AGENDA
MARINA ADVISORY BOARD
REGULAR MEETING
AUGUST 24, 2020
6:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF MINUTES

4.1 July 27, 2020 Minutes

5. PUBLIC COMMENT REGARDING ITEMS NOT ON THE AGENDA

6. OLD BUSINESS

6.1 RFP 2020-20

6.2 Amelia River Waterfront

6.3 Channel Update

6.4 FEMA

6.5 Mooring Field

7. NEW BUSINESS

8. MARINA MANAGER REPORT

9. BOARD MEMBER REPORTS/COMMENTS

10. NEXT MEETING DATE

10.1 September 28, 2020

11. ADJOURNMENT

All members of the public are invited to be present and be heard. Persons with disabilities requiring accommodations in order to participate in this program or activity should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired). All interested parties may appear at said meeting and be heard as to the advisability of any action, which may be considered with respect to such matter. For information regarding this matter, please contact the Marina Manager.

Marina Advisory Board Minutes July 27, 2020

1. Roll Call: All MAB members present

2. Minute Approval: Minutes approved for June 22, 2020

3. Public Comments: No public comments

4. Old Business: Review of old business Paul Lore requested mooring field be included monthly in old business.

5. New Business:
   6.5 Started with RFP Process: presented a timeline and looking for MAB Feedback
   Concern by Scott that RFP is not using one budget
   Capital improvement plan and debt needs to be a part of process
   Terry- West Trac get an extension on working the marina when it is actually functional
   We affirmed three times to extend West Trac to work the marina
   Allen – provided some answers to questions: silting biggest problem; fuel; new design doing well; location great; lodging works; ask how these companies do when
   Coleman-work more in IT; work better with the local committee
   Joe- what works to be competitive with our other competitor's
   New guy- why is this a matter of urgency; back to the evaluation process there are 26 items in the RFP of statements of work
   Joe- westrac leaves there is no corporate memory in our marina
   How will the company transition into management of the marina?
   New guy- westrac never sent a proposal
   All information sent to Evaluation Team
   Criteria – public management vs private management services
   Kevin- is pleased with the outcome of input
   Public viewing and zoom capability for the 6th and 10th meeting

6.1 Amelia River Waterfront- Terry- dry storage is needed to make money and some small restaurants

6.2 Channel Update- Chip Ross - Port and City meeting was not successful with recent mediation regarding the 'pilot payment.' As far as moving the channel the port wants the city to take responsibility on all that is moved. Port wants to expand to the south with a warehouse. Our best course of action is to abandon the channel.

6.3 FEMA – Appeal is being put together and will be submitted to FEMA

6.4 Mooring – 9 functional balls. Diver is looking for more balls. Bigger question- expansion of the mooring field. One study found a pre-historic bed and new shipwrecks maybe of wooden ships. Looking at $28,000 additional study. Looking at 12 more mooring balls. We could end up with 60 new mooring balls. Current- Total of 12 with 9 operational. Permitted for 20 mooring balls. The island on west side has slid eastward and it eliminated 5-mooring balls. Don't let folks come to the dingy dock without a mooring ball permit. We are not operational on the fuel. Permit for 100 mooring balls has lapsed. Dr Ross is going to give the mooring information to the board.

6. Marina Manager Report
   - Fuel still not done
   - 1,000 gal or gas and diesel to test
   - Pay for within 48 hours for fuel by the city
   - Same fuel flow rate @24 gal per minute
   - Three diesel and two gas
   - Rent the dock as transit near the fuel area

7. Board Member Reports/Comments:

   Allen – rebar sticking out on dock is a hazard

Next meeting August 24, 2020.

MARINA ADVISORY BOARD
REGULAR MEETING MINUTES
July 27th, 2020
6:00 PM
City Hall Commission Chambers

1. **CALL TO ORDER** 6:00 PM

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

MEMBERS PRESENT:
Chairperson Kevin McCarthy, Vice Chair-Person Allen Mills, Recording Secretary Paul Lore, Coleman Langshaw, Joe Blanchard, Ronald Scott Stewart, Jerry Decker and Terry Lacoss

VOTING MEMBERS ABSENT: None

4. **APPROVAL OF MINUTES**

4.1 MAB Regular Meeting Minutes for June 22, 2020
ACTION: *Approve Minutes*
Motion: Joe Blanchard; Second: Scott Stewart

APPROVED: 7-0

5. **PUBLIC COMMENT**

5.1 City Manager, Dale Martin introduced a visiting team of the Oasis Group. A presentation was provided followed by a question and answer session

5.2 Mike Meadows – 2601 Via Del Ray – Questioned if we had considered having one of our members work to be on the TDC Board. It was suggested Mr. McCarthy assume this position and we keep the Chairman of the MAB on the TDC board as long as there is a TDC.

5.3 Commissioner Mike Lednovich – 1586 Escambia Drive – reported the sitting Commissioners have directed the City Manager to provide a plan on how to pay the marina debt.

5.4 Jack Nolisky – 2809 Oceanview Ct - Asked if the MAB would hear presentations by the other Management Submitters

6. OLD BUSINESS

6.1 Amelia River Waterfront
6.2 Channel Update
6.3 Profit Centers and Income Streams
6.4 FEMA Update
6.5 Mooring Field
6.6 Discussion of the Marina Management RFP and the respondents' submissions

Nate Coyle, Pauline Testagross and Tammi Bach were present to provide an insight to the membership and actions of the evaluation committee. All respondents were advised there will be a meeting August 6th at 10:00 am to allow the respondents to provide information that may not have been covered in their RFP.

Paul Lore asked if it was too late to add a MAB member to the evaluation committee.

A schedule of events was provided:

July 27th, 2020	Marina Advisory Board
August 6th, 2020	Scoring meeting/discussion; 10:00am
August 7th, 2020	Publish results to the Marina Advisory Board
August 10th, 2020	Special meeting of the Marina Advisory Board; 6:00 pm
August 18th, 2020	City Commission deliberation

Members of the MAB discussed their views on the Evaluations Committee research items.

7. NEW BUSINESS

8. MARINA MANAGER REPORT

9. BOARD MEMBER REPORTS/COMMENTS

No additional reports/comments

10. NEXT MEETING DATE

10.1 August 24th, 2020

11. ADJOURNMENT: 8:45 PM

ACTION: *Approve Adjournment*
Motion: Allan Mills; Second: Paul Lore

APPROVED: 7-0

Paul Lore, Secretary

Kevin McCarthy, Chairperson

To: Fernandina Beach Marina Advisory Board
From: James Frye, VP, Westrec Marinas
Date: August 24, 2020
RE: Remarks at the Marina Advisory Board Meeting, August 24, 2020

I want to thank the Marina Advisory Board for inviting Westrec to deliver a presentation at this meeting and apologize for not attending the meeting in person. Due to the Covid-19 pandemic, out of respect for my wife and family in Virginia, I have refrained from flying until the situation improves.

Joe Springer was keen to deliver his presentation to you and to demonstrate the progress that Westrec has made in growing visitations and revenue at Fernandina Harbor Marina throughout Westrec's tenure with the City. We worked in concert with the City of Fernandina Beach for over a decade in delivering a great deal of success at the marina.

I have only a few topics to address as additions to Joe's presentation.

Out of respect for you folks that continue to support Westrec, I want to address the question surrounding Westrec's response to the Request for Proposals.

I have heard many times throughout the RFP process and at a myriad of meetings that "Westrec did not submit a proposal." It was my expectation that our existing Agreement would be considered along with responses to the RFP. I based that expectation on the fact that the RFP, in the second paragraph under Scope of Work, said,

"T*he City currently has an operating agreement with Westrec Marinas (copy attached) to manage marina operations. Although the relationship between the City and Westrec remains viable, it has been several years since the agreement has been reviewed, and with the recent renovations, the City Commission believes it is an appropriate time to examine and clarify financial and operational components of the Marina. The City is seeking proposals from interested parties to lease Marina facilities or manage Marina operations…"*

In hindsight I guess I should have prepared a one page document that summarized our Agreement so that it could have been reviewed at a glance, but since it was acknowledged overtly in the RFP and distributed as a part of the RFP, I was comfortable that our existing Agreement would be considered among the responses to the RFP. The Stantec Report included the Westrec Agreement in both summary tables in their Report, unfortunately, the arithmetic they displayed was incorrect and misrepresented the Westrec position. For the record, they got the numbers wrong for Founders 3 too. I pointed this out to the City Manager in a letter that you may or may not have seen.

I was disappointed when the rhetoric around the RFP review repeatedly said that Westrec did not submit a response, but who would have guessed that this confusion was only the beginning of what turned out to be a rather convoluted RFP review. And that is all I will say about the RFP review process, those challenges are your own.

I want to thank the Marina Advisory Board for your continuing support of Westrec. No matter what the outcome of this meeting is and whatever recommendation that you make going forward, I want to thank you for supporting Joe Springer and acknowledging his work at the marina for so many years. I know that at least twice, as a group, you have recommended that Westrec continue and get the marina back up to speed when construction is complete, but I also recognize the limitations on your influence in the process.

Finally, as the decision is made on marina management and the marina construction is completed; discussions will return to the marina debt. Unfortunately, it looks like the anticipated reimbursement from FEMA will not materialize. The debate surrounding that issue is only beginning and I want to make sure that everyone is clear that Westrec was not involved in the FEMA funding application. Westrec was specifically excluded from the FEMA review when we tried to participate in FEMA's walk-through immediately after the hurricane. We were asked to leave the docks as the City Manager took complete control of situation. We were not involved in the application process.

As I have stated previously, the success of the marina is predicated on one's ability to host a safe, enjoyable, and quality experience for the recreational boater, the commercial tenants and everyone of the guests that those businesses attract. Fernandina Harbor Marina is an integral part of the downtown community that makes Fernandina Beach so vibrant and unique. It has been our pleasure at Westrec to have partnered with the City for so many years in delivering on that premise. We remain available to you to continue in that mission or to respectfully facilitate a transition to a new operator if you wish.

Thank you for your support and my absolute best wishes to each of you to remain, safe, healthy, and prosperous in these challenging times.

LEASE

THIS LEASE (the **"Lease"**) made this 7th day of October 2014, between **the City of Fernandina Beach, Florida**, whose principal address is **204** Ash Street, Fernandina Beach, Florida 32034 (hereinafter referred to as **"Landlord")**, and **Westrec Marina Management, Inc.** a California corporation whose principal address is 16633 Ventura Boulevard, 6th Floor, Encino California 91436 (hereinafter referred to as **"Tenant"**).

1. **DEMISED PREMISES**. In consideration of the rents, covenants and Leases hereinafter reserved and contained on the part of the Tenant to be observed and performed, the Landlord demises and leases to the Tenant, and the Tenant rents from the Landlord those certain premises, known as the Dock House Retail, now erected and located at One North Front Street, Fernandina Beach, FL 32034 ,Fernandina Beach, Nassau County, State of Florida, which premises consists of a floor area of approximately six hundred (600) square feet and outdoor space contiguous to the present building. The premises shall be referred to herein as the **"Demised Premises"**. The land upon which the Demised Premises are located is referred to herein as the **"Land"**. This Lease and the rights of the parties set forth herein shall create the relationship of "landlord" and tenant" only between Landlord and Tenant. The exact legal description is set forth on **Exhibit "A"**.

2. **TERM**. The term of this Lease shall continue ~~be~~, until either party gives the other party at least ninety (90) days written notice of termination,

3. **RENT**.

A. Base Rent. For each month under the term of this Lease, Tenant agrees to pay Landlord a Monthly Base Rent for the Demised Premises. The Monthly Base Rent shall be the greater of twenty five hundred dollars ($2,500) or 25% of the Monthly Gross Retail Sales. Said Base Rent shall be paid in arrears not later than the 10th day of each and every calendar month during said term. In addition to said Base Rent, Tenant agrees to pay the amount of the rental adjustments as and when hereinafter provided in this Lease. Said rental (including Base Rent, Additional Rent and all other sums payable to Landlord under this Lease) shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the office of Landlord or to such other person or at such other place as Landlord may from time to time designate in writing.

4. **ADDITIONAL RENT**. Taxes. Tenant hereby agrees to pay any and all real property taxes and personal property taxes, sales taxes, charges and assessments which are levied,

assessed upon or imposed by any governmental authority or political subdivision thereof during any calendar year of the term hereof with respect to the Land and all buildings, including the Demised Premises, located thereon.

5. **USE OF DEMISED PREMISES**. Tenant's Business. The Demised Premises shall be used and occupied by Tenant for general retail purposes, including the sale of marina related retail items.

6. **OPTION TO RENEW**. Tenant may elect to extend the term of this Lease, with approval by the Fernandina Beach City Commission, in its sole discretion, which shall not be unreasonably withheld, upon the same covenants and conditions as herein provided. If Tenant shall elect to extend the term of this Lease, it shall do so by giving Landlord written notice at least one hundred eighty (180) days prior to the expiration of the primary term or of the then current extension.

7. **UTILITIES**. Tenant shall be solely responsible for, and shall promptly pay, all charges for use or consumption for water, sewer, telephone, sanitation, heat, gas, electricity or any other utility services.

8. **MAINTENANCE AND REPAIRS**. Tenant Responsibility. Tenant shall at Tenant's sole cost and expense keep and maintain the Demised Premises in good condition and repair; except damage thereto from causes beyond the reasonable control of Tenant. All damage or injury to the Demised Premises caused by the act or negligence of Tenant, its employees, agents or visitors, shall be repaired by Tenant at Tenant's sole cost and expense. Tenant shall upon the expiration or sooner termination of the term hereof surrender the Demised premises to Landlord in the same condition as they existed on the Commencement Date, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Landlord shall have no obligation to alter, remodel, improve, decorate, or paint the Demised Premises or any part thereof, and the parties hereto affirm that Landlord has made no representations to Tenant respecting the condition of the Demised Premises, except as specifically herein set forth. Tenant accepts the Demised Property in its "as is" condition.

9. **INDEMNIFICATION**. Tenant agrees to assume liability for and indemnify, hold harmless, and defend the Landlord, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees. in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of Tenant, its officers, employees, agents, and representatives. Tenant's liability hereunder shall include all attorney's fees and costs incurred by the Landlord in the enforcement of this indemnification provision. This includes claims made by the employees of Tenant against the Landlord and Tenant hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Lease and shall not be limited by the amount of any insurance required to be obtained or maintained under this Lease. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of

liability the Landlord may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

10. **MECHANIC'S LIENS**. Tenant shall have no authority to subject the Demised Premises or the Land, or any part thereof or any interest of Landlord therein, to any mechanic's or other lien. Should any mechanic's or other liens be filed against the Demised Premises or the Land or any part thereof or any interest of Landlord therein, by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Landlord.

11. **INSURANCE.**

A. Tenant Insurance/Property Damage. At all times during the term hereof, Tenant shall maintain in effect policies of property damage insurance covering: (i) all leasehold improvements (including any alterations, additions or improvements as may be made by Tenant pursuant to provisions of Paragraph 14 hereof) and in which Tenant may have an insurable interest; and (ii) trade fixtures, merchandise and other personal property from time to time in, on or upon the Demised Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against vandalism and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under subsection (i) shall be paid to Landlord and the proceeds under subsection (ii) shall be paid to Tenant.

B. Tenant Liability Insurance. Tenant shall, at all times during the term hereof and at its own cost and expense, procure and continue in force comprehensive general liability insurance for bodily injury and property damage, adequate to protect Landlord against liability for injury to or death of any person, arising in connection with the construction of improvements on the Demised Premises or use, operation or condition of the Demised Premises. Such insurance at all times shall be in an amount of not less than a combined single limit of One Million and 00/100 Dollars ($1,000,000.00), insuring against any and all liability of the insured with respect to the Demised Premises or arising out of the use or occupancy thereof.

C. Policy Form. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies, qualified to do business in the State of Florida. Each policy shall name Landlord as an additional insured, as their respective interests may appear, and copies of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord by Tenant at least ten (10) days prior to Tenant's occupancy of the Demised Premises. No such policy shall be cancelable or materially altered except after ten (10) days prior written notice to Landlord. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof.

