

COMMERCIAL LEASE shall mean a lease given from the City for dock space and any structure for the purposes of operating a Commercial Operation by a business entity for profit.

DOCKAGE is the charge assessed against a vessel(s) for berthing at a wharf, pier, slip, bulkhead, structure or bank or for mooring to a vessel so berthed.

DUMP STATION shall mean that area that contains a sanitary sewer for which to dump/pump human waste from the vessel to a waste treatment facility.

ENVIRONMENTAL ORDINANCE is the ordinance enacted by the City regulating the dumping and discharge of hazardous wastes, wastes in general, trash, refuse, bilge water, oil, fuel and etc. and also deals with the abandonment of property and etc. within the City and on the waters of the City.

HARBOR BOUNDARY is that area south of West Bay Avenue from the 2nd Street Bridge to Main Street including that portion that extends westward referred to as "the second street extension" and the portion of West Bay Avenue right of way that is south of the pavement. Also included is that area south of East Bay Avenue from and including Main Street to South Pine Street including the East Bay Avenue right of way south of the pavement. Also included is that roadway that branches eastward from South Pine Street intersecting with the street referred to as the Orange Street Extension and includes the east side of Orange Street Extension to and including the area referred to as "the harbor turn-around", including the jetty extending from the harbor turn-around westward to the jetty end.

HARBOR FACILITY/FACILITIES are all wharves, dock, slips, stalls, sheds, warehouses, lands, structures, freight handling machinery, equipment and appliances of all kinds situated within the area covered by the scope of this ordinance.

HARBOR MASTER is the person designated by the City of Seadrift to implement all aspects of this ordinance and includes his assistant or representative.

LESSEE shall mean a person, owner, agent, master or operator that holds property under a lease at the Municipal Harbor.

LESSOR shall mean the City as conveyor of property at the Municipal Harbor by a lease.

LIVING ON BOARD shall mean the act of living on a vessel and occupying it as living quarters. (reference Environmental Ordinance)

NO WAKE ORDINANCE means the ordinance regulating wakes, approach distances to fisherman and swimmers, restricted areas and etc.

OPERATE means to navigate or otherwise use a vessel.

SANITARY FACILITY shall mean equipment installed on a vessel to contain all human waste associated with daily living that is USCG approved and certified for that purpose. (reference Environmental Ordinance)

SEAFOOD shall mean fish, shrimp, crab, oysters and etc.

SHALL in this document means a mandatory obligation.

STALL means a stall, space or other area of the Harbor for the docking of one vessel.

STALL LEASE means a lease given from the City for a stall and any structure for purposed of operating a vessel to catch seafood for the purposes of selling to a Commercial Operation.

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SUB-LEASE means a lease given by the current Lessee to another Lessee for a fee. (see section 13)

TARIFF is the fee assessed against the cargo or vessel on all cargo passing or conveyed over, onto wharves, bulk-head, and stalls or between vessels when moored in the Municipal Harbor or adjacent Waters of the City. Other terms may be Oyster sack fee or other seafood related fee. (see section 1b 3)

TRAILERABLE VESSEL means any vessel that is normally, and can be readily transported by a trailer and can be routinely launched and/or retrieved at a boat launch.

VESSEL means any water craft used or capable of being used for transportation on water whether commercial or recreational.

WAITING LIST means a list maintained by the City of Businesses and/or individuals that are desiring a Commercial Lease or a Stall Lease. (see section 1a 2)

WATERS OF THE CITY means all the water located within the City Limits.

WAVES means, for purposes of this ordinance, a commercial facility that is used to haul out (remove from the water) any vessel for repairs and maintenance that is not a Trailerable Vessel.

WHARF is any wharf, pier, harbor, landing or other stationary structure to which a vessel may make fast or which may be utilized in the transit or handling of any cargo or seafood and shall include other harbor facility area alongside of which vessels may lie or which are suitable for and are used in the loading, unloading, assembling, distribution or handling of any cargo or seafood.

WHARFAGE is the fee assessed against the cargo or vessel on all cargo passing or conveyed over, onto wharves, bulk-head, and stalls or between vessels when moored in the Municipal Harbor or adjacent Waters of the City. Other terms may be Oyster sack fee or other seafood related fee.

SECTION 1a 2: Waiting List

A. Two (2) waiting lists are to be maintained by the City:

- 1) Stalls
- 2) Commercial Leases

B. The two (2) waiting lists shall consist of those businesses or individuals requesting a Stall Lease and/or a Commercial Lease as defined herein, and shall be offered on a first come basis as determined by their position on the lists.

- 1) Position on the two (2) lists shall be ordered by date of request to be put on the waiting list with the oldest date at the top and then next oldest and etc.
- 2) When a Stall or Commercial Lease is available for leasing, the appropriate waiting list shall be consulted and the lease offered to the business or individual at the top of the list.
 - a. If the business or individual refuses that particular Stall or Commercial Lease it shall be offered to the next business or individual on the list and on down as the case may be.

- b. The order of the business or individual on the two (2) waiting lists shall be maintained in the order they develop except that when a business or individual accepts a lease they shall be removed from the list.
 - ◊ If the business or individual then wishes to be placed again on the list, they will be placed on the list as of the date of this request, not the date of their previous request.
 - ◊ In no case will a single commercial/business entity or individual be allowed to obtain more than two (2) Commercial Leases, except by specific Council approval/variance.
- 3) When offered a stall and/or commercial lease area, by certified mail, return receipt, the individual/business shall have 15 days from date of notice in which to notify the City of acceptance or rejection.
 - a. If rejected, the stall or commercial lease area shall be offered to the next individual on the waiting list.
 - b. If no response within the timeline specified in (3) above, it shall be considered a rejection and the next individual/business shall be notified by phone/email and offered the stall or commercial lease area.
 - c. Appendix E shall be amended with space allowed for collection of phone number and mailing addresses.
 - d. Appendix F shall be created, being the official form letter to send certified, return receipt.

SECTION 4b-3: Wharfage Tariff

The City reserves the right to assess Wharfage Tariff fees and periodically to adjust fees on all cargo passing or conveyed over, onto wharves, bulk-head, and stalls or between vessels when moored in the Municipal Harbor or adjacent Waters of the City. Other terms may be Oyster sack fee or other seafood related fee. (see appendix B)

SECTION 4: Lease

- A. The City of Seadrift hereby leases to the LESSEE named in the Lease agreement the right to moor a vessel in the listed Slip leased or conduct a seafood business on the premises leased, for the term stated and for the amount of the lease payment stated in the lease subject to all other terms and conditions stated in this Agreement. If more than one person or entity is named above as LESSEE, each shall be jointly and severally, collectively and individually, bound under this Agreement and the term "LESSEE" as used in this Agreement shall apply individually and collectively to all persons so listed.
- B. Stalls or Commercial Leases cannot be transferred or sold to another person, business or other entity. When LESSEE terminates lease for any reason whatsoever this agreement becomes null and void and the leased facility returns solely to the City of Seadrift and will be offered for lease to

other persons, businesses or entities on a first come first served basis from an active list maintained by the Harbor Master. When LESSEE of a commercial lease terminates a lease for any reason it becomes that LESSEE'S responsibility to:

1. Remove and/or sell all vessel(s), buildings, equipment and machinery, that was not on leased premises when LESSEE originally signed lease, within ninety (90) days from date of termination.
 - a. Any of the above property that existed when original lease was signed must remain on the premises when LESSEE vacates premises.
 - b. **Any of the above property, equipment, machinery and etc. that remains after ninety (90) days of termination becomes the property of the Lessor.**
 2. Repair any damage done to the LESSOR'S premises, removing equipment, machinery and/or buildings.
 3. LESSEE will continue to be responsible for the lease payment until (B) 1 & 2 are satisfied.
- C. Any remaining lease monies will be refunded to the LESSEE ten (10) business days after Harbor Master verifies that Lessee has completed Section 2 A & B above. Ninety (90) days from date of lease termination all the vessel(s), property and equipment remaining will become the property of the City of Seadrift unless prior arrangements have been made with Harbor Master and approved by the Seadrift City Council.
- D. Commercial LESSEES shall be allowed to sell the improvements they constructed or purchased and/or installed while leasing the location or the improvements they purchased from the previous lease holder when they terminate their lease. Improvements that were in place when the current LESSEE leased the premises from the City and did not purchase from the previous LESSEE are considered City Property and cannot be sold. Improvements are defined as: Structures, Equipment, Machinery and Customer Base.
1. HOWEVER, before offering the above for sale the current lease holder must notify the city of their intent to terminate their lease, ~~and also receive City Council approval~~ **is required** before selling any improvements they constructed or purchased from a previous lease holder and also provide City Council with the asking price.
 2. The lease and improvements offered for sale must be offered on a first come basis to the next person/s on a waiting list maintained by the City, at the stated price, before the lease and improvements can be offered to anyone not originally on the list.
 3. An excessive price may not first be asked just to weed out the waiting list and then drastically lowered for someone not originally on the waiting list.
- E. Individual slips/stalls cannot be used for any manner of commercial operations.

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- F. If it is determined that a Commercial Lease, at the Seadrift City Harbor, is being used as a docking space ONLY for LESSEE'S vessel(s) or vessel(s) under the lessee's control, will constitute a breach of contractual agreement and result in default under this ordinance (agreement).
- G. Environmental Notice (See APPENDIX A)
- H. Oyster/Seafood Tariff & Rates (See APPENDIX B)
- I. Slip/Stall Lease Agreement (Non-Commercial) (See APPENDIX C)
- J. Commercial Harbor Lease Agreement (See APPENDIX D)

SECTION 5: Managing LESSEE & Liability (Commercial Leases)

- A. If more than one person or entity is named as LESSEE, all LESSEES hereby appoint one person or entity as their MANAGING LESSEE, agent and attorney-in-fact to manage the vessel/facility and to act for all LESSEES in all matters and decisions under this Agreement and to receive all notices from the City on behalf of all LESSEES. All LESSEES agree to be bound by the actions and decisions of the MANAGING LESSEE concerning all matters arising under this Agreement or pertaining to the vessel/facility.
- B. LESSEE shall maintain sufficient liability insurance in the amount of at least \$500,000. LESSEE shall furnish an endorsement naming the City of Seadrift as an additional insured.

