

Ordinance authorizing a Right-of-Way License Agreement with BL Marina Properties, LP., (“Permittee”) to install a private wastewater collection system and conveyance system force main subject to the Permittee’s compliance with specified conditions.

WHEREAS, BL Marina Properties, LP, LLC., (“Permittee”), desires to install, operate, maintain, repair, and remove a private wastewater collection system and conveyance system force main (“Wastewater Line”) located south of Caribbean Drive and east of Nassau Drive;

WHEREAS, the Permittee has requested, and the City of Corpus Christi (“City”) desires to execute, a one-year term Right-of-Way Agreement (“Agreement”). At the end of the initial term, this Agreement renews automatically, in order to accomplish the purpose and use intended by the Permittee within the public right-of-way;

WHEREAS, in accordance with Article IX, Section 1 of the City Charter, the City Council authorizes the City Manager or designee to enter into the Agreement for the benefit of the City and the Permittee, subject to the Permittee’s compliance with the specified provisions of the Use Privilege Agreement.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The City Manager or designee is authorized to execute a one-year term Right-of-Way License Agreement (“Agreement”). At the end of the initial term, this Agreement with BL Marina Properties, LP, (“Permittee”), renews automatically, to allow the Permittee to install, operate, maintain, and remove a private wastewater sanitary sewer main (“Wastewater Line”) located south of Caribbean Drive and east of Nassau Drive, such Agreement at all times subject to the Permittee’s compliance with the conditions specified in the Agreement. A copy of the Agreement is attached to this ordinance and being incorporated by reference into this ordinance as if fully set out herein in their entirety.

SECTION 2. The Agreement authorized in Section 1 of this ordinance is subject to the Permittee’s compliance with the conditions of the Agreement including, but not limited to, the provisions specified below:

- a. In exchange for the City’s authorization for use of the public right-of-way by the Permittee for the stated purpose, the Permittee agrees to provide the City with a one-time Right-of-Way license Agreement fee of \$562.50.
- b. The Permittee’s use of the wastewater sanitary sewer main is strictly limited to serving the Permittee’s Caribbean Dreams facilities. Permittee may not provide wastewater service through the wastewater sanitary sewer main to any facilities other than the facilities specified in this section, nor may Permittee permit or allow anyone else to provide wastewater service or any other service through the two-inch wastewater sanitary sewer main to any facility whether owned by the Permittee or by another person or entity.
- c. All costs incurred to install, operate, maintain, repair, and remove the wastewater

That the foregoing ordinance was read for the first time and passed to its second reading on this the ____ day of _____, 2019, by the following vote:

Joe McComb _____

Michael Hunter_____

Roland Barrera _____

Ben Molina _____

Rudy Garza _____

Everett Roy _____

Paulette M. Guajardo _____

Greg Smith _____

Gil Hernandez _____

That the foregoing ordinance was read for the second time and passed finally on this the ____ day of _____ 2019, by the following vote:

Joe McComb _____

Michael Hunter_____

Roland Barrera _____

Ben Molina _____

Rudy Garza _____

Everett Roy _____

Paulette M. Guajardo _____

Greg Smith _____

Gil Hernandez _____

PASSED AND APPROVED on this the ____ day of _____, 2019.

ATTEST:

Rebecca Huerta
City Secretary

Joe McComb
Mayor

**Right-of-Way
License Agreement**

**STATE OF TEXAS §
 §
COUNTY OF NUECES §**

This Right of Way License Agreement ("Agreement") is entered into by and between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, and BL Marina Properties, LP, a Texas limited liability partnership, whose business address is 5716 Highway 290 West, Austin TX 78735.

In accordance with Article IX, Section 1, of the City's City Charter and in consideration of a one-time payment of (\$562.50) paid by Licensee, the City has granted and conveyed, and by these presents does grant and convey to Licensee, for the term and upon the conditions stated in this Agreement, a license for the right to install, operate, maintain, repair, and remove a private wastewater collection system and conveyance system force main ("Wastewater Line") located south of Caribbean Drive and east of Nassau Drive; as shown in Exhibits "A" (Location Map) and "B" (Plan View). Exhibits "A" and "B" are attached to this Agreement and incorporated into this Agreement by reference as if fully set out herein in their entirety. The area in which the license is granted for the location of the Licensee's Wastewater Line is referred to in this Agreement as the "Licensed Area."

