

TAB 1



City of Palmetto Agenda Item

Meeting Date

1/25/10

Presenter: Allen R Tusing

Department: Public Works

Title:
Green Bridge Fishing Peir Bait Shop Agreement

The bait shop has been vacant for a long period. Purchasing advertised for an RFP to lease the bait shop and sent out 20 bid packages and received one proposal. The proposal has been reviewed by the City Attorney and all issues but one have been resolved. The lessee is requesting that a dock be installed to allow for boats to access the bait shop. In discussion within the city staff, to allow the vendor to install the dock would be a benefit to the area; however, in the event that the vendor does not do well and ended their contract, they would remove the dock as it would belong to them. We feel that since a dock system is part of the study that the CRA had JEA perform, it may be beneficial for the CRA to install the docks as part of the overall plan and the city remain to be the owner. Even without the vendor, the dock would be an asset to the park. The current lease calls for the vendor (Pier Associates) to pay \$485.00 per month plus the cost of utilities (water, sewer garbage, electric, and telephone) whereas the last lease only had the vendor paying \$106.50 per month with the vendor only paying for electric and phone ant the city paying for water sewer, and garbage. If approval is granted for the installation of the dock, staff will proceed with the plans and begin requesting the formal approvals from the CRA Advisory Board, CRA, and the Environmental agencies.

Budgeted Amount: \$0.00 **Budget Page No(s):** **Available Amount:** \$0.00 **Expenditure Amount:** \$0.00

Additional Budgetary Information: No cost other than general maintenance that would be performed even without a vendor. Will be a revenue stream for several areas of the budget

Funding Source(s): **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:**

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A

Potential Motion/ Direction Requested: To accept the proposal and authorize the mayor to execute the agreement with Pier Associates, Inc. and approve staff to move forward with the insatallation of a dock at Riverside Park.

Staff Contact: Allen R Tusing Director of Public Works

Attachments:

Proposal for Green Bridge Fishing Pier
By: Pier Associates, Inc.
P.O. Box 146 Terra Ceia Island, FL 34250

About Us: Pier Associates has been under contract with the Department of Environmental Protection as the Visitor Service Provider of the Skyway State Fishing Piers since their inception as a state park in 1994. The South Skyway Pier is located at 7901 US Hwy 19 S, Palmetto, and the North Pier is located at 11101 34th St. S in St. Petersburg. In addition to the Skyway Piers locally, Pier Associates operates the Okaloosa Island Pier in Fort Walton Beach and is a partner in the Pensacola Pier. At all of the piers we have bait, tackle and snack provisions. We pride ourselves in maintaining safe, family destinations while preserving the tradition of fishing in the state of Florida

OUR PROPOSAL

Hours: 6 am- 6 pm Monday - Thursday
5:30 am- 8:30 pm Friday - Sunday

These hours would be subject to change due to weather and season. We believe in the importance of being open 365 days a year weather permitting.

Employees: We would employ one person per shift. Possibly two on weekends, if needed. The employee pool at Skyway Pier will be utilized to provide trained and dependable staff for this facility.

Shop Stock: Pier Associates would sell live bait, frozen bait, tackle, ice, hot and cold beverages, food items including sandwiches, chips, sweets etc... Other items for sale could

include, sunscreen, T-Shirts, hats, postcards, batteries as space permits. The sale of beer, wine and tobacco products could be open for discussion.

Dock Installation: We would request permission to install a dock, either floating or fixed to the SW side of the building, along the seawall. The dock is instrumental in providing service to the boating community. This permission is of utmost importance in our proposal.

Bait Tanks: Pier Associates would provide bait tanks on the interior and exterior of the existing building. The tanks would need to be plumbed in to the Manatee River providing a natural water source necessary in keeping bait alive. We would install and maintain the plumbing that serves the bait tanks.

Environmental Awareness: We use recycled products when possible. We use green products in cleaning our tanks, and floors to prevent any harm to the waterways and marine life. We will continue to work with the Ocean Conservancy to provide a monofilament recycling center.

Impact on Birds: We have been working closely for many years with local bird rescue centers, such as the Suncoast Seabird Sanctuary. We will provide crates for bird rescue for any birds that have come into contact with fish hooks and fishing line.

Surveillance: We would install security cameras. We would invite law enforcement personnel to utilize the facility for recreation for themselves and family while advising security needs to the facility.

Signs: We would provide signage and display banners when needed.

Tournaments: We would promote and organize fishing tournaments occasionally.

Rent Offer: Our proposal to the City of Palmetto is \$458 per month for rent of the building.

Utilities: It is our understanding that the City of Palmetto is responsible for providing all utilities; water, sewage, garbage and electricity.

Contact Information: Race Foster (941-720-2959)
racefoster@gmail.com

Jamie Foster (941-780-5595)

BAIT SHOP LICENSE AND CONCESSION AGREEMENT

This Agreement, made as of the _____ day of 2009, by and between the City of Palmetto, a municipal corporation (“City”) and Pier Associates, Inc., a Florida corporation (the “Licensee”).

