN**

---

**AND THE  
CITY OF CORPUS CHRISTI**

**THE STATE OF TEXAS §**

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF NUECES §**

This lease ("**Lease**") is entered into between the City of Corpus Christi ("**City**"), a Texas municipal home-rule corporation, acting through its duly authorized City Manager ("**City Manager**"), and \_\_\_\_\_ ("**Lessee**");

The City, in consideration of Lessee's faithful performance of the conditions and covenants contained in this Lease, leases to Lessee a dockside area in the Corpus Christi Marina ("**Marina**"), as follows:

**Section 1. Preamble Language.** The preamble language included above this initial numerated section is incorporated into this Lease by reference and made a part of this Lease for all intents and purposes.

**Section 2. Premises.** Lessee is granted use of sufficient space on the north side of the Coopers Alley L-Head (see Exhibits A and B [all areas collectively referred to as the "**Premises**"], which is incorporated in this Lease by reference).

**Section 3. Permitted Uses.**

- (A) Lessee must use the Premises primarily as a fuel station & development.
- (B) Additionally, related development may be used by Lessee for the sale of souvenirs and other merchandise secondary to and as appropriate to compliment the fuel station and the general character of the marina and bay front.
- (C) The business operation must be confined to the designated areas within the Premises.
- (D) This Lease is not an exclusive right to operate a fuel station and development.

**Section 4. Term.** The term of this Lease shall be a minimum of fifteen years. Thereafter, the Agreement shall become month-to-month until a new lease has been re-negotiated.

## Section 5. Lease Rate and Payments.

- (A) The Lessee must pay the City a base lease rate of \$\_\_\_\_\_ per month, or \_\_\_\_\_% of monthly "Gross Sales," whichever is greater.
- (B) "**Gross Sales**" means all sales of food, drink, souvenir items, and all merchandise of any kind, prepared, produced or sold on the Premises or sold on the Peoples Street T-Head, excluding credit card transaction fees and sales, consumption and alcoholic beverage taxes.
- (C) Payments must be made to the order of the City of Corpus Christi and mailed to the City Collections Department, P. O. Box 9277, Corpus Christi, TX, 78469, or delivered to City Hall at 1201 Leopard Street, Corpus Christi, TX, 78401.

## Section 6. Lease Payment Abatement.

- (A) The monthly lease payment may be abated during the time Lessee ceases restaurant business operations:
  - (1) Lessee's Hurricane Preparedness Plan ("**Hurricane Plan**") is attached as **Exhibit C** and incorporated in this Lease by reference;
  - (2) in the event major repair, renovation or construction prohibits access to and through the Coopers Alley L-Head.
- (B) In the event that a condition in subsection (A) of this section occurs and Lessee desires to claim a lease payment abatement, Lessee must notify the the City's Marina Superintendent or the Marina Superintendent's designee ("**Marina Superintendent**") in writing within three (3) business days following the occurrence of a condition stated in subsection (A) of this section, providing the date, time, and reason for cessation of restaurant business operations and the expected date of resumption of restaurant business operations.
- (C) Lessee must resume its fuel station & development operations as soon as practical after a condition that caused the cessation of restaurant business operations no longer exists. Lessee must provide the Marina Superintendent with written notice within 24 hours after resuming restaurant business operations.
- (D) The lease payment abatement amount will be a pro rata share of the minimum monthly lease payment due.

## Section 7. Monthly Financial Statements; Audit of Records.

- (A) Lessee must keep strict and accurate books of account and records of Gross Sales and of all receipts collected.
- (B) Lessee must furnish monthly statements of Gross Sales, certified by an authorized officer of Lessee, in accordance with generally accepted accounting principles and procedures and in a form approved by the City's Director of Finance.
- (C) Lessee's books and records must be open for inspection by the City Manager at all reasonable times.
- (D) All underlying documentation for Lessee's certified monthly statements, including, but not limited to, cash register and computer terminal tapes, must be preserved by Lessee for at least three (3) years. The City Manager may terminate this Lease for failure to preserve such records or provide them to the City upon the City Manager's request.
- (E) The City Manager may audit Lessee's books and records at any time to verify Gross Sales for any period within three (3) years prior to an audit.

(1) "Books and records" includes, but is not limited to, all documents related to the conduct of the business such as: general ledgers, accounts receivables and payables, sales journals, inventory records, daily and periodic summary re-ports, cash register and computer terminal tapes, bank deposit slips, bank statements, tax reports to State and Federal agencies, and discount and rebate records.

(2) Any additional payments due the City, as may be determined by an audit, must be paid by Lessee to the City, with annual interest of 10% from the date the payment became due, within 30 days of such determination and notice to Lessee.

(3) Audits will be conducted at the administrative offices of the City's Park & Recreation Department, 1201 Leopard Street, Corpus Christi, Nueces County, Texas, 78401, and Lessee must make its books and records available at such time as required by the City's Auditor. If first agreed to in writing by the City's Marina Director or the Marina Director's designee ("**Director**"), the audit can be conducted at another site, provided Lessee's reimburses the City for the travel, food, and lodging expenses of City staff necessary to conduct the audit.

(4) If the audit shows that Lessee has understated Gross Receipts by 3% or more, the entire expense of the audit must be paid by Lessee's.

## **Section 8. Delinquency and Default Regarding Lease Payments.**

- (A) Lessee is "delinquent" if the City has not received Lessee 's monthly lease payment and certified financial statement on or before 5:00 p.m. on the 10th day of the month in which the payment and certified financial statement are due. If the 10th day on the month falls on a weekend or holiday, the payment and certified financial statement must be tendered on the first business day thereafter.
- (B) Lessee is "in default" if Lessee fails to pay the amount due or provide the certified financial statement within ten (10) business days after the City Manager has sent a written notice of delinquency requesting the payment, certified financial statement, or both. A default for failure to pay the amount due or provide the certified financial statement constitutes grounds to terminate this Lease.

