

**CONTRACTOR’S ACADEMY/ EQUAL BUSINESS OPPORTUNITY
PROGRAM AGREEMENT**

THIS AGREEMENT, (the Agreement) is made as of the _____, 2009, between Maritime Park Development Partners, LLC, a Florida limited liability corporation (the “Developer”), and Community Maritime Park Associates, Inc., a Florida not-for-profit corporation (the “CMPA”), .

RECITALS

A. CMPA and the City of Pensacola, Florida (the “City”), are parties to two agreements dated March 27, 2006 – the Master Development Agreement (Community Maritime Park Project) and the Master Lease (Community Maritime Park) – which set forth CMPA’s and the City’s respective duties and responsibilities pertaining to the development of real property for a project known and referred to as the Community Maritime Park or the Project (as hereinafter defined).

B. With the City’s approval, CMPA conducted a two-stage competitive procurement (RFQ No. 2007- 02 and RFP No. 2007-03) to select a developer to act as CMPA’s primary agent in implementing CMPA’s vision of the Project, which culminated on August 22, 2008, with the trustees of CMPA voting to negotiate a Development Agreement with the Developer. The negotiation and execution of that Development Agreement occurred on _____, 2009.

C. The buildings and other improvements of the project particularly described on Exhibit A (collectively referred to as the Improvements) which are to be constructed upon the Land are described in general terms on Exhibit A annexed hereto and by this reference made a part thereof. The Land and the Improvements are collectively referred to as the Community Maritime Park Project.

D. Developer hereby agrees to launch and sustain as provided for herein a Contractor’s Academy inclusive of an Equal Business Opportunity Program to fulfill the CMPA’s covenant with the Community and deliver on the commitment established by Community Maritime Park Associates to ensure the inclusion of minority and women owned businesses in the CMPA development. This binding legal document is to be executed simultaneously with the Development Agreement executed between CMPA and Developer.

E. The Contractor’s Academy/Equal Business Opportunity Program (“EBO Program”) goals are specific and aimed at attracting groups of minorities and women business enterprises: unskilled individuals seeking to learn a trade; skilled construction workers seeking to become subcontractors; and existing contractors and business owners

seeking to expand their businesses. The EBO Program will concentrate on finding potential MFBE contractors, vendors, consultants, sub-contractors and other MFBE businesses primarily in Escambia,, Santa Rosa and Okaloosa Counties in Florida secondarily in the wider Pensacola Region which includes Mobile County and Baldwin County, in Alabama .

F. The Developer will establish a Contractor’s Advisory Council (“CAC”) within 30 days of the execution of this agreement to act in an advisory and supervisory roll for the implementation of the provisions of the Contractor’s Academy/Equal Business Opportunity Program outlined in this Agreement and pertaining to the minority and women inclusion goal identified hereinto. The CAC will be co-chaired by a representative of the Gulf Coast African American Chamber of Commerce and the Developer and consist of relevant community and professional organizations including, but not limited to Tri-States Chapter of the National Association of Minority Contractors; Small Business Development Corporation; Hispanic Chamber of Commerce; Other Area Chambers of Commerce; George Stone Technical Center; Locklin Tech; Pensacola Junior College; Workforce EscaRosa; Workforce Development Board of Okaloosa & Walton Counties; Movement for Change; CLI-Disability Center and other relevant stakeholders (herein collectively referred to as “Program Partners”). All meetings of the CAC and any sub-committees shall be open to the public and subject to the Florida “Sunshine Law.”

G. The CAC will establish an Sub-Committee of Contract Compliance that will be the program compliance body that will monitor expenditures and activities carried out by the Developer and its consultants, contractors, suppliers and vendors related to the Contractor’s Academy/Equal Business Opportunity Program and minority and women inclusion goals. The Gulf Coast African American Chamber of Commerce will be a permanent member of the Sub-Committee of Contract Compliance. The Developer shall fund the position of Contract Compliant Officer who shall report to the Sub-Committee of Contract Compliance as determined by the CAC subject to the overall budget for the Contractors Academy. Said funding shall be part of the Developer’s contribution described below in paragraph H.

H. Developer will provide funding in order establish, administer and implement the Contractor’s Academy/Equal Business Opportunity Program and the Sub-Committee of Contract Compliance. Funding shall be in the amount of \$250,000 over the course of construction of the Project in cash and in-kind services. Additionally, Developer will provide 25% of the Maritime Park’s operating profits as measured by return on Private Improvement Project Costs in excess of 12% up to \$500,000 per year to assist in the ongoing operation of the Contractor’s Academy/Equal Business Opportunity Program for the period of time that Developer owns the Private Improvements.

I. The Developer also agrees to cooperate and assist the Program Partners and other community organizations to leverage the impact of the Community Maritime Park with

other public and private urban development and investment programs that impact cultural tourism, the performing arts, education, technology, workforce development, business incubation, contractor training, affordable housing and other public/private initiatives to be developed within the Belmont/DeVillers St. Historical Business District, the Westside Neighborhood and surrounding area.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Developer and CMPA agree as follows:

Section 1.0. Program Goals.

This EBO Program shall be known as the "Contractor's Academy/Equal Business Opportunity Program." This program as described in this Agreement outlines the terms, conditions and obligations between the Developer and the Community Maritime Park Associates, Inc. related to the inclusion of minority and female business enterprises in the development, construction, management and operation of the Community Maritime Park Project. The stated equal business opportunity goal for the Community Maritime Park Project is the best effort inclusion of Minority/Female Business Enterprises in the procurement and awarding of contracts and/or eligible projects (as defined below) that are executed in connection with the development, construction, management and/or operation of the Community Maritime Park Project in the following minimum percentages:

1. 33.5% to African American Business Enterprises (AABE)
2. 2.3% to Asian Business Enterprises (ABE)
3. 2.9% to Latino business enterprises (HBE)
4. 0.6% to Native American Business Enterprises (NABE)

Section 2.0. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

African American shall mean persons having origins in any black racial group of Africa.

African American Business Enterprise (AABE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more African Americans.

Asian shall mean persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Asian Business Enterprise (ABE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Asian individuals.

Bid shall mean a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to the Developer for a price on an eligible project, or for an eligible project that generates revenue for the Community Maritime Park Project.

Bidder shall mean any individual, sole proprietorship, partnership, joint venture, or corporation that submits a bid to the Developer, or a vendor or contractor that has entered a contract with the Developer regarding an eligible project.