TO HAVE AND TO HOLD the same license granted unto Licensee, its successors, and assigns, together with the right under the conditions specified in this Agreement, to at any time enter upon the above described Licensed Area to install, operate, maintain, repair, or remove Licensee's Wastewater Line, and being further understood that the license granted by this Agreement is subject to the Licensee's compliance at all times with the following conditions, the City and Licensee agree as follows:

- A. This Agreement, and the rights granted under the Agreement, may be revoked at any time by the City upon providing the Licensee not less than 30 days notice in writing by the City's City Manager or designee ("City Manager"). In the event of a revocation by the City Manager or earlier termination of this Agreement by either party, no portion of any payment made under this Agreement is refundable to the Licensee.
- B. This Agreement is for a term of one (1) year from the date executed by the City. At the end of the initial term, this Agreement renews automatically unless the Licensee or the City provides written notice to revoke the Agreement.
- C. This Agreement may not be assigned by Licensee without the City Manager's prior written consent.

- D. During construction or maintenance of improvements pertaining to the Licensed Area granted under this Agreement, insurance requirements are as stated in Exhibit C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

Before construction or maintenance of the improvements pertaining to the Licensed Area granted under this Agreement can begin, the Licensee must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and Director of Development Services Department. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request.

- E. Should construction be deemed necessary by Licensee in the Licensed Area, construction plans and specifications for all proposed work shall be submitted in advance by the Licensee to the City's City Engineer for approval prior to beginning the construction process. The plans must show the depth, and location of the proposed construction and distance from existing water, storm water, wastewater, and gas lines. The Licensee shall also comply with any other laws, rules, regulations, and ordinances applicable to construction in the City and in the public right-of-way, including obtaining all required permits.
- F. Prior to the start of any approved construction, Licensee shall require every contractor and subcontractor to provide a Certificate of Insurance reflecting insurance in coverage amounts as set forth in Exhibit "C." Additionally, Licensee shall require their contractors and subcontractors to indemnify the City, its officers, officials, employees, representatives, agents, licensees, and invitees in the same manner that Licensee has provided indemnification to the City pursuant to this Agreement.
- G. Licensee shall provide all necessary and proper safety devices so as to prevent injuries or accidents in the Licensed Area, in as much as possible.
- H. At least 48 hours prior to beginning any approved construction, Licensee shall contact 1-800-DIG-TESS and the Lone Star Notification Center (1-800-669-8344), and any other required agency or authority. Additionally, at least 48 hours prior to beginning any approved construction, Licensee shall give notice and verify depth and location of communication lines or communication fiber optic cables, whichever is applicable, to the following:
- City Utility Departments, including Water, Storm water, Wastewater and Gas;
 - American Electric Power (AEP);
 - American Telephone and Telegraph (AT&T);

- CenturyTel;
- Time Warner;
- Grande Communications; and
- Any and all other certified telecommunications providers.

A City inspector may request a utility line be uncovered to verify its depth or location.

- I. Any construction process and use of the Licensed Area by Licensee shall not interfere with the construction, installation, operation, maintenance, repair, removal or replacement by the City or any of its agents, contractors, or franchisees of any existing or future proposed sidewalks, utility lines, or other uses. If the City or any franchisee with utilities currently located in said public right-of-way needs access to the right-of-way, Licensee shall pay for removing or relocating the private wastewater line in the Licensed Area to allow access to utility lines for maintenance, repair, removal, or replacement of the utility lines. The Licensee shall repair the Licensed Area to its original condition or cease to use the Licensed Area, at which time this AGREEMENT terminates immediately.
- J. Traffic Engineer requirements pertaining to this Agreement, if applicable in context:
 1. At least 48 hours prior to commencing any approved construction, the Licensee shall file and obtain approval for a traffic control plan with the City's Traffic Engineer. No closure or barricading of a public right-of-way or any portion of a public right-of-way may occur before approval of the traffic control plan and, if applicable, approval of a detour or barricade plan has been obtained from the City's Traffic Engineer.
 2. Should Licensee require a trench, pit, or similar excavation be dug during approved construction, the Licensee shall file and obtain approval for barricading said trench, pit, or excavation in accordance with the Texas Manual on Uniform Traffic Control Devices from the City's Traffic Engineer. [See paragraph "P" of this Agreement for additional requirements regarding trenches, pits and similar excavations.]
- K. If, as determined by the City Manager, damage occurs to any gas, water, storm water, or wastewater line, Licensee shall allow the City immediate access to the Licensed Area to perform an assessment, make repairs, or take any other action deemed necessary by the City. Determination of the extent of damage and repairs necessary to restore the utility line(s) shall be made by the City Manager. All costs of the City associated with said damage and repair, including labor and materials, shall be paid by Licensee within 30 days of the City's invoice.