## **Section 9. Lessee Responsibilities.** Lessee, shall:

- (A) Pay for the installation, maintenance, and use of all of its utilities including, but not limited to, water, sewer, sanitation, electricity, natural gas, and telephone;
- (B) Comply with all Federal, State, and local laws, rules, regulations, and ordinances, as each may be amended, including, but not limited to, Chapter 12 of the City's Code of Ordinances and the Marina Rules and Regulations, and ensure that its employees, agents, and representatives comply as well;
- (C) Maintain the Premises and all improvements in a good and safe condition during the Lease term;
- (D) Maintain the Fuel Station and Development at all times in a satisfactory state of repair, as specified by the Marina Superintendent;
- (E) Perform grounds maintenance for the area north of the center of the L-Head portion of the Coopers Alley L-Head, as shown in the attached **Exhibits A and B**, which is incorporated in this Lease by reference, to include, without limitation, litter control of all grass and landscaped areas and the parking lots utilized by its customers, except for such times as the City leases such property to other third parties;
- (F) Remove the fuel tanks and related equipment from the Marina in the event of extensive damage, destruction, regardless of cause, or threat of hurricane, as set out in **Exhibit C**;

- (G) Ensure that no pollutant, effluent, liquid or solid waste material, bilgewater, litter, trash, or garbage issued from the Premises is allowed to collect in the waters of the Marina or in the vicinity of the fuel station development or parking areas utilized by customers. Lessee must regularly inspect and police the vicinity of the Premises for such materials and promptly clean up and remove such materials (in compliance with applicable laws, regulations and ordinances) in order to maintain the cleanliness and attractiveness of the Marina;
- (H) Ensure that the noise level issuing from the Premises is reasonable and not discernibly audible to a person of normal hearing sensitivity standing along the east curb lines of Shoreline Boulevard (northbound);
- (I) Regularly inspect and maintain fire fighting systems and equipment in the highest degree of readiness and regularly conduct training for employees in fire prevention and emergency procedures;
- (J) Pay all operating expenses incurred by Lessee in connection with operating its fuel station & development;
- (K) Pay all ad valorem taxes which may be assessed against the Premises, that are associated with Lessee use of the Premises, prior to their past due date;
- (L) Properly maintain and clean the grease traps, trash dumpsters, trash dumpster area, in accordance with applicable local ordinances and State health regulations, at least once every month or more frequently as needed; and

#### **Section 10. Repairs and Maintenance.**

- (A) For all repairs, Lessee must provide the Marina Superintendent with a written description of the type of maintenance requested and the estimated time frame to start and complete the maintenance requested, at least one week prior to the requested start date.
- (B) Lessee agrees to provide Marina Superintendent with copy of records regarding maintenance (including regular maintenance) for the facility within one week of maintenance.

#### **Section 11. Improvements/Additions/Alterations.**

- (A) Lessee may not make any improvements, additions, or alterations to the Premises, the Marina facilities, the exterior of the facility without the prior written approval of the Director and the City Manager. Lessee must also obtain

clearance, in writing, from the City's Risk Manager as required by this Lease.

- (B) If approved, any improvements, additions, or alterations made by Lessee to the Premises must comply with all applicable City Codes.
- (C) Lessee acknowledges and agrees that all improvements, additions, and alterations that may be made to the Premises during the term of this Lease become the property of the City upon the earlier termination or expiration of this Lease.

**Section 12. Fuel Station & Development Operations.** Lessee shall carry out operations in a businesslike manner at all times. The hours and days of operation during the term of this Lease must be comparable to those of similar facilities in the City.

**Section 13. Hurricane Preparedness.** If the City or the surrounding area is threatened by a hurricane or other emergency weather situation, Lessee shall comply with all orders of the Marina Superintendent pursuant to the Hurricane Preparedness Plan, as set out in **Exhibit C**.

As part of hurricane preparedness Lessee agrees to provide to the City Marina Superintendent a written plan regarding how Lessee will secure the facility in times of severe weather.

**Section 14. Sanitation.** Lessee shall store garbage and trash on the Coopers Alley L-Head at a location designated by the Marina Superintendent. All garbage and trash stored in designated areas upon the L-Head must be stored in dumpster-type containers. Such containers must be housed inside a small building, screened or appropriately landscaped, and all at Lessee's expense and as approved by the Marina Superintendent. The garbage container area must be maintained by Lessee. Lessee shall obtain garbage pickup no less than five (5) days per week. Lessee may not store anything outside either the dumpster itself or the dumpster housing. Lessee will construct concrete pad beneath dumpster upon request of Marina Superintendent to reduce damaged to asphalt caused by dumpster service vehicles. Lessee shall relocate dumpster at Marina Superintendent's direction. During days of special events approved by the City which occur at the Coopers Alley L-Head, Lessee shall arrange for daily dumpster pickup, including weekends. Lessee shall obtain additional dumpster at Marina Superintendent's sole director at Lessee's sole cost.

**Section 15. Parking.** Lessee's customers may park on the stem and head portion of the Coopers Alley L-Head, provided, however, that such parking areas may not be utilized by Lessee for the exclusive use of Lessee and its employees and customers. Parking on the Coopers Alley L-Head is subject to the City street closure process. For example, during City-approved street closure of Coopers Alley L-Head, Lessee (and its

employees and customers) will not have access to use of parking areas on the Coopers Alley L-Head.

**Section 15.1 Special Events.** Lessee acknowledges that City may authorize special events on the Coopers Alley L-Head, such as the Power and Sailboat Regattas and Fishing Competitions, vehicular access to Lessee's Premises will be restricted to deliveries made at least one hour prior to opening of special event for the day and deliveries made after the special event has closed for the day

Lessee's customers shall not be allowed entrance to Coopers Alley L-Head, except as follows:

Access to Premises when special event is open to the public: Lessee's customers shall be required to pay admission ticket in order to enter the Coopers Alley L-head during special event.