Commercially useful function. For the purpose of determining whether a business enterprise is performing a commercially useful function, Developer shall consider all of the facts in the record, viewed as a whole, including without limitation the following:

- (1) An MFBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
- (2) To perform a commercially useful function, the MFBE must be responsible, with respect to material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- (3) To determine whether an MFBE is performing a commercially useful function, Developer will evaluate the amount of work subcontracted by the MFBE, industry practices regarding subcontracting, whether the amount the MFBE is to be paid under the contract is commensurate with the work it's actually performing, the MFBE credit claimed for its performance of the work, and other relevant factors.
- (4) An MFBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MFBE participation. In determining whether an MFBE is such an extra participant, Developer will examine similar transactions, particularly those in which MFBEs do not participate.

Contractor shall mean any individual, sole proprietorship, partnership, joint venture, corporation, vendor or other business entity that has entered a contract with the Developer, Consultant or Prime Contractor regarding an eligible project.

Control or controlled. For the purpose of determining whether the owner or owners of a potential MFBE (as used in this definition, "MFBE-owner", which shall denote one or more owners) controls the potential MFBE, GCAACC shall consider all of the facts in the record, viewed as a whole, including without limitation the following:

- (1) For an MFBE-owner to be deemed to control the potential MFBE, the potential MFBE must be independent. An independent business enterprise is a

business whose viability does not depend on its relationship with another firm or fines.

(a) In determining whether a potential MFBE is independent, Developer will scrutinize relationships with other firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(b) Developer will consider whether present or recent employer/employee relationships between the MFBE-owner and other firms or persons associated with other firms compromise the independence of the potential MFBE firm.

(c) Developer will examine the potential MFBE's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MFBE firm.

(d) In considering factors related to the independence of a potential MFBE firm, Developer will consider the consistency of relationships between the potential MFBE and other firms with normal industry practice.

(2) A potential MFBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the MFBE-owner. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by persons other than the MFBE-owner, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the MFBE-owner, without the cooperation or vote of any other individual, from making any business decision of the business enterprise. This paragraph does not preclude a spousal co-signature on documents.

(3) The MFBE-owner must possess the power to direct or cause the direction of the management and policies of the business enterprise and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(a) An MFBE-owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(b) In a corporation, the MFBE-owner must control the board of directors.

(c) In a partnership, the MFBE-owner must serve as a general partner, with control over all partnership decisions.

(4) Individuals who are not the MFBE-owner may be involved in an MFBE as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the business enterprise, or be disproportionately responsible for the operation of the business enterprise.

(5) The MFBE owners of the business enterprise may delegate various areas of the management, policymaking, or daily operations of the business enterprise to other participants in the firm, regardless of whether these participants are African

American, Latino, Asian, Native American, or female. Such delegations of authority must be revocable, and the MFBE-owner must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the MFBE-owner in the business enterprise's overall affairs must be such that Developer can reasonably conclude that the MFBE-owner actually exercises control over the business enterprise's operations, management, and policy.

(6) The MFBE-owner must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the business enterprise is engaged and the business enterprise's operations. The MFBE-owner is not required to have experience or expertise in every critical area of the business enterprise's operations, or to have greater experience or expertise in a given field than managers or key employees. The MFBE-owner must have the ability to intelligently and critically evaluate information presented by other participants in the business enterprise's activities and to use this information to make independent decisions concerning the business enterprise's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business enterprise is insufficient to demonstrate control.

(7) If state or local law requires the owner of a particular type of firm to have a particular license or other credential, then the MFBE must possess the required license or credential in order to be deemed in control. If state or local law does not require an owner to have such a license or credential, Developer will not deny certification solely on the ground that the MFBE-owner lacks the license or credential. However, Developer may take into account the absence of the license or credential as one factor in determining whether the MFBE-owner actually controls the firm.

(8) Developer may consider differences in remuneration between the MFBE and other participants in the business enterprise in determining whether the MFBE controls the business enterprise. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the business enterprise's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business enterprise. Developer may determine that a business enterprise is controlled by its MFBE although the MFBE's remuneration is lower than that of some other participants in the business enterprise.

(9) In order to be viewed as controlling a business enterprise, an MFBE-owner cannot engage in outside employment or other business interests that conflict with the management of the business enterprise or prevent the MFBE-owner from devoting sufficient time and attention to the affairs of the business enterprise to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an MFBE-owner could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the MFBE-owner controls the business enterprise when it is operating.

(10) An MFBE-owner may control a business enterprise even though one or more of the MFBE-owner's immediate family members (who themselves are not African American, Latino, Asian, Native American, or female) participate in the business enterprise as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, Developer must make a judgment about the control the MFBE-owner exercises vis-a-vis other persons involved in the business enterprise as it does in other situations, without regard to whether or not the other persons are immediate family members. If Developer cannot determine that the MFBE-owner, as distinct from the family as a whole, controls the business enterprise, then the MFBE-owner has failed to carry her/his burden of proof concerning control, even though s/he may participate significantly in the business enterprise's activities.

Eligible project shall mean:

- (1) Any Developer contract or project "value" that is executed in connection with the development, construction, management and/or operation of the Maritime Park Project in the City of Pensacola.
- (2) For purposes of this EBO Program, contract or project "value" shall mean either the expenditure of funds by the Developer, or the generation of revenue for the Developer by a contractor as a direct result of a Developer contract.

Female business enterprise (FBE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more females.

GCAACC shall mean the Gulf Coast African American Chamber of Commerce in the City of Pensacola.

Joint venture shall mean an association of two or more persons, partnerships, corporations, or any combination of them, established to carry on a single business activity that is limited in scope and duration. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings.

Latino shall mean persons with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.

Latino Business Enterprise (LBE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Latino individuals. For purposes of this EBO Program alone, references to racial ownership of businesses shall include LBEs.

Minority and female business enterprise (MFBE) shall mean a business which is an independent and continuing operation for profit, performing a commercially useful function, and which is owned and controlled by one or more African Americans, Latinos, Asians, Native Americans, or females, or a combination thereof.

Native American shall mean persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

Native American Business Enterprise (NABE) shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function and which is owned and controlled by one or more Native Americans.

North American Industry Classification System (NAICS) Code shall mean the standard code that classifies industries by the type of activity in which such industries are primarily engaged.