- L. Should construction become necessary near existing water or wastewater lines, Licensee shall take every precaution not to disturb the soil surrounding any such lines, including all thrust blocks.
- M. If any approved work is conducted near any existing water main, it shall be done under the inspection of a City inspector at a daily rate of three-hundred ten dollars and thirty-five cents (\$310.35) for each day spent inspecting construction, installation, maintenance, repair, removal, or replacement in the Licensed Area. A half-day, being four hours or more of work time by the City inspector, constitutes a whole working day for purposes of calculation. Any time in excess of eight hours a day, or on Saturday, Sunday or holidays, shall be calculated at a daily rate of fifty-eight dollars and eighteen cents (\$58.18) per hour. Any assessed inspection fees shall be paid by the Licensee to the appropriate City department within 30 days of the City's invoice. These amounts will be adjusted annually each year on August 1 to reflect any pay increases that may be attributable to the rates charged.
- N. At any and all times Licensee shall be responsible for the repair and maintenance of the Wastewater Line and Licensed Area, including any costs associated with damage occurring due to natural weather elements/occurrences or man-made forces. Should damage occur to the Wastewater Line or Licensed Area, regardless of the type of damage, Licensee shall immediately repair the damage upon notice by the City. Failure to so repair terminates this Agreement immediately without any further action needed on the part of the City.
- O. Licensee shall repair, or cause to be repaired, any damage to driveways, culverts, head walls, landscaping, sidewalks, curbs, gutters, and any other structure, public or private, resulting from or caused by reason of construction, installation, maintenance, repair, removal, replacement or operation of the Wastewater Line and Licensed Area.
- P. If a trench, pit, or other excavation is required during approved construction, no trenches, pits, or other excavation, other than bore pits, shall be left open overnight, except as specifically authorized by the City's Director of Development Services and City's Engineer. Bore pits are not allowed open for a period of longer than 14 calendar days, regardless of location. All trenches, pits, or other excavations, other than bore pits, shall be backfilled by the Licensee promptly and in accordance with current City standards and specifications and as per the City inspector's request. All trenches, pits, and other excavations, *including* bore pits, shall be barricaded by the Licensee in accordance with the Texas Manual on Uniform Traffic Control Devices and as approved by the City's Traffic Engineer. [See paragraph "J.2." for additional requirements pertaining to trenches, pits, and other excavations.]

- Q. If backfilling becomes necessary, all backfill, specifically including that in and around existing utilities, shall be made by Licensee according to current City standards and specifications and as required by a City inspector.
- R. Use of the Wastewater Line authorized by this Agreement is strictly limited to providing service to Caribbean Dreams in the Licensed Area. Licensee shall not provide, nor permit anyone else to provide or receive, service through said Wastewater Line, or at any facilities within the City other than the building facilities specifically included in this Agreement without first obtaining a franchise or other required approval from the City.
- S. **INDEMNIFICATION. Licensee shall fully indemnify and hold harmless the City of Corpus Christi, its officers, officials, employees, and agents ("indemnitees") from and against all suits, claims, demands, actions, losses, costs, expenses, liability, damages and judgments recovered from or asserted against City for any and all property damage or injuries sustained by any person, including without limitation, workers' compensation, personal injury or death, arising from or incident to, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the license granted.**
- T. All signatories signing this Agreement warrant and guarantee that they have the authority to act on behalf of the entity represented and make this Agreement binding and enforceable by their signatures.
- U. Unless otherwise stated in this Agreement, any notice required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested to the following addresses:

If to Licensee: BL Marina Properties, LP
P.O. Box 5943
Austin, TX 78763

If to the City: City of Corpus Christi
Attn: Director, Development Services Department
P. O. Box 9277
Corpus Christi, TX 78469-9277

Any party shall, by notice to the others in accordance with the provisions of this paragraph, specify a different address or addressee for notice purposes within 10 days of any address change.