SECTION 6: Designation of Local Agent

- A. If LESSEE had designated a Local Agent in the lease, LESSEE hereby grants to that Agent full authority on behalf of LESSEE to receive any notice from the City and to manage the vessel(s), including but not limited to actions and decisions which the Local Agent or City deem necessary to protect the public, the City's facilities, or the physical integrity of the vessel, to secure it from water and weather, to prevent it from sinking, and to make such emergency repairs as the City directs or the Local Agent deems necessary. The Local Agent is hereby granted the power to incur expenses, and to grant liens upon the vessel to secure such expenses, necessary to accomplish any such actions or purpose.
- B. The Local Agent shall not have the power to terminate or change the term of lease without further, specific authorization from LESSEE. LESSEE may terminate the Agent's authority or designate a substitute agent upon written notice to the City.

SECTION 7: Payment

- A. The term of a Commercial Harbor Lease Agreement is for a period of one (1) year with the understanding that the LESSOR has the option each year to either increase or decrease, the lease price. City Council shall have the sole responsibility of granting a commercial lease for a longer term than one (1) year. The lease payment shall be paid in full at the time of lease signing. At the end of the lease year the LESSEE will have the option to renew the lease for an additional year upon approval of the "Certification of Condition and Account of Leased Property" by the Harbor

Master. LESSEE agrees to pay any fees charged by the City promptly after receiving notice of incurred or increased fee amounts.

- B. Terms for Individual stall/slip leases vary from one week to one year to accommodate the tourist trade.

SECTION 8: Vessel Authorization

- A. This agreement allows the mooring of only the vessel(s) identified in this agreement and any additional or substitute vessel approved in writing by the Harbor Master on an addendum to this agreement. Every such vessel approved shall be subject to the terms and conditions of this agreement, and any reference to a vessel in this agreement shall include every such additional or substitute vessel. The LESSEE shall not use the mooring area indicated for any boat or vessel other than those authorized.
- B. Proof of current Federal Documentation and current State Registry shall be a prerequisite to authorization for mooring of any vessel in the City Harbor facilities. Continuous appropriate and current federal documentation and state registry is also a condition for this agreement to continue to be valid. Any vessel moored at Lessee's stalls or bulkhead found not to be properly documented or registered may, at the sole discretion of the Harbor Master is subject to immediate expulsion from the City Harbor facilities and Harbor Master may terminate this agreement.
- C. Upon notification the Lessee will have thirty (30) days to properly document and register the vessel(s) or remove the vessel(s) from the harbor. If after thirty (30) days the vessel(s) is not properly documented and registered or removed the City shall follow the paragraph titled "SALE OR OTHER DISPOSITION OF VESSELS" unless prior arrangements have been made and approved by Seadrift City Council.

SECTION 9: Responsibility for Vessel

This is a lease of space only and includes the stall (private lease) or commercial lease (frontage/linear footage AND includes an area of responsibility as defined by the City, and The City assumes no custody, control or responsibility for LESSEE'S vessel(s) or any temporary property placed upon the City's premises. LESSEE shall at all times be responsible for the care, maintenance and adequate and safe mooring of the vessel(s). City personnel may occasionally observe that the vessel's mooring is not adequate or that the vessel's condition is defective and may adjust and add mooring lines or take other action as deemed necessary by the Harbor Master, or provide advice and instructions concerning such conditions, but in no event shall the City thereby assume any responsibility for the vessel(s) or its condition nor any liability for the timeliness, performance, non-performance, correctness or adequacy of such action or advice nor the consequences of vessel neglect thereof.

SECTION 10: Use of Premises

- A. To keep a Commercial lease, the LESSEE must buy/sell seafood from each of their commercial lease areas (if they have more than one), at least during one season per fiscal year. The City's fiscal year begins October 1 and runs through the following September 30th.

1. If a Commercial LESSEE does not buy/sell seafood **from each of** their commercial leased areas at least during one season per fiscal year that lease shall be cancelled.
 2. Lease #102, 808 S. Main, currently "Dockside" is exempt from this requirement due to the nature of the business, **as long as it remains in operation and utilized commercially.**
 3. Lease #78, 116 E. Bay, currently the "Waves" is exempt from this requirement due to the nature of the business, **as long as it remains operational and used.**
 4. Lease 103, 104, 105, 106, 107, 108 & 109 is exempt from this requirement due to the nature of the business.
 5. **If any commercial lease becomes unused by the lessee for a period of 12 months or longer, the lease shall be cancelled and leased to someone else to be operated.**
- B. LESSEE may not use or permit using the harbor premises in any manner that results in the waste of premises or constitutes a nuisance or any illegal purpose.
- C. LESSEES have exclusive use of their leased areas and **areas of responsibility** are entitled to collect any and all fees levied on others for use of the premises for whatever purposes, as long as those purposes are in agreement with their particular lease.
1. If others, using the LESSEE's premises for authorized purposes, do not pay the LESSEE the levied fee for their use of the premises (ie: boat launching/retrieval, purchasing bait **and haul-out on the waves**, and etc.) they may be charged with theft of services within the confines of this ordinance.
 2. To file charges in Municipal Court and/or calling for assistance from Law Enforcement, this action will require the LESSEE to collect all pertinent information, such as vehicle identification, license plate, registration, names, etc. then LESSEE may file a complaint with Municipal Court. If calling for a Law Enforcement Officer, any citation, if issued will serve as notice to the Defendant.
 3. Launching and/or retrieving a vessel that is NOT a "trailerable vessel" requires PRIOR permission of LESSEE and Harbor Master.
 - a. Any damages to LESSEE's facilities or to the City's Property shall be reimbursed by the individual(s) that caused the damage. This includes the repair of the damage, whether the damage is to piers, bulkhead, parking areas, structures and etc.
 - b. IF the LESSEE and Harbor Master approve the launch and/or retrieval of a vessel that is not a "trailerable vessel" the LESSEE or City (if not leased to anyone at the current time) shall be paid the normal launching/retrieval fee for use of those premises.
- D. LESSEE and its officers, employees, agents and invitees and vessel(s) doing business with LESSEE shall comply with the City's Environmental Ordinance and all federal and state rules and

regulations with regard to the placing or discharging into harbor waters and waters of the City, garbage, oil, gasoline, human waste, contaminated bilge water, diesel fuel or any other matter covered by such laws or regulations or any and all such authorities.

1. Vessels or facilities discharging from contaminated bilges, fuel tanks, fuel storage tanks, sanitary tanks or any other unauthorized discharge into the harbor or waters of the City shall be prosecuted in accordance with the City's Environmental Ordinance EN-01 AND reported to the United States Coast Guard and/or the General Land Office for prosecution under appropriate federal and state laws and the possibility of declaring the LESSEE'S lease in default and the lease terminated.
- E. Living on board any vessel moored in the City Harbor or on the waters of the City is regulated by the Environmental Ordinance EN-01.
- F. LESSEE hereby grants permission to the City and its agents (ie: Harbor Master and any Law Enforcement Officer) all access to the premises and to board moored vessels for the purpose of conducting inspections to verify compliance with the terms of this ordinance. The access and boarding rights granted under this ordinance do not require prior notification to the LESSEE by the City.
- G. City's Inspection may include sampling and testing of bilge contents and other items deemed appropriate at the sole discretion of the Harbor Master. It is further understood and agreed that LESSOR expressly reserves the right and privilege to enter upon said premises for the purpose of laying water or sewer or other necessary pipes, lines or wiring under, over or across said premises, and it shall be lawful for LESSOR at reasonable times to enter into and upon same to examine the condition of said premises and the improvements situated thereon.
- H. LESSEE'S vessel or vessels which do business with LESSEE shall not, by virtue of this ordinance, have exclusive use of the public pier or docks to which the vessels are moored. Further, LESSEE agrees to maintain said lease and adjacent area in a condition such that free and safe movement is assured. Any material or items placed in said area that is deemed by the Harbor Master or representative to be unsafe, obstructive or unsightly shall be removed by the LESSEE within 24 hours of notice by the City either verbally or in writing. The 24 hours does not apply to containers of oil and/or hazardous material (opened or sealed). These must be moved immediately upon notification by the Harbor Master. If the LESSEE fails to remove such items as directed, the Harbor Master will have such item(s) removed and disposed of immediately at the LESSEE'S sole risk and expense. Failure to remove any of the items requested by the Harbor Master shall result in the following:
 1. First notification shall result in a warning to the LESSEE and sole responsibility for any cost associated with removal and disposal of said item.
 2. Second notification shall result in a fine to the LESSEE of up to \$500 and sole responsibility for any cost associated with removal and disposal of said item.
 3. Third notification shall result in the City possibly declaring the LESSEE'S lease in default plus a fine of \$500.
 4. Any violation that is a violation of the Environmental Ordinance EN-01 shall be handled in accordance with EN-01 carrying a fine of up to \$1,000 per occurrence.

- I. LESSEE shall keep leased premises and surrounding area **of responsibility** clean of all trash, rubbish, weeds, junk, hazardous material and debris of any kind or nature during the entire year. LESSEE shall not place any waste material, junk, hazardous material or debris of any kind in or upon said premises or on other lands or water near or adjacent to said leased premises. LESSEE shall be responsible for all trash and debris from any vessel authorized to moor under this ordinance. Failure to keep all areas used under this agreement clean and free of trash, rubbish, weeds, junk, hazardous material or other debris and in accordance with Environmental Ordinance EN-01 will constitute a condition of default under the terms of this ordinance.
- J. LESSEE shall be responsible for upkeep of parking areas, unloading/loading areas in regard to filling potholes, grading and/or other maintenance of parking and drive areas within the lease area of responsibility as well as repair and upkeep of bulk-heading damaged during use and parking and unloading.
- K. LESSEE or the LESSEE'S agents, employees, patrons, guests, licensees or invitees shall take all precautions necessary to prevent erosion of the banks of the Harbor from wheel wash of LESSEE'S vessel or vessels under LESSEE'S control. The motor of the vessel shall not be operated in gear when the vessel is moored to the dock. In the event of damage or destruction to the slip, piers, pilings or docks by LESSEE or vessels under LESSEE'S control, LESSEE shall within ten (10) days begin replacement or repairs to the LESSOR'S property and with the written consent of the City of Seadrift City Council, repair said damage or destruction to the satisfaction of the Harbor Master and Seadrift City Council at the sole cost of the LESSEE. In the event the LESSEE should fail to begin repairs or replace LESSOR'S damaged or destroyed property within ten (10) days, LESSOR shall notify LESSEE of damages or destruction by certified mail. Upon LESSOR receiving of certified mail return receipt card, verifying that LESSEE has received the written notice to make/begin making repairs or replace damaged or destroyed property, the LESSEE will have an additional ten (10) days to notify LESSOR of what action LESSEE will be taking to repair damages or replace destroyed property.
- L. If LESSEE fails to respond within the fifteen (15) days after LESSOR receives the certified mail return receipt card the LESSOR shall make such repairs or replacements at LESSOR'S sole discretion as deemed necessary and LESSEE shall pay all costs associated with repairs and/or replacement within fifteen (15) days after notification by the LESSOR of said costs.
- M. LESSEE has the right of placing and erecting such buildings and improvements on said premises as shall be necessary and reasonable in use of the lease, provided LESSEE obtains the required permits from the City **and/or any State or Federal entity as needed**. Any structure erected or moved onto the premises must be approved by the LESSOR (through proper permitting) and LESSOR has the right to determine the suitability of said structure in relation to existing structures in the leased area. LESSEE retains the right of removing all buildings and improvements on the premises owned by the LESSEE at the expiration of this lease, or any extension thereof, provided LESSEE shall not be in default in the performance of any covenants of said term of any extension thereof, and all damages caused to said premises by such removal shall be repaired by LESSEE on or before expiration of said term.
- N. No more than two (2) tractor trailer trucks or combination thereof will be allowed at any one of LESSEE'S **commercial** premises during any loading or unloading operations at any time day or night. All LESSEES' will be expected to abide by this regulation unless the Harbor Master allows

an exception. First violation will result in a warning from the Harbor Master. The second violation will result in termination of the lease without any appeal.

