

RESOLUTION NO. 2011- 116

**RESOLUTION BY THE PUBLIC WORKS, PARKS, AND FACILITIES COMMITTEE
AUTHORIZING RACINE COUNTY TO ENTER INTO AN AGREEMENT WITH
EDGEWATER RESOURCES, LLC FOR THE OPERATION AND MANAGEMENT OF
REEFPPOINT 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 Edgewater Resources, LLC for the operation and management of Reefpoint Marina, under the general terms and conditions set out in "Exhibit A", which is attached hereto and incorporated herein.

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 _____

**PUBLIC WORKS, PARKS, AND FACILITIES
COMMITTEE**

2nd Reading _____

Jeff Halbach, Chairman

BOARD ACTION
Adopted _____
For _____
Against _____
Absent _____

Katherine Buske, Vice-Chairman

Mike Dawson, Secretary

VOTE REQUIRED: 2/3 M.E.

Prepared by:
Corporation Counsel

Kenneth Hall

James C. Rooney

Daniel F. Sharkozy

Donnie Snow

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3

4 **The foregoing legislation adopted by the**
5 **County Board of Supervisors of**
6 **Racine County, Wisconsin, is hereby:**

7

8 **Approved: _____**

9 **Vetoed: _____**

10

11 **Date: _____,**

12

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14 _____
15 **James A. Ladwig, County Executive**

16

INFORMATION ONLY

17 **WHEREAS**, Resolution 2011-99 authorized Racine County to purchase from
18 Racine Harbor Marina, LLC (RHM) all the assets of Reefpoint Marina; and

19 **WHEREAS**, such purchase having occurred, RHM has conveyed to Racine County
20 ownership of the Reefpoint Marina assets and has relinquished all authority and
21 responsibility for the day to day operation and management of Reefpoint Marina; and

22 **WHEREAS**, Racine County deems it advantageous for operation and management of
23 Reefpoint Marina to be conducted by an individual or firm experienced in marina
24 operations; and

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

27 **WHEREAS**, upon examination of all such bids, the bid of Edgewater Resources, LLC has
28 been deemed most advantageous to Racine County.

OPERATION AND MANAGEMENT AGREEMENT
for
RACINE COUNTY REEFPOINT MARINA

THIS CONTRACT, entered into this _____ day of _____, 2012, by and between Racine County, Wisconsin (hereinafter “County”), a quasi-municipal corporation with its principal place of business at 730 Wisconsin Avenue, Racine, WI 53403, and Edgewater Resources, LLC, a Michigan corporation (hereinafter “Operator”), with its principal place of business at 406 State Street, St. Joseph, Michigan 49085; (269) 932-4502.

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, the parties now agree as follows:

1. Term of the Operation and Management Agreement

The term of this operation and management agreement shall begin on March 1, 2012, or as soon thereafter as practicable, and end on December 31, 2012. At the end of the agreement, Racine County shall have the option of renewing the agreement for one or more years, as more fully described in Article 20 below.

2. Operation and Management Responsibilities

A. Facilities Operation and Management. Operator 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 and as depicted in the site plan that accompanies this agreement, 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, hot tub, and pump house; and fueling station and dock, along with all fuel storage and piping. The following exceptions apply:
 - Routine housekeeping of all buildings, including restroom and shower facilities, shall be provided or arranged for by Racine County;
 - The building containing a fish cleaning station and restrooms at the east end of the marina area is managed and maintained by Racine County;
 - If Racine County leases a portion or portions of the administration building for restaurant, convenience store, or similar purposes, County will reach agreement with the lessee(s) concerning housekeeping of those areas.
- All walkways, driveways, and parking lots immediately adjacent to the harbor and/or buildings, facilities, or structures which Operator is responsible for maintaining.
- 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.

Adequate 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.

Operator shall keep in good repair and maintain all of the facilities and equipment described above in clean and orderly condition. 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. Operator 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 renters, their families and guests, and prompt, courteous responsiveness to their needs and reasonable requests;
- Clear, frequent communications with all slip renters 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 devices;
- 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 8:00 PM during the primary boating season (Memorial Day Weekend through Labor Day), 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,
 - 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.);
- 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;
- Establishment and implementation of effective systems for handling, safeguarding, accounting for, and regularly transferring to 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 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;
- Operation of the on-site marina office during the following hours*:
 - beginning no later than 8:00 AM and ending no earlier than 8:00 PM during the primary

* The specified hours are based on 2011 operating hours of Reefpoint Marina. If Operator wishes to propose alternative hours, Operator may do so, but must provide a justification therefor.

