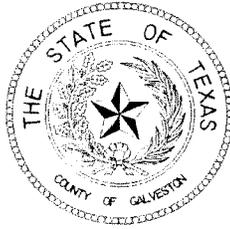


**GALVESTON COUNTY
PURCHASING DEPARTMENT**



REQUEST FOR PROPOSAL

RFP #B132009

**JONES BAY BOAT RAMP CONCESSION
AGREEMENT 2013**

PROPOSALS DUE: July 23, 2013 at 10:00 AM

*Rufus Crowder, CPPO CPPB
Purchasing Agent
Galveston County
722 Moody (21st Street), Fifth (5th) Floor
Galveston, Texas 77550
(409) 770-5372*

RFP#:B132009
OPEN: 07/23/2013
10:00 AM

Request for Proposal Jones Bay Boat Ramp Concession Agreement 2013

Galveston County will accept sealed proposals for the granting of a Concession Agreement for the construction, maintenance, and operation of a Bait and Fishing Supplies, Food and Beverage Concession or other concession purpose at the Jones Bay Boat Ramp located adjacent to Interstate 45 and the Santa Fe Overpass, near Tiki Island, Galveston County, Texas.

The Request for Proposal as well as a copy of the proposed Concession Agreement may be picked up at the County Purchasing Agent's office at the address below or by visiting [www.co.galveston.tx.us/Purchasing/Bid Listing](http://www.co.galveston.tx.us/Purchasing/Bid%20Listing), or if requested, at the bidder's risk, mailed to interested bidders. The terms of the bidder's response and the proposed Concession Agreement may, if deemed necessary by the County, be negotiated.

Sealed proposals in sets of eight (8) including one (1) original and seven (7) copies will be received in the office of the County Purchasing Agent until **10:00 AM** on **7/23/2013** and opened immediately in that office in the presence of the County Auditor and the Purchasing Agent. Any proposal received after **10:00 AM** on the date specified will be returned unopened.

All proposals must be sealed and marked on the outside of the envelope:

RFP #: B132009
Jones Bay Boat Ramp Concession Agreement 2013

The Proposer's name, return address, and the enclosed label should be prominently displayed on the outside of the envelope. The fee to be paid will be on a monthly flat rate as bid by the Proposer.

A voluntary pre-proposal conference will be held at the office of the Galveston County Purchasing Agent, located at the Galveston County Courthouse, 722 Moody (21st Street), Fifth (5th) Floor, Purchasing, Galveston, Texas, 77550, on Wednesday, June 26, 2013, at 2:00 PM.

Sealed proposals are to be hand delivered to the office of the County Purchasing Agent at the Galveston County Courthouse, 722 Moody (21st), 5th Floor Galveston, Texas, or mailed via FedEx, UPS, or USPS to the Galveston County Purchasing Agent at the address listed above.

The Galveston County Commissioners' Court reserves the right to waive any informality; reject any and all proposals at any time and for any reason or no reason or solely for convenience; or to award the contract to the responsible Proposer whose proposal is determined to be the best evaluated offer, taking into consideration the relative importance of the monthly payment to be made, the improvements to be constructed and other evaluation factors as specified in the Request for Proposal.

Rufus G. Crowder, CPPO CPPB
Purchasing Agent
County of Galveston

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AGREEMENT 2013

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TO FOLLOW:

Exhibit A - Description

Exhibit B - Amendment

Exhibit C – Texas General Land Office Coastal Surface Lease No. SL 20120008

Exhibit D – 2013 Jones Bay Boat Ramp Concession Agreement

Exhibit E - Debarment Certification Form

Exhibit F - Vendor Qualification Packet

**REQUEST FOR PROPOSAL
JONES BAY BOAT RAMP CONCESSION AGREEMENT 2013
GALVESTON COUNTY, TEXAS**

History: The **General Land Office (“GLO”)** owns and **Galveston County (“County”)** leases by way of a **Coastal Easement** both of the following described tracts of land commonly called the **Jones Bay Boat Ramp** located at Interstate 45 and the Santa Fe Overpass near the City of Tiki Island, Galveston County, Texas, to-wit:

A tract of 0.045 of an acre of land owned by the State of Texas out of the Samuel C. Bundick Survey, Abstract No. 7, more fully described in **Exhibit “A”** attached hereto.

A tract of 0.004 of an acre (188 square feet) of land owned by the State of Texas out of the Samuel C. Bundick Survey, Abstract No. 7, more fully described in **Exhibit “B”** attached hereto.

The **Coastal Easement** the **County** has with the **GLO** expires on December 31, 2031. It may be terminated early by the **GLO** for reasons set forth within the document. A copy of the **Coastal Easement** is attached hereto as **Exhibit “C”**.

There is currently located upon the above described tracts of land described in the **Coastal Easement** various improvements owned by the **GLO** and maintained by the **County** consisting of a boat ramp, a 200’ linear wooden fishing pier leading into the water and a boat ramp parking lot.

There is also currently a water line and a sewer line that belongs to the **County** that serves portions of the above described tracts of land. It is the responsibility of the successful proposer to maintain these lines, upgrade them to accommodate his/her/its proposed improvements and keep them in good condition and repair.

There is also currently located upon the above described tracts of land various smaller improvements that are in the process of being relocated. These improvements are currently owned by Mr. Robert Pike and Mr. U.T. Alexander. They were used to operate a bait and refreshment stand and fishing retail outlet known as Fat Boys’ Fishing Paradise. These improvements will be removed from their current location by no later than June 24, 2013.

Request for Proposal: The **County** will accept sealed Proposals for the granting of a Concession Agreement for the construction, maintenance and operation of a Bait and Fishing Supplies, Food and Beverage Refreshment Concession or other concession purpose at the Jones Bay Boat Ramp, located adjacent to Interstate 45 and the Santa Fe Overpass, near Tiki Island, Galveston County, Texas from individuals, sole proprietors, partnerships, corporations or other legal entities (collectively Individuals). The term of the Concession Agreement will correspond with and is subject to the terms and conditions of the Coastal Easement that the County has with the General Land Office.

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Any Individual making a Proposal may propose to construct new improvements upon the Concession Premises. Alternatively, any Individual may propose to operate a mobile concession. Any Proposal must contain:

- a detailed description of the new improvements that will be constructed;
- the method of payment for construction of such improvements;
- a commitment to issue a letter of credit ensuring the ability of the proposer to construct the improvements upon execution of the Concession Agreement; and
- the projected time of completion of construction not to exceed nine (9) months from date of execution of the Concession Agreement.

To assist the Concessionaire during the initial few months of the Concession Agreement the County agrees that the Concessionaire may have up to six months to prepare plans and specifications, have such plans and specifications approved by the County and the GLO, obtain all necessary permits and to commence construction without having to pay a monthly fee. But if, during this six month period Concessionaire opens for business to the public (e.g. begins selling bait and fishing supplies from a mobile vehicle) the Concessionaire must begin making monthly concession payments of 100% beginning on the first day of the month after the date of opening for business to the public.

In addition, the Proposal must contain:

- a commitment to commence construction of Improvements in an expeditious manner by no later than the sixth month after the Commencement date;
- a commitment to pay 50% of the monthly concession payments beginning with the seventh month after the Commencement Date through the ninth month and, beginning with the tenth month after the Commencement Date to commence paying 100% of the monthly concession fees. But, if, during this three (3) month period (i.e. months six, seven and eight) Concessionaire opens for business to the public (e.g. begins selling bait and fishing supplies from a mobile vehicle) the Concessionaire must begin making monthly concession payments of 100% beginning on the first day after the date of opening for business to the public; and
- an acknowledgement that upon expiration or early termination of the Concession Agreement by the County all improvements constructed by the proposer will become the property of Galveston County at no cost to the County or, if the Coastal Easement County has with the GLO has expired or been terminated by the GLO at no cost to the GLO. But, in the event the Concession Agreement is terminated early by the County or the GLO, the Concessionaire may be entitled to receive his/her/its unrecovered capital expenditure as set forth in Articles 4.8 and 4.9 of the proposed Concession Agreement.

Sealed Proposals are to be delivered to the office of the County Purchasing Agent which is located at the Galveston County Courthouse, 722 Moody, 5th Floor, Galveston, Texas 77550.

Eight (8) set of sealed Proposals (one (1) original and seven (7) copies will be received in the office of the Purchasing Agent until 10:00 AM on 07/23/2013 and be opened immediately in that office in the presence of the Purchasing Agent and the County Auditor. All Proposals will be time and date stamped by the County Purchasing Agent. Any Proposal received after the specified date and time will be returned unopened at such time as is determined reasonable by the Purchasing Agent.

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All Proposals must be sealed and marked on the outside of the envelope "RFP # B132009 Jones Bay Boat Ramp Concession Agreement 2013". The proposer's name and return address must be prominently displayed on the outside of the envelope. Pricing to be paid the County will be on a monthly flat rate as bid by the proposer and accepted by the County. The amount of this monthly flat rate will be set forth in the final executed Concession Agreement.

A voluntary pre-proposal conference will be held at the office of the Galveston County Purchasing Agent, located at the Galveston County Courthouse, 722 Moody (21st Street), Fifth (5th) Floor, Purchasing, Galveston, Texas, 77550, on Wednesday, June 26, 2013, at 2:00 PM.

A copy of the proposed Concession Agreement is attached to this Request for Proposal as **Exhibit "D"**. The proposed Concession Agreement may be modified by County depending on bids received, alternative Proposals presented and final negotiations. **All Individuals must read the proposed Concession Agreement prior to making a Proposal so as to familiarize themselves with its terms, conditions, reservations and restrictions.**

The Galveston County Commissioners' Court reserves the right to waive any informality. It may also reject any and all Proposals or stop the RFP process at any time for any reason or no reason or for convenience. It may also award the Concession Agreement to the responsible successful proposer whose Proposal is determined to be the best evaluated offer, taking into consideration the relative importance of monthly flat rates offered, alternatives offered by the proposer and other evaluation criteria as specified in the RFP. No Proposal will be entertained that does not meet, at a minimum, the successful proposer's willingness to accept all terms, conditions, restrictions, and other obligations imposed upon in this Request for Proposal and to execute the final Concession Agreement as modified by County

Rufus Crowder, CPPO CPPB
Purchasing Agent
County of Galveston

**GENERAL PROVISIONS
JONES BAY BOAT RAMP CONCESSION AGREEMENT 2013
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The general provisions set forth in this Request for Proposal are attached hereto and contained within the attached proposed Concession Agreement. The Concession Agreement will be modified as necessary to accommodate alternative suggestions made by a proposer.

All Individuals interested in making a Proposal must certify that they have read the Concession Agreement.

In the event of a conflict between the attached General Provisions, the attached Supplemental Requirements for Request for Proposals and the attached Concession Agreement the terms and provisions of the Concession Agreement (as mutually agreed to be modified and subsequently executed) will prevail.

1. PROPOSAL PACKAGE

The request for Proposal, general and special provisions, drawings, specifications/line item details, contract documents and the Proposal sheet are all considered part of the Proposal package. Proposals must be submitted in one (1) original and seven (7) copies on the forms provided by the County, including the Proposal sheet completed in its entirety and signed by an authorized representative by original signature. Failure to complete and sign the Proposal sheet/contract page(s) may disqualify the Proposal from being considered by Commissioners' Court. Any individual signing on behalf of the proposer expressly affirms that he/ she/it is duly authorized to tender this Proposal and to sign the Proposal sheet/contract under the terms and conditions in this Proposal. Proposer further understands that the signing of the Concession Agreement shall be of no effect unless subsequently awarded and the Concession Agreement is properly executed by the Commissioners' Court. All figures must be written in ink or typed. Figures written in pencil or with erasures are not acceptable. However, mistakes may be crossed out, corrections inserted, and initialed in ink by the individual signing the Proposal. Each Proposer is required to thoroughly review this entire Proposal packet to familiarize themselves with the Proposal procedures, the plans and specifications for the requested work as well as the terms, and conditions of the Concession Agreement the successful proposer will execute with the County.

2. COMPETITIVENESS AND INTEGRITY

To prevent biased evaluations and to preserve the competitiveness and integrity of such acquisition efforts, proposers are to direct all communications regarding this Proposal to the Galveston County Purchasing Agent, unless otherwise specifically noted.

Do not contact the requesting department. Attempts by offering firms to circumvent this requirement will be viewed negatively and may result in rejection of the Proposal of the Proposer found to be in non-compliance.

All questions regarding this Request for Proposal must be submitted in writing to:

Rufus G. Crowder, CPPO CPPB, Purchasing Agent
722 Moody (21st Street)
Fifth (5th) Floor
Galveston, Texas 77550
Fax: (409) 621-7997
E-mail: rufus.crowder@co.galveston.tx.us

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An authorized person from the submitting Proposer must sign all Proposals. This signature acknowledges that the Proposer has read the Proposal documents thoroughly before submitting a Proposal and will fulfill the obligations in accordance with all terms, conditions, and specifications.

Please carefully review this Request for Proposal. It provides specific information necessary to aid participating Proposers in formulating a thorough response.

3. PROPOSER'S RESPONSIBILITY

The Proposer must affirmatively demonstrate his/her/its responsibility. The Proposer must also meet the following minimum requirements:

1. have adequate financial resources or the ability to obtain such resources as required;
2. be able to comply with all federal, state, and local laws, rules, regulations, ordinances and orders regarding this Request for Proposal;
3. have a satisfactory record of performance;
4. have a satisfactory record of integrity and ethics;
5. be otherwise qualified and eligible to receive an award.

4. TIME FOR RECEIVING PROPOSALS

Proposals may be submitted by Fed Ex, UPS, USPS or hand delivered to the reception desk of the Purchasing Department. Proposals will not be accepted by fax or electronic mail unless superseded by instruction(s) within the Request for Proposal document. Proposals must be received and time stamped by procurement staff in the Purchasing Department prior to the specified date and time on the bid notice. Late Proposals will not be accepted and returned to the submitter unopened. Only the time designated by the "time stamp" issued by the Purchasing Department will determine whether the Proposal was received at the proper time.

Proposals received prior to the submission deadline will be maintained unopened until the specified time for opening. If the Proposer fails to identify the Proposal Number on the outside of the envelope as required, the Purchasing Agent will open the envelope for the sole purpose of identifying the bid number for which the submission was made. The envelope will then be resealed. No liability will attach to a County office or employee for the premature opening of a Proposal. If you do not care to submit a bid, please return this Invitation to Bid and state reason, otherwise your name may be removed from our mailing list on future RFP's.

5. PROPOSAL OPENING

Only the names of proposers will be read at the opening. The Purchasing Agent will examine Proposals promptly and thoroughly. No Proposal may be withdrawn for a period of sixty (60) calendar days of the Proposal opening date.

6. COMMISSIONERS' COURT

No Concession Agreement is binding on the County until it is properly placed on the Commissioners' Court agenda, approved in open Court, authorized to be executed by the County Judge, and fully executed by both parties.

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Department head and elected officials are not authorized to enter into any type of agreement, contract or Concession Agreement on behalf of the County. Only the Commissioners' Court acting as a body may enter into such an instrument on behalf of and contractually bind the County. Additionally, department heads and elected officials are not authorized to agree to any type of supplemental Concession Agreements, agreements or contracts for goods or services. Supplemental agreements are subject to review by the County Legal Department prior to being accepted by the Commissioners' Court and executed by the County Judge.

7. REJECTION OF PROPOSALS

The County, acting through its Commissioners' Court reserves the right to: (1) reject any and all Proposals and waive any informality in the Proposals received; (2) disregard the Proposal of any Proposer determined to be not responsible.

8. RESTRICTIVE OR AMBIGUOUS SPECIFICATIONS

It is the responsibility of the prospective Proposer to review this entire Request for Proposal packet and to notify the Purchasing Department if the specifications are formulated in a manner that would restrict competition or appear ambiguous. Any such protest or question(s) regarding the specifications or Proposal procedures must be received in the Purchasing Department not less than seventy-two hours prior to the time set for Proposal opening.

9. SUBSTITUTES (Not Applicable)

It is not the County's intent to discriminate against any materials of equal merit to those specified; however, should the proposer desire to use any substitutions, prior written approval shall be obtained from the County Purchasing Agent sufficiently in advance in order that an addendum might be issued.

10. EXCEPTIONS OR ALTERNATIVES TO PROPOSAL

The Proposer will list on a separate sheet of paper any exceptions or alternatives to the conditions of the Proposal. This sheet must be labeled, "Exceptions/Alternatives to Proposal Conditions", and must be attached to the Proposal. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.

The Proposer must specify in its Proposal any alternatives it wishes to propose for consideration by the County. Each alternative should be sufficiently described and labeled within the Proposal and should indicate its possible or actual advantage to the program being offered.

The County is under no obligation to consider any exception or alternative. Also, the County reserves the right to offer these exceptions or alternatives to other Proposers.

11. PRICING (Not Applicable)

Proposals will be either lump sum or unit prices as shown on the Proposal sheet. The net price will be delivered to Galveston County, including all freight or shipping charges. The County is tax exempt and no taxes should be included in your Proposal.

Cash discount must be shown on Proposal, otherwise prices will be considered net. Unless prices and all information requested are complete, Proposal may be disregarded and given no consideration.

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In case of default by the contractor, the County of Galveston may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the contractor, the difference between the price named in the contract of purchase order and the actual cost thereof to the County of Galveston. Prices paid by the County of Galveston shall be considered the prevailing market price at the time such purchase is made. Periods or performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent and the Commissioners' Court.