- O. All forklifts used on and around the harbor shall have soft tires. Hard type tires, of the type normally used ONLY on concrete surfaces are unacceptable and shall not be allowed – due to the damage the tires cause to asphalt surfaces.
- P. Vehicular parking at the harbor will be as directed by the Harbor Master based on the number of vehicles and congestion taking place.
 - 1. The Harbor Master, Law Enforcement and any other Elected Official of the City may restrict traffic to only harbor traffic, restricting non-harbor traffic from entry into the harbor.
- Q. Trailers, cargo trailers, refrigeration trailers, token type trailers, ~~temporary buildings and containers~~ used only during oyster **one seafood** season shall be ~~kept road worthy at all times~~ **be removed at the end of the season.**
 - 1. IF the above are kept in place for longer periods and other seasons, in addition to oyster seasons, they ~~SHALL be tied down to meet wind storm specifications due to the high probability of hurricanes hitting the gulf coast region or removed until next season.~~ **they shall be kept road worthy and licensed and removed PRIOR to arrival of a hurricane or severe tropical storm.**
 - 2. **Portable buildings and containers used year-round shall be tied down in a manner acceptable to the building officials and/or harbor master.**

SECTION 11: Utilities & Sanitation

- A. LESSEE is responsible for all costs associated with utility (water, sewer, electricity and telephone) installation, hookups and monthly fees.
- B. Commercial leases are required to furnish dumpsters of at least 6-cubic yard size or larger for **each** commercial lease.
- C. **Commercial leases are required to furnish rest room facilities at each commercial leased area either through fixed facilities or porta-potties.**

SECTION 12: Unleased Stalls, Unleased Commercial Leases and Public Parking

- A. **Unleased Stalls and Commercial Leases are under the full control of the City until such time they are leased.**
- B. **Unleased Areas and Open Public Spaces, not controlled by any Lessee and used for public parking may have parking fees assessed with the issuance of parking permits at the discretion of City Council.**
 - 1. **IF City Council initiates a parking fee and permit system for Public Parking within the Harbor or adjacent Street Right of Ways signs shall be posted.**

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2. Violations of non-payment of parking fee and/or not displaying parking permit) may be issued parking citations.
3. Any parking fee/permit system authorized by City Council will begin each fiscal year on October 1st and renewable during October of each year.

C. Penalty:

SECTION 13: Laws and Ordinances

LESSEE shall promptly execute and fulfill all ordinances, rules and regulations of the City of Seadrift, Texas applicable to said premises, and all orders and requirements imposed by the State Board of Health, Police Departments, State Governments and Federal Governments during the said term of this lease. Correction, prevention and abatement of nuisances in, upon or connected with said premises during the term of this lease, or any extension thereof, shall be at LESSEE'S own cost and expense.

SECTION 14: Indemnification and Release

LESSEE further promises and agrees to release, indemnify, defend and hold harmless LESSOR from any and all damages, losses, claims, demands, expenses, attorney's fee, costs and losses of any nature whatsoever arising by virtue of any enforcement of any of the terms of this agreement and from any and all causes of action, claims, demands, expenses, or damages that may be asserted against LESSOR by reason of the use of the lease, its adjacent dock, pier, bulkhead or other property or LESSOR by LESSEE, its agents, employees, patrons, guests, invitees or licensees.

SECTION 15: Environmental Compliance

- A. LESSEE shall be in compliance with the City's Environmental Ordinance EN-01 that governs environmental requirements and compliance within the City and on the waters of the City.
- B. LESSEE must promptly supply the City with copies of all notices, reports, submissions and correspondence from or to any governmental agency concerning any violations, alleged violations or compliances with any regulation or law including by not limited to commercial fishing and game laws, coast guard regulations and environmental matters or hazardous material laws.
- C. LESSEE is responsible for the payment of any clean up costs necessary for compliance with hazardous material laws that arise because of any act of the LESSEE or the LESSEE'S agent, employee's, patrons, guest, licensees or invites or caused by the operation or mooring of any vessel which came to be at the LESSEE'S stall through this agreement or by the action, permission or acquiescence of the LESSEE, including costs of any action deemed necessary by the Harbor Master and performed to protect the environment, City tenants or surrounding property and citizenry.

SECTION 16: Sub-Leasing

- A. A commercial lease cannot be subleased without full approval of the Seadrift City Council.

- B. A slip/stall may be sublet with prior approval of the Harbor Master for a period not to exceed one (1) month.
- C. A sublease of a slip/stall for more than one (1) month requires approval of the Seadrift City Council.

SECTION 17: Vessel Operation and Liability

- A. While in or upon City property or waters of the City, LESSEE shall operate, or cause to be operated, the vessels in a safe and proper manner, with no wake within the harbor and compliance with all applicable laws, ordinances and governmental rules, regulations and policies now in effect or as hereafter adopted or amended from time to time. Additionally, LESSEE shall comply or cause his agents to comply with any directives, instructions or other requirements of the City Harbor Master given, at his sole discretion, due to operational requirements.
- B. LESSEE shall also comply with all applicable laws, ordinances and governmental rules, regulations and policies with respect to the sale or purchase of seafood products. LESSEE shall obtain all required licenses and certificates with respect to such activities.
- C. The City shall not be liable to the LESSEE or the LESSEE'S agents, employees, patrons, guests, licensees or invitees for any injury or death to any person or persons or for damage to property, caused solely or in part by any act or omission of LESSEE or the LESSEE'S agents, employees, patrons, guests, licensees or invitees. LESSEE further agrees to release, indemnify, defend and hold harmless the City from all such damage or injury, including all costs and expenses, including attorney's fee incurred in defense of any such claim.
- D. LESSEE shall further release the City from any and all claims, losses, damages, demands, expenses, attorney's fee, costs and losses of any nature whatsoever arising directly or indirectly from the use of the lease premises or from any other cause, whether arising from the negligence (sole, joint, concurrent, active or passive or gross negligence) of the LESSEE, the condition of the leased premises, or based on any doctrine of strict liability in tort or violation of the environmental compliance provisions contained herein.

SECTION 18: Lien on Vessel

- A. LESSEE'S of boat stalls only hereby grant the City a lien on the vessel and on all tackle, equipment, fitting, engines, gear, cargo, furniture and other property on the vessel, to secure payment of all amounts owed to the City at any time under this agreement, or on any other basis. If for labor, repairs, services, supplies or materials performed or furnished to the vessel, or for enforcement costs, the lien shall attach to the vessel at the moment that such items are performed or furnished or the cost are incurred by the City; if for lease payments, or any other amounts owed to the City, the lien shall attach to the vessel the moment that the amount becomes due to the City; the lien shall continue until all amounts owed to the City are satisfied.
- B. If LESSEE is more than 30 days delinquent in a lease payment or has failed to pay any other amount owed to the City within the time required under this agreement, the City may enforce the lien by seizing or restraining the vessel, by selling the vessel as provided by this agreement, by filing suit to foreclose on the lien or by any other procedure provided or allowed by law or

this agreement. The City shall be entitled to recover its attorney fees and all other costs incurred in enforcing the lien.

SECTION 19: Default

In addition to other rights the City may have under this Agreement upon default by the LESSEE, if, after 48 hours after City has given notice of default of any term or condition of this agreement, the LESSEE has failed to cure the default, the City may declare this agreement terminated and thereupon LESSEE must immediately vacate the premises and remove from the City's harbor all vessels and other property which the LESSEE has caused or permitted to be in or upon the City's harbor and land.

SECTION 20: Succession

- A. Upon the death of LESSEE, the rights and obligations of this agreement may be assumed temporarily for a period not to exceed the longer of six (6) months or the remainder of the term of this agreement by the personal representative of the LESSEE'S estate or, if no representative has been appointed, by a surviving spouse or heir. Thereafter, assignment of the lease may be made, subject to approval of the City.
- B. A family business, properly documented as a "dba", shall continue under the family operation, but where the "dba" is assumed by a family member not on the "dba", the assignment of the lease may be made subject to the approval of City Council.
- C. The City may terminate this agreement upon ten (10) days notice to the LESSEE upon dissolution or termination of the right to do business of a LESSEE, which is an organization, except that if a receiver of the entity has been appointed, the receiver may assume the rights and obligations of this agreement for a period not to exceed the longer of ninety (90) days or the remainder of the term of this agreement. If the authorized vessel(s) is sold, the LESSEE'S rights may be assigned, subject to approval of the City.

SECTION 21: Notices

- A. Written notice is required to be given within thirty (30) days unless otherwise stipulated herein. All notices by the City shall be deemed delivered when they are delivered in person to LESSEE or LESSEE'S local agent, or to either of their respective addresses, or when delivered or attempted to be delivered at either address by the US Postal Service. Posting notice on the vessel(s) shall not be required in any circumstance; however, if for any reason the City is unable to deliver notice by other methods or deems that other methods may not be effective, the City may choose to give notice by posting the notice conspicuously on the vessel(s) and it shall be conclusively presumed that LESSEE received the notice at the time it was posted on the vessel(s).
- B. Any notice required to be given to the City shall be in writing and shall be effective when addressed and delivered, during business hours, by certified mail return receipt requested or in person to P.O. Box 159, 501 S. Main, Seadrift, Texas 77983.

#3a.

