

RESOLUTION NO. 2013-89

JOINT RESOLUTION BY THE EXECUTIVE COMMITTEE AND PUBLIC WORKS, PARKS AND FACILITIES COMMITTEE AUTHORIZING RACINE COUNTY TO ENTER INTO AN AGREEMENT WITH SIEGEL-GALLAGHER FOR THE PROPERTY AND OPERATIONS MANAGEMENT OF REEFPOINT MARINA

To the Honorable Members of the Racine County Board of Supervisors:

BE IT RESOLVED that the Racine County Board of Supervisors hereby authorizes and approves the entry by Racine County into an agreement with Siegel-Gallagher for the property and operations management of Reefpoint Marina, under the general terms and conditions set out in "Exhibit A", which is attached hereto and available on the County's website and in the County Clerk's Office.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that such agreement shall incorporate such terms and conditions as the Corporation Counsel and the Finance Director deem necessary and appropriate.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that any two of the County Clerk, the County Executive and/or the County Board Chairman are authorized to execute any contracts, agreements or other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

1st Reading _____

EXECUTIVE COMMITTEE

2nd Reading _____

Peter L. Hansen, Chairman

BOARD ACTION

Adopted _____

For _____

Against _____

Absent _____

Russell A. Clark, Vice Chairman

Robert N. Miller, Secretary

VOTE REQUIRED: Majority

Prepared by:
Corporation Counsel

Mark M. Gleason

Katherine Buske

Ronald Molnar

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2 Page Two

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4 _____
Kenneth Hall

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7 _____
Q.A. Shakoor, II

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10 _____
Pamela Zenner-Richards

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13 Respectfully submitted,

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15 1st Reading _____

**PUBLIC WORKS, PARKS AND FACILITIES
COMMITTEE**

16
17 2nd Reading _____

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19 BOARD ACTION

20 Adopted _____

21 For _____

22 Against _____

23 Absent _____

Katherine Buske, Chairman

Robert D. Grove, Vice-Chairman

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25 VOTE REQUIRED: Majority

Mike Dawson, Secretary

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27 Prepared by:
28 Corporation Counsel

Monte G. Osterman

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31 _____
Jeff Halbach

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34 _____
Daniel F. Sharkozy

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37 _____
Kiana K. Johnson

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39 **The foregoing legislation adopted by the**
40 **County Board of Supervisors of**
41 **Racine County, Wisconsin, is hereby:**

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43 **Approved:** _____

44 **Vetoed:** _____

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46 **Date:** _____,

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48 _____
49 **James A. Ladwig, County Executive**

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INFORMATION ONLY

6 **WHEREAS**, Resolution 2011-99 authorized Racine County to purchase from
7 Racine Harbor Marina, LLC (RHM) all the assets of Reefpoint Marina (“RPM”) and RPM
8 has been run as a county property continuously since February 2012; and

9 **WHEREAS**, Racine County deems it advantageous for operation and
10 management of Reefpoint Marina to be conducted by a firm experienced in property
11 management and marina operations; and

12 **WHEREAS**, pursuant to its standard contracting procedures, Racine County has,
13 through a Request for Proposals (RFP), invited and received bids to provide such
14 services; and

15 **WHEREAS**, based upon the examination of all bids received and the subsequent
16 interviews with bidders, the bid of Siegel-Gallagher has been deemed most
17 advantageous to Racine County.

REAL ESTATE MANAGEMENT AND OPERATION AGREEMENT
For
RACINE COUNTY REEFPOINT MARINA

1. **Introduction**

THIS CONTRACT, entered into this _____ day of _____, 2013, by and between Racine County, Wisconsin (hereinafter "Racine County"), a quasi-municipal corporation with its principal place of business at 730 Wisconsin Avenue, Racine, WI 53403, and Siegel-Gallagher Management Company, a Wisconsin corporation (hereinafter "Siegel-Gallagher"), with its principal place of business at 252 East Highland Avenue, Milwaukee, WI 53202, (414) 270-4100.

2. **Term of the Real estate management and operation agreement**

The term of this proposed real estate management and operation agreement shall begin on January 1, 2014 and end on December 31, 2018. At the end of the agreement, Racine County shall have the option of renewing the agreement for one additional 5-year term, as more fully described in Article 21 below.