12. PROCUREMENT CARD PROGRAM (Not Applicable)

The County of Galveston participates in a Procurement Card (P-Card) program that allows payments made to the vendor by credit card. This method normally results in substantially faster bill payments sometimes within three (3) to five (5) days of the actual transaction date. If your company will accept payment via credit card (Visa, MasterCard), please notate this in your Proposal submittal.

13. TAX EXEMPTION

Pursuant to Section 151.309 of the Texas Tax Code, Galveston County qualifies for exemption from sales, excise and use taxes imposed under the Limited Sales, Excise, and Use Tax Act, which is codified at Chapter 151 of the Texas Tax Code. In accordance with Section 151.309, a taxable item sold, leased, or rented to, or stored, used, or consumed by the County is exempt from the taxes imposed under Chapter 151. Section 151.311 of the Texas Tax Code lists its requirements for tax exemptions on taxable items incorporated into or used for the improvement of realty of an exempt entity. Section 151.3111 lists its requirements for tax exemptions on certain services. Contractor is cautioned that this RFP provision simply highlights some statutory qualifying exemptions from the sale and use taxes imposed under Chapter 151. If Contractor believes all or a portion of its costs are exempt from taxes imposed under Chapter 151 of the Texas Tax Code, it may request a certificate of tax exemption by submitting a written request for such to the County Purchasing Agent. Additionally, information regarding eligibility for exemption from taxes imposed under Chapter 151 may be obtained through the Office of the State of Texas Comptroller of Public Accounts, whose website is <http://www.window.state.tx.us/>.

14. PASS THROUGH COST ADJUSTMENTS (Not Applicable)

Except in instances of extreme extenuating circumstances Vendor prices shall remain firm throughout the Concession Agreement period. Examples of extreme extenuating circumstances include such situations as a nation-wide rail strike, oil shortage, or oil embargos.

In extreme extenuating circumstances Vendors may be allowed to temporarily "pass through" additional costs they are forced to incur through no fault of their own. A request for a pass through cost increase will not be considered unless a Vendor's cost for his product exceeds 10% over the original cost for the product. Also, the increase in cost must be nationwide and consistent for a minimum period of sixty (60) days. If a Vendor thinks he will be asking for a pass through cost adjustment during the term of his contract the original cost of his product to him must be stated in Vendor's original Proposal.

A request for a pass through cost does not guarantee that one will be granted. Vendors must submit such information on each request as is required by the County Purchasing Agent. The County Purchasing Agent will review each request on a case by case basis and determine the appropriateness of each request as well as amount and duration of increase. Vendors will not be permitted any additional compensation for mark-ups or profits based on the increase in price.

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Rather, such additional compensation will be limited to the actual increase in original cost to the Vendor as such increase is reflected by the original cost stated in the Proposal. But in no event will the amount of additional compensation exceed 25% increase in Vendor's original cost for his product as such cost is reflected in Vendor's original Proposal or the duration exceed a period of sixty (60) days. In addition, should, during the period of the pass through, cost return to normal or decrease to below pre pass through prices, appropriate downward adjustments will be made. No more than one pass through adjustment will be permitted per year.

15. MODIFICATION OF PROPOSALS

A Proposer may modify a Proposal by letter at any time prior to the submission deadline for receipt of Proposals. Modification requests must be received prior to the submission deadline. Modifications made before opening time must be initialed by Proposer guaranteeing authenticity. Proposals may not be amended or altered after the official opening with the single exception that any product literature and/or supporting data required by the actual specifications, if any, will be accepted at any time prior to the Commissioners' Court considering acceptance of a Proposal.

16. SIGNATURE OF PROPOSALS

Each Proposal shall give the complete mailing address of the Proposer. Each Proposal shall be executed by an authorized representative by original signature with the authorized representative's name and legal title typed below the signature line. Each Proposal shall include the Proposer's Federal Employer Identification Number (FEIN). Failure to sign the Contract page(s) and Proposal response sheet will disqualify the Proposal from being considered by the County. The person signing on behalf of the Proposer expressly affirms that the person is duly authorized to tender the Proposal and to sign the Proposal sheets and contract under the terms and conditions of this RFP and to bind the Proposer thereto and further understands that the signing of the Concession Agreement shall be of no effect until it is properly placed on the Commissioners' Court agenda, approved in open Court, authorized to be executed by the County Judge, and fully executed by both parties.

17. AWARD OF PROPOSALS – EVALUATION CRITERIA AND FACTORS

The award will be made to the responsible Proposer whose Proposal is determined to be the best evaluated offer demonstrating the best ability to fulfill the requirements set forth in this Request for Proposal. The prices proposed will be considered firm and cannot be altered after the submission deadline.

Each Proposer, by submitting a Proposal, agrees that if their Proposal is accepted by the Commissioners' Court, such Proposer will furnish all items and services and perform all duties upon the terms and conditions in this Proposal and the Concession Agreement.

Neither department heads nor elected officials are authorized to sign any binding Concession Agreements or other contracts or agreements prior to such instruments being properly placed on the Commissioners' Court Agenda, approved in open court and the County Judge is authorized to execute the instrument. Additionally, department heads and other elected officials are not authorized to agree to any type of supplemental Concession Agreements or other contracts for goods or services. Supplemental agreements are subject to review by the County Legal Department prior to being accepted by the Commissioners' Court and executed by the County Judge.

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The County of Galveston reserves the right to accept Proposals on individual items listed, or group items, or on the Proposal as a whole; to reject any and all Proposals; to waive any informality in any Proposal and to accept the Proposal that appears to be in the best interest of the County. In addition, the selection process may include a request for additional information or an oral presentation to support the written Proposal.

In determining and evaluating the best Proposal, the Competence, Creativity, Quality, Revenue to the County and Completeness of the Proposer and the Proposal in general will also be considered with any other relevant items. The criteria utilized for determining responsibility of Proposer(s) includes, but is not limited to, the Proposer's experience, skill, ability, business judgment, financial capacity, integrity, honesty, ability to construct the necessary facilities and/or equipment and supplies, previous performance, reputation, promptness, and any other factor deemed relevant by the Evaluation Committee. The Proposers shall furnish any information requested by the Evaluation Committee in order for it to determine whether a proposer is responsible.

The Evaluation Committee will evaluate these factors and make a recommendation to the Commissioners' Court.

The County reserves the right to reject any or all Proposals in whole or in part received by reason of this RFP and may discontinue its efforts under this RFP for any reason or no reason or solely for the County's convenience at any time prior to actual execution of the Concession Agreement by the County.

A Proposer whose Proposal does not meet the mandatory requirements set forth in this RFP will be considered to be noncompliant.

Notice of tentative award will be made within sixty (60) days of opening of Proposals. Notice of a tentative award to a Proposer does not assure or guarantee that a Concession Agreement will be executed by the County.

18. DISPUTE AFTER AWARD

Any actual or prospective Proposer who is allegedly aggrieved in connection with the solicitation of this RFP or award of a Concession Agreement resulting therefrom may protest. The protest will be submitted in writing to the Purchasing Agent within seven (7) calendar days after such aggrieved person knows of or should have known of the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Purchasing Agent will promptly issue a decision in writing to the protestant. If the protestant wishes to appeal the decision rendered by the Purchasing Agent, such appeal must be made to the Commissioners' Court through the Purchasing Agent. The decision of the Commissioners' Court will be final. The Commissioners' Court will not consider protests until the above procedure is followed.

19. PUBLIC INFORMATION ACT

The parties agree that the County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with its provisions. Proposer agrees that he/she/it has marked any information that he/she/it considers to be confidential, proprietary, and/or trade secret in its Proposal. County agrees to provide notice to Proposer in accordance with the provisions Public Information Act in the event the County receives a request for information under the Public Information Act for information that the Proposer has marked as confidential, proprietary, and/or trade secret.

20. RESULTANT CONCESSION AGREEMENT

The resultant Concession Agreement shall become effective upon the Commissioners' Court execution of the same. The Concession Agreement documents shall consist of the contract, the general and special provisions, the drawings, Proposal package and any addenda issued.

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21. CONTRACT TERM

The term of the resultant Concession Agreement will begin on the Commencement Date and will terminate on the date specified in the Concession Agreement unless terminated earlier as therein.

22. TERMINATION FOR DEFAULT (Not Applicable)

Failure of either party in the performance of any of the provisions of this contract shall constitute a breach of contract, in which case, either party may require corrective action within ten (10) days from date of receipt of written notice citing the exact nature of such breach. Failure of the party being notified to take corrective action within the prescribed ten (10) days, or failure to provide written reply of why no breach has occurred, shall constitute a Default of Contract.

All notices relating to default by Proposer of the provisions of the contract shall be issued by County by its Legal Department, and all replies shall be made in writing to the County Legal Department. Notices issued by or issued to anyone other than the County Legal Department shall be null and void and shall be considered as not having been issued or received.

Galveston County reserves the right to enforce the performance of this contract in any manner prescribed by law in the event of breach or default of this contract, and may contract with another party, with or without solicitation of bids or Proposals or further negotiations. At a minimum, Proposer shall be required to pay any difference in service or materials, should it become necessary to contract with another source, plus reasonable administrative costs and attorney fees.

In the event of Termination for Default, Galveston County, its agents or representatives shall not be liable for loss of any profits anticipated to be made by Proposer.

No waiver by either party of any event of default under this agreement shall operate as a waiver of any subsequent default under the terms of this agreement.

County reserves the right to terminate this contract immediately in the event Proposer:

- Fails to meet delivery or completion schedules;
- Fails to otherwise perform in accordance with the accepted Proposal and the contract

23. TERMINATION FOR CONVENIENCE (Not Applicable)

County may terminate this contract upon at least thirty (30) days prior written notice for its convenience or for any reason deemed by the County to serve the public interest. County may terminate this contract upon thirty (30) days prior written notice for any reason resulting from any governmental law, order, ordinance, regulations, or court order. In no event shall County be liable for loss of any profits anticipated to be made hereunder by Proposer should this contract be terminated early.

24. FORCE MAJEURE (Not Applicable)

If by reason of force Majeure either Party shall be rendered unable, wholly or in part, to carry out its Responsibilities under this contract by any occurrence by reason of force Majeure, then the Party unable to carry out its responsibility shall give the other Party notice and full particulars of such force Majeure in writing within a reasonable time after the occurrence of the event, and such notice shall suspend the Party's responsibility for the continuance of the forced Majeure claimed, but for no longer period.

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Force Majeure means acts of God, floods, hurricanes, tropical storms, tornadoes, earthquakes, or other natural disasters, acts of a public enemy, acts of terrorism, sovereign conduct, riots, civil commotion, strikes or lockouts, and other causes that are not occasioned by either Party's conduct which by the exercise of due diligence the Party is unable to overcome and which substantially interferes with operations.

25. ESTIMATED QUANTITIES (Not Applicable)

Any reference to quantities shown in the Request for Proposals are an estimate only. Since the exact quantities cannot be predetermined, the County reserves the right to adjust quantities as deemed necessary to meet its requirements.

26. CONTRACTOR INVESTIGATION

Before submitting a Proposal, each Proposer shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the Concession Agreement and to verify any representations made by the County upon which the Proposer will rely. If the Proposer receives an award as a result of its Proposal submission, failure to have made such investigations and examinations will in no way relieve the Proposer from its obligation to comply in every detail with all provisions and requirements of the Concession Agreement, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the Proposer.

27. NO COMMITMENT BY COUNTY OF GALVESTON

This Request for Proposal does not commit the County to award any costs or pay any costs, or to award any contract, or to pay any costs associated with or incurred in the preparation of a Proposal to this request, or to procure or enter into a Concession Agreement.

28. BEST AND FINAL OFFERS

In acceptance of Proposals, the County reserves the right to negotiate further with one or more of the Proposers as to any features of their Proposals and to accept modifications of the Proposal when such action will be in the best interest of the County. This includes solicitation of a Best and Final Offer from one or more of the Proposers. If invoked, it allows acceptable Proposers the opportunity to amend, change or supplement their original Proposal. Proposers may be contacted in writing requesting that they submit their best and final offer. Any such best and final offer must include discussed and negotiated changes.

29. SINGLE PROPOSAL RESPONSE (Not Applicable)

If only one Proposal is received in response to the Request for Proposals, a detailed cost Proposal may be requested of the single contractor. A cost/price analysis and evaluation and/or audit may be performed of the cost Proposal in order to determine if the price is fair and reasonable.

30. REJECTION/DISQUALIFICATION OF PROPOSALS

The County reserves the right to reject any or all Proposals in whole or in part received by reason of this Proposal package and may discontinue its efforts for any reason or no reason or for convenience under this Proposal package at any time prior to actual execution of the Concession Agreement by the County. Proposers may be disqualified and rejection of Proposals may be recommended to the Commissioners' Court for any of (but not limited to) the following causes:

- A. Failure to use the Proposal form (s) furnished by the County.
- B. Lack of signature by an authorized representative that can legally bind the company on the Proposal form.
- C. Failure to properly complete the Proposal.
- D. Proposals that do not meet the mandatory requirements.
- E. Evidence of collusion among Proposers.

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31. CHANGES IN SPECIFICATIONS

If it becomes necessary to revise any part of this Proposal, a written notice of such revision will be provided to all potential Proposers who requested a RFP packet in the form of addenda(s). The County is not bound by any oral representations, clarifications, or changes made in the written specifications by the County's employees, unless such clarification or change is provided to Proposers in a written addendum from the Purchasing Agent.

The County of Galveston reserves the right to revise or amend the terms and provisions of this RFP up to the time set for opening of Proposals. Such revisions and amendments, if any, shall be announced by amendments to the solicitation. Copies of such amendments shall be furnished to all prospective Proposers who requested a RFP packet. If revisions and amendments require substantial changes to the Request for Proposal the date set for opening of Proposals may be postponed by such number of days as in the opinion of the County Purchasing Agent shall enable Proposers to revise their Proposals. In any case, the Proposal opening shall be at least five working days after the last amendment; and the amendment shall include an announcement of the new date if applicable, for the opening of Proposals.

32. PROPOSAL IDEAS AND CONCEPTS

The County reserves to itself the right to adopt or use for its benefit, any concept, plan, or idea contained in any Proposal.

33. PROPOSAL DISCLOSURES

The names of those who submitted Proposals will not be made public information until after an award is made by Commissioners' Court. No price or staffing information will be released. Proposers are requested to withhold all inquiries regarding their Proposal or other submissions until after an award is made. No communication is to be had with any County employee, other than the Purchasing Agent, regarding whether a Proposal was received. Violations of this provision may result in the rejection of a Proposal.

34. PROTEST

Any actual or prospective Proposer who is allegedly aggrieved in connection with the solicitation or award of Proposal may protest. The protest will be submitted in writing to the County Purchasing Agent within seven days after such aggrieved person knows of, or should have known of the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Purchasing Agent will promptly issue a decision in writing to the Protester. If the Protester wishes to appeal the decision rendered by the County Purchasing Agent, such appeal must be made to the Commissioners' Court through the Purchasing Agent. The decision of the Court will be final. The Court need not consider protests unless this procedure is followed.

35. WITHDRAWAL OF PROPOSAL

Proposers may request withdrawal of a sealed Proposal prior to the scheduled Proposal opening time provided the request for withdrawal is submitted to the Purchasing Agent in writing. No Proposals may be withdrawn for a period of sixty (60) calendar days after opening of the Proposals.

36. INDEMNIFICATION (Not Applicable)

The contractor shall agree to assume all risks and responsibility for, and agrees to indemnify, defend, and save harmless, the County of Galveston, its elected and appointed officials and department heads, and its agents and employees from and against all claims, demands, suits, actions, recoveries, judgments, and costs and expenses including reasonable attorney's fees for the defense thereof in connection therewith on account of the loss of life, person which shall arise from contractor's operations under this contract, its use of County facilities and/or equipment or from any other breach on the part of the

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contractor, its employees, agents or any person(s) in or about the County's facilities with the expressed or implied consent of the County. Contractor shall pay any judgment with cost which may be obtained against Galveston County resulting from contractor's operations under this contract.

Contractor agrees to indemnify and hold the County harmless from all claims of subcontractors, laborers incurred in the performance of this contract. Contractor shall furnish satisfactory evidence that all obligations of this nature herein above designated have been paid, discharged or waived. If Contractor fails to do so, then the County reserves the right to pay unpaid bills of which County has written notice direct and withhold from Contractor's unpaid compensation a sum of money reasonably sufficient to liquidate any and all such lawful claims.

37. PROOF OF INSURANCE (Not Applicable)

Successful proposer agrees to keep in full force and effect, a policy of public liability and property damage insurance issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners' of the State of Texas, with coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of services rendered by successful proposer and providing that the amount by reason of services limits of not less than the following sums:

- A. For damages arising out of bodily injury to or death of one person in any one accident - ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS.
- B. For damages arising out of bodily injury to or death of two or more persons in any one accident - THREE HUNDRED THOUSAND AND NO/100 (\$300,000.00) DOLLARS.
- C. For any injury to or destruction of property in any one accident - ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS.

Successful proposer shall carry in full force Workers' Compensation Insurance Policy(ies), if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the successful proposer. Current insurance Certificates certifying that such policies as specified above are in full force and effect shall be furnished by successful proposer to the County.

Insurance is to be placed with insurers having a Best rating of no less than A. The Proposer shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses within ten (10) business days of execution of this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The Proposer shall be required to submit annual renewals for the term of this contract prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity.

The County agrees to provide Proposer with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property. Proposer shall have the right to defend any such claim, demand, or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the Proposer.