SECTION 22: Re-Assignment

- A. The City reserves the right to reassign vessels to slips/mooring areas and/or reassign slips and mooring areas according to the best use of the harbor as determined by City Council and/or at the request of the Harbor Master.
- B. The City reserves the right to change the designation of areas from "Commercial" to "Stalls" or vice-versa according to the best use of the harbor and the benefit of the City.

SECTION 23: Temporary Relocation

Due to operational or maintenance requirements of the City, occasionally the City may choose to move LESSEE'S vessel(s) temporarily to a slip other than the one assigned under this agreement. When practical in the opinion of the Harbor Master, prior notice will be provided to the LESSEE of activities requiring the relocation of the vessel(s) and the LESSEE will be given the option of relocation the vessel(s) himself. If the Harbor Master decides that prior notice to the LESSEE is not practicable or the City needs to move vessel(s) before effective notice could be given and the vessel(s) will remain displaced twenty-four (24) hours, the City will make a reasonable effort to notify the LESSEE of the relocation of the vessel(s).

SECTION 24: Penalty

It shall be a misdemeanor for any person to perform any act prohibited by the terms of this ordinance, or fail to do any act, which is required, and any such violation shall be punished by a fine not to exceed five hundred dollars (\$500.00). UNLESS stipulated otherwise herein (such as Environmental EN-01 violations). Each day or portion thereof that a violation exists shall constitute a separate offense.

SECTION 25: Severability

If any provision of this agreement is found to be illegal, void or unenforceable the remainder of this agreement shall not be affected thereby and shall remain in full force and effect to the extent consistent with the purpose and objective of the parties in entering into this agreement.

SECTION 26: Waiver

Any waiver by the City of any default or breach of any term of condition by the LESSEE shall not be deemed nor shall constitute a waiver of any further or other default or breach by the LESSEE.

SECTION 27: Termination

- A. LESSEE may terminate lease by giving the City thirty (30) days written notice in advance of termination, provided LESSEE'S rental payments and other charges are not delinquent.
 - 1. This notice shall be hand delivered to or mailed to Seadrift City Hall, PO Box 159, 501 S. Main, Seadrift, Texas, 77983.
 - 2. If hand delivered, it must be stamped "received" with date and time
 - 3. If mailed, it must be by certified mail.

- B. The City in its sole and absolute discretion may terminate this Agreement anytime the Lessee fails to respond within fifteen (15) workdays after receiving written notice of a violation of this ordinance and/or other ordinances of the City and/or applicable federal and state rules and regulations.
1. The City will provide pro-rata refund or lease payments paid in advance, less and amounts owed to the City.

SECTION 28: Survival of Remedies

The City's right to recover any amounts owed by LESSEE, any lien in favor of the City, and other rights and remedies of the City shall survive expiration or termination of this Agreement.

SECTION 29: Cost of Enforcement

Upon default, LESSEE shall be liable for all costs incurred by the City in enforcing the terms of this Agreement, in collecting any monies owed by Lessee, and in enforcing any lien or other remedy, whether or not suit is filed. Such costs may include, but are not limited to, the fees of attorneys, expert witnesses, consultants, trial aids, court reporters, and any other amounts allowed by law or specified elsewhere in this Agreement as recoverable by the City or owed by the LESSEE.

SECTION 30: Sales or Other Disposition of Vessels

In any situation in which the City has the right to sell or dispose of the vessel under the terms of this Agreement or a law, the City shall give LESSEE no less than fifteen (15) days notice of the intended sale. The City may elect to conduct the sale at public auction at a location of the City's choice or by sealed bids, with or without reserve. If the City is unable to sell the vessel, the City may demolish or otherwise dispose of the vessel in a manner deemed appropriate by the City, without liability to LESSEE. All costs of enforcement and sale, demolition, or other disposition shall be borne by LESSEE. Proceeds from the sale will be applied first to the costs of sale, then to the costs of enforcement and all other amounts owed by LESSEE to the City, then to any ad valorem taxes or registration fees owed to the City or other agencies, and then to satisfaction of any other liens against the vessel in favor of third parties of which the City has actual notice. Any remaining proceeds will be sent to Primary LESSEE at the address listed on the Lease Agreement. The costs of sale shall include all costs and expenses incurred by the City in conducting the sale, including, but not necessarily limited to, the costs of notices, appraisals, marine surveys, consultants, towing, storage, auction, attorney's fees, and any preparation of the vessel for sale that the Harbor Master deems appropriate. LESSEE shall remain responsible for any costs in excess of the funds realized through the sale of the vessel or, in the event the City is unable to secure a buyer for the vessel, the LESSEE shall remain responsible for all costs incurred in the removal, storage, attempted sale of, and disposal of the vessel. Upon demolition of the vessel, the City shall have all salvage rights in all equipment, fitting, engines, gears, cargo, and other property on the vessel and LESSEE shall have no further rights or claim thereto.

SECTION 31: Legal Proceedings

Venue of any suit or other action arising from or related to this Agreement or a party's performance hereunder shall be in a State District Court in Calhoun County, Texas.

SECTION 32: Suitability

- A. LESSEE warrants and represents that he has made a full and complete inspection of the leased premises described herein and that the premises are fully acceptable, in condition satisfactory to LESSEE, and fit for LESSEE'S purposes.

SECTION 33: Warranties

- A. There are no understandings, agreements, representations or warranties expressed or implied, verbal or written (including any regarding the merchantability or fitness for particular purpose) not specified herein, respecting this agreement or the premises leased herein. The City expressly disclaims all warranties concerning the condition and value of the premises, and disclaims specifically any warranty of merchantability or fitness for a specific purpose. This Agreement states the entire Agreement and obligation of the parties in connection with this transaction.

SECTION 34: Mooring Outside of Slip

- A. This Agreement allows mooring only in the Slip described above and in any area marked by the Harbor Master for temporary docking in accordance with City Rules, Regulations and Policies. Mooring by Lessee of any vessel at any other location on City property without express and specific approval of the Harbor Master, at his sole discretion, may immediately impound or move the vessel to a storage area, or expel it from the harbor, at the sole risk and expense of the Lessee. Any vessel impounded or moved under terms of this Agreement, and any property on or about the vessel, shall remain in the possession of the City, or be disposed of as outlined in this Agreement, until all monies owed the City by Lessee have been paid and, if applicable, until LESSEE has made arrangements satisfactory to the Harbor Master for the vessel to be removed from the harbor.

SECTION 35: Condition of Vessel

- A. On the date LESSEE requests approval to moor a vessel, LESSEE shall provide proof to the satisfaction of the Harbor Master that the vessel is seaworthy and capable of making headway with its normal source of propulsion. If thereafter the vessel becomes, in the sole opinion of the Harbor Master, not seaworthy or incapable of making headway with its normal source of propulsion, the defective condition must be corrected or the vessel removed from the City's harbors within thirty (30) days after City delivers to LESSEE notice stating the nature of the condition and the action required. If the actions required by the City are not completed or the vessel is not removed within said thirty (30) days, the City may give notice that the LESSEE has failed to comply and that the City may remove the vessel within 24 hours after delivery of the notice. If LESSEE then fails to remove the vessel, the City may remove the vessel and have it impounded or stored at the sole risk and expense of the LESSEE. Stored vessels will be held for thirty (30) days pending payment by LESSEE of all costs incurred by the City, including but not limited to all costs for removal and storage, and all other monies owed to the City by LESSEE under this Agreement or owed on any other basis. If LESSEE fails to pay all monies owed to the City before expiration of the thirty (30) day storage period, the city may sell or dispose of the vessel as provided herein.

#3a.

- B. In the event that any vessel authorized under the Agreement or any unauthorized vessel which came to be at the LESSEE'S Slip through action, agreement, permission or acquiescence by the LESSEE, becomes disabled, damaged, deteriorated, takes on water, sinks, or is in any other condition which, in the sole opinion of the Harbor Master, constitutes an obstruction or hazard to navigation, a nuisance, or a hazard to the environment, other vessels, other property, or the use of the City's property or facilities, channels, submerged lands or other navigable waterways within the City's jurisdiction, LESSEE shall, within the time stated in a notice from the City, take all necessary action as approved by the Harbor Master to abate said nuisance, hazard, or condition at the sole cost and risk of the LESSEE. In addition, if the Harbor Master, at his sole discretion, determines that there is an imminent threat of significant damage or injury posed by the condition of the vessel, the City may take any and all actions that it deems necessary to abate the condition, without prior notice to LESSEE. The City shall have the right, without liability to LESSEE, and LESSEE hereby grants permission to the City, to board the vessel and gain or force access to all areas of the vessel, to inspect items or conditions of concern, to make emergency repairs, to tow the vessel, to ground the vessel, to pump water from the vessel, to raise the vessel if sunken, to remove fuel and all possible contaminants, and to take all other actions which the City determines to be necessary or appropriate in the circumstances. The cost of all such actions and operations shall be the sole responsibility of the LESSEE. LESSEE shall make payment of all such charges within fifteen (15) days after notifications to LESSEE of said costs and expense. The City and the City's agents, employees, and contractors shall have no liability to LESSEE or any other person who owns an interest in the vessel for any damage that is sustained by the vessel or other property on or about the vessel during such actions or operations, regardless of the cause of the damage or injury. Any attempt by LESSEE to interfere with or prevent such actions or operations of the City shall be a breach of this Agreement and an act of default.

SECTION 36: Variance

City Council, at its sole discretion, shall be the only issuer of any variances to this ordinance.

SECTION 37: Effective Date

Effective date of this amended ordinance shall be _____, 2020

PASSED AND APPROVED this _____ day of _____, 2020

Mayor

ATTEST:

City Secretary

(seal)

**CITY OF SEADRIFT
ORDINANCE
HARBOR 01
GENERAL**

As revised 8/10/2011
As Amended 6/5/2012
As Amended 06/04/2013
As Amended 06/09/2020

**AN AMENDED ORDINANCE OF THE CITY OF SEADRIFT, TEXAS,
ESTABLISHING LEASING OF BULK-HEAD AREAS, STALLS AND/OR OTHER
AREAS OF THE MUNICIPAL HARBOR; PROVIDING RULES AND
REGULATIONS WITHIN THE MUNICIPAL HARBOR AREA; PROVIDING FOR
ADMINISTRATION; PRESCRIBING PENALTIES FOR VIOLATION NOT TO
EXCEED FIVE HUNDRED DOLLARS (\$500) UNLESS STIPULATED
OTHERWISE IN REFERENCED ORDINANCES; PROVIDING A SEVERABILITY
CLAUSE REPEALING ANY PART OF ANY ORDINANCE IN CONFLICT;
ESTABLISHING A REPEALING CLAUSE AND AN EFFECTIVE DATE.**

WHEREAS, recognizing that San Antonio Bay is the most valuable resource to the City of Seadrift; and

WHEREAS, the Municipal Harbor has a major impact on the use and continued well-being of that resource;
and

WHEREAS, the City of Seadrift maintains jurisdiction over and control of the use of the Municipal Harbor
and all stalls, docks, landings and appliances of all kinds within the harbor area; and

WHEREAS, shall make and enforce such rules and regulations necessary to promote order and facilitate
traffic, business, secure the safety and ensure environmental rules are established; and

WHEREAS, all parties or persons and all vessels of any kind must conform to the rules and regulations of
the Municipal Harbor; now

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SEADRIFT, TEXAS THAT THE FOLLOWING
ORDINANCE BE AMENDED, REPLACING ANY EXISTING ORDINANCE OR ORDINANCES:**

SECTION 1: Definitions

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

CARGO shall mean seafood or any other bulk material unloaded from a vessel to a Commercial
Operation.