INTRODUCTION:

1. The City of Palmetto (the “City”) owns the real property commonly known as The Green Bridge Bait Shop, 101 8th Avenue West, Palmetto, Florida more particularly described and depicted on Exhibit A attached to and hereby incorporated in this Agreement by reference (the “Property”); and
2. The City has determined that public interest of the citizens of and visitors to the City and the region will be served by the maintenance and operation of a bait shop at the Property; and
3. Licensee has experience and expertise in operating a bait shop and desires to operate at bait shop at the Property for the sale at retail of bait, fishing supplies, ice, snacks and beverages (the “Bait Shop”);

PROVISIONS:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto mutually agree as follows:

Section 1. *Right to Operate Bait Shop.* Subject to the terms and conditions specified herein, City hereby grants to Licensee the right to operate the Bait Shop at the Property solely for the sale of bait, fishing supplies, T-shirts, hats, sunscreen, ice, snacks and beverages and similar items. The Bait Shop shall be located in the areas identified on Exhibit B attached to and hereby incorporated in this Agreement by reference, and shall contain *approximately* the number of square feet indicated on Exhibit B hereto.

Section 2. *Grant of Concession.* The City hereby grants to Licensee and Licensee hereby accepts the exclusive concession right, except as provided to the contrary herein, to sell food, snacks, sundries, drinks, ice and bait under the terms and conditions herein stated.

Section 2(a) *Term.* The term of this Agreement shall commence on January 1, 2010 (the “Commencement Date”) and continue for Three (3) License Years as defined below unless extended or sooner terminated or canceled as set forth herein. The first License Year shall begin on the Commencement Date and continue until and through the anniversary date in the following calendar year; and each succeeding License Year shall begin on the day after the last day of the preceding License Year and until and through the anniversary date in the following calendar year.

Section 2(b) *Licensee's Option to Renew.* If this Agreement shall be in full force and effect and Licensee is not in default hereunder, Licensee may extend the term of this Agreement on the same terms and conditions set forth herein, for one term of Three (3) additional License Years determined as set forth above commencing on the first day after the end of the term as set forth in Section 2(a) (unless sooner terminated or canceled as provided herein). Licensee must give City prior written

notice of its election to so extend the term of this Agreement no later than three (3) months prior to the end of the term set forth in Section 2(a), time being of the essence. If Licensee fails to send City notice by that date, Licensee's option to extend the term of this Agreement shall be null and void and of no force and effect.

Section 2(c) *City's Right to Cancel*. In addition to any other rights of cancellation set forth herein, City shall have the right at any time during the term of this Agreement (and the extended term) for any reason whatsoever to cancel this Agreement upon six (6) months' prior written notice to Licensee. Licensee acknowledges that this right of cancellation is of critical importance to City and that it is crucial that Licensee vacate the Property at the end of the six month notice period, time being of the essence.

Section 3(a). *License Fees*. Licensee shall pay to City for the privileges granted hereunder (in addition to any other payments required to be made under this Agreement) a fixed licensee fee of \$5,496.00 for each License Year, payable in equal monthly installments of \$458.00 on the first day of each calendar month ; such payments to be adjusted for any fractional month and subject to reduction by reason of a cancellation or termination. The amount of the License Fee shall be subject to increase for the renewal term.

Section 3(b) *Security Deposit*. Within thirty (30) days of the execution of this Agreement, Licensee shall post with the City a security deposit in the amount of Two Thousand Dollars (\$2,000.00). Said deposit shall be returned to the Licensee following termination of this Agreement upon determination by the City that the Property has been left in condition required under this Agreement. If Licensee does not observe the termination provisions of this Agreement or is otherwise found by City to be in violation of this Agreement, the deposit shall be forfeited to the City.

Section 4. *Services*. Licensee shall pay for electricity, water, sewer, telephone, garbage removal and other utility services for and at the Property. Licensee shall be responsible for removal of litter a minimum of twice a day, once before 12:00 noon and again before the close of the business day, within 50 feet around the perimeter of the Property. Licensee shall be responsible for garbage removal from the Property, which may be disposed of in the City supplied dumpster at the boat ramp. The City shall not be required to provide any other services, including without limitation, security beyond regular Municipal police protection at or with respect to the Property or the Bait Shop.

Section 5. *Signage, Advertising, Supplies*. All signage, advertising and business forms used by Licensee shall be subject to approval by Public Works Director, which shall not be unreasonably withheld or delayed.

Section 6. *Insurance*.

a) To protect the parties from losses attributable to the operation of the Bait Shop, Licensee agrees at all times to carry at its sole cost and expense:

(i) Workers' compensation insurance for Licensee's employees in accordance with the requirements of the State of Florida;

(ii) Employer's Liability: \$500,000.00 each accident, \$500,000.00 each employee and \$500,000.00 disease (policy limit).

(iii) General Comprehensive Liability insurance, including products liability, covering all operations in limits of not less than \$1,000,000 for each person and \$1,000,000 for each occurrence for personal injury or death, and

\$100,000 for each occurrence for property damage in or about the Premises and also including contractual liability insurance; and

(iv) Such other or additional insurance coverage as City may reasonably request from time to time.

