
INTER

OFFICE

MEMO

Office of the Mayor

To: City Council
From: John R. Pick *JRP*
Subject: Marina Management Services Agreement
Date: April 5, 2005

Attached for your review and approval is a proposed Management Services Agreement for the Port of Salisbury marina. This agreement has been negotiated by the City staff with Mr. Mitch Nathanson of Coastal Properties Management, Inc. following Mr. Nathanson's response to the City's request for proposals for this service.

The Management Services Agreement establishes a management relationship between the City and Coastal Properties for the next three years. Under this arrangement, Coastal Properties would run the Marina for the City. They would have the ability to establish rate and fee schedules that would be charged to their customers. All revenues received would be forwarded to the City's Finance Department for deposit in the City's accounts. These funds would then be forwarded to Coastal Properties for deposit in their account. All costs attributable to operation of the marina would be paid for by Coastal Properties. At the end of each year, the net proceeds would be divided equally between Coastal Properties and the City. If there is a loss, the City would be responsible for the loss. At any time during the course of the agreement, both parties have the ability to notify the other that they are canceling the agreement with sixty (60) days notice, without qualification.

Under this agreement, the manager is responsible for making whatever repairs may be necessary to marina facilities up to \$2,500 in cost. Any repairs exceeding \$2,500 must be pre-approved by the City. The manager will also be responsible for providing a budget at the beginning of each year and for providing the City with as much advance notice as possible if the manager believes that adherence to the budget will not be possible. The manager is also responsible for providing the City and the Marina Committee with monthly financial reports. The manager is also responsible for maintaining adequate insurance protection for his operations and activities.

The City has agreed to make a number of relatively minor repairs to the Marina facilities, at Mr. Nathanson's request, within a reasonable period of time, in order to help make the facility an attractive place for boaters.

Coastal Properties Management, Inc. is a very experienced and well-respected marina operations company. They are currently responsible for operating the following marinas: Fort Washington; The Gangplank Marina; Piney Narrows Yacht Haven; Horn Point Harbor marina; Bowley's Marina; Solomons Yachting Center; Wells Cove Marina; Harborview marina, and Sunset Island Marina.

If the Council approves this agreement, Mr. Nathanson has indicated that he will be able to take over management of the marina by May 1, 2005.

If you have any questions, please let me know.

cc: Mayor Tilghman
John Jacobs
Carol Turner
Paul Wilber

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RESOLUTION NO. 1225

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND
AUTHORIZING THE MAYOR TO SIGN A MANAGEMENT SERVICES AGREEMENT WITH
COASTAL PROPERTIES MANAGEMENT INC. FOR THE MANAGEMENT OF THE PORT OF
SALISBURY MARINA

WHEREAS, the City Council finds that the Port of Salisbury marina has not maximized its potential to serve as an asset to the City's downtown and as a tourist attraction; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens that a private company be engaged to manage the Port of Salisbury marina; and

WHEREAS, the City has advertised and received proposals for the management of the marina; and

WHEREAS, the City staff has reviewed the proposal submitted by Coastal Properties Management, Inc. and recommends to the Council that this firm be selected to manage the marina in accordance with the attached Management Services Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council authorizes the Mayor to sign the attached Management Services Agreement with Coastal Properties Management, Inc. for the management of the Port of Salisbury Marina

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on ____ day of _____, 2005 and is to become effective immediately.

ATTEST:

Brenda J. Colegrove
CITY CLERK

Michael P. Dunn
PRESIDENT, City Council

Barrie P. Tilghman
MAYOR, City of Salisbury

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT is made as of the ____ day of _____, 2005 by and between City of Salisbury (the "Owner") and COASTAL PROPERTIES MANAGEMENT, INC., a Maryland corporation (the "Manager").

ARTICLE I DUTIES OF THE MANAGER

Section 1.01 The Manager is an independent contractor and agrees to perform all services necessary for the management, care, operation, and maintenance of The Port of Salisbury Marina.