Access to Premises when special event is closed to the public and during special event setup and takedown: During times when special event is closed to public, and during special event setup and takedown times, Lessee's customers and staff will have access to the Premises only via golf cart shuttle service paid for by Lessee, and only under terms and conditions approved by the special event sponsor and the City Manager.

Such terms and conditions include, but are not limited to, the following:

- 1) Lessee must indemnify special event and its sponsors for Lessee's operation of shuttle service in accordance with the indemnity provision below.
- 2) Lessee must obtain the attached insurance for the shuttle service.
- 3) Lessee shall pay for two off-duty Corpus Christi police officers to stand guard at Premises and at entrance into Coopers Alley L-Head to ensure that Lessee's customers and staff travel via shuttle directly between Premises and entrance. The off-duty Corpus Christi police officers shall coordinate with the special event security staff.
- 4) Lessee's customers shall not be allowed to walk through special event site unless the special event is open to the public and customer has paid admission ticket.
- 5) Lessee's staff shall not be allowed to walk through special event site unless the special event is open to the public and staff is reporting to work.
  
- 6) Marina Superintendent and special event sponsor shall establish hours for operation of golf cart shuttle.
- 7) Lessee may not operate golf cart shuttle service during times that the special event is open to the public.
- 8) ***Lessee agrees to indemnify and hold harmless the City of the Corpus Christi, special event, all special event sponsors, their officers, agents, representatives and employees (collectively "Indemnitees") for the operations of shuttle service at Coopers Alley L-Head. Lessee covenants to fully indemnify, save and hold harmless the Indemnitees from and against any and all claims, demands, actions, damages, losses, costs, liabilities, expenses and***

***judgments asserted against or recovered from any of the Indemnitees on account of injury or damage to persons or property (including, without limitation on the foregoing, premises defects, workers' compensation and death claims), to the extent any injury, damage or loss may be incident to, arise out of, be caused by or be in any way connected with, either proximately or remotely, wholly or in part: (1) operation of a shuttle service. Lessee covenants and agrees that, if any of the Indemnitees are made a party to any litigation commenced by any party relating to operation of shuttle service, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation and at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the Indemnitees in all actions based thereon with legal counsel satisfactory to the Indemnitees, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from any said claims, demands, actions, damages, losses, costs, liabilities, expenses or judgments.***

- 9) Lessee agrees to provide City Marina Superintendent with evidence of insurance on or before street closure. Required insurance is set forth in Request for Proposal BI-0151-09 and are incorporated herein by reference.
- 10) Lessee must ensure that its shuttle service will be operated in safe manner by responsible drivers at all times. If shuttle service is operated in unsafe manner, then Lessee's authority for shuttle service operation is subject to immediate termination by the City of Corpus Christi's Marina Superintendent without further notice.

Lessee shall have no claim for lost revenues as a result of street closure for special event.

#### **Section 16. Sanitary Sewer.**

- (A) Lessee shall operate its sanitary sewer facilities in accordance with the City Code of Ordinances, Section 13-201, as amended, and City Code of Ordinances, Chapter 55, Article XI, Commercial and Industrial Waste Disposal and Pretreatment, as amended.
- (B) The City warrants sewer service from the lift station only so long as electrical service to the station is not disrupted by storm, accident or other hazards, or catastrophe. Standby power to operate the lift station is not available at the beginning of this Lease nor is it planned by the City.

**Section 17. Inspection.** Any officer or authorized employee of the City may enter upon the Premises, including the barge restaurant, at all reasonable times and without notice, to determine whether Lessee is providing maintenance required by this Lease, to

inspect the restaurant operations, to enforce this Lease, for purposes of any fire or police action, or for any other purpose incidental to the City's retained rights of and in the Premises.

### **Section 18. Signs and Lighting.**

- (A) Lessee may not exhibit, inscribe, paint, erect, or affix any signs, advertisements, notices, or other lettering ("**Signs**") at, on, or about the Premises, or any part thereof, without the prior written approval of the City Manager.
- (B) The City may require Lessee to replace, repaint, or repair any Signs allowed. If Lessee does not remove, repaint, or repair the Signs within 15 business days of the Director's written demand, the City may do or cause the work to be done, and Lessee shall pay the City's costs within 30 days of receipt of Director's invoice. Failure to pay the amount due within 30 days from receipt of an invoice constitutes grounds to terminate this Lease.
- (C) Lessee may not erect or affix any new or modified lighting fixtures ("**Lighting**") at, on, or about the Premises, or any part thereof, without the prior written approval of the City Manager.
- (D) If approved, the new or altered Signs and Lighting must comply with the City's Code of Ordinances and the City's zoning ordinance, as each may be amended.

### **Section 19. Assignment or Sublease.**

- (A) Lessee may not, without the prior written consent of the City's City Council ("**City Council**"), such consent not to be unreasonably withheld, assign this Lease or sub- lease any portion of the Premises. Any attempted assignment or sublease, without the prior written consent of the City Council may, in the City Manager's sole discretion, render this Lease null and void.
- (B) In the event of the City Council's consent to an assignment or sublease of this Lease, each provision, term, covenant, obligation, and condition required to be performed by Lessee must be binding upon any assignee or sublessee and is partial consideration for the City Council's consent to the assignment or sublease. Any failure of the assignee or sublessee to strictly comply with each provision, term, covenant, obligation, and condition stated in this Lease may, in the City's Manager's sole discretion, render this Lease null and void.

**Section 20. Non-discrimination.** Lessee covenants and agrees that it shall not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Premises, on the grounds of race, religion, national origin, gender, age, disability, or in any manner

prohibited by the laws of the United States or the State of Texas. The City hereby reserves the right to take such action as the United States may direct to enforce this covenant. Violation by Lessee of this covenant constitutes grounds for the City to immediately terminate this Lease.