12. **DAMAGE AND RESTORATION.**

A. Tenant's Obligations. In the event the Demised Premises, or any portion thereof, should be damaged or destroyed, Tenant may, at its option reconstruct or restore the Demised Premises after any damage or destruction thereof.

B. Abatement of Rent. During the period commencing with the date of any such damage or destruction which Landlord elects hereunder to repair, reconstruct or restore, and ending with the completion of such repairs, reconstruction or restoration, the Base Rent and Additional Rent shall be proportionately abated in an amount equal to the proportion thereof which the number of square feet of gross floor area in the Demised Premises rendered un-tenantable thereby bears to the total number of square feet of gross floor area in the Demised Premises immediately prior to such damage or destruction. The full amount of said Base Rent and all other charges shall again become payable immediately upon the completion of such work of repair, reconstruction or restoration.

13. **RENOVATION.** Tenant shall have the right to renovate or remodel the current building, subject to approval by Landlord, which shall not be unreasonably withheld. The costs associated with renovation and remodeling shall include the cost of construction, permitting and design, and shall be referred to herein as Renovation Costs. The Renovation Costs shall be subject to City approval.

14. **EMINENT DOMAIN**. If the whole of the Demised Premises shall be taken, or such part thereof, shall be taken as shall substantially interfere with Tenant's use and occupancy of the balance thereof, under power of eminent domain, or sold, transferred, or conveyed in lieu thereof, either Tenant or Landlord may terminate this Lease as of the date of such condemnation or as of the date possession is taken by the condemning authority, whichever date occurs later. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and removable by Tenant at the expiration of the term hereof, as provided hereunder or for the interruption of, or damage to Tenant's business or for relocation expenses recoverable against the condemning authority. No temporary taking of a part of the Demised Premises, including parking facilities, shall give Tenant any right to terminate this Lease or to any abatement of rent hereunder.

15. **QUIET ENJOYMENT**. Landlord shall not take any action that restricts Tenant's quiet enjoyment of the property, except as provided hereunder. Landlord shall provide adequate access to the property during the term of the Lease including non-exclusive use of existing parking areas. Landlord shall have the right to improve the Demised Premises and surrounding areas, including but not limited to, the parking areas and waterfront property on the Amelia River. Tenant hereby acknowledges and understands that construction activity and/or disruption of Tenant's use and business enterprise on the Demised Premises is likely. No construction activity and/or disruption of Tenant's use and business enterprise on the Demised Premises, including parking facilities, shall give Tenant any right to terminate this Lease or to any abatement of rent hereunder, except as approved by the City Commission.

16. **DEFAULT BY TENANT/REMEDIES.**

A. **Defaults**. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

1. The vacating or abandonment of the Demised Premises by Tenant.

2. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant.

3. The making by Tenant of any general arrangement or assignment for the benefit of creditors, whereby; (a) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (b) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (c), the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days. Provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect.

B. **Remedies**. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

1. Terminate Tenant's right to possession of the Demised Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Demised Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Demised Premises; expenses of re-letting, including necessary renovation and alteration of the Demised Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of any leasing commission paid by Landlord applicable to the unexpired term of this Lease.

2. Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Demised Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and

remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

3. Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Demised Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

17. **DEFAULT BY LANDLORD/REMEDIES/EXCULPATION.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event shall Landlord be deemed in default sooner that thirty (30) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than such thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and, thereafter, diligently prosecutes the same to completion. Anything in this Lease to the contrary notwithstanding, Landlord shall be liable for any damages resulting from its default under the terms of this Lease.

18. **ASSIGNMENT AND SUBLETTING.** Tenant shall be permitted to assign this Lease or sublet its rights, duties, or obligations hereunder with the prior written consent of Landlord, which consent shall not be unreasonably withheld.

19. **END OF TERM.**

A. At the expiration of this Lease, Tenant shall surrender the Demised Premises in the same condition as it was in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall deliver all keys and combinations to locks, safes and vaults to Landlord. Before surrendering the Demised Premises, Tenant shall remove all its personal property, trade fixtures, inventory, alterations, additions and decorations, and shall repair any damage caused thereby. Tenant's obligations to perform this provision shall survive the end of the term of this Lease. If Tenant fails to remove its property upon the expiration of this Lease, the said property, at Landlord's option, shall be deemed abandoned and shall become the property of Landlord.

B. If the Demised Premises are not surrendered at the end of the term, then Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Demised Premises, including, without limitation, any claims founded on such delay made by any succeeding occupant of the Demised Premises or any part thereof, and Tenant shall be liable to Landlord for any and all legal expenses, costs, and fees incurred by Landlord in obtaining the possession of the Demised Premises.

20. **HOLDING OVER.** Any holding over after the expiration of this term or upon termination, shall be construed to be a tenancy from month to month and shall otherwise be on the terms herein specified so far as applicable.

21. **NO WAIVER**. Failure of Landlord to insist upon the strict performance of any provision or to exercise any option or enforce any rules and regulations shall not be construed as a waiver for the future of any such provision, rule or option. The receipt by Landlord of rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent shall be deemed to be other than on account of the earliest rent then unpaid nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

22. **NOTICES**. Any notice, demand, request or other instrument which may be or required to be given under this Lease shall be delivered in person or sent by United States Certified or Registered Mail, postage prepaid, and shall be addressed to either party at the address as hereinabove given. Any notice shall be deemed delivered upon hand deliver or three (3) days after depositing such notice in postal receptacles, return receipt requested. Either party may designate such other address as shall be given by written notice.

23. **RECORDING**. Tenant shall record this Lease.

24. **PARTIAL INVALIDITY**. If any provision of this Lease or application thereof to any person or circumstance shall, to any extent, be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. **PROVISIONS BINDING, ETC.** Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns and any sale by Landlord of the Land or of the Demised Premises shall be subject to this Lease provided the same is not in default at the time of such sale. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one lessee, they shall all be bound, jointly and severally, by these provisions.

26. **ENTIRE LEASE, ETC.** This Lease and the Exhibits, Riders and/or Addenda if any attached, set forth the entire Lease between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by the party sought to be charged. Submission of this Lease for examination does not constitute an option for the Demised Premises and becomes effective as a Lease only upon execution and delivery thereof by Landlord to Tenant. It is herewith agreed that this Lease contains no restrictive covenants in favor of Tenant. The captions and numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this Lease.

27. **NO PARTNERSHIP**. Nothing contained in this Lease shall, or shall be deemed or construed so as to create the relationship of principal-agent, joint venturers, co-adventurers, partners or co-tenants between Landlord and Tenant; it being the express intention of the parties that they are and shall remain independent contractors one as to the other.

28. **RADON GAS DISCLOSURE**. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

29. **PUBLIC RECORDS LAW REQUIREMENTS.** Pursuant to Section 119.0701, Florida Statutes, Westrec shall: (a) keep and maintain all public records as that term is defined in Chapter 119, Florida Statutes ("Public Records"), that ordinarily and necessarily would be required by the City in order to perform the work contemplated by this Agreement; (b) provide the public with access to Public Records, on the same terms and conditions that the City would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining Public Records and transfer, at no cost to the City, all public records in possession of Westrec within thirty (30) days after termination of this Agreement, however terminated, and destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements and provide the City with a letter confirming that this has been done within thirty (30) days of the termination of this Agreement. All Public Records stored electronically must be provided to the City in a format that is compatible with the information technology of the City. If Westrec does not comply with a public records request, the City may pursue any and all remedies available in law or equity, including but not limited to specific performance.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Lease as of the day and year first above written.

LANDLORD:

ATTEST:

CITY OF FERNANDINA BEACH

Caroline Best
Caroline Best, City Clerk

Joe Gerrity
Joe Gerrity, City Manager

APPROVED AS TO FORM AND LEGALITY:

Tammi E. Bach, City Attorney

WITNESS:

TENANT:

WESTREC MARINA MANAGEMENT, INC., a California Corporation

Mary Pastore
Witness Signature

By: ______________________

MARY PASTORE
Print Name of Witness

Name: WILLIAM W. ANDERSON

Title: PRESIDENT

Exhibit A

DOCKHOUSE & FUEL DOCK

A building and adjacent dock area which is utilized for marina operations, including retail sales, fuel dispensers and outdoor display area that is located upon a floating dock located within the City of Fernandina Beach Marina, more particularly described as:

A portion of the floating dock lying west of and immediately adjacent to the west property line of Water Lot 25, City of Fernandina Beach, Nassau County Florida as shown on the Official Plat of said City as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and re-issued by the Florida Town Improvement Company in 1887 and 1901, said portion of floating dock being approximately 50 feet long by 20 feet wide.

Encumbering 1,000 square foot, more or less.

Resolution 2014-141
Exhibit "A"

Date: September 18, 2014

Marina Management Agreement

Between Westrec Marina Management, Inc.,

and

City of Fernandina Beach, Florida

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MARINA MANAGEMENT AGREEMENT

THIS MARINA MANAGEMENT AGREEMENT (the "Agreement") dated October 7, 2014 is between Westrec Marina Management, Inc., a California corporation ("Westrec"), 16633 Ventura Boulevard, 6th Floor, Encino, CA 91436, and City of Fernandina Beach, Florida, a Municipal Corporation, ("City"), 204 Ash Street, Fernandina Beach, FL, 32034:

RECITALS

A. City owns the Marina located at 1 Front Street, known as Fernandina Harbor Marina (the "Marina").

B. It is the intention of City that the wet slips at the Marina be rented to third parties for use as temporary boat storage facilities, that the other buildings be leased for communal and retail activity, and that the Marina facilities are put to their intended use.

C. Westrec is in the business of managing marinas and currently manages similar facilities.

D. City wants Westrec to manage the Marina and Westrec wants to manage the Marina in accordance with the terms and conditions of this Agreement as hereinafter set forth in the location described as the Marina Operating Area ("MOA") described in Exhibit 3.

E. City's intent in retaining Westrec is to have a vital, financially successful and self-supporting marina by increasing overall net revenue to pay for all fixed and variable costs including annual debt service.

F. The City finds that this Agreement serves both a public purpose and a municipal purpose.

AGREEMENT

NOW, THEREFORE, in consideration for the mutual covenants herein contained, Westrec and City agree as follows:

1. **Documents Comprising Contract.**

The contract shall include this Agreement as well as the following documents which are incorporated herein by reference:

(a) The City of Fernandina Beach Request for Proposal "RFP" (RFP #2009-103), its Exhibits and Attachments issued on June 3, 2009, and all of its addenda.

(b) Westree's proposal, including its certificate of insurance as required by the RFP and other required documents.

(c) Exhibits

- (1) Marina (Tax Free) Debt Service schedule
- (2) Marina (Taxable) Debt Service schedule
- (3) Marina Operating Area
- (4) List of Current Marina Employees and Job Descriptions
- (5) Submerged Land Lease

(d) Attachments

- (1) Current leases in Marina Operations Area
  - (a) One Centre Street Restaurant Group
  - (b) Atlantic Seafood
  - (c) Amelia Island Charter Fishing Boat Association (month to month)
  - (d) Amelia Island Cruises
- (2) Florida Inland Navigation District Agreement (FIND)
- (3) Boating Infrastructure Grant Program (BIGP)
- (4) Applicable City policies
  - (a) Purchasing Policies and Procedures
  - (b) Budget Policy
  - (c) City Sign Code
  - (d) Mooring Field Grant
- (5) The City 2014-15 Pro Forma Marina Budget

If there is a conflict between the terms of this Agreement and above-referenced documents then the conflict shall be resolved as follows: the terms of this Agreement shall supersede over other documents, and the terms of the remaining documents shall be given preference in their above-listed order.

2. **General Contract Terms.**

(a) **Non-exclusive Contract.**

Award of this contract shall impose no obligation on the City to utilize Westree for all work of the type which may develop during the contract period. This is not an exclusive contract.

(b) **Additional Services and Locations.**

The City reserves the right to request additional services relating to this Agreement from Westree when approved by the Parties, in accordance with additional services as set forth in the RFP. Westree shall provide such additional requirements as may become necessary. The City reserves the right to unilaterally add or delete locations or services at its sole option as it may deem necessary or in the best interests of the City. In such case, Westree will be required to provide services pursuant to this Agreement in accordance with the terms, conditions and specifications, and as set forth in an amendment approved by the Parties.

(c) **Entirety of Agreement.**

Parties hereto agree that this Agreement sets forth the entire agreement between the parties and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto. This Agreement and the exhibits and attachments hereto and other documents and agreements specifically referred to herein constitute the entire fully integrated Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written communication or agreements between the parties with respect hereto excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may only be amended by written documents, properly authorized, executed and delivered by both parties hereto. For the City, appropriate authorization shall be construed to mean formal action by the elected officials of the City, except where specified within this Agreement that the City Manager or his or her designee shall have approval or authority. This Agreement shall be interpreted as a whole unit. This Agreement shall not be construed in favor of one party or the other. All matters involving this Agreement shall be governed by the laws of the State of Florida and the proper venue for any litigation arising hereunder will be a state or federal court located in Florida with venue within Nassau County, Florida.

(d) **Headings.**

Headings of various paragraphs and sections of this Agreement and its table of contents are for convenience and use of reference only and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

(e) **Severability.**

The terms and conditions of this Agreement shall be deemed to be severable; consequently, if any clause, term or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions and notwithstanding such determination, this Agreement shall continue in a full force and effect unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement to be impossible of performance

(f) **No Waiver of Right to Enforce.**

The waiver of any breach or any term covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term, or condition shall be deemed to have been waived, unless such waiver be in writing. Nor shall there be any accord and satisfaction unless expressed in writing and signed by both the City and Westrec.

(g) **Performance.**

Service shall be performed in a timely manner as specified in the RFP.

The Parties expressly agree that time is of the essence in the performance of this Agreement and the failure to complete the performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the Parties of any obligation to accept such performance.

(h) **Notices.**

Any notice required or permitted herein is to be given in writing and shall be personally delivered or mailed, first class postage prepaid or delivered by an overnight delivery service to the respective addresses of the parties set forth below their signatures on the signature page hereof, or to such other address as any party may give to the other in writing. Any notice required by this Agreement will be deemed to have been given and received when personally served or one (1) day after delivery to an overnight delivery service or five (5) days after deposit in the first class mail.

To the City: City Manager
City of Fernandina Beach
204 Ash Avenue
Fernandina Beach, Florida 32034
Attn: City Manager

To Westrec: Westrec Marina Management, Inc.
16633 Ventura Boulevard, 6th Floor
Encino, CA 91436

With copy to: Westrec Marinas
801 North East Third Street
Dania Beach, Florida 33004
Attn: Gary Groenewold
Vice President Southern Area

With copy to: Shutts & Bowen LLP
Attention: Stephen K. Tilbrook, Partner
200 East Broward Boulevard
Suite 2100
Fort Lauderdale, FL 33301

(i) **Remedies.**

Each party shall have full remedies available under existing laws, including, but not limited to, the Uniform Commercial Code, mediation, alternative dispute resolution and all state and federal courts of any jurisdiction.

(j) **Assignment, Subcontracting, Corporation Acquisitions and/or Mergers.**

Westrec shall perform this contract. No assignment or subcontract shall be allowed without the prior written consent of the City in the event of a corporate acquisition and/or merger. Westrec shall provide a written notice to the City within the 30 business days of any assignment or subcontract. In the event of an assignment of the contract to a wholly owned subsidiary of Westrec, the City's written consent shall not be unreasonably withheld.

(k) **Miscellaneous.**

If it shall become necessary for either party hereto to engage attorneys to institute legal action for the purpose of enforcing its rights hereunder or for the purpose of defending legal action brought by the other party hereto, the party or parties prevailing in such litigation shall be entitled to receive all costs, expenses and fees (including reasonable attorneys' fees) incurred by it in such litigation (including appeals). This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. No representative of Westrec is authorized to make any representations, warranties or agreements other than as expressly set forth herein. Any consent required by this Agreement to be given by City to Westrec shall be given in writing. Westrec hereby disclaims any implied or express warranties, guarantees or representations of any kind other than as expressly set forth in this Agreement.

3. **Management.**

(a) **Term.**

City hereby engages Westrec to manage the Marina and Westrec hereby agrees to manage the Marina until this Agreement is terminated in accordance with Section 13 below.