3. **Property Management and Operations Responsibilities**

A. **Facilities Property Management.** Siegel-Gallagher shall be responsible for the operation, care, custody, and control, including all daily and routine maintenance and repairs of all personal property and all real property and fixtures thereon within Reefpoint Marina, as specified herein including:

- All permanent and floating piers, docks, and other mooring facilities, on land or in water.
- All buildings, facilities, and structures within the confines of Reefpoint Marina, including but not limited to the administration building; restroom and shower facilities onshore and offshore; swimming pool, two (2) hot tubs and related pump house; and fueling station and dock, along with all fuel storage and fuel systems. The following exceptions apply:
 - The building that houses a fish cleaning station and restrooms at the east end of the marina area is managed and maintained by Racine County;
 - Racine County leases a portion or portions of the administration building for restaurant and convenience store, Racine County has reached agreements with the lessee(s) concerning housekeeping of those areas.
- All walkways, driveways, and parking lots immediately adjacent to the harbor and/or buildings, facilities, and structures that Siegel-Gallagher is responsible for managing.
- All electrical, mechanical, plumbing, heating, ventilation and air conditioning equipment in or on the facilities, including equipment made available to accommodate vessels moored at slips.

Mutually agreed to security devices shall be installed and maintained onsite to protect all real and personal property, including, but not limited to protecting the slips and watercraft from direct, unrestricted access by the general public. Security services shall also be retained and managed seven (7) days per week during the annual boating season.

Siegel-Gallagher shall keep in good repair and maintain all of the facilities and equipment described above in clean and orderly condition and shall continually assess and offer regular written recommendations to Racine County on how to improve facilities and equipment at Reefpoint Marina. The property and all facilities are at all times subject to entry by authorized officers, agents, and employees of Racine County for purposes of inspection or water or engineering tests, or for other reason.

B. Marina Administration. Siegel-Gallagher shall conduct in a businesslike and customer-friendly manner all the administrative aspects of operation of a first-class marina, including, but not limited to:

- Accessibility and friendly attention to slip tenants, their families and guests, and prompt, courteous responsiveness to their needs and reasonable requests;
- Develop and maintain clear and frequent communications with all slip tenants on matters of general concern and interest;
- Operation, including regular updating, of a website for Reefpoint Marina that encompasses all facets of Reefpoint operations and matters of significance to current and prospective renters, including, but not limited to, verbal and imagery description of marina facilities and the surrounding area, current weather information, seasonal and transient slip fees, and promotions and other marketing projects;
- Safe, efficient, and courteous operation of the fueling station in compliance with all applicable federal, state, and local laws and regulations;
- Operation of the fueling station during the following hours*:
 - Beginning no later than 8:00 AM and ending no earlier than 6:00 PM during the primary boating season (Memorial Day Weekend through Labor Day), and or other mutually agreed to times, and
 - Beginning no later than 8:00 AM and ending no earlier than 4:30 PM from April 1st until Memorial Day Weekend and from the day after Labor Day through November 1st, and other mutually agreed to times;
 - Signs shall be prominently placed on fuel docks, posting hours of operation and a contact phone number.
- Sales of convenience-type items from store at fuel station April 1st through November 1st, for purchase of snacks, ice and boat needs (oil, etc.);
- Design and operation of retail ship store for consumer requested items to be located on the ground floor of the Administration Building;
- Establishment and implementation of effective systems for processing, monitoring, and accounting for slip rental payments of all renters, in

accordance with the terms of the applicable slip rental agreements;

- Responsible for the administration of all slip leases affecting the Premises. In connection with such lease administration: monitor tenant compliance and enforce Racine County's rights under all such leases; upon default by any tenant and after consultation with County, terminate tenancies and sign and serve in the name of Racine County to evict tenants and to recover possession of the Premises, and recover rents and other sums due; when expedient, settle, compromise and release such disputes, actions or suits or reinstate such tenancies; communicate regularly with Racine County Sheriff's Office-Water Patrol to enforce all Racine County Ordinances; provide County with periodic forecasts of scheduled or anticipated vacancies; advise County of suggested lease rental rates and terms and/or preferred tenant use for vacant space;
- Establishment and implementation of effective financial systems for handling, safeguarding, accounting for, and regularly transferring to Racine County, funds received in the course of operation and management of the marina, including, but not limited to, slip rentals and deposits; transient slip fees and other per-use fees; collections from cash-operated laundry or vending machines owned by Racine County (if any);
- Facilitation of visits by transient boaters; boaters visiting the marina to patronize restaurant, bar, or convenience store facilities; and boaters coming to assess the marina's suitability as a permanent mooring location;
- Comprehensive management as County's exclusive agent to operate, manage, and service premises, as Siegel-Gallagher determines and in their sole discretion, any and all commercial tenants on the marina premises and Administration Building, including but not limited to Reefpoint BrewHouse Restaurant;
- Operation of the on-site marina office during the following hours:
 - beginning no later than 8:00 AM and ending no earlier than 5:00 PM during the primary boating season (Memorial Day Weekend through Labor Day), and mutually agreed to times;
 - beginning no later than 8:00 AM and ending no earlier than 5:00 PM from March 1st until Memorial Day Weekend and from the day after Labor Day through November 30th
 - from December 1st through February 28th, Siegel-Gallagher need not operate under the on-site marina office hours, but shall clearly and publicly post and announce contact information (including street and mailing address, telephone numbers, and email address) for its off-season hours. Off-season hours shall be mutually agreed to in writing with County;
- Upon termination of this agreement, Siegel-Gallagher shall provide to County all records of its operation and management of the marina, including, but not limited to, all records and transactions concerning slip rentals, deposits, and payments; all contact information for current and former slip renters; and all records of inspections, maintenance, and repairs of property, fixtures, and equipment;