Owned or ownership. In determining whether a potential MFBE is owned by one or more African Americans, Latinos, Asians, Native Americans, or females, Developer will consider all of the facts in the record, viewed as a whole, including without limitation the following:

- (1) Developer shall deem the owner of a business enterprise to be whoever possesses at least 51 percent of the business enterprise. There may be more than one owner.
 - (a) In the case of a corporation, such individual(s) must possess at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - (b) In the case of a partnership, such individual(s) must possess at least 51 percent of each class of partnership interest. Such ownership must be reflected in the business enterprise's partnership agreement.
 - (c) In the case of a limited liability company, such individual(s) must possess at least 51 percent of each class of member interest.
- (2) All securities which constitute ownership of an entity for purposes of establishing it as an AABE, HBE, ABE, NABE or FBE must be held directly by African American, Latino, Asian, Native American or female individuals or by AABEs, HBEs, ABEs, NABEs or FBEs. No securities held in trust or by any guardian for a minor shall be considered held by African Americans, Latinos, Asians, Native Americans or females in determining the ownership or control of a corporation.
- (3) Ownership shall be measured as though not subject to the community property interest of a spouse if both spouses certify that only one spouse owns the business and if such assertion is supported by the totality of the evidence considered by the Developer.
- (4) Developer must find that the individual(s) ownership is real, substantial, and continuing, going beyond pro forma ownership of the business enterprise as reflected in ownership documents. The individual(s) must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their

ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

Satisfactorily completed or satisfactory completion shall mean when all of the tasks called for in the subcontract have been accomplished and documented as required by the Developer. When the Developer has made an incremental acceptance of a portion of a prime contract, the work on a subcontractor covered by the acceptance is deemed to be satisfactorily completed.

Supplier shall mean a warehouse or manufacturer of materials, supplies or equipment which contracts directly with a bidder to provide such materials, supplies or equipment on an eligible project which involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on eligible projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted.

Section 3.0. Statement of policy.

It is the policy of the the CMPA to promote full and equal business opportunity for all persons doing business with the Developer. The Developer must ensure that firms seeking to participate in contracting and procurement activities with the Developer are not prevented from doing so on the basis of the race or gender of their owners. The Developer is committed to ensuring that it is not a passive participant in any private scheme of discrimination. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the Developer, the Developer and the CMPA have developed an equal business opportunity program.

Section 4.0. Duties of Developer, the CAC and the Program Partners.

Under this EBO Program, the Developer shall have the following authority and duties for the encouragement of non-discrimination in Developer contracting and the implementation of the equal business opportunity program under this EBO Program which shall be subject to review and audit by the CAC:

- (1) Administration and enforcement of this EBO Program.
- (2) Establishment of written procedures, informal guidelines, and forms as may be necessary to effectuate this EBO Program.
- (3) Monitoring compliance with the requirements of this EBO Program.
- (4) Certification of businesses as AABEs, HBEs, ABEs, NABEs and FBEs in accordance with the standards set forth in this EBO Program.
- (5) Development of databases to be maintained as a public record of certified AABEs, HBEs, ABEs, NABEs and FBEs.
- (6) Ensuring compliance with requirements for mentor-protege or joint venture arrangements under section 6.0 and section 7.0, as applicable.

- (7) Investigation of alleged violations of this EBO Program, and the issuance of written statements following any determination of such investigation, stating the reasons therefore and any penalty to be imposed.
- (8) Determination of whether any of the penalties set forth in section 9.0 should be applied to a business.
- (9) Provision to business entities of all forms, applications, documents and papers necessary to comply with this EBO Program.
- (10) Provision of information to potential bidders which shall include names and contact information of certified MFBEs for each eligible project, to reinforce and support outreach efforts by potential bidders.
- (11) Notification to the chief procurement officer of any determination of non-responsiveness regarding the requirements of this EBO Program, and of any appeal from any such determination.
- (12) Monitoring, for data gathering and informational purposes, utilization of MFBEs on eligible projects.
- (13) Maintenance of documents, forms, records or data regarding this program as provided in this EBO Program, including: (a) documents, forms, records or data regarding the dollar amounts subcontracted to or expended for services performed by subcontractors and suppliers on eligible projects, including the race and gender ownership of each subcontractor and supplier; and (b) documents, forms, records or data regarding certified AABEs, HBES, ABES, NABEs and FBES.
- (14) Development and implementation of outreach and assistance programs to im promote equal contracting opportunities for all businesses that wish to do business with the Developer, in accordance with section 10.0.

Section 5.0. Equal business opportunity subcontracting program.

(a) *Program requirements.*

- (1) All bidders are required to make efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of bid opening, or upon request by Developer. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a Developer contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the Developer to the extent of their availability, capacity and willingness to compete.
- (2) Developer will review information submitted by bidders pertaining to efforts to promote opportunities for diverse businesses, including MFBEs, to compete for business as subcontractors and/or suppliers. A bidder is eligible for award of a Developer contract upon a finding by Developer that the bidder has engaged in, and provided with its bid submission documentation of, efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has been non-discriminatory. To assist prime

contractors in this effort, the Developer shall set forth in the solicitation documents for the eligible project the availability of businesses, including certified MFBES within the relevant NAICS Codes for such eligible project.

(b) *Determination of non-discrimination during bid process.* No bidder shall be awarded a contract on an eligible project unless the Developer determines that the bidder has satisfied the non-discrimination requirement of this section 5.0 on such eligible project. Accordingly, each bidder shall submit with each bid the following:

(1) *Covenant of non-discrimination.* Each bidder shall submit with her/his bid a covenant of non-discrimination in such form as directed in the solicitation document by the Developer.

(2) *Outreach efforts documentation.* Each bidder shall submit with her/his bid written documentation demonstrating the bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified MFBES, as subcontractors or suppliers on the eligible project. The Developer shall set forth in the solicitation document the documents that a bidder may submit to demonstrate its outreach efforts, and such documentation may include, without limitation, evidence of the following:

a. The bidder contacted the Developer, the CAC, other private sector and government entities, or local MFBE organizations, to identify available businesses to work on the eligible project, including certified MFBES, regardless of race, gender or ethnicity.

b. The bidder placed notices of opportunities for qualified businesses to perform subcontracting work on the eligible project in newspapers, trade journals, and other relevant publications, including publications specifically targeted to MFBES, or communicated such notices of opportunities via the Internet or by other available media or means.

c. The bidder submitted invitations to bid for work on the eligible project to qualified businesses, including certified MFBES, regardless of race, gender or ethnicity.

d. The bidder included in such notices and invitations a full disclosure of the criteria upon which bids, proposals or quotes would be evaluated, and also included contact information for inquiries, submissions, or requests to review any necessary bid documents.

e. The bidder promptly responded to inquiries, provided necessary physical access and time for interested businesses to fully review all necessary bid documents, and otherwise provided information, access and time necessary to allow all interested businesses to prepare bids and quotes, regardless of race, gender or ethnicity.

f. The bidder considered, or hired, or otherwise utilized qualified and available businesses on the eligible project, including certified MFBES, regardless of race, gender or ethnicity.

g. For each business which contacted or was contacted by the bidder regarding subcontracting or other services on the eligible project, but was not contracted with or otherwise utilized on the eligible project, the bidder shall provide a written statement setting forth the dates of such contacts,

the nature of such contacts, and the reasons why an agreement was not reached regarding work to be performed on the project. The bidder shall maintain all written documents reflecting such contacts, including bids, quotes and proposals.

