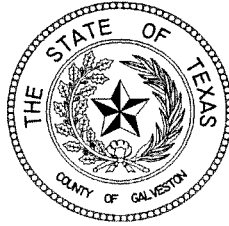


**GALVESTON COUNTY
PURCHASING DEPARTMENT**



REQUEST FOR PROPOSAL

RFP #B202009

HITCHCOCK BOAT RAMP CONCESSION

PROPOSAL DUE DATE: 06/11/2020

2:00 P.M. CST

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

RFP #B202009
OPEN: 06/11/2020
TIME: 2:00 P.M.



**REQUEST FOR PROPOSAL
HITCHCOCK BOAT RAMP CONCESSION
GALVESTON COUNTY, TEXAS**

Sealed proposals in sets of five (5), one (1) unbound original and four (4) copies will be received in the office of the County Purchasing Agent until 2:00 P.M. CST, on Thursday, June 11, 2020 and opened immediately in that office in the presence of the Galveston County Auditor and the Purchasing Agent. Sealed proposals are to be delivered to Rufus G. Crowder, CPPO CPPB, Galveston County Purchasing Agent at the Galveston County Courthouse, 722 Moody (21st Street), Floor 5, Purchasing, Galveston, Texas 77550, (409) 770-5372. **The time stamp clock located in the Purchasing Agent's office shall serve as the official time keeping piece for this solicitation process. Any proposals received after 2:00 P.M. CST on the specified date will be returned unopened.**

Purpose:

Galveston County will accept sealed proposals for the granting of a Concession Agreement for the maintenance and operation of a Bait Camp and Food and Beverage Refreshment Concession at the Hitchcock Boat Ramp, located adjacent to the Highland Bayou Diversionary Canal on Second Avenue, Hitchcock, Texas. The primary term of the Concession Agreement will be for three (3) years. There will be two (2) additional one (1) year options to renew.

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

RFP #B202009, Hitchcock Boat Ramp Concession

Proposals name and return address, should be prominently displayed on the proposal package for identification purposes.

Proposal Specifications can be obtained at the office of the Galveston County Purchasing Agent, located in the Galveston County Courthouse, 722 Moody, (21st Street), Floor 5, Purchasing, Galveston, Texas 77550, or by visiting the Galveston County website @ <http://www.galvestoncountytexas.gov/pu/Pages/BidListing.aspx>

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

A non-mandatory pre-bid conference will be held on Wednesday, May 20, 2020, at 10:00 a.m. at the Hitchcock Boat Ramp, which is adjacent to the Highland Bayou Diversionary Canal on Second Street in Hitchcock, Texas.

Upon satisfaction of contractual terms (e.g., goods delivered in promised condition, services rendered as agreed, etc.), contractor shall be paid via Galveston County's normal accounts payable process.

Bond Requirement:

No bond is required with this Request for Proposal.

The Galveston County Commissioners' Court reserves the right to waive any informality and to reject any and all bids and to accept the bid or bids which, in its opinion, is most advantageous to Galveston County with total respect the governing laws.

Rufus G. Crowder, CPPO CPPB
Purchasing Agent
Galveston County

**REQUEST FOR PROPOSAL
HITCHCOCK BOAT RAMP CONCESSION
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**GENERAL PROVISIONS – REQUEST FOR PROPOSAL
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1. PROPOSAL PACKAGE

*The Request for Proposal, general and special provisions, drawings, specifications/line item details, contract documents, addenda (if any), and the Proposal are all part of the Proposal package. **PROPOSALS must be submitted in sets of five (5), one (1) unbound original and four (4) copies** on the forms provided by the County if County forms are provided, and shall include the Proposal sheets completed in their entirety and signed by an authorized representative by original signature. Failure to complete and sign the proposal sheets/contract page(s) may disqualify the proposal from being considered by the Commissioners Court. Any individual signing on behalf of the Proposer expressly affirms that he or she is duly authorized to tender this proposal and to sign the proposal under the terms and conditions in this request for proposal on behalf of the Proposer and to bind the Proposer to the terms and conditions of this request for proposal and the Proposer's response hereto. Proposer further understands that Proposers' signing of the contract shall be of no effect unless the contract is subsequently awarded by the Commissioners Court and the contract 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 bid. If there are discrepancies between unit prices quoted and extensions, the unit price shall prevail. Each Proposer is required to thoroughly review this entire request for proposal package to familiarize themselves with the proposal procedures, the plans and specifications for the requested work, as well as the terms and conditions of the contract the successful Proposer will execute with the County.*

2. PROPOSER'S RESPONSIBILITY

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

- A. have adequate financial resources or the ability to obtain such resources as required;
- B. be able to comply with all federal, state, and local laws, rules, regulations, ordinances and orders regarding this request for proposal;
- C. have a satisfactory record of performance;
- D. have a satisfactory record of integrity and ethics; and
- E. be otherwise qualified and eligible to receive an award.

3. TIME FOR RECEIVING PROPOSALS

Proposals may be submitted by mail or hand delivery and **must be submitted only to the Galveston County Purchasing Agent**. If by delivery, the Proposer must deliver the Proposal to the reception desk in the County Purchasing Agent's Office. The delivery and mailing instructions for the Galveston County Purchasing Agent are the following:

**Rufus Crowder, CPPO CPPB
Galveston County Purchasing Agent
722 Moody, Fifth (5th) Floor
Galveston, Texas 77550**

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Proposals will **not** be accepted by facsimile transmission or by electronic mail (email) unless superseded by instructions within the Special Provisions sections of this solicitation. Proposals must be received by the County Purchasing Agent on or before the deadline for the opening of the proposals. For clarity, mailing date/postmark is **not** sufficient – proposals **must be received** by the County Purchasing Agent on or before the deadline. Late proposals will not be accepted and will be returned to the proposer unopened. Proposals received prior to the submission deadline will be maintained unopened until the specified time for opening.

The County Purchasing Agent will accept proposals from 8:00 a.m. to 5:00 p.m. on each business day up to the submission deadline. Business days do not include Saturdays and Sundays, and do not include other days in which the County is closed for business in observance of holidays or for other reasons.

The time-stamp clock within the County Purchasing Agent's Office shall be the official time-clock for the purpose of this solicitation and thus shall be the determinant of whether the proposal was timely received.

The proposer should prominently identify the procurement number and name on the outside of the envelope/ mailing package. A label shall be provided for this purpose and usage of the label is preferred. If the proposer fails to identify the request for proposal number and name on the outside of the envelope as required, the Purchasing Agent will open the envelope for the sole purpose of identifying the solicitation 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 a proposal is not submitted, return this Request for Proposal and state reason (s), otherwise your name may be removed from the Purchasing Agent's mailing list.

4. COMPETITIVENESS, INTEGRITY, INQUIRIES AND QUESTIONS

To prevent biased evaluations and to preserve the competitiveness and integrity of the procurement process, **proposers are to direct all communications regarding this invitation to bid only 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 firm found to be in non-compliance.

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

**Rufus Crowder, CPPO CPPB, Purchasing Agent
722 Moody
Fifth (5th) Floor
Galveston, Texas 77550
Fax: (409) 621-7997
E-mail: purchasing.bids@co.galveston.tx.us**

All questions received and the responses thereto will be mailed, emailed, or faxed to all prospective proposers by addendum. No inquiries except clarification of instructions will be addressed by telephone.

Proposer is advised to carefully review this Request for Proposal – it provides specific information necessary to aid participating firms in formulating a thorough response. Proposer's failure to examine all documents shall not entitle the proposer to any relief from the conditions imposing in the Request for Proposal and the resultant contract.

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An authorized person from the proposer must sign the proposal. This signatory must be a person from the submitting firm who is duly authorized to tender and sign the proposal on behalf of the proposer and to bind the proposer to the terms and conditions of this Request for Proposal, the proposer's response, and all other terms and conditions of the contract. By this signature, the proposer further acknowledges that the proposer has read the request for proposal and proposal documents thoroughly before submitting a proposal and will fulfill the obligations in accordance to the terms, conditions, and specifications detailed herein.

5. PROPOSAL OPENING

The Purchasing Agent shall open the proposals on the date and time specified herein. Only the names of the proposers will be read at the opening. Proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and that keeps the proposals secret during negotiations. The Purchasing Agent will examine proposals promptly and thoroughly. Upon opening, no proposal may be withdrawn for a period of sixty (60) calendars days after the proposal opening date.

6. WITHDRAWAL OF PROPOSAL/FIRM BID RULE

Proposers may request withdrawal of their 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.

7. COMMISSIONERS COURT

No contract 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.

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

8. REJECTION OF PROPOSALS/DISQUALIFICATION

Galveston County, acting through its Commissioners Court, reserves the right to:

- reject any and all proposals in whole or in part received by reason of this request for proposal;
- waive any informality in the proposals received;
- disregard the proposal of any proposer determined to be not responsible;
- disregard the proposal of any proposer determined to have not submitted its proposal timely; and/or
- discontinue its efforts for any reason under this request for proposal package at any time prior to actual execution of contract by the County.

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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 forms furnished by the County, if applicable;
- B. Lack of signature by an authorized representative of proposer;
- C. Failure to properly complete the proposal;
- D. Engaging in communications regarding this procurement during the pendency of this procurement with County officials and/or personnel who are not within the Purchasing Agent's Office;
- E. Failure to meet the mandatory requirements of this request for proposal; and/or
- F. Evidence of collusion among proposers.

9. RESTRICTIVE OR AMBIGUOUS SPECIFICATIONS

It is the responsibility of the prospective proposer to review the entire request for proposal packet and to notify the Purchasing Agent if the specifications are formulated in a manner that would restrict competition or appear ambiguous. Any protest or question(s) regarding the specifications or proposal procedures must be received in the Purchasing Agent's Office not less than seventy-two (72) hours prior to the time set for proposal opening. Proposers are to submit their proposal as specified herein or propose an approved equal.

10. SUBSTITUTES/DESCRIPTION OF MATERIALS AND EQUIPMENT

Any brand name or manufacturer reference used herein is intended to be descriptive and not restrictive, unless otherwise noted, and is used to indicate the type and quality of material. The term "or equal" if used, identifies commercially produced items that have the essential performance and salient characteristics of the brand name stated in the item description. All supplies, material, or equipment shall be new and of the most suitable grade for the purpose intended. For clarification, "new" includes products containing recovered materials that are EPA-designated items and additionally see Section 63 of these General Provisions on contracts involving federal funds. It is not the County's intent to discriminate against any materials or equipment of equal merit to those specified. However, if proposer desires to use any substitutions, prior written approval must be obtained from the Purchasing Agent and sufficiently in advance such that an addendum may be issued. All material supplied must be one hundred percent (100%) asbestos free. Proposer, by submission of its proposal, certifies that if awarded any portion of this procurement, the proposer will supply only material and equipment that is 100% asbestos free.

11. EXCEPTIONS TO PROPOSAL

The proposer will list on a separate sheet of paper any exceptions to the conditions of this request for proposal. This sheet will be labeled, "Exceptions to Proposal Conditions", and will be attached to the proposal. If no exceptions are stated, it will be understood that all general and special 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 reserves the right to offer these alternatives to other proposers.

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12. PRICING

Proposals will be either lump sum or unit prices as shown on the proposal sheet. The net priced items will be delivered to Galveston County, including all freight, shipping, and delivery charges.

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

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 of 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.

13. PROCUREMENT CARD (P-CARD) PROGRAM

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

14. PASS THROUGH COST ADJUSTMENTS

Except in instances of extreme extenuating circumstances, Contractor prices shall remain firm throughout the contract period and any renewals. Examples of extreme extenuating circumstances include such situations as a nationwide rail strike, oil shortage or oil embargo.

In extreme extenuating circumstances, Contractors 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 Contractor's cost for the Contractor's 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) calendar days. Costs that historically are anticipated to rise over a period of time (for example only, such as wages or insurance costs) do not qualify for pass through. If a Contractor thinks he will be asking for a pass through cost adjustment during the term of the contract, then the original cost of the product to Contractor must be stated in Contractor's original proposal.

A request for a pass through cost does not guarantee that one will be granted. Contractors must submit such information on each request as required by the County Purchasing Agent. The County Purchasing Agent will review each request on a case-by-case basis and if valid submit the request to the Commissioners Court for authorization and determination of the appropriateness of each request as well as amount and duration of increase. Contractors will not be permitted any additional compensation for mark-ups or profits based on the increase in price. Rather, such additional compensation will be limited to the actual increase in original cost to the Contractor as such increase is reflected by the original cost stated in the bid. But in no event will the amount of additional compensation exceed 25% increase in Contractor's original cost for the product as such cost is reflected in Contractor's original proposal or the duration exceed a period of sixty (60) calendar days. In addition should the cost, during the period of the pass through, return to normal or decrease to below pre pass through prices, appropriate downward adjustments shall be made. No more than one pass through adjustment will be permitted per year.

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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 by the Purchasing Agent 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 of same.

16. PRE-PROPOSAL CONFERENCE

A pre-proposal conference for the purpose of discussing contract requirements and answering questions of prospective proposers may be conducted in this procurement. A pre-proposal conference may be mandatory or voluntary. If the pre-proposal conference is mandatory, then the County is authorized to condition acceptance of a proposal on compliance with attendance. The Special Provisions of this procurement shall specify if a pre-proposal conference is to be held and shall specify whether the pre-proposal conference is mandatory or voluntary. Regardless of whether the pre-proposal conference is mandatory or voluntary, only a principal, officer, or employee of the proposer may represent the proposer at the pre-proposal conference and no person may represent more than one proposer at the pre-proposal conference.

17. SIGNATURE OF PROPOSALS

Each proposal shall give the complete name of the proposer and the mailing address of the proposer and be signed 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 sheets may 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 on behalf of the proposer and to sign the proposal sheets and contract under the terms and conditions of this Request for Proposal and to bind the proposer hereto and further understands that the signing of the contract 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.

18. AWARD OF PROPOSALS – EVALUATION CRITERIA AND FACTORS

The award will be made to the responsible proposer whose proposal is determined to be the lowest and best evaluated offer demonstrating the best ability to fulfill the requirements set forth in this Request for Proposal. **The proposed cost to the County will be considered firm and cannot be altered after the submission deadline, unless the County invokes its right to request a best and final offer.**

"Lowest and best" means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale.

In determining the lowest and best bid for a contract for the purchase of earth-moving, material-handling, road maintenance, or construction equipment, the Commissioners Court may also consider the information submitted under Section 262.0255 of the Local Government Code; and in determining the lowest and best bid for a contract for the purchase of road construction material, the Commissioners Court may consider the pickup and delivery locations

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of the bidders and the cost to the county of delivering or hauling the material to be purchased. The Commissioners Court may award contracts for the purchase of road construction material to more than one bidder if each of the selected bidders submits the lowest and best bid for a particular location or type of material.

Each proposer, by submitting a proposal, agrees that if its' proposal is accepted by the Commissioners Court, the proposer will furnish all items and services upon which prices have been tendered and upon the terms and conditions in this proposal, including but not limited to the best and final offer if applicable, and the contract.

The contractor shall commence work only after the transmittal of a fully executed contract and after receiving written notification to proceed from the County Purchasing Agent. The contractor will perform all services indicated in the proposal in compliance with this contract.

Neither department heads nor elected officials are authorized to sign any binding contracts or agreements prior to being properly placed on the Commissioners' Court agenda and approved in open court. Department heads and other elected officials are not authorized to enter into any type of agreement or contract on behalf of Galveston County. Only the Commissioners Court, acting as a body, may enter into a contract on behalf of the County. Additionally, department heads and other elected officials are not authorized to agree to any type of supplemental agreements or contracts for goods or services. Supplemental agreements are subject to review by the County Legal Department prior to being signed by the County's authorized representatives.

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 the proposals; to disregard proposals that are not submitted timely; to disregard the proposals of proposers determined to be not responsible; and to accept the proposal that appears to be in the best interest of the County. The selection process may, however, include a request for additional information or an oral presentation to support the written proposal.

In determining and evaluating the best proposal, the pricing may not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the service offered, and the reputation of the service in general use will also be considered along with any other relevant items. The Commissioners Court shall be the sole judge in the determination of these matters.

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

A Proposer whose proposal does not meet the mandatory requirements set forth in this request for proposal will be considered non-compliant.

The invitation to submit a proposal which appears in the newspaper, or other authorized advertising mediums, these general provisions, the specifications which follow, the proposal sheets, and any addenda issued are all considered part of the proposal.

Each proposer, by submitting a proposal, agrees that if its proposal is accepted by the Commissioners Court, such proposer will furnish all items and services upon the terms and conditions in this request for proposal and the resultant contract.

Notice of contract award is anticipated to be made within ninety (90) days of opening of proposals to the lowest responsive and responsible contractor, whose proposal complies with all the requirements in the request for proposal.

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Contractor shall submit to the County, for approval, within ten (10) days from notice of contract award, all Certificates of Insurance evidencing the required coverage as described under Section 37, Requirement of and Proof of Insurance, or if different, then as described within the Special Provisions or resultant contract.

The contractor shall not commence work under these terms and conditions of the contract until all applicable Purchase Orders, Certificates of Insurance, Performance and Payment Bonds, and Irrevocable Letters of Credit (if required) have been approved by the County of Galveston and the Contractor has received notice to proceed in writing and an executed copy of the contract from the County Purchasing Agent.

19. DISPUTE AFTER AWARD/PROTEST

Any actual or prospective Proposer who is allegedly aggrieved in connection with this procurement or award of a contract resulting therefrom may protest. The protest shall 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 need not consider protests unless this procedure is followed.

20. PUBLIC INFORMATION ACT (f/k/a Open Records Act)

The proposer acknowledges that the County is a government 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 the provisions of the Public Information Act.

If proposer considers any of its submitted information to be proprietary in nature, trade secret, or otherwise confidential, then it must clearly and conspicuously mark such information as proprietary, trade, secret, or confidential. By the submission of its proposal, proposer expressly affirms that it has clearly and conspicuously marked any information within its submission that proposer considers confidential, proprietary, and/or trade secret.

In the event the County receives a request for information under the Public Information Act seeking information that the proposer has marked as confidential, proprietary, and /or trade secret, then the County agrees that it shall provide notice to the proposer of the request for information and the request for decision process under the Public Information Act. Thus, the County will submit the initial correspondence to the Texas Attorney General – however, the burden is and shall be on the proposer to submit correspondence to the Attorney General if the proposer wishes its information to be withheld. Proposer is deemed to have knowledge of the Public Information Act. **By the submission of its proposal, proposer expressly acknowledges that the burden to withhold its' information from public disclosure lays with the proposer;** thus, proposer further acknowledges and agrees that it shall submit comments to the Texas Attorney General in the request for decision process if proposer wishes to have its' information withheld from public disclosure.

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21. PROPOSER'S E-MAIL ADDRESSES – CONSENT TO DISCLOSURE

Notwithstanding the foregoing Section 20, proposer acknowledges and agrees that the confidentiality of any and all email addresses proposer uses or discloses in communicating with the County are **open** to the public in accordance with Section 552.137 of the Government Code and proposer consents to the release of its email addresses.

22. RESULTANT CONTRACT

Proposer shall correctly and fully execute the resultant contract first. After this, the contract shall be set for consideration by the Commissioners Court. If the Commissioners Court authorizes the execution of the contract, the resultant contract shall become effective upon the Commissioners Court execution of same, provided that the contract is executed by all parties to the contract. Contract documents shall consist of the contract, the General and Special Provisions, drawings, proposal package (including best and final offer(s) if such is utilized), any addenda issued, and any change orders issued during the work. If applicable to the attached proposal, proposer must sign three (3) original contracts and return all three with their proposal submittal.

