

Resolution No. 2022-3036

A Resolution of the City of Sanford, Florida, amending the City's annual operating budget for the fiscal year beginning October 1, 2021 and ending September 30, 2022 pertaining to management fees and payroll and operating expenses to Founders 3 Management Company for management and operations of the Sanford Marina; providing for implementing administrative actions; providing for a savings provision; providing for conflicts; providing for severability and providing for an effective date.

Whereas, the Commission of the City of Sanford, Florida has adopted an annual operating budget for the fiscal year beginning October 1, 2021 and terminating on September 30, 2022 specifying certain projected revenues and expenditures for the operations of Sanford municipal government; and

Whereas, the City's budget presumes that each department generally will, to the best of their ability, maintain its expenditures within its allocated budgeted level and exercise prudence in expending funds during the course of the City's fiscal year; and

Whereas, from time-to-time circumstances and events may require that the original City budget may need revision such as management fees and payroll and operating expenses to Founders 3 Management Company for management and operations of the Sanford Marina; and

Whereas, the City Commission, in its judgment and discretion, has the authority to adjust the budget to more closely coincide with actual and expected events.

Now, therefore, be it adopted and resolved by the City Commission of the City of Sanford, Florida as follows:

Section 1. Adoption Of Budget Amendment; Management and Operations Services Relating To The Sanford Marina.

The annual operating budget of the City of Sanford for the fiscal year beginning October 1, 2021 and terminating on September 30, 2022 is hereby revised and amended by Attachment "A". The Attachment is hereby incorporated into this Resolution as if fully set forth herein verbatim. Except as amended herein, the annual operating budget for the City of Sanford for fiscal year beginning October 1, 2021 and terminating on September 30, 2022 shall remain in full force and effect.

Section 2. Implementing Administrative Actions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Resolution by means of such administrative actions as may be deemed necessary and appropriate pertaining to management fees and payroll and operating expenses to Founder3 Management Company.

Section 3. Savings.

The prior actions of the City of Sanford relating to the adoption of the City budget and related activities pertaining to the Sanford Marina are hereby ratified and affirmed.

Section 4. Conflicts.

All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

Section 5. Severability.

If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase,

word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

Section 6. Effective Date.

This Resolution shall become effective immediately upon adoption.

Passed and adopted this 9th day of May 2022.

Attest:

City Commission of the City of Sanford

Traci Houchin MMC, FCRM
Traci Houchin, MMC, FCRM
City Clerk



Art Woodruff
Art Woodruff
Mayor

For use and reliance of the Sanford
City Commission only.
Approved as to form and legality.

William L. Colbert
William L. Colbert, City Attorney

REQUEST FOR BUDGET AMENDMENT

Fiscal Year 2022

Department: Marina

Division: Marina

Date: 4/28/2022

CHANGES IN REVENUES

REVENUE ACCOUNT NUMBER						Current Budget	Current Unrealized (Budget)	Amount of Change	Adjusted Unrealized
Fund	Revenue	Act Cd	Ele	Project #	Revenue Account Title				
001	0000	389	98	00	Use of Reserves	\$ -	\$ -	\$ 298,713	\$ 298,713
457	0000	381	01	00	Transfer from General Fund	\$ -	\$ -	\$ 298,713	\$ 298,713
TOTAL CHANGES IN REVENUES									\$ 597,426

CHANGES IN EXPENDITURES

EXPENDITURE ACCOUNT NUMBER						Current Budget	Current Balance	Amount of Change	Remaining Balance
Fund	Dpt/Div	Activity	Obj	Ele	Project #	Expenditure Account Title			
457	5502	575	63	00	MA2201	Imp Other than Bldgs	-	\$ -	\$ 298,713
001	7979	581	91	54		Transfer to Marina Fund	-	-	298,713
TOTAL CHANGES IN EXPENDITURES									\$ 597,426

REASON FOR AMENDMENT: Marina management fee and payroll and operating expenses

DIRECTOR APPROVAL: DATE: 5/4/2022

FINANCE APPROVAL: DATE: 5/4/22

CITY MANAGER APPROVAL: DATE: 5/4/2022

CITY COMMISSION AGENDA DATE: 5.9.2022 APPROVED? Y

FOR FINANCE USE

Entry Date: 5/16/2022
S. Posey

Batch Number: B# 3432

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Res# 3036
CCM# 22-147

SANFORD MARINA (RFP 21/22-17)
MANAGEMENT AND OPERATION SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this 5 day of May between the City of Sanford, Florida, a municipal corporation of the State of Florida, whose address is 300 North Park Avenue, Sanford, Florida 32771, hereinafter referred to as the "City" or "Owner", and Founders 3 Management Company, a foreign corporation established in the State of Wisconsin, but authorized to do business in the State of Florida, whose address is 252 East Highland Avenue, Milwaukee, Wisconsin 53202, hereinafter referred to as the "Operator".

Whereas, the City is the owner of a marina identified as the "Sanford Marina" which is located on the Sanford waterfront of Lake Monroe and is further described in Section 2 of this Agreement; and

WHEREAS, the City desires to engage an operator who has special and unique competence and experience providing marina management and operation services to manage and operate the CITY's Sanford Marina; and

WHEREAS, the City desires to engage an operator on or before May __, 2022, to begin an expedited transition and stabilization plan to transfer current operations of the Sanford Marina to the Operator by May 31, 2022; and

WHEREAS, the Operator represents that it is duly licensed, authorized to do business in the State of Florida, and that it has such competence and experience in providing marina management and operation services to manage and operate the Sanford Marina; and

WHEREAS, the City in reliance on such representation has selected the Operator in accordance with the requirements of law; and

WHEREAS, at the Sanford City Commission Meeting of March 28, 2022, the award of

the marina management and operation services for the Sanford Marina was duly considered and awarded to the Operator; and

WHEREAS, the Operator has fully agreed to abide by all stipulations set forth in this Agreement and pertinent requirements thereto.

NOW, THEREFORE, in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Operator and the City agree as follows:

SECTION 1. TERM OF AGREEMENT.

(a). The initial term of this Agreement shall commence on _____, 2022, or whatever earlier date that the City designates for the Operator to commence the expedited transition and stabilization plan to transfer current operations to the Operator (the "Effective Date") and shall end on September 30, 2027.

(b). This Agreement may be administratively renewed and amended, in writing, by the mutual consent of the Sanford City Manager and the Operator on a yearly basis for up to a total of 5 additional years.

(c). Both the initial term and any subsequent renewal terms are subject to the annual appropriation of funds by City Commission of the City of Sanford. In the event sufficient budgeted funds are not appropriated for any fiscal year, this Agreement shall terminate on the last day of the then current fiscal year without expense or penalty to the City and no further obligations for payments of fees contained herein.

SECTION 2. DESCRIPTION OF SANFORD MARINA TO BE MANAGED AND OPERATED (THE PROPERTY).

(a). The Sanford Marina is located on Lots 4, 5, 6 and 8 and includes the east 75' of Lot 7 and which includes the Harbormaster/Store Dry Storage Building, the existing East and

West Basins areas and the Sanford Marina accessory boat facility, the Public "free" slips, the entire southern parking lot to the lease line of the "pizzeria" building and all other ancillary facilities thereof (hereinafter referred to collectively as the "Sanford Marina"). The Sanford Marina is depicted in Exhibit "A" which is attached hereto and incorporated herein by reference.

(b). Pursuant to this Agreement, the Operator shall have a license to occupy a portion of the Harbormaster/Store Dry Storage building identified on Exhibit "A" for use as office space by Operator's employees in relation to the services to be provided in this Agreement and for customer service for Sanford Marina customers. This license conveys no property vested interest in the Sanford Marina to the Operator and shall automatically end when this Agreement terminates. Operator acknowledges that it is familiar with overall operations and management of Marina in general and with the Sanford Marina in particular. Operator further acknowledges that it has read and is familiar with the current Sovereignty Submerged Land Leases, governing the operation of the Sanford Marina and Mooring Field, which are subject to this agreement, and further agrees to comply with any future FDEP Environmental Resource Permits and Army Corps of Engineer Permits that may be issued to the Sanford Marina.

SECTION 3. OPERATOR'S GENERAL DUTIES, RESPONSIBILITIES AND AUTHORITY.

(a). The Operator shall manage and operate the Sanford Marina as a public marina and recreation facility offering dockage and other Sanford Marina related services for the use of vessel owners and the general public which operations shall ensure that the Sanford Marina is staffed and operated, at a minimum, from 8:00 a.m. through 6:00 p.m., 365 days per year and after hours as may be agreed to by the City or as may be established in fees, charges and rates for after-hours services.