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In no event shall the County be liable for any damage to or destruction of any property belonging to the Proposer.

Galveston County shall be listed as the additional insured on policy certificates and shall be notified of any changes to the policy during the contractual period.

38. PATENT AND COPYRIGHT PROTECTION (Not Applicable)

The Proposer agrees at its sole expense to protect the County from claims involving infringement of patents or copyrights.

39. CONFLICT OF INTEREST DISCLOSURE REPORTING

Proposer(s) may be required under Chapter 176 of the Texas Local Government Code (Chapter 176) to complete and file a conflict of interest questionnaire (CIQ Form). If so, the completed CIQ Form must be filed with the County Clerk of Galveston County, Texas.

If a Proposer has an employment or other business relationship with an elected or appointed official or department head of Galveston County or with a family member of one or more such persons that results in the officer or family member of the officer receiving taxable income that exceeds \$2,500.00 during the preceding 12-month period, the Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

If Proposer has given any elected or appointed official or department head or any employee of Galveston County or a family member of one or more of such persons one or more gifts with an aggregate value of more than \$25.00 during the preceding 12-months, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

The Galveston County Clerk has offices at the following locations:

Galveston County Clerk
Galveston County Justice Center, Suite 2001
600 59th Street
Galveston, Texas 77551

Galveston County Clerk
North County Annex, 1st Floor
174 Calder Road
League City, Texas 77573

For Proposer's convenience, a blank CIQ Form is enclosed with this Proposal. Blank CIQ Forms may also be obtained by visiting the Galveston County Clerk's website and/or the Purchasing Agent's website – both of these web sites are linked to the Galveston County homepage, at <http://www.co.galveston.tx.us>.

As well, blank CIQ Forms may be obtained by visiting the Texas Ethics Commission website, specifically at http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm.

Chapter 176 specifies deadlines for the filing of CIQ Forms (both initial filings and updated filings).

It is a Proposer's sole responsibility to file a true and complete CIQ Form with the Galveston County Clerk if a Proposer is required to file by the requirements of Chapter 176. Proposer is advised that it is an offense to fail to comply with the disclosure reporting requirements dictated under Chapter 176 of the Texas Local Government Code.

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If you have questions about compliance with Chapter 176, please consult your own legal counsel. Compliance is the individual responsibility of each person, business, and agent who is subject to Chapter 176 of the Texas Local Government Code.

40. ENTIRETY OF AGREEMENT AND MODIFICATION (Not Applicable)

This contract contains the entire agreement between the parties. Any prior agreement, promise, negotiation or representation not expressly set forth in this contract has no force or effect. Any subsequent modification to this contract must be in writing, signed by both parties.

An official representative, employee, or agent of the County does not have the authority to modify or amend this contract except pursuant to specific authority to do so granted by the Galveston County Commissioners' Court.

41. NON-COLLUSION AFFIDAVIT

Each Proposer declares, by signing and submitting a Proposal, that the Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited another Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to either put in a sham Proposal or refrain from bidding; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communications, or conference with anyone to alter the Proposal of any other Proposer, or to secure any advantage against the public body awarding the Concession Agreement of anyone interested in the proposed Concession Agreement; that all statements contained in the Proposal are true; and further, that the Proposer has not, directly or indirectly, submitted his/ her or its Proposal terms and conditions to any other person and will not pay anyone any fee or other form of compensation to effectuate a collusive or sham Proposal.

No negotiations, decisions, or actions shall be initiated by any Proposer with any County employee other than the County Purchasing Agent prior to the opening of responses to this Request for Proposal.

No officer or employee of the County of Galveston, and no other public or elected official, or employee, who may exercise any function or responsibilities in the review or approval of this undertaking may have any personal or financial interest, direct or indirect, in any portion of this Request for Proposal or any resulting Concession Agreement.

42. SOVEREIGN IMMUNITY

The County specifically reserves any claim it may have to sovereign, qualified, or official immunity as a defense to any action arising in conjunction with this Request for Proposal and the resulting Concession Agreement.

43. MERGERS, ACQUISITIONS

The Proposer shall be required to notify the County of any potential for merger or acquisition of which there is knowledge at the time that a Proposal is submitted.

If subsequent to the award of any contract resulting from this RFP the Proposer shall merge or be acquired by another firm, the following documents must be submitted to the County.

1. Corporate resolutions prepared by the awarded Proposer and the new entity ratifying acceptance of the original contract, terms, conditions and prices;
2. New Proposer's Federal Identification Number (FEIN); and
3. New Proposer's proposed operating plans.

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Moreover, Proposer is required to provide the County with notice of any anticipated merger or acquisition as soon as Proposer has actual knowledge of the anticipated merger or acquisition. The New Proposer's proposed plan of operation must be submitted prior to merger to allow time for submission of such plan to the Commissioners' Court for its approval.

44. DELAYS (Not Applicable)

The County reserves the right to delay the scheduled commencement date of the contract if it is to the advantage of the County. There shall be no additional costs attributed to these delays should any occur. Proposer agrees it will make no claims for damages, for damages for lost revenues, for damages caused by breach of contract with third parties, or any other claim by Proposer attributed to these delays, should any occur. In addition, Proposer agrees that any contract it enters into with any third party in anticipation of the commencement of the contract will contain a statement that the third party will similarly make no claim for damages based on delay of the scheduled commencement date of the contract.

45. ACCURACY OF DATA

Information and data provided by the County through this RFP is believed to be reasonably accurate. But, County gives no express or implied warranty as to such accuracy. Proposer(s) are encouraged to tour the Concession Premises site to verify information and data and site data to enable the Proposer(s) to construct the facilities and other improvements the Proposer(s) propose.

46. SUBCONTRACTING/ASSIGNMENT (Not Applicable)

Proposer shall not assign, sell, or otherwise transfer its contract in whole or in part without prior written permission of Commissioners' Court. Such consent, if granted, shall not relieve the Proposer of any of its responsibilities under this contract.

47. INDEPENDENT CONTRACTOR (Not Applicable)

Proposer expressly acknowledges that it is an independent contractor. Nothing in this agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing County to exercise control or direction over the manner or method by which Proposer or its subcontractors perform in providing the requirements stated in the Request for Proposal.

48. MONITORING PERFORMANCE (Not Applicable)

The County shall have the unfettered right to monitor and audit the Proposer's work in every respect. In this regard, the Proposer shall provide its full cooperation and insure the cooperation of its employees, agents, assigns, and subcontractors. Further, the Proposer shall make available for inspection and/or copying when requested, original data, records, and accounts relating to the Proposer's work and performance under this contract. In the event any such material is not held by the Proposer in its original form, a true copy shall be provided.

49. PROCUREMENT ETHICS

Galveston County is committed to the highest ethical standards. Therefore, it is a serious breach of the public trust to subvert the public purchasing process by directing purchases to certain favored vendors, or to tamper with the competitive bidding process, whether it's done for kickbacks, friendship or any other reason. Since misuse of the purchasing power of a local government carries criminal penalties, and many such misuses are from a lack of clear guidelines about what constitutes an abuse of office, the Code of Ethics outlined below must be strictly followed.

Galveston County also requires ethical conduct from those who do business with the county.

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50. CODE OF ETHICS – Statement of Purchasing Policy

“Public employment is a public trust. It is the policy of Galveston County to promote and balance the objective of protecting the County’s integrity and the objective of facilitating the recruitment and retention of personnel needed by the County. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public office.

Public employees must discharge their duties impartially so as to assure fair competitive access to contracting with the County by responsible Proposers. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Galveston County procurement organization.

To achieve the purpose of the Article, it is essential that those doing business with Galveston County also observe the ethical standards prescribed here.”

51. General Ethical Standards

It shall be a breach of ethics to attempt to realize personal gain through public employment with Galveston County by any conduct inconsistent with the proper discharge of the employee’s duties.

It shall be a breach of ethics to attempt to influence any public employee of Galveston County to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Galveston County to participate directly or indirectly in a procurement when the employee knows that:

- The employee or any member of the employee’s immediate family, has a financial interest pertaining to the procurement
- A business or organization in which the employee, or any member of the employee’s immediate family, has a financial interest pertaining to the procurement
- Any other person, business or organization with which the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Gratuities

It shall be a breach of ethics to offer, give or agree to give any employee of Galveston County, or for any employee or former employee of Galveston County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any program requirement or a contract or subcontract, or to any solicitation or Proposal therefore pending before this government.

Kickbacks

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Galveston County, or any person associated therewith, as an inducement for the award of a subcontract or order.

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Contract Clause

The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation by Galveston County.

Confidential Information

It shall be a breach of ethics for any employee or former employee of Galveston County to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

52. EMPLOYMENT VERIFICATION

The Immigration Reform and Control Act (IRCA) of 1986 prohibit Proposers from knowingly hiring illegal workers. Accordingly, the Proposer who executes the Concession Agreement and hires employees under their Concession Agreement must collect information regarding an employee's identity and employment eligibility and document that information on Form I-9. In addition, the Proposer will be required to utilize E-Verify to verify that the information their employees provided was valid or that the documents presented were genuine. The records shall be open at all reasonable hours to inspection by the Galveston County Wage Compliance Officer. Each violation of this requirement shall result in the Proposer paying the County the amount of \$60.00 for each employee employed for each calendar day or part of the day that the Proposer failed to comply with the requirements of this general condition.

53. CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY, AND VOLUNTARY EXCLUSION (Not Applicable)

By submission of its Proposal, proposer certifies that it is not ineligible for participation in federal or state assistance program under Executive Order 12549, "Debarment and Suspension." Proposer further agrees to include this certification in all contracts between itself and any subcontractors in connection with services performed under this contract. Proposer also certifies that it shall notify Galveston County in writing immediately if contractor is not in compliance with Executive Order 12549 during the term of this contract. Proposer agrees that it shall refund Galveston County for any payments made to it while ineligible.

54. NOTICE (Not Applicable)

All notices or other communications required or permitted under this contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, transmitted by facsimile, or mailed certified mail, return receipt requested with proper postage affixed and addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

To the County at:

Hon. Mark A. Henry, County Judge
722 Moody
Second Floor
Galveston, Texas 77550
Fax: (409) 765-2653

With copies to:

Rufus G. Crowder, CPPO CPPB
Purchasing Agent
722 Moody, Fifth Floor
Galveston, Texas 77550
Fax: (409) 621-7987

Bob Boemer
Director of County Legal
722 Moody, Fifth Floor
Galveston, Texas 77550
Fax: (409) 770-5560

**SPECIAL PROVISIONS
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Special Note:

A voluntary pre-proposal conference will be held at the office of the Galveston County Purchasing Agent, located at the Galveston County Courthouse, 722 Moody (21st Street), Fifth (5th) Floor, Purchasing, Galveston, Texas, 77550, on Wednesday, June 26, 2013, at 2:00 PM.

The following are minimum requirements and required information for the submission of a Proposal on the above-referenced Concession Agreement Proposal:

1. Successful proposer must indicate that he/she/it is submitting a Proposal for a Bait and Fishing Supplies, Food and Beverage Refreshment or Other Purpose Concession for the Jones Bay Boat Ramp.
2. All Proposals are subject to the terms and conditions of this Request for Proposal and modifications to the final Concession Agreement deemed necessary by the County.
3. Proposals will not be accepted from any Individual who is in breach of any agreement with the County as determined by the Authorized Representative after consulting with County Legal.
4. Any Individual(s) desiring to submit a bid on this Proposal must state in their Proposal that they are willing to agree to abide by all terms and conditions of the Request for Proposal and attached Concession Agreement as modified by the County. In addition, such Individual(s) must state the monthly fee they are willing to pay the County and answer all other questions on the Proposal forms. Failure to abide by these requirements will disqualify a proposer.
5. Proposers wishing to offer any alternatives or take any exceptions to the RFP must attach a separate sheet noting any such alternatives or exceptions. Although the County encourages fresh and innovative ideas by which the public using boat ramps and other county parks may be served the County is under no obligation to consider or accept any alternative or exception.
6. This RFP is seeking an individual or other legal entity to operate his/her/its concession on land leased by the County from the General Land Office pursuant to a Coastal Easement. All Proposals are subject to the terms and conditions of this Coastal Easement, a copy of which is attached to this RFP. All proposers must acknowledge a receipt of a copy of the Coastal Easement and acknowledge their willingness to abide by its terms and conditions.
7. V.T.C.A., Local Government Code, Chapter 171 prohibits, where applicable, the participation on the part of local public officials in matters in which they may have an interest as described in this law. Proposers should familiarize themselves with the entire provisions of this law and the penalties provided for its violations before submitting their Proposals.
8. The Proposal should be typewritten or computer generated and signed in ink. Legibility, clarity, and completeness are essential elements of the Proposal. One (1) original and eight (8) copies of the Proposal must be provided in a sealed envelope clearly marked as **RFP #B132009 Jones Bay Boat Ramp Concession Agreement 2013** and be delivered to:

Rufus Crowder, CPPO CPPB
Purchasing Agent
Galveston County Purchasing Department
Galveston County Courthouse
Galveston, Texas 77552
722 Moody, 5th Floor
(409) 770-5373

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9. The deadline to submit Proposals is **07/23/2013 at 10:00 AM**. Proposals shall be opened and the names of proposers read aloud at **10:00 AM** in the office of the Purchasing Agent, located at the address immediately above. No decision regarding any Proposal will be made on that date.
10. Any inquiries regarding the Proposals should be made to Rufus Crowder, CPPO CPPB, Purchasing Agent at (409) 770-5372 or via e-mail at Rufus.Crowder@co.galveston.tx.us
11. All Proposals shall remain firm for 60 days.
12. The responses and any subsequent negotiated items of the successful Proposal shall be incorporated into the final executed Concession Agreement.
13. Information disclosed in the Proposals is the property of Galveston County. No information will be disclosed until a recommendation of the award has been placed on the Galveston County Commissioners' Court agenda. Once recommendations are made to and a Concession Agreement has been executed the Commissioners' Court, Proposal information is subject to public access and disclosure will be made pursuant to the terms and provisions of what is commonly called the Texas Open Records Act. All requests for information must be submitted to the Purchasing Agent.
14. The County reserves the right to reject any and all Proposals received as a result of this Request for Proposal for any reason or no reason or for convenience at such times it determines proper. The County may waive any informality, technical defect, or clerical error in any Proposal, as the interest of the County may require. A recommendation for the award of the Concession Agreement and acceptance of such recommendation by the County Commissioners' Court does not guarantee that the County will enter into a formal agreement. The County may cancel the RFP process at any time for any reason or no reason or for convenience without liability to any proposer prior to entering into a formal agreement.
15. The proposer must demonstrate his/her/its experience with past or existing similar operations such as the one described in this RFP. In addition, should the proposer have current agreements for the operation of similar operations as the one described in this RFP or other leasehold arrangements for the operation of other businesses, the proposer should furnish letters of recommendations from their other landlords as to their being in good standing and in compliance with the terms and conditions of the terms and conditions of such other leases.
16. Expenses for developing Proposals are entirely the responsibility of the proposers and shall not be chargeable in any manner to the County.
17. Proposals will be evaluated by a panel made up of a representative from the Director of the Parks and Senior Services Department the Director of County Legal and one member of the Galveston County Commissioners' Court or their designees, in accordance with the factors set forth below. A short list of finalists will be determined. If necessary, short list finalists may be invited to present their Proposals and their best and final offers in an oral presentation at a time and place to be determined by the panel. The evaluation criteria will consist of:

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<u>Possible Points</u>	<u>Criterion</u>
15	Competence: The Proposal will be evaluated for qualifications, financial stability, and previous directly related experience of the proposer.
10	Creativity: The Proposal will be evaluated for alternative suggestions concerning the proposer's use of the Concession Premises.
25	Quality: The Proposal will be assessed as to the overall approach to the management and operation of a Bait Camp and a Food and Refreshment Concession or other proposed recreational or leisure facility.
30	Revenue: The Proposal will be evaluated with regard to financial benefits to Galveston County.
20	Completeness: The Proposal will be evaluated with regard to inclusion of all items specified in this RFP.

A Proposal that does not meet each of the criteria set forth in this RFP and is not submitted by deadline will not be considered.

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JONES BAY BOAT RAMP CONCESSION AGREEMENT 2013
PROPOSAL FORM

1. This is a Proposal to operate a Bait and Fishing Supplies, Food and Beverage Refreshment or Other Purpose Concession for the Jones Bay Boat Ramp.

() Yes () No. Check applicable box.

2. Name under which concession will operate if Proposal is selected and contract entered into:

3. Name of Proposed Owner/Operator

4. Type of Business (Individual, Corporation, Partnership, Sole Proprietorship, etc.):

5. Improvements to be Constructed:

Include:

- a detailed description of the Improvements that you propose to construct;

- your method of payment for construction of such Improvements;

6. Time period for construction of Improvements:

7. Address of Proposed Concession Owner/Operator:

8. Telephone/Fax/Email:

9. Monthly Flat Rate Bid in Consideration for this RFP: _____
upon opening for business to the public or the completion of construction of Improvements whichever occurs earlier. **(To be paid at such times and on such terms and conditions as stated in Concession Agreement)**

10. Proposed Hours of Operation (7 days per week required):

12. List all items you are proposing to initially sell/rent with proposed prices: (Attach additional page if necessary)

Item	Proposed Price

The County recognizes that over time, depending on market conditions and inflation, these initial prices are subject to change.