**Section 21. Relationship of Parties.** This Lease establishes a landlord/tenant relationship, and none other, and this Lease must be construed conclusively in favor of that relationship. In performing this Lease, both the City and Lessee will act in an individual capacity and not as agents, representatives, employees, employers, partners, joint venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose whatsoever. Lessee shall employ sufficient employees to operate the restaurant business and such employees must be solely in the employ of Lessee.

**Section 22. Termination and Damages Prior To Expiration.** If Lessee causes termination of this Lease prior to expiration, Lessee must pay the City, within 30 days of termination, liquidated damages in the amount of \$34,500 to offset income the City will lose due to early termination of this Lease. The liquidated damages paid by Lessee will provide revenue to the City while the City attempts to find a new operator or other revenue source.

**Section 23. Termination upon Default.** The City may terminate this Lease if Lessee fails to comply with any provision, term, covenant, obligation, or condition of this Lease and fails or refuses to cure the default within a reasonable time after receiving written notice of the default. Notwithstanding the immediately preceding language, default of Section 20 of this Lease will subject this Lease to immediate termination.

**Section 24. Indemnification.**

**(A) *To the extent allowed by Texas law and in consideration of allowing Lessee to lease the Premises, Lessee ("Indemnitor") covenants to fully indemnify, save and hold harmless the City, its officers, agents, representatives, and employees (collectively, "Indemnitees") from and against any and all claims, demands, actions, damages, losses, costs, liabilities, expenses and judgments asserted against or recovered from the City on account of injury or damage to persons or property (including, without limitation on the foregoing, premises defects, workers' compensation, and death claims), to the extent any injury, damage, or loss may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part: (1) Lessees' performance pursuant to this***

**Lease; (2) Lessees' use of the Premises and any and all activities associated with the Premises pursuant to this Lease; (3) the violation by Lessee, its officers, employees, agents or representatives or by Indemnitees of any law, rule, regulation, ordinance, or government order of any kind pertaining directly or indirectly to this Lease; (4) the exercise of rights under this Lease; or (5) an act, omission, or criminal violation on the part of Lessee's, its officers, employees, agents, representatives, contractors, patrons, guests, licensees or invitees entering upon the Premises or Boardwalk area with or without the express or implied invitation of Lessee, or of Indemnitees, pertaining to this Lease, regardless of whether the injury, damage, loss, violation, exercise of rights, act, omission or criminal violation is caused or is claimed to be caused by the sole, contributing or concurrent negligence of Indemnitees, but not if such damage or injury results from the gross negligence or willful misconduct of the Indemnitees.**

- (B) Lessee covenants and agrees that, if the City is made a party to any litigation against Lessee or in any litigation commenced by any party, other than Lessee relating to this Lease, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation and at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions based thereon with legal counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from any said claims, demands, actions, damages, losses, costs, liabilities, expenses or judgments.**
- (C) The provisions of this section survive the earlier termination or expiration of this Lease.**

#### **Section 25. Insurance.**

- (A) Lessee must provide insurance in the amounts and types of coverages required by the City's Risk Manager or the Risk Manager's designee ("**Risk Manager**") as**

required in Request for Proposal BI-0151-09 which is incorporated herein by reference. Lessee must provide the City's Marina Director and the Risk Manager with a Certificate of Insurance, stating the levels and types of coverages, at least 30 days prior to the annual anniversary date of the effective date of this Lease.

- (B) The language on the Certificate of Insurance must provide that the City's Marina Director and the Risk Manager receive at least 30 days advance written notice, by certified mail, of any cancellation, non-renewal, or material change in the insurance as required in Request for Proposal BI-0151-09 and which are incorporated herein by reference.
- (C) The Risk Manager retains the right to annually review the limits and types of insurance required by this Lease, to require increased coverage limits and types, if necessary in the interest of public health, safety, or welfare, or to adequately insure the Premises, and to decrease coverage, if so warranted. In the event of any necessary increase, Lessee will receive at least 30 days written notice of the revised re-insurance requirements. Lessee shall procure the revised insurance limits and types within 30 days of receipt of written notice of the revised insurance requirements and provide written proof of insurance to the City's Marina Director and the Risk Manager.
- (D) Lessee shall, prior to the construction of any improvement, addition, or alteration to, in, on, or about the Premises, obtain prior clearance, in writing, from the Risk Manager that the proposed improvement, addition, or alteration will not necessitate a change or modification in the existing insurance coverage maintained by Lessee. This clearance is in addition to the prior consent required by Section 11(A) of this Lease. In the event that the Risk Manager determines that the improvement, addition, or alteration necessitates increased insurance coverage, Lessee shall procure such increased insurance coverage within the time specified by the Risk Manager.

## **Section 26. Taxes.**

- (A) Lessee shall pay all taxes, license and permit fees, and other fees required to operate the Premises. Lessee shall also pay all taxes that Lessee use of the Premises causes to be assessed against the Premises, and any Fixed Asset and Personal Property taxes appurtenant to the Premises. Lessee shall pay all taxes prior to the due date.
- (B) Further, Lessee covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other related taxes according to the United States Internal Revenue Service's Circular E, entitled "Employer Tax Guide", Publication 15, as it may be amended, prior to their respective due dates. Lessee shall provide proof of payment of these taxes within 30 days after payment is due or

the Marina Superintendent requests proof of payment. Failure to pay or provide proof of payment is grounds to terminate this Lease.

**Section 27. Notice.**

- (A) All notices, demands, requests, or replies provided for or permitted by this Lease must be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid, to the addresses stated below; (3) by prepaid telegram; (4) by deposit with an overnight express delivery service; or (5) by fax transmission.
- (B) Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. Notice by fax transmission will be deemed effective upon transmission with proof of delivery.
- (C) All such communications must be made only to the following:

**IF TO THE CITY :**

**IF TO LESSEE:**

City of Corpus Christi  
Attn: Director of Corpus Christi Marina  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
(361) 826-3983 Office  
(361) 883-4778 Fax

- (D) Either party may change the address to which notice is sent by using a method set out above. Lessee shall notify the City of an address change or fax number change within ten (10) days after the address or number is changed.