(b) All policies of insurance referred to in subsection (a) above shall be issued in the name of Licensee and City, as their interests may appear, and shall be issued by companies and in form reasonably satisfactory to City. Each policy shall provide that it may not be canceled or materially changed except upon ten (10) days' prior written notice to City. Certificates of such insurance shall be delivered to City by Licensee five (5) days prior to the Commencement Date, and ten (10) days prior to the expiration date of any policy. At the request of City, Licensee shall make the originals of all such policies available to City for inspection. If Licensee shall fail at any time to effect or maintain any of such insurance, City, at its option, may do so, and the cost thereof shall be paid by Licensee upon demand. Licensee shall not carry on any activity, other than that permitted by this Agreement, which will increase the premium on any policy of insurance carried or to be carried by City, and, in the event of any such increase, Licensee shall pay the amount by which such premiums may be increased by such activity. All insurance shall contain a waiver of subrogation in favor of City, if obtainable.

Section 7. *Initial Improvements and Fixtures.* Subject to Section 8 below, all permanent fixtures and improvements located in the Property may be used by Licensee at no cost and expense. All of such furniture, trade fixtures, equipment, permanent fixtures, and improvements shall at all times remain the sole property of City. Licensee hereby represents and warrants that it has inspected each of the Property, is willing to take it "as is," and agrees that City has no obligation to make any repairs or renovations thereto. Licensee shall at all times present the Bait Shop and utilize all fixtures, furniture, and equipment in an attractive manner.

Section 8.

Subsequent Improvements and Fixtures. Licensee shall not at any time subsequent to the Commencement Date make any alterations, improvements, or physical changes in the Property without the prior written consent of City Commission of the City, with two exceptions which require no future approval by the City Commission of the City: (a) Licensee may install a floating or fixed dock to the SW side of the building. (b) Licensee may install bait tanks and related plumbing improvements as necessary for the bait tanks. If Licensee wishes to make any alterations or improvements, except for the said dock and bait tank improvements, Licensee shall deliver to Mayor plans and specifications describing them in reasonable detail (the "Plans"). City Commission shall approve with conditions, or reject the Plans in writing within 30 days of their receipt.

For all improvements to the site proposed by Licensee, the cost of the improvements, furniture, fixtures, and equipment indicated on the approved Plans shall be borne by the Licensee. All such furniture, fixtures, and equipment shall be paid for in cash, and no chattel mortgage, conditional sales agreement, security agreements, financing statements, or other encumbrance on the Property shall be imposed or filed, and no hypothecation or assignment shall be made by Licensee in connection therewith. All improvements shall be constructed in compliance with the approved Plans and all laws, regulations, statutes, codes, ordinances, and other governmental requirements and obtain the appropriate zoning and building permits from the City. All fixtures and equipment constructed or installed on the Property shall be the property of the City upon installation or construction.

Section 9. *Maintenance and Repair.* City shall keep the Property in a state of good repair and condition during the term of this Agreement. Licensee shall immediately notify City of any condition that would result in injury to the public. Licensee shall at all times during the term of this Agreement, at its own cost and expense, maintain the furniture, floor coverings, other furnishings, fixtures, and equipment in the Bait Shop in good operating condition and in a clean, neat condition and appearance and shall make all necessary repairs thereto unless the damage requiring repair was caused by the willful misconduct of City or its employees. If Licensee shall fail to do so, City may serve a written demand upon Licensee to make the repairs or to correct or remove any defective condition within the number of days which City, in its sole judgment, deems reasonable from the date of such demand as set forth therein, and, if Licensee shall fail to do so within such period of time, City may, at its option, remedy such condition and charge the cost thereof to Licensee's account.

Section 10. *Condition of Bait Shop at Termination; Disposition of Improvements.*

(a) At the expiration or termination of this Agreement, Licensee shall remove, except as may be approved in writing by the Public Works Director, all its trade fixtures, furnishings, wall coverings, and equipment from the Bait Shop at its own cost and expense and deliver the Property to City "broom clean" and in good order and condition, reasonable wear and tear excepted.

(b) Any fixtures or any other property furnished by City without cost to Licensee, for use in the Bait Shop, shall remain the property of City and shall be returned to City at the expiration or termination of this Agreement in the same condition as they were at the beginning of the term, reasonable wear and tear excepted. In addition, any fixtures or other property in the Bait Shop, whether or not furnished by City, which cannot be removed without damage to the property of City, shall become City's property at the expiration or termination of this Agreement.

Section 11. *Bait Shop Employees.*

(a) All employees in the Bait Shop shall be the employees of Licensee and shall be compensated by the Licensee. Licensee shall be responsible for handling all aspects of compensating these employees.

(b) All employees of the Bait Shop shall be hired and fired by Licensee. Notwithstanding the foregoing, Licensee agrees to remove, at its own liability, any employees objectionable to City.

(c) All of the employees in the Bait Shop shall conform to the policies, practices, systems, and rules established or enforced or which may from time to time be established or enforced in the conduct and operation of the Bait Shop by the City. Licensee assumes all responsibilities and liabilities for all of its employees.

Section 12. *Licenses, Taxes, and Returns.*

(a) Licensee shall prepare and file all necessary license and permit applications and pay all fees and other charges due in connection with the operation of the Bait Shop.

