

PERMISSIVE USE LICENSE AGREEMENT

THIS LICENSE made and entered into this 13th day of Dec, 2021, by and between **Lee County**, a political subdivision of the State of Florida, whose mailing address is P.O. Box 398, Fort Myers, Florida 33902-0398 hereinafter called "**COUNTY**" and SH Marinas, LLC, a Delaware Limited Liability Company, whose address is 14785 Preston Road, Suite 975, Dallas, TX 75254 hereinafter called "**LICENSEE**"; and

WHEREAS, **COUNTY** is the owner of certain property in North Fort Myers, Lee County, Florida, located at 1667 & 1687 Inlet Drive, North Fort Myers, Florida 33903 and being further identified as Strap Nos. 16-44-24-03-0030B.0000 & 16-44-24-03-0030B.00A0, hereinafter called the "**Parcel**"; and

WHEREAS, **LICENSEE** is desirous of obtaining permission to inspect and perform due diligence activities, as hereinafter provided, a portion of said **Parcel** of the **COUNTY**.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar (\$1.00) cash in hand paid by the **LICENSEE** to the **COUNTY**, receipt of which is hereby acknowledged, and further consideration as herein provided, it is agreed as follows:

- (1) **USE – COUNTY**, subject to the conditions herein expressed, does hereby grant unto the **LICENSEE** and any representatives, agents, contractors, consultants, or employees of **LICENSEE** (collectively with Licensee, the "**LICENSEE PARTIES**") the non-exclusive privilege and license to access, inspect and perform due diligence upon the area indicated in Exhibit "A" of the above-described **Parcel** ("**SITE**") for the potential construction of a marina facility upon the subject property.

LICENSEE will be responsible for properly securing the **SITE** during the license period. **LICENSEE** will be responsible for controlling access to the **SITE** and will be responsible to restore it to as good or better condition than that which existed prior to its use.

LICENSEE will be responsible to ensure there are no contaminants from any materials used on the **SITE** by **LICENSEE PARTIES**, including sludge from drilling activities; if any. If any contamination results from the actions of **LICENSEE PARTIES**, **LICENSEE** will immediately inform **COUNTY** in writing and remediate to **COUNTY**'s satisfaction. **LICENSEE PARTIES** will not be permitted to store or handle any petroleum products on the above-described **SITE**. Notwithstanding the foregoing, **LICENSEE PARTIES** may park vehicles and equipment at the **SITE** that contain petroleum for the sole use of such vehicles and equipment.

This License will be for a period of 90 days, commencing on **December 7, 2021** and terminate on or before **March 7, 2022**. **LICENSEE** agrees that this license is personal to the **LICENSEE AND LICENSEE PARTIES** and is not assignable without the express written consent of the **COUNTY**.

- (2) **CONSIDERATION - LICENSEE** will pay as consideration for this License One (\$1.00) Dollar, net of any applicable tax, payable on or before the date of commencement of this agreement, for said license and privilege.
- (3) **RESTRICTION** – The license and privilege granted **LICENSEE** under this License will be exercised only on the **SITE** of **COUNTY** and upon no other property.
- (4) **INDEMNIFICATION** – **LICENSEE** agrees to indemnify, defend and hold harmless **COUNTY** from and against all claims of whatever nature arising from any act, omission or negligence of **LICENSEE PARTIES**, or arising from any accident, injury or damage whatsoever caused to any person or to the property of any person during the term hereof in or about the **SITE** where such accident, damage or injury results or is reasonably claimed to have resulted from any act or omission on the part of **LICENSEE PARTIES**. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney fees incurred in or in connection with any such claim or proceedings brought thereon and the defense thereof.
- (5) **INSURANCE** – **LICENSEE PARTIES** must maintain insurance consistent with the requirements set forth in the attached Exhibit “B”. **LICENSEE** will provide a fully completed, original certificate of insurance signed by an authorized representative of the insurer providing such coverage, for the term of this License. **LICENSEE** will be responsible for assuring that the insurance remains in force and uninterrupted for the duration of the License. Lee **COUNTY** Board of **COUNTY** Commissioners must be named as a Certificate Holder and Additional Insured on the insurance policy.
- (6) **LIENS** – **LICENSEE** will not incur any indebtedness giving right to a lien of any kind upon the **COUNTY**'s interest in and to lands described herein. **COUNTY**'s interest will not be subject to liens for improvements made by the **LICENSEE** on the lands described herein. In the event any liens are filed, due to improvements made by the **LICENSEE**, the **LICENSEE** will immediately discharge said lien by such manner as permitted by law.
- (7) **ENJOYMENT** – Nothing herein contained will be construed as limiting the **COUNTY** from having the full use and enjoyment of its lands, save only as to the rights granted to the **LICENSEE** by the terms of this License, and nothing herein contained will be construed or interpreted as granting anything to **LICENSEE** other than use of the property provided herein.
- (8) **BREACH** – In the event of any breach or non-performance of any of the covenants, agreements, terms or conditions to be performed by **LICENSEE**, and said breach or non-performance continues for one day after written notice to **LICENSEE** from **COUNTY**, **COUNTY** has the right to declare this License terminated and to re-enter the property and remove **LICENSEE** and its respective property therefrom, and **LICENSEE** agrees to peacefully vacate said property and pay all costs, including reasonable attorneys' fees, that may be incurred by **COUNTY** in enforcing the covenants, agreements, terms and conditions of this License.