Proposer should submit a proposed contract with its proposal or its sample material terms and conditions for review and consideration.

23. CONTRACT TERM

The term of the resultant contract will begin on the date of full execution or the execution by the Commissioners Court, whichever is later, and will terminate on the date specified in the resultant contract unless terminated earlier as herein set forth.

24. TERMINATION FOR DEFAULT

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) business 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) business 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 the County through 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 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.

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

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:

- A. Fails to meet delivery or completion schedules; and/or
- B. Fails to otherwise perform in accordance with the accepted proposal and the contract.

25. TERMINATION FOR CONVENIENCE

County may terminate this contract upon at least thirty (30) calendar days prior written notice for its convenience or for any reason deemed by the County to serve the public interest. As well, County may terminate this contract upon thirty (30) calendar days prior written notice for any reason resulting from any governmental law, order, ordinance, regulation, 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.

26. FORCE MAJEURE

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 Force Majeure claimed, but for no longer period.

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.

27. ESTIMATED QUANTITIES

Any reference to quantities shown in the request for proposal is 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.

28. 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 contract and to verify any representations made by the County upon which the contractor will rely. Proposer shall exercise due diligence and is further charged with knowledge of the local, State, and Federal laws, rules, and regulations applicable to this contract. If the proposer receives an award as a result of its proposal submission in this procurement, the proposer's failure to have made such investigations and examinations will in no way relieve the proposer from its obligation to comply in every detail with

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all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the contractor for additional compensation and/or for excused nonperformance.

29. NO COMMITMENT BY COUNTY OF GALVESTON

This request for procurement does not commit the County of Galveston 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 in response to this request for proposal and does not commit the County of Galveston to procure or contract for services or supplies.

30. PROPOSAL COSTS BORNE BY PROPOSER

Galveston County shall not be liable for any costs incurred by proposer in preparation, production, or submission of a proposal, including but not limited to best and final offer if applicable. As well, Galveston County shall not be liable for any work performed by proposer prior to issuance of fully executed contract and properly issued notice to proceed. Galveston County shall not be liable for any costs incurred by proposer by reason of attending a pre-proposal conference. Galveston County shall not be liable for any costs incurred by proposer by reason of the County invoking use of best and final offers.

31. BEST AND FINAL OFFERS (BAFO)

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 work and price when such action will be in the best interest of the County. This includes, but is not limited to, the solicitation of a Best and Final Offer from one or more of the proposers. If a Best and Final Offer is invoked, this allows acceptable proposers the opportunity to amend, change, or supplement their original proposal. Proposers may be contacted in writing by the Purchasing Agent, requesting that they submit their Best and Final Offer. Any such Best and Final Offer must include discussed and negotiated changes.

32. SINGLE PROPOSAL RESPONSE

If only one proposal is received in response to the request for proposal, a detailed cost proposal may be requested of the single proposer. 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.

33. 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 proposers in the form of addenda. The County is not bound by any oral representations, clarifications, or changes made in the written specifications by the County's employees or officials, unless such clarification or change is provided to proposers in a written addendum from the Purchasing Agent. Proposers are advised to inquire prior to the submission deadline as to whether any addenda to this request for proposal have been issued, as the successful proposer will be required to abide by such addenda.

The County of Galveston reserves the right to revise or amend the specifications up to the time set for opening of proposals. Such revisions and amendments, if any, shall be announced by form of addenda. Copies of such addenda

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(or addendum in the event only one addendum is issued in the procurement) shall be furnished to all prospective contractors. Prospective contractors are defined as those contractors listed on the County's request for proposal list for this material/service or those who have obtained documents from the Purchasing Agent's Office subsequent to the advertisement. If revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening of proposals may be postponed by such number of days as in the opinion of the County shall enable prospective contractors to revise their proposals. In any case, the proposal opening shall be at least seven (7) business days after the last revising or amendment addendum and the addendum shall include an announcement of the new date, if applicable, for the opening of proposals.

34. 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.

35. PROPOSAL DISCLOSURES

While this procurement is pending, the names of those who submitted proposals will not be made public unless in conformity with the County Purchasing Act. Likewise, no pricing, staffing, or other contents of the proposal information will be released unless in conformity with the County Purchasing Act. 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 or official, other than the County Purchasing Agent, regarding whether a proposal was received - violations of this provision may result in the rejection of a proposal.

36. INDEMNIFICATION

The contractor agrees 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, arising out of or in connection therewith on account of the loss of life, property or injury or damage to the 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 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. REQUIREMENT OF AND PROOF OF INSURANCE

The successful proposer shall furnish evidence of insurance to the County Purchasing Agent and shall maintain such insurance as required hereunder or as may be required in the Special Provisions or resultant contract, if different. Contractor shall obtain and thereafter continuously maintain in full force and effect, commercial general liability

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insurance, including but not limited to bodily injury, property damage, and contractual liability, with combined single limits as listed below or as may be required by State or Federal law, whichever is greater.

- 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.

Insurance shall be placed with insurers having an A.M. Best's rating of no less than A. Such insurance must be 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 loss or damage that may arise to any person or property by reason of services rendered by Contractor.

Galveston County shall be listed as the additional insured on policy certificates and shall be provided with no less than thirty (30) calendar days prior notice of any changes to the policy during the contractual period.

Certificates of Insurance, fully executed by a licensed representative of the insurance company written or countersigned by an authorized Texas state agency, shall be filed with the County Purchasing Agent within ten (10) business days of issuance of notification from the County Purchasing Agent to proposer that the contract is being activated as written proof of such insurance and further provided that proposer shall not commence work under this contract until it has obtained all insurance required herein, provided written proof as required herein, and received written notice to proceed issued from the County Purchasing Agent.

Proof of renewal/replacement coverage shall be provided prior to the expiration, termination, or cancellation date of any policy and Galveston County shall be named as an additional insured on any such renewal/replacement coverage and a certificate of insurance showing such shall be provided to the Purchasing Agent. Said insurance shall not be cancelled, permitted to expire, or changed without at least thirty (30) days prior written notice to the County.

Insurance required herein shall be maintained in full force and effect during the life of this contract and shall be issued on an occurrence basis. Contractor shall require that any and all subcontractors that are not protected under the Contractor's own insurance policies take and maintain insurance of the same nature and in the same amounts as required of Contractor and provide written proof of such insurance to Contractor. Proof of renewed/replacement coverage shall be provided prior to the expiration, termination, or cancellation date of any policy. Contractor shall not allow any subcontractor to commence work on the subcontract until such insurance required for the subcontractor has been obtained and approved.

Workers' Compensation Insurance: Successful proposer shall carry in full force Workers' Compensation Insurance Policy(ies), if there is more than one employee, for all its' 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 receiving notification from the County Purchasing Agent that the contract is being activated. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to

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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.

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

Subrogation Waiver. Proposer and proposer's insurance carrier waive any and all rights to subrogation against Galveston County in regard to any suit or claim arising out of personal injury or property damage resulting from proposer's performance under this agreement.

38. PROPOSAL GUARANTEE

Unless specified differently within the Special Provisions of this procurement, each proposer shall be required to submit a proposal guarantee with its proposal as required within this Section.

Evidencing its firm commitment to engage in contract if proposer is selected for award of contract, each proposer is required to furnish with their bid a cashier's check or an acceptable proposer's bond (generally, a bid bond) in the amount of five percent (5%) of the total contract price. If proposer is using a bond, then the bond must be executed with a surety company authorized to do business in the State of Texas. Failure to furnish the proposal guarantee in the proper form and amount, by the time set for opening of proposals may be cause for rejection of the proposal.

The cashier's check or proposer bond (as applicable) will be returned to each respective unsuccessful proposer(s) subsequent to the Commissioners Court award of contract, and shall be returned to the successful proposer upon the completion and submission of all contract documents. Provided however, that the cashier's check or proposer bond will be forfeited to the County as liquidated damages should successful proposer fail to execute the contract within thirty (30) days after receiving notice of the acceptance of its proposal.

39. PERFORMANCE AND PAYMENT BONDS (if required)

Successful proposer, before beginning work, shall execute a performance bond and a payment bond, each of which must be in the amount of the contract. The required payment and performance bonds must each be executed by a corporate surety authorized to write surety bonds in the State of Texas and in accordance with Chapter 3503 of the Insurance Code (codified in 2005 and originally within Section 1, Chapter 87, Acts of the 56th Leg., R.S., 1959, and in Article 7.19-1, Vernon's Texas Insurance Code).

The performance and payment bonds must each clearly and prominently display on the bond or on an attachment to the bond:

- a.) The name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- b.) The toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter

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521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll free-telephone number.

The performance bond shall be solely for the protection of Galveston County, in the full amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply labor or material, and in the amount of the contract.

The payment and performance bonds required to be furnished herein must be furnished before the contractor begins work and are a requirement for issuance of a Notice to Proceed. Such bonds must be furnished to the Galveston County Purchasing Agent within thirty (30) calendar days after the date of the full execution of the contract or, if applicable, as required under Chapter 2253, Government Code, whichever is earlier. Contractor's failure to provide the required payment and performance bonds within such time period shall constitute an event of default under this contract. Contractor shall not commence work until all applicable certificates of insurance, performance bonds, and payment bonds have been received and approved by the County Purchasing Agent and the Contractor receives notice to proceed in writing that has been issued by the County Purchasing Agent.

Additionally, if this request for proposal is for the award of a public works contract, then compliance with Chapter 2253 of the Texas Government Code, which is known as the McGregor Act, is mandatory. Performance and payment bonds are required to be furnished in accordance with Chapter 2253 of the Texas Government Code. Proposer should familiarize itself with the entire provisions of Chapter 2253 of the Texas Government Code.

40. PATENT AND COPYRIGHT PROTECTION

The proposer agrees at its sole expense to protect the County from claims involving infringement of patents, copyright, trademark, trade secret, or other intellectual property rights. **Proposer shall indemnify and save harmless the County of Galveston, its officers, employees, and agents, from liability of any nature and kind whatsoever, including without limitation cost and expenses, for or on account of any copyrighted, trademarked, trade secret, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, or other intellectual property rights, including its use by the County.** Proposer also agrees that if proposer is awarded this contract, that no work performed hereunder shall be subject to patent, copyright, or other intellectual property by proposer.

41. CONFLICT OF INTEREST DISCLOSURE REPORTING (FORM CIQ)

Proposer may be required under Chapter 176 of the Texas Local Government Code to complete and file a conflict of interest questionnaire (CIQ Form). The CIQ Form pertains to business relationship, gift giving and family relationship reporting. If proposer is required to file a CIQ Form, then the completed CIQ Form must be filed with the County Clerk of Galveston County, Texas.

Business relationship. If proposer has an employment or other business relationship with a local government officer of Galveston County or with a family member of a local government 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.

Gift-giving. If proposer has given a local government officer of Galveston County or a family member of a local government officer of Galveston County one or more gifts with an aggregate value of more than one-hundred dollars

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(\$100.00) 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.

Family member. For purposes of the business relationship and gift giving reporting requirements, a “family member” means a person related to another person with the first degree of consanguinity or affinity, as described by Subchapter B, Chapter 573, Texas Government Code. Examples of persons within the first degree by consanguinity or affinity include a son, daughter, father, mother, spouse, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepson, stepdaughter, stepmother, and stepfather.

Family relationship. If proposer has a “family relationship” with a local government officer of Galveston County then proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County, regardless of whether proposer has a business relationship or has given gifts to the local government officer or a family member of the local government officer. For this purpose, “family relationship” means proposer is related within the third degree by consanguinity or the second degree by affinity, as those terms are defined under Chapter 573 of the Texas Government Code, to a local government officer of Galveston County. Examples of such relationships include a son, daughter, mother, father, brother, sister, grandchild, great-grandchild, grandparent, great-grandparent, niece, nephew, uncle, aunt, spouse, mother-in-law, father-in-law, daughter-in-law, son-in-law, spouse’s grandchild, spouse’s grandparent, grandparent’s spouse, grandchild’s spouse, stepson, stepdaughter, stepmother, and stepfather.

Proposer must file its original CIQ Form with the Galveston County Clerk. 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 package. Blank CIQ Form(s) may also be obtained by visiting the Purchasing Agent’s website – this website is linked from the Galveston County homepage, at <http://www.galvestoncountytexas.gov>.

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 of the Local Government Code. 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, and the failure to file may be grounds to void the contract, if proposer is awarded a contract.

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If proposer has any questions about compliance with Chapter 176, proposer may wish to consult its' 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.

42. DISCLOSURE OF INTERESTED PARTIES/FORM 1295

Under Section 2252.908 of the Government Code, any business entity that enters into a contract with Galveston County that requires the approval of the Commissioners Court must submit a "Disclosure of Interested Parties" to the County prior to the execution of the contract. This form, the "Disclosure of Interested Parties" form was promulgated by the Texas Ethics Commission, and is the "Form 1295". **This procurement is subject to these requirements.**

The Texas Ethics Commission was charged with promulgating rules to implement Section 2252.908 of the Government Code. The rules adopted by the Texas Ethics Commission are located at Sections 46.1, 46.3, and 46.5 of Title 1 of the Texas Administrative Code. Thus, the law covering these requirements is located at Section 2252.908 of the Government Code, and in Title 1, Sections 46.1, 46.3, and 46.5 of the Texas Administrative Code.

The Texas Ethics Commission's website is: www.ethics.state.tx.us. The area of the Texas Ethics Commission website pertaining to Form 1295 is:

www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

Form 1295 must be completed electronically through the Texas Ethics Commission website (handwritten forms are not allowable). Once the business entity has completed their electronic filing of Form 1295, then the business entity must print out the electronically completed form, and sign and notarize the Form 1295. Once Form 1295 is signed and notarized, the business entity must submit their completed, signed, and notarized Form 1295 to the Galveston County Purchasing Agent.

Successful Proposer is and shall be subject to these requirements, and no resultant contract may be executed by the Commissioners Court until the completed, signed, and notarized Form 1295 is on file with the County Purchasing Agent.

No portion of the Form 1295 process commits the County to any type of award of contract whatsoever.

After the Purchasing Agent's Office receives the completed, signed, and notarized Form 1295, the Purchasing Agent's Office will, within 30 days, go the Texas Ethics Commission website to submit electronic confirmation of the County's receipt of the completed, signed, and notarized Form 1295.

43. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS & REQUIREMENT TO REGISTER IN SAM

Proposer certifies that neither it, nor any of its Principals, are presently debarred, suspended, proposed for debarment, disqualified, excluded, or in any way declared ineligible for the award of contracts by any Federal agency. Contractor agrees that it shall refund Galveston County for any payments made to Contractor while ineligible. Contractor acknowledges that Contractor's uncured failure to perform under this Agreement, if such should occur, may result in Contractor being debarred from performing additional work for the County, the respecting State Agency administering the grant funding the contract, if applicable, the State, FEMA or HUD (as applicable), and other Federal and State

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entities. Further, proposer has executed the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters and returned the fully completed and executed original certification with the submission of its proposal. **The truthful and fully completed and executed original of the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters must be included with the submission of proposer's proposal and is a mandatory requirement of this request for proposal. Proposer's failure to include the fully completed and executed original of this Certification shall be considered non-compliance with the requirements of this request for proposal and grounds for the rejection of proposer's proposal.** Proposer shall immediately notify the County Purchasing Agent if it becomes debarred or suspended, placed on the Consolidated List of Debarred Contractors, or in any other way becomes ineligible for award of contract by any Federal agency. This Certification is a material fact relied upon by Galveston County; if it is later determined that the contractor did not comply with 2 C.F.R. Part 180 and 2 C.F.R. Part 3000, in addition to the remedies available to Galveston County and the State agency administering this grant, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment of contractor.

If the contract to be awarded pursuant to this procurement involves the use of Federal funds, then proposer must also be registered in the Federal Contractor Registry through the System for Award Management (SAM) to be eligible for award of contract pursuant to this procurement.

Information regarding the SAM is available at:

<http://www.federalcontractorregistry.com/?gclid=CIG1hf2rr8wCFYkCaQoducANZw> or at
<https://www.sam.gov/portal/SAM/#1>.

No contract involving the use of Federal funds may be awarded to any proposer unless and until such registration is current and in good standing under SAM. Successful proposer must maintain SAM registration throughout the entire term of the agreement with the County. If this contract involves the use of Federal funds, then proposer must enclose proof of such SAM registration within its response, which is also a mandatory requirement of this procurement; failure to enclose such proof shall be considered non-compliance with the requirements of this procurement and grounds for the rejection of proposer's response to this procurement (i.e., bid, proposal, or qualifications statement, as applicable).

44. 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 contract.

45. CONTROLLING LAW AND VENUE

Proposer acknowledges and agrees that the contract is and shall be governed and construed by the laws of the State of Texas and that venue shall lie exclusively in a court of competent jurisdiction in Galveston County, Texas.

46. 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.

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If subsequent to the award of any contract resulting from this request for proposal the proposer shall merge or be acquired by another firm, the following documents must be submitted to the County:

- A. Corporate resolutions prepared by the awarded Bidder and the new entity ratifying acceptance of the original contract, terms, conditions and prices;
- B. New entity's Federal Identification Number (FEIN);
- C. New entity's proposed operating plans;
- D. New entity's proof of registration in SAM for contracts involving Federal funds;
- E. New entity's certification regarding debarment;
- F. New entity's certification regarding lobbying; and
- G. W-9 Form for new entity

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.

47. DELAYS

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.

48. ACCURACY OF DATA

Information and data provided through this request for proposal are believed to be reasonably accurate.

49. SUBCONTRACTING/ASSIGNMENT

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

50. INDEPENDENT CONTRACTOR

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 proposer's subcontractors perform in providing the requirements stated in the request for proposal.

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51. MONITORING PERFORMANCE

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.

52. SUBJECT TO APPROPRIATION OF FUNDS

State law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved by the Commissioners Court. Galveston County anticipates this to be an integral part of future budgets to be approved during the periods of this contract, except for unanticipated needs or events which may prevent such payments against this contract. However, Galveston County cannot guarantee the availability of funds, and enters into this contract only to the extent such funds are made available through appropriation (allocation) by the Commissioners Court. This contract shall not be construed as creating any debt on behalf of the County of Galveston in violation of TEX. CONST. art. XI, § 7, and it is understood that all obligations of Galveston County are subject to the availability of funds.

53. CONTRACTS SUBJECT TO GRANT FUNDING

Notwithstanding the foregoing, if the contract to be awarded by this procurement is funded with Federal or State grant funds, the proposer acknowledges that the obligations of the County under the contract are contingent upon the continued availability of grant funding to meet the County's obligations. If the grant(s) to the County is reduced, de-obligated, or otherwise discontinued or terminated, Contractor agrees that the County may immediately terminate the contract without penalty or any liability whatsoever on the part of the County, the State, or the Federal awarding agency.

54. 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.

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.

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

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

Gratuities:

It shall be a breach of ethics for any person to offer, give, or agree to give any employee or former 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 a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or bid 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 to any person associated therewith, as an inducement for the award of a contract, 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 other person.

Prohibition against Contingent Fees:

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It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Galveston County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Failure to abide by this section constitutes a breach of ethical standards.