CITY as used in this ordinance shall mean the City of Seadrift, Texas.

COMMERCIAL OPERATION shall mean conducting a seafood business such as buying seafood from
vessels for the purposes of selling seafood at retail and/or wholesale.

COMMERCIAL LEASE shall mean a lease given from the City for dock space and any structure for the purposes of operating a Commercial Operation by a business entity for profit.

DOCKAGE is the charge assessed against a vessel(s) for berthing at a wharf, pier, slip, bulkhead, structure or bank or for mooring to a vessel so berthed.

DUMP STATION shall mean that area that contains a sanitary sewer for which to dump/pump human waste from the vessel to a waste treatment facility.

ENVIRONMENTAL ORDINANCE is the ordinance enacted by the City regulating the dumping and discharge of hazardous wastes, wastes in general, trash, refuse, bilge water, oil, fuel and etc. and also deals with the abandonment of property and etc. within the City and on the waters of the City.

HARBOR BOUNDARY is that area south of West Bay Avenue from the 2nd Street Bridge to Main Street including that portion that extends westward referred to as "the second street extension" and the portion of West Bay Avenue right of way that is south of the pavement. Also included is that area south of East Bay Avenue from and including Main Street to South Pine Street including the East Bay Avenue right of way south of the pavement. Also included is that roadway that branches eastward from South Pine Street intersecting with the street referred to as the Orange Street Extension and includes the east side of Orange Street Extension to and including the area referred to as "the harbor turn-around", including the jetty extending from the harbor turn-around westward to the jetty end.

HARBOR FACILITY/FACILITIES are all wharves, dock, slips, stalls, sheds, warehouses, lands, structures, freight handling machinery, equipment and appliances of all kinds situated within the area covered by the scope of this ordinance.

HARBOR MASTER is the person designated by the City of Seadrift to implement all aspects of this ordinance and includes his assistant or representative.

LESSEE shall mean a person, owner, agent, master or operator that holds property under a lease at the Municipal Harbor.

LESSOR shall mean the City as conveyor of property at the Municipal Harbor by a lease.

LIVING ON BOARD shall mean the act of living on a vessel and occupying it as living quarters. (reference Environmental Ordinance)

NO WAKE ORDINANCE means the ordinance regulating wakes, approach distances to fisherman and swimmers, restricted areas and etc.

OPERATE means to navigate or otherwise use a vessel.

SANITARY FACILITY shall mean equipment installed on a vessel to contain all human waste associated with daily living that is USCG approved and certified for that purpose. (reference Environmental Ordinance)

SEAFOOD shall mean fish, shrimp, crab, oysters and etc.

SHALL in this document means a mandatory obligation.

STALL means a stall, space or other area of the Harbor for the docking of one vessel.

STALL LEASE means a lease given from the City for a stall and any structure for purposed of operating a vessel to catch seafood for the purposes of selling to a Commercial Operation.

SUB-LEASE means a lease given by the current Lessee to another Lessee for a fee. *(see section 13)*

TARIFF is the fee assessed against the cargo or vessel on all cargo passing or conveyed over, onto wharves, bulk-head, and stalls or between vessels when moored in the Municipal Harbor or adjacent Waters of the City. Other terms may be Oyster sack fee or other seafood related fee. *(see section 3)*

TRAILERABLE VESSEL means any vessel that is normally transported and can be readily transported by a trailer and can be routinely launched and/or retrieved at a boat launch.

VESSEL means any water-craft used or capable of being used for transportation on water whether commercial or recreational.

WAITING LIST means a list maintained by the City of Businesses and/or individuals that are desiring a Commercial Lease or a Stall Lease. *(see section 2)*

WATERS OF THE CITY means all the water located within the City Limits.

WAVES means, for purposes of this ordinance, a commercial facility that is used to haul out (remove from the water) any vessel for repairs and maintenance that is not a Trailerable Vessel.

WHARF is any wharf, pier, harbor, landing or other stationary structure to which a vessel may make fast or which may be utilized in the transit or handling of any cargo or seafood and shall include other harbor facility area alongside of which vessels may lie or which are suitable for and are used in the loading, unloading, assembling, distribution or handling of any cargo or seafood.

WHARFAGE is the fee assessed against the cargo or vessel on all cargo passing or conveyed over, onto wharves, bulk-head, and stalls or between vessels when moored in the Municipal Harbor or adjacent Waters of the City. Other terms may be Oyster sack fee or other seafood related fee.

SECTION 2: Waiting List

A. Two (2) waiting lists are to be maintained by the City:

- 1) Stalls
- 2) Commercial Leases

B. The two (2) waiting lists shall consist of those businesses or individuals requesting a Stall Lease and/or a Commercial Lease as defined herein, and shall be offered on a first come basis as determined by their position on the lists.

- 1) Position on the two (2) lists shall be ordered by date of request to be put on the waiting list with the oldest date at the top and then next oldest and etc.
- 2) When a Stall or Commercial Lease is available for leasing, the appropriate waiting list shall be consulted and the lease offered to the business or individual at the top of the list.
 - a. If the business or individual refuses that particular Stall or Commercial Lease it shall be offered to the next business or individual on the list and on down as the case may be.

- b. The order of the business or individual on the two (2) waiting lists shall be maintained in the order they develop except that when a business or individual accepts a lease they shall be removed from the list.
 - ◊ If the business or individual then wishes to be placed again on the list, they will be placed on the list as of the date of this request, not the date of their previous request.
 - ◊ In no case will a single commercial/business entity or individual be allowed to obtain more than two (2) Commercial Leases, except by specific Council approval/variance.
- 3) When offered a stall and/or commercial lease area, by certified mail, return receipt, the individual/business shall have 15 days from date of notice in which to notify the City of acceptance or rejection.
- a. If rejected, the stall or commercial lease area shall be offered to the next individual on the waiting list.
 - b. If no response within the timeline specified in (3) above, it shall be considered a rejection and the next individual/business shall be notified by phone/email and offered the stall or commercial lease area.
 - c. Appendix E shall be amended with space allowed for collection of phone number and mailing addresses.
 - d. Appendix F shall be created, being the official form letter to send certified, return receipt.

SECTION 3: Wharfage/Product/Seafood Tariff

The City reserves the right to assess Wharfage/Product/Seafood Tariff fees and periodically to adjust fees on all such cargo passing or conveyed over, onto wharves, bulk-head, and stalls or between vessels when moored in the Municipal Harbor or adjacent Waters of the City. Other terms may be Oyster Barrel or Sack Tariff Fee or other seafood related tariff fees. *(see appendix B)*

SECTION 4: Lease

- A. The City of Seadrift hereby leases to the LESSEE named in the Lease agreement the right to moor a vessel in the listed Slip leased or conduct a seafood business on the premises leased, for the term stated and for the term stated and for the amount of the lease payment stated in the lease subject to all other terms and conditions stated in this Agreement. If more than one person or entity is named above as LESSEE, each shall be jointly and severally, collectively and individually, bound under this Agreement and the term "LESSEE" as used in this Agreement shall apply individually and collectively to all persons so listed.
- B. Stalls or Commercial Leases cannot be transferred or sold to another person, business or other entity. When LESSEE terminates lease for any reason whatsoever this agreement becomes null and void and the leased facility returns solely to the City of Seadrift and will be offered for lease to other persons, businesses or entities on a first come first served basis from an active list maintained by

the Harbor Master. When LESSEE of a commercial lease terminates a lease for any reason it becomes that LESSEE'S responsibility to:

1. Remove and/or sell all vessel(s), buildings, equipment and machinery, that was not on leased premises when LESSEE originally signed lease, within ninety (90) days from date of termination.
 - a. Any of the above property that existed when original lease was signed must remain on the premises when LESSEE vacates premises.
 - b. Any of the above property, equipment, machinery and etc. that remains after ninety (90) days of termination becomes the property of the Lessor.
 2. Repair any damage done to the LESSOR'S premises, removing equipment, machinery and/or buildings.
 3. LESSEE will continue to be responsible for the lease payment until (B) 1 & 2 are satisfied.
- C. Any remaining lease monies will be refunded to the LESSEE ten (10) business days after Harbor Master verifies that Lessee has completed Section 2 A & B above. Ninety (90) days from date of lease termination all the vessel(s), property and equipment remaining will become the property of the City of Seadrift unless prior arrangements have been made with Harbor Master and approved by the Seadrift City Council.
- D. Commercial LESSEES shall be allowed to sell the improvements they constructed or purchased and/or installed while leasing the location or the improvements they purchased from the previous lease holder when they terminate their lease. Improvements that were in place when the current LESSEE leased the premises from the City and did not purchase from the previous LESSEE are considered City Property and cannot be sold. Improvements are defined as: Structures, Equipment, Machinery and Customer Base.
1. HOWEVER, before offering the above for sale the current lease holder must notify the city of their Intent to terminate their lease. City Council approval is required before selling any improvements they constructed or purchased from a previous lease holder and also provide City Council with the asking price.
 2. The lease and improvements offered for sale must be offered on a first come basis to the next person(s) on a waiting list maintained by the City, at the stated price, before the lease and improvements can be offered to anyone not originally on the list.
 3. An excessive price may not first be asked just to weed out the waiting list and then drastically lowered for someone not originally on the waiting list.
- E. Individual slips/stalls cannot be used for any manner of commercial operations.
- F. If it is determined that a Commercial Lease, at the Seadrift City Harbor, is being used as a docking space ONLY for LESSEE'S vessel(s) or vessel(s) under the lessee's control, will constitute a breach of contractual agreement and result in default under this ordinance(agreement).