(b). The Operator shall perform all duties assigned in a careful, diligent, efficient,

prudent and vigilant manner. Except where specifically provided, and subject to the funding limitations in the City's annual operating budget, the Operator shall perform the services described herein at the City's expense.

(c). The Operator shall operate the Sanford Marina and Mooring Field in compliance with all terms and conditions of the State and Federal leases and permits.

(d). Without limiting the specificity of other provisions of this Agreement, required services shall, at a minimum, include the following the costs of which shall be included in the base management fee (as described in Section 13 below) :

(1). Executing and managing slip space and buoy leases on behalf of the City for docking and mooring of boats. Management responsibilities include receipt of rental and other payments due, responding to tenant concerns, enforcing and monitoring tenant compliance with lease provisions and applicable City ordinances, rules and regulations. The Operator shall use its best efforts to enforce and perform all City's obligations under all government authorizations, contracts, service agreements and other documents in effect with respect to the Sanford Marina, shall enforce compliance with tenants, guests or invitees with all obligations under such documents, slip rental or mooring agreements (including the service of any and all notices necessary and appropriate for the eviction of any tenant), and otherwise shall enforce or cause the enforcement, in a manner approved by the City, of contractual agreements in effect with respect to the Sanford Marina, to the end that City's interest in the Sanford Marina shall be preserved and no default chargeable to the City shall exist thereunder. In no

event shall legal counsel be retained for any such purposes, nor shall any such legal proceedings be commenced without prior consent of the City. The City has the right to insist that Operator rely upon the City Attorney or other legal counsel employed by the City in the prosecution or defense of any legal matter concerning the Sanford Marina. Also, and with the City's prior written approval, arranging for non-judicial sale of vessels moored in the Sanford Marina in accordance with Federal maritime law as supplemented by the laws of the State of Florida. The Operator shall use only those dock slip spaces or mooring leases that are provided or approved by the City.

(2). Management and maintenance of docks and moorings to provide safe mooring facilities for vessels and hazard free access for vessel owners. Creation of maintenance schedules for preventative maintenance and inspections.

(3). Collaborate and cooperate with the City to develop strategic short- and long-term plans for capital projects and the reconstruction of the physical and operational condition of the Sanford Marina.

(4). Maintenance of all the recreational walkways in a manner that ensures the public full and free access, except those walkways where boats are docked; and operation of designated marine exhibits, and marine-oriented attractions.

(5). Enhancement of the appearance and function of the ships store to provide easy access to supplies and convenience items for boaters. Sale of bait, tackle, ice, and other sundries incidental to the boating public's needs

or executing leases of equipment or other products on behalf of the City for the ships store.

(6). Maintaining a list of appropriately insured boat and marine equipment maintenance and repair technicians for referral on a non-exclusive basis, for general minor repairs and servicing of boats while docked or moored in the water only.

(7). Conducting a detailed Sanford Marina physical audit to fully document and understand physical assets. Noting electrical and water shut offs, panels, switches, etc. on-site plan in the event of an emergency.

(8). Providing a safe and secure environment for the boaters and the public 365 days a year by providing an emergency call number and contact 24 hours a day, 7 days a week. Provide, manage, invoice, and collect payments/dues for, cable, Wi-Fi, telephone, electrical, and other utility services provided through the City. Responsibilities include monitoring tenant usage and responding to service complaints, including by contacting the utility provider. The cost of obtaining these utility services shall be incorporated into the Sanford Marina's annual operating budget.

(9). Operation of an Information Center and telephone, mail, and messages services.

(10). Sale of fuel.

(11). Management and maintenance of shower, restroom, and laundry facilities for the use of persons docking at the Sanford Marina.

(12). Operation of other profit centers to be approved by the City.

- (13). Attending all meetings related to the Sanford Marina functions sponsored by local boating and/or recreational groups or businesses, and any similar groups upon the City's request.
- (14). Publishing a monthly electronic newsletter. Provide weekly executive summaries and monthly financial reports to the City.
- (15). Maintaining the Sanford Marina's compliance with the State of Florida's Clean Vessels/Clean Sanford Marina Program. Ensure compliance with any grants.
- (16). Provide, manage, invoice, and collect payments for vessel pump out services.
- (17). Providing the City reasonable assistance in obtaining and maintaining all required Federal and State permits including, but not limited to, the calendar of deadlines for permit applications and renewal, and in complying with the conditions of such permits when issued.
- (18). Provision of any other management/operator services approved by the City during annual operating budget approval process.
- (19). Support the City's Fourth of July celebration as determined by the City to ensure that the use of the Sanford Marina and Northshore area for the City's set up and event is critical for the City's tourism and economic development goals and programs. For example, the dates for 2022 will be July 1 through Tuesday July 5 with the City. However, when July 4 falls on or near a weekend, it is critical for the Operator to have the ability to barricade the Northshore earlier in the set-up process in order to keep vehicles and

trailers out of the area, as they will remain on the water for extended periods of time and tend to interfere with the actions and activities

(20). Provide boat slip(s) for the City's Fire/Rescue and other public safety vessels.

(e). The Operator shall promptly forward to the City any and all notices with respect to the Sanford Marina received from any governmental or quasi-governmental agency or authority and notices received from any person, party or entity, which notices in Operator's reasonable judgment, may have a material and adverse impact on the value, operations, financial liabilities or use of the Sanford Marina which notices shall be sent to:

Norton N. Bonaparte, Jr., ICMA-CM
City Manager
City Hall
300 North Park Avenue
Sanford, Florida 32771-1788

(f). The Operator shall not knowingly use or suffer the use of the Sanford Marina for any illegal or otherwise prohibited purpose or for any purpose that:

(1). Could void or render voidable any policy of insurance held by the City or the Operator.

(2). Could prohibit the procurement of required insurance from companies acceptable to the City.

(3). Could render uncollectible any loss insured under any insurance policy held by City or Operator.

(4). Would materially reduce the value of the Sanford Marina.

(5). Would otherwise be in violation of any Legal Requirements as defined herein and the Operator shall not commit or allow to be committed,

any action under its control which will cause a violation of the terms or conditions thereof.

(g). The Operator shall use all reasonable efforts to secure full compliance by all tenants, guests, and invitees of the Sanford Marina with all herein requirements in the contract documents and the and the City's policies, codes, ordinances, rules and regulations.

(h). Except where specifically authorized under or pursuant to this Agreement, the Operator shall not hold itself out as having any authority whatsoever to approve any contract or expenditure for or on behalf of City with respect to the Sanford Marina or any portion thereof, whether for maintenance, repair, restoration or otherwise.

(i). The City reserves the right to access and inspect the Sanford Marina at all times, including for the purpose of performing unannounced cash audits and inventory reviews. The Operator shall make all areas of the Sanford Marina available for such inspections at any time. If requested by the City, an employee of the Operator shall accompany on such inspections

(j). All improvements and fixtures located at the Sanford Marina, and all equipment, supplies, and other items of personal property included in the inventory referenced below or constructed, installed or located at the Sanford Marina or purchased with City funds, shall be the property of the City. Upon expiration or termination of this Agreement, possession and title to all such property shall be peacefully surrendered and delivered to the City.

(k). All the services to be provided or performed by the Operator shall be performed in conformance with commonly accepted industry and professional codes and standards, standards of the City, and the laws of any Federal, State or local regulatory agency constituting a legal requirement.

(l). Time is of the essence with respect to this Agreement and each of its provisions.

SECTION 4. RATES AND FEES.

(a). Except for vessel fuel prices, which fluctuate with the market rate, all vessel mooring rates and fees for operating revenues shall be set by the City. However, consideration shall be provided to recommendations from the Operator.

(b). The Operator shall annually, or as otherwise agree to by the City, perform a survey and analysis of comparable marina rates and fees for reference when developing the annual operating budget for the Sanford Marina.

(c). The Operator's proposed fee structure to the City shall be sufficient to fund the Sanford Marina management and operations and maintenance costs including personnel costs, operating expenditures and Operator's fees.

SECTION 5. SANFORD MARINA RULES AND REGULATIONS.

(a). The Operator shall assist the City in developing comprehensive policies and procedures for operation and maintenance of the Sanford Marina as well as conduct of vessel owners and the public and shall oversee compliance with the City's rules and regulations regarding the conduct of vessel owners and others using the Sanford Marina.

b). The Operator shall ensure that current rules and regulations are furnished to each and every user, tenant and concessionaire and that the rules are prominently displayed in the Sanford Marina office.

(c). The Operator may from time-to-time make recommendations to the City for revising the rules and regulations. All changes to rules and regulations are subject to Sanford City Manager's approval. Additionally, the Operator may develop for the City's consideration additional policies and procedures with respect to the installation of new features and profit centers for approval by the City.