(3) *Subcontractor project plan.* Each bidder shall submit with her/his bid a completed and signed subcontractor project plan, in a form approved and provided by the Developer and the CAC, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, if applicable the AABE, HBE, ABE, NABE, or FBE certification number of each business, and any other information requested by the Developer. In order for the Developer to officially consider a firm to be an MFBE, the MFBE firm must be certified by or have a certification application pending with the Developer prior to the bidder's submission of the bid.

(c) *Developer review of bidder submissions.* The Developer shall determine whether a bidder has satisfied the non-discrimination requirement of this section 5.0 based on its review of the covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and its review of other relevant facts and circumstances, including complaints received as part of the bid process. In reviewing the documents submitted by a bidder to determine whether the bidder has satisfied the good faith efforts requirement of this section, the Developer will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified MFBEs, whether such businesses perform commercially useful functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MFBEs within the relevant NAICS Codes for such eligible project.

(1) *Receipt of complaint of discrimination in the bid process.* The Developer and the CAC shall accept complaints of alleged discrimination during the bid process regarding any participant in the bid process. Where the complaint of discrimination is specific to the procurement which is under consideration by the Developer, the CAC may investigate said complaint, determine its validity, and determine whether the actions complained of impact the bidder's responsiveness on the specific procurement. Allegations of discrimination based on events, incidents or occurrences which are unrelated to the specific procurement will be placed in the bidder's file maintained in the vendor relations database and handled in accordance with the procedure established in the EBO Program.

(2) *Determination of violation of EBO process.* Where the CAC investigates a complaint of discrimination that is related to the specific bid process, as described in subsection 5.0(3)(a) above, the details of that investigation, including findings, shall be recorded and maintained in the CAC database.

(3) *CAC determination of non-responsiveness.* When, based upon the totality of the circumstances, the CAC determines that a bidder has been non-responsive to the EBO requirements of a Developer bid solicitation, the director of the CAC

shall present a written determination of non-responsiveness to the chief procurement officer which states the determination and lists the reasons for the determination.

(d) *Equal business opportunity subcontracting program bid process.* The covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and any other information required by the Developer in the solicitation document must be completed in their entirety by each bidder and submitted with the other required bid documents in order for the bid to be considered as a responsive bid. Failure to timely submit these forms, fully completed, will result in the bid being considered as a non-responsive bid, and therefore, excluded from consideration.

(e) *Contract progress.* The Developer shall require contractors on eligible projects to complete and submit to Developer documentation regarding their utilization of MFBEs, along with all other pertinent records required by Developer. Said documentation shall be in a format that is established by the Developer and the CAC. These records will be submitted to Developer and CAC monthly. The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the Developer. A written letter to the director of the Developer requesting approval to change the subcontractor project plan must be submitted prior to any change in the plan or termination of an MFBE's contract.

(f) *Database.* The Developer will maintain a database identifying MFBEs on behalf of the Developer and the CAC, that will include the types of services provided by the business enterprise and contact information for the business enterprise. A list from the database will be made available to the Developer and bidders to assist them in their efforts to meet the requirements of the equal business opportunity subcontracting program. The list prepared from the database will specify which firms the Developer and the CAC has determined to be certified minority and female business enterprises, in accordance with the definitions for MFBEs as defined in Subsection 2.0. This list is not exhaustive.

(g) *Minority and female business enterprise utilization.* To ensure that the equal business opportunity subcontracting program achieves its purpose, the Developer will verify the MFBE certification status of each firm claiming such designation. Only certified MFBEs may be designated in reports as MFBEs for purposes of Developer projects. The percentage of MFBEs utilized by a bidder will be calculated by dividing the MFBE's price for providing direct labor or a bona fide service by the bidder's total dollars as identified in the bid.

(h) *Equal business opportunity program compliance, monitoring and audit.* The CAC and the CMPA reserve the right to conduct an audit of a bidder's work on an eligible project to confirm the bidder's compliance with this equal business opportunity subcontracting program, including without limitation compliance with the covenant of non-discrimination, the outreach efforts documentation, and the subcontractor project plan.

(i) *Prohibition against discrimination and reporting allegations.* With regard to the Project, bidders shall prohibit discrimination against any person or business on the basis of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, disability, age, national origin, political affiliation, gender identity, or racial profiling. Bidders shall develop a written policy statement that shall be approved by the CAC and distributed to all employees. Bidders shall conduct their contracting and purchasing programs so as to prohibit any discrimination and to resolve all allegations of discrimination. The Developer and the CAC shall review and investigate all allegations of discrimination which claim that prohibited forms of discrimination have occurred. Allegations of discrimination that are determined to have merit may be subject to penalties decided upon by the CAC in consultation with the initiating department.

(j) *Penalties.* Breach of the equal business opportunity subcontracting program by a bidder shall be subject to any or all of the penalties set forth in section 9.0 below.

Section 6.0. Requirements for mentor-protége relationships.

(a) The Developer shall encourage, where economically feasible, establishment of mentor-protége relationships to ensure prime contracting opportunities for all businesses, including certified MFBEs on eligible projects.

(b) Based upon the scope of work and market availability, the Developer shall determine on a project-by-project basis on all eligible projects valued over \$5,000,000.00 whether good faith efforts to enter into a mentor-protége relationship shall be required for such eligible project. On such eligible projects in which good faith efforts to enter into a mentor-protége relationship are required, no bid shall be accepted unless submitted by a mentor-protége team, unless the Developer has determined that good faith efforts to enter into a mentor-protége relationship have been demonstrated. The CAC shall determine whether good faith efforts to enter into a mentor-protége relationship have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

(c) On such eligible projects in which good faith efforts to enter into a mentor-protége relationship are required, the mentor and protége team members must have different race ownership, different gender ownership, or both. MFBE members of the mentor-protége team must be certified as such by the Developer, and the mentor-protége team shall include in its bid submittal the MFBE certification number of each MFBE team member. A bid submitted by a mentor-protége team comprised of bidders with both the same race and gender ownership shall be deemed non-responsive and rejected.