- boating season (Memorial Day Weekend through Labor Day), and
 - beginning no later than 8:00 AM and ending no earlier than 4:30 PM from March 1st until Memorial Day Weekend and from the day after Labor Day through November 30th;
 - from December 1st to the end of this agreement, or, if this agreement is renewed, through February 28th, Operator need not operate the on-site marina office, but shall clearly and publicly post and announce contact information (including street and mailing address, telephone numbers, and email address) for its off-season location.
 - Upon termination of this agreement, Operator 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.
- C. Marina Marketing. Operator shall provide support and assistance to County's marketing of Reefpoint Marina, including, but not limited to:
- Distribution of County-provided flyers, brochures, and other promotional materials to slip renters 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 County-provided materials related to rentals for the next season, such as price lists and notices of limited-term promotional offers to slip renters 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 County-provided slip rental and deposit agreements for rentals for the next season, to slip renters, 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 renters 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;
 - Being available to interested persons, between December 1st and February 28th, to provide information about slip rentals, etc.

3. Standards of Service

- A. Operator agrees to operate and maintain Reefpoint Marina as a first-class facility, providing services generally expected of first-class marinas on Lake Michigan.
- B. Operator shall 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. Operator shall be obligated to pay all salaries for such employees including the withholding of payroll, social security taxes, workers compensation, and other personal costs which may be required.

Said employees shall be competent and able to deal effectively and courteously with the boating public, as well as with the general public, in a recreational setting. Operator shall further provide

adequate training to said employees so that they are able to perform maintenance on the marina facilities and equipment in a good workmanlike manner. Employees of Operator who use and/or direct (supervise) the use of any restricted-use pesticides must be licensed and certified pursuant to State of Wisconsin laws and regulations. Sufficient employees shall be hired to adequately staff the marina at all times, including providing off-hours security and the ability to respond in case of emergency after normal working hours. Operator shall be an Equal Opportunity Employer.

- C. Operator shall enforce current rules and county ordinances pertaining to the marina. Any additional rules proposed by Operator shall be approved in writing by County prior to their posting. Said approval by County shall not be unreasonably withheld.
- D. Operator agrees to employ a Marina Manager who shall have demonstrated success in the operation and management of marinas. The Marina Manager shall be satisfactory to County and available at the marina at all reasonable times during operation of this agreement. Key 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. Operator will agree, at the request of County or its authorized representative, and with the making of specific charges, forthwith to terminate or suspend the employment of any employee whom 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 Operator, of official notice from County.
- E. Operator shall be obligated to secure and pay for all federal, state, and local licenses and permits and pay all sales and excise taxes required for the operation of any facility for the sale of any goods, including fuel, food, beverages, apparel, or equipment, and for the rental of any equipment.
- 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. Operator 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.

4. Slip Rental Fees and Other Fees and Charges

- A. Operator shall charge slip rental fees, transient fees, slip rental deposit fees, and other fees and charges for use of the marina facilities as established by County. Operator shall have the right to offer discounted fees, seasonal rates, and special group rates, with the written approval of County.
- B. Operator 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., dockside repair services or laundry services) that it offers to the public.

5. 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.

6. Maintenance, Repairs, Damage, Destruction and Restoration

- A. Operator shall, throughout the term of this operation and management 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. Operator shall bear the cost of routine maintenance of the facilities and equipment described in Paragraph 7.A, above. County shall bear the cost of major repairs, which are further defined in Paragraph 7.G, below. County shall bear the cost of replacement of facilities or equipment, unless such replacement is necessitated by the negligence or wrongdoing of Operator or any of its employees or agents, in which case Operator shall be responsible for such replacement cost.
- C. Based on good marina management standards, Operator shall perform all outdoor maintenance functions needed to maintain the marina in a clean and presentable condition, including but not limited to routine sweeping and power washing of walkways and piers; 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 not damage the wood planks. Racine County shall provide, or shall arrange for, interior housekeeping, including of restrooms and shower facilities.
- D. County may and shall without notice inspect and demand that conditions, which are in its opinion unsatisfactory, be corrected without delay.
- E. Operator has no responsibility for maintaining the roads and parking lots, except that it is responsible for 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 Operator is responsible. County shall mow lawns, control weeds, and otherwise be responsible for landscape maintenance of the grounds adjacent to the marina.
- F. Operator agrees to keep clean and in an orderly condition, any and all structures and improvements of the marina used by Operator. Operator shall not be allowed to store on the marina premises equipment, vehicles, materials, supplies, etc. not required for carrying out this operation and management agreement without written permission from County.
- G. 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 Operator, Operator shall be responsible for all repairs or replacements at its own cost, and without any expenses to County.
- H. Operator shall make no major alterations, additions, major repairs, permanent decorations,

restorations, or improvements of the leased premises without first submitting plans and specifications therefor to County for its written approval.