- G. Environmental Notice (See APPENDIX A)
- H. Oyster/Seafood Tariff & Rates (See APPENDIX B)
- I. Slip/Stall Lease Agreement (Non-Commercial) (See APPENDIX C)
- J. Commercial Harbor Lease Agreement (See APPENDIX D)

SECTION 5: Managing LESSEE & Liability (Commercial Leases)

- A. If more than one person or entity is named as LESSEE, all LESSEES hereby appoint one person or entity as their MANAGING LESSEE, agent and attorney-in-fact to manage the vessel/facility and to act for all LESSEES in all matters and decisions under this Agreement and to receive all notices from the City on behalf of all LESSEES. All LESSEES agree to be bound by the actions and decisions of the MANAGING LESSEE concerning all matters arising under this Agreement or pertaining to the vessel/facility.
- B. LESSEE shall maintain sufficient liability insurance in the amount of at least \$500,000. LESSEE shall furnish an endorsement naming the City of Seadrift as an additional insured.

SECTION 6: Designation of Local Agent

- A. If LESSEE had designated a Local Agent in the lease, LESSEE hereby grants to that Agent full authority on behalf of LESSEE to receive any notice from the City and to manage the vessel(s), including but not limited to actions and decisions which the Local Agent or City deem necessary to protect the public, the City's facilities, or the physical integrity of the vessel, to secure it from water and weather, to prevent it from sinking, and to make such emergency repairs as the City directs or the Local Agent deems necessary. The Local Agent is hereby granted the power to incur expenses, and to grant liens upon the vessel to secure such expenses, necessary to accomplish any such actions or purpose.
- B. The Local Agent shall not have the power to terminate or change the term of lease without further, specific authorization from LESSEE. LESSEE may terminate the Agent's authority or designate a substitute agent upon written notice to the City.

SECTION 7: Payment

- A. The term of a Commercial Harbor Lease Agreement is for a period of one (1) year with the understanding that the LESSOR has the option each year to either increase or decrease, the lease price. City Council shall have the sole responsibility of granting a commercial lease for a longer term than one (1) year. The lease payment shall be paid in full at the time of lease signing. At the end of the lease year the LESSEE will have the option to renew the lease for an additional year upon approval of the "Certification of Condition and Account of Leased Property" by the Harbor Master. LESSEE agrees to pay any fees charged by the City promptly after receiving notice of incurred or increased fee amounts.

- B. Terms for Individual stall/slip leases vary from one week to one year to accommodate the tourist trade.

SECTION 8: Vessel Authorization

- A. This agreement allows the mooring of only the vessel(s) identified in this agreement and any additional or substitute vessel approved in writing by the Harbor Master on an addendum to this agreement. Every such vessel approved shall be subject to the terms and conditions of this agreement, and any reference to a vessel in this agreement shall include every such additional or substitute vessel. The LESSEE shall not use the mooring area indicated for any boat or vessel other than those authorized.
- B. Proof of current Federal Documentation and current State Registry shall be a prerequisite to authorization for mooring of any vessel in the City Harbor facilities. Continuous appropriate and current federal documentation and state registry is also a condition for this agreement to continue to be valid. Any vessel moored at Lessee's stalls or bulkhead found not to be properly documented or registered may, at the sole discretion of the Harbor Master is subject to immediate expulsion from the City Harbor facilities and Harbor Master may terminate this agreement.
- C. Upon notification the Lessee will have thirty (30) days to properly document and register the vessel(s) or remove the vessel(s) from the harbor. If after thirty (30) days the vessel(s) is not properly documented and registered or removed the City shall follow the paragraph titled "SALE OR OTHER DISPOSITION OF VESSELS" unless prior arrangements have been made and approved by Seadrift City Council.

SECTION 9: Responsibility for Vessel

This is a lease of space and includes the stall (private lease) or commercial lease (frontage/linear footage AND includes an area of responsibility as defined by the City. The City assumes no custody, control or responsibility for LESSEE'S vessel(s) or any temporary property placed upon the City's premises. LESSEE, shall at all times, be responsible for the care, maintenance and adequate and safe mooring of the vessel(s). City personnel may occasionally observe that the vessel's mooring is not adequate or that the vessel's condition is defective and may adjust and add mooring lines or take other action as deemed necessary by the Harbor Master, or provide advice and instructions concerning such conditions, but in no event shall the City thereby assume any responsibility for the vessel(s) or its condition nor any liability for the timeliness, performance, non-performance, correctness or adequacy of such action or advice nor the consequences of vessel neglect thereof.

SECTION 10: Use of Premises

- A. To keep a Commercial lease, the LESSEE must buy/sell seafood from each of their commercial lease areas (if they have more than one), at least during one season per fiscal year. The City's fiscal year begins October 1 and runs through the following September 30th.
1. If a Commercial LESSEE does not buy/sell seafood from each of their commercial leased areas at least during one season per fiscal year that lease shall be cancelled.

2. Lease #102, 808 S. Main, currently "Dockside" is exempt from this requirement due to the nature of the business, as long as it remains in operation and utilized commercially.
 3. Lease #78, 116 E. Bay, currently the "Waves" is exempt from this requirement due to the nature of the business, as long as it remains operational and used.
 4. Lease 103, 104, 105, 106, 107, 108 & 109 is exempt from this requirement due to the nature of the business.
 5. If any commercial lease becomes unused by the lessee for a period of 12 months or longer, the lease shall be cancelled and leased to someone else to be operated.
- B. LESSEE may not use or permit using the harbor premises in any manner that results in the waste of premises or constitutes a nuisance or any illegal purpose.
- C. LESSEES have exclusive use of their leased areas and areas of responsibility are entitled to collect any and all fees levied on others for use of the premises for whatever purposes, as long as those purposes are in agreement with their particular lease.
1. If others, using the LESSEE's premises for authorized purposes, do not pay the LESSEE the levied fee for their use of the premises (ie: boat launching/retrieval, purchasing bait and haul-out on the waves, and etc.) they may be charged with theft of services within the confines of this ordinance.
 2. To file charges in Municipal Court and/or calling for assistance from Law Enforcement, this action will require the LESSEE to collect all pertinent information, such as vehicle identification, license plate, registration, names, etc. then LESSEE may file a complaint with Municipal Court. If calling for a Law Enforcement Officer, any citation, if issued will serve as notice to the Defendant.
 3. Launching and/or retrieving a vessel that is NOT a "trailerable vessel" requires PRIOR permission of LESSEE and Harbor Master.
 - a. Any damages to LESSEE's facilities or to the City's Property shall be reimbursed by the individual(s) that caused the damage. This includes the repair of the damage, whether the damage is to piers, bulkhead, parking areas, structures and etc.
 - b. IF the LESSEE and Harbor Master approve the launch and/or retrieval of a vessel that is not a "trailerable vessel" the LESSEE or City (if not leased to anyone at the current time) shall be paid the normal launching/retrieval fee for use of those premises.
- D. LESSEE and its officers, employees, agents and invitees and vessel(s) doing business with LESSEE shall comply with the City's Environmental Ordinance and all federal and state rules and regulations with regard to the placing or discharging into harbor waters and waters of the City, garbage, oil, gasoline, human waste, contaminated bilge water, diesel fuel or any other matter covered by such laws or regulations or any and all such authorities.

1. Vessels or facilities discharging from contaminated bilges, fuel tanks, fuel storage tanks, sanitary tanks or any other unauthorized discharge into the harbor or waters of the City shall be prosecuted in accordance with the City's Environmental Ordinance EN-01 AND reported to the United States Coast Guard and/or the General Land Office for prosecution under appropriate federal and state laws and the possibility of declaring the LESSEE'S lease in default and the lease terminated.
- E. Living on board any vessel moored in the City Harbor or on the waters of the City is regulated by the Environmental Ordinance EN-01.
- F. LESSEE hereby grants permission to the City and its agents (ie: Harbor Master and any Law Enforcement Officer, or official of the City) all access to the premises and to board moored vessels for the purpose of conducting inspections to verify compliance with the terms of this ordinance. The access and boarding rights granted under this ordinance do not require prior notification to the LESSEE by the City.
- G. City's inspection may include sampling and testing of bilge contents and other items deemed appropriate at the sole discretion of the Harbor Master. It is further understood and agreed that LESSOR expressly reserves the right and privilege to enter upon said premises for the purpose of laying water or sewer or other necessary pipes, lines or wiring under, over or across said premises, and it shall be lawful for LESSOR at reasonable times to enter into and upon same to examine the condition of said premises and the improvements situated thereon.
- H. LESSEE'S vessel or vessels which do business with LESSEE shall not, by virtue of this ordinance, have exclusive use of the public pier or docks to which the vessels are moored. Further, LESSEE agrees to maintain said lease, area of responsibility and adjacent area in a condition such that free and safe movement is assured. Any material or items placed in said area that is deemed by the Harbor Master or representative to be unsafe, obstructive or unsightly shall be removed by the LESSEE within 24 hours of notice by the City either verbally or in writing. The 24 hours does not apply to containers of oil and/or hazardous material (opened or sealed). These must be moved immediately upon notification by the Harbor Master. If the LESSEE fails to remove such items as directed, the Harbor Master will have such item(s) removed and disposed of immediately at the LESSEE'S sole risk and expense. Failure to remove any of the items requested by the Harbor Master shall result in the following:
 1. First notification shall result in a warning to the LESSEE and sole responsibility for any cost associated with removal and disposal of said item.
 2. Second notification shall result in a fine to the LESSEE of up to \$500 and sole responsibility for any cost associated with removal and disposal of said item.
 3. Third notification shall result in the City possibly declaring the LESSEE'S lease in default plus a fine of \$500.
 4. Any violation that is a violation of the Environmental Ordinance EN-01 shall be handled in accordance with EN-01 carrying a fine of up to \$1,000 per occurrence.