No rights or property interests are granted to or created in the **LICENSEE** by this License except as otherwise provided herein. The granting of this License is only as an accommodation to the **LICENSEE**.

- (9) **ENTIRE AGREEMENT** – It is understood and agreed that this License sets forth all the covenants, agreements, terms and conditions between the parties and that there are no other oral or written agreements between them.
- (10) **AMENDMENT** – It is further understood that no subsequent amendments, alterations or additions to this License will be binding upon the parties hereto unless reduced to writing and executed by said parties.
- (11) **GOVERNING LAW** – **COUNTY** and **LICENSEE** agree that this License will be governed by and construed under the laws of the State of Florida.
- (12) **ASSIGNMENT** –**LICENSEE** will not transfer or assign its interest or rights provided in this License, nor attempt to grant any sub-license to any persons whom so-ever without the written consent of the **COUNTY**. The consent of the **COUNTY** will be at the **COUNTY**'s sole discretion.
- (13) **NOTICE** – All notices or request between the parties will be in writing and will be deemed to have been duly given or served by either personally delivered (deemed given same day), delivered via private local courier services (deemed given same day), sent via fed ex or other nationally recognized overnight delivery service (deemed given on the next business day after deposit with the service), or deposited in the United States Mail, Certified Mail, return receipt requested, postage prepaid (deemed given on the fourth business day after deposit in the mail) addressed as follows:

TO THE COUNTY:

LEE COUNTY DEPARTMENT OF COUNTY LANDS
Attn: Director Robert Clemens
PO Box 398
Fort Myers, FL 33902-0398
OR
1500 Monroe Street, 4thFloor
Fort Myers, FL 33901
239-533-8747
Email: clemenrg@leegov.com

TO THE LICENSEE:

SH Marinas, LLC
Attn: Luke Taylor, Director of Acquisitions
14785 Preston Road, Suite 975
Dallas, TX 75254
PH: 972.746.5622
Email: LTaylor@shmarinas.com

WITH COPY TO

SH Marinas, LLC
Attn: Legal Department
14785 Preston Road, Suite 975
Dallas, TX 75254
972.488.1314
Email: Legal@shmarinas.com

- (14) **BINDING EFFECT** – This License and all of its terms and conditions will extend to and be binding upon the parties hereto and upon their respective successors and assigns.
- (15) **SEVERABILITY** – The invalidation of any provision or clause in whole or in part by judgment or court order will in no way affect any of the other provisions or clauses, which will remain in full force and effect.
- (16) **CONDITION** – **LICENSEE** and **COUNTY** agree to meet at a time to be mutually agreed upon by the **LICENSEE** and **COUNTY**, to inspect the **SITE**. At the expiration of this License, **LICENSEE** will be responsible to restore the **SITE**, in regard to any changes or damages to the **SITE** resulting from the inspections and access to the property by **LICENSEE PARTIES**, to as near the original condition as possible with a post-use inspection by **LICENSEE** and **COUNTY** to be completed at the termination of the agreement. **COUNTY** will provide **LICENSEE** written notice of any unacceptable condition resulting from the inspections and access to the property by **LICENSEE PARTIES** and **LICENSEE** agrees to correct same within fifteen (15) days following said notice.
- (17) **ENVIRONMENTAL** – **LICENSEE** will not, and will ensure that **LICENSEE PARTIES** will not, install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or onto the **SITE**.