- I. At the termination of this operation and management agreement, Operator shall ensure that the condition of the marina premises is at least as good as the condition of the premises when agreement first entered into force. Operator shall be responsible for the repair or replacement of conditions of the marina premises that are determined to be substandard.

7. Capital Improvements

Racine County has the right to make whatever capital improvements it deems necessary or desirable at any time without expense to Operator. Before making any such improvements, County shall meet with Operator to discuss the effect of the improvement and making of such improvement upon operation and use of the marina premises. Operator and 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.

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 Operator's operation of the marina. The parties expressly understand and agree that Operator shall not be relieved of any of its obligations under this operation and management agreement, nor shall County be liable to Operator for any interruptions of, or costs or damages to, Operator's operation that may result from county's making any capital improvements.

8. Easements

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

9. Inspection and Accounting

- A. Operator shall submit to County a monthly itemized statement of gross revenue receipts for slip rentals, transient fees, and other fees and charges for use of the marina facilities. This statement shall be submitted to County by the twenty-fifth (25th) day of each fiscal month, showing an accounting of gross revenue receipts for the previous fiscal month.
- B. 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 Operator with reference to its handling and disposition of slip rentals, transient fees, and other fees and charges for use of the marina facilities. County shall have the right at County's expense, at any and all reasonable hours, and upon reasonable notice, to have an audit performed upon Operator's handling and disposition of slip rentals, transient fees, and other fees and charges for use of the marina facilities, as County may deem necessary or desirable.
- C. County shall have the right of access to any and all portions of the marina premises, at any and all reasonable hours, and upon reasonable notice, for the purpose of inspecting, analyzing and/or gathering information relating to the premises itself.

10. Security Deposit

- A. Operator shall provide, at execution of this operation and management agreement, a security deposit of Ten Thousand Dollars (\$10,000.00). Said amount shall be deposited in an escrow account to be invested by County with interest earned being added to the escrow account. This deposit shall be used by County, at the option and in the sole discretion of County, to reimburse County for any default of any provision(s) of this operation and management agreement. Such breach shall include, but not be limited to, the failure to maintain or restore premises, failure to maintain equipment, failure to provide adequate insurance coverage, or any other violation of any term of this operation and management agreement. County shall give to Operator ten (10) days written notice of County's intent to withdraw funds from the escrow account. The notice shall state the amount County intends to withdraw and the act of default by Operator.
- B. The total sum of Ten Thousand Dollars (\$10,000.00) shall be on deposit by Operator with County each year of this operation and management agreement. If any amount has been expended by County from the original Ten Thousand Dollars (\$10,000.00) security deposit for defaults, Operator shall deposit an amount equal the sum withdrawn to County, so that County has available to it the total sum of Ten Thousand Dollars (\$10,000.00) as a security deposit for the renewal year of this operation and management agreement.
- C. Any balance remaining, without interest, on the security deposit in the escrow account shall be refunded by County to Operator within sixty (60) days from the date of the termination of the last year of this operation and management agreement.

11. Insurance

- A. 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. Operator shall maintain at its own expense and provide 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 Operator in the operation of the marina.
 - 2. The following forms of liability insurance coverage:
 - a. 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 Two Million Dollars (\$2,000,000.00) in the aggregate naming County as an additional named insured under Operator's policy;
 - b. Automobile liability coverage including personal injury liability with limits of at least One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate naming County as an additional named insured under Operator's policy;
 - c. Marina Operator legal liability coverage, with limits of at least One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate naming County as an additional named insured under Operator's policy; and

d. Sudden Accidental Pollution Insurance coverage with limits of at least One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate naming County as an additional named insured under Operator's policy.

- C. Operator shall also provide an umbrella liability policy, with provisions acceptable to County, insuring all property in the care, custody and control of Operator under the terms of this Agreement, including materials, equipment, structures, and improvements, insuring such property against losses by virtue of the negligent acts of Operator or its agents or employees with liability limits of One Million Dollars (\$1,000,000.00). Said policy shall name County as an additional named insured.

12. Indemnity Provisions

- A. Operator shall indemnify and save harmless 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 Operator, 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 Operator, or its agents, employees, customers, invitees, contractors, subcontractors or any other persons.
- B. Operator shall immediately notify County of any injury or death of any person or property damage on the marina premises or any legal action taken against Operator as a result of any injury or death of any person or property damage.

13. Utility Charges

- A. County shall pay all charges for the following utilities at the marina: gas, sewer, water, electric, security systems, and fire suppression and exhaust systems.
- B. Operator shall pay all charges for the following utilities used by it at the marina: telephone, television and internet services.