(b) **Other Marinas.**

City acknowledges that Westrec is in the business of managing marinas both for its own account and for others. It is hereby expressly agreed that Westrec and its affiliates may continue to engage in such activities, may manage facilities other than those presently managed by it so long as the facilities are not in direct or indirect competition with City. Westrec agrees not to manage or lease any other facility within twenty (20) nautical miles of the City's marina without the express written consent of the City.

(c) **Relationship of Parties.**

In the performance of its duties under this Agreement, Westrec shall occupy the position of an independent contractor with respect to the City. Nothing contained herein shall be construed as making the parties hereto partners, nor, except as expressly otherwise provided for herein, construed as making Westrec an agent or employee of the City.

(d) **Independent Contractor Status and Compliance with the Immigration Reform and Control Act of 1986.**

Westrec is and shall remain an independent contractor and is neither agent, employee, partner nor joint venturer of the City. Westrec acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 USC Section 1324 et seq. and regulations relating thereto as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the contract at the discretion of the City.

4. **Authority of Westrec.**

(a) **General Authority.**

Westrec hereby agrees to provide the City with Marina Management Services as requested as specifically outlined in the RFP, this Agreement and all subsequent official documents that form the contract documents for this Agreement, subject to budget and City policy restrictions and procedures stated or referenced herein. Westrec shall have the authority to fully and completely supervise and direct the operations of the Marina and matters associated or related to the operation of the Marina, including boat slip rentals, diesel gasoline sales, convenience store sales, and supervision of all leases of space at the Marina referenced in Attachment 1. City shall execute such documents as Westrec, in its reasonable judgment, deems necessary or advisable for Westrec to carry out its management of the Marina. Such authority shall include authority to direct the matters specified below, which are not in limitation of the foregoing.

(b) **Renting of the Marina.**

Westrec shall use its reasonable discretion to establish the terms and conditions of occupancy of boat slips in the Marina. The City shall set the rates for the boat slip rentals. Westrec is hereby authorized to assist the City's employees in entering into rental agreements with such tenants and to collect rent from such tenants. The form of rental agreement shall be prepared, reviewed, as appropriate by Westrec and recommended to the City for acceptance.

(c) **Marketing and Advertising.**

Westrec shall establish the policies and procedures which it deems necessary or advisable for directing the marketing activities of personnel engaged by or on behalf of City relating to the Marina subject to authorized budget appropriations and restrictions. Westrec shall cause City to advertise in such media and to the extent Westrec deems necessary and appropriate. All advertising of the Marina, including signs, may be carried under the Westrec name and/or the name of the Marina. All advertising and marketing costs shall be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(d) **Repair, Maintenance and Improvements.**

Westrec shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the acquisition of furniture, fixtures and supplies for the Marina, and the purchase, lease or other acquisition of the same, on behalf of the City. Westrec shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the routine day-to-day maintenance, repair and landscaping of the Marina, on behalf of the City. In connection with performance of routine day-to-day maintenance, repair and landscaping, Westrec shall negotiate and supervise the installation of minor capital improvements related to the Marina which Westrec, in its reasonable discretion, deems necessary or appropriate; provided, however, that Westrec shall obtain the prior approval of the City for all expenditures in excess of five hundred dollars ($500.00) for any one item (except monthly or recurring operating charges and/or emergency repairs if in the opinion of Westrec such expenditures are necessary to protect the Marina from damage or to maintain services to the tenants as called for in their leases). Westrec agrees to follow and comply with the City's Purchasing Policies and Procedures. All repair, maintenance and improvement costs shall be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(e) **Personnel.**

Westrec shall select, hire, discharge and supervise all labor and employees which it deems necessary or advisable for the operation and maintenance of the Marina. Westrec may hire the types and number of Marina Personnel as Westrec, in its reasonable discretion, deems appropriate for operation and management of the Marina, subject to the provisions in subsection (g), Budget. Westrec shall have the authority for the supervision of all employees, for the determination of employee compensation, including any incentives, bonuses and benefits, and for the establishment of policies and procedures relating to employment. Westrec shall pay for all costs of on-site employees (including without limitation payroll taxes, insurance, 401-K plan contributions and all other employee fringe or other benefits), as specified in subsection (g) Budget. The cost of Marina Personnel is the responsibility of the City as set forth in the approved marina budget, and the cost of Marina Personnel will be paid by the City to Westrec as invoiced monthly by Westrec.

Throughout the terms of this Agreement, Westrec shall employ a qualified full-time, on-site manager ("Marina Manager") having experience in the management of a marina of this type who shall be available during normal business hours and be delegated sufficient authority to ensure competent performance and fulfillment of the responsibility of the management agreement and to accept serviceable notices provided for herein. The on site Marina Manager shall be part of the Marina Personnel, and the Marina Budget shall include the costs of the on-site Marina Manager. The cost of Westrec personnel who supervise, or otherwise participate in the management, administration and operation of the Marina, but also do work for Westrec and/or other marinas managed by Westrec, will be covered by the Administration Fee (as defined in Section 6 - Compensation of Westrec) paid by the City to Westrec. These persons include Westrec personnel responsible for: (i) the direct supervision of on-site personnel; (ii) training of on-site and supervisory managers; (iii) the coordination and supervision of routine repairs and maintenance at the Marina; (iv) supervision of the procedures relating to eviction of delinquent tenants and sale of delinquent tenants' property; (v) overseeing inventory and supplies of the type used by the Marina; (vi) marketing; (vii) administering the payroll for on-site employees, including the administration, withholding and payment of applicable compensation coverage on behalf of and for the account of City; and (viii) accounting and other services relating to the operation and administration of the Marina. City understands and acknowledges that some or all of such persons may be simultaneously engaged by and/or for the account of City and by and/or for other marinas managed by Westrec, some of whom may (i) be affiliates of Westrec and (ii) compete with City. Westrec shall not be separately reimbursed for the time of its executive officers devoted to City's affairs or for the other overhead expenses of Westrec.

Westrec's employees in contact with the public shall perform their duties in an efficient and courteous manner. Westrec shall insure all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. Failure of an employee to do so shall be grounds for the City to demand his or her removal from duties on the Marina property. Westrec shall provide the City with the name and telephone number of a management person who will be on call at all times for emergencies or other matters related to the operations under this Agreement. At the conclusion of this Agreement, City agrees to use its best efforts to rehire the employees listed on Exhibit 4, with credit for previous City length of service and seniority.

(f) **Budget.**

Westrec agrees, to the extent reasonable and feasible, to operate the Marina in accordance with the approved budget. Westrec shall annually, beginning with Fiscal Year 2014-2015, develop a proposed budget, in conjunction with the City's budget preparation process, which shall be reviewed and approved by the City Manager and City Commission. The annual budget submittal shall include, but not be limited to, all of the proposed revenue sources and expenditures for the Marina. The proposed revenue projection shall include detailed written justification to support the proposed sources and projections. Westrec in proposing the annual expenditure budget shall include, but not be limited to, the following:

(1) **Personnel Costs.** An organizational chart listing all of the full and part-time positions that Westrec is proposing, their positions with titles, number in each position, proposed pay ranges, and benefit costs for each position.

(2) **Marketing and Promotion Costs.** Westrec shall provide a comprehensive marketing and promotion budget which will list the proposed specific expenditures to support the proposed plan.

(3) **Proposed Capital Improvement and Repair Maintenance Plan.** Westrec shall develop a proposed detailed Capital Improvement and Repair Maintenance Plan that specifically describes each proposed expenditure, activity, justification or need for activity, and the estimated cost.

(4) **City's Overhead Costs.** Westrec shall provide a detailed list and projected cost for each expenditure.

(g) **Agreements.**

Westrec shall have the authority to negotiate and recommend to the City such agreements which Westrec deems necessary or advisable for the furnishing of utilities, services, concessions and supplies, for the maintenance, repair and operation of the Marina and such other agreements which may benefit the Marina or be incidental to the matters for which Westrec is responsible hereunder.

(h) **Other Decisions.**

Westrec shall make all decisions in connection with the day-to-day operations of the Marina.

(i) **Regulations and Permits.**

Westrec will observe, obey and comply with all rules and regulations adopted by the City and all laws, ordinances, and or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to the operations under this Agreement. Failure to do so will constitute a breach of this Agreement. Westrec shall procure all required permits, licenses and approvals, on behalf of the City, for the operation and performance under this Agreement. All permit or regulatory fees or costs shall be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(j) **Management Records and Reports of Disbursements and Collections.**

Westrec shall establish, supervise, direct and maintain the operation of a system of record keeping and bookkeeping with respect to all receipts and disbursements in connection with the management of the Marina. The books, records and accounts shall be maintained at the City's Marina. City acknowledges that any budgets or projections prepared by Westrec for City are only estimates of revenues and expenses, that the initial budgets and projections prepared by Westrec will be based in part on information provided by City, that any projections prepared by Westrec are subject to, and may be affected by, changes in financial, economic, competitive and other conditions and circumstances beyond Westrec's control and that such projections and budgets are not to be construed as a guarantee by Westrec of the actual results to be obtained from operations. City acknowledges that Westrec makes no representations or warranties as to the results to be obtained from operations. City acknowledges that Westrec has no knowledge, and cannot certify the accuracy of any historical information provided to Westrec by City. All receipts and disbursements in connection with Marina operations will be recorded on the City's books using software provided by the City utilizing Westrec personnel. All receipts will be deposited into the City's bank account. Receipts will be accounted for on the City's books by Westrec personnel. All purchases for the Marina which fall under the City's area(s) of responsibility shall be made such that they are in compliance with the City's Purchasing Policy, Procedures and Code. Requests for disbursements will be processed through the City's accounting system and paid with City's funds. Westrec will have access to the City's accounting system to print and analyze financial data for the Marina on an on-going basis.

(k) **Collection.**

Westrec shall analyze and direct the collection and billing of all accounts receivable due to the City with respect to the Marina and shall be responsible for establishing policies and procedures to minimize the amount of bad debts.

(l) **Legal Actions.**

Westrec shall cause to be instituted, on behalf and in the name of the City, any and all legal actions or proceedings Westrec deems necessary or advisable to collect charges with the advice and consent of the City, rent or other income due to City with respect to the Marina or to oust or dispossess tenants or other persons unlawfully in possession under any lease, license, concession agreement or otherwise, and to collect damages for breach thereof or default thereunder by such tenant, licensee, concessionaire or occupant. The costs of all such legal actions or proceedings shall be borne by City. Westrec shall also assist the City in the defense of any and all actions and proceedings brought by tenants, suppliers, vendors and similar persons relating to the Marina and City shall be responsible for satisfying and paying the costs of defending all such claims to the extent not covered by insurance. Westrec shall provide notice to City of any and all actions or proceedings instituted by, on behalf of, or against the City.

(m) **Insurance.**

The City shall pay for and maintain all necessary insurances including but not limited to property casualty insurance for the MOA, Marina Operators Legal Liability, automobile coverage, theft coverage, and environmental pollution coverage, listing Westrec as an additional named insured. Westrec shall provide workers compensation coverage. The costs incurred by the City and Westrec for insurance coverage applicable to the MOA or marina operations shall be included in the approved marina budget and shall be paid or reimbursed by the City, pursuant to the approved marina budget.

Westrec shall provide to the City a certificate of coverage. Westrec shall maintain workers compensation coverage, throughout the term of this Agreement, and the policy shall prohibit termination, expiration, cancellation, or substantial modification without at least thirty (30) days prior written notice to the City.

As a part of the marina budget planning process for each subsequent Fiscal Year (beginning in FY 2014-2015), all insurance coverage will be re-evaluated and specific coverage may be redistributed between the City and Westrec depending on what is most advantageous to the parties. However, at all times the cost for insurance coverage for the MOA and the marina operations shall remain a part of the marina budget and will ultimately be paid or reimbursed by the City.

(n) **Restrictions.**

Notwithstanding anything to the contrary set forth in this Section 4, Westrec shall not be required to do, or cause to be done, anything for the account of City (i) which may make Westrec liable to third parties; or (ii) which may not be commenced, undertaken or completed because of insufficient funds of City.

(o) **Force Majeure.**

Neither the City nor Westrec is required to perform any term or covenant of this Agreement so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the City's or Westrec's control and that the City or Westrec cannot, by exercising due diligence, prevent or overcome in whole or in part.

(p) **City Approval**

Westrec agrees it will obtain prior approval from the City prior to implementing changes on the following matters:

(1) Changes from the original approved plans, activities signage and graphics;
(2) Equipment Westrec plans to install requiring any building or facility modifications;
(3) Any use of the City's name or City seal;
(4) Any improvements to be constructed on the Marina property;
(5) Hours of daily operation;
(6) Uniforms to be used by the employees; and
(7) The décor of the Marina and all signs to be installed directed or displayed in or on the Marina property and any changes thereto at anytime during this Agreement.

Further it is understood by Westrec, that should any changes related to the above items be disapproved, either Party may offer alternative solutions.

(q) **Shared Expenses.**

The parties acknowledge that certain economies may be achieved with respect to certain expenses to be incurred on behalf of City hereunder if materials, supplies, insurance or services are purchased by Westrec in quantity for use not only in connection with the Marina but in connection with other marinas managed by Westrec or its affiliates. Westrec shall have the right, with the advice and consent of the City, to purchase such materials, supplies, insurance or services in its own name and charge City a pro rata share of the cost; provided, however, that the pro rata cost of such purchase to City shall not result in expenses greater than would otherwise be incurred at competitive prices and on terms available in the area where the Marina is located or the service is rendered; and, provided further, Westrec shall provide a copy of the financial records to the City upon request and shall make records available to City at Westrec's corporate headquarters office at all reasonable times after reasonable notice to Westrec so City may review any such expenses incurred.

(r) **Reporting Requirements.**

Westrec must submit a monthly written report to the City Manager including but not limited to:

(1) Occupancy (both numbers and dollars), historical comparison;
(2) Fuel sales (both numbers and dollars), historical comparison;
(3) Marketing and promotions;
(4) Non-routine expenses;
(5) Capital improvements status report;
(6) Insurance claims;
(7) Litigation; and
(8) Safety and environmental incidents.

(s) **Business Continuity Plan.**

Westrec shall provide the City with a copy of its business continuity plan covering the Marina as well as the company head office. Westrec will provide the City with the results of any testing of its business continuity plan.

5. **Duties of City.**

City shall cooperate with Westrec in the performance of its duties under this Agreement and to that end, upon the request of Westrec, City agrees to provide reasonable office space for Westrec employees on the premises of the Marina, to give Westrec access to all files, books and records of City relevant to the Marina, and to execute all documents and instruments as Westrec, in its reasonable judgment, deems necessary or advisable to enable it to carry out its management of the Marina.

6. **Compensation of Westrec.**

Westrec agrees to operate and maintain the Marina and associated property on a negotiated fixed fee and variable fee basis.

(a) **Fixed Fee Component.**

The City shall pay Westrec a Fixed Fee Component of Ninety-Five Thousand Two Hundred Sixty-Eight Dollars and Fifty-Six Cents ($95,268.56) annually, unless and until the parties negotiate a different amount. Such payment shall be paid in twelve monthly installments on the 15th of each month commencing January 15, 2015.

(b) **Variable Fee Component.**

In addition, the City shall pay Westrec a Variable Fee Component payment equal to one percent (1%) of the Marina Gross Revenues. In no event may the Variable Fee Component payment exceed the Fixed Fee Component. For purposes of this Agreement, "Marina Gross Revenues" means gross revenues of the Marina for Slip rental (including seasonal, transient and commercial rents), fees for the Mooring Field, and Leases in the MOA, excluding the existing casino boat lease, so long as the casino boat does not occupy a slip at the Marina. For the purposes of this calculation, Marina Gross Revenues does not include Gas and Diesel revenues, nor retail revenues for the Dock House Retail Area pursuant to the Lease Agreement for the Dock House Retail Area. The Variable Fee Component payment will be made quarterly in arrears, not later than 30 days following the end of each quarter.

7. **Fiscal Non-funding.**

In the event that sufficient budgeted funds are not available for any new fiscal period, the City shall notify Westrec of such occurrence and the Agreement shall terminate on the last day of the then current fiscal period without expense or penalty to the City.

8. **Audit.**

Westrec shall retain all records relating to this contract for a period of at least three years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, City reserves the right to audit such records pursuant to City policy.