13. List all officers and members of your organization or enterprise:

14. Describe your experience in operating bait camps and food and beverage and other concessions. This should include the length of time in business, your staff size, your understanding of the importance of senior management's continuity and involvement throughout the contract, and previous and current operations that are similar in nature to this project:

18. I, the undersigned, agree, if awarded the Concession Agreement by the County, to furnish the services and items listed on the attached Proposal forms, at the prices quoted, and according to the terms and provisions of the Concession Agreement attached to this RFP as modified by the County. My Proposal and the prices quoted herein shall remain firm for a period of thirty (30) days from the date of the Proposal opening. I am authorized to agree to abide by the terms and conditions of this RFP and the Concession Agreement. I understand that being tentatively named as the successful proposer does not guarantee to me that the County will execute a final Concession Agreement with me. Rather, I understand that the County may terminate this RFP process at any time, for any reason or no reason or for convenience short of actually executing the final Concession Agreement without any liability to me.
19. I understand that I may be given up to six (6) months to prepare my plans and specifications, obtain all necessary permits and commence construction without having to pay a monthly concession payment unless during this six (6) month period I open for business to the public.
20. I commit to pay 50% of the monthly concession payments during the time of construction of the new improvements for up to a maximum period of three (3) months or until I have completed construction and/or opened for business to the public at which time I will commence to paying 100% of the monthly Concession Payments.
21. I also commit, upon execution of the Concession Agreement, to provide to the County an irrevocable letter of credit ensuring my ability of the proposer to construct the improvements.
22. I also commit that I will maintain and keep in good repair or relocate the water line(s) and sewer line(s) and all Improvements that serves the Concession Premises.
23. I acknowledge that upon expiration or early termination of the Concession Agreement that all Improvements and Modifications that I have constructed on the Concession Premises will become the property of Galveston County at no cost to the County or, if the Coastal Easement with the GLO has expired or been terminated, at no cost to the GLO other than as is set forth in the Concession Agreement.
24. Attach a Separate Sheet if you are proposing alternatives to the requirements set forth in this RFP. Although the County is seeking Proposals as specified in this RFP, reasonable alternatives will be considered. For example, the County will entertain allowing the successful applicant to rent kayaks or construct boat stalls upon the Concession Premises.

By executing this Concession Proposal Form, I hereby certify that:

- I am willing to agree to abide by all terms and conditions of this Request for Proposal and attached Concession Agreement as modified by the County;
- I have not violated any terms and conditions set forth in this Request for Proposal
- I have received and read copy of the County's Coastal Easement and acknowledge my willingness to abide by its terms and conditions;
- I have received and read a copy of the proposed Concession Agreement and acknowledge my willingness to abide by its terms and conditions: and
- I am willing to pay the monthly Concession Payments set forth above.

Signature: _____

Title: _____

Date: _____

FEIN: _____

A tract of 0.045 of an acre of land out of the Samuel C. Bundick Survey, Abstract No. 7, more fully described by metes and bounds as follows;

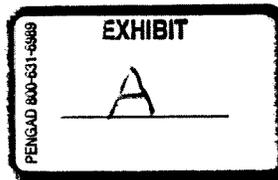
Commencing at a right of way marker at the intersection of the existing southwesterly right of way line of Interstate Highway 45 and the southwesterly right of way line of the Gulf, Colorado, and Santa Fe Railroad;

Thence S 28°34' E a distance of 560.5 feet, along the existing southwesterly right of way line of Interstate Highway 45 to the POINT OF BEGINNING of this tract;

THENCE with the southwesterly right of way line of Interstate Highway 45 as follows,

N 60°29'25" E a distance of 42.27 feet,
S 32°22'35" E a distance of 45.00 feet,
S 60°29'25" W a distance of 45.26 feet;

THENCE N 28°34' W a distance of 44.95 feet to the place of beginning and containing 0.045 of an acre of land.



LC 92-006 AMENDMENT

A tract of 0.004 of an acre (188 sq. ft.) of land owned by the State of Texas out the Samuel C. Bundick Survey, Abstract No. 7, Galveston County, Texas more fully described by metes and bounds as follows:

Commencing at a right of way marker at the intersection of the existing southwesterly right of way line of Interstate Highway 45 and the southwesterly right of way line of the Gulf, Colorado, and Santa Fe Railroad;

Thence S 28° 34' E along the existing southwesterly right of way line of Interstate Highway 45 as described in a BOUNDARY AGREEMENT between the School Land Board and the Department of Highways and Public Transportation executed February 15 and 28, 1977 (respectively), a distance of 560.5 feet to the west corner of a 0.045 acre tract of land owned by the State of Texas and described in Coastal Easement No. LC 92-006 issued by the School Land Board to Galveston County Beach Park Board of Trustees said corner being the POINT OF BEGINNING of this tract;

THENCE S 28° 34' E a distance of 21.0 feet along the southwesterly boundary line of said 0.045 acre tract of land;

THENCE S 61° 26' W a distance of 4.0 feet;

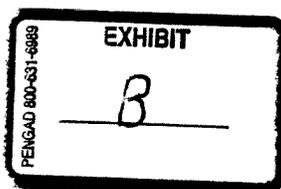
THENCE N 28° 34' W a distance of 20.7 feet;

THENCE S 61° 26' W a distance of 4.5 feet;

THENCE N 28° 34' W a distance of 12.4 feet;

THENCE N 61° 26' E a distance of 8.5 feet to the above mentioned southwesterly right of way line of Interstate Highway 45;

THENCE S 28° 34' E along said right of way line a distance of 12.1 feet to the place of beginning and containing 0.004 of an acre (188 sq. ft.) of land.





TEXAS GENERAL LAND OFFICE
COASTAL SURFACE LEASE NO. SL 20120008

STATE OF TEXAS

COUNTY OF GALVESTON

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KNOW ALL MEN BY THESE PRESENTS:

This Coastal Surface Lease SL20120008, ("Lease"), is granted by virtue of the authority granted in Section 51.121, et seq., TEX. NAT. RES. CODE ANN., 31 TEX. ADMIN. CODE, Chapter 13, Land Resources, et seq., and all other applicable statutes and rules, as the same may be amended from time to time, and is subject to all applicable regulations promulgated from time to time.

ARTICLE I. PARTIES

1.01. In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the STATE OF TEXAS, acting by and through the Commissioner of the General Land Office, on behalf of the Permanent School Fund of the State of Texas (the "State"), hereby grants to Galveston County, whose address is 4102 Main Street (FM 519), La Marque, TX, 77568-4666, ("Lessee"), the right to use the surface estate of certain Permanent School Fund land (the "Leased Premises") for the purposes identified in Article V below.

ARTICLE II. PREMISES

2.01. The Leased Premises is described below and further described or depicted on Exhibits attached hereto and collectively incorporated by reference for all purposes:

Approximately 20,241 SF in Jones Bay, State Tract 81, Galveston County, adjacent to Lot 5 Samuel Bundick Survey, Abstract 7.

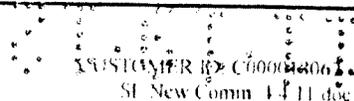
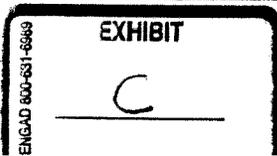
2.02. LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE LEASED PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE STATE REGARDING ANY ASPECT OF THE PREMISES, BUT IS RELYING ON LESSEE'S OWN INSPECTION OF THE PREMISES. THE STATE DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS LEASE. THE STATE AND LESSEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERMS "GRANT" AND/OR "CONVEY" IN NO WAY IMPLIES THAT THIS LEASE OR THE LEASED PREMISES ARE FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. LESSEE IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCES MAY BE OF RECORD AND LESSEE IS ADVISED TO EXAMINE ALL RECORDS OF THE STATE AND COUNTY IN WHICH THE LEASED PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

ARTICLE III. TERM

3.01. This Coastal Surface Lease No. SL20120008 is for a term of twenty (20) years, commencing on January 1, 2012 and terminating on December 31, 2031, unless earlier terminated as provided herein. The State reserves the right to review, amend, cancel or otherwise modify this agreement at any time during its term upon 30-day written notice to Lessee as prescribed in 3.01. Renewal of this agreement is at the sole discretion of the State, and no right to renew is implied or provided for herein.

ARTICLE IV. CONSIDERATION

4.01. A. As consideration ("Consideration") for the granting of this Lease, Lessee shall pay rent ("Rent") to the State (payable to the Commissioner of the General Land Office at Austin, Texas) the sum of **Thirty-Seven Thousand Two Hundred Eighty-Nine And 86/100 Dollars (\$37,289.86)**



B. Consideration for this Lease shall be payable in twenty(20) annual installments, in advance, payable in two (2) installments of **Nine Hundred Twelve And 53/100 Dollars (\$912.53)**, beginning January 1, 2012; eight (8) installments of **One Thousand Six Hundred Twenty-Five And 60/100 Dollars (\$1,625.60)**, beginning January 1, 2014 and ten (10) installments of **Two Thousand Two Hundred Forty-Six And 00/100 Dollars (\$2,246.00)**, beginning January 1, 2022. The first annual installment shall be made upon the execution hereof and subsequent annual installments are to be made on or before each anniversary of the effective date hereof.

C. Past due Rent and other past due payments shall bear interest from maturity at the rate of ten percent (10%) per annum from the date when due until actually paid, as provided in Section 51.301, TEX. NAT. RES. CODE ANN. Failure of Lessee to make a payment on or before the date the same becomes due shall, at the State's option, make all payments due and payable immediately.

ARTICLE V. USE OF THE PREMISES

5.01. The Leased Premises may be used by Lessee solely for **bait stand, boat ramp, dredged area, fill, pier and riprap** and for no other purpose. The Leased Premises are to remain in their current topographical and hydrologic condition during the term of the Lease. Lessee is specifically prohibited from modifying the premises in any manner not authorized herein, and from using, or allowing the use by others, of the Leased Premises for any other purpose.

5.02. Lessee shall not use, or permit the use of, the Leased Premises for any illegal purpose. Lessee will comply with, and will cause its officers, employees, agents and invitees to comply with, all applicable federal, State and local laws, ordinances and rules concerning the use of the Leased Premises.

5.03. The State reserves the exclusive right to grant easements, rights-of way and/or other grants of interest authorizing use of the Leased Premises, provided such use does not unreasonably interfere with Lessee's use thereof.

5.04. Lessee shall not grant other rights in or to the Leased Premises to any other person or entity, and any attempt to do so shall be void and of no effect and shall constitute a default by Lessee hereunder; except Lessee may continue to lease the existing concession to a third party so long as the third party complies with the terms of the Lease including the provisions of Section 5.02 of the Lease.

5.05. State reserves the right to enter upon the Leased Premises at any time with or without prior notice to Lessee to inspect the condition thereof and/or take action authorized by this Lease.

5.06. The Leased Premises are subject to prospecting, production and development of oil, gas and other minerals and other materials of commercial value by the State, its lessees, permittees, licensees or other agents, assigns or representatives. Lessee shall not interfere with such use of the Leased Premises and shall allow any lessee, permit holder, licensee or other agent, assignee or representative of the State and/or the School Land Board the right of ingress and egress over, across and through, and the use of, the Leased Premises for any and all purposes authorized by State.

5.07. Lessee may not charge State's authorized lessees, permit holders, licensees or other agents, assigns or representatives surface damages, or any other fee, for use of the Leased Premises; provided, however, the foregoing shall not limit the liability of any person or entity to Lessee for damages caused to property owned by Lessee.

5.08. Lessee's use of the Premises is subject to and contingent upon compliance with the following covenants, obligations and conditions (the "Special Conditions")

1. Grantee shall notify the General Land Office, LaPorte Field Office in writing at least sixty (60) days prior to undertaking any maintenance dredging activities occurring during the term of this contract.
2. All maintenance dredging activities are to be confined within the limits of the authorized excavation areas.
3. Depth of the dredged area authorized herein shall not exceed four (4) feet below Mean Low Water. Over-dredging for advance maintenance is specifically prohibited.
4. All dredged material (spoil) authorized by this instrument shall be placed and contained on private property above the limits of mean high water, and Grantee waives any right to claim ownership of Coastal Public Land as a result of artificial accretion caused by deposition of dredged material.

5. Silt curtains are to be installed prior to beginning any dredging action, and shall be maintained around the perimeter throughout the duration of all dredging activity to minimize turbidity levels within adjacent waters.
6. Impacts to seagrasses, emergent marsh, and/or oyster reefs are to be strictly avoided.

ARTICLE VI. ASSIGNMENTS

6.01. Lessee shall not assign the Leased Premises or the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of the State, which may be granted or denied in the State's sole discretion. Any unauthorized assignment shall be void and of no effect and such assignment shall not relieve Lessee of any liability for any obligation, covenant, or condition of this Agreement. This provision, and the prohibition against assignment contained herein, shall survive expiration or earlier termination of this agreement. For purposes of this agreement, an assignment is any transfer, including by operation of law, to another of all or part of the property, interest or rights herein granted.

ARTICLE VII. PROTECTION OF NATURAL AND HISTORICAL RESOURCES

7.01. Lessee shall take no action on the premises which results in the discharge of any solid or liquid material. Lessee shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Premises, and (ii) to protect and preserve natural resources and wildlife habitat. Lessee shall comply with all applicable rules and regulations of the General Land Office and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Premises or adjacent property which is the result of Lessee's (or Lessee's employees, contractors, invitees and agents) acts or omissions, Lessee shall immediately notify the State, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

7.02. **LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING ANY ACTIVITY ON THE PREMISES, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY STATE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.**

ARTICLE VIII. INDEMNITY

8.01. **TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, LESSEE SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. LESSEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE STATE, THE STATE'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUIT, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF THE STATE, THE STATE'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM LESSEE'S USE OF THE PREMISES (OR ANY ADJACENT OR CONTIGUOUS PSF LAND) OR FROM ANY BREACH BY LESSEE OF THE TERMS, COVENANTS OR CONDITIONS CONTAINED HEREIN. THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

ARTICLE IX. DEFAULT, TERMINATION AND EXPIRATION

9.01. If, following 30 days prior written notice from the State specifying a default or breach, Lessee fails to pay any money due hereunder or is in breach of any term or condition of this Agreement, the State shall have the right, at its option and its sole discretion, to terminate this Agreement and all rights inuring to Lessee herein by sending written notice of such termination to Lessee in accordance with ARTICLE XI of this Agreement. Upon sending of such written notice, this Agreement shall automatically terminate and all rights granted herein to Lessee shall revert to the State. Such termination shall not prejudice the rights of the State to collect any money due or to seek recovery on any claim arising hereunder.

9.02. If Lessee fails to remove its personal property from the Leased Premises within the time specified in Section 9.01 above, or if Lessee fails to remove improvements placed or constructed on the Leased Premises by or behalf of Lessee pursuant to a notice by the State to do so pursuant to Section 9.01. above, then State may, at its sole option, remove and dispose of such property (with no obligation to sell or otherwise maintain such property in accordance with the Uniform Commercial Code), at Lessee's sole cost and expense, or the State may elect to own such property by filing a notice of such election pursuant to Section 51.302, et seq., TEXAS NATURAL RESOURCES CODE ANNOTATED. If the State elects to remove Lessee's property and dispose of it pursuant to this section, then in such an event Lessee shall be obligated to reimburse the State for the reasonable costs of such removal and disposal within ten (10) days of State's demand for reimbursement. **THE TERMS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

9.03. In addition to the above, Lessee shall pay and discharge any and all taxes, general and special assessments, and other charges which during the term of this Agreement may be levied on or assessed against the Premises or the Improvements constructed thereon, provided such taxes result from Lessee's use of this easement. Lessee shall pay such taxes, charges, and assessments not less than five (5) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof. Lessee shall have the right in good faith at its sole cost and expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed.

9.04. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, LESSEE AGREES TO AND SHALL PROTECT AND HOLD THE STATE HARMLESS FROM LIABILITY FOR ANY AND ALL SUCH TAXES, CHARGES, AND ASSESSMENTS, TOGETHER WITH ANY PENALTIES AND INTEREST THEREON, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.

ARTICLE X. HOLDOVER

10.01. If Lessee holds over and continues in possession of the Premises after expiration or earlier termination of this Agreement, Lessee will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Agreement, except that as liquidated damages by reason of such holding over, the amounts payable by Lessee under this Agreement shall be increased such that the Consideration payable under Section 4.01 of this Agreement and any other sums payable hereunder shall be two hundred percent (200%) of the amount payable to the State by Lessee for the applicable period immediately preceding the first day of the holdover period. Lessee acknowledges that in the event it holds over, the State's actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. Lessee further acknowledges that acceptance of hold over Consideration does not imply State consent to hold over.

10.02. The tenancy from month-to-month described in Section 10.01 of this Agreement may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If upon notice of termination by the State, Lessee pays Consideration in excess of the amount due and payable and the State accepts such payment, the acceptance of such payment will not operate as a waiver by the State of the notice of termination unless such waiver is in writing and signed by the State. Any such excess amounts paid by Lessee and accepted by the State shall be promptly refunded by the State after deducting therefrom any amounts owed to the State.

ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Agreement shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, if for the State to Deputy Commissioner, Professional Services, addressed to his attention, 1700 North Congress Avenue, Austin, Texas 78701-1495, FAX: (512) 463-5304, and if for Lessee, to Galveston County, 4102 Main Street (FM 519), La Marque, TX 77568-4666. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Premises may not be used by Lessee as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Agreement, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party referred to above. Notice mailed in the manner provided

above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided.

ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. A. Lessee shall provide written notice to the State of any change in Lessee's name, address, corporate structure, legal status or any other information relevant to this Agreement.

B. Lessee shall provide to the State any other information reasonably requested by the State in writing within fifteen (15) days following such request or such other time period approved by the State (such approval not to be unreasonable withheld).

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01. With respect to terminology in this Agreement, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Agreement, but such other provisions shall continue in full force and effect.

13.02. The titles of the Articles in this Agreement shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself. This Agreement shall be binding upon and shall accrue to the benefit of the State, its successors and assigns, Lessee, Lessee's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by the State to any assignment by Lessee, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased natural person Lessee, refers to the instances previously referred to in this sentence and also circumstances in which title to Lessee's interest under this Agreement passes, after the demise of Lessee, pursuant to Lessee's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Lessee hereunder (or any portion thereof) to the State nor failure by the State to complain of any action, non-action or default of Lessee shall constitute a waiver as to any breach of any covenant or condition of Lessee contained herein nor a waiver of any of the State's rights hereunder. Waiver by the State of any right for any default of Lessee shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the State hereunder or covenant, duty or obligation of Lessee hereunder shall be deemed waived by the State unless such waiver be in writing, signed by a duly authorized representative of the State.

13.04. No provision of this Agreement shall be construed in such a way as to constitute the State and Lessee joint ventures or co-partners or to make Lessee the agent of the State or make the State liable for the debts of Lessee.

13.05. In all instances where Lessee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall the State ever be liable hereunder for consequential damages or special damages. The terms of this Agreement shall only be binding on the State during the period of its ownership of the Premises, and in the event of the transfer of such ownership interest, the State shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Agreement term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of the State and Lessee (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. The obligation of Lessee to pay all Consideration and other sums hereunder provided to be paid by Lessee and the obligation of Lessee to perform Lessee's other covenants and duties under this Agreement constitute independent, unconditional

obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Agreement and not otherwise. Lessee waives and relinquishes all rights which Lessee might have to claim any nature of lien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the State by Lessee. Lessee waives and relinquishes any right to assert, either as a claim or as a defense, that the State is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the Grantor not expressly set forth in this Agreement.

13.09. In the event any provision of this Lease is more restrictive than any administrative rule promulgated by the General Land Office and/or the School Land Board, this Lease shall control.

ARTICLE XIV. FILING

14.01. Lessee shall, at its sole cost and expense, record a memorandum of lease in the Galveston County Real Property Records and provide a file marked copy of same to State within 60 days after this Lease is executed by all parties.

ARTICLE XV. ENTIRE AGREEMENT

15.01. This Lease, including any exhibits to the same, constitutes the entire agreement between the State and Lessee; no prior written or prior oral contemporaneous oral promises or representations shall be binding. The submission of this Lease for examination by Lessee or the State and/or execution thereof by the Lessee or the State does not constitute a reservation of or option for the Leased Premises and this Lease shall become effective only upon execution of all parties hereto and deliver of a fully executed counterpart thereof by the State to the Lessee. This Lease shall not be amended, changed or extended except by written instrument signed by both parties thereto.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

STATE:
THE STATE OF TEXAS

LESSEE:
Galveston County

By: Jerry E. Patterson
JERRY E. PATTERSON
Commissioner, General Land Office

By: Mark A. Henry
MARK A. HENRY, County Judge

Attest: _____
DWIGHT D. SULLIVAN, County Clerk
By: Brandy Chapman Deputy
Brandy Chapman
Date: October 30, 2012

Date: 11/20/12

APPROVED:
Contents: _____
Legal: _____
Deputy: _____
Executive: _____
[Signature]

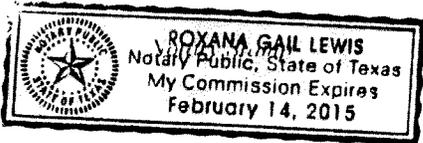
ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Galveston §

This instrument was acknowledged before me on the 30th day of October, 2012,

by Mark Henry
(Lessee representative signing this document)

Roxana Lewis
(Notary Signature)



Notary Public, State of Texas
My commission expires: Feb. 14, 2012

Information collected by electronic mail and by web form is subject to the Public Information Act, Chapter 552, Government Code.

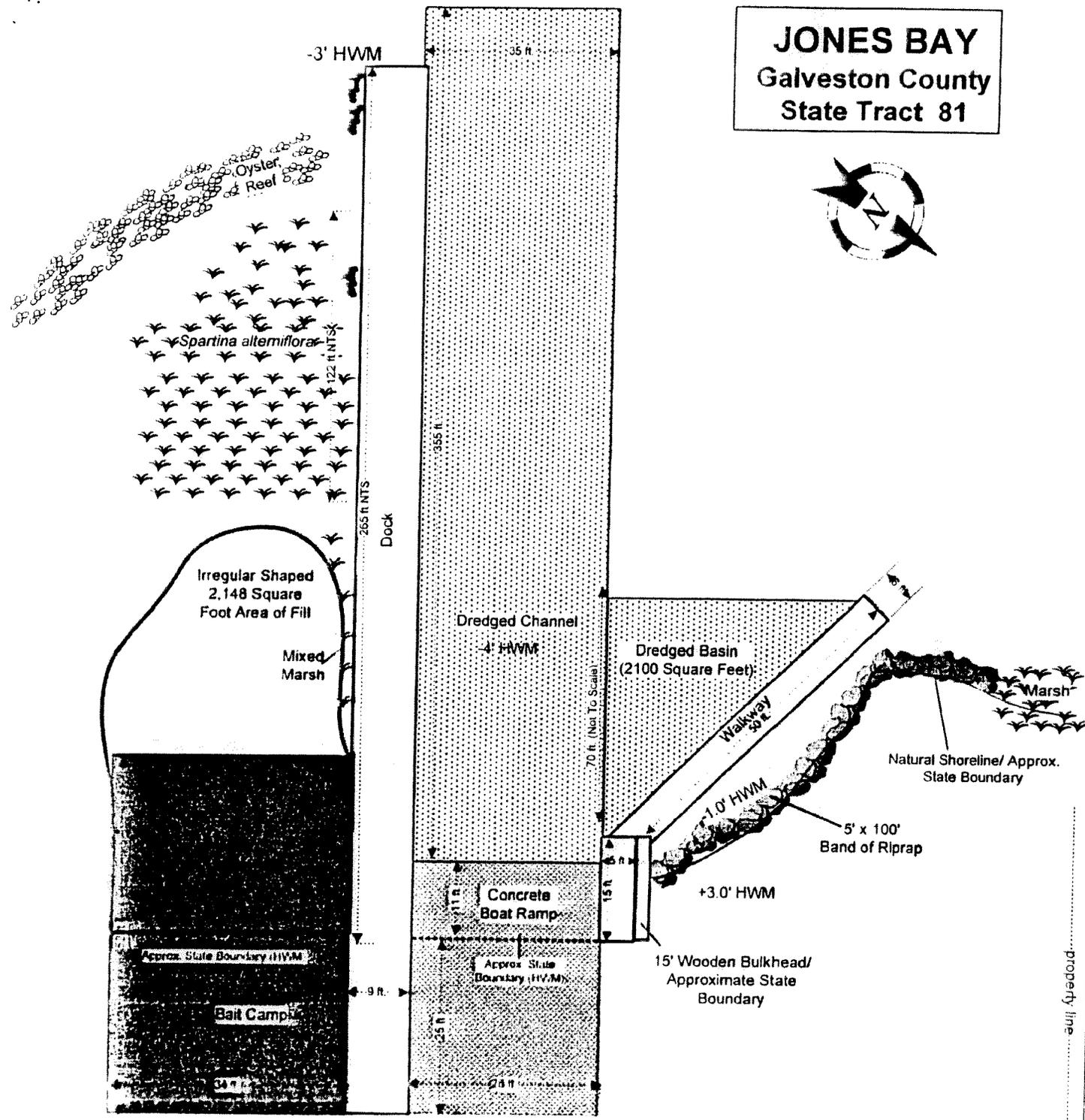


Exhibit A: Map	
Title: SL20120008 – Galveston County	Date of Inspection: 11/09/2011
Creator: DRamirez	Scale: 1 in. = 1.22 miles
Texas General Land Office, Asset Inspection Division, Upper Coast Field Office	



Exhibit B: Aerial Image	
Title: SL20120008 – Galveston County	Date of Inspection: 11/09/2011
Creator: DRamirez	Scale: 1 in. = 63.07 feet
Texas General Land Office, Asset Inspection Division, Upper Coast Field Office	

JONES BAY
Galveston County
State Tract 81



Lot 4

Legal Description
Lot 5, Samuel Bundick, Survey A-7

Title: SL20120008 - Galveston County	Date of Inspection: 11/09/2011
Company: Texas General Land Office	Inspector: D. Ramirez
Scale: (Not to scale)	Exhibit: C



TEXAS GENERAL LAND OFFICE
MEMORANDUM OF SURFACE LEASE NO. SL 20120008

STATE OF TEXAS

COUNTY OF GALVESTON

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KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Surface Lease is made on January 1, 2012 to record the agreement (the "Agreement") heretofore entered into by the State of Texas (the "State"), acting by and through the Commissioner of the General Land Office (the "GLO") as Chairman of the School Land Board (the "Board") on behalf of the Permanent School Fund (the "PSF"), and Galveston County, (the "Lessee"), which affects certain lands located in GALVESTON County, Texas (the "Premises"), which property is more particularly described on Attachments to the Agreement.

WITNESSETH

That for, and in consideration of, the mutual promises and undertakings recited therein, the parties have executed Surface Lease No. SL 20120008 (the "Agreement"), an original of which is in the records of the GLO. The Lessee has been granted the use of certain submerged land (the "Premises") located in State Tract Number 81, Jones Bay, GALVESTON County, Texas, being more particularly described in the Agreement and its Attachments.

The Premises encumbered by the Agreement to Lessee contains approximately 20,241 Square Feet. The term of the Agreement is for a period of twenty (20) years, which term begins on January 1, 2012.

The Agreement sets forth Lessee's limited right to use and occupy the property described for a public wood piling pier consisting of a 6' x 50' walkway, a 5' x 15' walkway, and a 9' x 265' dock, comprising an encumbrance of 2,760 square feet; an 11' x 28' concrete boat ramp, comprising an encumbrance of 308 square feet; a 35' x 355' dredged access channel and a 2,100 square foot triangular-shaped dredged basin, comprising an encumbrance of 14,525 square feet; an irregular shaped area of fill, comprising an encumbrance of 2,148 square feet; and a 5' x 100' band of "no fee" riprap, comprising an encumbrance of 500 square feet, for a total project encumbrance of 20,241 square feet of coastal public land; and to enter into a bait stand concession agreement with a third party.

The Agreement is not assignable without the prior written consent of the State. Use of state property without the requisite consent may subject the user to the assessment of a civil penalty of \$200.00 per day, as provided in Chapter 33 of the Texas Natural Resources Code, and/or a penalty of up to \$1,000.00 per day as provided in Chapter 51 of the Texas Natural Resources Code.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

STATE:
THE STATE OF TEXAS

LESSEE:
GALVESTON COUNTY

By: Jerry E. Patterson
JERRY E. PATTERSON
Commissioner, General Land Office
Chairman, School Land Board

By: Mark A. Henry
MARK A. HENRY
County Judge

Date: 11/20/12

Attest: _____
DWIGHT D. SULLIVAN
County Clerk

By: Brandy Chapman Deputy
Brandy Chapman

Date: October 30, 2012

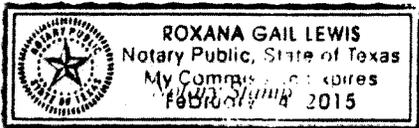
APPROVED: _____
Contents: ild
Legal: AH
Deputy: RST
Executive: [Signature]

ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Galveston §

This instrument was acknowledged before me on the 30th day of October, 2012.

by [Signature]
(Grantee representative signing this document)

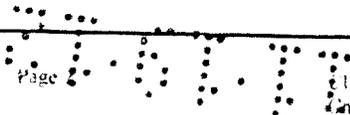


Roxana Lewis
(Notary Signatures)

Notary Public, State of Texas

My commission expires: Feb. 14, 2014

Information collected by electronic mail and by web form is subject to the Public Information Act, Chapter 552, Government Code



7. **Concession Agreement** – means this **Concession Agreement**, the **County's** Request for Proposal, **Requirements for Submission of Proposal**, and the **Concession Proposal Form** all of which are incorporated herein and attached hereto as **Exhibits "E" "F" and "G"**. In the event of an irreconcilable difference between this **Concession Agreement**, the **County's** Request for Proposal, the **Requirements for Submission of Proposal** and the **Concession Proposal Form**, the terms of this **Concession Agreement** shall control.
8. **GLO** – means the **General Land Office of the State of Texas**.
9. **Commencement Date** - means _____ 1, 2013 regardless of the actual date of execution of this **Concession Agreement** by the **County**, the **Concessionaire** and the **GLO**.
10. **County's Authorized Representative** - is the **County's Director of the County Parks and Senior Services Department** or her written designee.
11. **Concessionaire's Authorized Representative** – is _____.

Recitals

Whereas, the **GLO** owns and the **County** leases by way of the **Coastal Easement** both of the following described tracts of land adjacent to Interstate 45 and the Santa Fe Overpass, **Galveston County, Texas**, to-wit:

A tract of 0.045 of an acre of land owned by the State of Texas out of the Samuel C. Bundick Survey, Abstract No. 7, more fully described in **Exhibit "A"** attached hereto.

A tract of 0.004 of an acre (188 square feet) of land owned by the State of Texas out of the Samuel C. Bundick Survey, Abstract No. 7, more fully described in **Exhibit "B"** attached hereto; and

Whereas the **Coastal Easement** the **County** has with the **GLO** expires on December 31, 2031. It may also be terminated early by the **GLO** for reasons set forth within the document. A copy of this instrument is attached hereto as **Exhibit "C"**; and

Whereas there is currently located upon the above described tracts of land described in the **Coastal Easement** various improvements leased by the **County** consisting of a boat ramp, a 200' linear wooden fishing pier leading into the water and a boat ramp parking lot. The **County** currently maintains these improvements; and

Whereas, there is also currently a water line and a sewer line owned by the **GLO** and leased by **County** that serves the above described tracts of land that may need replacement or upgrading; and

Whereas, the **County** and the **Concessionaire** desires to enter into this Agreement for the operation of the **Concession** upon the **Concession Premises**; and

Whereas, inasmuch as the **GLO** owns the lands made the subject of this **Concession Agreement** it is necessary that not only this **Concession Agreement** be subject to the terms and conditions of the **Coastal Easement** but also that the **GLO** approve the terms and conditions of this **Concession Agreement**.

Now, Therefore, Know all Men by These Presents:

That for and in consideration of the payments to be made by **Concessionaire** and the mutual covenants, terms, provisions and conditions herein set forth, the parties hereby agree as follows:

Article I Scope and Use

- 1.1 That the **County**, for and in consideration of
- the payments to be made to **County** by **Concessionaire**; and
 - subject to the covenants, terms, provisions and conditions hereinafter set forth; and
 - subject to the terms and conditions of the **Coastal Easement**; and
 - subject to any other agreements, licenses or permits heretofore or hereinafter granted affecting the **Concession Premises**; and
 - subject to any other conditions, restrictions, covenants, licenses, rights of way or easements affecting the **Concession Premises** heretofore or hereinafter granted,

hereby gives to **Concessionaire**, for the term hereinafter stated, the right to maintain, operate and manage the **Concession** upon the **Concession Premises** for the purposes set forth in the definition of the **Concession**.

1.2 No other use of the **Concession Premises** shall be permitted, unless consent to such use is obtained in writing from the **County's Authorized Representative** and the **GLO**.

1.3 No portion of the **Concession Premises** is being leased to **Concessionaire**. Rather, **Concessionaire's** interest in the **Concession Premises** is that of a licensee and not a lessee of the **Concession Premises**.

1.4 The right of **Concessionaire** to occupy the **Concession Premises** shall continue only so long as all of the terms of this Agreement are strictly and promptly complied with by **Concessionaire**.

Article II Term

2.1 The Initial Term of this Agreement, unless terminated early by **County** or pursuant to the terms and conditions of the **Coastal Easement**, shall begin on the **Commencement Date** and terminate at midnight December 31, 2031.

2.2 The **County** may terminate this **Concession Agreement** for any reason or for no reason or for convenience upon giving **Concessionaire** one hundred eighty (180) days prior written notice. But should the **County** terminate this Agreement prior to the expiration of the capital investment recovery time period the provisions of Articles 4.8 and 4.9 below will apply.

In the event of early termination as set forth in this Article the **County**, its elected or appointed officials, department heads and employees, agents or representatives shall not be liable for loss of any profits anticipated to be made by **Concessionaire**.

Article III Permits, Other Agreements and Approval

3.1 This **Concession Agreement** is granted by the **County** subject both to all of the terms and conditions of this **Concession Agreement** and the **Coastal Easement**, as well as to all design standards and requirements of the **County** for construction of future improvements on the **Concession Premises**.

3.2 This **Concession Agreement** is made and accepted subject to all easements, rights of way, roadways, encroachments, and prescriptive rights, whether of record or not; all previously recorded restrictions, reservations, covenants, and conditions, if any; any and all oil and gas and other mineral leases, mineral severances and other instruments that affect the property described in the **Coastal Easement**; any discrepancies, conflicts or shortages in area or boundary lines; any encroachments or overlapping of improvements, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect relating to the hereinabove described property.