- Siegel-Gallagher may, at its discretion, perform any other services beyond the scope of ordinary management services of this Agreement as requested in writing by County (including, but not limited to, supervision of major capital repairs, replacements or additions or restoration of damage due to fire or other casualty) for such reasonable additional compensation and upon such terms and conditions as the parties may mutually agree.
- C. Marina Marketing. Siegel-Gallagher shall provide marketing of Reefpoint Marina, including but, not limited to the following:
- Distribution of flyers, brochures, and other promotional materials to slip tenants and visitors, and placement of such materials in public areas of the marina and, as permitted in other commercial locations where the boating public can be targeted;
 - Distribution of materials related to rentals for the next season, such as price lists and notices of long or limited-term promotional offers to slip tenants and visitors, and placement of such materials in public areas of the marina and, as permitted, in other locations where they can reach the boating public;
 - Distribution of slip rental and deposit agreements for rentals for the next season, to slip tenants, visitors, and other interested persons; and receipt and processing of applications for slip rentals, including acceptance of slip deposits;
 - Providing guided tours of the Reefpoint Marina facilities to potential slip tenants on request;
 - Providing internet access to all documents, materials, and information described in the foregoing items through posting on the marina's website and/or providing links to such items;
 - Development and management of the official Reefpoint Marina website;
 - Being available to interested persons, throughout the year, to provide information about slip rentals, etc.;
 - Utilization of social media and other electronic marketing;
 - Development of print marketing in newspapers and trade periodicals;
 - Frequent "press releases" to local media outlets.

4. Standards of Service

- A. Siegel-Gallagher agrees to operate and maintain Reefpoint Marina as a first-class facility, providing services generally expected of first-class marinas on Lake Michigan and under *Clean Marina* standards and maintaining continuous *Clean Marina* certification.
- B. Siegel-Gallagher shall, subject to annual budget limitations, provide sufficient and competent employees to adequately manage, maintain and operate the marina facilities and equipment and to meet the ongoing needs of the customers served by the marina. Racine County shall be obligated to pay all costs related to the seasonal dock hands and office staff.

Said staff shall be competent and able to understand buildings and grounds maintenance and upkeep, as well as deal effectively and courteously with the boating and general public in a recreational setting with an attention to detail, and to adequately operate the marina at all times, including providing security and the ability to respond in case of emergency after normal working hours. Siegel-Gallagher shall further provide regular and adequate training to said staff so that they are able to perform maintenance on the marina facilities and equipment in a quality workmanlike manner. Staff under the supervision of Siegel-Gallagher who use and/or direct (supervise) the use of any restricted-use pesticides or herbicides must be licensed and certified pursuant to State of Wisconsin laws and regulations.

- C. Siegel-Gallagher shall enforce current rules and county ordinances pertaining to the marina. Any additional rules proposed by Siegel-Gallagher shall be approved in writing by Racine County prior to their posting. Said approval by Racine County shall not be unreasonably withheld.
- D. Siegel-Gallagher agrees to employ a Marina General Manager and Dock Master who shall have demonstrated success in the operation and management of a marina. The General Manager and Dock Master shall be satisfactory to Racine County and available at the marina at all reasonable times, weekdays and routinely scheduled weekends, during operation of this agreement. Management shall be available on-site daily from Memorial Day weekend through Labor Day weekend from no later than 8:00 AM through no earlier than 8:00 PM. Siegel-Gallagher will agree, at the request of Racine County or its authorized representative, and with the making of specific charges, forthwith to terminate or suspend the employment of any employee whom Racine County or such representative considers detrimental to the best interests of the marina or the public. Such termination or suspension shall occur within 48 hours of receipt, by Siegel-Gallagher, of official notice from Racine County. Siegel-Gallagher shall be obligated to pay all costs related to the Marina General Manager and Dock Master.
- E. Siegel-Gallagher shall be obligated to secure all federal, state, and local licenses and permits necessary for the Reefpoint Marina operation.
- F. The marina shall not be used for any illegal purposes, or in violation of any valid regulation of any governmental body, nor in any manner to create any nuisance or trespass, nor in any manner which may invalidate the insurance coverage of the premises or increase the rate of insurance coverage on the premises. All activities must receive written approval by County.
- G. Siegel-Gallagher shall operate the premises as a public marina, open and available to all persons regardless of race, color, creed, national origin, or physical handicap, and in compliance with all applicable federal, state and local anti-discrimination laws.
- H. Siegel-Gallagher shall not allow any boater to occupy a slip without payment in full for the space at the pre-authorized rental fee amount, without prior written

authorization from Racine County.