(d) As to each mentor-protége relationship under this section, a written mentor-protége agreement must be completed by both parties to the mentor-protége relationship and executed before a notary public, which clearly delineates the rights and responsibilities of the mentor and protége, complies with any requirements of the CAC as set forth in bid

documents or otherwise, and provides that the mentor-protege relationship shall continue for, at a minimum, the duration of the project.

(e) The Developer shall review and approve all contractual agreements regarding the terms and provisions of the mentor-protege relationship prior to the award of a contract on an eligible project to the mentor-protege team. Mentor-protege teams may submit agreements for pre-approval no later than 14 calendar days prior to the date set for receipt of bids on an eligible project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a mentor-protege team that does not include a satisfactory written mentor-protege agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

(f) During the term of the contract the mentor and protege businesses must each provide to the Developer a quarterly summary of the mentor skills provided to the protege, which shall include:

- (1) The time spent between mentor and protege businesses in furtherance of the mentor-protege relationship;
- (2) The nature and extent of managerial, technical, financial and/or bonding assistance provided;
- (3) A summary and explanation of any projects bid on or undertaken by the mentor-protege team in the private sector or for a governmental entity other than the Developer; and
- (4) Any additional or further information required by the Developer as set forth in bid documents or otherwise.
- (5) No officer, director, employee or member of the mentor-protege team shall be allowed to bid or otherwise participate independently on a contract where the mentor-protege team is bidding or otherwise participating.
- (6) Each member of the mentor-protege team shall provide the Developer and the CAC access to review all records pertaining to mentor-protege agreements before and after the award of a contract in order to reasonably assess compliance with this EBO Program.
- (7) Penalties for noncompliance. Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in section 9.0.

Section 7.0. Requirements for joint ventures.

(a) The Developer shall encourage, where economically feasible, establishment of joint ventures to ensure prime contracting opportunities for all businesses, including certified MFBEs, on eligible projects.

(b) Based upon the scope of work and market availability, the Developer shall determine on a project-by-project basis on all eligible projects valued over \$5,000,000.00 whether good faith efforts to enter into a joint venture shall be required for such project. On such projects in which good faith efforts to enter into a joint venture relationship is required,

no bid shall be accepted unless submitted by a joint venture, unless the Developer has determined that good faith efforts to enter into a joint venture have been demonstrated. The CAC shall determine whether good faith efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

(c) On such eligible projects in which good faith efforts to enter into a joint venture relationship is required, the joint venture member businesses must have different race ownership, different gender ownership, or both. MFBE members of the joint venture must be certified as such by the Developer, and the joint venture team shall include in its bid submittal the MFBE certification number of each MFBE joint venture member. A bid submitted by a joint venture comprised of bidders with both the same race and gender ownership shall be deemed non-responsive and rejected.

(d) As to each joint venture under this section, a written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the CAC as set forth in bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the project.

(e) The Developer shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible project to the joint venture, including agreements pertaining to:

- (1) The initial capital investment of each venture partner;
- (2) The proportional allocation of profits and losses to each venture partner; no M/FBE venture partner's liability should ever exceed said partners percentage of revenue earned while a participant in the joint venture.
- (3) The sharing of the right to control the ownership and management of the joint venture;
- (4) Actual participation of the venture partners on the project;
- (5) The method of and responsibility for accounting;
- (6) The method by which disputes are resolved; and
- (7) Any additional or further information required by the Developer as set forth in bid documents or otherwise.

Joint ventures may submit agreements for pre-approval no later than 14 calendar days prior to the date set for receipt of bids on an eligible project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

(f) The joint venture, and each member of the joint venture, shall provide the CAC access to review all records pertaining to joint venture agreements before and after the award of a contract in order to reasonably assess compliance with this EBO Program.

(g) Penalties for noncompliance. Any responsible bidder who fails to comply with this section shall be subject to any or all of the penalties contained in section 9.0.

Section 8.0. Mediation of disputes between joint venture and mentor-protége team members and prime and subcontractors.

(a) If, after the award of a contract to a joint venture or mentor-protége team, any member of the joint venture or mentor-protége team believes that the terms and conditions of the agreement as approved by the Developer have not been complied with, then such member may seek review and mediation of such agreement before the CAC. The request for review must be made in writing.

(b) If, after the award of a contract, a dispute arises between the prime contractor and a subcontractor regarding performance of work or provision of services or supplies on the eligible project, then such prime contractor or subcontractor may seek review and mediation of the issue before the CAC. The request for review must be made in writing. If the dispute involves an alleged violation of the Developer's prompt payment requirement, as set forth below, the contractor, subcontractor and the Developer shall proceed as is set forth in section (c).

(c) Within 20 calendar days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the director shall set a mediation date, and the director shall provide written notice of the mediation date to each of the interested parties.

(d) The CAC shall have authority to make recommendations in an attempt to resolve the dispute.

(e) In the event that the mediation with the CAC does not resolve all disputes, the CAC shall have the option of referring mediation proceedings to a qualified outside mediator, contingent upon the consent of the interested parties.

Section 9.0. Penalties for noncompliance.

If the Developer or a contractor fails to comply with any portion of this EBO Program, and whose failure to comply continues for a period of 30 calendar days after the Developer or contractor receives written notice of such noncompliance from the CAC to the CMPA, the Developer or contractor shall be subject to any or all of the following penalties:

- (1) Withholding of ten percent of all future payments for the eligible project until the CAC determines that the contractor is in compliance with this EBO Program.
- (2) Withholding of all future payments under the eligible project until it is determined that the contractor is in compliance with this EBO Program.
- (3) Cancellation of the eligible project.

- (4) Refusal of all future contracts or subcontracts with the CMPA for a minimum of one year and a maximum of five years from the date upon which this penalty is imposed.

Section 10.0. Outreach and assistance to subcontractors by the Developer.

To ensure that opportunities to participate on Developer contracts are available to the widest feasible universe of interested, available and qualified businesses, the Developer shall develop and implement a written comprehensive outreach program aimed at increasing business participation in the Developer' contracting and procurement process.