3.3 This **Concession Agreement** is subject to all Federal, State and/or local statutes, rules and regulations including any permits required for purposes of construction of improvements upon the **Concession Premises**, including but not limited to permits of the **U.S. Army Corps of Engineers**, the **Galveston County Health District**, the **GLO** and the **County**, if any, being secured.

Article IV Construction of Improvements/Owner of Improvements

4.1 **Concessionaire** desires to construct the **Improvements** specified in the **Definitions** section above.

4.2 Prior to conducting any operations leading to construction of the **Improvements** **Concessionaire** will prepare and submit, at his/her/its expense, to the **County's Authorized Representative** both five (5) hard copies of **Concessionaire's** preliminary plans and specifications

and five (5) copies of such plans and specifications in a reviewable soft copy electronic format. The **County's Authorized Representative** will provide one copy each of the preliminary plans and specifications to the **GLO**, the **U.S. Army Corps of Engineers (Corps)** if the **Corps** has any jurisdiction, the **County Engineer** and the **County Architect** for purposes of review and comment. No plans will be approved and no construction will be permitted that in any way will damage or endanger the integrity of any improvements already located on the ground with the exception that **Concessionaire** may relocate or replace the water line and/or the sewer line so as to accommodate **Concessionaire's** requirements. Any revisions or modifications to the proposed **Improvements** deemed necessary by the **County's Authorized Representative** or the **GLO**, the **Corps** (if applicable), the **County Engineer** or the **County Architect** shall be incorporated by **Concessionaire** into the final plans and specifications for the construction of the **Improvements**. Approval of the plans and specifications by the **County's Authorized Representative** will be evidenced by the **Authorized Representative** signing a set of the plans and specifications. Ownership of the **Improvements**, once constructed, may not be sold, transferred or assigned to any third party unless they are sold, transferred or assigned along with the sale, transfer or assignment of this **Concession Agreement**.

4.3 Prior to the commencement of construction of the **Improvements**, **Concessionaire** will obtain from the appropriate authority or authorities all building permits, for the construction of the **Improvements**. In addition, **Concessionaire** shall require his contractor to furnish to the **Concessionaire**, as owner of the proposed **Improvements** payment and performance bonds. These bonds will be in an amount sufficient to pay the estimated construction costs of such **Improvements**. Such bonds shall be conditioned that the **Concessionaire** shall complete the construction of the **Improvements** in accordance with the approved plans and specifications and that the **Concessionaire** and **Concessionaire's** contractors and sub-Contractors shall pay for all labor, materials, tools, supplies and equipment furnished in connection with the construction. The payment and performance bonds must be approved by the **County**, acting through the **County's Authorized Representative**. The **Authorized Representative** will then issue a Notice to Proceed to **Concessionaire**.

4.4 **Concessionaire** further agrees that upon obtaining the Notice to Proceed he/she/it will thereafter proceed with reasonable diligence and without unreasonable interruption, to build and construct such **Improvements** on the **Concession Premises**. All such **Improvements** will be constructed in a good and workmanlike and environmentally safe manner and substantially in accordance with the plans and specifications and in compliance with the regulations and requirements of all regulatory authorities having jurisdiction. **Concessionaire** further agrees to allow inspection of the progress to be made by the **Authorized Representative**, the **County Architect** and the **County Engineer** or their designee. In case of disagreement with respect to the compliance with approved plans, such disagreement will be submitted to the **County Engineer**, the **County Architect** and the **County's Authorized Representative** whose decisions shall be binding on all points contested. Five copies of as-built plans and specifications will be tendered to the **County's Authorized Representative** both in hard copy and in an electronically reproducible format upon completion of construction. The **County's Authorized Representative** will give one copy of such as-built plans and specifications to the **GLO**, the **Corp** (if applicable), the **County Engineer** and the **County Architect**.

4.5 The installation, maintenance and use of the **Improvements** will be performed without cost or expense to **County**. **Concessionaire** further agrees that all additional utility connections or modification of existing utility connections necessitated by the **Improvements** shall be at **Concessionaire's** expense. **Concessionaire** warrants that no liens of any type or kind will be voluntarily or involuntarily placed or suffered to be placed on the **Concession Premises**. Any liens permitted or suffered to be imposed will be cleared by **Concessionaire** within ten (10) working days.

4.6 During the construction of any **Improvements** on the **Concession Premises**, **Concessionaires** will also obtain and keep, or cause to be obtained and kept, what is commonly referred to as Builder's Risk insurance in such amounts as is required by the **Authorized Representative**.

4.7 Any survey monument disturbed during construction shall be restored to the condition it was in as of the date of execution of this **Concession Agreement** by a licensed surveyor.

4.8 The cost to **Concessionaire** of construction of the **Improvements** and the anticipated capital investment recovery time period for such cost will be agreed upon by the **County** and the **Concessionaire** prior to the commencement of construction. This capital recovery time period will be used as a basis to establish payment to be made to the **Concessionaire** should this **Concession Agreement** be terminated early by either the **County** or the **GLO**. By way of example only, if the cost of construction of the improvements is \$100,000 and the parties agree that the anticipated capital investment recovery time period is ten years, for each year after the date of completion of construction **Concessionaire** is permitted to operate, the payment to be made by the **County** to the **Concessionaire** for the purchase of the unrecovered capital expenditure made by **Concessionaire** will be reduced by \$10,000.

4.9 As stated in Article 2.2, the **County** has the right to terminate this **Concession Agreement** prior to the expiration of the Initial Term. Similarly, this **Concession Agreement** may be terminated if the **GLO** terminates its Coastal Easement. If, this Agreement is terminated early by the **County** or if the **GLO** terminates its Coastal Easement early, and if the **Improvements** are, at the time of early termination properly maintained and in good condition as determined by the **County Engineer** and the **County Architect**, the **County** will tender to **Concessionaire** their unrecovered capital expenditure in accordance with the provisions of Article 4.8. Upon payment of allowed capital recovery cost, all right, title and interest that **Concessionaire** holds in the **Improvements** desired by the **County** in its sole discretion shall be conveyed to the **County** free and clear of all liens and other encumbrances and all remaining improvements shall be removed by **Concessionaire** as directed by the **County's Authorized Representative**. But if, in the opinion of the **County Engineer** and the **County Architect**, such **Improvements** have deteriorated and/or not been properly maintained or if such **Improvements** have been damaged or destroyed by hurricane, storm or other natural or man-made disaster or event and have not immediately been rebuilt by **Concessionaire** to the same or better condition, the provisions of this Article 4.8 and this Article will not apply.

4.10 As described in more detail in Article V below **Concessionaire** may, from time to time, upon prior written approval being obtained from the **County's Authorized Representative**

make such permanent changes, alterations and additions to the **Improvements** (such changes, alterations and additions hereinafter to be called "**Modifications**") as **Concessionaire** deems desirable for the purpose of maintaining the **Concession Premises** as an efficient high quality facility, provided: i) such **Modifications** do not diminish the value or utility of the **Improvements** or change the use thereof, ii) all **Modifications** are designed, engineered, developed and once completed, maintained and operated at no expense to the **County**, and iii) all **Modifications** meet the requirements contained in Article V. Any **Modifications** must either complement the current use of the **Concession Premises** or be in keeping with **Concessionaire's** proposed usage of the **Concession Premises**. In addition, should the parties agree prior to commencement of construction of the **Modifications**, the cost of such **Modifications** may be added to the capital recovery time period set forth in Article 4.8.

4.11 All **Improvements** and **Modifications** made by **Concessionaire** remain the property of the **Concessionaire** during the term of the **Concession Agreement**. **Concessionaire** will not commit waste upon, remove, or voluntarily destroy any **Improvements** or **Modifications** unless to construct other improvements that meet the requirements specified herein. Such **Improvements** and **Modifications** may not be removed from the **Concession Premises** without prior written consent from the **County's Authorized Representative**.

4.12 Upon expiration or early termination of this **Concession Agreement** the title to all **Improvements** and **Modifications** constructed by **Concessionaire** and permanently fixed to the **Concession Premises** shall, unless otherwise directed by **County** as set forth in Article 4.13 below, automatically and simultaneously and by way of the terms of this **Concession Agreement** vest in the **County** without payment of any compensation from **County** to **Concessionaire** except as may be due and owing as set forth in Article 4.8.

4.13 Upon such expiration or early termination of this **Concession Agreement**, **Concessionaire** shall remove his/her/its personal property, all non-permanent trade fixtures and such **Improvements** and **Modifications** as the **County's Authorized Representative** shall direct at **Concessionaire's** sole cost and expense. In the event **Concessionaire** is instructed to remove all or a portion of the **Improvements** and **Modifications**, **Concessionaire** will do so in a timely manner, and shall restore the **Concession Premises** to the same condition it was in at **Commencement Date**, ordinary wear and tear excluded. In the event **Concessionaire** is instructed to not remove any **Improvements** and **Modifications**, **Concessionaire** will remove his/her/its personal property and non-permanent trade fixtures in such a fashion as not to damage or destroy any **Improvements** and **Modifications**.

Article V Modifications

5.1 **Concessionaire** covenants and agrees that in the event **Concessionaire** wishes to make changes to the **Improvements**, or to install or cause to be installed any additional trade fixtures, shades or awnings, or to construct additional improvements on the **Concession Premises** (e.g. covered picnic tables or boat storage stalls), (collectively "**Modifications**") **Concessionaire** will, at the **Concessionaire's** sole cost, risk and expense, and prior to commencement of construction, prepare and submit to the **County's Authorized**

Representative both five (5) hard copies of **Concessionaire's** preliminary plans and specifications and a set of such plans and specifications in a reviewable soft copy electronic format for review and approval. The **Authorized Representative**, in turn, will submit such plans and specifications to the **GLO**, the **Corp** (if applicable), the **County Engineer** and the **County Architect** for review and comment. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the **County's Authorized Representative**. Any revisions to **Concessionaire's** plans and specifications made by the **County's Authorized Representative**, the **GLO**, the **Corps**, the **County Engineer** or the **County Architect** shall be incorporated by **Concessionaire** into the final plans and specifications for the construction of the **Modifications**. Approval of the final plans and specifications will be evidenced by **Concessionaire** and the **County's Authorized Representative** signing a set of the plans and specifications.

5.2 Prior to the commencement of construction of the **Modifications**, **Concessionaire** will obtain all required building permits, from the appropriate authority or authorities for the construction of the **Modifications**. In addition, **Concessionaire** shall require his contractor to furnish to the **Concessionaire**, as owner of the proposed **Modifications** payment and performance bonds. These bonds will be in an amount sufficient to pay the estimated construction costs of such **Modifications**. Such bonds shall be conditioned that the **Concessionaire** shall complete the **Modifications** in accordance with the approved plans and specifications and that the **Concessionaire** and **Concessionaire's** contractors and sub-contractors shall pay for all labor, materials, tools, supplies and equipment furnished in connection with the construction. The payment and performance bonds must be approved by the **County's Authorized Representative**. The **County's Authorized Representative** will then issue a Notice to Proceed to **Concessionaire**.

5.3 **Concessionaire** further agrees that upon obtaining the Notice to Proceed he/she/it will thereafter proceed with reasonable diligence and without unreasonable interruption, to build and construct such **Modifications** on the **Concession Premises**. All such **Modifications** will be constructed in a good and workmanlike and environmentally safe manner, substantially in accordance with the plans and specifications and in compliance with the regulations and requirements of all regulatory authorities having jurisdiction. **Concessionaire** further agrees to allow inspection of the progress to be made by the **County's Authorized Representative** or her designee. In case of disagreement with respect to the compliance with approved plans, such disagreement will be submitted to the **County Engineer** and the **County Architect**, whose decisions shall be binding on all points contested. **Concessionaire** further agrees that all additional utility connections necessitated by the **Modifications** shall be at **Concessionaire's** expense.

5.4 **Concessionaire** warrants that no liens or other encumbrances of any type or kind will be voluntarily or involuntarily placed or suffered to be placed on the **Concession Premises**. Any liens permitted or suffered to be imposed will be cleared by **Concessionaire** within ten (10) working days.

5.5 During the construction of any **Modifications** on the **Concession Premises**, **Concessionaires** will also obtain and keep, or cause to be obtained and kept, what is commonly

referred to as Builder's Risk insurance in such amounts as is required by the **County's Authorized Representative**.

5.6 **Concessionaire** agrees, upon completion of construction of the **Modifications**, to furnish **County's Authorized Representative** with five copies of as-built plans and specifications both in hard copy and in an electronically reproducible format upon completion of construction. The **County's Authorized Representative** will give one copy of such as-built plans and specifications to the **GLO**, the **Corps** (if applicable), the **County Engineer** and the **County Architect**. This requirement may be waived by the **County's Authorized Representative** if in her opinion the circumstances warrant.

Article VI Consideration

6.1 The parties agree that the operations conducted upon the **Concession Premises** shall be operated at no expense to the **County**.

6.2 To assist the **Concessionaire** during the initial few months of the **Concession Agreement** the **County** agrees that the **Concessionaire** may have up to six (6) months to prepare plans and specifications, have such plans and specifications approved by the **County** and the **GLO**, obtain all necessary permits and to commence construction without having to pay a monthly rental fee. In addition, for the next three months **Concessionaire**, during the construction of the **Improvements** will pay 50% of the monthly rental fee. But if, during this nine (9) month period **Concessionaire** opens for business to the public (e.g. begins selling bait and fishing supplies from a mobile vehicle) the **Concessionaire** must begin making monthly concession payments of 100% beginning on the first day of the month after the date of opening for business to the public.

6.3 **Concessionaire** has agreed, beginning with the tenth (10) month after the Commencement Date or the opening of business to the public, whichever comes first to pay a rental fee of \$_____ per month with the initial payment to be made on the **Commencement Date**. Thereafter **Concessionaire** has agreed during the next three (3) years of the initial term of this **Concession Agreement** and all renewals thereof, to pay **County** without demand and without a grace period a rental fee of _____ (\$_____) per month (annual base rental \$_____) with the first such payment being due and payable on the first day of the month following the date of completion of construction of the **Improvements** or the opening of business to the public and a like payment being due and payable on the first (1st) day of each succeeding month.

6.4 Every three years, commencing _____ 1, 20____, the annual payment required of **Concessionaire** shall be the annual base rental of \$_____ plus an additional or lesser amount based upon any increases or decreases in the Consumer Price Index. For the purpose of determining the initial amount of such increase or decrease, the All Urban Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor for the year 20____ shall be used as a base period. The annual payment shall be increased or decreased by the percentage that such index for the year 20____ has increased or decreased over the twelve month period of _____ through _____ up to a maximum percentage adjustment of 10

percent (10%). Subsequent base periods will be adjusted accordingly. For example if in 20__ the Consumer Price Index was an accumulative positive ten percent (10%), the base rental beginning _____ 1, 20__ will be \$_____ and the base period in 20__ will be _____ 1, 20__.

6.5 Payments shall be by cashier's check, personal check or money order. Cash payments will not be accepted.

Article VII Taxes

7.1 **Concessionaire** will be subject to ad-valorem taxes upon all **Improvements** and **Modifications** owned and constructed by **Concessionaire**. In addition, **Concessionaire** will be subject to ad-valorem taxes on all personal property items, inventory and trade fixtures owned by **Concessionaire** and used at or in connection with **Concessionaire's** operations. **Concessionaire's** interest in this **Concession Agreement** will also be the basis of an ad valorem tax. **Concessionaire** covenants to pay such ad valorem taxes as may be lawfully assessed against his/her/its operations as such taxes become due. **Concessionaire** also covenants to pay Texas state sales taxes and Federal income taxes, Federal withholding and Social Security taxes and other taxes as such taxes become due. **Concessionaire** agrees to provide to **County's Authorized Representative** receipts or other certified documentation that all taxes have been paid within thirty (30) days of the due date of such taxes.

Article VIII Bookkeeping

8.1 **Concessionaire** shall keep full, complete, and proper books, records, and accounts of all gross receipts, both for cash and on credit, of each separate activity, reported monthly. Said books, records and accounts, including any sales tax reports that may be required by any government or governmental agency, shall at all reasonable times be open to inspection and copying by the Internal Revenue Service, the Texas Comptroller of Public Accounts, the County Auditor or their designated representatives.

Article IX Repairs and Maintenance

9.1 **Concessionaire** covenants and agrees, at **Concessionaire's** sole cost and expense, to keep all **Improvements** and **Modifications**, both exterior and interior, upon and within the **Concession Premises** as well as **Concessionaire's** contents thereon and therein in good and safe condition and to make, at **Concessionaire's** sole cost and expense, all repairs and replacements that may be necessary and required to keep same in good, safe and sound condition.

9.2 **Concessionaire** will also be responsible for:

- a. Mowing and trimming (Weed Eat) the grassy areas upon the **Concession Premises** and surrounding **Coastal Easement** areas on a weekly basis during the growing season and at least once a month during the non-growing season

or as often as determined necessary by **County's Authorized Representative** during such other months;

- b. Maintaining exterior lights;
- c. Daily bag all trash and refuse found upon the **Concession Premises** and to place same in trash receptacles located on the property;
- d. Daily trash removal from **Concessionaire's** trash receptacles;
- e. Daily trash removal from the boat ramp, the fishing pier and the parking lot;
- f. Daily maintain the restrooms in a clean condition; and
- g. Provide such paper products and soap as are necessary to the restrooms.