If the **COUNTY** has reason to believe a Hazardous Substance has been discharged, spilt, or released on the Property by any **LICENSEE PARTIES**, then the **COUNTY** has the right, but not the obligation, to require **LICENSEE**, at **LICENSEE**'s sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to the **COUNTY**. Such an investigation will be commenced within ten (10) days after the **COUNTY**'s request, and thereafter be diligently prosecuted to completion. **LICENSEE** will provide the **COUNTY** with an electronic copy of the environmental audit immediately after it is completed.

- (18) **RELATIONSHIP** – Nothing contained in this License will be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto, other than the relationship of **LICENSEE / COUNTY**.
- (19) **PREVAILING PARTY** – The prevailing party in any litigation brought to enforce rights hereunder will be entitled to reimbursement of all reasonable costs and expenses, including, but not limited to, court costs, fees, and reasonable attorneys' fees at all judicial levels.
- (20) **MISCELLANEOUS** – The **LICENSEE** will be responsible for the payment for any trash removal that may be required as a result of the inspections and access to the property by **LICENSEE PARTIES**. The **LICENSEE** is responsible for obtaining any required local, state and/or federal permits for activities to be conducted on the **COUNTY**'s property.

The remainder of this page has been intentionally left blank

IN WITNESS WHEREOF, the COUNTY and LICENSEE have executed this License as of the date and year first above written.

WITNESSES:

[Signature]
Signature

Marshall Leonard
Print Name

[Signature]
Signature

Humza Ahmed
Print name

Approved and accepted for and on behalf of Lee County, Florida, intending to be bound as of the date first written above.

ATTEST:
LINDA DOGGETT, CLERK

BY: [Signature]
Deputy Clerk



LICENSEE

SH Marinas, LLC, a Delaware limited liability company

BY: [Signature] 11-15-21
Signature Date

Print Name: Jason Hobbs

Title: CIO

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Commissioner Cecil L. Pendergrass, Chairman
Lee County Board of County Commissioners
Kevin Ruane, District 2

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

[Signature]
County Attorney's Office

EXHIBIT "A"

Tract B of that certain subdivision known as Waterway Estates of Fort Myers Unit Two, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 12, Page 64.

EXHIBIT "B"

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this Permissive Use License Agreement. The County reserves the right to request additional documentation regarding insurance provided.*

Commercial General Liability: Coverage will apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate
- \$1,000,000 products and completed operations
- \$1,000,000 personal and advertising injury

Verification of Coverage: Coverage will be in place prior to the commencement of any work and throughout the duration of the Permissive Use License Agreement. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate will provide for the following:

- a. The certificate holder will read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. "**Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials**" will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.
- c. Lee County will be given thirty (30) days' notice prior to cancellation or modification of any stipulated insurance. Such notification will be noticed in writing to the Risk Manager, pursuant to Paragraph 14 of the Permissive Use License Agreement.

CONTRACT REVIEW CHECKLIST

CONTRACT TYPE: Other: please specify Permissive Land Use Agreement

SUBJECT: Project known as: Development of Waterway Estates

Between Lee County and SH Marinas, LLC

Reference: Board action approving contract/agreement

Board Date: 12-7-2021

Agenda Item No.:

A4

2021 DEC -9 PM 1:15
RECEIVED BY
LEE CO. ATTORNEY

Please sign the attached documents on appropriate signature lines. When complete, please send entire packet to the next Department on the numbered list below. Please return to Procurement Management when fully completed.

The subject contract is forwarded herewith for review and/or endorsements:

(1) **By the Director of:** Routed by Procurement

Project Sponsoring Department

Recommendation to execute

Not recommending execution for the following reason(s):

Date received: _____

Date returned/forwarded: _____

Signed: _____

(2) **By Procurement Management:**

Recommending execution

Not recommending execution for the following reason(s):

Procurement Contract Reviewed by: Annex Brevette

Date: 12-8-21

Date received: _____

Date returned/forwarded: _____

Signed: _____

(3) **By the Risk Management**

Recommending execution

Not recommending execution for the following reason(s)