5. Slip Rental Fees and Other Fees and Charges

- A. Siegel-Gallagher shall charge slip rental fees, transient fees, sport dock rental fees, slip rental deposit fees, and other fees and charges for use of the marina facilities as established by Racine County and set out in the annual budget or otherwise pre-authorized. Siegel-Gallagher shall have the right to offer discounted fees, seasonal rates, and special group rates, only with the expressed written approval of Racine County.
- B. Siegel-Gallagher may charge such lawful fees and prices as it chooses for any goods (e.g., fuel and items sold at retail in a convenience store) or for any other services (e.g., concierge services or laundry services) that it offers to the public, provided they are pre-approved in writing by Racine County.

6. Daily Operation

The marina shall be operated on a seven day a week basis from at least April 1st through at least November 1st and on a five day a week basis (holidays excepted) during the months of March and November. The fueling station need not be in operation between November 1st and March 31st.

7. Maintenance, Repairs, Damage, Destruction and Restoration

- A. Siegel-Gallagher shall, throughout the term of this property management and operation agreement, keep and maintain the premises, including, but not limited to all structures and improvements of every kind which may be a part of the marina facilities, including the heating, ventilating and air conditioning systems; electrical, plumbing and sewer lines; hot water heaters and water softener systems; fire suppression and exhaust systems; building security systems; emergency lighting systems and the like.
- B. Siegel-Gallagher shall, at Racine County's sole cost and expense, establish accounts and enter into contracts in the name of County for electricity, gas, fuel, water, steam, telephone, window cleaning, rubbish removal, janitorial, security and other services Manager may deem advisable and as provided for in the budget.
- C. Based on the standard in commercial property management and marina management, Siegel-Gallagher shall perform all indoor and outdoor maintenance functions needed to maintain the marina in a clean and presentable condition, including but not limited to routine sweeping and washing of walkways and piers, weed removal above and below the water in the marina and regular removal of dirt and detritus from all exterior faces of the marina facilities. All wood ramps and dockage shall be inspected daily and cleaned of any water fowl droppings using a method that will cause the least damage to the wood planks. Siegel-Gallagher shall provide, or shall arrange for, interior housekeeping, including of

restrooms and shower facilities.

- D. Racine County may and shall without notice inspect and demand that conditions, which are in its opinion unsatisfactory, be corrected without delay.
- E. Siegel-Gallagher has no responsibility for maintaining the roads and parking lots within Harbor Park, except that it is responsible for coordinating trash and debris removal and disposal, as well as snow and ice removal on parking lots immediately adjacent to the harbor or the marina buildings for which the restaurant tenant is responsible. Racine County shall mow lawns, control weeds, and otherwise be responsible for landscape maintenance of the grounds adjacent to the marina.
- F. Siegel-Gallagher agrees to keep clean and in an orderly condition, any and all structures and improvements of the marina used by Siegel-Gallagher. Siegel-Gallagher shall not be allowed to store on the marina premises equipment, vehicles, materials, supplies, etc. not required for carrying out this real estate management and operation agreement without expressed written permission from Racine County.
- G. Racine County shall be responsible for major repairs. Major repairs shall be defined as structural repairs, including, but not limited to such categories as building floors (excluding carpeting and tile), exterior walls and roofs, heating and air conditioning systems, water and sewer laterals, and electrical service leading to the building. If major repairs are required because of neglect or lack of regular maintenance of the facilities by Siegel-Gallagher, Siegel-Gallagher shall be responsible for all repairs or replacements at its own cost, and without any expenses to Racine County.
- H. Siegel-Gallagher shall make no major alterations, additions, major repairs, permanent decorations, restorations, or improvements of the leased premises without first submitting plans and specifications therefore to Racine County for its written approval.
- I. Siegel-Gallagher will be authorized to identify and remediate exigent maintenance issues that arise. Siegel-Gallagher will communicate, either directly or through the marina General Manager, with Racine County Corporation Counsel in as contemporaneous time frame as possible given the circumstances. Siegel-Gallagher will procure remedial goods or services by utilizing Racine County's open purchase orders. Written notice to Corporation Counsel and the corresponding reply authorization is a condition precedent to Siegel-Gallagher's purchases on behalf of Racine County. Siegel-Gallagher will assist marina General Manager in preparing a monthly report of purchases and repairs that were made and deliver said report to the Racine County Finance Department representative and Corporation Counsel during the first week of every month.
- J. Siegel-Gallagher shall utilize and make available to boaters a web-based maintenance system to monitor and track maintenance orders. The Siegel-Gallagher system shall include features and benefits similar to the BE "Work

Order Manager”, “Boater Portal”, “Boater Handbook”, and “Resource Scheduling” software.