Representation:

Proposer represents and warrants, by signing and submitting its proposal, that it has not retained anyone in violation of this section prohibiting contingent fees.

Contract Clause:

The representation prescribed above shall be conspicuously set forth in every contract and solicitation thereof.

55. NON-COLLUSION AFFIDAVIT

Proposer certifies, 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 contractor has not directly or indirectly induced or solicited another contractor to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham proposal or that anyone shall refrain from bidding; that the contractor has not in any manner, directly or indirectly, sought by agreement, communications, or conference with anyone to fix the bid price of the contractor of any other proposer, or to fix any overhead, profit or cost element of the proposal price, or that of any other contractor, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the contractor has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any cooperation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

A blank Non-Collusion Affidavit is included with this proposal packet. Proposer must enclose a truthful and fully executed original Non-Collusion Affidavit with the submission of its proposal. This is a mandatory requirement of this request for proposal. Failure to include the truthfully and fully executed Non-Collusion Affidavit in the submission of its proposal shall be considered non-compliance with the requirements of this request for proposal by the Proposer and grounds for the rejection of Proposer's submission.

No negotiations, decisions, or actions shall be initiated by any company as a result of any verbal discussion with any County employee 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 shall have any personal or financial interest, direct or indirect, in any contract or negotiation process thereof. The above compliance request will be part of all County of Galveston contracts for this service.

56. CERTIFICATION REGARDING LOBBYING

Proposer certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder, to any person for influencing or attempting to influence a department or employee of an agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant,

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the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence a department or employee of any agency, a member of Congress, a department or employee of congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the bidder shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- c. Proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The truthful and fully completed and executed original of the Certification Regarding Lobbying (included with bid packet) must be included with the submission of proposer’s proposal and is a mandatory requirement of this request for proposal. Proposer’s failure to include the fully completed and executed or original of this Certification shall be considered non-compliant with the requirements of this request for proposal and grounds for the rejection of the Proposer’s proposal. Submission of the certification is a prerequisite for making or entering into a contract with Proposer and is imposed by Section 1352, Title 31, United States Code. Further, any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

57. NON-DISCRIMINATION

- a. **Equal Employment Opportunity:** Proposer will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, genetic information or veteran status. Proposer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, disability, genetic information or veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices of employment.

Proposer will, in all solicitation or advertisements for employees placed by or on behalf of proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, disability, genetic information, or veteran status.

Proposer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

Proposer will include the provisions herein in every subcontract or purchase order unless exempted.

- b. **Drug Free Work Place Act:** Proposer shall comply with all applicable requirements of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. § 8102, et seq.) and implementing regulations thereunder.

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- c. Americans with Disabilities Act: Proposer shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (Public Law 101-136) and implementing regulations thereunder.
- d. OSHA Regulations: Proposer agrees to maintain and to display any applicable materials for its employees in accordance with OSHA regulations.
- e. Compliance with Immigration Laws and Use of E-Verify: Proposer agrees to comply with all requirements of the U.S. Immigration Reform and Control Act of 1986, as amended, and any implementing regulations thereto. Proposer further agrees to utilize the E-Verify system through the Department of Homeland Security on its employees. Proposer shall not employ unauthorized aliens, and shall not assign services to be performed to any supplier or subcontractor who are unauthorized aliens. If any personnel performing any services hereunder are discovered to be an unauthorized alien, then Proposer will immediately remove such personnel from performing services hereunder and shall replace such personnel with personnel who are not unauthorized alien(s).
- f. State and Federal Law Compliance: Proposer agrees to comply with all other State and Federal laws and regulations applicable to the provision of services under this contract.

58. RECORD RETENTION AND RIGHT TO AUDIT

Proposer shall keep and maintain all records associated with this contract for a minimum of five (5) years from the close of the contract or as required by Federal or State law or regulation, whichever period is longer. If awarded this contract, proposer shall allow the County reasonable access to the records in proposer's possession, custody, or control that the County deems necessary to assist it in auditing the services, costs, and payments provided hereunder. If this contract involves the use of Federal or State funds, then proposer shall also allow reasonable access to representatives of the Office of Inspector General, the General Accounting Office, the State Auditor's Office, and the other Federal and/or State agencies overseeing the funds that such entities deem necessary to facilitate review by such agencies and proposer shall maintain fiscal records and supporting documentation for all expenditures in a manner that conforms with OMB Circular A-87 (relocated to 2 C.F.R. Part 225) and this contract.

59. TITLE VI ASSURANCES/TxDOT

The County is subject to Title VI of the Civil Rights Act of 1964 and the Federal and State laws and regulations of the United States Department of Transportation and Texas Department of Transportation (TxDOT). Pursuant to these requirements, the County must have its contractors provide required assurances on compliance with non-discrimination by itself and its subcontractors. The Title VI Assurances within this Subsection are not exhaustive – whenever any Federal, State, or Local requirement requires additional clauses, this list shall not be construed as limiting. Contractor agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this contract.
- (2) **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, religion, sex, age, disability or Veteran status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the

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Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- (3) **Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, religion, sex, age, disability or Veteran status.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Galveston County or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to Galveston County or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Non-compliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, Galveston County shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
- (a) withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
 - (b) cancellation, termination, or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as Galveston County or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request Galveston County to enter into such litigation to protect the interests of Galveston County, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

60. SECTION 231.006, FAMILY CODE/DELINQUENT CHILD SUPPORT

Pursuant to Title 5, Section 231.006 of the Texas Family Code, as applicable, Proposer certifies that it, including all of its principals, is/are current in child support payments and that it is eligible to receive payments from State funds under a contract for property, materials, or services. Proposer acknowledges and agrees that if it is awarded this contract, then the ensuing agreement may be terminated and payment withheld if this certification is inaccurate. Finally, by the submission of its proposal, the Proposer certifies that it has included the names and social security numbers of each person with at least 25% ownership interest in Proposer within its response to the request for proposal and that all such persons are current in child support payments.

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61. ANTITRUST

Pursuant to 15 U.S.C. § 1, et seq., and Texas Business and Commerce Code, Chapter 15, Contractor, by the submission of its proposal, certifies that neither Contractor nor any natural person, proprietorship, firm, corporation, partnership, association, or institution represented by Contractor or anyone acting for such natural person, proprietorship, firm, corporation, partnership, association, or institution has violated any Federal or State antitrust laws or communicated the nature of the offer, directly or indirectly, to any competitor or other person engaged in a similar line of business.

62. LABOR STANDARDS

On contracts funded under a federal grant: Proposer acknowledges that the contract to be awarded pursuant to this solicitation is on a grant program funded with Federal funds. Proposer shall comply with the requirements of 29 CFR Part 5 and Part 30 and shall be in conformity with Executive Order 11246, entitled “Equal Employment Opportunity”, Copeland, “Anti-Kickback” Act (40 U.S.C. 3145, 29 C.F.R. Part 3), the Davis-Bacon and Related Acts (40 U.S.C. 3141-3148, 29 C.F.R. Parts 1,3, and 5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), and all other applicable Federal, State, and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement. Proposer is also responsible for ensuring that all subcontractors comply with the requirements of 29 CFR Part 5 and Part 30 and shall be in conformity with Executive Order 11246, entitled “Equal Employment Opportunity”, Copeland “Anti-Kickback” Act, the Davis-Bacon and Related Acts (29 CFR Parts 1, 3 and 5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), and all other applicable Federal, State, and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement.

63. PROCUREMENT LAWS

- a. Proposer shall comply with all applicable local, State, and Federal laws, rules, and regulations.
- b. If this contract is made pursuant to a federal award, then Contractor acknowledges that the contract is subject, without limitation, to applicable provisions within 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Contractor shall comply with applicable provisions within 2 C.F.R., Sections 200.319 through 200.326, including but not limited to the following:
 - 1.) **Equal Employment Opportunity**, 41 C.F.R. Part 60-1.4(b) (applicable to federally assisted construction contracts).
 - (a) During the performance of this contract, the contractor agrees as follows:
 - (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national original, disability, or veteran status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national original, disability or veteran status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national original, disability, or veteran status.

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- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and by rules, regulations, and relevant orders of the Secretary of Labor.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to contractor's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- 2.) **Small and minority business, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321).** The County is required to take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. This includes requiring the prime contractor, if subcontracts are to be let in the performance of this contract, to itself take affirmative steps in letting the subcontract. Accordingly, if subcontracts are to be let in the performance of this contract, the contractor must take affirmative steps in the letting of the subcontract(s), which must include:
- (a) placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; and
 - (d) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

In accordance with FEMA procurement guidance:

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A small business is a business that is independently owned and operated, not dominant in the field of operation in which it is bidding on Galveston County contracts, and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Part 121.

A women's business enterprise is a business enterprise that is: (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women.

A minority business is a business that is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.

- 3.) **Davis-Bacon Act as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act as supplemented by the Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractor must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity (the County) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be condition upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contract must also include a provision for compliance with the Copeland Anti-Kickback Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
- 4.) **Compliance with the Copeland "Anti-Kickback" Act.** Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. "Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title [Title 18, U.S.C.] or imprisoned not more than five years, or both." 18 U.S.C. § 874.
 - (a) Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.
 - (b) The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Federal awarding agency may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - (c) Breach. A breach of the contract clause above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- 5.) **Contract Work Hours and Safety Standards Act.**

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- (a) Where applicable, all contracts awarded by the County in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by the Department of Labor regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.S. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or material or articles ordinarily available on the open market, or contractors for transportation or transmission of intelligence.
- (b) Compliance with the Contract Work Hours and Safety Standards Act.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this subsection the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this subsection, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this subsection.
- (3) Withholding for unpaid wages and liquidated damages. The awarding Federal agency, State agency, or the County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this subsection.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this subsection and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this subsection.
-
- 6.) **Rights to Inventions Made Under a Contractor Agreement.**
- (a) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the

**GENERAL PROVISIONS – REQUEST FOR PROPOSAL
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substitution of parties, assignment or performance of experimental, developmental, or research work under the “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- (b) Stafford Act Disaster Grants. This requirement does not apply to Public Assistance, Hazard Mitigation Grant Program, Crisis Counseling Assistance and Training Grant program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
 - (c) The regulations and 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- 7.) **Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act 933 U.S.C. §§ 1251-1387), as amended.**
- (a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq., and agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Contract Act, as amended, 33 U.S. C. § 1251, et seq.
 - (b) The contractor agrees to report each violation of the Clean Air Act and/or the Federal Water Pollution Control Act to the Federal awarding agency, the State agency administering the grant, and the Regional Office of the Environmental Protection Agency (EPA) and understands and agrees that the Federal awarding agency, the State agency, and the EPA will, in turn, report each violation as required to assure notification to Galveston County, the Federal Emergency Management Agency, and the appropriate EPA Regional Office.
- 8.) **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 and 12689. The Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

Contractor must comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C, and 2 C.F.R. Part 3000, Subpart C, while this offer is valid and through the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9.) **Procurement of Recovered Materials.**

- (a.) A non-Federal entity that is a State agency or agency of a political subdivision of the State and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Public Law No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962).

**GENERAL PROVISIONS – REQUEST FOR PROPOSAL
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(b.) In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

(c) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines website, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <https://www.epa.gov/cpg/products.htm>.

In the event of any discrepancy between the provisions in this Section 63 of General Provisions and provisions on the same subject elsewhere within this procurement, the most stringent shall control.

64. ENTIRETY OF AGREEMENT AND MODIFICATION

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.

65. NOTICE

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 at such other address as may have been previously given in writing to the parties (proposer shall provide its notice information with its proposal submission). If mailed, the notice shall be deemed delivered when actually received, or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, duly certified, return receipt requested, with proper postage affixed. If delivered in person, notice shall be deemed delivered when receipted for by, or actually received by, the receiving Party. If transmitted by facsimile, notice shall be deemed delivered when receipt of such transmission is acknowledged.

To the County at:

Hon. Mark Henry,
County Judge of Galveston County
722 Moody (21st Street), Second (2nd) Floor
Galveston, Texas 77550
Fax: (409) 765-2653

**GENERAL PROVISIONS – REQUEST FOR PROPOSAL
HITCHCOCK BOAT RAMP CONCESSION
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With copies to:

Rufus Crowder, CPPO CPPB,
Galveston County Purchasing Agent
722 Moody (21st Street), Fifth (5th) Floor
Galveston, Texas 77550
Fax: (409) 621-7997

To the Contractor at:

(Proposer to provide its contact name, address, and facsimile number for notice under the contract.)

66. USE OF DHS SEAL, LOGO, AND FLAGS PROHIBITED WITHOUT PRIOR APROVAL

Contractor must obtain permission from the U.S. Department of Homeland Security financial assistance office (DHS FAO) **prior** to using DHS seals(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard Officials.

67. FEDERAL GOVERNMENT NOT A PARTY

Contractor acknowledges that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to Galveston County, contractor, or any other party pertaining to any matter resulting from the contract.

68. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

In contracts funded through Federal grants, Contractor acknowledges that 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements (31 U.S.C. § 3801, et seq.) and the implementing regulations thereunder, 49 C.F.R. Part 79, apply to Contractors actions pertaining to the contract.

69. LEAD AND ASBESTOS

If this request for proposal involves remediation, demolition, reconstruction, rehabilitation, repair, or construction, or other applicable activities, the Contractor shall be responsible for performing investigations of lead and asbestos containing materials, and any required lead and asbestos abatement in compliance with Federal, State, and local laws, rules, regulations, ordinances and orders, relating to lead abatement and asbestos abatement as applicable, including but not limited to the Texas Asbestos Health Protection Act, codified as Chapter 1954 of the Occupations Code; the Texas Asbestos Health Protection Regulations, located at Title 25, Part 1, Chapter 295, Subchapter C of the Texas Administrative Code; Chapter 1955 of the Texas Occupations Code (lead-based paint abatement); the Texas Environmental Lead Reduction regulations, located at Title 25, Part 1, Chapter 295, Subchapter I of the Texas Administrative Code; the federal National Emission Standards for Asbestos regulations, located at Title 40, Part 61, Subpart M of the Code of Federal Regulations, and the National Emission Standards for Hazardous Air Pollutants. Contractor shall perform such inspections, encapsulation, remediation or other actions as required by federal, State, or local requirements in accordance with the federal Environmental Protection Agency (EPA), Texas Department of State Health Services (TXDSHS), and Texas Commission on Environmental Quality (TCEQ) requirements.

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70. ACKNOWLEDGMENT OF GOVERNMENT RECORD

Proposer acknowledges that its submission in this Request for Proposals, including its Proposal, certifications, affidavits, Vendor Forms (i.e., PEID, W-9, CIQ, etc.) constitutes government records under Chapter 37 of the Texas Penal Code.

71. COMPLIANCE WITH GALVESTON COUNTY PURCHASING POLICIES AND PROCEDURES

Proposer acknowledges, by its submission in this Request for Proposals, that it shall comply with the Galveston County Purchasing Policies & Procedures Manual approved by Order of the Galveston County Commissioners Court on March 7, 2018.

End of General Provisions Section

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**REQUEST FOR PROPOSALS
HITCHCOCK BOAT RAMP CONCESSION
SPECIAL PROVISIONS**

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SPECIAL PROVISIONS**

The Special Provisions and the General Provisions of this Request for Proposal and the Exhibits attached hereto are made a part of the agreement between the Parties. In the event of a conflict between the General Provisions and the Special Provisions, the terms of the Special Provisions shall control.

A. PURPOSE:

Galveston County will accept sealed proposals for the granting of a Concession Agreement for the maintenance and operation of a Bait Camp and Food and Beverage Refreshment Concession at the Hitchcock Boat Ramp, located adjacent to the Highland Bayou Diversionary Canal on Second Avenue, Hitchcock, Texas. The primary term of the Concession Agreement will be for three (3) years. There will be two (2) additional one (1) year options to renew.

B. DEFINITIONS: (As mentioned in FAR Subpart 52.2—Text of Provisions and Clauses)

52.202-1 Definitions.

Definitions (Nov 2013)

When a solicitation, provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures

C. BID/PROPOSAL GUARANTEE:

A 5% bid bond is not a requirement of this solicitation request.

D. PERFORMANCE AND PAYMENT BONDS:

Performance and Payment Bonds are not a requirement of this solicitation request.

E. PROCUREMENT TIMELINE:

A timeline for this RFP and initial process are included below. Galveston County reserves the right to change these dates and will notify proposers of any changes via addendum:

Advertise RFP (first date of publication)	Thursday, May 7, 2020
Advertise RFP (second date of publication)	Thursday, May 14, 2020
Pre-Proposal Conference	Wednesday, May 20, 2020 at 10:00 a.m.
Deadline for Questions & Inquiries	Thursday, May 28, 2020 by 5:00 p.m.
Proposals due from proposers/RFP Opening	Thursday, June 11, 2020 at 2:00 p.m.

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F. SUBMISSION INSTRUCTIONS:

One (1) unbound original and four (4) copies must be submitted no later than **2:00 P.M. CST**, on **Thursday, June 11, 2020** to:

**Rufus G. Crowder, CPPO CPPB
Purchasing Agent
County of Galveston
722 Moody Avenue (21st Street), Fifth (5th) Floor
Galveston, TX 77550**

The time stamp clock located in the Purchasing Agent's office shall serve as the official time keeping piece for this solicitation process. Any proposals received after **2:00 P.M. CST** on the specified date will be returned unopened.

Proposal Specifications can be obtained at the office of the Galveston County Purchasing Agent, located in the Galveston County Courthouse, 722 Moody, (21st Street), Floor 5, Purchasing, Galveston, Texas 77550, or by visiting the Galveston County website @ <http://www.galvestoncountytexas.gov/pu/Pages/BidListing.aspx>

G. PRE-PROPOSAL CONFERENCE:

A non-mandatory pre-bid conference will be held on **Wednesday, May 20, 2020, at 10:00 a.m. at the Hitchcock Boat Ramp, which is adjacent to the Highland Bayou Diversionary Canal on Second Street in Hitchcock, Texas.**

H. TYPE OF CONTRACT:

It is the intent of this solicitation to enter into a contract that meets federal guidelines. It is imperative that all responders seeking a contract under this RFP solicitation effort must familiarize and adhere to the procurement standards as referenced in 2 C.F.R. Part 200, Sections 200.317-200.326, and Appendix II, 2 C.F.R. Part 200. Sections 200.317–200.326 and Appendix II are attached hereto as **Exhibit A**.

The resultant contract consists of the following documents: Request for Proposal, General Provisions, Special Provisions, General Terms and Conditions (including specifications, drawings, and addenda), Responder's response, Proposal Sheets, contract award, and any other documents referenced herein or attached hereto for the work. Collectively these documents may also be referred to as the Plans and Specifications.

In an effort to satisfy cost reasonableness responsibilities, the County of Galveston reserves the right to obtain additional quotes and current pricing information from the successful contractor and other contractors to perform the work as stated per the specification listed herein and in the resultant contract. The solicited results may be used by the County to determine if the contract extensions or amendments will be considered or other service options be utilized.

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I. COLLATERAL CONTRACT:

The County reserves the right to provide by separate contract or otherwise, in such manner as not to delay its programs or damage said Contractor, all labor and material essential to the completion of the work that is not included in this contract.

J. AWARD PRICE:

Award prices include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Awardee is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Awardee shall indemnify and save harmless the County, its officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, tool, material, equipment, or process, to be performed under the contract, and shall indemnify the County its officers, agents, and employees for any costs, expenses and damages which may be incurred by reason of any infringement at any time during the prosecution or after the completion of the work.