9.3 **Concessionaire** shall keep the **Concession Premises**, **Concessionaire's** parking lot, the boat ramp, the fishing pier, the boat ramp parking lot and the surrounding grounds in a clean and sanitary condition at all times. **Concessionaire** shall store all trash in the existing trash receptacles. If the existing trash receptacles are not sufficient, **Concessionaires** will provide such additional trash receptacles as are specified by the **County's Authorized Representative**.

9.4 **County**, if and as budgeted funds become available for such purpose retains the right but not the obligation to make such repairs to the Jones Bay Boat Ramp, fishing pier and the boat ramp parking lot it determines practicable or feasible. **County**, acting through its agents or representatives shall have the right to enter the **Concession Premises**, at such times as is required by **County** for purposes of inspection of same.

9.5 The **County**, acting through its **County Authorized Representative**, shall have the right to impose reasonable regulations to insure proper maintenance care, repair and upkeep of the **Concession Premises** and surrounding grounds outside of the **Concession Premises** that need attention. The degree of maintenance, repair and upkeep shall be in keeping with other boat ramps and public parks operated by the **County** and as directed by **County's Authorized Representative**. If **Concessionaire** neglects or refuses to perform such maintenance care, repair and upkeep, the **County** may, but is not required to take such actions for the account of **Concessionaire**. **Concessionaire** shall promptly reimburse the **County** for the costs incurred by **County** on **Concessionaire's** behalf. Failure on the part of **Concessionaire** to repair or maintain the **Concession Premises, Improvements, Modifications** as herein provided, or to promptly reimburse the **County** as herein provided, shall be grounds for termination of this **Concession Agreement**. But, such termination will not relieve **Concessionaire** of his/her/its obligation to pay **County** for such repairs or maintenance charges.

Article X Operation

10.1 **Concessionaire** agrees that all areas of the **Concession Premises** shall be permanently identified as being publicly owned and operated as a public outdoor recreational facility in all signs, literature, and advertising and that **Concessionaire** will be identified solely as a **Concessionaire** operating his/her/its business at a public boat ramp park so as to not mislead the public into believing that any portion of the **Concession Premises** (other than the **Improvements** and **Modifications** owned by **Concessionaire** during the term of this

Concession Agreement) located upon the **Concession Premises** is private or that a launch fee will be charged for the launching of any boat.

10.2 **Concessionaire** agrees to make the **Concession Premises** open and available to the public for public use at all times on a nondiscriminatory basis.

10.3 The **County's Authorized Representative** retains the unfettered right to instruct **Concessionaire** to close or partially close all or any part of the **Concession Premises** for potentially dangerous weather situations, natural or man-made disaster, pollution of State owned waters or for such other causes determined necessary by the **Constitutional County Judge** or the **County's Authorized Representative**.

10.4 **Concessionaire** covenants and agrees to comply with all valid laws, ordinances, rules and regulations now or hereafter made by any governmental authority having jurisdiction in the premises respecting fire, cleanliness, the handling and dispensing of food and beverage products, health and safety, and operation of concession sales on the **Concession Premises**.

10.5 **Concessionaire** also agrees to obtain and keep current any and all permits and licenses relating to the operation of the **Concession** or use of the **Concession Premises** that is required by the **GLO**, the **Corps**, the **County**, the **Galveston County Health District** and any other governmental entity that has jurisdiction over the subject matter.

10.6 **Concessionaire's** violation of the provisions of Article 10.4 or 10.5 will also be cause for termination of this **Concession Agreement** and the provisions of Articles 4.8 and 4.9 shall not apply.

10.7 All monthly utilities associated with the **Concession Premises**, the fishing pier, the parking lot and the boat ramp will be the responsibility of the **Concessionaire**. **Concessionaire** will also be responsible for all costs associated with the operation and maintenance of all water and sewer lines serving the **Concession Premises**, the fishing pier, the boat ramp and the parking lot. **Concessionaire** will also be responsible for costs associated with grease trap cleaning. Telephone expenses for the **Concession Premises** as well as costs for water, sewer, trash and other solid waste disposal found upon the **Coastal Easement**, will be the responsibility of the **Concessionaire**. Gas is not available.

10.8 **Concessionaire** shall not erect any signs or modify any signs on the **Concession Premises** or in the vicinity thereof without obtaining the advance written approval of the **County's Authorized Representative**. **Concessionaire** may enter into advertising relative to his/her/its operations that are consistent with the dignified approach necessitated by the reputation of **Concessionaire's** business on the **Concession Premises**. The **Concession Premises** shall be known by the name set forth in **Concessionaire's** proposal if the name is acceptable to **County's Authorized Representative**. The name may not be changed without obtaining the advance written approval of **County's Authorized Representative**.

10.9 **Concessionaire** will manage and operate the **Concession** at the **Concession Premises**, providing bait and fishing supplies and/or food and beverages and/or other products or services set forth in this **Concession Agreement**.

- a. Examples of the variety of food and beverages sold at the **Concession Premises** may include but are not limited to such items as pizza, hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, canned soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc...), bottled water, fruit juices, iced tea, canned beer, coffee and lemonade. No food or beverage using glass containers may be sold.
- b. Examples of bait and fishing supplies may include but is not limited to live and dead shrimp, squid, live and dead finger mullet and mud fish, hooks, sinkers, fishing line, corks, bobbers, floats, stringers, ice, ice buckets, fishing licenses and other similar items.
- c. **County**, acting through its Authorized Representative, may prohibit **Concessionaire** from the sale or rental of any food, beverage, or item of merchandise that she finds objectionable.

10.10 **Concessionaire** shall promptly pay all debts incurred by him/her/it for the purchase of goods or services used by him in the operation of the **Concession**.

10.11 The **County's** Authorized Representative or her designees shall have unfettered access to the **Concession Premises**, all areas of the **Improvements** and **Modifications** and to each part thereof, during the regular business hours of **Concessionaire** for the purpose of inspecting **Concessionaire's** operations and his relationship with the public.

10.12 The boat ramp, the fishing pier and the boat ramp parking lot are open to the public seven days a week, 24 hours a day year round. The operating hours of the **Concession** located on the **Concession Premises** shall be conducive to meeting the needs of people fishing from the fishing pier and boat ramp users. **Concessionaire** will adhere to the schedule set forth in **Concessionaire's** proposal if such hours are acceptable to **County's Authorized Representative**. This schedule may be changed only upon prior approval of the **County's Authorized Representative**.

10.13 **Concessionaire** may not keep any explosive or hazardous materials on the **Concession Premises** including the **Improvements** and **Modifications**, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the **Concession Premises**, the **Improvements** or **Modifications**, the boat ramp, the fishing pier or the boat ramp parking lot.

10.14 Vendors shall not be permitted or engaged by **Concessionaire** upon the **Concession Premises** without prior written approval being obtained by **Concessionaire** from the **County's Authorized Representative**.

10.15 No vending machines shall be permitted upon the **Concession Premises** without prior written approval being obtained from the **County's Authorized Representative**.

10.16 Prices for all services and items shall be clearly posted by **Concessionaire**.

10.17 No member of the public may be charged for parking, fishing or utilizing the boat ramp to launch their boat.

Article XI Erosion

11.1 The **Concession Premises** is located on Jones Bay near the Village of Tiki Island. **Concessionaire** acknowledges that steady erosion and avulsion caused by storms or hurricanes and naturally occurring tides are constant problems and threats on unprotected areas of Galveston County and that all or a portion of the **Concession Premises** and **Concessionaire's Improvements and Modifications** and **Concessionaire's** trade fixtures, inventory and other personal property or the boat ramp, the fishing pier or the parking lots located on the Coastal Easement may be affected or destroyed. **Concessionaire** agrees that in the event such erosion or destruction imminently threatens or occurs, the **County** is not under any obligation: i) to protect, repair to restore any portion of the **Concession Premises**, to **Concessionaire's Improvements or Modifications**, or to the lands upon which the Coastal Easement are situated that may have been lost, ii) to undertake any efforts whatsoever toward recapturing any shoreline lost to such erosion or avulsion, iii) to reimburse or in any way be responsible to **Concessionaire** for any loss of income or damages incurred to **Concessionaire's** property, or iv) to repair or replace the fishing pier, the boat ramp, the parking lot or the boat ramp parking lot. **Concessionaire** agrees that in the event he/she/it feels any **Improvements or Modifications** constructed by **Concessionaire** are so threatened, to undertake (subject to prior approval being obtained by the **County's Authorized Representative**, the **GLO**, the **Corps** (if applicable) and the **County** such steps as are necessary to prevent or minimize such damage.

Article XII Insurance Coverage and Repair Obligations

12.1 **Concessionaire** covenants and agrees that the **Concessionaire** will, throughout the term of this **Concession Agreement**, at the **Concessionaire's** sole cost and expense, maintain in force and effect a policy or policies of insurance with deductibles of no more than five thousand (\$5,000.00) dollars in which the **County**, the Galveston County Commissioners' Court, the Galveston County Parks and Senior Services Department, and **Concessionaire** are named as the insureds.

12.2 This insurance shall be of the kind commonly known as public or third party liability insurance and public or third party property damage insurance, insuring all of the insureds against liability under any claim by any third parties for personal injuries or property damage arising out of or related to the **Concessionaire's** operations, management or control of the **Concession Premises** and the **Improvements or Modifications**. The amount of this insurance shall be not less than the minimum amounts set forth in Chapter 101, of the Revised Texas Civil Practice and Remedies Code, commonly known as the Texas Tort Claims Act, as it presently exists or hereinafter may be amended. Such policy of insurance shall be on the Texas Standard Form and shall be carried in a good and responsible company or companies authorized to do business in the State of Texas.

12.3 The insurance coverage referred to in paragraph 12.2 currently shall be in minimum amounts as follows:

- a. one hundred thousand dollars (\$100,000.00) for damages arising out of bodily injury to or death of one or more persons in any one accident; and
- b. three hundred thousand dollars (\$300,000.00) for damages arising out of bodily injury to or death of one or more persons in any one accident; and
- c. one hundred thousand dollars (\$100,000.00) for any injury to or destruction of property in any one accident.

12.4 If **Concessionaire** is engaged in any way in the sale of alcoholic beverages, either for consumption on or off the **Concession Premises**, **Concessionaire** will also maintain Liquor Liability Insurance with limits of not less than One (1) Million Dollars each common cause and One (1) Million Dollars aggregate.

12.5 **Concessionaire** agrees, at the **Concessionaire's** expense, to obtain and maintain during the entire term of this **Concession Agreement** a policy or policies of Workers' Compensation insurance covering all employees of **Concessionaire** involved in the operation and management of the Concession Premises and modifications.

12.6 **Concessionaire** shall be responsible for keeping all of its **Improvements** and **Modifications** and all additions thereto, and replacements thereof located upon the **Concession Premises** insured against loss, damage and destruction by flood, wind and hail, fire and such other hazards as are covered by and protected against under policies of insurance commonly referred to as "flood insurance", "windstorm and hail" and "fire and extended coverage". The policies of insurance shall be carried in good and responsible companies authorized to do business in the state of Texas and the proceeds of all insurance shall be payable to **Concessionaire**. In the event there is damage or destruction to the **Improvements** and/ or the **Modifications**, and in the event such damage or destruction, may, in the opinion of the **County's Authorized Representative** be repaired or replaced, **Concessionaire** shall have ninety (90) days (or such greater periods of time as are permitted by **County's Authorized Representative**) after such damage or destruction occurs to repair or replace same.

12.7 That in the event the **Improvements** and/or the **Modifications** or any part thereof shall at any time during the initial or renewal term hereof be damaged by storm, wind, hail, fire or other such casualty, so as to be temporarily unfit for use and occupancy, the rental provided herein shall be reduced fifty (50%) percent or a just and proportionate part thereof, according to the nature and extent of the damage sustained and mutually agreeable by and between the parties, until the said **Improvements** and/or **Modifications** shall have been duly repaired and restored by **Concessionaire** during the ninety (90) day period set forth immediately above,.

12.8 Alternatively, in the event the **Improvements** and **Modifications** shall be substantially destroyed, then, at the election of **County's Authorized Representative**, this **Concession Agreement** may be terminated and **Concessionaire** shall be relieved of all obligations under this **Concession Agreement** with the exception that **Concessionaire** will be responsible for removing at **Concessionaire's** sole cost all such damaged and destroyed

Improvements and Modifications and restoring the **Concession Premises** to its original condition.

12.9 **Concessionaire** also covenants and agrees that the **Concessionaire** will, throughout the term of this Agreement, at the **Concessionaire's** sole cost and expense, keep **Concessionaire's** inventory, trade fixtures and personal property items ("**Contents**"), and all replacements thereof, and all other contents of the **Concession Premises** insured against loss, damage, and destruction by theft, vandalism, malicious mischief, "flood", "windstorm and hail", "fire and extended coverage", and such other hazards as are covered by and protected against under policies of insurance commonly referred to and known as "windstorm and hail", and "fire and extended coverage insurance" in an amount not less than eighty (80%) of the full replacement value of said Contents. In the event there is damage or destruction to the **Contents**, **Concessionaire** shall have up to ninety (90) days (or such greater periods of time as are permitted by **County's Authorized Representative**) after such damage or destruction occurs to repair or replace same.

12.10 **Concessionaire** agrees to waive any right of recovery against the **County** for loss or damage to person or property. **Concessionaire** further agrees that no insurance company or companies with which **Concessionaire** may maintain any insurance shall be subrogated to any claim of **Concessionaire** against the **County**.

12.11 **County** is under no obligation to furnish insurance coverage of any kind covering the **Concession Premises**, the boat ramp, the fishing pier, the boat ramp parking lot or any other portion of the **Coastal Easement**. In addition, in the event of partial or complete destruction of improvements located upon the **Concession Premises** or the boat ramp, the fishing pier or the boat ramp parking lot, **County** shall have no duty or obligation to make any repairs or to otherwise restore the improvements located upon the **Concession Premises** or the boat ramp, the fishing pier or the boat ramp parking lot or any improvements located upon the **Coastal Easement** or any part thereof.

Article XIII **Assignment of Concession Agreement**

13.1 This **Concession Agreement** shall not be assigned or sold in whole or in part unless and until the **County**, acting solely through its **Commissioners' Court**, authorizes such assignment or sale, pursuant to a duly authorized action of the Court. Such approval of assignment or sale, if made, will be provided to **Concessionaire** in writing delivered by the **County's Authorized Representative**.

Article XIV **Default by Concessionaire**

14.1 If, during the term of this Agreement, **Concessionaire** defaults in the prompt and punctual payment of any amount payable by **Concessionaire** to the **County**, or defaults in any other payment provided for herein, or if **Concessionaire** abandons the **Concession Premises**, or declares bankruptcy or is placed in voluntary or involuntary receivership or makes default in any other term, covenant, condition or obligation of the **Concessionaire** or contained in this **Concession Agreement**, including but not limited to failure to perform necessary maintenance

and repairs or to obtain and maintain all required insurance, and such default shall continue for fifteen (15) days (ten (10) days with respect to procurement of insurance requirements) after written notice thereof by the **County's Authorized Representative to Concessionaire** (without being fully remedied within such fifteen (15) or ten (10) day period) or if such default is a kind or nature which is not capable of being physically remedied within such time as the **County's Authorized Representative** permits in writing under the circumstances and the **Concessionaire** does not begin and proceed diligently to remedy such default within such fifteen (15) or ten (10) day period and continue without interruption (except that if **Concessionaire** is delayed by strike, lockout, shortage of material or labor, act of God, riot, failure of carriers to transport materials, or by order, regulations or requisition of any governmental authority, or other causes beyond **Concessionaire's** control, the time of such delay or interruptions shall not be counted against **Concessionaire**) until the same is completely remedied, the **County**, acting through its **County Commissioners' Court**, shall have the right to declare this **Concession Agreement** forfeited and the Agreement term hereof ended.

14.2 In the event the **County** declares this **Concession Agreement** forfeited and the **Concession Agreement** term ended, the **County** shall have the unfettered right to re-enter the **Concession Premises** and the **Improvements and Modifications** and to remove all persons or chattels therefrom, as though such date of termination was originally set forth for the expiration hereof, and, except for the payment of all fees or other debts which may accrue through the date of such termination, and the performance of each, every and all of the other obligations of the **Concessionaire** which may accrue to such date, **Concessionaire's** obligations hereunder and this **Concession Agreement** shall cease and terminate and **Concessionaire** shall be under no further obligation to the **County** hereunder, provided the **Concessionaire** surrenders to the **County** the complete physical possession of the **Concession Premises**, including the **Improvements and Modifications** on or before such date of termination.

14.3 In the event of Termination for Default as set forth in this Article 14 the **County**, its elected or appointed officials, department heads and employees, agents or representatives shall not be liable for loss of any profits anticipated to be made by **Concessionaire**.

Article XV Employees of Concessionaire

15.1 **Concessionaire** shall at all times employ only those persons of good moral character, and **Concessionaire** shall not retain any employee that the **County's Authorized Representative** considers to be unfit for such employment or otherwise objectionable. All employees of **Concessionaire** shall be neatly dressed at all times. All employees shall conduct themselves courteously in their relations with the public. **Concessionaire** shall observe the rate of pay, benefits and working conditions that are being generally paid to persons employed in similar businesses in the **County**.

Article XVI Quality of Service

16.1 All items sold by **Concessionaire** shall be of first rate quality and the service provided by **Concessionaire** shall be rendered courteously and efficiently. The **County's**

Authorized Representative reserves the right to prohibit the sale of any item(s) that she deems objectionable and shall have the right to order the improvement of the quality of either the merchandise or the services rendered. Failure of **Concessionaire** to abide by the terms of this Article shall be grounds for termination of this **Concession Agreement**.