9. **Public Emergencies.**

It is hereby made part of this contract that before, during and after a public emergency, disaster, hurricane, tornado, flood or other acts of God, that City shall require a "first priority" for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety as determined by the City. Westrec agrees to rent, sell, lease all goods and services to the City or governmental entities on a "first priority" basis. The City expects to pay a fair and reasonable price for all products and services rendered or contracted in the event of a disaster, emergency, hurricane, tornado, or other acts of God.

10. **Sales Tax.**

Westrec shall pay the prevailing State of Florida sales and use tax for any amounts payable under this Agreement.

11. **City's Ownership of Improvements.**

Upon the expiration of this Agreement, for any reason, all existing and any future installed fixtures, equipment, improvements and appurtenances attached to or built into the Marina in such a manner as to become part of the freehold whether or not by the expense of Westrec, shall become and remain a part of and be surrendered with the Marina property. Any furniture, furnishings, equipment or other articles of moveable personal property owned by Westrec and located on the Marina property shall be and remain the property of Westrec and may be removed by it at any time during the term of this Agreement so long as Westrec is not in default of any obligations under this Agreement and the same has not become part of the freehold and so long as such do not materially affect Westrec's ability to use such premises and conduct its business as provided herein.

12. **Hours of Operation.**

The Marina property will be required to operate seven (7) days a week during those hours approved by the City. Sufficient staff will be available to provide outstanding service. The City may require change in hours of operation if in the reasonable discretion of the City such a change is desirable for providing the best service to the public.

13. **Termination by the City or Westrec.**

(a) The Agreement may be terminated by the City or Westrec without cause by giving the other party ninety (90) days prior written notice.

(b) **Natural Disaster**

In the event that the City's marina is destroyed or significantly damaged by a natural disaster or Act of God, either Party may terminate this Agreement upon providing 30 days written notice as set forth herein.

(c) **Tax Exempt Bonds**

In the event that the City loses it's tax exempt status on the existing municipal improvements due to the terms of the this Agreement, either Party may terminate this Agreement upon providing 30 days written notice as set forth herein.

14. **Limiting Legislative or Judicial Action.**

In the event that any municipal, county, state or federal body of competent jurisdiction passes any law, ordinance or regulation in any way restricting or prohibiting the use of the Marina for purposes of this Agreement, this Agreement may be terminated by Westrec pursuant to the "Termination by Westrec" clause in paragraph 18 above and will be null and void and unenforceable by any party to this Agreement and the City shall have no further liability under this Agreement. In the event that any court or legislative body of competent jurisdiction issues an injunction substantially restricting or prohibiting the use of the Marina for the purposes of this Agreement, which injunction stays in force for more than thirty (30) calendar days, this Agreement will be null and void and unenforceable by any party to this Agreement and the City shall have no further liability under this Agreement. If the City deems the Agreement null and void by function of this paragraph, the City will not be liable to Westrec for damages arising therefrom and the City shall have no further liability under this Agreement.

15. **Nondiscrimination.**

Westrec does hereby for itself, its personal representatives, successors in interest and assigns as part of the consideration and agreement consideration hereof, covenant and agree that:

(a) No person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the City or handicap shall be excluded from participating in or be denied the benefits of or be otherwise subjected to discrimination in the use of the Marina except for bona fide cause allowed by law.

(b) The construction of any improvements on over such land or in the furnishing of services thereon. No person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the City or handicap shall be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination, except for bona fide causes allowed by law.

(c) That Westrec shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, non discrimination under programs receiving federal assistance through the City of health, education and welfare-effectuation of Title VI of the Civil Rights Act of 1964 and as such regulations may be amended that in the event a breach of any of the above non-discrimination covenants, the City shall have the right to terminate the Agreement and this Agreement shall be null and void. Westrec shall not discriminate against City employees or applicant for employment in the performance of the contract with respect to hiring tenure terms, conditions or privileges of employment because of age, sex, or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national original or ancestry.

16. **Hurricane Preparedness.**

Westrec shall follow the City's emergency evacuation and hurricane plan.

17. **Termination of Agreement.**

Following the termination of this Agreement by either party within fifteen (15) calendar days, or earlier if determined by the City, Westrec shall forthwith remove all of its personal property not acquired under the terms of the Agreement. Any personal property of Westrec not removed in accordance with this paragraph may be removed by the City for storage at the cost of Westrec or shall constitute a gratuitous transfer of title thereof to the City for whatever disposition is deemed to be in the best interests of the City. The City shall not be liable to Westrec for safekeeping for Westrec's personal property during or after termination of this Agreement.

18. **Approvals.**

Except as otherwise provided, whenever approvals are required herein by either party, such approval shall not be unreasonably withheld.

19. **Rights Reserved to the City.**

All rights not specifically granted to Westrec by this Agreement are reserved to the City, and the designation of any particular remedy for the City without prejudice to any other relief available in law or equity and all such relief is reserved to the City.

20. **Lien.**

The City shall have a lien upon all personal property of Westrec to secure the payment to the City of any unpaid money accruing to the City under the terms of this Agreement.

21. **Submerged Land Lease.**

A submerged land lease is attached hereto as Exhibit 5. Westrec agrees to operate the Marina Operating Area (MOA) in such a fashion as to not violate such submerged land lease.

22. **Compliance with City's Internal Control Processes.**

Westrec agrees to comply with the City's procurement policies and procedures, budget policies and other policies which are attached hereto as Attachment 4.

23. City's Mooring Fields.

The City owns and maintains 20 Helix' system moorings located across from the Marina on the west side Atlantic intercoastal waterway as part of the MOA. The City is currently operating this mooring field within the jurisdiction of the City which is coming into compliance with Florida's law. The City will continue to regulate this issue of mooring fields and may revise its ordinances as appropriate. In addition, the City retains the right to expand its mooring fields to additional areas, and will notify Westrec of any action taken in this regard. The City's Mooring Fields are part of the MOA and are subject to the management, operating and insurance provisions as set forth herein.

24. Recycled Material.

Westrec agrees to use recovered materials to the extent practical under the terms of this contract.

The City wishes to encourage Westrec to use recycled materials in fulfilling contractual obligations to the City and that such a policy will serve as a model for other public entities and private sector companies.

When awarding a purchase of $5,000 or less or recommending a purchase in excess of $5,000 for products, materials or services, Westrec may allow preference to a responsive bidder who certifies that their product or material contains the greatest percentage of post-consumer materials. If they are bidding on paper products, it may certify that their materials and/or products contain at least the content recommended by the EPA guidelines.

Definitions under this section are as follows:

"Recovered Materials:" Materials that have recycling potential, can be recycled, and have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection or processing.

"Recycled Materials:" Materials that contain recovered materials. This term may include internally generated scrap that is commonly used in industrial or manufacturing processes, waste or scrap purchased from another manufacturer and used in the same or a closely related product

"Postconsumer Materials:" Materials which have been used by a business or consumer and have served their intended end use and have been separated or diverted from the solid waste stream for the purpose of recycling such as Newspaper, aluminum, glass containers, plastic containers, office paper, corrugated boxes, pallets or other items which can be used in the remanufacturing process.

25. Infringement of Patent, Trademarks or Copyrights.

Westrec agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damages or expense including attorney fees, arising from or by reason of any actual or claimed trademark patent or copyright infringement or litigation based thereon with respect to the services or goods or any part thereof covered by this Agreement, and such obligations shall survive the term of this Agreement.

26. **Signage.**

Westrec shall abide by the City's Sign Code attached hereto as Attachment 5.

Any changes to exterior signage must meet applicable codes, ordinances, and HDC and CRA district guidelines.

27. **Condemnation.**

(a) **Total Condemnation.**

If during the term of this Agreement or any extension or renewal of this Agreement, all of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this Agreement will terminate, and the payments will be abated during the unexpired portion of this Agreement effective as of the date the condemning authority takes the said Area.

(b) **Partial Condemnation.**

If less than all, but more than ten percent (10%) of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by the right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate the Agreement by giving written notice to the other party within sixty (60) days. If the said area is partly condemned and neither party elects to terminate this Agreement or if less than ten percent (10%) of the said area is condemned, this Agreement will not terminate, but the payments to be made will be adjusted equitably during the unexpired portion of this Agreement.

(c) **Condemnation Award.**

The City will receive the entire award from any condemnation, and Westrec will have no claim to that award or for the value of any unexpired term of this Agreement.

28. **Mechanic's Liens.**

Westrec will not permit any mechanic's lien or liens to be placed on the MOA or on improvements to it. If a mechanic's lien is filed on the MOA or on improvements on it, Westrec will promptly pay it. If default in payment of the lien continues for ten (10) days after the City's written notice to Westrec, the City may, at its option, pay the lien or any, portion of it without inquiring into its validity. Any amounts the City pays to remove a mechanics lien caused by Westrec to be filed against the MOA or against improvements on the MOA, including expenses and interest, are due from Westrec to the City and must be repaid to the City immediately upon rendition of notice together with interest of twelve percent (12%) annually until fully paid.

The City's interest in the MOA is not subject to mechanic's liens for improvements made, or contracted for, by Westrec. Westrec must give written notification to all contractors making any improvements on the MOA of the provisions of this Agreement.

29. **Indemnity.**

(a) **Westrec's General Indemnity**.

City hereby agrees to indemnify Westrec for claims brought against Westrec only to the extent that they are found to result from the sole negligence of the City, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors, or third party agents of the City. This indemnification shall not be construed as a waiver of the City's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the City must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII, Section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the City to only those damages caused by City's sole negligence, and specifically not include any attorneys' fees or costs associated therewith.

(b) **Environmental Indemnity**.

Westrec is responsible only for the payment of that portion of any cleanup cost for compliance with hazardous materials laws that arise during the term of this Agreement as a result of a discharge of hazardous materials directly attributable to the negligence of a Westrec employee. The City is responsible for all other cleanup costs, including all costs associated with environmental compliance at the Marina, and the City is responsible for insuring that any other responsible party participate in the clean up to the extent of its responsibility for relief. Westrec shall indemnify, defend, and hold harmless the City from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen including without limitation counsel, engineering, or any other professional or expert fees, that the City may incur by reason of the negligence of Westrec employees during the term of this Agreement as set forth herein. This section survives the expiration or earlier termination of this Agreement.

30. **Alternative Dispute Resolution.**

Westrec and the City agree that any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be first subject to mediation by a mutually agreed upon mediator before any suit is filed.

31. **Current Marina Debt.**

(1) Both parties recognize that there is existing current marina debt.

a. Current Bonds. The City previously issued tax-exempt debt in the amount of $6.4 million to finance various improvements to the Marina. The debt service schedules are attached to this Agreement as Exhibit 1.

b. Conversion of Tax Exempt Debt To Taxable Debt for "private activity" Use. The City has outstanding indebtedness relating to marina improvements as set forth in Exhibit 2. Notes were issued in 2005 and 2009 to banks bearing interest at tax-exempt rates because under federal income tax law, the City qualified for the tax exemption as the owner and operator of the Marina.

(2) Westrec agrees to cooperate with the City to maintain this tax exemption, thus avoiding estimated maximum present value of the additional interest cost to the City of $1,082,745.60. The City shall provide notice to Westrec, and an opportunity to cooperate with the City, as to the measures that may be necessary to protect the tax exempt status of the debt financing.

32. **Reservations.**

Reservations are currently accepted up to four (4) months in advance. Westrec has provided an operations plan relating to reservations policy, including reservations, software, prepaying requirements and cancellation policies.

Any changes to the reservations policy must be approved by the City Manager.

33. **Facilities.**

Westrec will maintain the premises in good order and in sanitary and safe condition.

Westrec shall provide one boat slip, as needed, for use by the City for a police boat at all times during the term of this Agreement.

34. **Festivals and Special Events.**

The City hosts a number of festivals and special events: primarily the Shrimp Festival the first weekend in May, the Kingfish fishing tournament in June, and July 4th fireworks show. Frequently these events draw boaters and fill marina slips. Some festivals and special events might have some impact on the Marina operations and Westrec will cooperate with the City and designated festival committees in planning activities to support the Marina .

35. **Collection of Delinquent Accounts.**

The City invoices its customers for dockage both in advance and in arrears depending on the nature of the business relationship. Routinely, the City has a list of delinquent accounts ranging from a few hundred dollars to several thousand dollars. The City routinely works with its customers to bring all delinquent accounts current. Westrec shall provide its collection policies and procedures and how they would be applied to the Marina Operations Area.

36. **Use of Trademarks, Service Marks and Related Items**

In providing its services under this Agreement, Westrec will use the name, trademark and service mark "WESTREC" and such other trademarks, service marks, logos, commercial symbols, insignia and designs as Westrec shall deem appropriate (collectively, the "Trademarks") and certain operations manuals and software (including operations, emergency procedures, personnel, risk management and accounting software and manuals), formats (including financial reporting and budgeting formats) and forms (including bookkeeping, accounting and lease forms) and software (collectively, the "Proprietary Material"). Westrec hereby grants City the nonexclusive, nontransferable right to have Westrec, for the benefit of City, use the Trademarks and Proprietary Material in connection with the management and operation of the Marina all subject to Westrec's complete control. It is understood and agreed that Westrec shall have the right to use and license others to use the Trademarks and Proprietary Material elsewhere for any purposes whatsoever, including without limitation in the management and operation of other marinas. Immediately upon the expiration or termination of this Agreement, City shall (a) return to Westrec all materials bearing any of the Trademarks and all Proprietary Material without retaining any copies thereof, and (b) cease all use of the Trademarks and Proprietary Material by all means required, including without limitation changing all telephone listings using any of the Trademarks, removing all signs bearing any of the Trademarks, and using its best efforts to have existing tenants at the Marina sign new leases to replace their existing Westrec lease forms. Nothing contained in this Agreement shall give City any right, title or interest in or to any of the Trademarks or Proprietary Material, except the mere privilege and license during the term of this Agreement to have Westrec, for the benefit of City, use the Trademarks and Proprietary Material in connection with the management and operation of the Marina. City acknowledges and agrees that the Trademarks and Proprietary Material are the exclusive property of Westrec and that City now asserts and will hereafter assert no claim to any goodwill, reputation or ownership of any of the Trademarks or Proprietary Material. City shall not do or permit any act or thing to be done in derogation of any of Westrec's rights in any of the Trademarks or Proprietary Material, either during the term of this Agreement or thereafter. City shall not, during or after the term of this Agreement, in any way dispute or impugn the validity of the Trademarks or Proprietary Material, the rights of Westrec therein, or the rights of Westrec or other licensees of Westrec to use the same, both during the term of this Agreement and thereafter. The provisions of this section shall survive the expiration or termination of this Agreement.

37. **Florida Public Records Law Requirements**

Pursuant to Section 119.0701, Florida Statutes, Westrec shall: (a) keep and maintain all public records as that term is defined in Chapter 119, Florida Statutes ("Public Records"), that ordinarily and necessarily would be required by the City in order to perform the work contemplated by this Agreement; (b) provide the public with access to Public Records, on the same terms and conditions that the City would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining Public Records and transfer, at

no cost to the City, all public records in possession of Westrec within thirty (30) days after termination of this Agreement, however terminated, and destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements and provide the City with a letter confirming that this has been done within thirty (30) days of the termination of this Agreement. All Public Records stored electronically must be provided to the City in a format that is compatible with the information technology of the City. If Westrec does not comply with a public records request, the City may pursue any and all remedies available in law or equity, including but not limited to specific performance.

IN WITNESS WHEREOF, the parties hereby have executed this Marina Management Agreement as of the date first-above written.

CITY

By: Joe Gerrity
Name: Joe Gerrity
Title: City Manager

Attest: Caroline Best
Name: Caroline Best
Title: City Clerk

WESTREC:

WESTREC MARINA MANAGEMENT, INC.