**Section 28. No debts.** Lessee shall not incur any debts or obligations on the credit of the City during the term of this Lease and including during any Holdover Period that may occur.

**Section 29. Modifications.** This Lease may be modified by the parties if the parties enter into a separate development agreement for the City's Marina area during the term of this Lease. No other changes or modifications to this Lease may be made nor any provision waived unless made in writing and signed by persons duly authorized to sign agreements on behalf of each party.

**Section 30. Interpretation; Venue.** This Lease is to be interpreted according to the Texas laws which govern the interpretation of contracts. Venue lies in Nueces County, Texas, where this Lease was entered into and will be performed.

**Section 31. Captions.** The headings contained in this Lease are for convenience and reference only and are not intended to define or limit the scope of any provision.

**Section 32. Publication.** Lessee agrees to pay the cost of newspaper publication of this Lease and related ordinance, as required by the City Charter, in the legal section of the local newspaper.

**Section 33. Waiver.**

- (A) The failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights under this Lease. The waiver of any covenant or condition or of the breach of any covenant or condition of this Lease by either party at any time, express or implied, may not be taken to constitute a waiver of any subsequent breach of the covenant or condition nor justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition of this Lease. If any action by Lessee requires the consent or approval of the City on one occasion, any consent or approval given on said occasion shall not be deemed a consent or approval of the same or any other action at any other occasion.
- (B) Any waiver or indulgence of Lessee default of any provision of this Lease shall not be considered an estoppel against the City. It is expressly understood that, if at any time Lessee 's is in default in any of its conditions or covenants of this Lease, the failure on the part of the City to promptly avail itself of said rights and remedies which the City may have shall not be considered a waiver on the part of the City, but the City may at any time avail itself of said rights or remedies or elect to terminate this Lease on account of said default. Any waiver by the parties of a breach of any covenants, terms, obligations, or events of default shall not be construed to be a waiver of any subsequent breach nor shall the failure to require full compliance with this Lease be construed as changing the terms of this Lease or estopping the parties from enforcing the terms of this Lease.

**Section 34. Force Majeure.** No party to this Lease is liable for delays or failures in performance due to any cause beyond their control including, without limitation, any delays or failures in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, or riots or interference by civil or military authorities. Such delays or failures to perform extend the period of performance until these exigencies have been removed. Lessee shall inform the City in

writing of proof of such force majeure within three (3) business days or otherwise waive this right as a defense.

**Section 35. Surrender.** Lessee acknowledges and understands that the City's agreement to lease the Premises to Lessee is expressly conditioned on the understanding that the Premises, including, but not limited to, the Boardwalk area, must be surrendered upon the expiration, termination, or cancellation of this Lease in as good a condition as received, reasonable use and wear, acts of God, fire and flood damage or destruction where Lessee is without fault, excepted.

**Section 36. Enforcement Costs.** In the event any legal action or proceeding is undertaken by the City to repossess the Premises, collect the rent payment(s) due pursuant to this Lease, collect for any damages to the Premises, or to, in any other way, enforce the provisions of this Lease, Lessee agrees to pay all court costs and expenses and such sum as a court of competent jurisdiction may adjudge reasonable as attorneys' fees in said action or proceeding or, in the event of an appeal, as allowed by an appellate court, if a judgment is rendered in favor of the City.

**Section 37. Survival of Terms.** Termination or expiration of this Lease for any reason does not release either party from any liabilities or obligations set forth in this Lease that (1) the parties have expressly agreed survive any such termination or expiration, including, but not limited to, Section 25; (b) remain to be performed; or (c) by their nature would be intended to be applicable following any such termination or expiration.

**Section 38. Acknowledgment and Construction of Ambiguities.** The parties expressly acknowledge that they have each independently read and understood this Lease. By Lessee execution of this Lease, Lessee agrees to be bound by the terms, covenants, and conditions contained in this Lease. Furthermore, Lessee acknowledges and understands that this Lease is not binding on the City until properly authorized by the City's City Council and executed by the City Manager. By agreement of the parties, any ambiguities in this Lease are not to be construed against the drafter.

**Section 39. Severability.**

(A) If, for any reason, any word, phrase, paragraph, provision, or section of this Lease or the application of such language to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law effective during the term of this Lease or by a final judgment of a court of competent jurisdiction, then the remainder of this Lease, or the application of said language to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected hereby, for it is the definite intent of the parties to this Lease that every word, phrase, paragraph, provision, or section of this Lease be given full force and effect for its purpose.

(B) To the extent that any word, phrase, paragraph, provision, or section of this Lease is held illegal, invalid, or unenforceable under present or future law effective during the term of this Lease or by a final judgment of a court of competent jurisdiction and in lieu of each such illegal, invalid, or unenforceable language, a word, phrase, paragraph, provision, or section, as similar in terms to such illegal, invalid, or unenforceable language as may be possible and be legal, valid, and enforceable, will be added to this Lease automatically.

**Section 40. Entire Agreement.** This Lease document and the incorporated and attached exhibits constitute the entire agreement between the City and Lessee for the purpose granted. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter hereof, unless contained in this Lease, are expressly revoked, as it is the intention of the parties to provide for a complete understanding within the provisions of this Lease and its exhibits of the terms, conditions, promises, and covenants relating to Lessee operations and the Premises to be used in the operations.