Section 1.02 The Manager will provide all of the following services and perform all of the following duties and responsibilities:

A. OPERATIONS

1. General - The Manager will be responsible for all aspects of operation and management of the Marina. Services to be provided shall include, but not be limited to, slip rentals, utility services for slips, boat fuel sales, parking.
2. Overall operation of the Marina.
3. Overseeing all boat and dockage activities.
4. Establishing hours of operation subject to the following minimums:
 Summer: 40 hours per week
 Winter: 8 hours per week
5. Keeping the facility, restrooms, docks, and adjacent city property neat and clean to ensure customer and visitor satisfaction.
6. Ensuring that all water and electrical services are operational, and that proper lighting is available to the boaters.
7. Providing all employees needed to operate the facility.
8. Providing the City with primary and back-up telephone numbers and means of emergency contact.
9. Providing all slip renters with a written notice giving the name and telephone number of City contacts.
10. Any alterations or improvements to the facilities must be approved in advance by the City of Salisbury.

B. SAFETY

1. Providing for safe operation of boats entering and exiting the facility.
2. Inspecting any unattended boats to make sure that they are safely moored and notifying boat owners of any unsafe conditions to the extent possible.

3. Ensuring the security of the facility and reporting any acts of vandalism to the proper police agency and the boat owner

C. MAINTENANCE & REPAIRS

1. Manager will, to the satisfaction of the City, keep the Marina and all of its structures, facilities and improvements in good, clean operating condition and repair, including, but not limited to, all docks, piers, sidewalks, fences, Marina multi-service building, fuel pumps and related equipment, appliances, lights, and pump-out facilities.

2. Manager will provide maintenance to all Marina equipment on a routine basis, but in no event will the maintenance be performed less frequently or to standards that are less than those suggested by the equipment manufacturer. Manager agrees to respond promptly to any notification from the City that maintenance is needed.

3. Manager will also institute a comprehensive program of daily maintenance, litter collection and refuse removal. (See map for defined area)

4. Manager agrees that the facilities will be inspected annually by the City Department of Public Works. Manager agrees to perform all required maintenance needed as a result of that inspection.

5. At the end of the contract, Manager will be required to return the facility to the City in equal to or better than the original condition, normal wear and tear accepted.

D. INSURANCE

1. Manager will acquire and maintain the following insurance:

a) Worker's Compensation Insurance

b) General Liability Insurance with the following minimum limits:

General Aggregate \$2,000,000; Each Occurrence \$1,000,000

2. All insurance must list the City as additional insured, and shall specify that the insured shall have no right of subrogation against the City for payments of any premiums or deductibles due there under, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. The City shall name the Manager as an additional insured on its property and liability insurance policies.

3. The Manager may not assume operations at the Marina until appropriate certificates of insurance and copies of insurance policies are filed with and approved by the City.

E. FINANCIAL

1. In accordance with the approved budget, the Manager will be responsible for and will pay all costs (*such as business license*), fees, penalties, fines, charges, claims, and taxes (*such as gas tax, etc.*) imposed on it, incurred by it, and arising from its operation, management and/or development of the Marina from income derived from Marina operations. Except as expressly provided herein, the City of Salisbury shall not have responsibility or liability for costs, fees, penalties, fines, charges, claims, or taxes imposed on or incurred by the Manager.

2. Manager may establish, charge, and collect from the public reasonable fees for any services it provides.

F. REPORTS & RECORD KEEPING

1. The Manager will, on a monthly basis, provide reports of operations and conditions to the Marina Committee and the City of Salisbury Public Works Department.

2. The Manager will keep accurate and up-to-date records of all transactions, rentals for each slip, sales of fuel and merchandise, number of slip rentals, etc.

3. The Manager will, within 48 hours, submit to the Director of Public Works reports of any and all accidents, injuries to persons or property, arrests, vandalism, and any other incidents occurring at the Marina. All reports will be in a form approved by the City of Salisbury.

4. By March 1st of each year the Manager will submit to the City the annual capital budget for the next calendar year. The budget must provide estimates of proposed capital expenditures itemized by discrete identifiable categories.

5. Monthly, the Manager will submit to the City of Salisbury a profit and loss statement for the preceding quarter. The statement shall be in a form approved by the City and must include the source and amount of all revenue collected during the preceding month and the amounts expended by the Manager in meeting its obligations under the contract.