By: ______________________
William W. Anderson, President

APPROVED AS TO FORM AND LEGALITY:

____

Tammi E. Bach, City Attorney

Resolution 2014-141
Exhibit "A"

Draft Date <u>September 22, 2014</u>~~September 17, 2014~~~~August 14, 2014~~

Marina Management Agreement

Between Westrec Marina Management, Inc.,

and

City of Fernandina Beach, Florida

Dated:

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MARINA MANAGEMENT AGREEMENT

THIS MARINA MANAGEMENT AGREEMENT (the "Agreement") dated _____, 201~~409~~ is between Westrec Marina Management, Inc., a California corporation ("Westrec"), 16633 Ventura Boulevard, 6th Floor, Encino, CA 91436, and City of Fernandina Beach, Florida, a Municipal Corporation, ("City"), 204 Ash Street, Fernandina Beach, FL, 32034:

RECITALS

A. City owns the Marina located at 1 Front Street, known as Fernandina Harbor Marina (the "Marina").

B. It is the intention of City that the wet slips at the Marina be rented to third parties for use as temporary boat storage facilities, that the other buildings be leased for communal and retail activity, and that the Marina facilities are put to their intended use.

C. Westrec is in the business of managing marinas and currently manages similar facilities.

D. City wants Westrec to manage the Marina and Westrec wants to manage the Marina in accordance with the terms and conditions of this Agreement as hereinafter set forth in the location described as the Marina Operating Area ("MOA") described in Exhibit 3.

E. City's intent in retaining Westrec is to have a vital, financially successful and self-supporting marina by increasing overall net revenue to pay for all fixed and variable costs including annual debt service.

F. The City finds that this Agreement serves both a public purpose and a municipal purpose.

AGREEMENT

NOW, THEREFORE, in consideration for the mutual covenants herein contained, Westrec and City agree as follows:

1. **Documents Comprising Contract.**

The contract shall include this Agreement as well as the following documents which are incorporated herein by reference:

(a) The City of Fernandina Beach Request for Proposal "RFP" (RFP #2009-103), its Exhibits and Attachments issued on June 3, 2009, and all of its addenda.

(b) Westrec's proposal, including its certificate of insurance as required by the RFP and other required documents.

(c) Exhibits

FTLDOCS 5484156 6

(1) Marina (Tax Free) Debt Service schedule
(2) Marina (Taxable) Debt Service schedule
(3) Marina Operating Area
(4) List of Current Marina Employees and Job Descriptions
(5) Submerged Land Lease

(d) Attachments

(1) Current leases in Marina Operations Area
    (a) One Centre Street Restaurant Group
    (b) Atlantic Seafood
    (c) Amelia Island Charter Fishing Boat Association (month to month)
    (d) Amelia Island Cruises
(2) Florida Inland Navigation District Agreement (FIND)
(3) Boating Infrastructure Grant Program (BIGP)
(4) Applicable City policies
    (a) Purchasing Policies and Procedures
    (b) Budget Policy
    (c) City Sign Code
    (d) Mooring Field Grant
(5) The City ~~2009-10~~ 2014-15 Pro Forma Marina Budget

If there is a conflict between the terms of this Agreement and above-referenced documents then the conflict shall be resolved as follows: the terms of this Agreement shall supersede over other documents, and the terms of the remaining documents shall be given preference in their above-listed order.

2. **General Contract Terms.**

(a) **Non-exclusive Contract.**

Award of this contract shall impose no obligation on the City to utilize Westrec for all work of the type which may develop during the contract period. This is not an exclusive contract.

(b) **Additional Services and Locations.**

The City reserves the right to request additional services relating to this Agreement from Westrec when approved by the Parties, in accordance with additional services as set forth in the RFP. Westrec shall provide such additional requirements as may become necessary. The City reserves the right to unilaterally add or delete locations or services at its sole option as it may deem necessary or in the best interests of the City. In such case, Westrec will be required to provide services pursuant to this Agreement in accordance with the terms, conditions and specifications, and as set forth in an amendment approved by the Parties.

(c) **Entirety of Agreement.**

Parties hereto agree that this Agreement sets forth the entire agreement between the parties and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto. This Agreement and the exhibits and attachments hereto and other documents and agreements specifically referred to herein constitute the entire fully integrated Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written communication or agreements between the parties with respect hereto excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may only be amended by written documents, properly authorized, executed and delivered by both parties hereto. For the City, appropriate authorization shall be construed to mean formal action by the elected officials of the City, except where specified within this Agreement that the City Manager or his or her designee shall have approval or authority. This Agreement shall be interpreted as a whole unit. This Agreement shall not be construed in favor of one party or the other. All matters involving this Agreement shall be governed by the laws of the State of Florida and the proper venue for any litigation arising hereunder will be a state or federal court located in Florida with venue within Nassau County, Florida.

(d) **Headings.**

Headings of various paragraphs and sections of this Agreement and its table of contents are for convenience and use of reference only and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

(e) **Severability.**

The terms and conditions of this Agreement shall be deemed to be severable; consequently, if any clause, term or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions and notwithstanding such determination, this Agreement shall continue in a full force and effect unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement to be impossible of performance

(f) **No Waiver of Right to Enforce.**

The waiver of any breach or any term covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term, or condition shall be deemed to have been waived, unless such waiver be in writing. Nor shall there be any accord and satisfaction unless expressed in writing and signed by both the City and Westree.

(g) **Performance.**

Service shall be performed in a timely manner as specified in the RFP.

The Parties expressly agree that time is of the essence in the performance of this Agreement and the failure to complete the performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the Parties of any obligation to accept such performance.

(h) **Notices.**

Any notice required or permitted herein is to be given in writing and shall be personally delivered or mailed, first class postage prepaid or delivered by an overnight delivery service to the respective addresses of the parties set forth below their signatures on the signature page hereof, or to such other address as any party may give to the other in writing. Any notice required by this Agreement will be deemed to have been given and received when personally served or one (1) day after delivery to an overnight delivery service or five (5) days after deposit in the first class mail.

To the City: City Manager
City of Fernandina Beach
204 Ash Avenue
Fernandina Beach, Florida 32034
Attn: City Manager

To Westrec: Westrec Marina Management, Inc.
16633 Ventura Boulevard, 6th Floor
Encino, CA 91436

With copy to: Westrec Marinas
801 North East Third Street
Dania Beach, Florida 33004
Attn: Gary Groenewold
Vice President Southern Area

With copy to: Shutts & Bowen LLP
Attention: Stephen K. Tilbrook, Partner
200 East Broward Boulevard
Suite 2100
Fort Lauderdale, FL 33301

(i) **Remedies.**

Each party shall have full remedies available under existing laws, including, but not limited to, the Uniform Commercial Code, mediation, alternative dispute resolution and all state and federal courts of any jurisdiction.

(j) **Assignment, Subcontracting, Corporation Acquisitions and/or Mergers.**

Westrec shall perform this contract. No assignment or subcontract shall be allowed without the prior written consent of the City in the event of a corporate acquisition and/or merger. Westrec shall provide a written notice to the City within the 30 business days of any assignment or subcontract. In the event of an assignment of the contract to a wholly owned subsidiary of Westrec, the City's written consent shall not be unreasonably withheld.

(k) **Miscellaneous.**

If it shall become necessary for either party hereto to engage attorneys to institute legal action for the purpose of enforcing its rights hereunder or for the purpose of defending legal action brought by the other party hereto, the party or parties prevailing in such litigation shall be entitled to receive all costs, expenses and fees (including reasonable attorneys' fees) incurred by it in such litigation (including appeals). This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. No representative of Westrec is authorized to make any representations, warranties or agreements other than as expressly set forth herein. Any consent required by this Agreement to be given by City to Westrec shall be given in writing. Westrec hereby disclaims any implied or express warranties, guarantees or representations of any kind other than as expressly set forth in this Agreement.

3. **Management.**

(a) **Term.**

City hereby engages Westrec to manage the Marina and Westrec hereby agrees to manage the Marina for ~~a an initial term of three (3) years.~~until this Agreement is terminated in accordance with Section 13 below. ~~This Agreement shall automatically renew for an additional term of one year, with a maximum of two (2) years additional term, on each anniversary date of the Agreement, unless either party gives notice of its desire not to renew at least sixty (60) days in advance of the anniversary date. The term begins on the date of this Agreement as set forth in the first paragraph.~~

~~(b)~~ (b) **Other Marinas.**

City acknowledges that Westrec is in the business of managing marinas both for its own account and for others. It is hereby expressly agreed that Westrec and its affiliates may continue to engage in such activities, may manage facilities other than those presently managed by it so long as the facilities are not in direct or indirect competition with City. Westrec agrees not to manage or lease any other facility within twenty (20) nautical miles of the City's marina without the express written consent of the City.

~~(c)~~ (c) **Relationship of Parties.**

In the performance of its duties under this Agreement, Westrec shall occupy the position of an independent contractor with respect to the City. Nothing contained herein shall be construed as making the parties hereto partners, nor, except as expressly otherwise provided for herein, construed as making Westrec an agent or employee of the City.

~~(d)~~ (d) **Independent Contractor Status and Compliance with the Immigration Reform and Control Act of 1986.**

Westrec is and shall remain an independent contractor and is neither agent, employee, partner nor joint venturer of the City. Westrec acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 USC Section 1324 et seq. and regulations relating thereto as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the contract at the discretion of the City.

4. **Authority of Westrec.**

(a) **General Authority.**

Westrec hereby agrees to provide the City with Marina Management Services as requested as specifically outlined in the RFP, this Agreement and all subsequent official documents that form the contract documents for this Agreement, subject to budget and City policy restrictions and procedures stated or referenced herein. Westrec shall have the authority to fully and completely supervise and direct the operations of the Marina and matters associated or related to the operation of the Marina, including boat slip rentals, diesel gasoline sales, convenience store sales, and supervision of all leases of space at the Marina referenced in Attachment 1. City shall execute such documents as Westrec, in its reasonable judgment, deems necessary or advisable for Westrec to carry out its management of the Marina. Such authority shall include authority to direct the matters specified below, which are not in limitation of the foregoing.

(b) **Renting of the Marina.**

Westrec shall use its reasonable discretion to establish the terms and conditions of occupancy of boat slips in the Marina. The City shall set the rates for the boat slip rentals. Westrec is hereby authorized to assist the City's employees in entering into rental agreements with such tenants and to collect rent from such tenants. The form of rental agreement shall be prepared, reviewed, as appropriate by Westrec and recommended to the City for acceptance.

(c) **Marketing and Advertising.**

Westrec shall establish the policies and procedures which it deems necessary or advisable for directing the marketing activities of personnel engaged by or on behalf of City relating to the Marina subject to authorized budget appropriations and restrictions. Westrec shall cause City to advertise in such media and to the extent Westrec deems necessary and appropriate. All advertising of the Marina, including signs, may be carried under the Westrec name and/or the name of the Marina. All advertising and marketing costs shall be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(d) **Repair, Maintenance and Improvements.**

Westrec shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the acquisition of furniture, fixtures and supplies for the Marina, and the purchase, lease or other acquisition of the same, on behalf of the City. Westrec shall make and execute, or supervise and have control over the making and executing of, all decisions concerning the routine day-to-day maintenance, repair and landscaping of the Marina, on behalf of the City. In connection with performance of routine day-to-day maintenance, repair and landscaping, Westrec shall negotiate and supervise the installation of minor capital improvements related to the Marina which Westrec, in its reasonable discretion, deems necessary or appropriate; provided, however, that Westrec shall obtain the prior approval of the City for all expenditures in excess of five hundred dollars ($500.00) for any one item (except monthly or recurring operating charges and/or emergency repairs if in the opinion of Westrec such expenditures are necessary to protect the Marina from damage or to maintain services to the tenants as called for in their leases). Westrec agrees to follow and comply with the City's Purchasing Policies and Procedures. All repair, maintenance and improvement costs shall be paid directly hy the City, subject to the approved marina budget or any subsequent approvals.

(e) **Personnel.**

~~Westrec agrees to employ, in some capacity but not necessarily at the same job or pay range, the City's employees who are currently working within the Marina Operations Area for a ninety (90) day trial period. Upon such employment, the staff will be employees of Westrec and no longer employees of the City. A list of the City's employees and their job descriptions are attached hereto as Exhibit 4.~~ Westrec shall select, hire, discharge and supervise all labor and employees which it deems necessary or advisable for the operation and maintenance of the Marina. Westrec may hire the types and number of Marina Personnel as Westrec, in its reasonable discretion, deems appropriate for operation and management of the Marina, subject to the provisions in subsection (g), Budget. Westrec shall have the authority for the supervision of all employees, for the determination of employee compensation, including any incentives, bonuses and benefits, and for the establishment of policies and procedures relating to employment. Westrec shall pay for all costs of on-site employees (including without limitation payroll taxes, insurance, 401-K plan contributions and all other employee fringe or other benefits), as specified in subsection (g) Budget. The cost of Marina Personnel is the responsibility of the City as set forth in the approved marina budget, and the cost of Marina Personnel will be paid by the City to Westrec as invoiced monthly by Westrec.

Throughout the terms of this Agreement, Westrec shall employ a qualified full-time, on-site manager ("Marina Manager") having experience in the management of a marina of this type who shall be available during normal business hours and be delegated sufficient authority to ensure competent performance and fulfillment of the responsibility of the management agreement and to accept serviceable notices provided for herein. The on site Marina Manager shall be part of the Marina Personnel, and the Marina Budget shall include the costs of the on-site Marina Manager. The cost of Westrec personnel who supervise, or otherwise participate in the management, administration and operation of the Marina, but also do work for Westrec and/or other marinas managed by Westrec, will be covered by the Administration Fee (as defined in

Section 6 - Compensation of Westrec) paid by the City to Westrec. These persons include Westrec personnel responsible for: (i) the direct supervision of on-site personnel; (ii) training of on-site and supervisory managers; (iii) the coordination and supervision of routine repairs and maintenance at the Marina; (iv) supervision of the procedures relating to eviction of delinquent tenants and sale of delinquent tenants' property; (v) overseeing inventory and supplies of the type used by the Marina; (vi) marketing; (vii) administering the payroll for on-site employees, including the administration, withholding and payment of applicable compensation coverage on behalf of and for the account of City; and (viii) accounting and other services relating to the operation and administration of the Marina. City understands and acknowledges that some or all of such persons may be simultaneously engaged by and/or for the account of City and by and/or for other marinas managed by Westrec, some of whom may (i) be affiliates of Westrec and (ii) compete with City. Westrec shall not be separately reimbursed for the time of its executive officers devoted to City's affairs or for the other overhead expenses of Westrec.

Westrec's employees in contact with the public shall perform their duties in an efficient and courteous manner. Westrec shall insure all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. Failure of an employee to do so shall be grounds for the City to demand his or her removal from duties on the Marina property. Westrec shall provide the City with the name and telephone number of a management person who will be on call at all times for emergencies or other matters related to the operations under this Agreement. At the conclusion of this Agreement, City agrees to use its best efforts to rehire the employees listed on Exhibit 4, with credit for previous City length of service and seniority.

~~**(f) Non-compete provision.**~~

~~Current Marina employees will be provided an opportunity for employment with Westrec pursuant to this Agreement. Westrec agrees that some of these employees may seek other positions within the City's personnel system, which shall not be impeded. The City agrees not to solicit these employees for employment or otherwise compete with Westrec in this regard.~~

(g) Budget.

~~The City's 2009-2010 Pro Forma Marina Budget is attached hereto as Exhibit 5.~~ Westrec agrees, to the extent reasonable and feasible, to operate the Marina in accordance with the approved budget. Westrec shall annually, beginning with the fiscal year 2014-15~~2010-11~~, develop a proposed budget, in conjunction with the City's budget preparation process, which shall be reviewed and approved by the City Manager and City Commission. The annual budget submittal shall include, but not be limited to, all of the proposed revenue sources and expenditures for the Marina. The proposed revenue projection shall include detailed written justification to support the proposed sources and projections. Westrec in proposing the annual expenditure budget shall include, but not be limited to, the following:

(1) **Personnel Costs**. An organizational chart listing all of the full and part-time positions that Westrec is proposing, their positions with titles, number in each position, proposed pay ranges, and benefit costs for each position.

(2) **Marketing and Promotion Costs.** Westrec shall provide a comprehensive

marketing and promotion budget which will list the proposed specific expenditures to support the proposed plan.

(3) **Proposed Capital Improvement and Repair Maintenance Plan.** Westrec shall develop a proposed detailed Capital Improvement and Repair Maintenance Plan that specifically describes each proposed expenditure, activity, justification or need for activity, and the estimated cost.