K. PERSONNEL TO CONTACT REGARDING THIS SOLICITATION:

Proposers desiring an explanation or interpretation relative to this solicitation must request it in writing. Oral explanations or instructions will not be binding. Any information given to a Proposer, which in the opinion of the County affects all responders or would be prejudicial to other proposers if not communicated, shall be furnished to all proposers as an addendum to the solicitation. Proposers **must** direct all inquiries to the following:

**Rufus G. Crowder, CPPO CPPB
Purchasing Agent
722 21st Street (Moody), 5th Floor
Galveston, Texas 77550
E-mail: purchasing.bids@co.galveston.tx.us**

Proposers must e-mail their inquiries (with the subject line “**Hitchcock Boat Ramp Concession – RFP #B202009 – Questions**”) for additional information and/or clarification to the address listed above. The request must include the Proposer’s name and the RFP number and title. ***Any request for additional information or clarification must be received in writing no later than seven (7) calendar days prior to the proposals due date.*** Late requests or those not delivered to the proper address may not receive a reply. Proposers shall not attempt to contact the County by any other means. The Purchasing Agent’s Office shall post the answers to the County website from the procurement web page and via addendum.

The County will issue responses to inquiries and any other corrections or amendments, it deems necessary, in the form of a written addendum, issued prior to the Proposal Submission Date. The County, at its sole discretion, may not issue a response to a RFI submittal. Proposers should not rely on any oral or written representations, statements, or explanations, other than those made in this RFP or in any written addendum to this RFP. Where there appears to be conflict between the RFP and any issued addenda, the last addendum issued will prevail. Addenda will be posted and made available on the County’s procurement web page. It is Proposer's sole responsibility to ensure receipt of all addenda prior to submitting its proposal. All Proposers should check the County’s procurement web page for all addenda prior to submitting a response. The County’s procurement web page is located at www.galvestoncountytx.gov/pu/Pages/BidListing.aspx.

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The Proposer must acknowledge the receipt of all addenda on the forms provided. In the event a Proposer fails to acknowledge receipt of such addenda, the County may, at its sole discretion, determine that such failure to acknowledge any or all addenda does not materially affect the Proposal and waive the acknowledgement of one or more addenda.

Proposers who submit inquiries *after* the deadline date for receipt of questions indicated on the Procurement Timeline, risk that its response in the procurement will not be responsive or competitive because the County is not able to respond before the proposal receipt date or in sufficient time for the Proposer to prepare a responsive or competitive submittal.

L. PROGRAM ADMINISTRATION:

The County's Parks and Cultural Services Department has designated a Program Administrator that will manage the work to be performed under the resultant contract, who for the purpose of this RFP is:

Julie Diaz
Parks and Cultural Services Director
4102 Main (FM 519)
La Marque, TX
(409) 934-8114
Email: julie.diaz@co.galveston.tx.us

The Galveston County Commissioners Court, and/or authorized designees will be responsible for negotiating with the successful Vendor the scope of work, the standards of performance, the specific technology provided, and the support services required for the proposed projects. All contractual amendments will be processed in accordance with Galveston County Purchasing Policies. Amendments will also be brought to Galveston County Commissioners Court for approval as deemed necessary. The approval process serves to ensure the project technology and/or service is within the scope of the resultant contract, and that pricing meets the agreed upon pricing methodology as specified in the contract, and that funds are available.

M. DISASTER AND EMERGENCY RESPONSE:

In an effort to satisfy cost reasonableness responsibilities and reimbursement initiatives in times of declared emergencies or disasters and their recovery efforts, the County of Galveston reserves the right to obtain additional quotes and current pricing information from the successful contractor and other contractors to perform the work as stated per the specifications listed herein and in the resultant contract. These services shall be solicited on the open market with the same specifications as listed herein and as stated in the resultant contract, however, may include scope changes due to the unknown status of the emergency.

The County of Galveston reserves the right to utilize the most advantageous and cost-effective solution(s) during the duration of the declared event and recovery period in an effort to relieve the taxpaying citizens of increased burden and financial hardship

N. LABOR:

Contractor is encouraged to use local labor, but not at the expense of poor workmanship and higher cost. Contractor will not discriminate against any employee or applicant for employment because of race, religion,

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color, sex or national origin. Contractor agrees to post in a conspicuous place a notice setting forth provisions of this non-discrimination clause

O. HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISE (HUB) PARTICIPATION:

It is the goal of the Galveston County Commissioners' Court to have Historically Underutilized Business enterprises (HUB) and labor surplus firms participation when providing services under a contract. If proposer(s) awarded a contract as a result of this solicitation effort do not hold a HUB certification/designation, then the Awardee shall make and demonstrate a good faith effort to include the services of HUB participation under a contract. As part of a good faith effort, Awardee agrees to work with and assist in meeting HUB targets and goals, as may be required by any rules, processes or programs that have a requirement for such. Such assistance may include such things as compliance with reporting requirements, provision of documentation, consideration of Certified/Listed sub-contractors, provision of documented evidence that an active participatory role for a HUB entity was considered in a procurement transaction, etc.

The term HUB as used in this solicitation, is understood to encompass all programs, business enterprises such as Small Disadvantaged Businesses (SBE) Disadvantage Business Enterprises (DBE), Minority Owned Business Enterprises (MBE), Women Owned Business Enterprises (WBE), and Disabled Veteran Business Enterprises (DVBE).

There are many designations other than "HUB" used across the country within various jurisdictions. Examples include terms such as Disadvantaged Business Enterprise (DBE), Minority Owned Business Enterprise (MBE), Woman Owned Business Enterprise (WBE), Small Disadvantaged Business (SDB), Small, Woman or Minority-owned Business (SWAM), etc. Regardless of the formal designation, the overall objective of the relevant programs are basically the same, i.e. to insure that disadvantaged and underutilized members of the business community receive a fair share of public spending. The term HUB as used herein shall be understood to encompass all such programs/business enterprises, no matter what terminology is used.

The terms "Certified" and "Listed" as used in conjunction with HUB programs relate to the process of HUB qualification review. Jurisdictions usually require that companies claiming HUB status be reviewed and confirmed as meeting certain minimum requirements to claim that status, and that the review and confirmation process be carried out by certain designated entities. They are then "Certified" or "Listed" by having their name included on an official listing published by the Certifying or Listing Authority.

The procurement efforts of the County of Galveston, especially when federal funding is involved, are subject to various requirements relative to purchasing goods and services from Historically Underutilized Business Enterprises (HUBs). These requirements are promulgated by federal and state governmental authorities, and may include measureable criteria such as "percentage of total dollars spent directed to HUBs", "number of HUB contractors used", "HUB subcontractors employed by primary contractors", etc. These requirements are generally formalized in goal-oriented programs

P. MINIMUM REQUIREMENTS:

1. Successful proposer must indicate that he/she is submitting a proposal for a Bait Camp and Food and Beverage Refreshment Concession for the Hitchcock Boat Ramp.
2. All proposals are subject to the terms and conditions of this Request for Proposal and any mutually agreed upon modifications that will be incorporated into the final Concession Agreement
3. Any individual(s) desiring to submit a bid on this proposal must state in their proposal they are willing to agree to abide by all terms and conditions of the Request for Proposal and attached

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- Concession Agreement as mutually modified. 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 may disqualify a proposer.
4. Proposers wishing to offer any alternatives or take any exceptions to the RFP must attach a separate sheet noting any such alternatives or exceptions.
 5. This RFP is seeking an individual or other legal entity to operate a County-owned facility. 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. Proposers should familiarize themselves with the entire provisions of this law and the penalties provided for its violations before submitting their proposals.
 6. The proposal should be typewritten or computer generated and signed in ink. Legibility, clarity, and completeness are essential elements of the proposal.
 7. The responses and any subsequent negotiated items of the successful proposal shall be incorporated in the final executed contract.
 8. Information disclosed in the proposals is the property of Galveston County. No information will be disclosed until the award has been placed on the Commissioners' Court agenda. Once recommendations are made to the Galveston County Commissioners' Court, proposal information is subject to public access and disclosure through request made under the Texas Open Records Act.
 9. The County reserves the right to reject any and all proposals as a result of this request. The County may waive any informality, technical defect, or clerical error in any proposal, as the interest of the County may require. A tentative acceptance of a proposal 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 without liability to any proposer prior to entering into a formal agreement. All proposals shall remain firm for 30 days.
 10. The proposer must demonstrate his/her experience with past or existing or similar operations such as the done described in this RFP.
 11. Expenses for developing proposals are entirely the responsibility of the proposers and shall not be chargeable in any matter to the County.

Q. EVALUATION CRITERIA:

Proposals will be evaluated by a panel made up of a representative from the Galveston County Legal Department, the Galveston County Purchasing Agent, and the Director of the County Parks Department, 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 County. The evaluation criteria will consist of:

<u>Points</u>	<u>Criteria</u>
25	Competence: The proposal will be evaluated for qualifications, financial stability, and previous directly related experience of the proper.
15	Creativity: The proposal will be evaluated for alternative suggestions concerning the proposer's use Of the Concession Premises.
20	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.

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- 20 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.

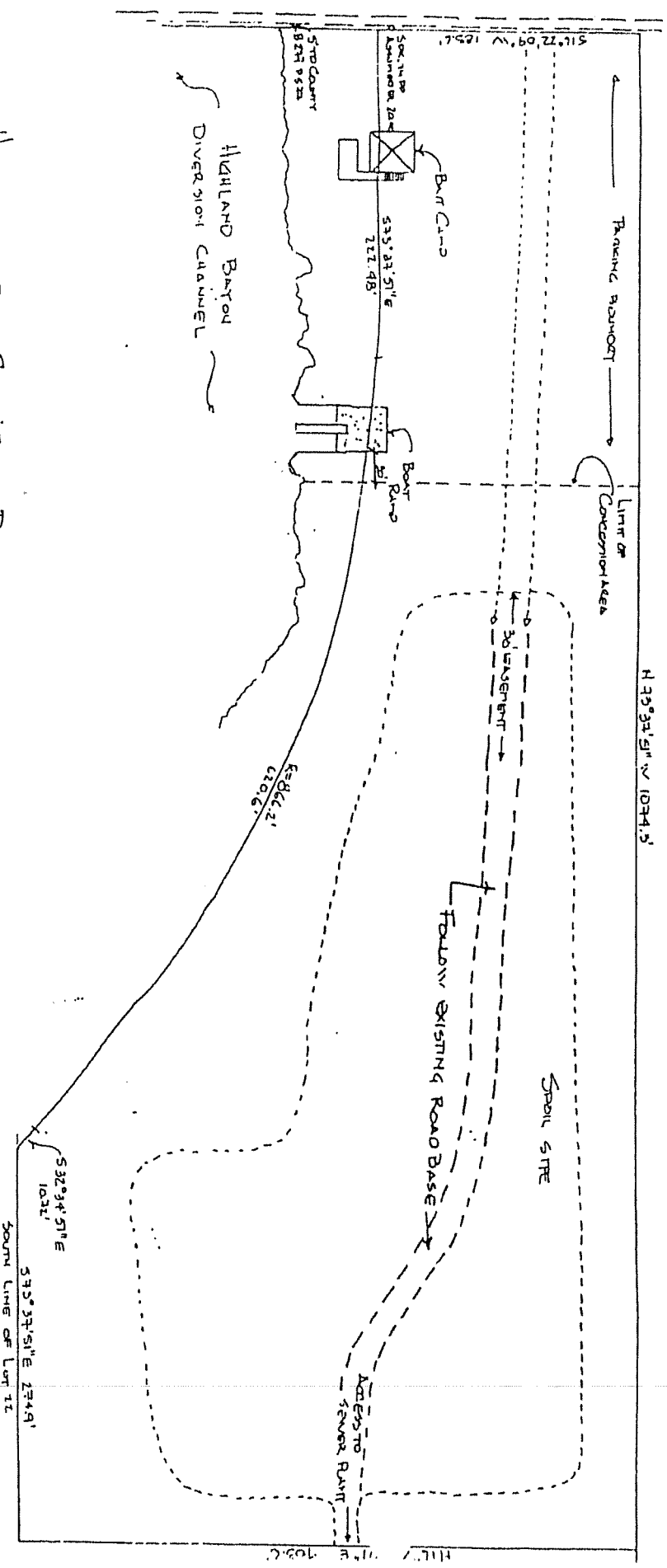
R. EXCEPTIONS:

Any exceptions to proposal conditions should be listed on separate sheets of paper, attached to proposal submittal, and submitted with proposal at the specified date and time of proposal opening.

End of Special Provisions

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HITCHCOCK BAIT CAMP & BOAT RAMP
 CLAYTON COUNTY BOUCH AND PARKS DEPARTMENT
 Julie Diaz,
 4102 Main Street
 La Marque, TX 77568
 409 934-8107



BAIT CAMP & BOAT RAMP = 1.29 ACRES
 SPOIL SITE = 3.32 ACRES
 TOTAL SITE = 4.61 ACRES

ATTACHMENT A

HITCHCOCK BOAT RAMP CONCESSION
CONCESSION PROPOSAL FORM

1. This is a proposal to operate a bait camp and food and beverage concession at the Hitchcock Boat Ramp (yes or no)

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

3. Name of Owner/Operator: _____

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

5. 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 mutually modified. 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 short of actually executing the final Concession Agreement without any liability to me.

Signature: _____ Date: _____

6. Address of Concession Owner/Operator: _____

7. Telephone Number: _____ Tax ID Number: _____

8. Fax Number: _____

Minimum monthly rates is \$1,000.00. Do you accept this or would you like to offer a different amount above the inimum? _____

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

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

Item	Proposed Price

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

13. Describe your experience in operating bait camps and food and beverage 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:

14. Provide a summary of how you intend to provide the services requested by this RFP. Please describe a staffing plan and chain of responsibility for resolving any problems that may arise at the concession.

15. Provide a list of at least three references that can attest to your ability to fulfill the requirements of this RFP and Concession Agreement. (List name, address, telephone number)

16. Provide any additional information, if any, that should be considered in evaluating your proposal. If there is none, state, "There is no additional information we wish to present."

17. List all trade fixtures and personal property items to be supplied by the proposer that will **not** become the property of the County at the expiration or early termination of the Concession Agreement.

18. 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 construct boat stalls upon the Concession Premises.

WHEREAS, the lands that make up the Concession Premises were acquired by the County for spoil disposal purposes associated with the Project. It is important that the paramount use of these lands is that it be used as a spoil disposal site as and when needed as such by the County; and

WHEREAS, subordinate to the possible future paramount use of this land, the County desires to grant to concessionaire an exclusive concession to maintain and operate a "Concession", on Concession Premises; and

WHEREAS, the Concessionaire desires to secure such concession rights in the Concession Premises.

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, 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: i) the payments to be made by Concessionaire; ii) the terms, provisions and conditions herein set forth; iii) any and all other Concession Agreements, Licenses or Permits heretofore or hereinafter granted and iv) any other conditions, restrictions, covenants, licenses, rights of way or easements affecting the Concession Premises heretofore or hereinafter granted gives to Concessionaire, for the term hereinafter stated, the right to manage and operate the Concession upon the Concession Premises. Upon prior approval of the County being obtained, Concessionaire may also offer such other items of merchandise as are customarily offered for sale under similar circumstances at other bait camp operations within Galveston County.

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.

1.3 No portion of the Concession Premises is being leased to Concessionaire. Concessionaire is 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.

1.5 The County reserves the right to enter any portion of the Concession Premises for any reason.

1.6 The County also retains the right to enter the Concession Premises and to make any and all repairs and other improvements it deems necessary during the term of this Agreement and any renewals thereof.

**ARTICLE II
TERM**

2.1 This Agreement, unless terminated early by County, shall begin on the commencement date and terminate at midnight nine (9) years after the execution date. The Concessionaire may request the County to exercise two (2) three (3) year renewal options. Such request shall be made in writing to the County no later than 60 days, but no sooner than 90 days, prior to the expiration of the agreement. County may, but is not obligated to grant the request for either renewal.

2.2 County may terminate this Agreement early, with or without cause or for any reason or no reason and without damages or liability to Concessionaire for such early termination, upon one hundred eighty (180) days prior written notice to Concessionaire. In addition, if it is determined by County that the Concession Premises are required for spoil disposal purposes or other purposes associated with the Highland Bayou Diversionary Canal Project, County may similarly terminate this Agreement without damages or liability to Concessionaire for such early termination upon thirty (30) days prior written notice to Concessionaire.

**ARTICLE III
PERMITS, OTHER AGREEMENTS AND APPROVAL**

3.1 This Agreement is granted by the County subject both to all of the terms and conditions of this Agreement, as well as to all design standards and requirements of the County for Concessions. This Agreement will not be effective until it has been approved by the Commissioners' Court of Galveston County and fully executed by the County Judge.

3.2 This 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; 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 Agreement is subject to all necessary Federal, State and/or local permits required for purposes of construction, including but not limited to permits of the U.S. Army Corps of Engineers, and the City of Hitchcock, if any, being secured.

3.4 The lands that make up the Concession Premises were acquired as part of the Highland Bayou Diversionary Canal Project (Project). Upon completion of the Project the County entered into an Operations and Maintenance Agreement with the United States Army Corp of Engineers to maintain the Project indefinitely in the future. The County acquired this land for spoil disposal purposes associated with the Project. It is the only land permanently acquired by the County for such

purposes in the lower reach of the Project. It is therefore imperative that the paramount use of this land is that it be readily available as required as a spoil disposal site as and when needed by the County. This Agreement is subject to this paramount use.

3.5 On July 12, 1999 the County entered into a License Agreement with the City of Hitchcock. This Agreement granted the City the right to construct, use and maintain a road over a portion of the Concession Premises. Currently, this road runs through the parking lot which Concessionaire will be used. This Agreement is subject to this July 12, 1999 Agreement.

ARTICLE IV OWNERSHIP OF TITLE TO IMPROVEMENT

4.1 All improvements already in place upon and within the Concession Premises belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaire will not commit waste upon, remove, or voluntarily destroy any improvements unless to construct other improvements that meet the requirements specified herein.

4.2 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 County-owned 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 as a bait camp or be in keeping with Concessionaire's proposed usage of the Concession Premises.

4.3 All modifications made by Concessionaire remain the property of the Concessionaire during the term of the Agreement. Such modifications may not be removed from the Concession Premises prior to the end of the term without prior written consent from the County's Authorized Representative.

4.4 Upon termination of this Agreement, whether by expiration or early termination, the title to all Modifications (as the term is defined in Article V) constructed by Concessionaire and permanently fixed to the Concession Premises shall, unless otherwise directed by County, vest in the County. Upon such termination, Concessionaire shall remove his/her personal property, all non-permanent trade fixtures and such Modifications as the Authorized Representative shall direct, and shall restore the Concession Premises to the same condition it was in at Commencement Date, ordinary wear and tear and damage by unavoidable causes excluded.

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 trade fixtures, shades or awning, or to construct additional improvements on the Concession Premises (e.g. 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 Authorized Representative preliminary plans and specifications of such requested Modifications for review and approval. The Authorized Representative, in turn, will submit such plans and specifications to the U.S. Army Corp of Engineers and the County Engineer to determine if such requested Modifications do not interfere with the requirements of the Corp's Operation and Maintenance Agreement. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the Authorized Representative. Any revisions to Concessionaire's plans and specifications by the Authorized Representative, the Corp or the County Engineer 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 Authorized Representative signing a set of the plans and specifications.