- K. At the termination of this real estate management and operation agreement, Siegel-Gallagher shall ensure that the condition of the marina premises have been appropriately maintained during the term of the agreement. Siegel-Gallagher shall be responsible for the repair or replacement of conditions of the marina premises that are determined to be substandard, excluding the major components of the marina infrastructure.

8. Capital Improvements

Racine County has the right to make whatever capital improvements it deems necessary or desirable at any time without expense to Siegel-Gallagher. Before making any such improvements, Racine County shall meet with Siegel-Gallagher to discuss the effect of the improvement and making of such improvement upon operation and use of the marina premises. Siegel-Gallagher and Racine County shall work together to minimize or limit any adverse effect of any such improvement or the making of such improvement upon boaters’ enjoyment of the use of the marina.

Racine County shall make a good faith effort to minimize or limit any adverse effect of any such improvement or the making of such improvement upon Siegel-Gallagher’s operation of the marina. The parties expressly understand and agree that Siegel-Gallagher shall not be relieved of any of its obligations under this real estate management and operation agreement, nor shall Racine County be liable to Siegel-Gallagher for any interruptions of, or costs or damages to, Siegel-Gallagher’s operation that may result from County’s making any capital improvements.

9. Easements

This real estate management and operation agreement is subject to all easements of record relating to the marina premises and the rights of Racine County and other public utilities to go upon the marina premises for the purpose of installing, removing, inspecting or maintaining public utilities.

10. Inspection and Accounting

- A. Siegel-Gallagher shall make available to Racine County a statement of gross revenue receipts for slip rentals, transient fees, and other fees and charges for use of the marina facilities and expenditures by way of an additional user license in the Yardi Voyager financial accounting system that will be paid for by Racine County. This information shall show a comprehensive reporting in real time and accounting of a general ledger that will be configured to mirror Racine County’s JD Edwards system accounts for the marina. Any other information requested by Racine County’s Finance Department or outside auditor shall be available through Siegel-Gallagher’s Yardi system. The Yardi Payscan and CheckScan software shall also be utilized by Siegel-Gallagher.

- B. Racine County shall have the right, at any and all reasonable hours, and upon reasonable notice, to have an accountant inspect and verify the books of Siegel-

Gallagher with reference to its handling and disposition of slip rentals, transient fees, and other fees and charges for use of the marina facilities. Racine County shall have the right at Racine County's expense, at any and all reasonable hours, and upon reasonable notice, to have an audit performed upon Siegel-Gallagher's handling and disposition of slip rentals, transient fees, and other fees and charges for use of the marina facilities, as Racine County may deem necessary or desirable.

- C. Racine County shall have the right of access to any and all portions of the marina premises, at any and all hours, for the purpose of inspecting, analyzing and/or gathering information relating to the premises itself.

11. Insurance

- A. Racine County shall obtain Fire & Property Insurance and Boiler Insurance coverage on the structures and improvements on the leased premises in an amount equal to their replacement value.
- B. Siegel-Gallagher shall maintain at its expense and provide Racine County with Certificates of Insurance that provide the following coverage:
 - 1. Unemployment Compensation and Worker's Compensation and/or Longshore & Harbor Workers' Compensation insurance, covering the statutory liability of Siegel-Gallagher in the operation of the marina.
 - 2. General liability coverage including personal injury and contractual liability with limits of at least One Million Dollars (\$1,000,000.00) for each occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate naming Racine County as an additional named insured under Siegel-Gallagher's policy.
- C. Siegel-Gallagher shall also provide an umbrella liability policy, with provisions acceptable to Racine County, insuring all property in the care, custody and control of Siegel-Gallagher under the terms of this Agreement, including materials, equipment, structures, and improvements, insuring such property against losses by virtue of the negligent acts of Siegel-Gallagher or its agents or employees with liability limits of Three Million Dollars (\$3,000,000.00). Said policy shall name Racine County as an additional named insured and shall be primary to any other.

12. Indemnity Provisions

- A. Siegel-Gallagher shall indemnify and save harmless Racine County from and against any and all losses, costs (including attorney's fees), damages, expenses and liability (including statutory liability and liability under Worker's Compensation and Unemployment Compensation Laws) in connection with claims for damages as a result of injury or death of any person or property damage to any property sustained by Siegel-Gallagher, its agents, employees, customers, invitees, contractors, subcontractors and all other persons which may

arise from and in any manner grow out of any act or neglect on or about the marina premises by Siegel-Gallagher, or its agents, employees, customers, invitees, contractors, subcontractors or any other persons.