(4) **City's Overhead Costs.** Westrec shall provide a detailed list and projected cost for each expenditure.

(h) **Agreements.**

Westrec shall have the authority to negotiate and recommend to the City such agreements which Westrec deems necessary or advisable for the furnishing of utilities, services, concessions and supplies, for the maintenance, repair and operation of the Marina and such other agreements which may benefit the Marina or be incidental to the matters for which Westrec is responsible hereunder.

(i) **Other Decisions.**

Westrec shall make all decisions in connection with the day-to-day operations of the Marina.

(j) **Regulations and Permits.**

Westrec will observe, obey and comply with all rules and regulations adopted by the City and all laws, ordinances, and or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to the operations under this Agreement. Failure to do so will constitute a breach of this Agreement. Westrec shall procure all required permits, licenses and approvals, on behalf of the City, for the operation and performance under this Agreement. All permit or regulatory fees or costs shall be paid directly by the City, subject to the approved marina budget or any subsequent approvals.

(k) **Management Records and Reports of Disbursements and Collections.**

Westrec shall establish, supervise, direct and maintain the operation of a system of record keeping and bookkeeping with respect to all receipts and disbursements in connection with the management of the Marina. The books, records and accounts shall be maintained at the City's Marina. City acknowledges that any budgets or projections prepared by Westrec for City are only estimates of revenues and expenses, that the initial budgets and projections prepared by Westrec will be based in part on information provided by City, that any projections prepared by Westrec are subject to, and may be affected by, changes in financial, economic, competitive and other conditions and circumstances beyond Westrec's control and that such projections and budgets are not to be construed as a guarantee by Westrec of the actual results to be obtained from operations. City acknowledges that Westrec makes no representations or warranties as to the results to be obtained from operations. City acknowledges that Westrec has no knowledge, and cannot certify the accuracy of any historical information provided to Westrec by City. All receipts and disbursements in connection with Marina operations will be recorded on the City's books using software provided by the City utilizing Westrec personnel. All receipts will be deposited into the City's bank account. Receipts will be accounted for on the City's books by Westrec personnel. All purchases for the Marina which fall under the City's area(s) of responsibility shall be made such that they are in compliance with the City's Purchasing Policy, Procedures and Code. Requests for disbursements will be processed through the City's accounting system and paid with City's funds. Westrec will have access to the City's accounting system to print and analyze financial data for the Marina on an on-going basis.

(l) **Collection**.

Westrec shall analyze and direct the collection and billing of all accounts receivable due to the City with respect to the Marina and shall be responsible for establishing policies and procedures to minimize the amount of bad debts.

(m) **Legal Actions**.

Westrec shall cause to be instituted, on behalf and in the name of the City, any and all legal actions or proceedings Westrec deems necessary or advisable to collect charges with the advice and consent of the City, rent or other income due to City with respect to the Marina or to oust or dispossess tenants or other persons unlawfully in possession under any lease, license, concession agreement or otherwise, and to collect damages for breach thereof or default thereunder by such tenant, licensee, concessionaire or occupant. The costs of all such legal actions or proceedings shall be borne by City. Westrec shall also assist the City in the defense of any and all actions and proceedings brought by tenants, suppliers, vendors and similar persons relating to the Marina and City shall be responsible for satisfying and paying the costs of defending all such claims to the extent not covered by insurance. Westrec shall provide notice to City of any and all actions or proceedings instituted by, on behalf of, or against the City.

(n) **Insurance.**

The City shall pay for and maintain all necessary insurances including but not limited to property casualty insurance for the MOA, Marina Operators Legal Liability, automobile coverage, theft coverage, and environmental pollution coverage, listing Westrec as an additional named insured. Westrec shall provide workers compensation coverage. The costs incurred by the City and Westrec for insurance coverage applicable to the MOA or marina operations shall be included in the approved marina budget and shall be paid or reimbursed by the City, pursuant to the approved marina budget.

Westrec shall provide to the City a certificate of coverage. Westrec shall maintain workers compensation coverage, throughout the term of this Agreement, and the policy shall prohibit termination, expiration, cancellation, or substantial modification without at least thirty (30) days prior written notice to the City.

As a part of the marina budget planning process for each subsequent Fiscal Year (beginning in FY 2014-2015~~FY2010 – 2011~~), all insurance coverage will be re-evaluated and specific coverage may he redistrihuted between the City and Westrec depending on what is most advantageous to the parties. However, at all times the cost for insurance coverage for the MOA and the marina operations shall remain a part of the marina budget and will ultimately be paid or reimbursed by the City.

(o) **Restrictions.**

Notwithstanding anything to the contrary set forth in this Section 4, Westrec shall not be required to do, or cause to be done, anything for the account of City (i) which may make Westrec liable to third parties; or (ii) which may not be commenced, undertaken or completed because of insufficient funds of City.

(p) **Force Majeure.**

Neither the City nor Westrec is required to perform any term or covenant of this Agreement so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the City's or Westrec's control and that the City or Westrec cannot, by exercising due diligence, prevent or overcome in whole or in part.

(q) **City Approval**

Westrec agrees it will obtain prior approval from the City prior to implementing changes on the following matters:

(1) Changes from the original approved plans, activities signage and graphics;
(2) Equipment Westrec plans to install requiring any building or facility modifications;
(3) Any use of the City's name or City seal;
(4) Any improvements to be constructed on the Marina property;
(5) Hours of daily operation;
(6) Uniforms to be used by the employees; and
(7) The décor of the Marina and all signs to be installed directed or displayed in or on the Marina property and any changes thereto at anytime during this Agreement.

Further it is understood by Westrec, that should any changes related to the above items be disapproved, either Party may offer alternative solutions.

(r) **Shared Expenses.**

The parties acknowledge that certain economies may be achieved with respect to certain expenses to be incurred on behalf of City hereunder if materials, supplies, insurance or services are purchased by Westrec in quantity for use not only in connection with the Marina but in connection with other marinas managed by Westrec or its affiliates. Westrec shall have the right, with the advice and consent of the City, to purchase such materials, supplies, insurance or services in its own name and charge City a pro rata share of the cost; provided, however, that the pro rata cost of such purchase to City shall not result in expenses greater than would otherwise be incurred at competitive prices and on terms available in the area where the Marina is located or the service is rendered; and, provided further, Westrec shall provide a copy of the financial records to the City upon request and shall make records available to City at Westrec's corporate headquarters office at all reasonable times after reasonable notice to Westrec so City may review any such expenses incurred.

(s) **Reporting Requirements.**

Westrec must submit a monthly written report to the City Manager including but not limited to;

(1) Occupancy (both numbers and dollars), historical comparison;
(2) Fuel sales (both numbers and dollars), historical comparison;
(3) Marketing and promotions;
(4) Non-routine expenses;
(5) Capital improvements status report;
(6) Insurance claims;
(7) Litigation; and
(8) Safety and environmental incidents.

(t) **Business Continuity Plan.**

Westrec shall provide the City with a copy of its business continuity plan covering the Marina as well as the company head office. Westrec will provide the City with the results of any testing of its business continuity plan.

5. **Duties of City.**

City shall cooperate with Westrec in the performance of its duties under this Agreement and to that end, upon the request of Westrec, City agrees to provide reasonable office space for Westrec employees on the premises of the Marina, to give Westrec access to all files, books and records of City relevant to the Marina, and to execute all documents and instruments as Westrec, in its reasonable judgment, deems necessary or advisable to enable it to carry out its management of the Marina.

6. **Compensation of Westrec.**

Westrec agrees to operate and maintain the Marina and associated property on a negotiated fixed fee and variable fee basis.

(a) Fixed Fee Component.

The City shall pay Westrec a Fixed Fee Component of ~~Ninety Six Thousand Dollars~~ **~~($96,000)~~** Ninety-Five Thousand Two Hundred Sixty-Eight Dollars and Fifty-Six Cents ($95,268.56) **annually**, unless and until the parties negotiate a different amount. **Such payment shall be paid in twelve monthly installments on the 15th of each month commencing** ~~February 15, 2010.~~January 15, 2015. **~~The Fixed Fee Component shall increase annually, in an amount equal to the increase in the United States Department of Labor Consumer Price Index-South Urban from the previous year, however the annual fee increase shall not exceed six percent (6%).~~**

(b) **Variable Fee Component.**

In addition, the City shall pay Westrec a Variable Fee Component payment equal to one percent (1%) of the Marina Gross Revenues. In no event may the Variable Fee Component payment exceed the Fixed Fee Component. For purposes of this Agreement, "Marina Gross Revenues" means gross revenues of the Marina for Slip rental (including seasonal, transient and commercial rents), fees for the Mooring Field, and Leases in the MOA, excluding the existing casino boat lease, so long as the casino boat does not occupy a slip at the Marina. For the purposes of this calculation, Marina Gross Revenues does not include Gas and Diesel revenues, nor retail revenues for the Dock House Retail Area pursuant to the Lease Agreement for the Dock House Retail Area. The Variable Fee Component payment will be made quarterly in arrears, not later than 30 days following the end of each quarter.

7. **Fiscal Non-funding.**

In the event that sufficient budgeted funds are not available for any new fiscal period, the City shall notify Westrec of such occurrence and the Agreement shall terminate on the last day of the then current fiscal period without expense or penalty to the City.

8. **Audit.**

Westrec shall retain all records relating to this contract for a period of at least three years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, City reserves the right to audit such records pursuant to City policy.

9. **Public Emergencies.**

It is hereby made part of this contract that before, during and after a public emergency, disaster, hurricane, tornado, flood or other acts of God, that City shall require a "first priority" for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety as determined by the City. Westrec agrees to rent, sell, lease all goods and services to the City or governmental entities on a "first priority" basis. The City expects to pay a fair and reasonable price for all products and services rendered or contracted in the event of a disaster, emergency, hurricane, tornado, or other acts of God.

10. **Sales Tax.**

Westrec shall pay the prevailing State of Florida sales and use tax for any amounts payable under this Agreement.

11. **City's Ownership of Improvements.**

Upon the expiration of this Agreement, for any reason, all existing and any future installed fixtures, equipment, improvements and appurtenances attached to or built into the Marina in such a manner as to become part of the freehold whether or not by the expense of Westrec, shall become and remain a part of and be surrendered with the Marina property. Any furniture, furnishings, equipment or other articles of moveable personal property owned by Westrec and located on the Marina property shall be and remain the property of Westrec and may be removed by it at any time during the term of this Agreement so long as Westrec is not in default of any obligations under this Agreement and the same has not become part of the freehold and so long as such do not materially affect Westrec's ability to use such premises and conduct its business as provided herein.

12. **Hours of Operation.**

The Marina property will be required to operate seven (7) days a week during those hours approved by the City. Sufficient staff will be available to provide outstanding service. The City may require change in hours of operation if in the reasonable discretion of the City such a change is desirable for providing the best service to the public.

13. **Termination by the City or Westrec.**

(a)The Agreement ~~to~~ may be terminated by the City or Westrec without cause by giving the other party ninety (90) days prior written notice.~~upon the terms and conditions as set forth below.~~

~~(a) **Automatic Termination.**~~

~~The City may automatically terminate the Agreement, by providing written notice to Westrec as set forth herein, upon the occurrence of the following:~~

~~(1) Institution of proceedings and voluntary bankruptcy or reorganization by the Westrec, or the institution of proceedings and involuntary bankruptcy against Westrec, if such proceedings continue for a period of more than ninety (90) days;~~

~~(2) Assignment by Westrec for the benefit of creditors;~~

~~(3) Abandonment or discontinuation of operation for more than a twenty-four hour period, unless as permitted herein, without prior written approval from the City; and~~

~~(4) Discovery of any misstatement in Westrec's proposal leading to the award of this Agreement which in the determination of the City significantly affects Westrec's qualifications to perform under the this Agreement.~~

~~(b) **Termination after Fourteen (14) Days.**~~

~~The City may provide written notice of default and termination of the Agreement within fourteen (14) days, as set forth herein, for the reasons set forth below:~~

~~(1) Nonpayment of any sum or sums due hereunder after the due date for such payment provided; however, that such termination shall not be effective if Westrec makes the required payments during the fourteen (14) calendar day period following mailing of written notice.~~

~~(2) Notice of any condition imposing a threat to health or safety of public patrons and not remedied within the fourteen (14) calendar day period from receipt of written notice.~~

~~(3) A final determination in a court of law in favor of the City in litigation instituted by Westrec against the City or brought by the City against Westrec.~~

~~(4) Instances in which a corporate acquisition or a merger represents a conflict of interest or is contrary to any local, state, or federal laws.~~

~~In the event that Westrec does not cure the breach, to the satisfaction of the City, within the fourteen (14) calendar days of the notice as set forth herein, then the Agreement shall be terminated.~~

~~(c) **Termination after Forty-five (45) Days.**~~

~~The City may provide written notice of default and termination of the Agreement within forty-five (45) days, as set forth herein, for the reasons set forth below:~~

~~(1) Nonperformance of any covenant of this Agreement other than non-payment of rent or performance fees other than listed in the paragraphs above.~~

~~(2) The inability or failure of Westrec to provide the City with an unqualified, certified statement of gross sales, or to strictly adhere to the revenue control procedures established in this Agreement. In such event the City shall have the right to terminate this Agreement upon forty-five (45) calendar days written notice to the lessee.~~

~~In the event that Westrec does not cure the breach, to the satisfaction of the City, within the forty-five (45) calendar days of the notice as set forth herein, then the Agreement shall be terminated.~~

~~(d) **Habitual default.**~~

~~Notwithstanding the foregoing, in the event Westrec has repetitively defaulted four (4) times within a twelve (12) month period in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by Westrec regardless of whether Westrec has cured each individual condition of breach or default, Westrec may be determined by the City to be a "habitual violator" at the times such determination is made, the City shall issue to Westrec a written notice advising of such determination citing the circumstances therefore. Such notice shall also advise Westrec that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults whatever nature taken with all previous breaches and defaults shall be considered cumulative and collectively shall constitute condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the City may cancel this Agreement upon the giving of written notice of termination to Westrec such cancellation to be effective upon the 10th day following the date of receipt thereof and all payments due hereunder shall be payable to said date. Westrec shall have no further rights hereunder. Immediately upon notice of said notice of termination, Westrec shall discontinue its operations at the Marina and proceed to remove all its personal property.~~

~~(e)~~ (b) **Natural Disaster**

In the event that the City's marina is destroyed or significantly damaged by a natural disaster or Act of God, either Party may terminate this Agreement upon providing 30 days written notice as set forth herein.

~~(f)~~ (c) **Tax Exempt Bonds**

In the event that the City loses it's tax exempt status on the existing municipal improvements due to the terms of the this Agreement, either Party may terminate this Agreement upon providing 30 days written notice as set forth herein.

~~14. **Termination by Westrec.**~~

~~Westrec shall have the right, upon thirty (30) calendar days from receipt of written notice to the City by certified or registered mail, to the address specified in at paragraph (2)(h) above, to terminate this Agreement at any time after the occurrence of one or more of the following events:~~

~~(a) **Issuance by any court of competent jurisdiction of any injunction, substantially restricting the use of the Marina property.**~~

~~(b) A breach by the City of any of the terms, covenants, or conditions contained in this Agreement and the failure of the City to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail return receipt requested from the Westrec of the existence of such breach.~~

~~(c) The assumption by the U.S. Government or any authorized agency or any other governmental agencies the operation control or use of the Marina .~~

~~15.~~ 14. **Limiting Legislative or Judicial Action.**

In the event that any municipal, county, state or federal hody of competent jurisdiction passes any law, ordinance or regulation in any way restricting or prohibiting the use of the Marina for purposes of this Agreement, this Agreement may he terminated by Westrec pursuant to the "Termination by Westrec" clause in paragraph 18 above and will be null and void and unenforceable by any party to this Agreement and the City shall have no further liability under this Agreement. In the event that any court or legislative body of competent jurisdiction issues an injunction substantially restricting or prohibiting the use of the Marina for the purposes of this Agreement, which injunction stays in force for more than thirty (30) calendar days, this Agreement will be null and void and unenforceable by any party to this Agreement and the City shall have no further liability under this Agreement. If the City deems the Agreement null and void by function of this paragraph, the City will not be liable to Westrec for damages arising therefrom and the City shall have no further liability under this Agreement.