(b) Licensee shall prepare and file all tax returns and pay all taxes due with respect to the operations of the Bait Shop and all its employees including, but not limited to, sales and use tax returns, Social Security, unemployment, and income withholding tax returns to the City, state, and federal government. If it is necessary, under the laws or regulations of any governmental authorities having jurisdiction, for City to file any tax returns for or on behalf of Licensee, Licensee shall pay all

taxes payable thereunder. Any deficiencies in taxes and/or penalties thereon applicable to the Bait Shop shall be a continuing liability of Licensee which shall survive this Agreement and shall be chargeable to Licensee irrespective of the tax years relative to said deficiencies. Licensee shall furnish City receipts and evidence of payment of taxes upon request by City. Licensee shall, at City's request, confer with City and participate in any examination, audit, request for information, or legal proceedings conducted by any governmental authority with respect to any tax liability or deficiency arising out of Licensee's operations in the Bait Shop and shall pay a reasonably proportionate amount of City's costs of expert or professional help employed in connection with such audits or proceedings.

(c) Licensee shall pay all taxes and make all reports and take any other action which may be appropriate or necessary to maintain its corporate existence and good standing.

Section 13. *Conduct and Merchandise Policy of Bait Shop.*

(a) Licensee shall operate and conduct the Bait Shop in conformity with the high standards of the City. Licensee shall not allow the Bait Shop to become vacant or to be used for any purpose other than as provided herein, or permit the Bait Shop to be used in whole or in part by any other firm, person, or corporation. The Bait Shop shall be fully staffed, with competent supervision, fully stocked with reasonable merchandise, and shall be open for business throughout the term hereof as follows: 6:00 a.m. – 6:00 p.m. Monday – Thursday; 5:30 a.m. – 8:30 p.m. Friday - Sunday. Licensee shall not interfere in any manner with ingress or egress of customers in any part of the Property or permit any discourtesy to be shown to said customers. All signs or advertisements exhibited by Licensee in the Bait Shop must first be approved by Mayor in writing.

(b) Licensee shall maintain efficient services sufficient to satisfy customers, to supply the demands of the business, and to encourage its development. Licensee shall represent its merchandise and services honestly and fairly and sell its merchandise in compliance with all requirements of all applicable laws, ordinances, and regulatory agencies. City shall have the right to inspect the Bait Shop and the related merchandise and/or services at any time in order to assure that the Bait Shop is well stocked and staffed and conducted up to City's standards and as herein provided. All pricing and merchandising of Licensee's items shall be determined solely and exclusively by Licensee.

(c) City shall have the right, upon giving prior written notice to Licensee, to sponsor or permit temporary special events open to the general public upon all or any portion of the Property. The City reserves the right to allow other vendors of any type to sell food, drinks, snacks, sundries and other goods during such temporary special events. City shall not be liable for any inconvenience or loss of business caused Licensee by any such temporary special event.

(d) The Licensee shall comply with all present and future laws, orders, licensing requirements and regulations of Federal, State, County or City authorities regarding use and operation of the Property.

Section 14. *Licensee's Purchases.* Licensee shall purchase all merchandise for the Bait Shop in Licensee's own name, on Licensee's own credit only, and shall pay its vendors directly therefor. Without the prior written consent of City, no consignment or other agreement shall be entered into by Licensee with the vendors of its merchandise whereby any such vendor shall retain title to or a security interest in any such merchandise. Licensee shall pay all freight and other delivery costs for its purchases.

Section 15. *Settlement of Customers' Complaints.* Licensee shall settle expeditiously any complaints or disputes arising with customers of the Bait Shop and promptly process any refunds, allowances, or other adjustments.

Section 16. *Indemnification of City.* Licensee shall reimburse, indemnify, and hold City harmless from all expenses, losses, liabilities, damages, costs, claims, and demands arising out of this Agreement, or as a result of any breach or default by Licensee under this Agreement, or arising out of or related to Licensee's business operations in the Bait Shop, including, but not limited to, any injury or death to any person, or damage to any property, claims for infringement of patent, copyrights, trademarks, violations of laws or governmental regulations, or any right of others, together with reasonable counsel fees and other related expenses. If requested by City, Licensee shall defend any action brought against City arising out of the activities of Licensee, its employees, or agents and any persons employed in the Bait Shop, and Licensee shall employ legal counsel, at its own expense, to conduct such defense. City may, but shall not be required to, engage its own counsel in connection therewith. In the event City shall employ counsel of its own choosing in connection with any such defense, payment to said counsel shall be reimbursed by Licensee to City. In addition, Licensee shall indemnify and hold City harmless from any claims of damages arising out of any loss or injury to Licensee's property wherever located, regardless of whether such loss or injury was caused by negligence of City, its employees, or any persons for whom it is legally responsible. The liabilities of Licensee provided in this paragraph shall continue after and shall survive this Agreement. In addition to other remedies to which City may be entitled, City shall have the right to charge Licensee for all sums and costs paid and incurred by City hereunder; provided, however, that City's rights as provided in this sentence shall be subject to first giving written notice to Licensee to correct said breaches and defaults; and provided further that the rights and obligations as provided in this sentence shall be exercised and performed subject to City's sole discretion and judgment. The failure or inability of Licensee to obtain or maintain the contractual liability insurance required under this Agreement shall not limit or affect Licensee's obligation hereunder.