- I. LESSEE shall keep leased premises and surrounding area of responsibility clean of all trash, rubbish, weeds, junk, hazardous material and debris of any kind or nature during the entire year. LESSEE shall not place any waste material, junk, hazardous material or debris of any kind in or upon said premises or on other lands or water near or adjacent to said leased premises. LESSEE shall be responsible for all trash and debris from any vessel authorized to moor under this ordinance. Failure to keep all areas used under this agreement clean and free of trash, rubbish, weeds, junk, hazardous material or other debris and in accordance with Environmental Ordinance EN-01 will constitute a condition of default under the terms of this ordinance.
- J. LESSEE shall be responsible for upkeep of parking areas, unloading/loading areas in regard to filling potholes, grading and/or other maintenance of parking and drive areas within the lease area of responsibility as well as repair and upkeep of bulk-heading damaged during use and parking and unloading.
- K. LESSEE or the LESSEE'S agents, employees, patrons, guests, licensees or invitees shall take all precautions necessary to prevent erosion of the banks of the Harbor from wheel wash of LESSEE'S vessel or vessels under LESSEE'S control. The motor of the vessel shall not be operated in gear when the vessel is moored to the dock. In the event of damage or destruction to the slip, piers, pilings or docks by LESSEE or vessels under LESSEE'S control, LESSEE shall within ten (10) days begin replacement or repairs to the LESSOR'S property and with the written consent of the City of Seadrift City Council, repair said damage or destruction to the satisfaction of the Harbor Master and Seadrift City Council at the sole cost of the LESSEE. In the event the LESSEE should fail to begin repairs or replace LESSOR'S damaged or destroyed property within ten (10) days, LESSOR shall notify LESSEE of damages or destruction by certified mail. Upon LESSOR receiving of certified mail return receipt card, verifying that LESSEE has received the written notice to make/begin making repairs or replace damaged or destroyed property, the LESSEE will have an additional ten (10) days to notify LESSOR of what action LESSEE will be taking to repair damages or replace destroyed property.
- L. If LESSEE fails to respond within the fifteen (15) days after LESSOR receives the certified mail return receipt card the LESSOR shall make such repairs or replacements at LESSOR'S sole discretion as deemed necessary and LESSEE shall pay all costs associated with repairs and/or replacement within fifteen (15) days after notification by the LESSOR of said costs.
- M. LESSEE has the right of placing and erecting such buildings and improvements on said premises as shall be necessary and reasonable in use of the lease, provided LESSEE obtains the required permits from the City and/or any State or Federal entity as needed. Any structure erected or moved onto the premises must be approved by the LESSOR (through proper permitting) and LESSOR has the right to determine the suitability of said structure in relation to existing structures in the leased area. LESSEE retains the right of removing all buildings and improvements on the premises owned by the LESSEE at the expiration of this lease, or any extension thereof, provided LESSEE shall not be in default in the performance of any covenants of said term of any extension thereof, and all damages caused to said premises by such removal shall be repaired by LESSEE on or before expiration of said term.
- N. No more than two (2) tractor trailer trucks or combination thereof will be allowed at any one of LESSEE'S commercial premises during any loading or unloading operations at any time day or night. All LESSEES' will be expected to abide by this regulation unless the Harbor Master allows

an exception. First violation will result in a warning from the Harbor Master. The second violation will result in termination of the lease without any appeal.

- O. All forklifts used on and around the harbor shall have soft tires. Hard type tires, of the type normally used ONLY on concrete surfaces are unacceptable and shall not be allowed – due to the damage the tires cause to asphalt surfaces.
 - 1. If the fork truck is used exclusively on concrete surfaces of the lease a hard tired fork-lift may be used, BUT this fork-lift SHALL NOT BE USE ON PAVED AREAS.
- P. Vehicular parking at the harbor will be as directed by the Harbor Master based on the number of vehicles and congestion taking place.
 - 1. The Harbor Master, Law Enforcement and any other Elected Official of the City may restrict traffic to harbor traffic, only, restricting non-harbor traffic from entry into the harbor.
- Q. Trailers, cargo trailers, refrigeration trailers, token type trailers, used only during one seafood season shall be removed at the end of the season.
 - 1. IF the above are kept in place for longer periods and other seasons, in addition to oyster seasons, they shall be kept road worthy and licensed and removed PRIOR to arrival of a hurricane or severe tropical storm.
 - 2. Portable buildings and containers used year-round shall be tied down in a manner acceptable to the building officials and/or harbor master.

SECTION 11: Utilities & Sanitation

- A. LESSEE is responsible for all costs associated with utility (water, sewer, electricity and telephone) installation, hookups and monthly fees.
- B. Commercial leases are required to furnish dumpsters of at least 6-cubic yard size or larger for each commercial lease.
- C. Commercial leases are required to furnish rest room facilities at each commercial leased area either through fixed facilities or porta-potties.

SECTION 12: Unleased Stalls, Unleased Commercial Leases and Public Parking

- A. Unleased Stalls and Commercial Leases are under the full control of the City until such time they are leased.
- B. Unleased Areas and Open Public Spaces not controlled by any Lessee and used for public parking may have parking fees assessed with the issuance of parking permits at the discretion of City Council.
 - 1. IF City Council initiates a parking fee and permit system for Public Parking within the Harbor or adjacent Street Right of Ways signs shall be posted.

2. Violations of non-payment of parking fee and/or not displaying parking permit) may be issued parking citations.
3. Any parking fee/permit system authorized by City Council will begin each fiscal year on October 1st and renewable during October of each year.

SECTION 13: Laws and Ordinances

LESSEE shall promptly execute and fulfill all ordinances, rules and regulations of the City of Seadrift, Texas applicable to said premises, and all orders and requirements imposed by the State Board of Health, Police Departments, State Governments and Federal Governments during the said term of this lease. Correction, prevention and abatement of nuisances in, upon or connected with said premises during the term of this lease, or any extension thereof, shall be at LESSEE'S own cost and expense.

SECTION 14: Indemnification and Release

LESSEE further promises and agrees to release, indemnify, defend and hold harmless LESSOR from any and all damages, losses, claims, demands, expenses, attorney's fee, costs and losses of any nature whatsoever arising by virtue of any enforcement of any of the terms of this agreement and from any and all causes of action, claims, demands, expenses, or damages that may be asserted against LESSOR by reason of the use of the lease, its adjacent dock, pier, bulkhead or other property or LESSOR by LESSEE, its agents, employees, patrons, guests, invitees or licensees.

SECTION 15: Environmental Compliance

- A. LESSEE shall be in compliance with the City's Environmental Ordinance EN-01 that governs environmental requirements and compliance within the City and on the waters of the City.
- B. LESSEE must promptly supply the City with copies of all notices, reports, submissions and correspondence from or to any governmental agency concerning any violations, alleged violations or compliances with any regulation or law including by not limited to commercial fishing and game laws, coast guard regulations and environmental matters or hazardous material laws.
- C. LESSEE is responsible for the payment of any clean up costs necessary for compliance with hazardous material laws that arise because of any act of the LESSEE or the LESSEE'S agent, employee's, patrons, guest, licensees or invites or caused by the operation or mooring of any vessel which came to be at the LESSEE'S stall through this agreement or by the action, permission or acquiescence of the LESSEE, including costs of any action deemed necessary by the Harbor Master and performed to protect the environment, City tenants or surrounding property and citizenry.

SECTION 16: Sub-Leasing

- A. A commercial lease cannot be subleased without full approval of the Seadrift City Council.
- B. A slip/stall may by sublet with prior approval of the Harbor Master for a period not to exceed one (1) month.

- C. A sublease of a slip/stall for more than one (1) month requires approval of the Seadrift City Council.

SECTION 17: Vessel Operation and Liability

- A. While in or upon City property or waters of the City, LESSEE shall operate, or cause to be operated, the vessels in a safe and proper manner, with no wake within the harbor and compliance with all applicable laws, ordinances and governmental rules, regulations and policies now in effect or as hereafter adopted or amended from time to time. Additionally, LESSEE shall comply or cause his agents to comply with any directives, instructions or other requirements of the City Harbor Master given, at his sole discretion, due to operational requirements.
- B. LESSEE shall also comply with all applicable laws, ordinances and governmental rules, regulations and policies with respect to the sale or purchase of seafood products. LESSEE shall obtain all required licenses and certificates with respect to such activities.
- C. The City shall not be liable to the LESSEE or the LESSEE'S agents, employees, patrons, guests, licensees or invitees for any injury or death to any person or persons or for damage to property, caused solely or in part by any act or omission of LESSEE or the LESSEE'S agents, employees, patrons, guests, licensees or invitees. LESSEE further agrees to release, indemnify, defend and hold harmless the City from all such damage or injury, including all costs and expenses, including attorney's fee incurred in defense of any such claim.
- D. LESSEE shall further release the City from any and all claims, losses, damages, demands, expenses, attorney's fee, costs and loses of any nature whatsoever arising directly or indirectly from the use of the lease premises or from any other cause, whether arising from the negligence (sole, joint, concurrent, active or passive or gross negligence) of the LESSEE, the condition of the leased premises, or based on any doctrine of strict liability in tort or violation of the environmental compliance provisions contained herein.

SECTION 18: Lien on Vessel

- A. LESSEE'S of boat stalls only hereby grant the City a lien on the vessel and on all tackle, equipment, fitting, engines, gear, cargo, furniture and other property on the vessel, to secure payment of all amounts owed to the City at any time under this agreement, or on any other basis. If for labor, repairs, services, supplies or materials performed or furnished to the vessel, or for enforcement costs, the lien shall attach to the vessel at the moment that such items are performed or furnished or the cost are incurred by the City; if for lease payments, or any other amounts owed to the City, the lien shall attach to the vessel the moment that the amount becomes due to the City; the lien shall continue until all amounts owed to the City are satisfied.
- B. If LESSEE is more than 30 days delinquent in a lease payment or has failed to pay any other amount owed to the City within the time required under this agreement, the City may enforce the lien by seizing or restraining the vessel, by selling the vessel as provided by this agreement, by filing suit to foreclose on the lien or by any other procedure provided or allowed by law or this agreement. The City shall be entitled to recover its attorney fees and all other costs incurred in enforcing the lien.

SECTION 19: Default

In addition to other rights the City may have under this Agreement upon default by the LESSEE, if, after 48 hours after City has given notice of default of any term or condition of this agreement, the LESSEE has failed to cure the default, the City may declare this agreement terminated and thereupon LESSEE must immediately vacate the premises and remove from the City's harbor all vessels and other property which the LESSEE has caused or permitted to be in or upon the City's harbor and land.

SECTION 20: Succession

- A. Upon the death of LESSEE, the rights and obligations of this agreement may be assumed temporarily for a period not to exceed the longer of six (6) months or the remainder of the term of this agreement by the personal representative of the LESSEE'S estate or, if no representative has been appointed, by a surviving spouse or heir. Thereafter, assignment of the lease may be made, subject to approval of the City.
- B. A family business, properly documented as a "dba", shall continue under the family operation, but where the "dba" is assumed by a family member not on the "dba", the assignment of the lease may be made subject to the approval of City Council.
- C. The City may terminate this agreement upon ten (10) days notice to the LESSEE upon dissolution or termination of the right to do business of a LESSEE, which is an organization, except that if a receiver of the entity has been appointed, the receiver may assume the rights and obligations of this agreement for a period not to exceed the longer of ninety (90) days or the remainder of the term of this agreement. If the authorized vessel(s) is sold, the LESSEE'S rights may be assigned, subject to approval of the City.