- V. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created pursuant to this Agreement are performable in Nueces County, Texas. Venue for all actions arising from, out of, or related to this Agreement must be brought in Nueces County, Texas.
- W. The Licensee further agrees, in compliance with the City of Corpus Christi Ordinance No. 17112, to complete, as part of this Agreement, the "Disclosure of Interests" form attached to this Agreement as Exhibit "D." Completed versions of Exhibit "D" by the Licensee form a part of this Agreement and are incorporated by reference into this Agreement as if set out here in their entireties.
- X. This instrument, including exhibits, constitutes the entire agreement between the City and the Licensee, and no prior written, oral, or contemporaneous promises, warranties, or representations shall be binding upon any parties. This Agreement may only be amended by written instrument signed by authorized representatives of the City and Licensee and approved as required by City law.

Remainder of page intentionally left blank; signature page to follow.

EXECUTED IN DUPLICATE this _____ day of _____, 20_____.

BL MARINA PROPERTIES, LP

Spence E. Collins, President
Ann Arbor GP, Inc.

Date

Kris Hawkins
Kris Hawkins, General Partner
BL Real Estate Management, LLC

11-26-2018
Date

ACKNOWLEDGMENT

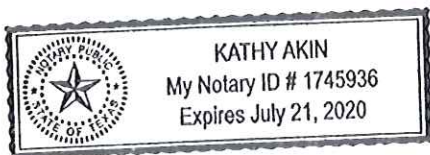
STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2018, by
Spence E. Collins, President, Ann Arbor G.P., Inc., a Texas Corporation, on behalf of
said company.

Notary Public's Signature

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on November 26, 2018, by
Kris Hawkins, General Partner, Hawkins Family Partners, L.P. a Texas limited liability
partnership, on behalf of said company.



Kathy Akin
Notary Public's Signature

CITY OF CORPUS CHRISTI

By: _____
Samuel Keith Selman
Interim City Manager

ATTEST:

By: _____
Rebecca Huerta
City Secretary

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2018, by
Keith Selman, Interim City Manager of the City of Corpus Christi, a Texas Municipal
Corporation, on behalf of said corporation.

Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:

By: _____
Buck Brice (Date)
Assistant City Attorney
For the City Attorney

EXHIBIT A

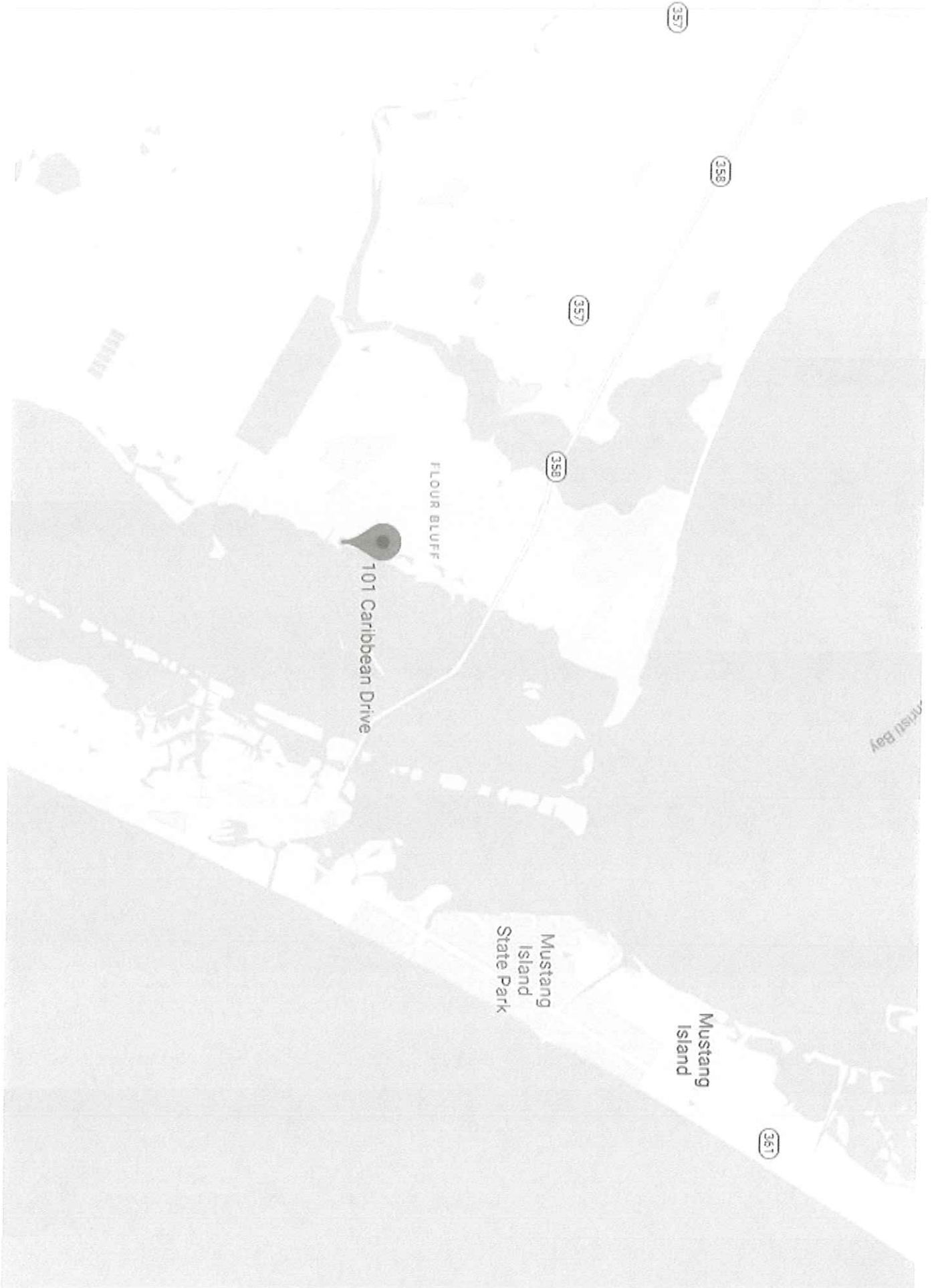


EXHIBIT C

INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employers Liability	Statutory and complies with Part II of this Exhibit. \$500,000/\$500,000/\$500,000
POLLUTION LIABILITY (Including Cleanup and Remediation)	\$1,000,000 Per Incident Limit \$1,000,000 Aggregate

EXHIBIT C

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

EXHIBIT C

- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2018 Insurance Requirements

Development Services

Use of City Easement for Installation of New Sanitary Sewer

04/30/2018 sw Risk Management



Exhibit D

City of Corpus Christi, Texas
Department of Development Services
P.O. Box 9277
Corpus Christi, Texas 78469-9277
(361) 826-3240
Located at: 2406 Leopard Street
(Corner of Leopard St. and Port Ave.)

DISCLOSURE OF INTERESTS

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA".

NAME: BL MARINA PROPERTIES, LP
STREET: 5716 Hwy 290 W #200 CITY: AUSTIN, TX ZIP: 78735
FIRM is: ☐ Corporation ☒ Partnership ☐ Sole Owner ☐ Association ☐ Other _____

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name

Job Title and City Department (if known)

NONE

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name

Title

NONE

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name

Board, Commission, or Committee

NONE

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name

Consultant

NONE

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: KRIS HAWKINS
(Print)

Title: General Partner

Signature of Certifying Person: Kris Hawkins

Date: 11-26-2018

Exhibit D

DEFINITIONS

- a. "Board Member". A member of any board, commission or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Employee". Any person employed by the City of Corpus Christi, Texas, either on a full or part time basis, but not as an independent contractor.
- c. "Firm". Any entity operated for economic gain, whether professional, industrial or commercial and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust and entities which, for purposes of taxation, are treated as non-profit organizations.
- d. "Official". The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads and Municipal Court Judges of the City of Corpus Christi, Texas.
- e. "Ownership Interest". Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate or holding entity. "Constructively held" refers to holding or control established through voting trusts, proxies or special terms of venture or partnership agreements.
- f. "Consultant". Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.