**EXECUTED IN DUPLICATE**, each of which shall be considered an original, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Armando Chapa  
City Secretary

\_\_\_\_\_  
Ángel R. Escobar, P.E.  
City Manager

**APPROVED AS TO LEGAL FORM:** \_\_\_\_\_, 2009.

\_\_\_\_\_  
Assistant City Attorney  
for the City Attorney

**LESSEE:**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2009, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of  
\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name

Commission expires:

Incorporated by Reference:  
Request for Proposal BI-0151-09  
Proposer's Proposal

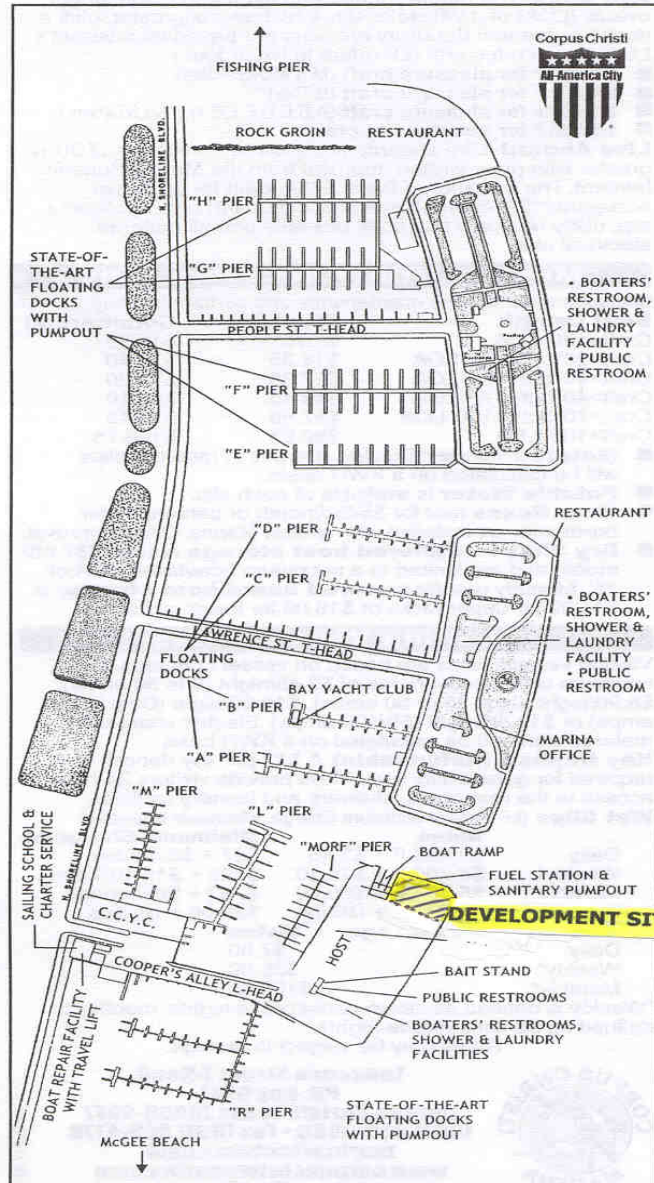
**EXHIBIT A**



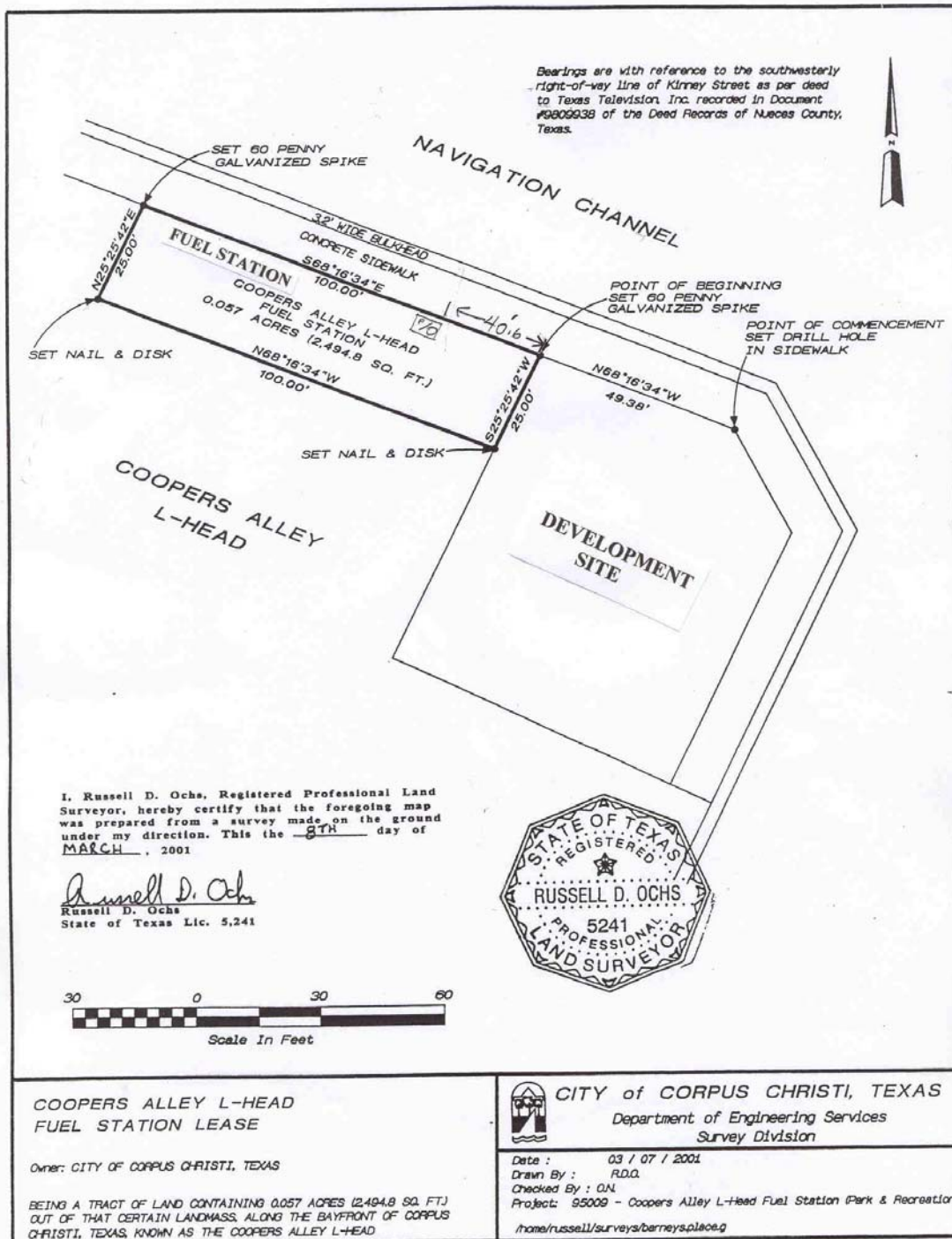
City of  
Corpus  
Christi

**Corpus Christi  
Municipal Marina**

*A division of the*  
**Parks & Recreation**



# EXHIBIT B



**EXHIBIT C**

**HURRICANE PREPAREDNESS PLAN**

This Hurricane/Emergency Action Plan (hereafter Plan) for Fuel Station Facility operated by “\_\_\_\_\_” property and facility has been developed with the coordination and approval of the Emergency Management Office and the Marina and Police Departments of the City of Corpus Christi. It is current for the \_\_\_\_ hurricane season and thereafter until replaced, rescinded or amended. This Plan will be reviewed by the Marina Superintendent and \_\_\_\_\_ from \_\_\_\_\_ on an annual basis prior to June 1st and any updates, corrections and/or revisions will be forwarded to the Emergency Management Office by that date.

**FUEL STATION:**

**Owner’s Name:** \_\_\_\_\_  
**Ofc.Tel. #:** \_\_\_\_\_  
**Main Ofc.Tel.#:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_  
**Res.:** \_\_\_\_\_  
**Mobile:** \_\_\_\_\_

**Manager (1):**

**Name:** \_\_\_\_\_  
**Ofc.Tel. #:** \_\_\_\_\_  
**Main Ofc.Tel.#:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_  
**Res.:** \_\_\_\_\_  
**Mobile:** \_\_\_\_\_

**Manager (2):**

**Name:** \_\_\_\_\_  
**Ofc.Tel. #:** \_\_\_\_\_  
**Main Ofc.Tel.#:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_  
**Res.:** \_\_\_\_\_  
**Mobile:** \_\_\_\_\_

CORPUS CHRISTI MARINA KEY PERSONNEL - Office: 826-3980 (24 hours) Cell: 813-0557

Peter Davidson, Marina Superintendent  
Mobile: 537-2463; Radio #898 Office: 826-3980

Rene Garza, Marina Supervisor,  
Mobile: 215-7690; Radio #897 Office: 826-3980

**GOVERNMENT OFFICES**

Police Department .....	826-2600	National Weather Service	
Fire Department .....	826-3900	Recorded Forecast .....	289-1861
Emergency Operating Center .....	826-3714	Office .....	289-0959
Emergency Management Office ...	826-3700		

**GENERAL PROVISIONS**

1. The order to implement the Plan may be issued by the Mayor, City Manager, Emergency Management Coordinator, Marina Director or Marina Superintendent.
2. It shall be the sole responsibility of \_\_\_\_\_ owners/operators to remove from the premises all equipment, inventory, fuel, fuel tanks, fuel pumps and related equipment, furniture, materials, supplies, all portable units/buildings and to secure the facilities.