SECTION 6. ADVERTISING AND MARKETING.

(a). The Operator, as part of the base management fee, shall provide an aggressive and comprehensive marketing and advertising program in order to stimulate the general business of the Sanford Marina.

(b). The Operator shall undertake an aggressive program to inform the public of the availability of services at the Sanford Marina.

(c). The Operator shall develop policies and procedures with respect to advertising and publicity of the Sanford Marina for the purpose of creating the greatest possible net income, consistent with the operation of a public marina and recreational facility.

(d). The Operator shall work diligently with area merchants and businesses to develop an integrated program of auxiliary services, such as hotel accommodations, car rentals and other services for Sanford Marina users.

SECTION 7. CLEANING, MAINTENANCE AND REPAIR.

(a). The Operator shall maintain the Sanford Marina in a safe, attractive, neat, clean and sanitary condition at all times and perform any necessary repairs to keep the Sanford Marina free from hazardous conditions and/or deterioration to the satisfaction of the City.

(b). In and to the extent contemplated in the annual operating budget, and otherwise subject to prior written approval from the City, which may be granted or withheld in its sole discretion, the Operator may enter into an agreement in its own name with one or more maintenance contractors for the maintenance of the Sanford Marina. Upon the execution of such maintenance agreement, the Operator shall provide to the City a fully executed copy of the agreement. In any event, such maintenance agreement shall provide that without the prior written consent of the City, which may be reflected by the inclusion of an appropriate line item in

the annual operating budget or otherwise may be granted or withheld in City's sole discretion, no maintenance shall be performed on the Sanford Marina or any portion thereof that would cause the total cost of all maintenance for the Sanford Marina during the fiscal year in which such maintenance is performed to exceed the amount specified thereof in the annual operating budget.

(c). Maintenance shall include, but not be limited to, all ordinary and extraordinary repairs, cleaning, sweeping, painting, landscaping and seasonal decoration and alteration, including, but not limited to, electrical, plumbing, carpentry, masonry, HVAC, roofing and such other routine repairs as are necessary or reasonably appropriate in the course of the maintenance of the Sanford Marina (subject to the limitations of this Agreement); provided, however, that without the prior written approval of the City, which may be granted or withheld in its sole discretion, no expenditures shall exceed in the aggregate in any calendar year the amount specified therefore in the annual operating budget.

(d). With respect to any maintenance and repairs to be performed by anyone other than an employee of the Operator, the Operator shall procure services in excess of \$50,000 in accordance with City policies, codes, ordinances, rules and regulations, to the extent reasonable and practicable.

(e). The Operator shall include in the annual operating budget adequate funds necessary for cleaning, maintenance and repairs of the Sanford Marina including, but not limited to, the following:

- (1). Repair and maintain docks and moorings as required to ensure sound structural integrity and safe condition.
- (2). Cleaning and maintenance including, at a minimum, but not

limited to, janitorial services and regularly scheduled cleaning and maintenance, shall be provided so as to maintain the Sanford Marina in good, clean, and sanitary condition, free from hazardous conditions and deterioration.

(3). Provide grounds maintenance such as mowing, trimming of bushes and trees, edging, fertilizing and flower bed upkeep.

(4). Visual inspections in order to keep reasonably informed of the potential need for repair or replacement of the Sanford Marina and related City facilities and any potentially hazardous conditions on or at the Sanford Marina.

(5). Processing repairs and minor replacements of Sanford Marina facilities and to procure the needed services from contractors or the City. Services may also be performed by Sanford Marina staff provided that those performing the services have adequate experience, skills and knowledge to perform the services.

(6). Capital improvements and the replacement of Sanford Marina facilities totaling \$5,000.00 and above shall be managed by the City. The Operator shall assist and support the City as needed including, but not limited to, the development of the needs assessment, assistance during design and construction as needed, etc. The City may delegate the management of certain capital improvements to the Operator. The Operator must have the opportunity to provide a quote for extraordinary oversight of significant capital improvements if it will require oversight/time from the Operator.

(f). The Operator shall immediately apprise the City if hazardous conditions exist on or at the Sanford Marina, or if there is an imminent need for repairs or replacement needed not covered in the annual operating budget.

(g). The Operator shall take reasonable steps necessary to protect the safety of the Sanford Marina and its occupants and property in the event of an emergency without prior City authorization but shall inform the City of such steps as soon as reasonably possible.

(h). In connection with any labor or materials provided in connection with any maintenance, repairs or improvement work performed for the Sanford Marina, the Operator shall take all the steps necessary or appropriate to maintain the Sanford Marina free and clear of all liens, levies and attachments including, but not limited to, any construction, workers', mechanic's or materialmen's lien or claims of lien. Such steps shall in any event include, at a minimum, obtaining from all providers of labor and materials for which the cost thereof is \$10,000.00 or more, construction, workers', mechanic's and materialmen's lien releases.

SECTION 8. SECURITY SERVICES.

The Operator shall provide all reasonable measures necessary to maintain the Sanford Marina secured at all times and provide an emergency call number year-round as part of the base management fee.

SECTION 9. PERSONNEL AND STAFFING.

(a). The Operator shall be responsible to provide its own management, operations and support staff in accordance with the needs of the Sanford Marina. Under no circumstances shall the Operator's employees be deemed to be City employees.

(b). The Operator shall provide competent, skillful, personnel to fulfill the Operator's obligations under this Agreement.

(c). At all times while on the Sanford Marina or conducting the business of the Sanford Marina in the name of the City, the Operator's personnel shall act courteously and in accordance with the highest professional standards and shall be well groomed in appearance.

(d). The City shall have the right to require the Operator to remove from the Sanford Marina any personnel who do not meet the requirements of this Agreement.

(e). The Operator shall ensure that all such personnel have and wear shirts or uniforms with the logo and name of the Sanford Marina and badges identifying personnel as personnel of the Operator. No product or service advertisements may be included on such materials, although the Operator's name or logo may be included.

(f). The Operator shall have the responsibility of hiring, disciplining and discharging all of its employees to fulfill the requirements of this Agreement. All employees so employed shall be employees of the Operator and not the City.

(g). The Operator shall not use contract workers unless such workers are engaged through an acceptable employment organization approved by the City.

(h). The Operator shall establish and implement an acceptable hiring plan that does not discriminate based on race, creed, color, sex, age or national origin, or violate any Federal, State or local discrimination statute, law, rule, regulation, code or ordinance. The Operator further covenants and agrees that it shall not discriminate as to race, color, creed, sex, age or national origin or engage in any type of discriminatory practice in the use of Sanford Marina or in the employment of its personnel.

(i). All personnel assigned by the Operator to the Sanford Marina shall go through shall be reviewed fit to perform the duties and pass background checks to the extent permissible by law. As a government contractor, the Operator shall abide by the provisions of the Drug-Free

Workplace Act of 1988 and Section 287.087, *Florida Statutes* and shall make a good-faith effort to maintain the standards required in those provisions of law.

(j). The Operator shall establish the compensation rates and benefits of all its employees in conjunction with the annual operating budget. The Operator is responsible for directly paying its employees each established pay period and for withholding any appropriate government prescribed deductions and directly remitting such deductions in a timely manner to the appropriate government agency.

(k). The Operator's personnel shall have all the necessary training and be competent in all the service and support functions necessary to manage and operate a marina. The Operator shall ensure that its staff complies with the City's Information Technology Protocols and Procedures whenever using a City computer or City computer network.

SECTION 10. LEGAL REQUIREMENTS.

(a). The Operator shall comply with all Federal, State and local statutes, laws, rules, regulations, codes, ordinances and permits, and the terms and conditions of the City's sovereignty submerged land leases with the State of Florida (hereinafter collectively "Legal Requirements"). Without limiting the generality of the foregoing, the Operator shall:

- (1). Comply with the provisions of the *Federal Civil Rights Act of 1964*.
- (2). Comply with the *Americans With Disabilities Act*.
- (3). Not employ undocumented immigrant workers or otherwise violate the provisions of the *Immigration Reform and Control Act of 1986* or any similar law or law of similar effect. In accordance with Section 448.095, *Florida Statutes*, the Operator shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the

employment eligibility of all new employees hired during the term of this Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. If the Operator enters into a contract with a subcontractor performing work or providing services on its behalf, the Operator shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>. The Operator and any of its subcontractors shall, upon the City's request, provide evidence of compliance with this provision to the City. Failure to comply with this provision is a material breach of this Agreement, and the City may choose to terminate this Agreement at its sole discretion. If such termination occurs, then pursuant to Section 448.095(2)(f), *Florida Statutes*, the Operator shall be liable for any additional costs incurred by the City as a result of the termination of this Agreement.

(4). Comply with the *Contract Work Hours and Safety Standards Act*.