This program may include, without limitation, any or all of the following:

- (1) The Developer may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals, in print and in electronic media (including publications or electronic media targeted to MFBEs and small businesses) information describing the equal business opportunity program, the small business opportunity program, and the functions of the CAC. In addition, the Developer may disseminate information in print and/or electronic form, may provide individualized counseling, and/or may conduct seminars regarding the certification process.
- (2) The Developer may establish a procedure to engage in continuous recruitment and outreach efforts directed at business assistance organizations to increase the pool of businesses available to do business with the Developer. The Developer may identify suppliers through business development organizations and participation at various trade shows, supplier diversity groups and work with various national and local supplier development counsels and organizations.
- (3) The Developer may disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals, in print and in electronic media information identifying ongoing contracting opportunities with the Developer, and providing contact information by which businesses may obtain additional information from the Developer . Developer will provide this information in languages other than English, where appropriate. To the extent feasible, the Developer may enter into arrangements to share data regarding upcoming Developer projects, and subcontracting opportunities on the projects, with other businesses and agencies or jurisdictions in the Pensacola Region.
- (4) The Developer may assist businesses in submitting bids for eligible projects by disseminating information in print or electronic form, by providing individualized counseling, and/or by conducting seminars regarding the process for submitting a bid on a Developer project. The Developer may sponsor "How to do business with the Developer" seminars and invite a wide array of businesses.
- (5) The Developer may actively encourage businesses to attend the pre-bid conferences, providing face-to-face and one-on-one meeting opportunities with employees of the Developer within the divisions and departments that are involved with the contracting and procurement process. The Developer may establish and implement training and awareness programs with the employees of the Developer's user departments to educate them with regard to increasing utilization of a wide array of businesses.

(6) The Developer may provide information and advice to the department of procurement regarding the effectiveness of current bidding procedures in facilitating bidding on eligible projects by the widest feasible universe of interested businesses. This information may include suggestions regarding how to arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of all interested businesses. In this regard, the CAC may provide and encourage feedback from contractors and subcontractors regarding every aspect of the Developer's procurement process and may establish a system to allow for anonymous comments to be sent through the mail.

(7) The Developer may create workshops for businesses located within the Developer on how to compete in the private sector, including advice on marketing, soliciting, and preparing a bid. The Developer may establish a program which will incorporate business and entrepreneurial training and assistance mentoring, matchmaking, individual consulting and regular training workshops and seminars. To accomplish the same, Developer may reach out to and collaborate with regional higher educational institutions.

(8) The Developer may develop communications and other written materials that are meant to encourage and provide information to contractors to increase their utilization of subcontractors. In addition, Developer may sponsor networking events that allow businesses to meet each other and that create an opportunity for contractors to discuss with subcontractors upcoming needs.

(9) The Developer may develop a resource directory to be provided to interested businesses, with information regarding assistance in bonding and financing, financial management, accounting, construction management and technical assistance.

(10) The CAC may work with existing service providers in the Pensacola Region:

- a) Develop a technical assistance program to prepare small businesses to compete for specific contracts;
- b) Implement and monitor a supportive services program to develop and improve immediate and long term business management, record keeping and financial and accounting capability for businesses;
- c) Develop and provide services to help businesses improve their long term development, increase their opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve self sufficiency;
- d) Establish a program to assist new, start-up or emerging businesses; and
- e) Assist businesses in developing their capability to utilize emerging technology and conduct business through electronic media.

(12) The Developer may create and maintain records on all subcontractor participation on Developer projects. The CAC may perform investigations regarding the actual utilization of subcontractors during the term of the contract as compared with the anticipated use of subcontractors at the time of bid submittal. Subcontractors shall report the amount of work they anticipate performing on the contract and will report the actual work performed and the amount billed. The

CAC will allow subcontractors to confirm the status of their subcontracts and the payments received thereunder.

(13) The Developer may continue to develop its website to provide general information on doing business with the Developer, on the bid process, on how to get certified, to provide a calendar of events, bid lists, bid status reports, to post solicitation notices, and to provide downloadable forms and other appropriate information. In addition, contractors that have been awarded Developer contracts may be posted on the website to allow businesses to target their marketing efforts to contractors that have worked or are working with the Developer.

(14) The CAC shall establish a mechanism by which a business can file an administrative complaint with the Developer if it believes a prime contractor or the Developer is discriminating in the award of contracts or subcontracts.

(15) The Developer is authorized to offer special ADA Title III training to contractors, subcontractors, the Contractor Academy and other relevant parties regarding the obligations of employers to reasonably accommodate persons with disabilities who seek employment, or who are employed on all jobs relating to the Project.

(16) The Developer is authorized to develop and implement such other and further outreach activities and programs as the CAC may from time to time recommend. From time to time an overall evaluation of the effectiveness of the program with regard to non-discrimination in contracting shall be conducted. Appropriate changes to the measures and programs based on the results of the evaluations will be implemented.

Section 11.0. Prompt payment of subcontractors.

Contractors awarded Community Maritime Park Project contracts shall ensure the prompt and full payment of any subcontractors working on the contract.

(1) Every contract by the Developer for the performance of work shall contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been paid promptly for work and materials from previous progress payments received (less any retainage) by the prime contractor prior to receipt of any further progress payments. A contractor is required to pay subcontractors or suppliers funds due from progress payments within three business days of receipt of payment from the Developer. During the contract and upon completion of the contract, the Developer may request documentation to certify payment to subcontractors or suppliers. This subsection in no way creates any contractual relationship between any subcontractor and the Developer or any liability on the Developer for contractor's failure to make timely payment to the subcontractor.

(2) A contractor who fails to ensure the prompt and full payment of subcontractors shall be subject to the penalties set forth under section 9.0.

(3) In the event of a good faith dispute regarding the amount of payment due to a subcontractor, contractor and subcontractor shall attend a binding arbitration within seven days of notice by the CAC in order to resolve any payment disputes. If the arbitrator determines that the subcontractor is entitled to payment under the

subcontract, contractor shall be required to pay the subcontractor within three business days of the arbitrator's decision. In the alternative, the contractor and subcontractor may utilize alternative dispute resolution mediation mechanism.

(4) The Developer is authorized to make a determination that the interests of the Developer are best served by issuing joint checks to resolve a dispute between vendors and suppliers, prime and subcontractors or sub-consultants, mentors and proteges, or joint venture partners. In such circumstances, the Developer will issue a written request to the chief financial officer to issue two checks, in amounts deemed by the Developer to be equitable. The department of finance will issue these checks exclusively to the Developer.