3. It shall be the sole responsibility of \_\_\_\_\_ owners/operators to insure no pollutants enter the waters of the Marina from any operation owned/operated by \_\_\_\_\_ i.e., fueling operations, garbage, materials, grease traps, etc.
4. All owners/operators, managers, employees will be required to evacuate the Marina Complex when conditions threaten human safety as determined by the Police Chief or Marina Superintendent. The Marina Staff will secure the Marina Complex and ensure all persons are notified of the danger.
5. The Marina Office has issued Emergency Passes to key \_\_\_\_\_ employees. Access to the Marina Complex will be restricted to persons presenting evidence of tenancy issued by the Corpus Christi Municipal Marina (i.e. a copy of the lease document or a Marina Emergency Pass).

**INCREASED READINESS ACTIONS FOR VARIOUS CONDITIONS**

This Plan is framed around four “conditions” which represent varying degrees of threatened emergencies and is based on the action to be taken as these conditions are known to develop

through information received from the National Weather Service or any other sources. These conditions are as follows:

**CONDITION NUMBER 4 - Beginning of Disaster Vulnerability Season** - This condition will be used by emergency services personnel to refer to a situation which causes a higher degree of disaster possibility than is normally present. This condition will automatically go into effect upon such occurrences as the beginning of **the Hurricane Season (June 1st each year, remaining in effect through November 30th each year)**; or other general conditions; such as fire threat, due to severe drought.

**CITY ACTION:** The City will initiate general increased readiness activities, submit all updated Plans and utilize the media and other sources to recommend various protective actions to the public.

**FUEL STATION ACTION:** \_\_\_\_\_ of \_\_\_\_\_ will review the Plan and provide updated information for the Plan to the Marina Superintendent no later than June 1st. \_\_\_\_\_ will prepare a contingency plan for (1) disconnecting power and/or utility services from all portable building(s); (2) removing all portable building(s) from the premises; (3) removing all fuel, fuel tanks and related equipment; (4) removing objects from outside the fuel facility; and (4) otherwise securing the premises.

**CONDITION NUMBER 3 - Situations Exist that Could Develop Into Hazardous Condition** - This condition will be declared by the City Manager or Emergency Management Coordinator to identify a situation which presents a greater potential threat than "CONDITION 4" but no immediate threat to life or property. This condition might be generated by such events as a hurricane watch, tornado watch, severe thunderstorm watch, or presence of hazardous material in transit through the city by rail, truck or other means.