(e). Comply with the *Clean Air Act*.

(f). Comply with the *Water Pollution Control Act*.

The Operator agrees to report each violation that becomes known to the Operator to the City and understands and agrees that the City will, in turn, report each violation as required to the

appropriate agency with jurisdiction over the matter.

(b). The Operator shall be bound by applicable law to the same extent that the City would be as if such provisions were fully set forth in these terms and conditions

(c). The Operator shall also all use reasonable efforts to secure full compliance by all tenants, guests, and invitees of the Sanford Marina with all Legal Requirements.

(d). The Operator shall ensure that all permits necessary to continue the operation of the Sanford Marina are in place, valid and current in all respects and shall provide sufficient notice to the City in order to obtain renewals or remedial actions and that any other permits necessary for the development and continued operation of the Sanford Marina.

(e). The City will be responsible for renewing the above-referenced submerged land leases.

(f). The Operator shall communicate and cooperate with the City to ensure that all permits and licenses necessary for the operation of concessions are obtained.

(g). The Operator shall not engage in any business or transaction involving the Sanford Marina with any vendor who is on a prohibited vendor list or is otherwise prohibited from doing business with a governmental agency under controlling law.

SECTION 11. FISCAL PROCEDURES.

(a). The Operator acknowledges that the budget for the Sanford Marina for Fiscal Year (FY) 2021-2022 is an interim budget during the transition period leading up to October 1, 2022. During this time the Operator and the City shall work together to create the FY 2022/2023 Sanford Marina Budget.

(b). For the Fiscal Year beginning on October 1, 2022, and for every fiscal year thereafter, the Operator shall submit to the City, at least 4 months prior to the beginning of such

fiscal year, a proposed annual operating budget and a capital improvement budget for the Sanford Marina in accordance with the procedures and schedule established by the City.

(c). The line-item revenue and expense operating budget shall include projections of both revenues and expenses with a narrative regarding recommended rates for all fees and a discussion of any new or expanded program initiative.

(d). The proposed budget shall include, at a minimum, projected costs of insurance, labor and all other expenses that the Operator reasonably anticipates will incur in carrying out its obligations of this Agreement.

(e). The proposed budget is subject to approval by the Sanford City Commission.

(f). The Assistant City Manager is authorized to transfer any unencumbered balance of a line-item expense to another line item upon request of the Operator.

(g). The Operator may from time-to-time advise the City of supplemental budget adjustments that may be needed which budget adjustments shall be subject to City approval in accordance with City policies, codes, ordinances, rules and regulations.

(h). The Operator shall not take any action or expend any funds, or refrain from doing the same, unless such action or expenditure (or the forbearance thereof) is contemplated in the then current annual operating budget approved by the City, as the same may have been modified at the City's request in accordance with this Agreement.

SECTION 12. REVENUES AND EXPENDITURES.

(a). The Operator shall manage all Sanford Marina operations in accordance with the following terms and conditions:

(1). The Operator shall use its management and financial software and any other devices necessary to manage, operate and run the Sanford

Marina operations and finances.

(2). The Operator shall coordinate set up its management and financial software with the City's established Chart of Accounts and upload the Sanford Marina annual operating budget for the appropriate fiscal year(s).

(3). The Operator's management and financial software shall have the capability to produce an audit tape of all transactions as needed.

(4). The City and the Operator shall establish a bank account (hereinafter the "Sanford Marina Bank Account") through which the Operator shall conduct all financial transactions for the Sanford Marina. All revenues from the Sanford Marina shall be deposited in said account and all Sanford Marina expenses for personnel, materials, goods, supplies or services shall be debited to the same account. The Operator shall prepare and provide to the City the monthly bank reconciliations of the Sanford Marina Bank Account.

(5). The Operator shall document, record and monitor all personnel and operating expenditures in accordance with the City established Chart of Accounts.

(6). The Operator shall prepare and provide to the City monthly reports detailing all purchases made by the Operator showing, at a minimum, the City account that such purchases were charged to.

(7). Labor costs eligible for reimbursement are limited to the cost (including salaries, wages and benefits) of the Operator's personnel actual hours engaged in providing services at the Sanford Marina as required by

this Agreement. Indirect costs, such as company overhead including, but not limited to, workers' compensation insurance, taxes, etc. or labor expenses of any officer or employee of the Operator above the on-site manager, shall not be eligible for reimbursement. In addition, if any of Operator's on-site personnel are engaged in services outside of this Agreement (such as for another marina), those costs shall be prorated accordingly. Labor costs debited to the Sanford Marina Bank Account shall be reconciled, by the City and the Operator, to actual documented expenses (payroll records) monthly or as otherwise agree to by the parties. Any necessary adjustments as a result of any reconciliation shall be made during the current month.

(8). The Operator shall comply with all applicable City policies, codes, ordinances, rules and regulations when procuring materials, goods, supplies, fuel or services.

(9). Except for purchases with City established requisitions or purchase orders, the Operator shall be required to obtain quotes for purchases exceeding \$4,999.99 unless the City has agreed otherwise.

(10). The Operator shall provide to the City the type and quantity of materials, goods or supplies being procured accompanied by the necessary quotes or bids for City approval prior to any purchase greater than \$50,000.00. No expenditures shall be debited to the Sanford Marina Bank Account unless previously approved by the City and comply with the following:

(A). Procurement expenditures made by the Operator shall

not be debited to the Sanford Marina Bank Account that are not consistent with the terms of this agreement.

(B). No expenditures will be debited to the Sanford Marina Bank Account if exceeding the budgeted amount. The Operator shall promptly advise the City in those circumstances. in which recurring or other projected expenditures may exceed budgeted amounts.

(C). All purchased materials, goods, supplies and fuel inclusive of inventory items, whether eligible for reimbursement or not, shall be kept at the Sanford Marina until consumed, used, or sold in the course of the services provided herein.

(11). Costs for the Operator's general liability, automobile liability insurance coverage approved by the City are not eligible for reimbursement. Sanford Marina Operators Legal Liability and Protection and Indemnity Insurance; and Pollution Insurance coverage are eligible for reimbursement and after City's approval can be debited to the Sanford Marina Bank Account.

(12). The Operator shall deposit all revenues from the Sanford Marina into the Sanford Marina Bank Account.

(13). All revenues from rentals or sales received by the Operator by virtue of this Agreement whether it be cash, checks, credit card, discounts, promotional incentives, or any other type shall be immediately recorded on the Operator's Sanford Marina management and financial software by date, type of consideration (identifying the area rented and vessel owner) or revenue category, and amount. All cash, checks, and credit card type

transactions, for any given calendar day, shall be recorded on a daily cash report and these items then deposited daily to the Sanford Marina Bank Account no later than 12:00 Noon on the next banking business day. The term "consideration" shall not be construed to include the consideration paid the Operator by the City under this engagement or any gratuities paid by Sanford Marina patrons to the employees of the Operator.

(14). The Operator shall pay the applicable State sales and use tax for any amounts payable under this Agreement.

(15). The Operator shall prepare and file with the State (online) the monthly Sales and Use Tax Return DR-15, or any successor documentation.

(16). The Operator shall prepare and provide to the City by the 15th day of each month the following documents and information for the prior month:

(A). Copies of the monthly bank reconciliations, sales tax returns and a detailed general ledger activity report.

(B). A detailed report listing all new customer deposits from slip or mooring rentals, and all refunds of customer deposits.

(C). A reconciliation report of diesel and unleaded fuel inventory showing fuel deliveries, sales and month end inventory; and a reconciliation report of diesel and unleaded fuel transactions showing fuel purchases, sales and net income.

(D). A list of revenues and expenses reflecting comparisons between actual and budgeted amounts for the interval selected and the fiscal year.

(E). An aged accounts receivable report.

(F). Any and all other reports or information reasonably requested by the City to be properly advised of the financial status and operational results of the Sanford Marina for the interval selected, such as appropriate invoices, payroll records, and other documentation.

(17). The Operator shall retain all cash and expense receipts for a period of 10 years from origin for use and/or examination by the City.

SECTION 13. COMPENSATION TO THE OPERATOR.

(a). As consideration for managing and operating the Sanford Marina during the term of the Agreement, the City will pay the Operator the following Fees and incentive, which shall constitute the Operator's sole compensation for all services performed under this Agreement:

(1). The Operator's labor costs which shall be based on the actual staff hours used at the Sanford Marina and associated benefits for years 1-5 and, 'if applicable, subsequent years 6-10; and shall be subject to any staffing modifications thereto made by the Operator and approved by the City. Payroll costs shall be debited to the Sanford Marina Bank Account based on the actual staffing hours used. Eligible labor costs are limited to the cost (including salaries, wages and benefits) of the Operator's personnel engaged in providing services required by this Agreement at the Sanford Marina. Indirect costs, such as Operator overhead or labor expenses of any officer or employee of the Operator above the on-site Marina manager, shall not be eligible for reimbursement. In addition, if any of the Operator's on-site Marina

personnel are engaged in services outside of this Agreement (such as for another marina), those costs shall be prorated accordingly.