ARTICLE XVII INDEMNIFICATION

17.1 CONCESSIONAIRE SHALL PROTECT, INDEMNIFY AND SAVE HARMLESS, THE COUNTY, ITS COMMISSIONERS' COURT, ITS DIRECTORS, ELECTED AND APPOINTED OFFICIALS, OFFICERS AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER FOR INJURY TO, OR DEATH OF PERSONS, OR LOSS OR DAMAGE TO PROPERTY OCCURRING ON THE CONCESSION PREMISES AND/OR IMPROVEMENTS AND/OR MODIFICATIONS OR IN ANY MANNER GROWING OUT OF OR CONNECTED WITH CONCESSIONAIRE'S USE AND OCCUPATION OF THE CONCESSION PREMISES AND IMPROVEMENTS AND MODIFICATIONS DURING THE TERM OF THIS AGREEMENT. CONCESSIONAIRE SHALL GIVE THE COUNTY PROMPT NOTICE OF ANY CLAIM COMING TO HIS/HER/ITS KNOWLEDGE THAT IN ANY WAY DIRECTLY OR INDIRECTLY AFFECTS EITHER CONCESSIONAIRE OR THE COUNTY. ALL PARTIES SHALL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE OF SUCH CLAIM TO THE EXTENT OF THEIR INTEREST.

Article XVIII Fees and Prices

18.1 All fees, charges and prices for services rendered and food, drink, goods and other products sold by Concessionaire shall be approved by the County's Authorized Representative and shall be competitive with similar sources in the Gulf Coast Region. Concessionaire is granted the right, once said fees, charges and prices are established, to increase same a percentage equal to but not greater than the average annual cost of living index increase for the Houston/Galveston SMSA as established by the United States Department of Labor. Any increase above this must be approved by the County's Authorized Representative.

18.2 Concessionaire is not granted the authority for allowing free food or services except as may be approved by the County's Authorized Representative.

18.3 Concessionaire's initial proposed fee structure is attached as Exhibit "H".

18.4 Concessionaire may not charge any "launch fee", "fishing fee" or "parking fee" to any person wishing to use the boat ramp, the fishing pier or the boat ramp parking lot located adjacent to the Concession Premises.

Article XIX
Independent Contractor

19.1 This **Concession Agreement** is not a contract of employment. No relationship of employer and employee exists between the **County** and **Concessionaire** or between the **County** and any employee or agent of **Concessionaire**. **Concessionaire** shall at all times be deemed to be an **Independent Contractor**. **Concessionaire** is not authorized to bind the **County** to any agreements or obligations. The **County** shall not be liable for any acts or omissions of **Concessionaire**, his employees, or his agents in performing the duties prescribed herein.

Article XX
Non-Discrimination

20.1 **Concessionaire** agrees that in the use and occupancy of the **Concession Premises**, the Improvements and Modifications, the boat ramp, the fishing pier, the parking lot, the boat ramp parking lot and all other portions of the **Coastal Easement**, no discrimination of any kind shall be practiced by any party that is based upon a person's race, sex, color, religion, ancestry or national origin, disability, age, military status, or sexual orientation, whether in employment or in the provision of goods and services.

Article XXI
Texas Architectural Barriers Act

21.1 **Concessionaire** agrees to comply with the Texas Architectural Barriers Act, which requires access to the facilities for handicapped, disabled, or differently abled persons.

Article XXII
Waiver of Default

22.1 Any waiver of the **County** of any default or breach of this **Concession Agreement** shall not be construed to be a continuing waiver of such default or breach nor as a waiver of permission, express or implied, or any other or subsequent default or breach.

Article XXIII
General Clauses

23.1 All references to the parties of this **Concession Agreement** and all covenants, conditions and agreements of this **Concession Agreement** shall apply to and be binding upon the **County** and **Concessionaire** and their respective legal representatives, successors and assigns (when assignment is made in accordance with the provisions hereof) as if they were in each case fully named and stated. In this **Concession Agreement**, both **County** and **Concessionaire** are referred to in the singular, plural and/or neuter gender. However, such words and all other terms and words used in this Agreement regardless of the number and gender in which they are used, shall be deemed and construed to include any number (singular and plural) and any other gender (masculine, feminine and neuter) as the sense of the writing herein may require number and gender.

23.2 Unless otherwise stated, **County's Authorized Representative** is authorized to act on the **County's** behalf on all aspects of this **Concession Agreement**.

23.3 Any notice required or permitted between the parties under this **Concession Agreement** must be in writing and shall be delivered in person or mailed, return receipt requested, or may be transmitted by fax or email as follows:

Hon. Mark A. Henry, County Judge
County Courthouse, 722 Moody, 2nd Floor
Galveston, Texas 77550
Fax: (409) 766-2653
Email: Mark.Henry@co.galveston.tx.us

with a copy to:

Kelly Snook, Director
Galveston County Parks and Senior
Services Department
4102 Main Street (FM 519)
La Marque, Texas 77568
Fax: (409) 934-8140
Email: Kelly.Snook@co.galveston.tx.us

with a second copy to:

Robert B. Boemer, Director
Galveston County Legal Department
722 Moody Avenue (21st Street), 5th Floor
Galveston, Texas 77550, 5th Floor
Fax: (409) 770-5560
Email: Bob.Boemer@co.galveston.tx.us

with a third copy to:

Rufus G. Crowder, CPPO, CPPB
Purchasing Agent
Galveston County Purchasing Department
722 Moody Avenue (21st Street)
Fifth (5th) Floor
Galveston, Texas 77550
Fax: (409) 621-7987
Email: Rufus.Crowder@co.galveston.tx.us

and to **Concessionaire** at address listed in RFP or at such other address as **Concessionaire** may designate by written notice to the **County**.

23.4 This **Concession Agreement** is made under the applicable laws of the State of Texas, and if any term, clause, provision, part or portion of this **Concession Agreement** shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this **Concession Agreement** shall not be affected thereby and the invalid or illegal term, clause, provision, part or portion shall be deleted and ignored as if the same had not been written.

23.5 Any and all provisions and clauses in this **Concession Agreement** can be amended or deleted by the **County** and **Concessionaire** only by mutual agreement and any such change shall be in writing and attached to this **Concession Agreement** as an addendum.

23.6 This **Concession Agreement** shall be governed by the laws of the State of Texas. Venue for an action arising under this contract shall lie exclusively in Galveston **County**.

23.7 That inasmuch as the **GLO** owns the lands made the subject of this **Concession Agreement** it is necessary that not only this Agreement be subject to the terms and conditions of the **Coastal Easement** but also that the **GLO** approve the terms and conditions of this **Concession Agreement**.

23.8 This **Concession Agreement** is effective as of the **Commencement Date** and it has been executed in multiple copies each of equal dignity.

This Agreement is effective as of the **Commencement Date** regardless of the date of actual execution by the parties.

County of Galveston

By: _____
Hon. Mark A. Henry, County Judge

Attest: _____
Dwight Sullivan, County Clerk

Date of Execution: _____

Approved as to Form:

By: _____
Robert B. Boemer
Director, Galveston County
Legal Department

Date of Execution: _____

Concessionaire

By: _____

Date of Execution: _____

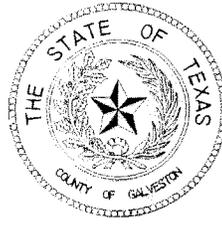
General Land Office of the State of Texas

By: _____

**Hon. Jerry Patterson
Commissioner**

Date of Execution: _____

Word/Depts/Parks/Jones Bay Boat Ramp Concession Agreement 2013



County of Galveston
ACKNOWLEDGMENT AND CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER INELGIBILITY
Executive Orders 12549 & 12689 Certification, Debarment and Suspension

Solicitation Number: RFP #B132009

Solicitation Title: Jones Bay Boat Ramp Concession Agreement 2013

Contractor hereby CERTIFIES that:

Contractor, and all of its principals, is not presently debarred, suspended, proposed for debarment, proposed for suspension, or declared ineligible under Executive Order 12549 or Executive Order 12689, Debarment and Suspension, and is not in any other way ineligible for participation in Federal or State assistance programs;

Contractor, and all of its principals, were not and have not been debarred, suspended, proposed for debarment, proposed for suspension, or declared ineligible under Executive Order 12549 or Executive Order 12689, Debarment and Suspension, and were not and have not been in any other way ineligible for participation in Federal or State assistance programs at the time its' proposal was submitted in the procurement identified herein and at any time since submission of its' proposal;

Contractor has included, and shall continue to include, this certification in all contracts between itself and any sub-contractors in connection with services performed under this contract; **and**

Contractor shall notify Galveston County in writing immediately, through written notification to the Galveston County Purchasing Agent, if Contractor is not in compliance with Executive Order 12549 or 12689 during the term of its contract with Galveston County.

Contractor **Represents** and **Warrants** that the individual executing this Acknowledgment and Certification on its behalf has the full power and authority to do so and can legally bind the Contractor hereto.

Name of Business

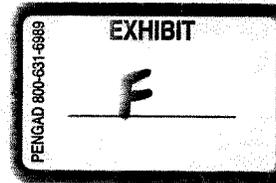
Date

By: _____

Signature

Printed Name & Title





**County of Galveston
Purchasing Department
Vendor Qualification Packet**
(rev. 1.2, January 27, 2012)

All interested parties seeking consideration for qualified vendor status with the County of Galveston should complete and return only the following attached forms to:

**Galveston County Purchasing Department
722 Moody Avenue, (21st Street), 5th Floor
Galveston, Texas 77550
(409) 770-5371 office
(409) 621-7987 fax**

- Form PEID:** Person /Entity Information Data
- Form W-9:** Request for Taxpayer Identification Number and Certification
(please note that the included form may not be the latest revised form issued by the Internal Revenue Service. Please check the IRS website at <http://www.irs.gov/pub/irs-pdf/jw9.pdf> for the latest revision of this form.)
- Form CIQ:** Conflict of Interest Questionnaire
(please note that the included form may not be the latest revised form issued by the State of Texas Ethics Commission. Please check the Texas Ethics Commission website at for the latest revision of this form. Please note that Galveston County Purchasing Agent is not responsible for the filing of this form with the Galveston County Clerk per instructions of the State of Texas Ethics Commission).

Certificate(s) of Insurance: **If the person or entity seeking qualified vendor status with the County will be performing work at or on any County owned facility and/or property, Certificate(s) of Insurance are required to be submitted prior to performing any work.**

Insurance requirements are as follows:

Public Liability and Property Damage Insurance:

Successful vendor agrees to keep in full force and effect, a policy of public liability and property damage insurance issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners of the State of Texas, with coverage provisions insuring the public from any loss or damage that may arise to any person or property by reason of services rendered by vendor. Vendor shall at its own expense be required to carry the following minimum insurance coverages:

- For damages arising out of bodily injury to or death of one person in any one occurrence – one hundred thousand and no/100 dollars (\$100,000.00);
- For damages arising out of bodily injury to or death of two or more persons in any one occurrence – three hundred thousand and no/100 dollars (\$300,000.00); and
- For injury to or destruction of property in any one occurrence – one hundred thousand and no/100 dollars (\$100,000.00).

This insurance shall be either on an occurrence basis or on a claims made basis. Provided however, that if the coverage is on a claims made basis, then the vendor shall be required to purchase, at the termination of this agreement, tail coverage for the County for the period of the County's relationship with the vendor under this agreement. Such coverage shall be in the amounts set forth in subparagraphs (1), (2), and (3) above.

Worker's Compensation Insurance:

Successful vendor shall also carry in full force Workers' Compensation Insurance policy(ies), if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the vendor. Current insurance certificates certifying that such policies as specified above are in full force and effect shall be furnished by the vendor to the County.

The County of Galveston shall be named as additional insured on policies listed in subparagraphs above and shall be notified of any changes to the policy(ies) during the contractual period.

Insurance is to be placed with insurers having a Best rating of no less than A. The vendor shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The vendor shall be required to submit annual renewals for the term of any contractual agreement, purchase order or term contract, with Galveston County prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity.

The County agrees to provide vendor with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property. Vendor shall have the right to defend any such claim, demand, or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the vendor.

In no event shall the County be liable for any damage to or destruction of any property belonging to the vendor unless specified in writing and agreed upon by both parties.

Procurement Policy - Special Note:

Understand that it is, according to Texas Local Government Code, Section 262.011, Purchasing Agents, subsections (d), (e), and (f), the sole responsibility of the Purchasing Agent to supervise all procurement transactions.

Therefore, be advised that all procurement transactions require proper authorization in the form of a Galveston County purchase order from the Purchasing Agent's office prior to commitment to deliver supplies, materials, equipment, including contracts for repair, service, and maintenance agreements. Any commitments made without proper authorization from the Purchasing Agent's office, pending Commissioners' Court approval, may become the sole responsibility of the individual making the commitment including the obligation of payment.

Code of Ethics - Statement of Purchasing Policy:

Public employment is a public trust. It is the policy of Galveston County to promote and balance the objective of protecting the County's integrity and the objective of facilitating the recruitment and

retention of personnel needed by Galveston County. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public office.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Galveston County procurement organization.

To achieve the purpose of these instructions, it is essential that those doing business with Galveston County also observe the ethical standards prescribed here.

General Ethical Standards: It shall be a breach of ethics to attempt to realize personal gain through public employment with Galveston County by any conduct inconsistent with the proper discharge of the employee's duties.

It shall be a breach of ethics to attempt to influence any public employee of Galveston County to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Galveston County to participate directly or indirectly in procurement when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.
- Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Galveston County, or for any employee or former employee of Galveston County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Galveston County, or any person associated therewith, as an inducement for the award of a subcontract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation by Galveston County.

Confidential Information: It shall be a breach of ethics for any employee or former employee of Galveston County to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Questions/Concerns:

If you have any questions or concerns regarding the information or instructions contained within this packet, please contact any member of the Purchasing Department staff at (409) 770-5371.

CONFLICT OF INTEREST DISCLOSURE REPORTING

Proposer may be required under Chapter 176 of the Texas Local Government Code to complete and file a conflict of interest questionnaire (CIQ Form). If so, the completed CIQ Form must be filed with the County Clerk of Galveston County, Texas.

If Proposer has an employment or other business relationship with an officer of Galveston County or with a family member of an officer of Galveston County that results in the officer or family member of the officer receiving taxable income that exceeds \$2,500.00 during the preceding 12-month period, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

If Proposer has given an officer of Galveston County or a family member of an officer of Galveston County one or more gifts with an aggregate value of more than \$250.00 during the preceding 12-months, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

The Galveston County Clerk has offices at the following locations:

Galveston County Clerk
Galveston County Justice Center, Suite 2001
600 59th Street
Galveston, Texas 77551

Galveston County Clerk
North County Annex, 1st Floor
174 Calder Road
League City, Texas 77573

Again, if Proposer is required to file a CIQ Form, the original completed form is filed with the Galveston County Clerk (not the Purchasing Agent).

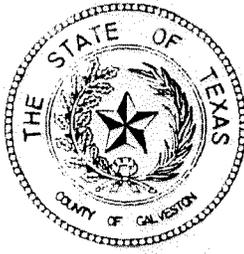
For Proposer's convenience, a blank CIQ Form is enclosed with this proposal. Blank CIQ Forms may also be obtained by visiting the Galveston County Clerk's website and/or the Purchasing Agent's website – both of these web sites are linked to the Galveston County homepage, at <http://www.co.galveston.tx.us>.

As well, blank CIQ Forms may be obtained by visiting the Texas Ethics Commission website, specifically at http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm.

Chapter 176 specifies deadlines for the filing of CIQ Forms (both initial filings and updated filings).

It is Proposer's sole responsibility to file a true and complete CIQ Form with the Galveston County Clerk if Proposer is required to file by the requirements of Chapter 176. Proposer is advised that it is an offense to fail to comply with the disclosure reporting requirements dictated under Chapter 176 of the Texas Local Government Code.

If you have questions about compliance with Chapter 176, please consult your own legal counsel. Compliance is the individual responsibility of each person, business, and agent who is subject to Chapter 176 of the Texas Local Government Code.



**COUNTY of GALVESTON
Purchasing Department**

rev. 1.3, March 29, 2010

FORM PEID:	Request for Person-Entity Identification Data
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Instructions: Please type or print clearly when completing sections 1 thru 4 and return completed form to:

Galveston County Purchasing Agent
 722 Moody Avenue (21st. Street), 5th Floor
 Galveston, Texas 77550
 (409) 770-5371 office
 (409) 621-7987 fax

1.	Business Name:			
	Attention Line:			
2.	Physical Address:			
	City:		State:	Zip+4:
3.	Billing / Remit Address:			
	City:		State:	Zip+4
4.	Main Contact Person:			
	Main Phone Number:			
	Fax Number:			
	E-mail Address:			

Areas below are for County use only.

Requested By:	Phone / Ext. #
Department:	Date:

Action Requested - Check One:	IFAS PEID Vendor Number:	
<input type="checkbox"/> Add New	<input type="checkbox"/> Change Data	<input type="checkbox"/> Re-activate
<input type="checkbox"/> Inactivate	<input type="checkbox"/> Employee	<input type="checkbox"/> Attorney
<input type="checkbox"/> Landlord	<input type="checkbox"/> Foster Parent	<input type="checkbox"/> Refund
<input type="checkbox"/> One Time	<input type="checkbox"/> Foster Child	

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶ _____	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor [*]
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

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Signature of person doing business with the governmental entity

Date