Section 17. *No Liability of City or City.* Neither City nor City shall be liable to Licensee for any shortage, loss, theft, damage, disappearance, or injury of or to any of the merchandise, supplies, equipment, or other property of any nature of Licensee, whether such loss or damage or injury may occur by reason of the negligence of City, its servants, agents, or employees or contractors or by reason of any other cause. City shall not be liable for any loss or damage to Licensee or interference with or suspension of Licensee's business operations due to causes beyond the reasonable control of City and shall not be liable or responsible in any way for any debts contracted by Licensee.

Section 18. *Termination.* In the event that on account of fire, appropriation by eminent domain, or other event beyond the control of City, the Property becomes unsuitable for use as a bait shop, then this use of Property by Licensee shall terminate and be of no further force and effect.

Section 19. *Liens.* Licensee shall not directly or indirectly by action or omission cause any lien to be placed upon the Property and/or the Bait Shop or any personal property located in the Bait Shop. Any such lien shall be paid or discharged by Licensee within ten days after notice thereof.

Section 20. *Bankruptcy, etc.* In the event that a petition in bankruptcy (including a petition for arrangement under the Bankruptcy Law) is filed by or against Licensee or any guarantor of Licensee's obligations under this Agreement, or if Licensee or any such guarantor shall become insolvent within the meaning of any state or

federal insolvency laws or shall make an assignment for the benefit of creditors, or if a receiver for all or any part of Licensee's business or the business of any such guarantor shall be appointed by any state or federal court, and the petition for the appointment of such receiver shall not be vacated within thirty (30) days of such appointment, or if any property or assets of Licensee or any such guarantor shall be attached or become subject to a lien or encumbrance which shall not be vacated within thirty (30) days thereafter, then, and in any such event, this Agreement shall be deemed to have been breached by Licensee, and City shall have the option of terminating this Agreement in accordance with the provisions of Section 44 hereof.

Section 21. *Abandonment or Suspension of Use.* Should the Licensee abandon the Facility or should the Licensee suspend activities or discontinue use of the Facility for any reason whatsoever for a period of thirty (30) consecutive days, the City may immediately terminate this Agreement.

Section 22. *Termination on Default.* In addition to any other rights and remedies of City specifically set forth herein, in the event that (a) any material representation made by Licensee to City in connection with this Agreement shall prove to have been false or misleading, in any material way, when made; (b) Licensee shall violate any of the terms or conditions herein contained and shall not remedy such violation within a period of five (5) days from the receipt of notice from City as to such violation (unless another time limit is provided) or, in the case of nonmonetary defaults which are curable within thirty (30) days, shall not have (i) notified City of its intent to so cure and commenced to cure within five (5) days of the aforesaid notice and (ii) cured such default within said thirty (30) days; (c) any guarantor of the obligations of the Licensee hereunder shall fail to perform in accordance with any guaranty agreement delivered to the City; (d) there shall be any change in control of the Licensee (*provided* that a transfer of shares of the Licensee from the owners thereof to members of their immediate family shall not be deemed to be a change in control if said owners shall continue to manage the business of the Licensee); then City shall have the right either to cure Licensee's default, if possible, and charge the cost and expense thereof to Licensee's account, or, at City's election, to terminate and end the privileges granted under this Agreement. Upon any such termination, City may immediately and summarily without resort to any court proceeding remove Licensee or any other person from the Property. Licensee shall reimburse City for reasonable attorneys' fees and other related costs as a result of Licensee's breach or violation as herein provided. In the event that Licensee or City fail to make any payments when due hereunder, then from and after the day such amount is due and owing (and whether or not notice of the failure of such payment has been given), interest shall accrue on the amount so due at a rate equal to eight (8) % per annum.

Section 23. *Remedies.* The remedies specified in this Agreement are cumulative and are not intended to limit or exclude either party's right to seek and obtain any available remedy at law or in equity, including injunctive relief in case of any threatened breach by the other of any provision of this Agreement. Licensee waives the right to trial by jury in any action brought by City against Licensee.

Section 24. *Assignment, Sublicense, and Transfer.* Licensee shall not, without the prior written consent of City, which City in its sole discretion may withhold, either

(a) sell, assign, mortgage, or transfer, by operation of law or otherwise, this Agreement, or

(b) sublicense all or any of the space allotted to Licensee, or any part thereof, or

(c) permit any of the foregoing to occur, or permit the said space to be occupied by anyone other than Licensee and Licensee's employees.

In the event City so consents, Licensee and any guarantor of the obligations of the Licensee hereunder shall continue to remain liable for all of Licensee's obligations hereunder until the end of the term hereof.

Section 25. *Waiver.* Failure of City to charge any item to Licensee's account at the correct time shall not operate as a waiver of the right to charge such item, nor of Licensee's obligation therefor, nor shall City's receipt of any payment from Licensee operate as a waiver of any rights of City to enforce any other payment previously due or which may hereafter become due, or of any rights of City to terminate this Agreement or to exercise any right which may otherwise be available to City. No waiver by City or Licensee of any breach of any provision of this Agreement shall operate as a waiver of any other prior or subsequent breach thereof, or of the provision itself, or of any other provision.

Section 26. *No Oral or Prior Agreements.* There are no oral agreements or understandings between the parties hereto affecting the matters covered by this Agreement, and this Agreement supersedes and cancels all previous oral or written arrangements between the parties hereto with respect to the subject matter hereof.