(2). In addition, the Operator shall be paid a Base management fee for Agreement years 1-5 and, if applicable, subsequent Agreement years 6-10 as detailed below. The base management fee shall be prorated the first month of the agreement and debited monthly from the Sanford Marina Bank Account with net operating income (NOI) being defined as total operating income less total operating expenses:

(A). Fiscal Year 1 (partial and transitional) – June 1, 2022 - September 30, 2022: \$16,000.00 and 15% NOI.

(B). Fiscal Year 2 - October 1, 2022 - September 30, 2023: \$8,000.00 and 15% NOI.

(C). Fiscal Year 3 - October 1, 2023 - September 30, 2024: \$8,000.00 and 15% NOI.

(D). Fiscal Year 4 - October 1, 2024 - September 30, 2025; \$8,000.00 and 15% NOI.

(E). Fiscal Year 5 - October 1, 2025 - September 30, 2026: \$8,000.00 and 15% NOI.

(G). Fiscal Year 6 - October 1, 2026 - September 30, 2027: \$8,000.00 and 15% NOI.

(H). For any future optional fiscal years; to be determined through negotiations.

SECTION 14. BOOKS AND RECORDS; AUDITS.

(a). The Operator shall prepare and keep books and records regarding the management of the Sanford Marina in sufficient detail to meet sound and generally acceptable accounting practices. For purposes herein "books and records" shall include general ledgers, income statements, tax returns (if required by the City), and any other relevant bookkeeping documents the Operator uses in its business operations.

(b). The Operator shall continue to maintain such books and records for a period of 10 years after the termination of this Agreement

(c). At any time during the term of this Agreement and for a period of 3 years after termination, the City shall have the right to audit the Operator's books and records, at the City's expense except as provided below. The Operator shall make the books and records available for the City's representative to perform the audit either electronically or at a location within the City of Sanford City Limits, no more than 3 days after the City provides written demand.

(d). If the audit shows that the Operator has underpaid to the City any consideration required to be provided to the City, the Operator shall either (i) pay to the City the amount owed plus interest at the statutory rate, within 30 calendar days of the City's written demand, and in addition if the audit discloses an underpayment by an amount in excess of 10% of the consideration owed for the year audited, all actual and reasonable expenses incurred by the City in connection with the audit; or (ii) give the City written notice within the same 30-day period referred to above that the Operator disagrees with said findings. If the Operator fails to give written notice of dispute within the 30-day period, the Operator shall be deemed to have accepted the findings of the audit report. If the Operator gives written notice that the Operator disputes any portion of the audit findings, the Operator shall promptly pay the City for that portion of the findings that the Operator disputes, plus the cost of the original audit if the agreed-upon

amount shows an underpayment of consideration in excess of 10% of the amount actually owed for the year audited.

(e). Within 30 calendar days after the Operator's provision of timely written notice of its dispute under the preceding paragraph, the Operator shall designate (subject to the City's reasonable approval) an independent public accounting firm, other than a firm which performed the City's audit, to audit the disputed records or calculation. If this audit shows that the Operator underpaid the consideration due, within 30 days of receipt of the audit report the Operator shall pay the City the amount owed plus interest as provided herein. The costs of this audit shall be borne as follows:

(1). If the audit shows that the City's calculations under this Section with respect to the disputed amounts were correct, then the Operator shall bear the entire cost.

(2). If the audit shows that the Operator's calculations and payment of the consideration were correct, the City shall bear the entire cost.

(3). If the audit shows that neither the City's nor the Operator's calculations with respect to the disputed amounts were entirely correct, then the Operator shall pay the portion of the cost of the audit determined by multiplying said cost by a fraction, the numerator of which is the total amount not paid to the City when due and the denominator of which is the disputed amount, and City will pay any remaining portion of such cost.

SECTION 15. DAMAGE OR LOSS TO THE OPERATOR'S PROPERTY.

(a). The Operator assumes all risk of damage or loss to its own property for any cause whatsoever, which shall include any damage or loss that may occur to its merchandise, goods,

or equipment, covered under this Agreement, if lost, damaged or destroyed by fire, theft, rain, water or leaking of any pipes or wastewater in or about the Sanford Marina, or from hurricane or any act of God, or any act of negligence of any user of the facilities, or occupants of the Sanford Marina, or any person whomsoever.

(b). The Operator indemnifies and holds harmless the City with regard to any and all damage or loss to its own property for any cause whatsoever, which shall include any damage or loss that may occur to its merchandise, goods, or equipment, covered under this Agreement, if lost, damaged or destroyed by fire, theft, rain, water or leaking of any pipes or wastewater in or about the Sanford Marina, or from hurricane or any act of God, or any act of negligence of any user of the facilities, or occupants of the Sanford Marina, or any person whomsoever.

SECTION 16. DAMAGE TO AND DESTRUCTION OF SANFORD MARINA PROPERTY.

(a). Except as provided below, if fire, hurricane, decay, or any other casualty event renders the Sanford Marina inoperable in whole or in part, the City will make all repairs reasonably necessary within 90 days of the conclusion of such event, or if repairs cannot reasonably be made within this period, within such period as the City may determine reasonable and appropriate. During any period of reconstruction, the Sanford Marina shall be operated under an interim budget, proposed by the Operator and adopted by the City, that reflects the most probable forecast of income and expenses; and, if the nature of the damage is such that it renders a portion of the Sanford Marina reasonably unavailable for leasing to boaters.

(b). If a casualty event substantially destroys or causes substantial damage to the Sanford Marina, the City may thereafter terminate this Agreement if the City determines that it would not be feasible or prudent to restore the Sanford Marina to the condition it was in prior to the casualty event, provided that the City gives the Operator timely notice of termination. Such

termination, including all reimbursable expenses and the prorated base management fee.

(c). Upon termination by either party, or expiration of this Agreement, the Operator shall:

(1). Discontinue services on the date and to the extent stipulated in the City notice.

(2). Place no further orders for goods, materials, supplies, fuel or services, except as directed by the City if needed to continue operations.

(3). Cancel any orders or contracts for services, unless directed otherwise by the City.

(4). Return all of the City's property including, but not limited to, funds, equipment and inventory, to the City; and execute all documents necessary and as required by the City to release or transfer any and all interest, management and control that Operator has acquired in the Sanford Marina operation as a result of this Agreement.

(5). Remove all signs that the Operator placed on the Sanford Marina indicating its management of the Sanford Marina, and fully restore any damage resulting from such removal; and

(6). Promptly deliver notice of such termination to all tenants, guests and invitees of the Sanford Marina and, thereafter, use its best efforts to cooperate with the City to accomplish an orderly transfer of management of the Sanford Marina to the City or to a new manager selected by the City.

(7). The Operator shall, after termination, make itself available to the City for a period of 30 days after such termination or expiration to consult with or

advise the City (or the operator selected by the City) regarding operation and maintenance of the Sanford Marina.

(d). Notwithstanding any other provision of this Agreement, the City may terminate this Agreement or any services hereunder, in whole or in part, at any time, with or without cause, by giving 7 days written notice to the Operator. Upon receiving notice of termination, the Operator shall discontinue the services as set forth above in this Section. In the event of such termination, the Operator's sole remedy shall be payment of any fees owed through the date of termination including all reimbursable expenses and the prorated base management fee if such termination occurs after the first partial year. If the termination occurs during or at the end of the first partial year, the Operator agrees to be compensated one half (1/2) of the Base Management Fee due to Operator for services performed up to the date of termination. The Operator waives all claims for compensation in excess of that which is specifically provided for herein including, but not limited to, loss of anticipated profits and claims of contractors and vendors.

SECTION 21. CONSTRUCTION ACTIVITIES.

(a). The Operator shall abide and conform to the provisions of the City's purchasing system and procedures for all procurements in excess of \$50,000.00 with respect to submission of requisitions and requests for payments incidental to its responsibilities for managing the Sanford Marina.

(b). Subject to the limitations and authority imposed by the purchasing system, the Operator shall make no addition, alteration or adjustment to the Sanford Marina and shall not apply for construction permits of any kind without first having obtained the written consent of the City, which shall not be unreasonably withheld.

(c). All requests shall be in writing and shall include plans and specifications pertaining

thereto.

(d). All permits must be received from the appropriate governmental agencies prior to undertaking any repairs, alterations, additions or improvements.