5.2 Prior to the commencement of construction of the Modifications, Concessionaire will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the modifications. In addition, Concessionaire shall require his Contractor to furnish to the County, as owner of the Concession Premises, payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code. 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 Authorized Representative. The 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 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 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 Authorized Representative. In case of disagreement with respect to the compliance with approved plans, such disagreement will be submitted to the County Engineer, whose decision 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 agrees, upon completion of construction, to furnish Authorized Representative with a complete set of "as-built" drawings in hard copy mylar and editable soft copy electronic format (Auto Cad). This requirement may be waived by Authorized Representative if the circumstances warrant.

**ARTICLE VI
CONSIDERATION - OPERATION**

6.1 The parties agree that the operations conducted upon the Concession Premises shall be operated at no expense to the County of Galveston. Concessionaire has agreed, during the initial term of this Agreement and all renewals thereof, to pay County a flat fee of _____ (\$_____) per month. The first payment will be due and payable on the fifth of the month following the commencement date. The first payment may be prorated by dividing the monthly fee by 30 and multiplying it times the number of days in the first payment period. The first payment period is the last day of the month minus the commencement date of the contract. All other payments are due on the fifth of each month thereafter in the amount of the full monthly flat fee listed above.

6.2 Payments shall be by cashier's check or money order. Cash payments and personal checks will not be accepted.

6.3 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 in a public park so as to not mislead the public into believing that the area is private. The 1st priority for parking in this area is for trucks and trailers for the boat ramp. The only designated parking in the area will be for ADA requirements.

6.4 Concessionaire agrees to make the Concession Premises open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

**ARTICLE VII
TAXES**

7.1 It is contemplated that Concessionaire may be subject to ad-valorem taxes upon all Modifications constructed by Concessionaire, as well 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 Agreement may 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 operations as such taxes become due. Concessionaire also covenants to pay Texas state sales taxes and Federal income taxes as such taxes become due. Concessionaire agrees to provide to County 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, will be provided to the County or its authorized agent on the 1st Monday of each quarter – January, April, July & October.

**ARTICLE IX
REPAIRS AND MAINTENANCE**

9.1 Concessionaire covenants and agrees, at Concessionaire's cost and expense, to keep all improvements, 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 cost and expense, all repairs and replacements that may be necessary and required to keep same in good, safe and sound condition. Concessionaire also agrees to daily bag all trash and refuse found upon the Concession Premises and to place same in trash receptacle located on the property and to maintain the restrooms in a clean condition.

9.2 Concessionaire will also be responsible for:

- a. Mowing and trimming (Weed Eat) the grassy areas upon the Concession Premises and surrounding County owned areas on a weekly basis during the summer months and as often as determined needed by Authorized Representative during such other months;
- b. Trash removal from the trash receptacle in and around building, parking lots and boat ramps, and
- c. Maintaining exterior lights; and
- d. Maintaining the parking lot.

9.3 County, if and as budgeted funds become available for such purpose retains the right but not the obligation to make such repairs to the existing boat ramp 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.

9.4 The County, acting through its agents or representatives, 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 which need attention. The degree of maintenance, repair and upkeep shall be in keeping with other Beach parks in the area and public parks operated by the County. 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, modifications and personal property items as herein provided, or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement. But, such termination will not relieve Concessionaire of his obligation to pay County for such repairs or maintenance charges.

9.5 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, health and safety, and operation of concession sales. Concessionaire also agrees to obtain and keep current any and all permits required by the State of Texas, the County, the City of Hitchcock the U. S. Army Corp of Engineers, and any other applicable entity.

ARTICLE X OPERATION

10.1 Concessionaires shall allow Authorized Representative the right to close or partially close all or any part of the Concession Premises, for potentially dangerous weather situations or other causes determined necessary by Authorized Representative.

10.2 Concessionaire shall comply with all applicable Federal, State, County and City laws governing the operation of the Concession Premises. Violation of any Federal, State, County or City laws ordinances, and/or regulations will be cause for termination of this Agreement.

10.3 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.

10.4 Concessionaire shall obtain and pay for all permits or licenses that may be required for the operation of all portions of the Concession Premises. In addition, Concessionaire shall meet all requirements of the County, City and State Health Departments covering the handling and dispensing of food and beverages. Any permits required for operating the Concession Premises must be timely obtained from the appropriate entity.

10.5 All electricity costs for the Concession Premises and the boat ramp will be borne by the Concessionaire. 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, will be the responsibility of the Concessionaire. Gas is not available.

10.6 Concessionaire shall not erect any signs on the Concession Premises and modifications or in the vicinity thereof without obtaining the advance written approval of the Authorized Representative. Concessionaire may enter into advertising relative to the Concession that is consistent with the dignified approach necessitated by the reputation of the Concession Premises. The Concession Premises shall be known by the name set forth in Concessionaire's proposal. The name may not be changed without obtaining the advance written approval of Authorized Representative.

10.7 Concessionaire will manage and operate the Concession at the Concession Premises, providing food and beverages and bait and fishing supplies.

- a. Examples of the variety of food and beverages sold at the Concession Premises may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc...), bottled water, fruit juices, iced tea, beer in cans, coffee and lemonade.
- 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 it finds objectionable.

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

10.9 Concessionaire shall keep the Concession Premises, modifications and 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 Authorized Representative.

10.10 The County and its representative(s) shall have access to the Concession Premises, modifications and to each part thereof, during the regular business hours of Concessionaire for the purpose of inspecting Concessionaires operations and his relationship with the public.

10.11 The boat ramp is open seven days a week, year round. The operating period of the Concession Premises shall be conducive to meeting the needs of boat ramp users. Concessionaire will adhere to the schedule set forth in Concessionaire's proposal. This schedule may be changed only upon prior approval of the Authorized Representative.

10.12 Concessionaire may not keep any explosive or hazardous materials on the Concession Premises and Modifications, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Concession Premises or modifications.

10.13 Vendors shall not be permitted or engaged by Concessionaire within the Concession Premises without prior written approval being obtained by Concessionaire from the Authorized Representative.

10.14 No vending machines shall be permitted within the Park.

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

**ARTICLE XI
EROSION/ PARAMOUNT PURPOSE**

11.1 Concessionaire acknowledges that steady erosion and avulsion caused by moving water within the Highland Bayou Diversionary Canal is a constant problem and that all or a portion of the Concession Premises and Modifications and Concessionaire's trade fixtures, inventory and other personal property 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 repair to restore any Concession Premises and modifications which may have been lost, ii) to undertake any efforts whatsoever toward recapturing any shoreline lost to such erosion or avulsion, or iii) to reimburse or in any way be responsible to Concessionaire for any damages incurred. Concessionaire agrees that in the event he/she feels any Modifications constructed by Concessionaire are so threatened to undertake (subject to prior approval being obtained by the Authorized Representative and the U. S. Army Corps of Engineers) such steps as are necessary to prevent or minimize such damage.

11.2 As stated in the Preamble to this Agreement, the paramount purpose of this land is that of a spoil site for the Highland Bayou Diversionary Canal. Accordingly, this Agreement is made subordinate to the right of the County to use the Concession Premises as a spoil deposit site for the deposit of spoil without regard to any damages which might be caused to Concessionaire. Should the County decide to use the Concession Premises or any land owned by County adjacent to the Concession Premises for spoil site purposes, County will give Concessionaire thirty (30) days prior written notice of its intention to cancel this Agreement. Upon the expiration of the thirty (30) day notice by County, this Agreement will terminate and Concessionaire, upon request of Authorized Representative, will remove all Modifications and/or trade fixtures, inventory and other personal property from the Concession Premises. In the event Concessionaire fails to comply with this requirement, County shall have the right to remove all such Modifications and other property belonging to Concessionaire and assess the cost of all such work against Concessionaire and Concessionaire will immediately pay the cost.

**ARTICLE XII
LIABILITY INSURANCE COVERAGE**

12.1 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Concession Agreement, at the Concessionaire's 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 of Galveston, and Concessionaires are named as the insured's.

12.2 This insurance shall be of the kind commonly known as public liability and third party property damage insurance, insuring the insured's 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 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 two 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 two 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 1 Million Dollars each common cause and 1 Million Dollars aggregate.

12.5 Concessionaire shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies of insurance, Concessionaire shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.6 Concessionaire agrees, at the Concessionaire's expense, to obtain and maintain during the entire term of this 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.

12.7 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep the Concession Premises and Concessionaire's inventory, trade fixtures and personal property items, and all replacements thereof, and all other contents of the Concession Premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, "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 improvements, personal property items and all other contents. In the event there is damage or destruction to the improvements or personal property items and/or other contents, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

12.8 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 Authorized Representative.

12.9 Concessionaire further covenants that in the event Concessionaire constructs Modifications which stand apart from County's current improvements on the Concession Premises (e.g. boat storage stalls) that he/she will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep such Modifications insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire, 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 hundred (80%) of the full replacement value of said Modifications. In the event there is damage or destruction to the Modifications, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

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. In addition, in the event of partial or complete destruction of the Concession Premises, County shall have no duty or obligation to make any repairs or to otherwise restore the Concession Premises or any part thereof.

ARTICLE XIII ASSIGNMENT OF AGREEMENT

13.1 This 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 duly authorized written Resolution. Such approval of assignment, 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 premises, or makes default in any other covenant of the Concessionaire contained in this Agreement, including but not

limited to failure to perform necessary maintenance and repairs or to obtain all required insurance, and such default shall continue for fifteen (15) days (ten (10) days in the event of 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 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 Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Concession Premises and Modifications, with process of law 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 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 Modifications on or before such date of termination.

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 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 he 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 Agreement.

ARTICLE XVII INDEMNIFICATION

17.1 Concessionaire shall protect, indemnify and save harmless, the County, its Commissioners, officers 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 Modifications or in any manner growing out of or connected with Concessionaire's use and occupation of the Concession Premises and Modifications during the term of this Agreement. Concessionaire shall give the County prompt notice of any claim coming to their 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 goods 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 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 "C".

18.4 Concessionaire may not charge any "launch fee" to any person wishing to use the County Boat Ramp located adjacent to the Concession Premises.

ARTICLE XIX INDEPENDENT CONTRACTOR

19.1 This 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 and modifications, no discrimination of any kind shall be practiced by any party which 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
AMERICANS WITH DISABILITIES ACT**

21.1 Concessionaire agrees to comply with the American with Disabilities 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 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 Agreement and all covenants, conditions and agreements of this 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 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 Agreement.

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

Hon. Mark A. Henry
County Judge
County Courthouse, 2nd Floor
Galveston, Texas 77550
Fax: (409) 766-2653

with a copy to:

Julie Diaz
Director
Galveston County
Parks and Cultural Services Department
4105 Main St. (FM 519)
La Marque, Texas 77568
Fax: (409) 934-8140

with a second copy to:

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

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 Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this 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 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 Agreement as an addendum.

23.6 This 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 This Agreement is executed to be effective as of the commencement date.

CONCESSIONAIRE:

By: _____

Date: _____

THE COUNTY OF GALVESTON:

The County of Galveston, acting by the through Mark A. Henry, County Judge, pursuant to Order of the Commissioners' Court of Galveston County, Texas, adopted on date indicated below hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution by the County Judge.

By: _____
Mark A. Henry, County Judge

Date: _____

Attest: _____
Dwight Sullivan, County Clerk

Approved as to Form

By: _____
Galveston County General Counsel

HITCHCOCK BOAT RAMP CONCESSION AGREEMENT

STATE OF TEXAS §
COUNTY OF GALVESTON §

THIS AGREEMENT IS MADE AND ENTERED INTO effective as of the COMMENCEMENT DATE by and between the COUNTY OF GALVESTON, TEXAS, hereinafter called "COUNTY", and _____ doing business as _____ hereinafter called "CONCESSIONAIRE".

DEFINITIONS

- 1. COUNTY - means the County of Galveston, Texas.
- 2. CONCESSION - () food and beverage refreshments and/or () bait and fishing supplies and/or () _____ and/or () _____.
- 3. CONCESSIONAIRE - means _____ and _____, doing business as _____.
- 4. CONCESSION PREMISES - means a designated area located adjacent to the Highland Bayou Diversionary Canal on 2nd Avenue, Hitchcock, Galveston County, Texas. The location of the concession premises is more fully shown on the plat attached hereto as Exhibit "A".
- 5. COMMENCEMENT DATE - Commencement date means the date of execution of this agreement by the County.
- 6. AUTHORIZED REPRESENTATIVE - means the Director of the County Parks Department or her written designee.
- 7. AGREEMENT – means this Agreement and the Request for Proposal, Requirements for Submission of Proposal, and Concession Proposal Form attached hereto as Exhibit "B".

RECITALS

WHEREAS, the County owns the tract of land more fully described in the following deed:

Warranty Deed from James P. Nash, et.al., dated October 9, 1973, found of Record in Volume 2419, Page 140 et. seq. of the Deed Records of the County Clerk of Galveston County, Texas; and

WHEREAS, the lands that make up the Concession Premises were acquired as part of the Highland Bayou Diversionary Canal Project (Project). The Project was constructed using federal funds. Upon completion of the Project the County entered into an Operations and Maintenance Agreement with the United States Army Corp of Engineers to maintain the Project indefinitely in the future; and

WHEREAS, the lands that make up the Concession Premises were acquired by the County for spoil disposal purposes associated with the Project. It is important that the paramount use of these lands is that it be used as a spoil disposal site as and when needed as such by the County; and

WHEREAS, subordinate to the possible future paramount use of this land, the County desires to grant to concessionaire an exclusive concession to maintain and operate a "Concession", on Concession Premises; and

WHEREAS, the Concessionaire desires to secure such concession rights in the Concession Premises.

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, 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: i) the payments to be made by Concessionaire; ii) the terms, provisions and conditions herein set forth; iii) any and all other Concession Agreements, Licenses or Permits heretofore or hereinafter granted and iv) any other conditions, restrictions, covenants, licenses, rights of way or easements affecting the Concession Premises heretofore or hereinafter granted gives to Concessionaire, for the term hereinafter stated, the right to manage and operate the Concession upon the Concession Premises. Upon prior approval of the County being obtained, Concessionaire may also offer such other items of merchandise as are customarily offered for sale under similar circumstances at other bait camp operations within Galveston County.

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.

1.3 No portion of the Concession Premises is being leased to Concessionaire. Concessionaire is 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.

1.5 The County reserves the right to enter any portion of the Concession Premises for any reason.

1.6 The County also retains the right to enter the Concession Premises and to make any and all repairs and other improvements it deems necessary during the term of this Agreement and any renewals thereof.

**ARTICLE II
TERM**

2.1 This Agreement, unless terminated early by County, shall begin on the commencement date and terminate at midnight nine (9) years after the execution date. The Concessionaire may request the County to exercise two (2) three (3) year renewal options. Such request shall be made in writing to the County no later than 60 days, but no sooner than 90 days, prior to the expiration of the agreement. County may, but is not obligated to grant the request for either renewal.

2.2 County may terminate this Agreement early, with or without cause or for any reason or no reason and without damages or liability to Concessionaire for such early termination, upon one hundred eighty (180) days prior written notice to Concessionaire. In addition, if it is determined by County that the Concession Premises are required for spoil disposal purposes or other purposes associated with the Highland Bayou Diversionary Canal Project, County may similarly terminate this Agreement without damages or liability to Concessionaire for such early termination upon thirty (30) days prior written notice to Concessionaire.

**ARTICLE III
PERMITS, OTHER AGREEMENTS AND APPROVAL**

3.1 This Agreement is granted by the County subject both to all of the terms and conditions of this Agreement, as well as to all design standards and requirements of the County for Concessions. This Agreement will not be effective until it has been approved by the Commissioners' Court of Galveston County and fully executed by the County Judge.

3.2 This 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; 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 Agreement is subject to all necessary Federal, State and/or local permits required for purposes of construction, including but not limited to permits of the U.S. Army Corps of Engineers, and the City of Hitchcock, if any, being secured.

3.4 The lands that make up the Concession Premises were acquired as part of the Highland Bayou Diversionary Canal Project (Project). Upon completion of the Project the County entered into an Operations and Maintenance Agreement with the United States Army Corp of Engineers to maintain the Project indefinitely in the future. The County acquired this land for spoil disposal purposes associated with the Project. It is the only land permanently acquired by the County for such

purposes in the lower reach of the Project. It is therefore imperative that the paramount use of this land is that it be readily available as required as a spoil disposal site as and when needed by the County. This Agreement is subject to this paramount use.

3.5 On July 12, 1999 the County entered into a License Agreement with the City of Hitchcock. This Agreement granted the City the right to construct, use and maintain a road over a portion of the Concession Premises. Currently, this road runs through the parking lot which Concessionaire will be used. This Agreement is subject to this July 12, 1999 Agreement.

ARTICLE IV OWNERSHIP OF TITLE TO IMPROVEMENT

4.1 All improvements already in place upon and within the Concession Premises belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaire will not commit waste upon, remove, or voluntarily destroy any improvements unless to construct other improvements that meet the requirements specified herein.

4.2 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 County-owned 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 as a bait camp or be in keeping with Concessionaire's proposed usage of the Concession Premises.

4.3 All modifications made by Concessionaire remain the property of the Concessionaire during the term of the Agreement. Such modifications may not be removed from the Concession Premises prior to the end of the term without prior written consent from the County's Authorized Representative.

4.4 Upon termination of this Agreement, whether by expiration or early termination, the title to all Modifications (as the term is defined in Article V) constructed by Concessionaire and permanently fixed to the Concession Premises shall, unless otherwise directed by County, vest in the County. Upon such termination, Concessionaire shall remove his/her personal property, all non-permanent trade fixtures and such Modifications as the Authorized Representative shall direct, and shall restore the Concession Premises to the same condition it was in at Commencement Date, ordinary wear and tear and damage by unavoidable causes excluded.

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 trade fixtures, shades or awning, or to construct additional improvements on the Concession Premises (e.g. 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 Authorized Representative preliminary plans and specifications of such requested Modifications for review and approval. The Authorized Representative, in turn, will submit such plans and specifications to the U.S. Army Corp of Engineers and the County Engineer to determine if such requested Modifications do not interfere with the requirements of the Corp's Operation and Maintenance Agreement. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the Authorized Representative. Any revisions to Concessionaire's plans and specifications by the Authorized Representative, the Corp or the County Engineer 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 Authorized Representative signing a set of the plans and specifications.

5.2 Prior to the commencement of construction of the Modifications, Concessionaire will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the modifications. In addition, Concessionaire shall require his Contractor to furnish to the County, as owner of the Concession Premises, payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code. 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 Authorized Representative. The 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 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 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 Authorized Representative. In case of disagreement with respect to the compliance with approved plans, such disagreement will be submitted to the County Engineer, whose decision 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 agrees, upon completion of construction, to furnish Authorized Representative with a complete set of "as-built" drawings in hard copy mylar and editable soft copy electronic format (Auto Cad). This requirement may be waived by Authorized Representative if the circumstances warrant.

**ARTICLE VI
CONSIDERATION - OPERATION**

6.1 The parties agree that the operations conducted upon the Concession Premises shall be operated at no expense to the County of Galveston. Concessionaire has agreed, during the initial term of this Agreement and all renewals thereof, to pay County a flat fee of _____ (\$_____) per month. The first payment will be due and payable on the fifth of the month following the commencement date. The first payment may be prorated by dividing the monthly fee by 30 and multiplying it times the number of days in the first payment period. The first payment period is the last day of the month minus the commencement date of the contract. All other payments are due on the fifth of each month thereafter in the amount of the full monthly flat fee listed above.