- B. Racine County shall indemnify and save harmless Siegel-Gallagher from and against any and all losses, costs (including attorney's fees), damages, expenses and liability (including statutory liability and liability under Worker's Compensation and Unemployment Compensation Laws) in connection with claims for damages as a result of injury or death of any person or property damage to any property sustained by Racine County, its agents, employees, customers, invitees, contractors, subcontractors and all other persons which may arise from and in any manner grow out of any act or neglect on or about the marina premises by Racine County, or its agents, employees, customers, invitees, contractors, subcontractors or any other persons.
- C. Each party shall immediately notify the other of any injury or death of any person or property damage on the marina premises or any legal action taken against them as a result of any injury or death of any person or property damage.

13. Utility Charges

Racine County shall be obligated to pay all charges for the following utilities at the marina: natural gas, sewer, water, electric, security systems, internet services, telephone and satellite television and fire suppression and exhaust systems but, said utility receivables and payables will be managed by Siegel-Gallagher.

14. Taxes

Because Racine County owns both the land and the fixtures of the marina, the property is not, per se, subject to real or personal property taxes. In any event, Siegel-Gallagher shall not be liable for payment of any real estate taxes, personal property taxes, or fees or assessments levied or assessed against Racine County as owner of the marina.

15. Signs

Siegel-Gallagher shall not erect or display, or permit to be erected or displayed, on the marina premises, any permanent sign or advertising material of any kind without first obtaining the written consent of Racine County and only if said sign complies with local sign ordinances. Any proposed signage shall prominently proclaim Racine County's ownership of the marina.

16. Compliance with Laws

Siegel-Gallagher shall comply with all applicable rules, regulations, laws, ordinances, statutes or orders of any governmental authority, federal, state, or local, lawfully exercising authority over the demised premises or over the operations carried out

pursuant to this lease agreement. Lessee shall take such action as may be necessary for the protection of health, safety and welfare of the public. The Lessee shall comply with the Americans with Disabilities Act (ADA) (42 USCS §12183) and any applicable regulations implementing the ADA.

17. Consultation with County

Siegel-Gallagher shall meet with Racine County's Corporation Counsel or his/her duly authorized representative on a regular basis to discuss the operation, maintenance, and development of the marina facilities.

18. Default and Termination

A. Any or all of the following shall be considered events of default of this real estate management and operation agreement:

1. By Siegel-Gallagher:

a. If Siegel-Gallagher fails to perform or defaults in any of its obligations to Racine County as set forth in this real estate and operation management agreement, or in the observance or performance of any of the covenants, agreements, commitments, or conditions contained in this real estate management and operation agreement, and if any such default continues unremedied for a period of fifteen (15) days after written notice of such default or failure to perform has been mailed to Siegel-Gallagher; or

b. Upon the occurrence of any of the following events:

- 1) Siegel-Gallagher makes an assignment of its property for the benefit of creditors; or
- 2) Siegel-Gallagher petitions any court to be adjudged a bankrupt; or
- 3) Siegel-Gallagher is judicially determined to be insolvent or is adjudged a bankrupt; or
- 4) A receiver or other officer is appointed to take charge of the whole or any part of Siegel-Gallagher's property or to wind up or liquidate its affairs; or
- 5) Siegel-Gallagher seeks a reorganization under any of the terms of the Federal Bankruptcy Code, as amended, or under any insolvency laws; or
- 6) Siegel-Gallagher admits in writing its inability to pay its debts as they become due; or
- 7) Any final judgment is rendered against Siegel-Gallagher and remains unsatisfied for a period of thirty (30) days from the date on which it shall become final; or
- 8) Siegel-Gallagher abandons the marina facilities; or
- 9) Siegel-Gallagher uses the premises for illegal purposes.

2. By County:

If Racine County fails to perform or defaults with regard to the observance or performance of any of the covenants, agreements, commitments or

conditions contained in this real estate management and operation agreement, and if such default continues unremedied for a period of fifteen (15) days after written notice of such default or failure to perform has been mailed to Racine County, such failure shall be considered default of the real estate management and operation agreement. In the event of such default, Siegel-Gallagher may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Racine County, including expressly the specific enforcement hereof, forthwith have the accumulative right to immediately terminate this real estate management and operation agreement and all rights of Racine County hereunder.