(e). All permanent alterations, improvements or repairs made or installed by the Operator shall be the property of the City.

(f). The Operator shall observe and report to the City on the progress of any work being performed by third parties.

(g). The Operator shall not provide other capital projects or construction services unless the parties agreed to such services in writing.

(h). The Operator shall not engage in any business or transaction involving the Sanford Marina with any vendor who is on a prohibited vendor list or is otherwise prohibited from doing business with a governmental agency under controlling law.

SECTION 22. CONTRACT DOCUMENTS.

(a). The contract documents pertaining to this Agreement shall consist of this Agreement, the City's solicitation documents (including all issued addenda, if any), the Operator's response to the City's solicitation documents together with all related documents in the files of the City.

(b). In the event of any conflict or inconsistency between the contract documents, this Agreement prevails.

SECTION 23. NOTICES.

(a). Notices to the Operator shall be sent to the following address: 252 East Highland Avenue, Milwaukee, Wisconsin 53202 to the attention of the Chief Operating Officer.

(b). Notices to the City shall be sent to the following address: Norton N. Bonaparte, Jr.,

ICMA-CM, City Manager, City Hall, 300 North Park Avenue, Sanford, Florida 32771-1788.

(c). The City may change such mailing address at any time upon giving the Operator written notice.

(d). All notices under this Agreement shall be in writing addressed to the appropriate addressee and shall be deemed to be served in any of the following events:

(1). When hand delivered to the address of the addressees and a receipt thereof is obtained or the addressee refuses to provide such receipt.

(2). Upon 3 days following the day on which such notice is mailed by certified or registered mail, postage prepaid, return receipt requested.

(3) One day following the day on which notice is delivered by Federal Express or such other overnight courier service with all delivery charges paid.

SECTION 24. CONFLICTS OF INTEREST.

No stockholders, directors, partner, employees of the Operator, or members of their families, shall have any interest in any business which supplies goods or services for the benefit of the Sanford Marina without advice to and consent of the City Manager, but said individuals may have an interest in marine exhibits located at the Sanford Marina.

SECTION 25. INSURANCE; INDEMNIFICATION.

(a). The provisions of this Section on Insurance shall be administered by the Risk Manager for the City.

(b). Unless otherwise provided for herein, the Operator shall purchase and maintain, at its own expense, the following types and amounts of insurance, in form and companies satisfactory to the City:

(1). As required by Chapter 440, *Florida Statutes*, Workers' Compensation Insurance for all employees of the Operator employed at the Sanford Marina or in any way required to fulfill or connected to the fulfillment of the terms of this Agreement. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage. No class of employee, including The Operator himself, if an individual, shall be excluded from the Workers' Compensation coverage.

(2). Commercial General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the Operator and any other interests including, but not limited to, any associated or subsidiary companies involved in the performance of this Agreement. The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$2,000,000.

(3). Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Operator at the Sanford Marina or in any way connected with the work

which is the subject of this Agreement.

(4). Employee Dishonesty Insurance in the principal amount of not less than \$200,000, with third party coverage.

(5). Employment Practices Liability Insurance, including sexual abuse and/or misconduct coverage and Vicarious Liability Endorsement naming the City of Sanford, in the principal amount of not less than \$1,000,000, with third party coverage.

(6). Cyber Liability Insurance in the principal amount of not less than \$1,000,000, with third party coverage.

(c). Founders 3, as operator of the Sanford Marina, shall obtain and carry Marina Operators Legal Liability and Protection and Indemnity Insurance coverage in the principal amount of not less than \$1,000,000.00.

(d). Founders 3 Management Company shall obtain and maintain Pollution coverage for accidental and sudden discharge of fuel which shall be treated as an Operator expense.

(e). Unless specifically waived hereafter in writing by the Risk Manager, the Operator agrees that the insurer shall waive its rights of subrogation, if any, against the City on each of the foregoing types of required insurance coverage.

(f). The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in the General Liability, and Automobile Liability insurance policies. The payment of such deductible shall be the sole responsibility of the Operator or subcontractor providing such insurance.

(g). The City's Risk Manager may at any time require the Operator to increase the amount of coverage, change the terms of coverage, and provide additional or different types of

coverage, as the Risk Manager may deem necessary; provided that the changes or increase in coverage are consistent with such requirements for similar operations and businesses then operating within the Central Florida area or are reasonable in light of prior claims made against Operator's policies. The Operator must comply with such requirements within 30 days after the City's demand. Any increase in costs associated with such changes shall be the responsibility of the City.

(h). Any insurance policy required by or pursuant to this Section may contain a reasonable deductible provision, provided advance notice of said deductible provision is given by the Operator to the City and approval from the City's Risk Manager is given, which approval shall not be unreasonably withheld or delayed.

(i). The Operator shall furnish proof of the required forms and coverages referenced above to the Risk Manager prior to or at the time of execution of this Agreement. The Operator shall not commence work under this Agreement until all proof of such insurance has been filed with and approved by the Risk Manager. The Operator shall furnish proof of any new or amended coverages to the Risk Manager promptly upon being directed to do so. The City may require the Operator to halt operations until the Operator has provided such insurance.

(j). The Operator shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates and shall contain the following language as to cancellation:

"In the event of cancellation of this policy by the insurer or any insured, this Company shall give not less than 30 days advance written notice to:

*Risk Manager
City of Sanford*

*300 North Park Avenue
Sanford Florida 32771-1788"*

The certificate of insurance shall name the City as an additional insured on the General Liability, Auto Liability, and Marina's Operator Legal Liability; the City recognizes that Operator is not able to name the City as an additional insured on the Employment Practices Liability Insurance coverage required to be maintained by the Operator.

(k). If requested by the City's Risk Manager, the Operator shall furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the City's Risk Manager.

(l). The liabilities of the Operator under this Agreement shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the Operator shall relieve the Operator or its subcontractors from responsibility to provide insurance as required by this Agreement.

(m). The Operator shall file replacement certificates of insurance 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the City.

(n). If such insurance lapses, the City expressly reserves the right to renew the insurance at Operator's expense.

(o). The Operator may not cancel the insurance required by this Agreement until all services are completed, accepted by the City, and the Operator has received written notification from the Risk Manager that the Operator may cancel the insurance required by this Agreement and the date upon which the insurance may be cancelled.

(p). To the fullest extent permitted by law, the Operator shall indemnify, hold harmless

and defend the City, its agents, servants, officers, officials and employees, or any of them, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees and other legal costs such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony, arising out of or resulting from the performance or provision of good or provided to the City if caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of the Operator related in any way to the performance of services or the provision of goods to the City.

(q). To the extent applicable, in accordance with Section 725.06, *Florida Statutes*, adequate consideration has been provided to the Operator for its obligations, the receipt and sufficiency of which is hereby specifically acknowledged.

(r). Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, *Florida Statutes*.

(s). In claims against any person or entity indemnified by an employee of the vendor anyone directly or indirectly employed by the Operator or anyone for whose acts the Operator may be liable, this indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Operator under Workers Compensation acts, disability benefit acts, or other employee benefit acts.

(t). The execution of the contract documents by the Operator shall obligate the Operator to comply with the indemnification provisions; provided, however, that the Operator must also comply with insurance coverage requirements.

(u). The Operator shall submit a report to the City within 24 hours of the date of any incident resulting in damage or which is reasonably likely to result in a claim of damage.

(v). In the event that the Operator is providing services as a “design professional”, the indemnification by the Operator running in favor of the City shall be to the maximum extent permissible under the provisions of Section 725.08, Florida Statutes.

(w). The Operator shall be held responsible for all accidents and shall indemnify, hold harmless, and protect the City from all suits, claims and actions brought against the City or its officials, representatives, agents, officers, and employees, and all costs, damages, or liabilities to which the City or its officials, representatives, agents, officers, and employees may be exposed, for any injury or alleged injury to the person(s) or property(ies) of another resulting from negligence or carelessness in the performance of the work, or in protection of the Sanford Marina, or from any improper or inferior workmanship, or from inferior materials used in the work, or otherwise related to the project

SECTION 26. HURRICANE AND EMERGENCY.

The City shall, during any emergency such as hurricane, flood, fire or any type of disaster, cooperate with the Operator for the security of the Sanford Marina. The City shall use its best efforts during an emergency to safeguard the Sanford Marina.

SECTION 27. INVENTORY.

(a). Prior to the Effective Date or within 14 days thereafter, a representative of both the City and the Operator shall jointly perform a physical inventory count and observation of all fixtures, furnishings, furniture and equipment, in or upon the Sanford Marina and the inventory shall immediately become attached hereto and made a part hereof.