6.2 Payments shall be by cashier's check or money order. Cash payments and personal checks will not be accepted.

6.3 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 in a public park so as to not mislead the public into believing that the area is private. The 1st priority for parking in this area is for trucks and trailers for the boat ramp. The only designated parking in the area will be for ADA requirements.

6.4 Concessionaire agrees to make the Concession Premises open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

**ARTICLE VII
TAXES**

7.1 It is contemplated that Concessionaire may be subject to ad-valorem taxes upon all Modifications constructed by Concessionaire, as well 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 Agreement may 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 operations as such taxes become due. Concessionaire also covenants to pay Texas state sales taxes and Federal income taxes as such taxes become due. Concessionaire agrees to provide to County 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, will be provided to the County or its authorized agent on the 1st Monday of each quarter – January, April, July & October.

ARTICLE IX REPAIRS AND MAINTENANCE

9.1 Concessionaire covenants and agrees, at Concessionaire's cost and expense, to keep all improvements, 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 cost and expense, all repairs and replacements that may be necessary and required to keep same in good, safe and sound condition. Concessionaire also agrees to daily bag all trash and refuse found upon the Concession Premises and to place same in trash receptacle located on the property and to maintain the restrooms in a clean condition.

9.2 Concessionaire will also be responsible for:

- a. Mowing and trimming (Weed Eat) the grassy areas upon the Concession Premises and surrounding County owned areas on a weekly basis during the summer months and as often as determined needed by Authorized Representative during such other months;
- b. Trash removal from the trash receptacle in and around building, parking lots and boat ramps, and
- c. Maintaining exterior lights; and
- d. Maintaining the parking lot.

9.3 County, if and as budgeted funds become available for such purpose retains the right but not the obligation to make such repairs to the existing boat ramp 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.

9.4 The County, acting through its agents or representatives, 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 which need attention. The degree of maintenance, repair and upkeep shall be in keeping with other Beach parks in the area and public parks operated by the County. 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, modifications and personal property items as herein provided, or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement. But, such termination will not relieve Concessionaire of his obligation to pay County for such repairs or maintenance charges.

9.5 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, health and safety, and operation of concession sales. Concessionaire also agrees to obtain and keep current any and all permits required by the State of Texas, the County, the City of Hitchcock the U. S. Army Corp of Engineers, and any other applicable entity.

ARTICLE X OPERATION

10.1 Concessionaires shall allow Authorized Representative the right to close or partially close all or any part of the Concession Premises, for potentially dangerous weather situations or other causes determined necessary by Authorized Representative.

10.2 Concessionaire shall comply with all applicable Federal, State, County and City laws governing the operation of the Concession Premises. Violation of any Federal, State, County or City laws ordinances, and/or regulations will be cause for termination of this Agreement.

10.3 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.

10.4 Concessionaire shall obtain and pay for all permits or licenses that may be required for the operation of all portions of the Concession Premises. In addition, Concessionaire shall meet all requirements of the County, City and State Health Departments covering the handling and dispensing of food and beverages. Any permits required for operating the Concession Premises must be timely obtained from the appropriate entity.

10.5 All electricity costs for the Concession Premises and the boat ramp will be borne by the Concessionaire. 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, will be the responsibility of the Concessionaire. Gas is not available.

10.6 Concessionaire shall not erect any signs on the Concession Premises and modifications or in the vicinity thereof without obtaining the advance written approval of the Authorized Representative. Concessionaire may enter into advertising relative to the Concession that is consistent with the dignified approach necessitated by the reputation of the Concession Premises. The Concession Premises shall be known by the name set forth in Concessionaire's proposal. The name may not be changed without obtaining the advance written approval of Authorized Representative.

10.7 Concessionaire will manage and operate the Concession at the Concession Premises, providing food and beverages and bait and fishing supplies.

- a. Examples of the variety of food and beverages sold at the Concession Premises may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc...), bottled water, fruit juices, iced tea, beer in cans, coffee and lemonade.
- 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 it finds objectionable.

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

10.9 Concessionaire shall keep the Concession Premises, modifications and 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 Authorized Representative.

10.10 The County and its representative(s) shall have access to the Concession Premises, modifications and to each part thereof, during the regular business hours of Concessionaire for the purpose of inspecting Concessionaires operations and his relationship with the public.

10.11 The boat ramp is open seven days a week, year round. The operating period of the Concession Premises shall be conducive to meeting the needs of boat ramp users. Concessionaire will adhere to the schedule set forth in Concessionaire's proposal. This schedule may be changed only upon prior approval of the Authorized Representative.

10.12 Concessionaire may not keep any explosive or hazardous materials on the Concession Premises and Modifications, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Concession Premises or modifications.

10.13 Vendors shall not be permitted or engaged by Concessionaire within the Concession Premises without prior written approval being obtained by Concessionaire from the Authorized Representative.

10.14 No vending machines shall be permitted within the Park.

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

**ARTICLE XI
EROSION/ PARAMOUNT PURPOSE**

11.1 Concessionaire acknowledges that steady erosion and avulsion caused by moving water within the Highland Bayou Diversionary Canal is a constant problem and that all or a portion of the Concession Premises and Modifications and Concessionaire's trade fixtures, inventory and other personal property 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 repair to restore any Concession Premises and modifications which may have been lost, ii) to undertake any efforts whatsoever toward recapturing any shoreline lost to such erosion or avulsion, or iii) to reimburse or in any way be responsible to Concessionaire for any damages incurred. Concessionaire agrees that in the event he/she feels any Modifications constructed by Concessionaire are so threatened to undertake (subject to prior approval being obtained by the Authorized Representative and the U. S. Army Corps of Engineers) such steps as are necessary to prevent or minimize such damage.

11.2 As stated in the Preamble to this Agreement, the paramount purpose of this land is that of a spoil site for the Highland Bayou Diversionary Canal. Accordingly, this Agreement is made subordinate to the right of the County to use the Concession Premises as a spoil deposit site for the deposit of spoil without regard to any damages which might be caused to Concessionaire. Should the County decide to use the Concession Premises or any land owned by County adjacent to the Concession Premises for spoil site purposes, County will give Concessionaire thirty (30) days prior written notice of its intention to cancel this Agreement. Upon the expiration of the thirty (30) day notice by County, this Agreement will terminate and Concessionaire, upon request of Authorized Representative, will remove all Modifications and/or trade fixtures, inventory and other personal property from the Concession Premises. In the event Concessionaire fails to comply with this requirement, County shall have the right to remove all such Modifications and other property belonging to Concessionaire and assess the cost of all such work against Concessionaire and Concessionaire will immediately pay the cost.

**ARTICLE XII
LIABILITY INSURANCE COVERAGE**

12.1 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Concession Agreement, at the Concessionaire's 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 of Galveston, and Concessionaires are named as the insured's.

12.2 This insurance shall be of the kind commonly known as public liability and third party property damage insurance, insuring the insured's 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 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 two 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 two 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 1 Million Dollars each common cause and 1 Million Dollars aggregate.

12.5 Concessionaire shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies of insurance, Concessionaire shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.6 Concessionaire agrees, at the Concessionaire's expense, to obtain and maintain during the entire term of this 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.

12.7 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep the Concession Premises and Concessionaire's inventory, trade fixtures and personal property items, and all replacements thereof, and all other contents of the Concession Premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, "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 improvements, personal property items and all other contents. In the event there is damage or destruction to the improvements or personal property items and/or other contents, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

12.8 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 Authorized Representative.

12.9 Concessionaire further covenants that in the event Concessionaire constructs Modifications which stand apart from County's current improvements on the Concession Premises (e.g. boat storage stalls) that he/she will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep such Modifications insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire, 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 hundred (80%) of the full replacement value of said Modifications. In the event there is damage or destruction to the Modifications, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

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. In addition, in the event of partial or complete destruction of the Concession Premises, County shall have no duty or obligation to make any repairs or to otherwise restore the Concession Premises or any part thereof.

ARTICLE XIII ASSIGNMENT OF AGREEMENT

13.1 This 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 duly authorized written Resolution. Such approval of assignment, 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 premises, or makes default in any other covenant of the Concessionaire contained in this Agreement, including but not

limited to failure to perform necessary maintenance and repairs or to obtain all required insurance, and such default shall continue for fifteen (15) days (ten (10) days in the event of 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 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 Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Concession Premises and Modifications, with process of law 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 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 Modifications on or before such date of termination.

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 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 he 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 Agreement.

**ARTICLE XVII
INDEMNIFICATION**

17.1 Concessionaire shall protect, indemnify and save harmless, the County, its Commissioners, officers 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 Modifications or in any manner growing out of or connected with Concessionaire's use and occupation of the Concession Premises and Modifications during the term of this Agreement. Concessionaire shall give the County prompt notice of any claim coming to their 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 goods 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 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 "C".

18.4 Concessionaire may not charge any "launch fee" to any person wishing to use the County Boat Ramp located adjacent to the Concession Premises.

**ARTICLE XIX
INDEPENDENT CONTRACTOR**

19.1 This 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 and modifications, no discrimination of any kind shall be practiced by any party which 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
AMERICANS WITH DISABILITIES ACT**

21.1 Concessionaire agrees to comply with the American with Disabilities 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 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 Agreement and all covenants, conditions and agreements of this 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 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 Agreement.

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

Hon. Mark A. Henry
County Judge
County Courthouse, 2nd Floor
Galveston, Texas 77550
Fax: (409) 766-2653

with a copy to:

Julie Diaz
Director
Galveston County
Parks and Cultural Services Department
4105 Main St. (FM 519)
La Marque, Texas 77568
Fax: (409) 934-8140

with a second copy to:

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

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 Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this 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 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 Agreement as an addendum.

23.6 This 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 This Agreement is executed to be effective as of the commencement date.

CONCESSIONAIRE:

By: _____

Date: _____

THE COUNTY OF GALVESTON:

The County of Galveston, acting by the through Mark A. Henry, County Judge, pursuant to Order of the Commissioners' Court of Galveston County, Texas, adopted on date indicated below hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution by the County Judge.

By: _____
Mark A. Henry, County Judge

Date: _____

Attest: _____
Dwight Sullivan, County Clerk

Approved as to Form

By: _____
Galveston County General Counsel

WHEREAS, the lands that make up the Concession Premises were acquired by the County for spoil disposal purposes associated with the Project. It is important that the paramount use of these lands is that it be used as a spoil disposal site as and when needed as such by the County; and

WHEREAS, subordinate to the possible future paramount use of this land, the County desires to grant to concessionaire an exclusive concession to maintain and operate a "Concession", on Concession Premises; and

WHEREAS, the Concessionaire desires to secure such concession rights in the Concession Premises.

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, 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: i) the payments to be made by Concessionaire; ii) the terms, provisions and conditions herein set forth; iii) any and all other Concession Agreements, Licenses or Permits heretofore or hereinafter granted and iv) any other conditions, restrictions, covenants, licenses, rights of way or easements affecting the Concession Premises heretofore or hereinafter granted gives to Concessionaire, for the term hereinafter stated, the right to manage and operate the Concession upon the Concession Premises. Upon prior approval of the County being obtained, Concessionaire may also offer such other items of merchandise as are customarily offered for sale under similar circumstances at other bait camp operations within Galveston County.

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.

1.3 No portion of the Concession Premises is being leased to Concessionaire. Concessionaire is 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.

1.5 The County reserves the right to enter any portion of the Concession Premises for any reason.

1.6 The County also retains the right to enter the Concession Premises and to make any and all repairs and other improvements it deems necessary during the term of this Agreement and any renewals thereof.

**ARTICLE II
TERM**

2.1 This Agreement, unless terminated early by County, shall begin on the commencement date and terminate at midnight nine (9) years after the execution date. The Concessionaire may request the County to exercise two (2) three (3) year renewal options. Such request shall be made in writing to the County no later than 60 days, but no sooner than 90 days, prior to the expiration of the agreement. County may, but is not obligated to grant the request for either renewal.

2.2 County may terminate this Agreement early, with or without cause or for any reason or no reason and without damages or liability to Concessionaire for such early termination, upon one hundred eighty (180) days prior written notice to Concessionaire. In addition, if it is determined by County that the Concession Premises are required for spoil disposal purposes or other purposes associated with the Highland Bayou Diversionary Canal Project, County may similarly terminate this Agreement without damages or liability to Concessionaire for such early termination upon thirty (30) days prior written notice to Concessionaire.

**ARTICLE III
PERMITS, OTHER AGREEMENTS AND APPROVAL**

3.1 This Agreement is granted by the County subject both to all of the terms and conditions of this Agreement, as well as to all design standards and requirements of the County for Concessions. This Agreement will not be effective until it has been approved by the Commissioners' Court of Galveston County and fully executed by the County Judge.

3.2 This 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; 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 Agreement is subject to all necessary Federal, State and/or local permits required for purposes of construction, including but not limited to permits of the U.S. Army Corps of Engineers, and the City of Hitchcock, if any, being secured.

3.4 The lands that make up the Concession Premises were acquired as part of the Highland Bayou Diversionary Canal Project (Project). Upon completion of the Project the County entered into an Operations and Maintenance Agreement with the United States Army Corp of Engineers to maintain the Project indefinitely in the future. The County acquired this land for spoil disposal purposes associated with the Project. It is the only land permanently acquired by the County for such

purposes in the lower reach of the Project. It is therefore imperative that the paramount use of this land is that it be readily available as required as a spoil disposal site as and when needed by the County. This Agreement is subject to this paramount use.

3.5 On July 12, 1999 the County entered into a License Agreement with the City of Hitchcock. This Agreement granted the City the right to construct, use and maintain a road over a portion of the Concession Premises. Currently, this road runs through the parking lot which Concessionaire will be used. This Agreement is subject to this July 12, 1999 Agreement.

ARTICLE IV OWNERSHIP OF TITLE TO IMPROVEMENT

4.1 All improvements already in place upon and within the Concession Premises belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaire will not commit waste upon, remove, or voluntarily destroy any improvements unless to construct other improvements that meet the requirements specified herein.

4.2 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 County-owned 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 as a bait camp or be in keeping with Concessionaire's proposed usage of the Concession Premises.

4.3 All modifications made by Concessionaire remain the property of the Concessionaire during the term of the Agreement. Such modifications may not be removed from the Concession Premises prior to the end of the term without prior written consent from the County's Authorized Representative.

4.4 Upon termination of this Agreement, whether by expiration or early termination, the title to all Modifications (as the term is defined in Article V) constructed by Concessionaire and permanently fixed to the Concession Premises shall, unless otherwise directed by County, vest in the County. Upon such termination, Concessionaire shall remove his/her personal property, all non-permanent trade fixtures and such Modifications as the Authorized Representative shall direct, and shall restore the Concession Premises to the same condition it was in at Commencement Date, ordinary wear and tear and damage by unavoidable causes excluded.

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 trade fixtures, shades or awning, or to construct additional improvements on the Concession Premises (e.g. 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 Authorized Representative preliminary plans and specifications of such requested Modifications for review and approval. The Authorized Representative, in turn, will submit such plans and specifications to the U.S. Army Corp of Engineers and the County Engineer to determine if such requested Modifications do not interfere with the requirements of the Corp's Operation and Maintenance Agreement. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the Authorized Representative. Any revisions to Concessionaire's plans and specifications by the Authorized Representative, the Corp or the County Engineer 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 Authorized Representative signing a set of the plans and specifications.

5.2 Prior to the commencement of construction of the Modifications, Concessionaire will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the modifications. In addition, Concessionaire shall require his Contractor to furnish to the County, as owner of the Concession Premises, payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code. 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 Authorized Representative. The 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 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 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 Authorized Representative. In case of disagreement with respect to the compliance with approved plans, such disagreement will be submitted to the County Engineer, whose decision 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 agrees, upon completion of construction, to furnish Authorized Representative with a complete set of "as-built" drawings in hard copy mylar and editable soft copy electronic format (Auto Cad). This requirement may be waived by Authorized Representative if the circumstances warrant.

**ARTICLE VI
CONSIDERATION - OPERATION**

6.1 The parties agree that the operations conducted upon the Concession Premises shall be operated at no expense to the County of Galveston. Concessionaire has agreed, during the initial term of this Agreement and all renewals thereof, to pay County a flat fee of _____ (\$ _____) per month. The first payment will be due and payable on the fifth of the month following the commencement date. The first payment may be prorated by dividing the monthly fee by 30 and multiplying it times the number of days in the first payment period. The first payment period is the last day of the month minus the commencement date of the contract. All other payments are due on the fifth of each month thereafter in the amount of the full monthly flat fee listed above.

6.2 Payments shall be by cashier's check or money order. Cash payments and personal checks will not be accepted.

6.3 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 in a public park so as to not mislead the public into believing that the area is private. The 1st priority for parking in this area is for trucks and trailers for the boat ramp. The only designated parking in the area will be for ADA requirements.

6.4 Concessionaire agrees to make the Concession Premises open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

**ARTICLE VII
TAXES**

7.1 It is contemplated that Concessionaire may be subject to ad-valorem taxes upon all Modifications constructed by Concessionaire, as well 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 Agreement may 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 operations as such taxes become due. Concessionaire also covenants to pay Texas state sales taxes and Federal income taxes as such taxes become due. Concessionaire agrees to provide to County 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, will be provided to the County or its authorized agent on the 1st Monday of each quarter – January, April, July & October.

**ARTICLE IX
REPAIRS AND MAINTENANCE**

9.1 Concessionaire covenants and agrees, at Concessionaire's cost and expense, to keep all improvements, 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 cost and expense, all repairs and replacements that may be necessary and required to keep same in good, safe and sound condition. Concessionaire also agrees to daily bag all trash and refuse found upon the Concession Premises and to place same in trash receptacle located on the property and to maintain the restrooms in a clean condition.

9.2 Concessionaire will also be responsible for:

- a. Mowing and trimming (Weed Eat) the grassy areas upon the Concession Premises and surrounding County owned areas on a weekly basis during the summer months and as often as determined needed by Authorized Representative during such other months;
- b. Trash removal from the trash receptacle in and around building, parking lots and boat ramps, and
- c. Maintaining exterior lights; and
- d. Maintaining the parking lot.

9.3 County, if and as budgeted funds become available for such purpose retains the right but not the obligation to make such repairs to the existing boat ramp 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.

9.4 The County, acting through its agents or representatives, 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 which need attention. The degree of maintenance, repair and upkeep shall be in keeping with other Beach parks in the area and public parks operated by the County. 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, modifications and personal property items as herein provided, or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement. But, such termination will not relieve Concessionaire of his obligation to pay County for such repairs or maintenance charges.

9.5 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, health and safety, and operation of concession sales. Concessionaire also agrees to obtain and keep current any and all permits required by the State of Texas, the County, the City of Hitchcock the U. S. Army Corp of Engineers, and any other applicable entity.

ARTICLE X OPERATION

10.1 Concessionaires shall allow Authorized Representative the right to close or partially close all or any part of the Concession Premises, for potentially dangerous weather situations or other causes determined necessary by Authorized Representative.

10.2 Concessionaire shall comply with all applicable Federal, State, County and City laws governing the operation of the Concession Premises. Violation of any Federal, State, County or City laws ordinances, and/or regulations will be cause for termination of this Agreement.

10.3 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.