Date received: ~~12/7/2021~~ 12/8/21

Date returned/forwarded: Dec 8, 2021

Signed: _____

(4) **By the County Attorney:**

Recommending execution

Not recommending execution for the following reason(s)

Date received: 12/9/2021

Date returned/forwarded: 12/13/2021

Signed: _____

(5) **Board**

(6) **Clerk's Office, Minutes Department**

(7) **Procurement Management**

12/13/21
Adam Brooke

Commissioner Cecil L. Pendergrass, Chairman
Lee County Board of County Commissioners
District 2

AGENDA ITEM REPORT

DATE: December 7, 2021
DEPARTMENT: Procurement Management
REQUESTER: Mary Tucker
TITLE: Authorize Continuation of Negotiations for Waterway Estates Development

I. MOTION REQUESTED

A) Authorize County to enter into detailed negotiations with SH Marinas, LLC pursuant to ITN190483ANB, Development of Waterway Estates Property, in order to reach agreement for the future development, operation, and maintenance of the Waterway Estates site based on the attached Term Sheet. Any such agreement would be formalized and brought back to the Board for consideration.

B) Approve permissive use license agreement with SH Marinas, LLC to provide physical access to SH Marinas, LLC and/or its agents to the Waterway Estates site to conduct 90 day due diligence actions.

C) Authorize the Chair to execute the contract documents on behalf of the Board of County Commissioners.

II. ITEM SUMMARY

Authorizes negotiations with SH Marinas, LLC to pursue an agreement for the future development, operations, and maintenance of the Waterway Estates site; a final negotiated agreement would be submitted to the Board for approval. Approves permissive use license agreement to provide SH Marinas, LLC and/or its agents physical access to the Waterway Estates site to conduct due diligence for a period of ninety (90) days.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

The Lee Board of County Commissioners voted on March 5, 2019, to direct staff to develop an Invitation to Negotiate to solicit developer proposals for the property based on current entitlements.

On October 25, 2019, the Procurement Management department advertised for the project known as Invitation to Negotiate (ITN), No. ITN190483ANB, Development of Waterway Estates Property. The scope of the project includes the development, operation, and maintenance of the property located at 1667 and 1687 Inlet Drive North Fort Myers, FL 33903. On the solicitation deadline, Procurement Management received two responses.

B) Policy Issues

C) BoCC Goals

D) Analysis

The evaluation and negotiations committee held necessary evaluation meetings that resulted in the identification of SH Marinas, LLC as the respondent the committee desired to negotiate with for the potential development, operation, and maintenance of the Waterway Estate site. Additional negotiations and any final agreement shall be based on the Term Sheet presented to the Board. Should an agreement be reached such will be brought back to the Board at a later date for Board review and authorization of award.

Safe Harbor Marinas has proposed to lease the county-owned property to develop:

- About \$9 million in capital improvements
- Dry storage for 200 boats
- Wet/Floating boat slips
- Fuel dock
- Waterfront restaurant
- Pool
- Potential for a Lee County Sheriff's Office Marine Unit substation

The deal points contained in the attached document regarding term, rent payments, construction, operation, maintenance, etc., etc., would be incorporated into a formal agreement for BoCC consideration.

Attachment: Term Sheet

E) Options

1. Authorize continued negotiations with SH Marinas, LLC
2. Direct new negotiations with other proposer
3. Conclude negotiations and rescind ITN190483ANB, Development of Waterway Estates Property

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	No funding required.
B)	Is this item approved in the current budget?	N/A
C)	Is this a revenue or expense item?	N/A
D)	Is this Discretionary or Mandatory?	N/A
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	
F)	Fund: Program: Project: Account Strings:	
G)	Fund Type?	N/A
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
<u>Term Sheet</u>	11/9/2021	Backup Material
<u>Sunbiz Verification - Signature Authorization</u>	11/9/2021	Backup Material
<u>Permissive Use License Agreement</u>	11/15/2021	Contract

REVIEWERS:

Department	Reviewer	Action	Date
Procurement Management	Tucker, Mary	Approved	11/18/2021 - 11:02 AM
Budget Services	Henkel, Anne	Approved	11/18/2021 - 11:08 AM
Budget Services	Winton, Peter	Approved	11/18/2021 - 11:36 AM
County Attorney	Halverson, David	Approved	11/27/2021 - 3:54 PM
County Manager	Winton, Peter	Approved	11/29/2021 - 8:47 AM