G. MARKETING

1. The Manager shall be responsible for advertising and marketing the services offered at the Marina.

2. The Manager shall develop advertising and promotional materials for the facility and conduct promotional activities.

3. All advertising and marketing endeavors, including signage, shall be in good taste and shall require final approval by the City of Salisbury and/or the Marina Commission.

4. Introduction of new products and services is permissible provided that all laws are followed.

H. USE OF MARINA NAME

1. The primary identification of the Marina throughout the term of the contract shall be the name "Port of Salisbury Marina" and the name of the Manager may only be associated with the Marina as a secondary name upon the City's concurrence.

2. The Manager will obtain approval from the City of Salisbury before using any service marks, trademarks, trade names, trade logos, or similar identification in the daily operation, marketing, or advertising of the Marina.

I. PERFORMANCE STANDARDS

1. The Manager is responsible for assuring that it provides services to the highest standards prevailing for similar businesses. The services rendered by the Manager shall at all times be orderly and sufficient to meet the reasonable demands that the current facility is capable of providing to the public.

2. Manager is to operate the facility in such a manner so as to preclude a public nuisance, to include, but not be limited to, loud music or other noise; accumulations of trash and weeds, and/or violations of City ordinances or any State or local laws.

3. The City reserves the right to object to the services or any particular conditions of the Marina where it finds and deems that the services or conditions fail to meet the highest standards prevailing for similar businesses.

4. The City shall submit to the Manager written notification of any objections. The Manager shall correct any unsatisfactory services or conditions within 30 days of written notification.

5. If the Manager cannot correct the problem within 30 days, the Manager shall contact the City to arrange a mutually acceptable timetable for correction.

6. The City reserves the right to correct unsatisfactory services or conditions at any time it deems necessary, and shall recover from the Manager the full cost of correcting such services or conditions.

7. Any sale or dispensing of alcoholic beverages of any type is not permissible.

J. OTHER OBLIGATIONS

1. The Manager must provide full cooperation to the City in the event the City becomes a party to any suit, action, claim, appeal or protest based upon or arising out of the issuance of this RFP, the award of a contract to the Manager, or any of the Manager's activities under the contract.

2. Representatives of the City will have unlimited access to any section of the Marina at all times. The City reserves the right to inspect the facility and any time, but no less frequently than annually. (See also 4.1.3.4)

Section 1.03 In the case of fire or other damage to all or any part of the Project, the Manager covenants and agrees promptly to give notice by telephone to the Owner's insurance carrier, with written confirmation thereof promptly mailed to the Owner's insurance agent, and to complete promptly any customary loss report in connection with fire or other damage to all or any part of the Project. In the case of any personal injury or property damage suffered or claimed to have been suffered by any tenant or third person or with respect to the Project, the Manager also covenants and agrees to forward to the Owner's insurance carrier any summons, subpoena, or other document served upon the Manager relating to actual or alleged potential liability of the Owner upon the Manager or the Project.

Section 1.04 On an annual basis, the Manager will submit a proposed budget for the operation of the marina for review by the Marina Committee and approval by the Director of Public Works. The Manager will use its best efforts not to exceed the approved budget without

prior approval by the Director of Public Works and shall notify the Director of Public Works of any anticipated or actual deviation from the budget.

A. On or before the effective date of this Agreement, the Owner shall establish one or more special accounts in a bank acceptable to the Owner and the Manager (collectively, the "Account"). The Account shall be subject at all times to the control of the Owner and the Manager, and the monies credited to the Account shall be utilized solely for the purposes permitted.

B. The Manager agrees to forward all monies received from the operation of the Marina to the City's Finance Department on a schedule determined by the City Finance Director. The Finance Department will audit these receipts and deposit them in a city account. The Finance Department will then forward these funds to the Manager for deposit in the account.

C. The Manager shall pay all operating expenses, mortgage payments and all other expenses of the Project.

D. Checks or other documents of withdrawal on the Account shall only be signed by representatives of the Manager who are approved in advance by the Owner.

Section 1.05 The Manager, through its employees or otherwise, shall:

A. Maintain full, true and accurate books of account (either manually or by computer) (the "Records") with entries of all income and expenses received or incurred, respectively, with respect to the Marina during each month during the term of this Agreement. The Records shall be the property of the Owner and shall at all times be open to the inspection of, and audit by, the Owner or any of its duly authorized agents or representatives.