Section 27. *Amendments.* This Agreement cannot be altered, modified, or discharged except by an agreement in writing signed by both parties.

Section 28. *Notices.* All notices and demands made pursuant to this agreement shall be mailed or delivered to Licensee at the following address:

Pier Associates, Inc.
P.O. Box 146
Terra Ceia, Florida 34205
Attn: Race Foster

and to City at the following address:

Attn: Mayor Shirley Groover Bryant
516 8th Avenue West
Palmetto, Florida 34221

With copy to: Mark P. Barnebey, Esquire
Kirk Pinkerton, P.A.
1301 6th Avenue West, Suite 401
Bradenton, Florida 34205

Notices and demands must be in writing and may be given by registered or certified mail or in person, subject to receipt therefore. Either party may notify the other in writing of a change of address to which all notices and demands shall thereafter be directed, provided that such new address shall be in the State of Florida.

Section 29. *Legal Effect of Agreement.* It is expressly understood and agreed that Licensee is an independent contractor and that City and Licensee shall not be

construed to be partners or joint ventures, nor shall the relationship of the parties be construed as a landlord-tenant, landlord-subtenant, principal-agent, or employer-employee relationship for any purpose whatsoever.

Section 30. *Brokers.* The parties hereto each represent and warrant that no brokers are involved in this transaction and that there are no brokerage fees or commissions due on account of the making of this Agreement. Licensee agrees to hold City harmless from, and indemnify City against, any claims for commission that may be made.

Section 31. *Jurisdiction.* This Agreement was made in the City of Palmetto, County of Manatee, and State of Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Venue of any legal action shall be in the courts in and for Manatee County, Florida.

Section 32. *Captions or Headings.* The section captions or headings throughout this Agreement are for convenience and reference only, and the words contained therein shall not in any way be held to explain, modify, amplify, or add to the interpretation, construction, or meaning of the provisions of this Agreement.

Section 33. *Successor and Assigns.* The terms of this Agreement shall be binding upon City and its successors and assigns, and upon Licensee and its successors, heirs, executors, and administrators, as the case may be, and if City has consented in writing to an assignment of this Agreement by Licensee, the terms of this Agreement shall be binding upon such assignee of Licensee.

IN WITNESS WHEREOF, City and Licensee have caused this Agreement to be executed by the undersigned.

Print name: _____

Print name: _____

Pier Associates, Inc., a Florida corporation

By: _____

Name: _____

Its: _____

Date: _____, 2009

CITY OF PALMETTO, a municipal corporation

By: _____

As its: _____

ATTEST:

By Jim Freeman, City Clerk

Dated: _____, 2009

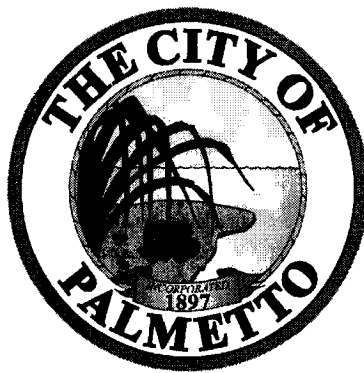
Exhibits:

A- legal description of Property

B- floor plan, showing Bait Shop

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CITY OF PALMETTO
REQUEST FOR PROPOSAL
GREEN BRIDGE FISHING PIER BUILDING
LEASE AND OPERATION



September 14, 2009

Proposals Must Be Submitted No Later Than
October 7, 2009 – 2:00PM

City of Palmetto
Requests for Proposals
Green Bridge Fishing Pier Building
Lease and Operation

The City of Palmetto is accepting proposals for the lease and operation of the Green Bridge Fishing Pier Building.

Copies of the RFP are available for pickup at the address below or you may email your request to nhaisley@palmettofl.org. In addition, you may download the RFP from our website at www.palmettofl.org.

City of Palmetto
Attn: Nixa Haisley
516 8th Ave West
Palmetto, FL 34221
(941)723-4570

Responses will be received until the time of opening which is at **2:00 PM on Wednesday, October 7, 2009** in City Hall. RFPs will be opened and recorded at that time; responses received after that time and date will be returned unopened.

The City reserves the right to reject any or all proposals, to waive technicalities, to re-advertise, and to otherwise conduct this RFP in the manner it deems to be in the best interests of the City.

09/14/09

City of Palmetto
Requests for Proposals
Green Bridge Fishing Pier Building
Lease and Operation

1. SCOPE AND PURPOSE

The City of Palmetto is accepting proposals for the lease and operation of the Green Bridge Fishing Pier Building. The building is located on the approach to the Green Bridge Fishing Pier and has been used as a sandwich shop and bait shop in the past.

The objective of the City is to obtain the proposal that best serves the current needs of the City of Palmetto citizens and our visitors.

2. PROPOSAL SPECIFICATIONS

Currently, the building has the following specifications:

1. Sales area within the bait shop consists of 88.48 square feet with one large counter top with a double sink installed in it, one small sink that sits by itself and a water heater.
2. There is one restroom attached to the bait shop. The restroom has one toilet and a sink and is approximately 81.76 square feet.
3. There is an eating area around the shop that has four picnic tables that look onto the Manatee River, this area is 140 square feet, and is fenced with lattice work around a concrete pad.