One such situation when Condition 3 will be declared is when the course of a hurricane has been established and the National Weather Service predicts a likely landfall within **thirty-six hours** and/or within one hundred miles of the City of Corpus Christi.

**CITY ACTION:** The Marina Superintendent or his designee will:

- Advise \_\_\_\_\_ of any changes in Condition as advisories or declarations are received.
  
- Advise \_\_\_\_\_ **IF** and **WHEN** information is received on utility shut offs. The retail electric provider secures their service when they determine it is in jeopardy without notice to the Marina. The Marina may shut off power if high waters make conditions dangerous.

- initiate/continue removal of watercraft from the Marina Complex until it is determined the operation is unsafe due to weather/road/equipment conditions. Marina rescue boats will be hauled out prior to cessation of haul out operations.
- relocate essential City records, tools, equipment and supplies to a safe location.
- ensure all loose items in Marina are secured.

**FUEL STATION ACTION:**

- Cease all normal operations of the fuel station and/or gift shop and begin securing the facilities.
- Consult with the Marina Superintendent relative to the fuel operation; make arrangements for removal of any and all above grounds tanks, fuel, oil drums or related equipment, but continue fueling until weather conditions necessitate removal of tanks or Condition 2 is declared.
- make arrangements for the removal of all refrigerated foods from the premises.
- Make arrangements to have all grease traps vacuumed, if applicable.
- Make arrangements for removal of any equipment, dumpsters, building materials, vending machines, potted plants, street furniture or other objects owned or leased by or placed on the premises by \_\_\_\_\_ Fuel Station.
- Make arrangements for all furnishings except for fixtures to be moved out of the Marina.

**CONDITION NUMBER 2 - Situations Exist That Have Definite Characteristic of Developing Into A Hazardous Condition** - This condition will be declared by the City Manager or Emergency Management Coordinator to identify a hazardous situation which has a significant potential and probability of causing loss of life and/or damage to property. CONDITION 2 will usually require some degree of warning the public of a potential disaster.

This condition might be generated by such events as a hurricane warning, tornado warning, severe thunderstorm warning or any other notification of the existence of a direct threat such as a toxic material spill, major fire, growing civil disturbance, etc.

One such situation when this condition will be declared is when the National Weather Service indicates the possibility of a hurricane landfall within **twenty-four hours** close enough to cause damaging winds or rising tides in the City of Corpus Christi.

**CITY ACTION:**

- complete any remaining hurricane preparations and begin evacuating all persons from the Marina Complex.

**FUEL STATION ACTION:**

- complete any remaining hurricane preparations
- evacuate all employees from the Marina.

**CONDITION NUMBER 1 - Hazardous Conditions Are Imminent** - This condition will be used to signify occurrence of a major emergency IS imminent. Events such as a hurricane strike, **landfall predicted in 12 hours or less**, tornado strike, large explosion, widespread civil disturbance, damaging tides or other similar events will constitute a “Condition One” declaration.

**CITY ACTION:**

- ensure that all hurricane preparations throughout the Marina Complex have been completed and all persons have evacuated the Marina Complex.

**FUEL STATION ACTION:**

\_\_\_\_\_ Fuel Station will have completed all preparations prior to this Condition and are required to evacuate all \_\_\_\_\_ Fuel Station employees from the Marina Complex.

**HURRICANE PASSED:**

Marina staff will report to duty, as directed by the City’s Bad Weather Policy, for damage assessment and appraisal, facility clean up and repair, launching operations, security, etc. Access to the Marina Complex will be restricted to persons presenting evidence of tenancy issued by the Corpus Christi Municipal Marina (i.e. a copy of the lease document or a Marina Emergency Pass).

APPROVED on the dates written.

\_\_\_\_\_ **Fuel Station at the Coopers Alley L-Head**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

**City of Corpus Christi, Marina Department**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**City of Corpus Christi, Police Department**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**City of Corpus Christi, Emergency Management Office**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF CORPUS CHRISTI  
FINANCE DEPARTMENT / PURCHASING DIVISION  
MINORITY BUSINESS ENTERPRISE INFORMATION FORM**

**THIS FORM MUST BE SUBMITTED  
ALONG WITH PROPOSAL**

PLEASE INDICATE WHETHER THE COMPANY IS A CERTIFIED MINORITY BUSINESS. EXAMPLES OF CERTIFICATIONS RECOGNIZED BY THE CITY INCLUDE:

YES  NO - **CERTIFIED HISTORICALLY UNDERUTILIZED BUSINESS (HUB)**

Select all that are appropriate:

- ASIAN PACIFIC
- BLACK
- HISPANIC
- NATIVE AMERICAN
- WOMAN

Please visit the following website for information on becoming a Certified HUB:

<http://www.window.state.tx.us/procurement/prog/hub/>

YES  NO - **LOCAL SMALL BUSINESS (LSB)**

A for-profit entity employing less than 49 employees located within the City limits of Corpus Christi, Texas

YES  NO OTHER (PLEASE SPECIFY):

THIS COMPANY IS NOT A CERTIFIED HUB or LSB

**THE ABOVE MINORITY BUSINESS INFORMATION IS REQUESTED FOR STATISTICAL AND TRACKING PURPOSES AND WILL NOT INFLUENCE THE AMOUNT OF EXPENDITURES THE CITY WILL MAKE WITH ANY GIVEN COMPANY.**

**BID INVITATION NO: BI-      -**

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

Telephone:      -      -      Ext. \_\_\_\_\_

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

Fax:      -      -      \_\_\_\_\_

City:      State:      Zip:      -      \_\_\_\_\_

E-mail: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign Form

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

Signer's Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Please print or type)



## **DEFINITIONS**

- a. “Board member.” A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. “Employee.” Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- c. “Firm.” Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- d. “Official.” The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- e. “Ownership Interest.” Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. “Constructively held” refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements.”
- f. “Consultant.” Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.