B. Furnish to the Owner the following management reports (the "Statement") (a) a monthly operating statement, (b) a monthly balance sheet, and (c) a monthly expense statement. The Statements shall show the income and expense in respect of the Project on an accrual basis and shall be supported by cancelled checks, vouchers, duplicate invoices, and similar documentation, in such form as shall be approved by the Owner, covering all items in respect of the Project. Such documentation shall be kept at the principal office of the Manager.

C. Contract in the name of the Owner for, and diligently supervise the making of, all repairs, improvements and alterations, for the Project, purchase or lease supplies, equipment, tools, materials and uniforms for the operation of the Project, and keep and maintain the Project in good repair and condition. However, the Manager shall not so contract for any such repair, alteration, purchase or lease, the cost of which exceeds \$2,500, without the prior written approval of the Owner, unless the Manager shall reasonably believe that there exists an emergency requiring immediate action for the protection of the Project. Upon the occurrence of

any such emergency, the Manager shall promptly give telephonic notice of such emergency and the action taken or proposed to be taken with regard to such emergency. The Manager shall be responsible for obtaining the foregoing contracts, but the costs shall be borne by the Owner.

D. Timely obtain, and provide the Owner with copies, of any and all permits, certificates, licenses or approvals necessary for the management, care, operation and maintenance of the Project.

E. Cooperate fully with the Owner in the preparation of all financial statements, tax returns or information and any governmental agency or department tax assessment appeals and insurance applications and reviews in respect of the Owner or the Project.

F. Fully and diligently cooperate with and assist the Owner in connection with any matter arising out of or in connection with the management and operation of the Project as the Owner shall reasonably deem to be necessary or proper.

ARTICLE II **COMPENSATION AND TERM**

Section 2.01 The net proceeds attributable each year to the operations of the Marina will be divided equally between the Owner and the Manager except that, in the first calendar year of operations, the Manager will retain 100% of net proceeds.

In calculating net proceeds, the Manager will be permitted to add an annual management fee of \$35,000 to his operating expenses.

Section 2.02 In the event this agreement is terminated prior to the end of any operating year, the manager and the owner will divide equally the net proceeds attributable to the operation of the Marina through the portion of the year during which the manager operated the Marina. In calculating net proceeds, the manager will be permitted to add the portion of the management fee referred to in Section 2.01 of this agreement represented by the portion of the year during which the manager operated the marina.

Section 2.03 The initial term of this agreement shall be three (3) years, commencing on _____, 2005, and terminating on _____, 2008. This agreement may be renewed for an additional term of up to three (3) years, at the option of the Owner upon satisfactory performance by the Manager.

ARTICLE III **OWNER'S AND MANAGER'S UNDERSTANDING**

Section 3.01 All notices, demands, requests, consents, or approvals required or permitted under this Agreement shall be in writing, and shall be deemed to have been properly given if and when delivered by hand, telecopy (fax), courier service, or three days after mailing by certified mail, return receipt requested, postage prepaid, if to the Owner at Director of Public Works, City of Salisbury, 125 N. Division St., Salisbury, MD 21801 and if to Manager at 1819 Bay Ridge Ave., Suite 400, Annapolis, Maryland 21403, or at such other addresses as the Owner or the Manager shall have furnished to the other in writing.

Section 3.02 This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Maryland.

Section 3.03 The drafting, execution, and delivery of this Agreement by the parties have been induced by no representation, statement, warranties, or agreements other than those expressed herein.

Section 3.04 The request for proposals for privatization of the Marina issued by the Owner and as amended by Section 1.02 of this agreement will be considered to be a part of the agreement between the Owner and the Manager. This agreement shall not be amended by either party without the written consent or agreement between the parties or the predecessors in interest.

Section 3.05 Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between Manager and Owner, it being the intent of the parties hereto that the relationship created hereby is, in fact and intent, that of an independent contractor. Nothing contained herein shall be deemed to constitute Owner and Manager as partners.

Section 3.06 If any provision of this Agreement or application to any person or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

Section 3.07 Neither the Owner nor the Manager may in any way assign, pledge, hypothecate or delegate any of its rights, privileges or duties under this Agreement.