SECTION 21: Notices

- A. Written notice is required to be given within thirty (30) days unless otherwise stipulated herein. All notices by the City shall be deemed delivered when they are delivered in person to LESSEE or LESSEE'S local agent, or to either of their respective addresses, or when delivered or attempted to be delivered at either address by the US Postal Service. Posting notice on the vessel(s) shall not be required in any circumstance; however, if for any reason the City is unable to deliver notice by other methods or deems that other methods may not be effective, the City may choose to give notice by posting the notice conspicuously on the vessel(s) and it shall be conclusively presumed that LESSEE received the notice at the time it was posted on the vessel(s).
- B. Any notice required to be given to the City shall be in writing and shall be effective when addressed and delivered, during business hours, by certified mail return receipt requested or in person to P.O. Box 159, 501 S. Main, Seadrift, Texas 77983.

SECTION 22: Re-Assignment

- A. The City reserves the right to reassign vessels to slips/mooring areas and/or reassign slips and mooring areas according to the best use of the harbor as determined by City Council and/or at the request of the Harbor Master.

- B. The City reserves the right to change the designation of areas from "Commercial" to "Stalls" or vice-versa according to the best use of the harbor and the benefit of the City.

SECTION 23: Temporary Relocation

Due to operational or maintenance requirements of the City, occasionally the City may choose to move LESSEE'S vessel(s) temporarily to a slip other than the one assigned under this agreement. When practical in the opinion of the Harbor Master, prior notice will be provided to the LESSEE of activities requiring the relocation of the vessel(s) and the LESSEE will be given the option of relocation the vessel(s) himself. If the Harbor Master decides that prior notice to the LESSEE is not practicable or the City needs to move vessel(s) before effective notice could be given and the vessel(s) will remain displaced twenty-four (24) hours, the City will make a reasonable effort to notify the LESSEE of the relocation of the vessel(s).

SECTION 24: Penalty

It shall be a misdemeanor for any person to perform any act prohibited by the terms of this ordinance, or fail to do any act, which is required, and any such violation shall be punished by a fine not to exceed five hundred dollars (\$500.00). UNLESS stipulated otherwise herein (such as Environmental EN-01 violations). Each day or portion thereof that a violation exists shall constitute a separate offense.

SECTION 25: Severability

If any provision of this agreement is found to be illegal, void or unenforceable the remainder of this agreement shall not be affected thereby and shall remain in full force and effect to the extent consistent with the purpose and objective of the parties in entering into this agreement.

SECTION 26: Waiver

Any waiver by the City of any default or breach of any term of condition by the LESSEE shall not be deemed nor shall constitute a waiver of any further or other default or breach by the LESSEE.

SECTION 27: Termination

- A. LESSEE may terminate lease by giving the City thirty (30) days written notice in advance of termination, provided LESSEE'S rental payments and other charges are not delinquent.
1. This notice shall be hand delivered to or mailed to Seadrift City Hall, PO Box 159, 501 S. Main, Seadrift, Texas, 77983.
 2. If hand delivered, it must be stamped "received" with date and time
 3. If mailed, it must be by certified mail.
- B. The City in its sole and absolute discretion may terminate this Agreement anytime the Lessee fails to respond within fifteen (15) workdays after receiving written notice of a violation of this ordinance and/or other ordinances of the City and/or applicable federal and state rules and regulations.

1. The City will provide pro-rata refund or lease payments paid in advance, less and amounts owed to the City.

SECTION 28: Survival of Remedies

The City's right to recover any amounts owed by LESSEE, any lien in favor of the City, and other rights and remedies of the City shall survive expiration or termination of this Agreement.

SECTION 29: Cost of Enforcement

Upon default, LESSEE shall be liable for all costs incurred by the City in enforcing the terms of this Agreement, in collecting any monies owed by Lessee, and in enforcing any lien or other remedy, whether or not suit is filed. Such costs may include, but are not limited to, the fees of attorneys, expert witnesses, consultants, trial aids, court reporters, and any other amounts allowed by law or specified elsewhere in this Agreement as recoverable by the City or owed by the LESSEE.

SECTION 30: Sales or Other Disposition of Vessels

In any situation in which the City has the right to sell or dispose of the vessel under the terms of this Agreement or a law, the City shall give LESSEE no less than fifteen (15) days notice of the intended sale. The City may elect to conduct the sale at public auction at a location of the City's choice or by sealed bids, with or without reserve. If the City is unable to sell the vessel, the City may demolish or otherwise dispose of the vessel in a manner deemed appropriate by the City, without liability to LESSEE. All costs of enforcement and sale, demolition, or other disposition shall be borne by LESSEE. Proceeds from the sale will be applied first to the costs of sale, then to the costs of enforcement and all other amounts owed by LESSEE to the City, then to any ad valorem taxes or registration fees owed to the City or other agencies, and then to satisfaction of any other liens against the vessel in favor of third parties of which the City has actual notice. Any remaining proceeds will be sent to Primary LESSEE at the address listed on the Lease Agreement. The costs of sale shall include all costs and expenses incurred by the City in conducting the sale, including, but not necessarily limited to, the costs of notices, appraisals, marine surveys, consultants, towing, storage, auction, attorney's fees, and any preparation of the vessel for sale that the Harbor Master deems appropriate. LESSEE shall remain responsible for any costs in excess of the funds realized through the sale of the vessel or, in the event the City is unable to secure a buyer for the vessel, the LESSEE shall remain responsible for all costs incurred in the removal, storage, attempted sale of, and disposal of the vessel. Upon demolition of the vessel, the City shall have all salvage rights in all equipment, fitting, engines, gears, cargo, and other property on the vessel and LESSEE shall have no further rights or claim thereto.

SECTION 31: Legal Proceedings

Venue of any suit or other action arising from or related to this Agreement or a party's performance hereunder shall be in a State District Court in Calhoun County, Texas.

SECTION 32: Suitability

- A. LESSEE warrants and represents that he has made a full and complete inspection of the leased premises described herein and that the premises are fully acceptable, in condition satisfactory to LESSEE, and fit for LESSEE'S purposes.

SECTION 33: Warranties

- A. There are no understandings, agreements, representations or warranties expressed or implied, verbal or written (including any regarding the merchantability or fitness for particular purpose) not specified herein, respecting this agreement or the premises leased herein. The City expressly disclaims all warranties concerning the condition and value of the premises, and disclaims specifically any warranty of merchantability or fitness for a specific purpose. This Agreement states the entire Agreement and obligation of the parties in connection with this transaction.

SECTION 34: Mooring Outside of Slip

- A. This Agreement allows mooring only in the Slip described above and in any area marked by the Harbor Master for temporary docking in accordance with City Rules, Regulations and Policies. Mooring by Lessee of any vessel at any other location on City property without express and specific approval of the Harbor Master, at his sole discretion, may immediately impound or move the vessel to a storage area, or expel it from the harbor, at the sole risk and expense of the Lessee. Any vessel impounded or moved under terms of this Agreement, and any property on or about the vessel, shall remain in the possession of the City, or be disposed of as outlined in this Agreement, until all monies owed the City by Lessee have been paid and, if applicable, until LESSEE has made arrangements satisfactory to the Harbor Master for the vessel to be removed from the harbor.

SECTION 35: Condition of Vessel

- A. On the date LESSEE requests approval to moor a vessel, LESSEE shall provide proof to the satisfaction of the Harbor Master that the vessel is seaworthy and capable of making headway with its normal source of propulsion. If thereafter the vessel becomes, in the sole opinion of the Harbor Master, not seaworthy or incapable of making headway with its normal source of propulsion, the defective condition must be corrected or the vessel removed from the City's harbors within thirty (30) days after City delivers to LESSEE notice stating the nature of the condition and the action required. If the actions required by the City are not completed or the vessel is not removed within said thirty (30) days, the City may give notice that the LESSEE has failed to comply and that the City may remove the vessel within 24 hours after delivery of the notice. If LESSEE then fails to remove the vessel, the City may remove the vessel and have it impounded or stored at the sole risk and expense of the LESSEE. Stored vessels will be held for thirty (30) days pending payment by LESSEE of all costs incurred by the City, including but not limited to all costs for removal and storage, and all other monies owed to the City by LESSEE under this Agreement or owed on any other basis. If LESSEE fails to pay all monies owed to the City before expiration of the thirty (30) day storage period, the city may sell or dispose of the vessel as provided herein.
- B. In the event that any vessel authorized under the Agreement or any unauthorized vessel which came to be at the LESSEE'S Slip through action, agreement, permission or acquiescence by the LESSEE, becomes disabled, damaged, deteriorated, takes on water, sinks, or is in any other condition which, in the sole opinion of the Harbor Master, constitutes an obstruction or hazard to navigation, a nuisance, or a hazard to the environment, other vessels, other property, or the use of the City's property or facilities, channels, submerged lands or other navigable waterways within the City's jurisdiction, LESSEE shall, within the time stated in a notice from the City, take all

necessary action as approved by the Harbor Master to abate said nuisance, hazard, or condition at the sole cost and risk of the LESSEE. In addition, if the Harbor Master, at his sole discretion, determines that there is an imminent threat of significant damage or injury posed by the condition of the vessel, the City may take any and all actions that it deems necessary to abate the condition, without prior notice to LESSEE. The City Shall have the right, without liability to LESSEE, and LESSEE hereby grants permission to the City, to board the vessel and gain or force access to all areas of the vessel, to inspect items or conditions of concern, to make emergency repairs, to tow the vessel, to ground the vessel, to pump water from the vessel, to raise the vessel if sunken, to remove fuel and all possible contaminants, and to take all other actions which the City determines to be necessary or appropriate in the circumstances. The cost of all such actions and operations shall be the sole responsibility of the LESSEE. LESSEE shall make payment of all such charges within fifteen (15) days after notifications to LESSEE of said costs and expense. The City and the City's agents, employees, and contractors shall have no liability to LESSEE or any other person who owns an interest in the vessel for any damage that is sustained by the vessel or other property on or about the vessel during such actions or operations, regardless of the cause of the damage or injury. Any attempt by LESSEE to interfere with or prevent such actions or operations of the City shall be a breach of this Agreement and an act of default.

SECTION 36: Variance

City Council, at its sole discretion, shall be the only issuer of any variances to this ordinance, except as specified herein.

SECTION 37: Effective Date

Effective date of this amended ordinance shall be June 24, 2020

PASSED AND APPROVED this 2nd day of June, 2020


Mayor

ATTEST:


City Secretary