The proposal must include a detailed plan on the use of the Green Bridge Fishing Pier Building, with the primary use to be providing bait, fishing supplies and sundries for the users of the pier. Plan should include days and hours of operation. Any proposed renovations must also be addressed in the proposal.

The proposal should indicate the yearly payment to the City the individual or company will make for the use of the Green Bridge Fishing Pier Building along with proof of insurability. The City of Palmetto will provide a one year renewable lease to the individual or company that in its opinion would serve the citizens of the City of Palmetto to the greatest extent.

- Proposals shall clearly indicate the legal name of the applicant, as well as current contact information, and shall be signed by person having legal authority to bind the applicant. The applicant shall complete and submit the Proposer's Certification form included in this RFP.
- The proposals should include the name(s) of the person(s) that will be operating the Bait Shop (no minors). *This person(s) may be subject to a background check.*

- The proposal *may* include references of past or current businesses for the purpose of verifying the capability of the applicant in providing the proposed services. References should include names and phone numbers of individuals to contact.
- If requested, Proposers should be prepared to make an oral presentation to the City Commission.
- Proposers will have the sole responsibility of completing all forms provided in this RFP.
- It is agreed by the proposer that the signing and delivery of the proposal represents the proposer's acceptance of the terms and conditions of the specifications.

One (1) Original and Three (3) copies of the proposal must be submitted in one sealed package. The exterior should be labeled **“RFP - GREEN BRIDGE FISHING PIER BUILDING LEASE” and is due by 2:00 p.m. on Wednesday, October 7, 2009** to City Hall at 516 8th Ave West, Attention: Nixa Haisley -Purchasing Agent, Palmetto, FL 34221 at which time they will be publicly opened, read aloud and recorded. All required information will be needed at the time the proposals are due. Proposals must comply with all of the proposal specifications and instructions included herein. The City is not responsible for proposals which do not meet the requirements of this request or which are not submitted by the time specified. Proposals submitted via fax will not be accepted.

The City is not responsible for any expenses incurred by the applicant in preparing or submitting a proposal in response to this RFP, or any expenses associated with interviews, presentations or contract negotiations related to the proposal.

The City of Palmetto reserves the right to accept or reject any proposal as it deems is in the best interest of the City.

3. CLARIFICATION AND INTERPRETATION

Any comments, questions, or requests for clarification, interpretation or additional information concerning the RFP should be submitted in writing, by fax, or by e-mail to Nixa Haisley, Purchasing Agent, at the address below. *The deadline for submitting questions will be Wednesday, September 30, 2009.* The applicant is not entitled to rely upon, and the City will not be bound by, any oral interpretations given by City staff or representatives.

A site visit of the Bait Shop has been scheduled for *Friday, September 25, 2009 at 10:00am.* All Proposers intending to submit a response to this RFP are encouraged to meet at the Bait Shop at this time for an overview of the location.

Written addenda or determinations issued by the Purchasing Agent are the only method by which this RFP may be clarified, interpreted or modified. If any such written decisions are issued, the City will make reasonable efforts to notify all applicants. However, each applicant shall be responsible for contacting the Purchasing Office, prior to submitting their proposal, to determine if any such written decisions have been issued and to amend their proposal as necessary.

Nixa Haisley, Purchasing Agent
City of Palmetto
516 8th Avenue West
Palmetto, Fl. 34221
Fax: 941-723-4576
E-mail: nhaisley@palmettofl.org

4. RIGHT TO REQUEST MODIFICATION:

To ensure that proposals best meet the City's needs, the City retains the right to request revisions after the submission of proposals and prior to the award of the contract. Negotiations may be conducted with applicants whose proposals are reasonably likely to be selected for the award. At no time will the contents of any proposal be disclosed to competing proposers during negotiation.

5. PUBLIC RECORDS

The applicant understands that upon receipt of the proposal by the City, the proposal documents become a “public record”, as defined in Chapter 119, Florida Statutes, and those documents are subject to public disclosure in accordance with that Chapter.

6. ANTI-COLLUSION

By offering a proposal in response to this RFP, the applicant is certifying that the applicant has not colluded in any way with any other applicant or parties to the proposal, or made any communication that would be reasonably understood to be detrimental to the public purpose of the RFP process, and will not do so during the RFP process. Such prohibited communications include but are not limited to discussion of prices and data with competitors or other applicants, attempting to induce others not to submit proposals, and the employment of a person or agency to solicit or secure this contract upon a commission, percentage, brokerage, or contingent fee arrangement.

7. PUBLIC ENTITY CRIMES

By offering a proposal in response to this RFP, the applicant is certifying that it is not prohibited from submitting such a proposal or entering into a subsequent contract with the City, pursuant to the restrictions of Section 287.133, Florida Statutes, relating to public entity crimes.

8. DISCRETION OF THE CITY

The City reserves the right to accept any proposal, to reject any or all proposals, to waive any technical errors or omissions, and to request resubmission or clarification from any or all applicants. The City reserves the right to select any applicant submitting a proposal that meets the requirements of this RFP, and shall have sole discretion to determine which proposal is in the best interests of the City. Following selection, the successful applicant shall negotiate an agreement with the City to carry out the terms of its proposal.