(b). The Operator agrees that the fixtures, furnishings and equipment are in the condition as stated in the inventory; that the Operator personally inspected and assisted in the taking of said inventory; that the Operator shall maintain the fixtures, furnishings, furniture and

equipment during the term of this Agreement; and that all of the property shall be deemed in its sole custody and care.

(c). At least once annually during the term of this Agreement the City shall provide the Operator with an amended listing of fixed assets to verify those assets currently in place taking into account deletions and additions. The City shall provide the Operator with fixed asset identification tags to be affixed to such assets.

(d). Upon the termination of this Agreement, the City and the Operator shall jointly perform a physical inventory count and observation of all fixtures, furnishings, furniture and equipment. If any of the aforementioned items are lost, stolen or damaged, through the negligence of the Operator, they shall be replaced or repaired at the cost and expense of the Operator.

SECTION 28. NON-ASSIGNABILITY.

(a). This Agreement may not be assigned by the Operator without prior approval of the City Commission.

(b). Any assignment, transfer, or conveyance of a controlling interest in stock to parties who are not stockholders or partners as of the Effective Date shall be deemed an assignment requiring the City Commission's approval.

(c). An assignment subject to the restriction contained herein shall not include an assignment to the personal representative of a deceased stockholder or to said stockholder's estate or heir, provided, however, that a subsequent transfer, assignment, or conveyance from the stockholder's estate or heir to a third party who is not a stockholder as of the date the Agreement shall require such approval. Also excluded from the operations of the restrictions of this clause shall be assignments, transfers, or conveyance between and amongst persons who

are stockholders as of the Effective Date or members of their immediate family.

SECTION 29. REPRESENTATION BY THE CITY.

(a). The City warrants and represents that it has full power and authority to enter into this Agreement under the Constitution and Laws of the State of Florida and codes, ordinances and resolutions of the City, and that all conditions and things required by the Constitution and Laws of the State of Florida, Seminole County and the City to happen, exist and be performed precedent to the signing of this Agreement have happened, exist, and have been performed as so required.

SECTION 30. PUBLIC RECORDS.

(a). **IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 688-5012, TRACI HOUCHIN, MMC, FCRM, CITY CLERK, CITY OF SANFORD, CITY HALL, 300 NORTH PARK AVENUE, SANFORD, FLORIDA 32771, TRACI.HOUCHIN@SANFORDFL.GOV.**

(b). In order to comply with Section 119.0701, *Florida Statutes*, public records laws, the Operator must:

- (1). Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (2). Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost

that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law.

(3). Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4). Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Operator upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

(c). If the Operator does not comply with a public records request, the City shall enforce the provisions of this Agreement.

(d). Failure by the Operator to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of this Agreement by the City. The Operator shall promptly provide the City with a copy of any request to inspect or copy public records in possession of the Operator and shall promptly provide the City with a copy of the Operator's response to each such request.

SECTION 31. SAFE HARBOR.

In the event of an act of bankruptcy, the Operator must immediately affirm the Agreement, cure all defaults, and thereafter remain in full compliance with this Agreement, or reject the Agreement pursuant to applicable bankruptcy laws. In case of conflicts between this Section

and any other provision of this Agreement, this provision shall govern.

SECTION 32. ENFORCEMENT.

The City's rights and remedies under this Agreement shall be cumulative and not exclusive.

SECTION 33. WAIVER OF JURY TRIAL; CONTROLLING LAW/VENUE.

(a). The City and the Operator waive all right to trial by jury in any claim, action, and proceeding or counterclaim by either Party against the other of any matters arising out of or in any way connected with this Agreement.

(b). The City's contractual relationship with the Operator shall be governed by the laws of the State of Florida regardless of any other consideration or doctrine of the choice of law.

(c). Venue for any legal proceeding shall be in the State Courts of Seminole County, Florida; the State and County in which the City is located.

SECTION 34. SURVIVAL.

(a). The Operator's obligations hereunder shall not be limited to any extent by the term of this Agreement and, as to any act or occurrence prior to the expiration or termination of this Agreement which gives rise to liability hereunder.

(b). The Operator's obligations shall continue, survive, and remain in full force and effect notwithstanding the expiration or termination of this Agreement.

SECTION 35. CITY MANAGER/DESIGNEE.

All references herein to the City Manager shall be construed to include the City Manager's designee which, until further notice by the City is the Assistant City Manager.

SECTION 35. EXTENT OF AGREEMENT/INTEGRATION/AMENDMENT.

(a). The City's contract documents constitute the entire integrated agreement between

the City and the Operator and supersede all prior written or oral understandings in connection therewith.

(b). The terms and conditions contained herein, including the exhibits, constitute the full and complete agreement between the City and the Operator to the date hereof, and supersede and control over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

(c). The terms and conditions contained herein may only be amended, supplemented or modified by a formal written amendment.

(d). Any alterations, amendments, deletions, or waivers of the terms and conditions shall be valid only when expressed in writing and duly signed by the City and the Operator.

SECTION 36. WAIVER.

(a). The failure of the City to insist in any instance upon the strict performance of any provision of the terms and conditions, or to exercise any right or privilege granted to the City shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(b). Payment for goods or services by the City shall not constitute waiver of any type of nature by the City.

SECTION 37. SEVERABILITY/CONSTRUCTION.

(a). If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when

consistent with equity and the public interest.

(b). All terms and conditions shall be read and applied in para materia with all other provisions.

SECTION 38. ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a). In the event of a dispute related to any performance or payment obligation arising, the parties agree to exhaust any alternative dispute resolution procedures reasonably imposed by the City prior to filing suit or otherwise pursuing legal remedies.

(b). The Operator agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the City in alternative dispute resolution procedures or which the Operator had knowledge and failed to present during the City's procedures.

(c). In the event that the City's procedures are exhausted, and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through mediation. Mediator selection and the procedures to be employed in mediation shall be mutually acceptable to the parties. Costs of mediation shall be shared equally among the parties participating in the mediation.

SECTION 39. NO GENERAL CITY OBLIGATION.

(a). In no event shall any obligation of the City be or constitute a general obligation or indebtedness of the City, but shall be payable solely from legally available revenues and funds and the Operator shall have no right to impose the levy of ad valorem taxation by the City.

(b). In no event shall the Operator have any right to cause the City to appropriate or budget funds for any purpose or reason.

(c). Unless otherwise provided by law, a procurement for goods or services may be

entered into for any period of time deemed to be in the best interests of the City, provide the time of the procurement and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the period at the time of procurement. Payment and performance obligations for succeeding fiscal periods shall be subject to appropriation by the City of funds therefor.

(d). When funds are not appropriated or otherwise made available to support continuation of the performance of services or the provision of goods in a subsequent fiscal period, the agreement with the City shall be canceled and the Operator shall be entitled for the reasonable value of any nonrecurring cost incurred, but not advertised in the prices of the goods supplied or services provided under the City contract documents.

SECTION 40. FORCE MAJEURE.

(a). Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure.

(b). Force Majeure shall include, but not be limited to, hostility, terrorism, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, cyber-attack, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated is beyond the control and without the fault or negligence of the party seeking relief.

SECTION 41. EXHIBITS.

Each exhibit referred to and attached to this Agreement is an essential part of this Agreement. The exhibits and any amendments or revisions thereto agreed upon by the parties,

even if not physically attached hereto, shall be treated as if a part of this Agreement.

SECTION 42. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument as to those who have executed the document, but all of which, taken together, shall constitute one and the same document; provided, however, that, in the event of a disparity between the counterparts, the counterpart recorded in the City's official records shall be controlling.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below hereby represent that they have full authority to execute this instrument and to bind the parties set forth herein.

ATTEST:

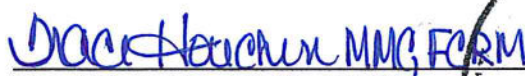
FOUNDERS 3 MANAGEMENT COMPANY, a foreign corporation established in the State of Wisconsin.


Joelle Wolf, Secretary


By: 
John Matheson, President


ATTEST:

CITY OF SANFORD


Traci Houchin, MMC, FCRM
City Clerk

Approved as to form and legal sufficiency.



By: 
Art Woodruff
Mayor
Date: 5-12-22


William L. Colbert City Attorney

(City of Sanford/Sanford Harbor Marina MOA/Final/4-28-22-dwh)



WS __ RM **X**
Item No. **8.B**

**CITY COMMISSION MEMORANDUM 22-147
MAY 9, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Commission
PREPARED BY: Craig M. Radzak, Assistant City Manager
SUBMITTED BY: Norton N. Bonaparte, Jr., ICMA-CM, City Manager
SUBJECT: Marina Management and Operation Services Agreement with Founders 3 Management Company; Associated Budget Amendment; Resolution No. 2022-3036

STRATEGIC PRIORITIES:

- Unify Downtown & the Waterfront
- Promote the City’s Distinct Culture
- Update Regulatory Framework
- Redevelop and Revitalize Disadvantaged Communities

SYNOPSIS:

Approve an agreement for the marina management and operation services between Founders 3 (F3) Management Company and the City of Sanford. The associated budget amendment Resolution has been prepared for the City Commission’s ratification and approval.