10.4 Concessionaire shall obtain and pay for all permits or licenses that may be required for the operation of all portions of the Concession Premises. In addition, Concessionaire shall meet all requirements of the County, City and State Health Departments covering the handling and dispensing of food and beverages. Any permits required for operating the Concession Premises must be timely obtained from the appropriate entity.

10.5 All electricity costs for the Concession Premises and the boat ramp will be borne by the Concessionaire. 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, will be the responsibility of the Concessionaire. Gas is not available.

10.6 Concessionaire shall not erect any signs on the Concession Premises and modifications or in the vicinity thereof without obtaining the advance written approval of the Authorized Representative. Concessionaire may enter into advertising relative to the Concession that is consistent with the dignified approach necessitated by the reputation of the Concession Premises. The Concession Premises shall be known by the name set forth in Concessionaire's proposal. The name may not be changed without obtaining the advance written approval of Authorized Representative.

10.7 Concessionaire will manage and operate the Concession at the Concession Premises, providing food and beverages and bait and fishing supplies.

- a. Examples of the variety of food and beverages sold at the Concession Premises may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc...), bottled water, fruit juices, iced tea, beer in cans, coffee and lemonade.
- 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 it finds objectionable.

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

10.9 Concessionaire shall keep the Concession Premises, modifications and 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 Authorized Representative.

10.10 The County and its representative(s) shall have access to the Concession Premises, modifications and to each part thereof, during the regular business hours of Concessionaire for the purpose of inspecting Concessionaires operations and his relationship with the public.

10.11 The boat ramp is open seven days a week, year round. The operating period of the Concession Premises shall be conducive to meeting the needs of boat ramp users. Concessionaire will adhere to the schedule set forth in Concessionaire's proposal. This schedule may be changed only upon prior approval of the Authorized Representative.

10.12 Concessionaire may not keep any explosive or hazardous materials on the Concession Premises and Modifications, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Concession Premises or modifications.

10.13 Vendors shall not be permitted or engaged by Concessionaire within the Concession Premises without prior written approval being obtained by Concessionaire from the Authorized Representative.

10.14 No vending machines shall be permitted within the Park.

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

**ARTICLE XI
EROSION/ PARAMOUNT PURPOSE**

11.1 Concessionaire acknowledges that steady erosion and avulsion caused by moving water within the Highland Bayou Diversionary Canal is a constant problem and that all or a portion of the Concession Premises and Modifications and Concessionaire's trade fixtures, inventory and other personal property 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 repair to restore any Concession Premises and modifications which may have been lost, ii) to undertake any efforts whatsoever toward recapturing any shoreline lost to such erosion or avulsion, or iii) to reimburse or in any way be responsible to Concessionaire for any damages incurred. Concessionaire agrees that in the event he/she feels any Modifications constructed by Concessionaire are so threatened to undertake (subject to prior approval being obtained by the Authorized Representative and the U. S. Army Corps of Engineers) such steps as are necessary to prevent or minimize such damage.

11.2 As stated in the Preamble to this Agreement, the paramount purpose of this land is that of a spoil site for the Highland Bayou Diversionary Canal. Accordingly, this Agreement is made subordinate to the right of the County to use the Concession Premises as a spoil deposit site for the deposit of spoil without regard to any damages which might be caused to Concessionaire. Should the County decide to use the Concession Premises or any land owned by County adjacent to the Concession Premises for spoil site purposes, County will give Concessionaire thirty (30) days prior written notice of its intention to cancel this Agreement. Upon the expiration of the thirty (30) day notice by County, this Agreement will terminate and Concessionaire, upon request of Authorized Representative, will remove all Modifications and/or trade fixtures, inventory and other personal property from the Concession Premises. In the event Concessionaire fails to comply with this requirement, County shall have the right to remove all such Modifications and other property belonging to Concessionaire and assess the cost of all such work against Concessionaire and Concessionaire will immediately pay the cost.

**ARTICLE XII
LIABILITY INSURANCE COVERAGE**

12.1 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Concession Agreement, at the Concessionaire's 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 of Galveston, and Concessionaires are named as the insured's.

12.2 This insurance shall be of the kind commonly known as public liability and third party property damage insurance, insuring the insured's 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 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 two 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 two 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 1 Million Dollars each common cause and 1 Million Dollars aggregate.

12.5 Concessionaire shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies of insurance, Concessionaire shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.6 Concessionaire agrees, at the Concessionaire's expense, to obtain and maintain during the entire term of this 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.

12.7 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep the Concession Premises and Concessionaire's inventory, trade fixtures and personal property items, and all replacements thereof, and all other contents of the Concession Premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, "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 improvements, personal property items and all other contents. In the event there is damage or destruction to the improvements or personal property items and/or other contents, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

12.8 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 Authorized Representative.

12.9 Concessionaire further covenants that in the event Concessionaire constructs Modifications which stand apart from County's current improvements on the Concession Premises (e.g. boat storage stalls) that he/she will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep such Modifications insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire, 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 hundred (80%) of the full replacement value of said Modifications. In the event there is damage or destruction to the Modifications, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

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. In addition, in the event of partial or complete destruction of the Concession Premises, County shall have no duty or obligation to make any repairs or to otherwise restore the Concession Premises or any part thereof.

ARTICLE XIII ASSIGNMENT OF AGREEMENT

13.1 This 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 duly authorized written Resolution. Such approval of assignment, 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 premises, or makes default in any other covenant of the Concessionaire contained in this Agreement, including but not

limited to failure to perform necessary maintenance and repairs or to obtain all required insurance, and such default shall continue for fifteen (15) days (ten (10) days in the event of 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 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 Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Concession Premises and Modifications, with process of law 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 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 Modifications on or before such date of termination.

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 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 he 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 Agreement.

**ARTICLE XVII
INDEMNIFICATION**

17.1 Concessionaire shall protect, indemnify and save harmless, the County, its Commissioners, officers 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 Modifications or in any manner growing out of or connected with Concessionaire's use and occupation of the Concession Premises and Modifications during the term of this Agreement. Concessionaire shall give the County prompt notice of any claim coming to their 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 goods 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 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 "C".

18.4 Concessionaire may not charge any "launch fee" to any person wishing to use the County Boat Ramp located adjacent to the Concession Premises.

**ARTICLE XIX
INDEPENDENT CONTRACTOR**

19.1 This 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 and modifications, no discrimination of any kind shall be practiced by any party which 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
AMERICANS WITH DISABILITIES ACT**

21.1 Concessionaire agrees to comply with the American with Disabilities 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 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 Agreement and all covenants, conditions and agreements of this 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 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 Agreement.

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

Hon. Mark A. Henry
County Judge
County Courthouse, 2nd Floor
Galveston, Texas 77550
Fax: (409) 766-2653

with a copy to:

Julie Diaz
Director
Galveston County
Parks and Cultural Services Department
4105 Main St. (FM 519)
La Marque, Texas 77568
Fax: (409) 934-8140

with a second copy to:

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

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 Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this 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 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 Agreement as an addendum.

23.6 This 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 This Agreement is executed to be effective as of the commencement date.

CONCESSIONAIRE:

By: _____

Date: _____

THE COUNTY OF GALVESTON:

The County of Galveston, acting by the through Mark A. Henry, County Judge, pursuant to Order of the Commissioners' Court of Galveston County, Texas, adopted on date indicated below hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution by the County Judge.

By: _____
Mark A. Henry, County Judge

Date: _____

Attest: _____
Dwight Sullivan, County Clerk

Approved as to Form

By: _____
Galveston County General Counsel

**EXHIBIT A
HITCHCOCK BOAT RAMP CONCESSION
GALVESTON COUNTY, TEXAS**

PROCUREMENT STANDARDS

**2 C.F.R. §§ 200.317 – 200.326 &
2 C.F.R. PART 200, APPENDIX II**

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PROCUREMENT STANDARDS

**2 C.F.R. §§ 200.317 – 200.326 &
2 C.F.R. PART 200, APPENDIX II**

2 C.F.R. § 200.317. Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013

2 C.F.R. § 200.318. General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of

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relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.213 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
- (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
- (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

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(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015; 80 FR 45395, July 30, 2015

2 C.F.R. § 200.319. Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly

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restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014

2 C.F.R. § 200.320. Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

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(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

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(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015

2 C.F.R. § 200.321. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

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2 C.F.R. § 200.322. Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014

2 C.F.R. § 200.323. Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

2 C.F.R. § 200.324. Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

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GALVESTON COUNTY, TEXAS

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

2 C.F.R. § 200.325. Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

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(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

69 FR 26280, May 11, 2004; 78FR 78608, Dec. 26, 2013, unless otherwise noted

2 C.F.R. § 200.326. Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise note

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2 C.F.R. Part, 200, Appendix II

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or

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dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014

CERTIFICATION REGARDING LOBBYING
(31 U.S.C.A. § 1352)
This Certification must be completed, signed, dated and
returned to the Galveston County Purchasing Agent

Procurement Number and Description: _____

_____ RFP #B202009, Hitchcock Boat Ramp Concession _____

Proposer **CERTIFIES**, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the proposer shall complete and submit **Standard Form LLL**, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. Proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Organization/Corporation: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Signature of Authorized Signatory for Proposer: _____ Date Signed: _____

Title of Authorized Signatory of Proposer: _____

**GALVESTON COUNTY, TEXAS
HITCHCOCK BOAT RAMP CONCESSION
PROPOSAL FORM**

THE COMPANY OF: _____

Address: _____

FEIN (TAX ID): _____

The following shall be returned with your bid. Failure to do so may be ample cause for rejection of bid as non responsive. It is the responsibility of the Bidder to ensure that Bidder has received all addenda.

Items:	Confirmed (X):
1. References (if required)	_____
2. Addenda, if any	#1 _____ #2 _____ #3 _____ #4 _____
3. One (1) original and four (4) copies of submittal	_____
4. Proposal Forms	_____
5. Vendor Qualification packet	_____
6. Payment Terms:	_____ net 30 _____ Other
7. Non-Collusion Affidavit	_____
8. Debarment Form	_____
9. Lobbying Certificate	_____
10. Concession Proposal Form	_____
11. Agreement – Three (3) Copies (included)	_____

Person to contact regarding this proposal: _____

Title: _____ Phone: _____ Fax: _____

E-mail address: _____

Name of person authorized to bind the Firm: _____

Signature: _____ Date: _____

Title: _____ Phone: _____ Fax: _____

E-mail address: _____

GALVESTON COUNTY, TEXAS
HITCHCOCK BOAT RAMP CONCESSION
PROPOSAL FORM

Proposer shall use this form to provide the information for notice.

1. Contact information for notice:

Name: _____
Address: _____

Telephone Number: _____ Facsimile number: _____

2. If a copy of notice is requested, please complete below:

Name: _____
Address: _____

Telephone Number: _____ Facsimile number: _____

3. If second or more copies are requested for notice, please supplement this form and clearly mark the supplement as "Supplementary Notice Information."

Proposer to submit reference information. Proposer shall use this form to provide minimum required reference information. If Proposer wishes to provide more than the minimum, Proposer should supplement this form and should clearly mark the supplement as "Supplementary Reference Information."

1. References who can attest to the Proposer's capability to carry out the requirements set forth in this qualification:

Business Name of Organization: _____
Name of Person: _____
Title of Individual within Organization, if applicable _____
Business address: _____

Telephone number: _____ Facsimile number: _____

Business Name of Organization: _____
Name of Person: _____
Title of Individual within Organization, if applicable _____
Business address: _____

Telephone number: _____ Facsimile number: _____

Business Name of Organization: _____
Name of Person: _____
Title of Individual within Organization, if applicable _____
Business address: _____

Telephone number: _____ Facsimile number: _____

**PROPOSAL FORM
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References of major supplier of Proposer who can speak to the financial capability of the Proposer to carry out the requirements set forth in this qualification:

1. Business Name of Supplier _____
Name of Person: _____
Title of Individual within business: _____
Business address: _____

Telephone number: _____ Facsimile number: _____

2. Business Name of Supplier _____
Name of Person: _____
Title of Individual within business: _____
Business address: _____

Telephone number: _____ Facsimile number: _____

3. Business Name of Supplier _____
Name of Person: _____
Title of Individual within business: _____
Business address: _____

Telephone number: _____ Facsimile number: _____

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State of Texas
County of Galveston

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§

NON-COLLUSION AFFIDAVIT

Before me, the undersigned notary, on this day personally appeared _____ (Affiant), whom being first duly sworn, deposes and certifies that:

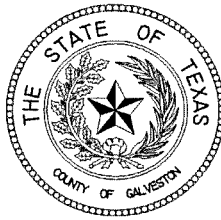
- Affiant is the _____ of _____, that
(Individual, Partner, Corporate Officer) (Name of Qualifier)
submitted the attached Qualification in **RFP No. B202009, Hitchcock Boat Ramp Concession**
- Affiant is a duly authorized representative of Qualifier and is authorized to make this Non-Collusion Affidavit;
- The attached Qualification is genuine and is not a collusive or sham Qualification;
- The attached Qualification has been independently arrived at without collusion with any other qualifier, bidder, proposer, person, firm, competitor, or potential competitor;
- Qualifier has not colluded, conspired, connived or agreed, directly or indirectly, with any other qualifier, bidder, proposer, person, firm, competitor, or potential competitor, to submit a collusive or sham qualification or that such other qualifier, bidder, proposer, person, firm, competitor, or potential competitor shall refrain from qualifying;
- Qualifier has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other qualifier, bidder, proposer, person, firm, competitor, or potential competitor to fix the price or prices in the attached Qualification or of the qualification any other qualifier;
- Qualifier has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other qualifier bidder, proposer, person, firm, competitor, or potential competitor to fix the overhead, profit or cost element of the Qualification price or prices of any other qualifier, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against Galveston County or any person interested in the proposed contract;
- Affiant has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other qualifier, bidder, proposer, person, firm, competitor, or potential competitor, paid or agreed to pay any other qualifier, bidder, proposer, person, firm, competitor, or potential competitor any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the price or prices in the attached Qualification or the qualification of any other Qualifier; and
- Affiant certifies that Affiant is fully informed regarding the accuracy of the statements contained herein, and under penalties of perjury, certifies and affirms the truth of the statements herein, such penalties being applicable to the Qualifier as well as to Affiant signing on its behalf.

Signature of Affiant

SWORN TO and SUBSCRIBED before me this _____ day of _____, 2020.

Notary Public

My Commission Expires: _____



County of Galveston

ACKNOWLEDGMENT AND CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER INELGIBILITY

Executive Orders 12549 & 12689 Certification, Debarment and Suspension

Solicitation Number: RFP #B202009

Solicitation Title: Hitchcock Boat Ramp Concession

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.

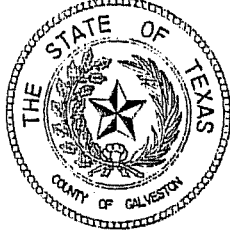
Contractor **Represents** and **Warrants** that the individual executing this Acknowledgment and Certification on its behalf has the full power and authority to do so and can legally bind the Contractor hereto.

Name of Business

Date

By: _____
Signature

Printed Name & Title



**County of Galveston
Purchasing Department
Vendor Qualification Packet**

(rev. 1.4, September 28, 2017)

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

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

PEID Form: Person /Entity Information Data

W -9 Form: 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-rd/ffw9.pdf> for the latest revision of this form.)

CIQ Form: 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 http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm 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).

Debarment: **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS & REQUIREMENT TO REGISTER IN SAM**
Vendors/contractor certifies that neither it, nor any of its Principals, are presently debarred, suspended, proposed for debarment, disqualified, excluded, or in any way declared ineligible for the award of contracts by any Federal agency. Vendor agrees that it shall refund Galveston County for any payments made to Contractor while ineligible. Vendor acknowledges that Contractor's uncured failure to perform under any agreement with the County of Galveston, if such should occur, may result in Contractor being debarred from performing additional work for the County, the respecting State Agency administering the grant funding the contract, if applicable, the State, FEMA or HUD (as applicable), and other Federal and State entities. Further, Vendor has executed the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters and returned the fully completed and executed original certification with the submission of this Vendor Qualification Packet. The truthful and fully completed and executed original of the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters must be included with the submission of this Vendor Qualification Packet and is a mandatory requirement to become a vendor of Galveston County. Vendor's failure to include the fully completed and executed original of this Certification shall be considered non-compliant with the requirements of this vendor qualification request and grounds for the rejection of vendor's request. Vendor shall immediately notify the County Purchasing Agent if it becomes debarred or suspended, placed on

the Consolidated List of Debarred Contractors, or in any other way becomes ineligible for award of contract by any Federal agency. This Certification is a material fact relied upon by Galveston County; if it is later determined that the vendor did not comply with 2 C.F.R. Part 180 and 2 C.F.R. Part 3000, in addition to the remedies available to Galveston County and the State agency administering a grant, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment of contractor. If the contract to be awarded pursuant to a Galveston County procurement effort involves the use of Federal funds, then vendor must also be registered in the Federal Contractor Registry through the System for Award Management (SAM) to be eligible for award of contract pursuant to the procurement.

Information regarding the SAM is available at:
<http://www.federalcontractorregistry.com/?gclid=CIG1hf2nr8wCFYkCaOoducANZw> or at
<https://www.sam.gov/portal/SAM/#1>.

No contract involving the use of Federal funds may be awarded to any vendor unless and until such registration is current and in good standing under SAM. Successful vendors must maintain SAM registration throughout the entire term of any contractual agreement with the County. If a contract involves the use of Federal funds, then vendor must enclose proof of such SAM registration within its response, which is also a mandatory requirement of County procurement policy; failure to enclose such proof shall be considered non-compliant with the requirements of any procurement effort and grounds for the rejection of vendor's response to any procurement efforts (i.e., bid, proposal, or qualifications statement, as applicable).

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:

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

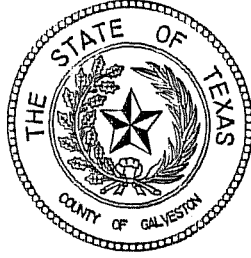
For Proposer's convenience, a blank CIQ Form is enclosed with this proposal. Blank CIQ Forms may also be obtained by visiting the Galveston County Clerk's website and/or the Purchasing Agent's website - both of these web sites are linked to the Galveston County homepage, at <http://www.co.galveston.tx.us>.

As well, blank CIQ Forms may be obtained by visiting the Texas Ethics Commission website, specifically at <http://www.ethics.state.tx.us/whatsnew/conflictforms.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 (21 st. Street), 5th Floor
 Galveston, Texas 77550
 (409) 770-5371
prodoc@co.galveston.tx.us

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"/> OneTime	<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.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see Instructions) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
6 City, state, and ZIP code	
7 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 line 1 to avoid backup withholding. For individuals, this is generally 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.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number												
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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); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

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 3.

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.
Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

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, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Note. If you are a U.S. person and 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 under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 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 section 1446 withholding on your share of partnership income.

In the cases below, the following person must give 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:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (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, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% 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, payments made in settlement of payment card and third party network transactions, 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 *Exempt payee code* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the instructions for the Requester of Form W-9 for more information.

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

Line 1

You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. Individual. Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant. Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. Sole proprietor or single-member LLC. Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation. Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. Other entities. Enter your name as shown on required U.S. federal tax documents on line 1. 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 line 2.

e. Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. 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 line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 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 U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—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 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

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 reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note. You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

Line 6

Enter your city, state, and ZIP code.