9. LOBBYING PROHIBITED

Upon the issuance of this RFP, all prospective applicants, and any agent, representative or person acting at the request of such prospective applicant, shall be prohibited from discussing any matters related in any way to this RFP with any officer, agent, Commissioner or employee of the City, other than the Purchasing Agent or as may otherwise be directed in this RFP. The applicant shall complete and submit the No Lobbying Affidavit form included in this RFP.

10. LOCAL PREFERENCE

Persons, or firms, known to supply the services or goods to be procured, located within the City of Palmetto shall be given first priority to be contacted to obtain such a quote under City Ordinance 09-990. Persons, or firms, known to supply the services or goods to be procured located within Manatee County shall be given second priority to be contacted to obtain a quote under City Ordinance 09-990.

11. MINORITY BUSINESS ENTERPRISES

The City hereby notifies prospective applicants that it will ensure that minority business enterprises will be afforded full opportunity to participate in response to this RFP, and that during the RFP and subsequent contract negotiation process, no party will be discriminated against based on race, color, creed, sex, age, national origin, or disability. Anyone requiring accommodations to access any public meetings required as part of the RFP or contract process should contact the Purchasing Agent at the address and phone number provided herein, at least 24 hours in advance of the meeting.

12. COMPLIANCE WITH THE LAW

The successful applicant shall comply with all federal, state and local laws, codes, regulations, ordinances and rules. Once awarded, the Proposer must have a Certificate of Registration with the State and must complete the City of Palmetto Application for Local Business Tax – Commercial (Occupational License). A copy of this document is available on our web site www.palmettofl.org for your review. To protect the health and safety of the public, all applicants intending to sell food must apply for licensing with the Florida Department of Business & Professional Regulations Division of Hotels and Restaurants.

13. PROTESTS

Any actual or prospective proposer who believes they have been aggrieved in connection with the solicitation or award of a contract may protest to the City Clerk. A protest with respect to this request for proposal shall be submitted in writing prior to the opening of responses or the closing date of proposals, unless the aggrieved person (protestor) did not know and could not have been reasonably expected to have knowledge of the facts giving rise to such protest prior to opening or the closing date for proposals. The protest shall be submitted within six (6) calendar days after such aggrieved person knows or could have reasonably been expected to know of the facts giving rise thereto.

14. DRUG FREE WORKPLACE CERTIFICATION

No person submitting a proposal shall be awarded or receive a city contract for public improvement, procurement of goods or services (including professional services) or a city lease, franchise, concession or management agreement, unless such person has submitted a written certification to the city that it will provide a drug free workplace. The applicant shall complete and submit the Drug Free Work Place Certification form included in this RFP.

15. INSURANCE REQUIREMENTS

Once an award is made, the Proposer agrees to maintain insurance as required below and provide a current Certificate of Insurance listing the City of Palmetto as an additional insured for each year throughout the contract period(s).

A. Workers' Compensation / Employer's Liability (if applicable)

1. Worker's Compensation: meets statutory limits in compliance with the workers' compensation laws of the State of Florida.
2. Employer's Liability: \$500,000 each accident, \$500,000 each employee (disease), \$500,000 disease (policy limit).

B. Commercial General Liability – includes Bodily Injury Liability, Property Damage Liability, Personal Injury Liability and Advertising Injury Liability

Coverage Includes: Premises / Operations
Products / Completed Operations
Contractual Liability
Independent Contractors

Limit of Liability: \$1,000,000 each occurrence
combined single limit or
\$1,000,000 each occurrence /
\$1,000,000 general aggregate.

16. EVALUATION OF PROPOSALS

The Proposal Evaluation Committee will review and evaluate all proposals submitted in response to this RFP. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided and other evaluation criteria as set forth in this RFP. All proposals submitted will be reviewed by the Committee and will be ranked by the criteria provided in this RFP, including the following:

- Planned use of the location
- Proposed annual payment
- Business History
- Financial stability
- Ability to service the City of Palmetto
- Industry reputation and client recommendations
- Local Preference

All rating factors will be weighed, taking into consideration the specific needs of the City of Palmetto.

The Committee will be responsible for presenting the proposal evaluations to the City Commission to make the final selection of the Successful Proposer. The Committee will review each proposal for compliance with the minimum qualifications and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a proposal.

The City reserves the following rights to:

- A. Conduct personal interviews or require presentations of any or all Proposers prior to selection; and make investigations of the qualifications of Proposers as it deems appropriate.
- B. Request that Proposer(s) modify its proposal to more fully meet the needs of the City or to furnish additional information as the City may reasonably require.
- C. Accord fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Such revisions may be permitted after submission of proposals and prior to award.
- D. Negotiate any modifications to a proposal that it deems acceptable, waive minor irregularities in the procedures, and reject any and all proposals.
- E. Process the selection of the successful Proposer without further discussion.

- F. Waive any irregularity in any proposal, or reject any and all proposals, should it be deemed in its best interest to do so. The City shall be the sole judge of Proposers' qualifications and reserves the right to verify all information submitted by the Proposers. The proposal selected will be that proposal which is judged to be the most beneficial to the City.

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