- B. If the default is of such a nature that it cannot be rectified within said fifteen (15) day period, Siegel-Gallagher (or County) may apply in writing to Racine County (or Siegel-Gallagher) for an extension of such period and consent to such extension by Racine County (or Siegel-Gallagher) shall not be unreasonably denied.
- C. In the event of any or all such defaults by Siegel-Gallagher, Racine County may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Siegel-Gallagher, including expressly the specific enforcement hereof, forthwith have the accumulative right to immediately terminate this real estate management and operation agreement and all rights of Siegel-Gallagher hereunder, and to recoup or reimburse from the escrow account any fiscal losses caused by the default of Siegel-Gallagher. However, receipt of payment from the escrow account by Racine County shall not be a waiver of any damages or losses for the unexpired portion of the real estate management and operation agreement term which may be sustained by Racine County on account of assignment, insolvency, adjudication, failure to perform or other default as provided herein above in this section, including any expenses incurred by Racine County in exercising its rights under this real estate management and operation agreement.
- D. Any unforeseen circumstances, problems, dispute or disagreement regarding the role of either party in this real estate management and operation agreement or regarding the use and operation of the marina facilities that is not addressed by the express terms of this real estate management and operation agreement shall be subject to negotiations between the parties to reach a mutually-agreed upon resolution of the matter(s) in issue. In the event agreement cannot be reached, Siegel-Gallagher may, upon notice to Racine County on or before September 30th of a contract year, terminate this real estate management and operation agreement at the conclusion of the boating season (October 31st).
- E. Siegel-Gallagher shall vacate the premises immediately upon any termination or expiration of this real estate management and operation agreement and Racine County shall, in the event of Siegel-Gallagher's failure to timely vacate the premises, remove and store Siegel-Gallagher's personal property with such expenses being chargeable to the security deposit.
- F. This real estate management and operation agreement may be terminated at any time upon the mutual agreement of the parties. In addition, either party shall have the right

to terminate this agreement for any reason or no reason upon ninety (90) days prior written notice to the other at which time Siegel-Gallagher and Racine County shall fully and completely perform their remaining obligations under this agreement.

- G. Upon termination of this real estate management and operation agreement by Racine County as provided herein, Racine County shall be entitled to take immediate possession of all of the marina premises and Siegel-Gallagher agrees to cooperate with Racine County to facilitate an orderly transfer of said premises under its control so that there will be minimal interruption of marina operations.

19. Modification or Amendment

This real estate management and operation agreement may be modified or amended upon the mutual agreement of the parties. However, such modification or amendment must be in writing, dated, and fully executed by both parties.

20. Renewal

At Racine County's option, this real estate management and operation agreement may be renewed for one (1) additional term of five (5) years, beginning on January 1, 2019. Payment for work performed in the subsequent term shall be in accordance with the pricing information contained in Siegel-Gallagher's response to this RFP.

21. Assignment of Interest

Siegel-Gallagher shall not mortgage, hypothecate, pledge, sell, transfer controlling interest, or otherwise encumber or assign any interest herein created.

22. Licenses and Permits

- A. Siegel-Gallagher may apply for all necessary licenses and permits required for sales of food, beverages, or other merchandise. Siegel-Gallagher must apply for such licenses in the normal manner and under normal procedures. By entering into this real estate management and operation agreement, Racine County is not guaranteeing to Siegel-Gallagher that it will, in fact, be granted or issued any such licenses or permits.
- B. If issued any such licenses or permits, Siegel-Gallagher shall not at any time in the future transfer or attempt to transfer any such licenses to premises other than the marina premises. At such time as Siegel-Gallagher is no longer operating the marina, Siegel-Gallagher shall relinquish all such licenses and permits no later than the effective date of termination.

23. Emergency Entry

- A. If Racine County discovers any action or condition at the marina facilities which presents a danger to the general public or which would result in serious harm to said marina facilities, then in that event Racine County shall have an absolute right to enter upon the marina facilities and enter into the structures and buildings thereon

which may be affected by said condition and take remedial measures as it may deem appropriate. Said re-entry rights shall be confined to the area where the dangerous or harmful condition exists and shall be limited to such time period as is necessary to correct the condition.

- B. The Security Deposit shall be used by Racine County to rectify any of the conditions and actions due to emergency entry.

24. Direct Contact and Mail Notices

- A. Direct contact regarding matters concerning this real estate management and operation agreement shall be made in writing.
- B. All formal notices shall be sent by certified mail. If there is a change in address desired or necessary for one of the parties, it shall be the obligation of that party to arrange to formally amend the lease to reflect the correct address.

Racine County's mailing address is:

Jonathan F. Lehman
Corporation Counsel
Racine County Office of Corporation Counsel
730 Wisconsin Avenue, 10th Floor
Racine, Wisconsin 53403
Jon.lehman@goRacine.org
O: (262) 636-3876
F: (262) 636-3549

Siegel-Gallagher's mailing address is:

John Matheson
Principal/Executive Vice President
Siegel-Gallagher Management Company
252 E. Highland Avenue
Milwaukee, WI 53403
jmatheson@sg-re.com
O: (414) 270-4114
F: (414) 225-9070

25. Miscellaneous

- A. Binding agreement; no oral agreements or waivers. This real estate management and operation agreement shall be binding upon the parties hereto, their respective heirs, devisees, personal representatives, administrators, successors, and assigns. It cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto; any such variance or waiver must be in writing and signed by the duly authorized agent or agents who executed this agreement.