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 this page), 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 SSA 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, apply for a TIN and 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 U.S. 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 items 1, 4, or 5 below 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 line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

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 made in settlement of payment card and third party network transactions, 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.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN or:
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) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ³ The actual owner ³
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 Regulations section 1.671-4(b)(2)(i)(A))	The grantor ³
For this type of account:	Give name and EIN or:
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 Regulations 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 2.

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

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, 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 (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@ftc.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.

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. commonwealths and 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.

4

Signature of person doing business with the governmental entity

Date

714175

ATTACHMENT B

CM12110
Term 1/24/12-1/23/15
B122005
APP CC 1/24/12

HITCHCOCK BOAT RAMP CONCESSION AGREEMENT

STATE OF TEXAS §
COUNTY OF GALVESTON §

THIS AGREEMENT IS MADE AND ENTERED INTO effective as of the COMMENCEMENT DATE by and between the COUNTY OF GALVESTON, TEXAS, hereinafter called "COUNTY", and DeLeon and Erskins Investments LLC doing business as Waters Edge Bait hereinafter called "CONCESSIONAIRE".

DEFINITIONS

1. COUNTY - means the County of Galveston, Texas.
2. CONCESSION - food and beverage refreshments and/or bait and fishing supplies and/or () _____ and/or () _____.
3. CONCESSIONAIRE - means DeLeon and Erskins Investments LLC doing business as Waters Edge Bait.
4. CONCESSION PREMISES - means a designated area located adjacent to the Highland Bayou Diversionary Canal on 2nd Avenue, Hitchcock, Galveston County, Texas. The location of the concession premises is more fully shown on the plat attached hereto as Exhibit "A".
5. COMMENCEMENT DATE - Commencement date means the date of execution of this agreement by the County.
6. AUTHORIZED REPRESENTATIVE - means the Director of the County Parks Department or his written designee.
7. AGREEMENT - means this Agreement and the Request for Proposal, Requirements for Submission of Proposal, and Concession Proposal Form attached hereto as Exhibit "B".

RECITALS

WHEREAS, the County owns the tract of land more fully described in the following deed:

Warranty Deed from James P. Nash, et al., dated October 9, 1973, found of Record in Volume 2419, Page 140 et. seq. of the Deed Records of the County Clerk of Galveston County, Texas; and

WHEREAS, the lands that make up the Concession Premises were acquired as part of the Highland Bayou Diversionary Canal Project (Project). The Project was constructed using federal funds. Upon completion of the Project the County entered into an Operations and Maintenance Agreement with the United States Army Corp of Engineers to maintain the Project indefinitely in the future; and

WHEREAS, the lands that make up the Concession Premises were acquired by the County for spoil disposal purposes associated with the Project. It is important that the paramount use of these lands is that it be used as a spoil disposal site as and when needed as such by the County; and

WHEREAS, subordinate to the possible future paramount use of this land, the County desires to grant to concessionaire an exclusive concession to maintain and operate a "Concession", on Concession Premises; and

WHEREAS, the Concessionaire desires to secure such concession rights in the Concession Premises.

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, 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: i) the payments to be made by Concessionaire; ii) the terms, provisions and conditions herein set forth; iii) any and all other Concession Agreements, Licenses or Permits heretofore or hereinafter granted and iv) any other conditions, restrictions, covenants, licenses, rights of way or easements affecting the Concession Premises heretofore or hereinafter granted gives to Concessionaire, for the term hereinafter stated, the right to manage and operate the Concession upon the Concession Premises. Upon prior approval of the County being obtained, Concessionaire may also offer such other items of merchandise as are customarily offered for sale under similar circumstances at other bait camp operations within Galveston County.

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.

1.3 No portion of the Concession Premises is being leased to Concessionaire. Concessionaire is 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.

1.5 The County reserves the right to enter any portion of the Concession Premises for any reason.

1.6 The County also retains the right to enter the Concession Premises and to make any and all repairs and other improvements it deems necessary during the term of this Agreement and any renewals thereof.

**ARTICLE II
TERM**

2.1 This Agreement, unless terminated early by County, shall begin on the commencement date and terminate at midnight three (3) years after the execution date. The Concessionaire may request the County to exercise two (2) three (3) year renewal options. Such request shall be made in writing to the County no later than 60 days, but no sooner than 90 days, prior to the expiration of the agreement. County may, but is not obligated to grant the request for either renewal.

2.2 County may terminate this Agreement early, with or without cause or for any reason or no reason and without damages or liability to Concessionaire for such early termination, upon one hundred eighty (180) days prior written notice to Concessionaire. In addition, if it is determined by County that the Concession Premises are required for spoil disposal purposes or other purposes associated with the Highland Bayou Diversionary Canal Project, County may similarly terminate this Agreement without damages or liability to Concessionaire for such early termination upon thirty (30) days prior written notice to Concessionaire.

**ARTICLE III
PERMITS, OTHER AGREEMENTS AND APPROVAL**

3.1 This Agreement is granted by the County subject both to all of the terms and conditions of this Agreement, as well as to all design standards and requirements of the County for Concessions. This Agreement will not be effective until it has been approved by the Commissioners' Court of Galveston County and fully executed by the County Judge.

3.2 This 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; 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 Agreement is subject to all necessary Federal, State and/or local permits required for purposes of construction, including but not limited to permits of the U.S. Army Corps of Engineers, and the City of Hitchcock, if any, being secured.

3.4 The lands that make up the Concession Premises were acquired as part of the Highland Bayou Diversionary Canal Project (Project). Upon completion of the Project the County entered into an Operations and Maintenance Agreement with the United States Army Corp of Engineers to maintain the Project indefinitely in the future. The County acquired this land for spoil disposal purposes associated with the Project. It is the only land permanently acquired by the County for such

purposes in the lower reach of the Project. It is therefore imperative that the paramount use of this land is that it be readily available as required as a spoil disposal site as and when needed by the County. This Agreement is subject to this paramount use.

3.5 On July 12, 1999 the County entered into a License Agreement with the City of Hitchcock. This Agreement granted the City the right to construct, use and maintain a road over a portion of the Concession Premises. Currently, this road runs through the parking lot which Concessionaire will be used. This Agreement is subject to this July 12, 1999 Agreement.

ARTICLE IV OWNERSHIP OF TITLE TO IMPROVEMENT

4.1 All improvements already in place upon and within the Concession Premises belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaire will not commit waste upon, remove, or voluntarily destroy any improvements unless to construct other improvements that meet the requirements specified herein.

4.2 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 County-owned 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 as a bait camp or be in keeping with Concessionaire's proposed usage of the Concession Premises.

4.3 All modifications made by Concessionaire remain the property of the Concessionaire during the term of the Agreement. Such modifications may not be removed from the Concession Premises prior to the end of the term without prior written consent from the County's Authorized Representative.

4.4 Upon termination of this Agreement, whether by expiration or early termination, the title to all Modifications (as the term is defined in Article V) constructed by Concessionaire and permanently fixed to the Concession Premises shall, unless otherwise directed by County, vest in the County. Upon such termination, Concessionaire shall remove his/her personal property, all non-permanent trade fixtures and such Modifications as the Authorized Representative shall direct, and shall restore the Concession Premises to the same condition it was in at Commencement Date, ordinary wear and tear and damage by unavoidable causes excluded.

**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 trade fixtures, shades or awning, or to construct additional improvements on the Concession Premises (e.g. 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 Authorized Representative preliminary plans and specifications of such requested Modifications for review and approval. The Authorized Representative, in turn, will submit such plans and specifications to the U.S. Army Corp of Engineers and the County Engineer to determine if such requested Modifications do not interfere with the requirements of the Corp's Operation and Maintenance Agreement. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the Authorized Representative. Any revisions to Concessionaire's plans and specifications by the Authorized Representative, the Corp or the County Engineer 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 Authorized Representative signing a set of the plans and specifications.

5.2 Prior to the commencement of construction of the Modifications, Concessionaire will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the modifications. In addition, Concessionaire shall require his Contractor to furnish to the County, as owner of the Concession Premises, payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code. 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 Authorized Representative. The 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 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 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 Authorized Representative. In case of disagreement with respect to the compliance with approved plans, such disagreement will be submitted to the County Engineer, whose decision 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 agrees, upon completion of construction, to furnish Authorized Representative with a complete set of "as-built" drawings in hard copy mylar and editable soft copy electronic format (Auto Cad). This requirement may be waived by Authorized Representative if the circumstances warrant.

ARTICLE VI CONSIDERATION - OPERATION

6.1 The parties agree that the operations conducted upon the Concession Premises shall be operated at no expense to the County of Galveston. Concessionaire has agreed, during the initial term of this Agreement and all renewals thereof, to pay County a flat fee of Four Hundred (\$ 400) per month. The first payment will be due and payable on the fifth of the month following the commencement date. The first payment may be prorated by dividing the monthly fee by 30 and multiplying it times the number of days in the first payment period. The first payment period is the last day of the month minus the commencement date of the contract. All other payments are due on the fifth of each month thereafter in the amount of the full monthly flat fee listed above.

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

6.3 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 in a public park so as to not mislead the public into believing that the area is private.

6.4 Concessionaire agrees to make the Concession Premises open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

ARTICLE VII TAXES

7.1 It is contemplated that Concessionaire may be subject to ad-valorem taxes upon all Modifications constructed by Concessionaire, as well 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 Agreement may 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 operations as such taxes become due. Concessionaire also covenants to pay Texas state sales taxes and Federal income taxes as such taxes become due. Concessionaire agrees to provide to County 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 by the County or its authorized agents.

**ARTICLE IX
REPAIRS AND MAINTENANCE**

9.1 Concessionaire covenants and agrees, at Concessionaire's cost and expense, to keep all improvements, 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 cost and expense, all repairs and replacements that may be necessary and required to keep same in good, safe and sound condition. Concessionaire also agrees to daily bag all trash and refuse found upon the Concession Premises and to place same in trash receptacle located on the property and to maintain the restrooms in a clean condition.

9.2 Concessionaire will also be responsible for:

- a. Mowing and trimming (Weed Eat) the grassy areas upon the Concession Premises and surrounding County owned areas on a weekly basis during the summer months and as often as determined needed by Authorized Representative during such other months;
- b. Trash removal from the trash receptacle
- c. Maintaining exterior lights; and
- d. Maintaining the parking lot.

9.3 County, if and as budgeted funds become available for such purpose retains the right but not the obligation to make such repairs to the existing boat ramp 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.

9.4 The County, acting through its agents or representatives, 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 which need attention. The degree of maintenance, repair and upkeep shall be in keeping with other Beach parks in the area and public parks operated by the County. 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, modifications and personal property items as herein provided, or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement. But, such termination will not relieve Concessionaire of his obligation to pay County for such repairs or maintenance charges.

9.5 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, health and safety, and operation of concession sales. Concessionaire also agrees to obtain and keep current any and all permits required by the State of Texas, the County, the City of Hitchcock the U. S. Army Corp of Engineers, and any other applicable entity.

ARTICLE X OPERATION

10.1 Concessionaires shall allow Authorized Representative the right to close or partially close all or any part of the Concession Premises, for potentially dangerous weather situations ^{or} other causes determined necessary by Authorized Representative.

10.2 Concessionaire shall comply with all applicable Federal, State, County and City laws governing the operation of the Concession Premises. Violation of any Federal, State, County or City laws ordinances, and/or regulations will be cause for termination of this Agreement.

10.3 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.

10.4 Concessionaire shall obtain and pay for all permits or licenses that may be required for the operation of all portions of the Concession Premises. In addition, Concessionaire shall meet all requirements of the County, City and State Health Departments covering the handling and dispensing of food and beverages. Any permits required for operating the Concession Premises must be timely obtained from the appropriate entity.

10.5 All electricity costs for the Concession Premises and the boat ramp will be borne by the Concessionaire. 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, will be the responsibility of the Concessionaire. Gas is not available.

10.6 Concessionaire shall not erect any signs on the Concession Premises and modifications or in the vicinity thereof without obtaining the advance written approval of the Authorized Representative. Concessionaire may enter into advertising relative to the Concession that is consistent with the dignified approach necessitated by the reputation of the Concession

Premises. The Concession Premises shall be known by the name set forth in Concessionaire's proposal. The name may not be changed without obtaining the advance written approval of Authorized Representative.

10.7 Concessionaire will manage and operate the Concession at the Concession Premises, providing food and beverages and/or bait and fishing supplies.

- a. Examples of the variety of food and beverages sold at the Concession Premises may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc...), bottled water, fruit juices, iced tea, beer in cans, coffee and lemonade.
- 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 it finds objectionable.

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

10.9 Concessionaire shall keep the Concession Premises, modifications and 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 Authorized Representative.

10.10 The County and its representative(s) shall have access to the Concession Premises, modifications and to each part thereof, during the regular business hours of Concessionaire for the purpose of inspecting Concessionaires operations and his relationship with the public.

10.11 The boat ramp is open seven days a week, year round. The operating period of the Concession Premises shall be conducive to meeting the needs of boat ramp users. Concessionaire will adhere to the schedule set forth in Concessionaire's proposal. This schedule may be changed only upon prior approval of the Authorized Representative.

10.12 Concessionaire may not keep any explosive or hazardous materials on the Concession Premises and Modifications, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Concession Premises or modifications.

10.13 Vendors shall not be permitted or engaged by Concessionaire within the Concession Premises without prior written approval being obtained by Concessionaire from the Authorized Representative.

10.14 No vending machines shall be permitted within the Park without prior written approval being obtained from the Authorized Representative.

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

ARTICLE XI EROSION/ PARAMOUNT PURPOSE

11.1 Concessionaire acknowledges that steady erosion and avulsion caused by moving water within the Highland Bayou Diversionary Canal is a constant problem and that all or a portion of the Concession Premises and Modifications and Concessionaire's trade fixtures, inventory and other personal property 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 repair to restore any Concession Premises and modifications which may have been lost, ii) to undertake any efforts whatsoever toward recapturing any shoreline lost to such erosion or avulsion, or iii) to reimburse or in any way be responsible to Concessionaire for any damages incurred. Concessionaire agrees that in the event he/she feels any Modifications constructed by Concessionaire are so threatened to undertake (subject to prior approval being obtained by the Authorized Representative and the U. S. Army Corps of Engineers) such steps as are necessary to prevent or minimize such damage.

11.2 As stated in the Preamble to this Agreement, the paramount purpose of this land is that of a spoil site for the Highland Bayou Diversionary Canal. Accordingly, this Agreement is made subordinate to the right of the County to use the Concession Premises as a spoil deposit site for the deposit of spoil without regard to any damages which might be caused to Concessionaire. Should the County decide to use the Concession Premises or any land owned by County adjacent to the Concession Premises for spoil site purposes, County will give Concessionaire thirty (30) days prior written notice of its intention to cancel this Agreement. Upon the expiration of the thirty (30) day notice by County, this Agreement will terminate and Concessionaire, upon request of Authorized Representative, will remove all Modifications and/or trade fixtures, inventory and other personal property from the Concession Premises. In the event Concessionaire fails to comply with this requirement, County shall have the right to remove all such Modifications and other property belonging to Concessionaire and assess the cost of all such work against Concessionaire and Concessionaire will immediately pay the cost.

ARTICLE XII LIABILITY INSURANCE COVERAGE

12.1 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Concession Agreement, at the Concessionaire's 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 of Galveston, the Galveston County Commissioners' Court, the Galveston County Parks Department, and Concessionaires are named as the insured's.

12.2 This insurance shall be of the kind commonly known as public liability and third party property damage insurance, insuring the insured's 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 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 two 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 two 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 1 Million Dollars each common cause and 1 Million Dollars aggregate.

12.5 Concessionaire shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies of insurance, Concessionaire shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.6 Concessionaire agrees, at the Concessionaire's expense, to obtain and maintain during the entire term of this 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.

12.7 Concessionaire covenants and agrees that the Concessionaire will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep the Concession Premises and Concessionaire's inventory, trade fixtures and personal property items, and all replacements thereof, and all other contents of the Concession Premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, "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 improvements, personal property items and all other contents. In the event there is damage or destruction to the improvements or personal property items and/or other contents, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

12.8 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 Authorized Representative.

12.9 Concessionaire further covenants that in the event Concessionaire constructs Modifications which stand apart from County's current improvements on the Concession Premises (e.g. boat storage stalls) that he/she will, throughout the term of this Agreement, at the Concessionaire's sole cost and expense, keep such Modifications insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire, 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 hundred (80%) of the full replacement value of said Modifications. In the event there is damage or destruction to the Modifications, Concessionaire shall have fifteen (15) days (or such greater periods of time as are permitted by Authorized Representative) after such damage or destruction occurs to repair or replace same. Flood insurance coverage is optional.

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. In addition, in the event of partial or complete destruction of the Concession Premises, County shall have no duty or obligation to make any repairs or to otherwise restore the Concession Premises or any part thereof.

ARTICLE XIII ASSIGNMENT OF AGREEMENT

13.1 This 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 duly authorized written Resolution. Such approval of assignment, 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 premises, or makes default in any other covenant of the Concessionaire contained in this Agreement, including but not limited to failure to perform necessary maintenance and repairs or to obtain all required insurance, and such default shall continue for fifteen (15) days (ten (10) days in the event of 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 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 Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Concession Premises and Modifications, with process of law 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 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 Modifications on or before such date of termination.

**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 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 he 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 Agreement.

**ARTICLE XVII
INDEMNIFICATION**

17.1 Concessionaire shall protect, indemnify and save harmless, the County, its Commissioners, officers 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 Modifications or in any manner growing out of or connected with Concessionaire's use and occupation of the Concession Premises and Modifications during the term of this Agreement. Concessionaire shall give the County prompt notice of any claim coming to their 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 goods 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 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 "C".

18.4 Concessionaire may not charge any "launch fee" to any person wishing to use the County Boat Ramp located adjacent to the Concession Premises.

**ARTICLE XIX
INDEPENDENT CONTRACTOR**

19.1 This 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 and modifications, no discrimination of any kind shall be practiced by any party which 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
AMERICANS WITH DISABILITIES ACT**

21.1 Concessionaire agrees to comply with the American with Disabilities 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 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 Agreement and all covenants, conditions and agreements of this 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 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 Agreement.

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

Hon. Mark A. Henry
County Judge
County Courthouse, 2nd Floor
Galveston, Texas 77550
Fax: (409) 766-2653

with a copy to:

Dennis Harris
Director
Galveston County
Department of Parks & Senior Services
4105 Main St. (FM 519)
La Marque, Texas 77568
Fax: (409) 934-8140

with a second copy to:

Harvey Bazaman
Director
Galveston County Legal Department
722 Moody Avenue (21st Street)
Fifth (5th) Floor
Galveston, Texas 77550
Fax: (409) 770-5560

with a third copy to:

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

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 Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this 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 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 Agreement as an addendum.

23.6 This 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 This Agreement is executed to be effective as of the commencement date.

CONCESSIONAIRE:

By:


Damon Erskins


Date:

01/17/12

THE COUNTY OF GALVESTON:

The County of Galveston, acting by and through Mark A. Henry, County Judge, pursuant to Order of the Commissioners' Court of Galveston County, Texas, adopted on date indicated below hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution by the County Judge.

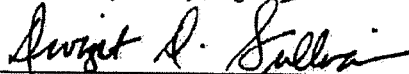
By:


Mark A. Henry, County Judge

Date:

1/24/12

Attest:


Dwight Sullivan, County Clerk

Approved as to Form

By:


Galveston County Legal Department