16.15. **Nondiscrimination.**

Westrec does hereby for itself, its personal representatives, successors in interest and assigns as part of the consideration and agreement consideration hereof, covenant and agree that:

(a) No person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the City or handicap shall be excluded from participating in or be denied the benefits of or be otherwise subjected to discrimination in the use of the Marina except for bona fide cause allowed by law.

(b) The construction of any improvements on over such land or in the furnishing of services thereon. No person on the grounds of race, color, religion, national origin, sexual orientation, age, residency within or without the City or handicap shall be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination, except for bona fide causes allowed by law.

(c) That Westrec shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, non discrimination under programs receiving federal assistance through the City of health, education and welfare-effectuation of Title VI of the Civil Rights Act of 1964 and as such regulations may be amended that in the event a breach of any of the above non-discrimination covenants, the City shall have the right to terminate the Agreement and this Agreement shall be null and void. Westrec shall not discriminate against City employees or applicant for employment in the performance of the contract with respect to hiring tenure terms, conditions or privileges of employment because of age, sex, or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national original or ancestry.

17.16. **Hurricane Preparedness.**

Westrec shall follow the City's emergency evacuation and hurricane plan.

18.17. **Termination of Agreement.**

Following the termination of this Agreement by either party within fifteen (15) calendar days, or earlier if determined by the City, Westrec shall forthwith remove all of its personal property not acquired under the terms of the Agreement. Any personal property of Westrec not removed in accordance with this paragraph may be removed by the City for storage at the cost of Westrec or shall constitute a gratuitous transfer of title thereof to the City for whatever disposition is deemed to be in the best interests of the City. The City shall not be liable to Westrec for safekeeping for Westrec's personal property during or after termination of this Agreement.

19.18. **Approvals.**

Except as otherwise provided, whenever approvals are required herein by either party, such approval shall not be unreasonably withheld.

~~20.~~19. **Rights Reserved to the City.**

All rights not specifically granted to Westrec by this Agreement are reserved to the City, and the designation of any particular remedy for the City without prejudice to any other relief available in law or equity and all such relief is reserved to the City.

~~21.~~20. **Lien.**

The City shall have a lien upon all personal property of Westrec to secure the payment to the City of any unpaid money accruing to the City under the terms of this Agreement.

~~22.~~21. **Submerged Land Lease.**

A submerged land lease is attached hereto as Exhibit 5. Westrec agrees to operate the Marina Operating Area (MOA) in such a fashion as to not violate such submerged land lease.

~~23.~~22. **Compliance with City's Internal Control Processes.**

Westrec agrees to comply with the City's procurement policies and procedures, budget policies and other policies which are attached hereto as Attachment 4.

~~24.~~23. **City's Mooring Fields.**

The City owns and maintains 20 Helix® system moorings located across from the Marina on the west side Atlantic intercoastal waterway as part of the MOA. The City is currently operating this mooring field within the jurisdiction of the City which is coming into compliance with Florida's law. The City will continue to regulate this issue of mooring fields and may revise its ordinances as appropriate. In addition, the City retains the right to expand its mooring fields to additional areas, and will notify Westrec of any action taken in this regard. The City's Mooring Fields are part of the MOA and are subject to the management, operating and insurance provisions as set forth herein.

~~25.~~24. **Recycled Material.**

Westrec agrees to use recovered materials to the extent practical under the terms of this contract.

The City wishes to encourage Westrec to use recycled materials in fulfilling contractual obligations to the City and that such a policy will serve as a model for other public entities and private sector companies.

When awarding a purchase of $5,000 or less or recommending a purchase in excess of $5,000 for products, materials or services, Westrec may allow preference to a responsive bidder who certifies that their product or material contains the greatest percentage of post-consumer materials. If they are bidding on paper products, it may certify that their materials and/or products contain at least the content recommended by the EPA guidelines.

Definitions under this section are as follows:

"Recovered Materials:" Materials that have recycling potential, can be recycled, and have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection or processing.

"Recycled Materials:" Materials that contain recovered materials. This term may include internally generated scrap that is commonly used in industrial or manufacturing processes, waste or scrap purchased from another manufacturer and used in the same or a closely related product

"Postconsumer Materials:" Materials which have been used by a business or consumer and have served their intended end use and have been separated or diverted from the solid waste stream for the purpose of recycling such as Newspaper, aluminum, glass containers, plastic containers, office paper, corrugated boxes, pallets or other items which can be used in the remanufacturing process.

~~26.~~25. **Infringement of Patent, Trademarks or Copyrights.**

Westrec agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damages or expense including attorney fees, arising from or by reason of any actual or claimed trademark patent or copyright infringement or litigation based thereon with respect to the services or goods or any part thereof covered by this Agreement, and such obligations shall survive the term of this Agreement.

~~27.~~26. **Signage.**

Westrec shall abide by the City's Sign Code attached hereto as Attachment 5.

Any changes to exterior signage must meet applicable codes, ordinances, and HDC and CRA district guidelines.

~~28.~~27. **Condemnation.**

(a) **Total Condemnation.**

If during the term of this Agreement or any extension or renewal of this Agreement, all of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this Agreement will terminate, and the payments will be abated during the unexpired portion of this Agreement effective as of the date the condemning authority takes the said Area.

(b) **Partial Condemnation.**

If less than all, but more than ten percent (10%) of the MOA is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by the right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate the Agreement by giving written notice to the other party within sixty (60) days. If the said area is partly condemned and neither party elects to terminate this Agreement or if less than ten percent (10%) of the said area is condemned, this Agreement will not terminate, but the payments to be made will be adjusted equitably during the unexpired portion of this Agreement.

(c) **Condemnation Award.**

The City will receive the entire award from any condemnation, and Westrec will have no claim to that award or for the value of any unexpired term of this Agreement.

~~29.~~ 28. **Mechanic's Liens.**

Westrec will not permit any mechanic's lien or liens to be placed on the MOA or on improvements to it. If a mechanic's lien is filed on the MOA or on improvements on it, Westrec will promptly pay it. If default in payment of the lien continues for ten (10) days after the City's written notice to Westrec, the City may, at its option, pay the lien or any, portion of it without inquiring into its validity. Any amounts the City pays to remove a mechanics lien caused by Westrec to be filed against the MOA or against improvements on the MOA, including expenses and interest, are due from Westrec to the City and must be repaid to the City immediately upon rendition of notice together with interest of twelve percent (12%) annually until fully paid.

The City's interest in the MOA is not subject to mechanic's liens for improvements made, or contracted for, by Westrec. Westrec must give written notification to all contractors making any improvements on the MOA of the provisions of this Agreement.

~~30.~~ 29. **Indemnity.**

(a) **Westrec's General Indemnity**.

City hereby agrees to indemnify Westrec for claims brought against Westrec only to the extent that they are found to result from the sole negligence of the City, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors, or third party agents of the City. This indemnification shall not be construed as a waiver of the City's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the City must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII, Section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the City to only those damages caused by City's sole negligence, and specifically not include any attorneys' fees or costs associated therewith.

(b) **Environmental Indemnity**.

Westrec is responsible only for the payment of that portion of any cleanup cost for compliance with hazardous materials laws that arise during the term of this Agreement as a result of a discharge of hazardous materials directly attributable to the negligence of a Westrec employee. The City is responsible for all other cleanup costs, including all costs associated with environmental compliance at the Marina, and the City is responsible for insuring that any other responsible party participate in the clean up to the extent of its responsibility for relief. Westrec shall indemnify, defend, and hold harmless the City from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen including without limitation counsel, engineering, or any other professional or expert fees, that the City may incur by reason of the negligence of Westrec employees during the term of this Agreement as set forth herein. This section survives the expiration or earlier termination of this Agreement.

~~31.~~ 30. **Alternative Dispute Resolution.**

Westrec and the City agree that any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be first subject to mediation by a mutually agreed upon mediator before any suit is filed.

~~32.~~ 31. **Current Marina Debt.**

(1) Both parties recognize that there is existing current marina debt.

a. Current Bonds. The City previously issued tax-exempt debt in the amount of $6.4 million to finance various improvements to the Marina. The debt service schedules are attached to this Agreement as Exhibit 1.

b. Conversion of Tax Exempt Debt To Taxable Debt for "private activity" Use. The City has outstanding indebtedness relating to marina improvements as set forth in Exhibit 2. Notes were issued in 2005 and 2009 to banks bearing interest at tax-exempt rates because under federal income tax law, the City qualified for the tax exemption as the owner and operator of the Marina.

(2) Westrec agrees to cooperate with the City to maintain this tax exemption, thus avoiding estimated maximum present value of the additional interest cost to the City of $1,082,745.60. The City shall provide notice to Westrec, and an opportunity to cooperate with the City, as to the measures that may be necessary to protect the tax exempt status of the debt financing.

~~33.~~ 32. **Reservations.**

Reservations are currently accepted up to four (4) months in advance. Westrec has provided an operations plan relating to reservations policy, including reservations, software, prepaying requirements and cancellation policies.

Any changes to the reservations policy must be approved by the City Manager.

~~34.~~ 33. **Facilities.**

Westrec will maintain the premises in good order and in sanitary and safe condition.

Westrec shall provide one boat slip, as needed, for use by the City for a police boat at all times during the term of this Agreement.

~~35.~~34. **Festivals and Special Events.**

The City hosts a number of festivals and special events: primarily the Shrimp Festival the first weekend in May, the Kingfish fishing tournament in June, and July 4th fireworks show. Frequently these events draw boaters and fill marina slips. Some festivals and special events might have some impact on the Marina operations and Westrec will cooperate with the City and designated festival committees in planning activities to support the Marina .

36.35. **Collection of Delinquent Accounts.**

The City invoices its customers for dockage both in advance and in arrears depending on the nature of the business relationship. Routinely, the City has a list of delinquent accounts ranging from a few hundred dollars to several thousand dollars. The City routinely works with its customers to bring all delinquent accounts current. Westrec shall provide its collection policies and procedures and how they would be applied to the Marina Operations Area.

37.36. **Use of Trademarks, Service Marks and Related Items**

In providing its services under this Agreement, Westrec will use the name, trademark and service mark "WESTREC" and such other trademarks, service marks, logos, commercial symbols, insignia and designs as Westrec shall deem appropriate (collectively, the "Trademarks") and certain operations manuals and software (including operations, emergency procedures, personnel, risk management and accounting software and manuals), formats (including financial reporting and budgeting formats) and forms (including bookkeeping, accounting and lease forms) and software (collectively, the "Proprietary Material"). Westrec hereby grants City the nonexclusive, nontransferable right to have Westrec, for the benefit of City, use the Trademarks and Proprietary Material in connection with the management and operation of the Marina all subject to Westrec's complete control. It is understood and agreed that Westrec shall have the right to use and license others to use the Trademarks and Proprietary Material elsewhere for any purposes whatsoever, including without limitation in the management and operation of other marinas. Immediately upon the expiration or termination of this Agreement, City shall (a) return to Westrec all materials bearing any of the Trademarks and all Proprietary Material without retaining any copies thereof, and (b) cease all use of the Trademarks and Proprietary Material by all means required, including without limitation changing all telephone listings using any of the Trademarks, removing all signs hearing any of the Trademarks, and using its best efforts to have existing tenants at the Marina sign new leases to replace their existing Westrec lease forms. Nothing contained in this Agreement shall give City any right, title or interest in or to any of the Trademarks or Proprietary Material, except the mere privilege and license during the term of this Agreement to have Westrec, for the benefit of City, use the Trademarks and Proprietary Material in connection with the management and operation of the Marina. City acknowledges and agrees that the Trademarks and Proprietary Material are the exclusive property of Westrec and that City now asserts and will hereafter assert no claim to any goodwill, reputation or ownership of any of the Trademarks or Proprietary Material. City shall not do or permit any act or thing to be done in derogation of any of Westrec's rights in any of the Trademarks or Proprietary Material, either during the term of this Agreement or thereafter. City shall not, during or after the term of this Agreement, in any way dispute or impugn the validity of the Trademarks or Proprietary Material, the rights of Westrec therein, or the rights of Westrec or other licensees of Westrec to use the same, both during the term of this Agreement and thereafter. The provisions of this section shall survive the expiration or termination of this Agreement.

37. **Florida Public Records Law Requirements**

Pursuant to Section 119.0701, Florida Statutes, Westrec shall: (a) keep and maintain all public records as that term is defined in Chapter 119, Florida Statutes ("Public Records"), that ordinarily and necessarily would be required by the City in order to perform the work contemplated by this Agreement; (b) provide the public with access to Public Records, on the same terms and conditions that the City would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining Public Records and transfer, at no cost to the City, all public records in possession of Westrec within thirty (30) days after termination of this Agreement, however terminated, and destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements and provide the City with a letter confirming that this has been done within thirty (30) days of the termination of this Agreement. All Public Records stored electronically must be provided to the City in a format that is compatible with the information technology of the City. If Westrec does not comply with a public records request, the City may pursue any and all remedies available in law or equity, including but not limited to specific performance.

IN WITNESS WHEREOF, the parties hereby have executed this Marina Management Agreement as of the date first-above written.

CITY~~:~~

By: ______________________________

Name: Joe Gerrity
Title: City Manager

Attest: ______________________________

Name: Caroline Best
Title: City Clerk

WESTREC:

WESTREC MARINA MANAGEMENT, INC.

By: ______________________________

William W. Anderson, President

APPROVED AS TO FORM AND LEGALITY:

____

Tammi E. Bach, City Attorney

RESOLUTION 2014-141

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA ACCEPTING AND APPROVING A MANAGEMENT AGREEMENT AND A LEASE AGREEMENT WITH WESTREC MARINA MANGEMENT, INC.; AUTHORIZING EXECUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 21, 2009, the City Commission selected Westrec Marina Management, Inc.'s ("Westrec") proposal to manage the City's Marina and authorized negotiations of an agreement; and

WHEREAS, the City Commission approved a 5-year Marina Management Agreement and 5-year Lease Agreement for the dockhouse on December 15, 2009; and

WHEREAS, the 2009 Management Agreement and Lease Agreement will expire in December 2014; and

WHEREAS, the City Commission wishes to enter into a new Marina Management Agreement and Lease Agreement with Westrec, and both can be terminated by the City or Westrec without cause by giving 90 days' notice; and

WHEREAS, the management fees including the variable fees are included in the FY 2014/215 budget in the Marina Contractual account, 480-7500-575.3400.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, that:

SECTION 1. The City Commission hereby accepts and approves the Marina Management Agreement, attached hereto as Exhibit "A", and the Lease Agreement, attached hereto as Exhibit "B", with Westrec Marina Management, Inc. to manage the Marina and lease the dockhouse building located at 1 North Front Street.

SECTION 2. The City Manager and City Clerk are authorized to execute both agreements on behalf of the City upon approval of the City Attorney.

SECTION 3. This Resolution shall be effective immediately upon passage.

ADOPTED this 7th day of October, 2014.

ATTEST:

Caroline Best

Caroline Best
City Clerk

CITY OF FERNANDINA BEACH

Edward E. Boner
Commissioner-Mayor

APPROVED AS TO FORM AND LEGALITY:

Tammi E. Bach
City Attorney

WESTREC
MARINAS

SOUTHERN REGIONAL OFFICE
801 North East Third Street, Dania Beach, Florida 33004
Phone 954-926-0300 ext. 4 Fax 954-922-5485
Email westrecsrmtv@prodigy.net

15 April 2014

Mr. Joe Gerrity, City Manager
The City of Fernandina Beach
204 Ash Street
Fernandina Beach, FL 32034

RE: The Fernandina Harbor Marina

Dear Joe,

It was nice meeting with you last month regarding the Fernandina Harbor Marina and the renewal of Westrec Marinas' contract to manage the property on behalf of the City. You expressed the City's desire to reduce expenses, and we discussed possibly cutting full-time marina positions and replacing them with part-time staff. I am concerned how this might affect the quality of service we provide and Westrec's reputation for personalized service that we have established at the Marina since our management contract began. As a result of our discussion, I have given considerable thought to how we could reduce the expenses of the Marina without compromising customer service or impacting its operations. Therefore, I would like to propose the following changes (with the City Commission's approval) to go into effect upon renewal of our management agreement this Fall.