FISCAL/STAFFING STATEMENT:

The City shall pay F3 Management a fee of \$16,000 per month until the end of the current fiscal year, which covers the cost of hiring, accounting set-up, transitional efforts, and administrative costs of a new assignment and training of staff. The budget resolution also requests the remaining fiscal year of payroll and operational costs (\$150,500 for payroll and \$84,213 for operating) and four (4) of management fees (\$64,000) totaling \$298,713. The base management fee shall be in the amount of \$8,000 per month after this fiscal year with an incentive fee of 15% of the net operating income (NOI). The NOI is defined as the total operating income minus total operating expenses.

BACKGROUND:

At the March 28, 2022 City Commission meeting, the Commission approved a lease termination agreement with the current operator, which expires May 31, 2022. At this same meeting, the City Commission awarded the marina management bid to F3 to manage and operate the Sanford Marina with delegation to the City Manager, or designee, to negotiate and approve the management contract.

The commencement agreement date is the earliest date the City designates F3 to begin the expedited transition and stabilization plan to transfer current operations. The agreement expires September 30, 2027; however, the City Manager and F3 may administratively renew it, in writing. The description of the property to be managed includes Lots 4, 5, 6, 8, the east 75’ of Lot 7, dry

storage building, east and west basins, the public transient dock slips, and the parking area south of the pizzeria building as depicted in Exhibit A.

F3 shall be responsible for providing its own personnel to effectively manage operate and support the marina, and be responsible for hiring, firing, and disciplining the employees. The employees of the Marina will not be City employees.

LEGAL REVIEW:

The Assistant City Attorney has prepared and reviewed the management and operation agreement and associated Resolution No, 2022-3036 and has no legal objection.

RECOMMENDATION:

City staff recommends that the City Commission ratify and approve the management and operations agreement between F3 Management Company and the City as well as the adoption of Resolution No. 2022- 3036 amending the budget in the amount of \$298,713.

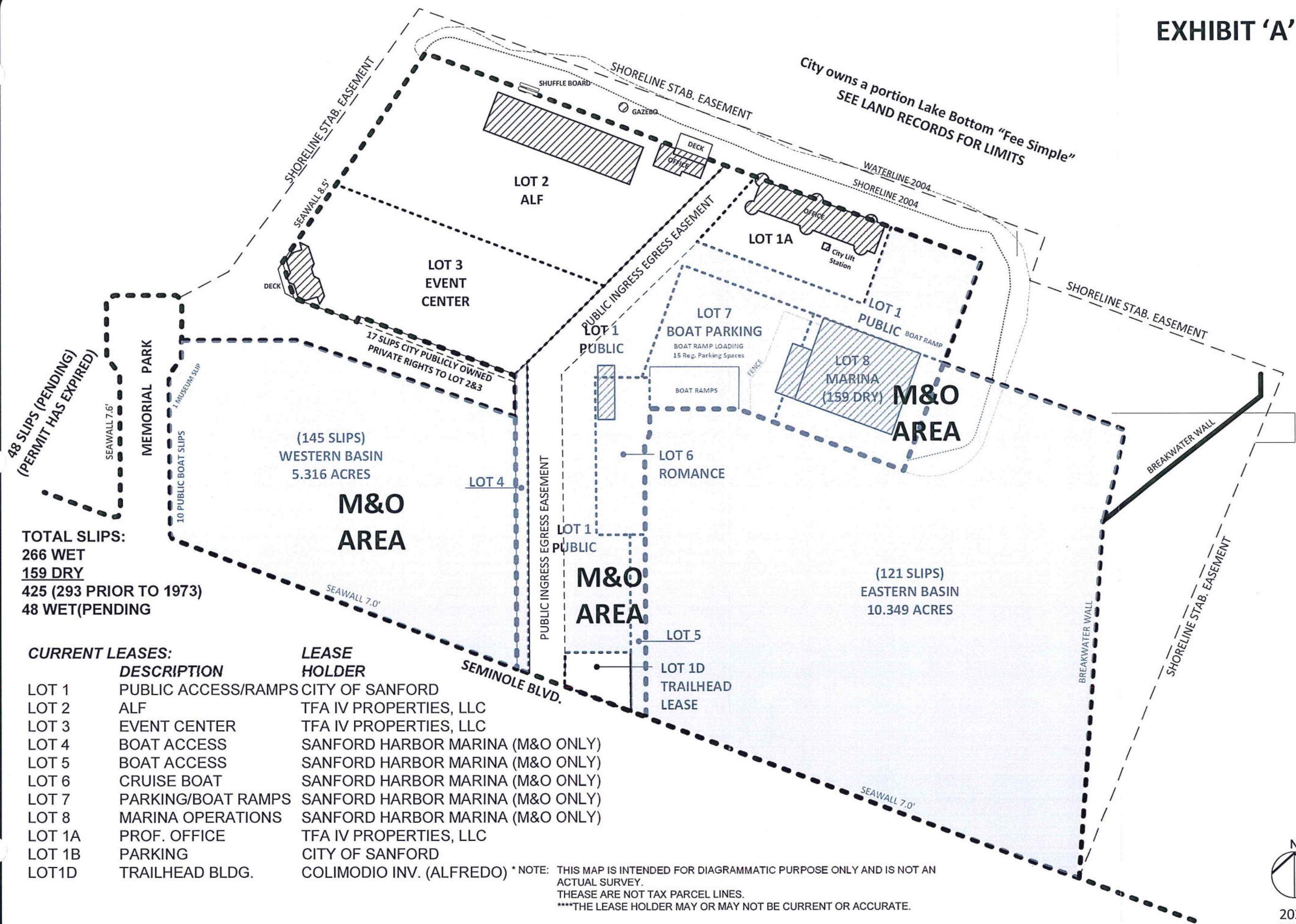
SUGGESTED MOTION:

“I move to ratify and approve the agreement, and associated Resolution No. 2022-3036 as presented.”

- Attachments:
- (1). Management and Operation agreement between F3 Management Company and the City.
 - (2). Exhibit A -map depicting properties to be managed by F3
 - (3). Budget Resolution No. 22-3036
 - (4). Budget Amendment – Attachment A

EXHIBIT 'A'

Rm 8.B
5.9.22



48 SLIPS (PENDING)
(PERMIT HAS EXPIRED)

MEMORIAL PARK

(145 SLIPS)
WESTERN BASIN
5.316 ACRES

**M&O
AREA**

(121 SLIPS)
EASTERN BASIN
10.349 ACRES

**M&O
AREA**

TOTAL SLIPS:
266 WET
159 DRY
425 (293 PRIOR TO 1973)
48 WET(PENDING)

CURRENT LEASES:

LOT	DESCRIPTION	LEASE HOLDER
LOT 1	PUBLIC ACCESS/RAMPS	CITY OF SANFORD
LOT 2	ALF	TFA IV PROPERTIES, LLC
LOT 3	EVENT CENTER	TFA IV PROPERTIES, LLC
LOT 4	BOAT ACCESS	SANFORD HARBOR MARINA (M&O ONLY)
LOT 5	BOAT ACCESS	SANFORD HARBOR MARINA (M&O ONLY)
LOT 6	CRUISE BOAT	SANFORD HARBOR MARINA (M&O ONLY)
LOT 7	PARKING/BOAT RAMPS	SANFORD HARBOR MARINA (M&O ONLY)
LOT 8	MARINA OPERATIONS	SANFORD HARBOR MARINA (M&O ONLY)
LOT 1A	PROF. OFFICE	TFA IV PROPERTIES, LLC
LOT 1B	PARKING	CITY OF SANFORD
LOT 1D	TRAILHEAD BLDG.	COLIMODIO INV. (ALFREDO)

* NOTE: THIS MAP IS INTENDED FOR DIAGRAMMATIC PURPOSE ONLY AND IS NOT AN ACTUAL SURVEY.
THESE ARE NOT TAX PARCEL LINES.
****THE LEASE HOLDER MAY OR MAY NOT BE CURRENT OR ACCURATE.

**SANFORD HARBOR MARINA
MANAGEMENT & OPERATIONS AREAS**

CITY OF SANFORD
DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES
300 N. PARK AVENUE
SANFORD, FL 32771



2022
SMITHC

C:\USERS\SMITHC\DESKTOP\MARINAEX.A.VSD