- B. No waiver of breach implied by any prior waiver. No waiver by Racine County or Siegel-Gallagher of any breach of any provision of this real estate management and operation agreement shall be deemed for any purpose to be a waiver of any breach of any other provision hereof, or of any continuing or subsequent breach of the same provision.
- C. Rights accumulative. Each right of the parties hereto is accumulative and is in addition to each other legal right which the party may have in the event of any default of the other.
- D. Severability. In the event any covenant, condition, or provision herein contained is held to be invalid by a final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any other covenant, condition or provision herein contained.
- E. Wisconsin law. This real estate management and operation agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
- F. Arbitration. There shall be no binding arbitration provisions in any contract between Racine County and Siegel-Gallagher.
- G. Enclosed buildings smoke-free. Pursuant to Racine County Code of Ordinances Section 16-95, all enclosed buildings on the marina premises shall be smoke-free, and the prohibition against smoking shall be enforced by Siegel-Gallagher.
- H. Swimming pool. Siegel-Gallagher is not required to provide a lifeguard for the swimming pool, but Siegel-Gallagher shall ensure that signage notifying patrons of the absence of a lifeguard, and of the fact that they swim at their own risk, is properly posted. In addition, Siegel-Gallagher is required to provide pool safety training to all staff that will be assigned to or responsible for the pool area.

The swimming pool shall be open and available to use by the general public from 10:00 AM to 2:00 PM Monday through Friday, but not on weekends or holidays. The fee for public pool access shall be set in the annual budget. Siegel-Gallagher shall be responsible for collection of such fees, monitoring of pool usage by members of the public and providing a monthly written report to Racine County of such usage.

26. Contract Price

A. Contract Price. The total price for property management and operations services provided under this agreement (Paragraphs 2 and 3) shall be Four Hundred Thirty Nine Thousand One Hundred Sixty Seven Dollars (\$439,167.00), payable in sixty (60) annual monthly installments beginning January 2014 and ending December 2018 on the following schedule:

January 2014 - December 2018: \$7,319.45

All payments will be remitted within 10 days of receipt of invoice, beginning in January 1, 2014 and ending in December, 2018.

B. Renewal. The agreement considers a potential for contract renewal of an additional five (5) year term (Paragraphs 2 and 21) that will be Four Hundred Eighty Three Thousand Eighty Three Dollars (\$483,083.00), payable in sixty (60) annual monthly installments beginning January 2019 on the following schedule:

January 2019 – December 2023: \$8,051.39

C. Incentive Fee. Throughout the term of the agreement, Siegel-Gallagher may be paid an incentive fee in addition to the base contract price stated above by calculating the increase in total new boater occupancy into the marina over the number of paid annual boat slip rentals during the 2013 boating season. The incentive fee will be remitted to Siegel-Gallagher during the first month of the year following the boating season that it is calculated from. The base total revenue for the 2013 season is calculated at Nine Hundred Sixty Four Thousand Fifty Five Dollars (\$964,055.00) and the transient base total revenue for the 2013 season is calculated at Forty Thousand Dollars (\$40,000.00). The incentive fee would be calculated off of the following increases from the base total revenue:

<u>Gross Boat Rental Revenue above Base Total</u>	<u>Incentive Fee</u>
\$1 - \$100,000.00	20% of additional revenue
\$100,001.00 - \$175,000.00	35% of additional revenue
\$175,000.00 +	50% of additional revenue

<u>Gross Transient Boat Revenue above Base Total</u>	<u>Incentive Fee</u>
\$1 - \$25,000	20% of additional revenue
\$25,001 - \$50,000	35% of additional revenue

FOR COUNTY:

FOR SIEGEL-GALLAGHER:

Date: _____

Date: _____

Date: _____

Date: _____

EXHIBIT "B"

The Contract with Siegel-Gallagher is for 5 years (60 months) 1/1/14 - 12/31/18
The total amount of the contract is \$439,167 with the possibility of incentives.
The monthly payments will be \$7,319.45.

There is a potential for a 5 year renewal for 5 years (60 months). 1/1/19 - 12/31/23
The total amount of the contract for that term will be \$483,083 with the possibility of incentives.
The monthly payments would be \$8,051.39

FINANCE COMMITTEE RECOMMENDATION

After reviewing the Resolution/Ordinance and fiscal information supplied, your Finance Committee recommends FOR--AGAINST adoption.

REASONS

FOR	AGAINST