1) We will reduce the full time staff by only one person, changing one of the fuel dock clerk / dockhand positions to part-time seasonal employment for 8 months out of the year, with the position eliminated during the 4 winter months. By instituting this, the annual savings would be $8,800.00.

2) Rather than cutting a second full time person to part-time seasonal in the same fashion as described above, and risk the quality of service that we are able to deliver to marina customers and the reputation we have built up there, we would instead reduce our annual management fee by $8,800.00 (the value of making that change).

3) During the 4 winter months, (November through February) we would close at 6:00 pm instead of 8:00 pm corresponding with Daylight Savings Time. This would save an additional $6,160.00.

Under this scenario, the City would retain Westrec's professional marina management services which include considerable promotion of the Fernandina Harbor Marina through our regional advertising and marketing program and all accounting and payroll operations for the marina, at a savings of $23,760.00. ($8,800.00 + $8,800.00 + $6,160.00). Westrec would like to renew our management agreement for a term of three years with two (one-year) options, the same time period as was our initial contract. I strongly believe that renewing Westrec's management contract for the operation of the Fernandina Harbor Marina provides far more than just numbers to the bottom line. Our company's experience and excellence in operations is widely known. If you have any questions regarding these proposed changes or anything with regard to our operations, please do not hesitate to contact me directly.

Best Regards,

Gary Groenewold
Vice President, Southern Area

GG/mtv

cc: Bill Anderson, Jeff Ellis, John Louis

File 1 Original
Fwd: 1 Original
to Westrec

CITY COMMISSION AGENDA ITEM
CITY OF FERNANDINA BEACH

SUBJECT: Resolution 2014-141
Lease and Management Agreement(s) – Westrec Marina Management, Inc.

DEPARTMENT: City Manager

ATTACHMENTS: ___ Ordinance _X_ Resolution
___ Support Documents ___ Other

RECOMMENDED ACTION: Approve Resolution 2014-141

SUMMARY: On September 21, 2009, the City Commission selected Westrec Marina Management, Inc.'s ("Westrec") proposal to manage the City's Marina and authorized negotiations of an agreement. The City Commission approved a 5-year Marina Management Agreement and 5-year Lease Agreement for the dockhouse on December 15, 2009. The 2009 Management Agreement and Lease Agreement will expire in December 2014.

The City Commission wishes to enter into a new Marina Management Agreement and Lease Agreement with Westrec, and both can be terminated by the City or Westrec without cause by giving 90 days' notice.

The highlights of the new management agreement are:

- Reduction of one full-time position to a seasonal part-time position resulting in a savings of $8,800 per year;
- Westrec Marina Management fee reduction in the amount of $8,800 per year;
- The Fernandina Beach Marina will be closed during the 4 winter months (their slow season) at 6:00 pm rather than 8:00 pm resulting in a savings of $6,160 per year.
- No change to the variable fee component of the agreement

Subsequent to these changes, the City will realize an annual savings of $23,760.

FISCAL IMPACT: Management fees including the variable fee is included in the FY 2014/2015 Budget in the Marina Contractual account, 480-7500-575.3400.

CITY ATTORNEY COMMENTS: None

DEPARTMENT HEAD	Submitted by: Joe Gerrity City Manager	Date: 9/22/14
	Requested Agenda	Date: 10/07/14
FINANCE DEPARTMENT	Approved as to Budget Requirements PTK	Date: 9/29/14
CITY ATTORNEY	Approved as to Form & Legality TEB	Date: 9/30/14
CITY MANAGER	Approved Agenda Item for 10/07/14	Date: 9/22/14

COMMISSION ACTION:

✓ Approved As Recommended
___ Approved With Modification
___ Other
___ Disapproved
___ Postponed to Time Certain
___ Tabled

Approved at the City Commission
Regular Meeting
Held on 10/7/14
Voted: 5-0 Initial: AB

City of Fernandina Beach

OFFICE OF THE CITY CLERK

March 6, 2014

Michelle Van Lenten
Regional Coordinator
WESTREC MARINAS
Southern Regional Office
801 N. E. Third Street
Dania Beach, Florida 33004

RE: Lease and Management Agreements

Dear Ms. Van Lenten,

The Fernandina Beach City Commission at their Regular Meeting on October 7, 2014, approved Resolution 2014-141 approving a Management Agreement and a Lease Agreement to manage the Marina and lease the dockhouse building located at 1 North Front Street. Attached is a copy of Resolution 2014-141 and original executed Management and Lease Agreements for your files.

If you have any questions, please let us know.

Sincerely,
City of Fernandina Beach

Caroline Best

Caroline Best
City Clerk

Marina Lease
RFP 2020-02

Combined Evaluations

Criteria	Weight
1 Technical Capabilities	30
2 Previous Experience	30
3 Financial Component	40
	100

Rating (used to fill in yellow boxes)

Rating	
0	Did not address
1	Significant deficiencies
2	Some deficiencies
3	Meets requirements/expectation
4	Slightly exceeds expectations
5	Greatly exceeds expectations

Criteria	Coastal Marina Management	Total	Founders 3 Marina Management	Total	Mobius Marine Management	Total	Oasis Marinas LLC	Total	Safe Harbor Marinas LLC	Total
1 Technical Capabilities	0	0	16.25	97.5	12.25	73.5	18.25	109.5	14	84
2 Previous Experience	0	0	15	90	10	60	17	102	16	96
3 Financial Component	0	0	10.5	84	12	96	17	136	6	48
SCORE	Withdrew Proposal 8/6/2020	0		271.5		229.5		347.5		228

Marina Management/Lease
RFP 2020-02 **Pauline Testagrose**

Criteria	Weight
1 Technical Capabilities	30
2 Previous Experience	30
3 Financial Component	40
	100

Rating (used to fill in yellow boxes)

0	Did not address
1	Significant deficiencies
2	Some deficiencies
3	Meets requirements/expectation
4	Slightly exceeds expectations
5	Greatly exceeds expectations

Criteria	Coastal Marina Management	Total	Founders 3 Marina Management	Total	Mobius Marine Management	Total	Oasis Marinas LLC	Total	Safe Harbor Marinas LLC	Total
1 Technical Capabilities		0	5	30	3	18	5	30	5	30
2 Previous Experience		0	4	24	3	18	4	24	5	30
3 Financial Component		0	2	16	4	32	4	32	1	8
SCORE	Withdrew Proposal 8/6/2020	0		70		68		86		68

Marina Lease
RFP 2020-02

Coleman Langshaw

Criteria	Weight
1 Technical Capabilities	30
2 Previous Experience	30
3 Financial Component	40
	100

Rating (used to fill in yellow boxes)

0	Did not address
1	Significant deficiencies
2	Some deficiencies
3	Meets requirements/expectation
4	Slightly exceeds expectations
5	Greatly exceeds expectations

Criteria	Coastal Marina Management	Total	Founders 3 Marina Management	Total	Mobius Marine Management	Total	Oasis Marinas LLC	Total	Safe Harbor Marinas LLC	Total
1 Technical Capabilities	0	0	4	24	4	24	5	30	4	24
2 Previous Experience	0	0	5	30	2	12	5	30	5	30
3 Financial Component	0	0	5	40	2	16	4	32	2	16
SCORE	Withdrew Proposal 8/6/2020	0		94		52		92		70

Marina Management/Lease
RFP 2020-02 **Nathan Coyle**

Criteria	Weight
1 Technical Capabilities	30
2 Previous Experience	30
3 Financial Component	40
	100

Rating (used to fill in yellow boxes)

0	Did not address
1	Significant deficiencies
2	Some deficiencies
3	Meets requirements/expectation
4	Slightly exceeds expectations
5	Greatly exceeds expectations

Criteria	Coastal Marina Management	Total	Founders 3 Marina Management	Total	Mobius Marine Management	Total	Oasis Marinas LLC	Total	Safe Harbor Marinas LLC	Total
1 Technical Capabilities		0	4.25	25.5	3.25	19.5	4.25	25.5	3	18
2 Previous Experience		0	4	24	3	18	4	24	4	24
3 Financial Component		0	2.5	20	3	24	4	32	2	16
SCORE	Withdrew Proposal 8/6/2020	0		69.5		61.5		81.5		58

Marina Management/Lease
RFP 2020-02 **Tammi Bach**

Criteria	Weight
1 Technical Capabilities	30
2 Previous Experience	30
3 Financial Component	40
	100

Rating (used to fill in yellow boxes)

0	Did not address
1	Significant deficiencies
2	Some deficiencies
3	Meets requirements/expectation
4	Slightly exceeds expectations
5	Greatly exceeds expectations

Criteria	Coastal Marina Management	Total	Founders 3 Marina Management	Total	Mobius Marine Management	Total	Oasis Marinas LLC	Total	Safe Harbor Marinas LLC	Total
1 Technical Capabilities		0	3	18	2	12	4	24	2	12
2 Previous Experience		0	2	12	2	12	4	24	2	12
3 Financial Component		0	1	8	3	24	5	40	1	8
SCORE	Withdrew Proposal 8/6/2020	0		38		48		88		32

CITY OF FERNANDINA BEACH
RFP 2020-02 MARINA MANAGEMENT/LEASE
PROPOSAL PRESENTATION MEETING
August 13, 2020 – 10:00AM

Committee members present: City Attorney, Tammi Bach; City Comptroller, Pauline Testagrose; Airport Director Nathan Coyle; MAB member Coleman Langshaw

Staff members present: Purchasing Agent, Wanda Weaks; Legal Assistant, Katie Newton

Others present: Joe Springer, Genece Minshew, Chip Ross, Joe Blanchard; Suanne Thamm;

The meeting was called to order at 10:00am.

City Attorney, Tammi Back began the evaluation discussion noting information used by the evaluation committee to make the evaluations of each submitter. The evaluation committee formulated questions for references to each submitter. All references were contacted with these questions and all questions were answered. Ms. Bach gave Oasis the highest score. Oasis got very close to the 20-21 budget for Westrec.

Airport Director, Nathan Coyle gave Oasis the highest score based on technical capabilities, previous experience, marketing, and planning.

MAB member Coleman Langshaw approached scoring from that of a former Marina Director with not much weight on the financial aspect. Mr. Langshaw gave F3 Marinas the highest score. He liked F3's approach from the hospitality standpoint and felt the F3 put community input at the forefront.

City Comptroller, Pauline Testagrose gave Oasis the highest score based on previous experience, technical capabilities, and lowest fees.

Founders 3 Marinas and Oasis had very strong proposals. The final decision came down to the financial.

City Attorney Bach made a motion to award as the number one contender, Oasis Marinas and a second to Founders 3 Marinas should a contract with Oasis not be negotiated. Airport Director, Coyle seconded the motion. The motion was carried by City Comptroller, Testagrose and MAB member Coleman Langshaw.

The evaluations and scoring will be given to the Marina Advisory Board for a meeting to be held on August 24, 2020. If the motion is carried, the resolution for award will go to commission September 1, 2020.

The meeting was adjourned at 10:30am.

CITY OF FERNANDINA BEACH
RFP 2020-02 MARINA MANAGEMENT/LEASE
PROPOSAL PRESENTATION MEETING
August 6, 2020 – 10:00AM

Committee members present: City Attorney, Tammi Bach; Comptroller, Pauline Testagrose; Airport Director Nathan Coyle; MAB member Coleman Langshaw

Staff members present: Purchasing Agent, Wanda Weaks; Legal Assistant, Katie Newton

Others present: Joe Springer, Genece Minshew, Chip Ross, Paul Lore; Kevin McCarthy; Joe Blanchard; Suanne Thamm; Bryn Byron

The meeting was called to order at 10:02am.

Five presentations were on the agenda via a Zoom virtual meeting.   Coastal Marina Management; Founders Marina Management, d/b/a F3 Marinas; Mobius Marine, Inc.; Oasis Marinas; and SH Marinas, LLC, d/b/a SH Marinas.

Mobius Marine, Inc. was the first presentation. Attendees were Chris Kelly, President and Brad Miller, Project Manager. Chris Kelly gave a short presentation discussing the marketing strategy and promoting Fernandina Beach downtown businesses. Brad Miller noted that Mobius Marine has an in-house maintenance manager.

Founders Marina Management was the second presentation. Attendees were John Matheson, President, Alain Giudice, Sr. Vice President; Phil Cook, Manager of Finance & Operations. John Matheson discussed the fact that F3 was in the hospitality business first and would be more aware of promoting Fernandina Beach and the marina. F3 uses "Dock One", a program for boaters to rent a slip (similar to booking a hotel room). F3 has a quality training program, cross training employees and setting goals. A marina manager is required to be certified. Alain Giudice would be relocating to Daytona for a home base, making him closer to Fernandina.

Oasis Marinas the third presentation. Attendees Brian Arnold, VP of Business Development presented. Brian Arnold discussed the fact that Oasis has been in the hospitality business and uses snag-a-slip. Oasis has a plan for marketing and promoting Fernandina as a destination. Oasis would implement a three to five-year master plan. The dockhands are referred to as Marina Service Associates. Oasis promotes employee training and development to insure the best possible marina experience. Oasis would be interested in interviewing the current marina employees.

S&H Marinas the fourth presentation. Attendees Jason Hogg, Chief Investment Officer and Luke Taylor, Director of Acquisitions. Jason Hogg discussed the fact that S&H Marinas 106 locations in twenty-two states, thirteen of those in Florida. The City of Fernandina Beach marina would fill a void on the eastern coastline of Florida for S&H Marinas. Partnering with S&H would save money for the City. S&H would re-invest in the facility. S&H uses a "black card" program with benefits for boaters staying in Safe Harbor marinas. S&H was the only submittal for a ten-year lease.

CITY OF FERNANDINA BEACH
RFP 2020-02 MARINA MANAGEMENT/LEASE
PROPOSAL PRESENTATION MEETING
August 6, 2020 – 10:00AM

Coastal Marina Management was to be the fifth presentation attended by Connie Chesscher, Operations Manager. Coastal hung up from the Zoom meeting. After returning to Finance, Coastal Marina has sent an email withdrawing their proposal.

The evaluation committee members asked questions regarding marketing, marina maintenance, marina fees, employees, transient fees versus local charter boat fees versus long-term boater fees and how to balance fees between each. Each proposer answered the questions to the satisfaction of the evaluation committee members.

Meeting adjourned 11:58am.

Work Order ID:	15370	Completion Date:	8/10/2020 8:7:31

Description	Concrete separators in the angle truck and trailer parking have exposed rebar. Possible tire damage to vehicles or trailers.		
Location	Marina	**Bldg./Unit**	Parking Lot D
Area		**Priority**	Medium
Area Number		**Craft**	Miscellaneous
Custom Category		**Type**	
Status	Complete	**Estimated Hour**	0.00
Assigned To		**Requester**	Joe Springer 904-310-3303
Estimated Start	08/07/2020	**Request Date**	08/07/2020
Est. Completion Date		**Req. Completion Date**	
Budget Code		**Purpose Code**	CoFB (Marina)
Project Code		**Project Description**	
Equip Item No.		**Equip Desc**	
Downtime	**Hours** **Minutes**	**Downtime Cost**	$0.00
Link To	No records found		
Notes			

Purchases **To Date: $0.00**

Date	Inv/Ref	Description	Supplier	Pool	Qty	Cost Each

Labor **To Date: 2.00**

Date	Name	Hours

Technician Name | Date | Confirmation | Date

FUEL DOCK STATUS

√ Docks Installed

√ Water Installed

√ Electricity Installed

√Fire Lines Installed

Veeder Root Still in work

Fuel Lines Still in Work

√ Tank Inspections Complete

√ Tank Pressure Test Complete

√ Line Pressure Test Complete

√ Introduction of Fuel Complete

DEP Inspection Rescheduled

Fuel leak detected

Solutions are being considered

Possible delay of 4 to 6 weeks

N2 and N3 DOCKS STATUS

Boats moved from westside of Dock N2

CWA Initial work on Dock N2 is complete

CWA Initial work on Dock N3 to begin this week

FHM Boats on Dock N3 will move to Dock East side of Dock N2

FHM Boats removed from westside of Dock N2 will be returned to their original location. This will free up additional long term dockage on dock S2