Section 3.08 The Owner hereby agrees to indemnify and hold harmless the Manager from and against all liabilities, damages, losses, and reasonable costs (including reasonable attorney's fees) and expenses incurred or suffered by the Manager and arising out of or in connection with any and all claims, suits, actions, debts, damages, costs, charges and expenses, of any nature whatsoever that may have arisen at The Port of Salisbury Marina prior to the commencement of the Agreement and for any other claim, suits, actions, debts, damages, costs, charges and expenses thereafter for which the Manager is not specifically responsible under this Agreement, and not arising as a result of the Manager's own negligence, fraud, or breach of this Agreement.

Section 3.09 The Manager hereby agrees to indemnify and hold harmless the Owner from and against any and all liabilities, damages, losses, and reasonable-costs (including reasonable attorney's fees) and expenses incurred or suffered by the Owner and arising out of or in connection with any negligent or fraudulent acts of the Manager or any breach of this Agreement by the Manager, occurring subsequent to the commencement date of this Agreement.

Section 3.10 This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and, except as stated herein to the contrary, their successors and assigns.

Section 3.11 As provided herein and as the context requires, the masculine gender shall be deemed the feminine and neuter genders and vice versa; and the singular shall be deemed to include the plural and vice versa.

Section 3.12 Time is of the essence with respect to each provision of this Agreement.

Section 3.13 This Agreement may be terminated, and the obligations of the parties hereunder shall thereupon cease, upon the "occurrence" of any of the following: (a) In the event of a bona fide sale or demolition of the Property, either party may terminate this Agreement upon at least thirty (30) day's written notice to the other party; (b) If a petition in bankruptcy is filed by the Manager or if either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, either party may terminate this Agreement upon thirty (30) day's written notice to the other party; (c) If Owner shall knowingly fail to comply with any rule, order requirement, determination, ordinance, or laws of any federal, state or municipal authority, Manager may terminate this Agreement upon at least thirty (30) day's written notice to Owner; (d) If Manager shall knowingly fail to comply with any law or any federal, state or municipal authority, Owner may terminate this Agreement upon at least thirty (30) day's written notice to Manager; and (e) If any licenses or permits necessary for the operation of the Property are at any time suspended, terminated or revoked and such suspension, termination or revocation shall knowingly continue unstayed and in effect for a period of 15 consecutive days; and (f) In the event of the damage or destruction of the Property so that the same shall become untenable and/or in the event of a taking by condemnation, or similar proceeding, of a substantial portion of the Property, then in any such event either party may terminate this Agreement upon at least thirty (30) days written notice to the other party.

Section 3.14 In addition to the reasons for termination of this agreement set forth in Section 3.13 of this agreement,

A. the Owner and the Manager shall have the right, at any time with sixty (60) days written notice, for their convenience, to terminate this agreement.

B. the Manager, within thirty (30) days of the effective date of the Notice of Termination, shall submit a final financial statement reflecting the results of operations through the date of termination and a final settlement statement.

ARTICLE IV
DUTIES OF MANAGER UPON TERMINATION OF AGREEMENT

Section 4.01 Upon the termination of this Agreement by either Owner or Manager as provided herein, Manager agrees that it will promptly undertake and complete as efficiently as possible all of the following obligations:

A. Manager shall use its best efforts to cause to be transferred to Owner or to any party designated by Owner all licenses registered or titled in the name of Manager. Manager agrees to execute such applications and other documents as may be required so as to enable all appropriate licenses and permits to be transferred from the then current holder of the same to Owner or to such party designated by Owner to be the new holder of such licenses and permits.

B. Manager agrees that it will leave on the premises all books and records relating to the operation and management of the Property including all books and records referred to under the terms of this Agreement, and Owner agrees to make extracts thereof if Manager wishes to do so for the purpose of determining any adjustments to be made between Owner and Manager pursuant to the terms of this Agreement or if Manager wishes to do so for the purpose of preparing Tax Reports or other filings required of Manager under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Management Services Agreement under seal as of the day and year first above written.

Witness

BY: _____ (Seal)

TITLE: _____

COASTAL PROPERTIES MGMT, INC

Witness

BY: _____ (Seal)

TITLE: _____