14. Taxes

Because 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, Operator shall not be liable for payment of any real estate taxes, personal property taxes, or fees or assessments levied or assessed against County as owner of the marina.

15. Signs

Operator shall not erect or display, or permit to be erected or displayed, on the marina premises, any permanent sign or advertising matter of any kind without first obtaining the written consent of 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

Operator 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

Operator shall meet with County's Director of Public Works and Development Services 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 operation and management agreement:

1. By Operator:

a. If Operator fails to perform or defaults in any of its obligations to County as set forth in this operation and management agreement, or in the observance or performance of any of the covenants, agreements, commitments, or conditions contained in this operation and management 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 Operator; or

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

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

2. By County:

If 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 operation and management 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 County, such failure shall be considered default of the operation and management agreement. In the event of such default, Operator may, at its option and in addition to all

other rights and remedies which it may have at law or in equity against County, including expressly the specific enforcement hereof, forthwith have the accumulative right to immediately terminate this operation and management agreement and all rights of County hereunder.

- B. If the default is of such a nature that it cannot be rectified within said fifteen (15) day period, Operator (or County) may apply in writing to County (or Operator) for an extension of such period and consent to such extension by County (or Operator) shall not be unreasonably denied.
- C. In the event of any or all such defaults by Operator, County may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Operator, including expressly the specific enforcement hereof, forthwith have the accumulative right to immediately terminate this operation and management agreement and all rights of Operator hereunder, and to recoup or reimburse from the escrow account any fiscal losses caused by the default of Operator. However, receipt of payment from the escrow account by County shall not be a waiver of any damages or losses for the unexpired portion of the operation and management agreement term which may be sustained by 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 County in exercising its rights under this operation and management agreement.
- D. Any unforeseen circumstances, problems, dispute or disagreement regarding the role of either party in this operation and management agreement or regarding the use and operation of the marina facilities that is not addressed by the express terms of this operation and management 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, Operator may, upon notice to County on or before November 1st of a contract year, terminate this operation and management agreement at the conclusion of the boating season.
- E. Operator shall vacate the premises immediately upon any termination or expiration of this operation and management agreement and County shall, in the event of Operator's failure to timely vacate the premises, remove and store Operator's personal property with such expenses being chargeable to the security deposit.
- F. This operation and management agreement may be terminated at any time upon the mutual agreement of the parties.
- G. Upon termination of this operation and management agreement by County as provided herein, County shall be entitled to take immediate possession of all of the marina premises and Operator agrees to cooperate with County to facilitate an orderly transfer of said premises under its control so that there will be a minimal interruption of marina operations.

19. Modification or Amendment

This operation and management 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 County's option, this operation and management agreement may be renewed for two (2) additional terms of twelve (12) months each, beginning on January 1, 2013. Payment for work performed in those subsequent terms shall be in accordance with the pricing information contained in Operator's response to this RFP.

21. Assignment of Interest

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

22. Licenses and Permits

- A. Operator may apply for all necessary licenses and permits required for sales of food, beverages, or other merchandise. Operator must apply for such licenses in the normal manner and under normal procedures. By entering into this operation and management agreement, County is not guaranteeing to Operator that it will, in fact, be granted or issued any such licenses or permits.
- B. If issued any such licenses or permits, Operator 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 Operator is no longer operating the marina, Operator shall relinquish all such licenses and permits.

23. Emergency Entry

- A. If 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 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 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 operation and management 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.

County's mailing address is:

Racine County Public Works & Development Services Department
14200 Washington Avenue
Sturtevant, Wisconsin 53177

Vendor's mailing address is:

Edgewater Resources, LLC
Ronald E. Schults, Principal
406 State St.
St. Joseph, MI 49085
(269) 932-4502 (office)
(269) 932-3542 (fax)

25. Miscellaneous

- A. Binding agreement; no oral agreements or waivers. This operation and management 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 County or Operator of any breach of any provision of this operation and management 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 operation and management agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
- F. 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 Operator.
- G. Swimming pool. Operator is not required to provide a lifeguard for the swimming pool, but Operator 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.

The swimming pool shall be open to use by the 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 \$8.00 per person per day. Operator shall be responsible for collection of such fees and monitoring of pool usage by members of the public.

26. Contract price

The total price for services provided under this agreement shall be Three Hundred Fifteen Thousand Dollars (\$315,000.00), payable in ten (10) monthly installments of Thirty One Thousand Five

Hundred Dollars \$31,500.00 each, on the first of each month, beginning in March 1, 2012 and ending in December 31, 2012.

FOR COUNTY:

FOR VENDOR:

Date

Date

Date

Date