Section 12.0. Reports by the Developer.

(a) The Developer shall cause to be issued periodically, but no later than 30 days after the effective date of this EBO Program, reports on the operation of this EBO Program. The director shall be authorized to contract with or retain outside consultants or experts in connection with preparing a report and to assist in assembly, review and analysis of data necessary to prepare such report.

(b) The CAC shall provide to such consultants or experts such records in its custody as may be necessary to evaluate the operation of this EBO Program and the extent to which the purposes of this EBO Program are accomplished. A report shall include any findings or recommendations regarding the economic opportunities available to AABEs, HBEs, ABEs, NABEs and FBEs in the Pensacola Region and any recommendations regarding changes to this EBO Program or the enactment of any additional programs, procedures or strategies to better effectuate the purposes of this EBO Program.

(c) Reports issued under this section shall be delivered to the mayor, city council, CMPA and to the Developer, a copy of any report(s) shall be maintained at the CAC for review, and copies shall be made available to the general public upon written request.

Section 13.0. CAC's role in dispute resolution.

All actions taken by the CAC to ensure the fair and equitable treatment of subcontractors or joint venture/mentor protege partners working on Developer projects or seeking work on Developer projects are done pursuant to the Developer' non-discrimination policy and shall not be construed as the CAC taking a position as to the merits of the dispute nor creating any privity of contract between the Developer and any contractor or subcontractor. Further, no contractor working on a Developer project or seeking work from the Developer shall have any claim against the CAC for any actions taken to ensure the fair and equitable treatment of subcontractors working on Developer projects or seeking work on Developer projects.

Section 14.0. Severability of EBO Program Provisions.

If any provision of this EBO Program or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this EBO Program which can be given effect without the invalid provisions or applications, and are to this end declared to be severable.

Section 15.0. Dispute Resolution

In the event of any dispute arising out of or in any related to this Agreement, or any of the transactions or occurrences described or contemplated herein, the parties shall be obligated to follow the following dispute resolution procedures:

(a) First, the parties shall attempt to negotiate a resolution of the dispute by direct discussions. Such negotiation shall be initiated by written demand by one party to another, and the negotiations may occur with or without counsel, as the parties elect.

(b) Second, in the event that any dispute is not resolved under paragraph (a) within three weeks of written demand for negotiation, the parties shall mediate the dispute under the statutes and rules governing mediation in the state of Florida. The parties shall first attempt to select a mediator by mutual agreement. Any mediator selected, or sought to be appointed as provided below, shall be a mediator certified by the Supreme Court of Florida to mediate civil cases. If they cannot do so within thirty (30) business days following the expiration of the ninety (90) day negotiation period, the parties shall petition the then Chief Judge of the First Judicial Circuit of Florida to appoint an appropriate mediator. Such mediation shall be without prejudice to further voluntary or court-ordered mediation in the event it is unsuccessful. The costs of obtaining the appointment of a mediator, the fees and expenses of the mediation, or any other cost or charge of the mediation shall be borne equally by the parties, unless otherwise agreed.

(c) If any dispute is not resolved pursuant to the foregoing process, either party may resort to any other judicial or non-judicial remedies available to them under this Agreement and applicable law.

Section 16.0. Assignments.

The Developer shall not have the right to assign its rights and obligations under this Agreement with the prior written consent of CMPA, which shall not be unreasonably withheld.

Section 17.0. Successors and Assigns.

The terms herein contained shall bind and inure to the benefit of CMPA, and its successors and assigns, and the Developer, and its successors and assigns, except as may otherwise be specifically provided herein.

Section 18.0. Notices.

(a) All notices, demands, requests for approvals or other communications given by either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by courier service, or by hand delivery to the office for each party indicated below and addressed as follows:

To CMPA: Community Maritime Park Associates, Inc.
c/o Lacey A. Collier, Chairman/Trustee
3885 Durango Drive
Pensacola, FL 32504

Copy to: Edward P. Fleming
McDonald, Fleming Moorhead
25 W. Government Street
Pensacola, FL 32502-5813

To Developer: Maritime Park Development Partners, LLC
c/o Jeff Galt
85 NE Loop 410, Ste. 207
San Antonio, TX 78216

Copy to: Mark G. Lawson
Bryant Miller Olive, P.A.
101 N. Monroe Street, Ste. 900
Tallahassee, FL 32301

Copy to: _____

Pensacola, FL _____

(b) Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this

Section 19.1. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective

upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

Section 20.0. Severability.

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

Section 21.0. Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by CMPA, GCAACC and the Developer, and the Agreement, including, without limitation, the Exhibits, shall not be deemed to have been prepared by CMPA or the Developer, but by all equally.

Section 22.0. Venue; Submission to Jurisdiction.

(a) For purposes of any suit, action, or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Escambia County, Florida.

(b) Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Escambia County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

Section 23.0. Complete Agreement; Amendments.

(a) This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

(b) Any provisions of this Agreement shall be read and applied *in para material* with all other provisions hereof.

(c) This Agreement cannot be changed or revised except by written amendment signed by

all parties hereto.

Section 24.0. Captions.

The article and section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

Section 25.0. Holidays.

It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed in the City, it shall be postponed to the next following business day.

Section 26.0. Exhibits.

Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement.

Section 27.0. Not an Agent of City.

During the term of this Agreement, the Developer hereunder shall not be an agent of the City, with respect to any and all services to be performed by the Developer (and any of its agents, assigns, or successors) with respect to the Project.

Section 28.0. Recording of Agreement.

CMPA and the Developer agree that this Agreement shall be recorded in the public records of Escambia County, Florida, as soon as possible after execution thereof. CMPA shall pay the cost of such recording.

Section 29.0. Technical Amendments; Changes.

In the event that due to minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to changes resulting from technical matters arising during the term of this Agreement, the parties agree that amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances which do not change the substance of this Agreement may be made and incorporated herein. In addition, as mutually agreed by the parties, this Agreement (including the Project design and layout) may be amended and restated to more

effectively address the maturation of the Project, market conditions, challenges and opportunities, performance by the Project participants, and other extraneous factors.

Section 30.0. Term; Agreement Expiration Certificate.

(a) The term Agreement shall run concurrently with the – the Development Agreement (Community Maritime Park Project) and the Master Sub-Lease (Community Maritime Park) executed on _____, 2009 between CMPA and the Developer – which set forth CMPA’s and the Developer’s respective duties and responsibilities pertaining to the development of real property for a project known and referred to as the Community Maritime Park or the Project (as hereinafter defined) and terminate on the date specified in the Agreement Expiration Certificate as described below.

(b) Upon completion of the term of this Agreement, all parties hereto shall execute the Agreement Expiration Certificate substantially in the form attached as Exhibit “B” hereto. The Agreement Expiration Certificate shall constitute (and it shall be so provided in the certificate) a conclusive determination of satisfactory completion of all obligations hereunder and the expiration of this Agreement.

(c) In the event of any dispute as to whether any party is required to execute the Agreement Expiration Certificate, the dispute shall be resolved as provided in Section 15.0.

Section 31.0. Effective Date.

Upon execution of this Agreement (and such of the Exhibits as are contemplated to be executed simultaneously with this Agreement by the authorized trustees of CMPA and by authorized representatives of the Developer following approval hereof by CMPA and the Developer, this Agreement (and any executed Exhibits) shall be in full force and effect in accordance with its terms and the Effective Date shall be the first day of the month in which all parties have executed same.

Section 32.0. Approvals Not Unreasonably Withheld.

The parties hereto represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals.

[SIGNATURES ON FOLLOWING PAGES]

Executed and delivered
in the presence of:

COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida not-for-profit
corporation

By: _____
Lacey A. Collier, Chairman/Trustee

(Print Name)

(Print Name)

(witnesses as to Lacey A. Collier)

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ___ day of , 2009, by
Lacey A. Collier, chairman and trustee of Community Maritime Park Associates, Inc., a
Florida not-for profit corporation. He is personally known to me or has produced a valid
driver's license as identification.

(SEAL)

Printed/Typed Name:
Notary Public-State of Florida
Commission Number:

Executed and delivered
in the presence of:

MARITIME PARK DEVELOPMENT PARTNERS, LLC, a Florida limited liability company

By: _____
Jeff Galt, [title]

(Print Name)

(Print Name)

(witnesses as to _____)

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me this ___ day of , 2009, by Jeff Galt, of Maritime Park Development Partners, LLC, a Florida limited liability company. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)

Printed/Typed Name:
Notary Public State of Florida
Commission Number:

MARITIME PARK DEVELOPMENT PARTNERS, LLC, a Florida limited liability company

By:
_____, [title]
(Print Name)

(Print Name)

(witnesses as to _____)

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

DRAFT

EXHIBIT "A"

**Project Site
Legal Description**

THAT PORTION OF THE WATERFRONT TRACT, CITY OF PENSACOLA, ESCAMBIA COUNTY, FLORIDA, ACCORDING TO THE OFFICIAL MAP OF WATERFRONT DRAWN BY WILLIAM GALT CHIPLEY IN 1889 AND REVISED IN 1890, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF MAIN STREET (R/W VARIES), BEING 210 FEET WEST OF THE WEST RIGHT OF WAY LINE OF DEVILLIERS STREET (50' R/W); THENCE SOUTH AND PARALLEL TO SAID DEVILLIERS STREET TO THE POINT OF INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH FACE OF A CONCRETE SEAWALL; THENCE EASTERLY ALONG SAID WESTERLY EXTENSION AND ALONG SAID SEAWALL, TO THE POINT OF INTERSECTION WITH THE EASTERLY EXTENSION OF SAID SEAWALL AND SOUTHERLY EXTENSION OF THE WEST LINE OF BLOCK 3, OLD CITY TRACT; THENCE NORTHERLY ALONG SAID SOUTHERLY EXTENSION TO THE POINT OF INTERSECTION WITH THE MEAN HIGH WATER LINE OF PENSACOLA BAY; THENCE EASTERLY ALONG SAID MEAN HIGH WATER LINE TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE WEST LINE OF PARCEL "C", PORT ROYAL PHASE II, AS RECORDED IN PLAT BOOK 15, PAGE 98, OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG SAID SOUTHERLY EXTENSION OF SAID WEST LINE OF SAID PARCEL "C" TO THE NORTH LINE OF SAID PARCEL "C"; THENCE EASTERLY ALONG SAID NORTH LINE OF SAID PARCEL "C" TO THE WEST RIGHT-OF-WAY LINE OF PORT ROYAL WAY (PRIVATE DRIVE), AS RECORDED IN O. R. BOOK 1749, PAGE 253-254, OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG SAID WEST LINE TO THE SOUTH RIGHT-OF-WAY LINE OF SAID MAIN STREET; THENCE WESTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE OF MAIN STREET TO THE POINT OF BEGINNING.

SUBJECT TO AN EXISTING DRAINAGE AND PUBLIC RIGHT-OF-WAY EASEMENT IN THE APPROXIMATE LOCATION OF THE SOUTHERLY EXTENSION OF THE SPRING STREET RIGHT-OF-WAY (R/W VARIES) AS LOCATED NORTH OF MAIN STREET.

EXHIBIT "B"

**Community Maritime Park
Agreement Expiration Certificate**

Pursuant to Section 18.17 of the Development Agreement (Community Maritime Park) between Community Maritime Park Associates, Inc. ("CMPA"), and Maritime Park Development Partners, LLC (the "Developer") with an Effective Date of January __, 2009 (the "Contractor's Academy/Equal Business Opportunity Program Agreement"), the Developer does hereby certify to CMPA that the Contractor's Academy/Equal Business Opportunity Program Agreement has expired in accordance with its terms and does hereby request the CMPA agree to such certification.

Accepted and Agreed to by:

**COMMUNITY MARITIME PARK ASSOCIATES, INC.
a Florida not-for-profit corporation**

By: _____
Authorized Representative

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me this __ day of , 200_, by _____, of Community Maritime Park Associates, Inc., a Florida not-for-profit corporation. He/she is personally known to me or has produced a valid driver's license as identification.

(SEAL)

Printed/Typed Name: _____
Notary Public-State of Florida
Commission Number:

Accepted and Agreed to by:

**MARITIME PARK DEVELOPMENT PARTNERS, LLC,
a Florida limited liability company**

By: _____
Authorized Representative

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

The foregoing instrument was acknowledged before me this __ day of , 200_ , by _____ , of Maritime Park Development Partners, LLC, a Florida limited liability company. He/she is personally known to me or has produced a valid driver's license as identification.

(SEAL)

Printed/Typed Name: _____
Notary Public-State of Florida
Commission Number: _____

DRAFT