

# MEMORANDUM

February 23, 2022

TO: Mayor John P. Kahl and Members of the City Council

FROM: Jeffery Becker, Director of Finance/Treasurer  
Scott A. Brunton, City Attorney

SUBJECT: Resolution Approving Eastport Marina Management Agreement

---

## DISCUSSION:

The City needs to enter into a new Eastport Marina Management Agreement for conducting marina operations for the 2022 boating season. City Officials have negotiated a new Eastport Marina Management Agreement with Omega 9 LLC for the 2022 boating season. In addition to negotiation this new Management Agreement, City Officials have also determined that it is in the best interests of the City and the Eastport Marina that an Operations Committee be established to oversee and coordinate operations at Eastport Marina. This Operations Committee shall initially consist of a representative from Omega 9 LLC, the Eastport Operations Manager, and a City representative to be designated by the Mayor. At this time, the City's Director of Finance will be appointed as the City representative on this Operations Committee.

This Resolution approves the 2022 Eastport Marina Management Agreement with Omega 9 LLC and establishes the Eastport Operations Committee.

## RECOMMENDATION:

Approval of this Resolution.

**RESOLUTION NO. 2122-117**

**East Peoria, Illinois**  
\_\_\_\_\_, **2022**

**RESOLUTION BY COMMISSIONER \_\_\_\_\_**

**RESOLUTION APPROVING THE EASTPORT MARINA MANAGEMENT  
AGREEMENT BETWEEN THE CITY OF EAST PEORIA  
AND OMEGA 9, LLC**

**WHEREAS**, the City has constructed and operates a first-class quality marina known as Eastport Marina (the "Marina"); and

**WHEREAS**, City Officials have negotiated the terms of an agreement with Omega 9, LLC to manage the Marina for a one-year term beginning March 1, 2022, which is attached hereto as "Exhibit A" (the Marina Management Agreement); and

**WHEREAS**, the City hereby finds that it is in the best interests of the City to enter into the Marina Management Agreement with Omega 9, LLC to operate and manage the Marina under the terms specified in the attached Agreement; and

**WHEREAS**, the City further finds that it is in the best interests of the City to establish an Eastport Operations Committee to oversee and coordinate the Eastport Marina operations; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The Eastport Marina Management Agreement with Omega 9, LLC in the form attached hereto labeled as "Exhibit A," is hereby approved.

**Section 2.** The Mayor and City Clerk are hereby authorized to execute the Marina Management Agreement on behalf of the City, together with such changes therein as the Mayor in his discretion may deem appropriate; provided, however, that such Agreement shall not be binding upon the City until an executed original thereof has been delivered to Omega 9, LLC.

**Section 3.** The City hereby creates the Eastport Operations Committee for the oversight and coordination of the Eastport Marina operations with the following persons appointed to this Committee at this time: (1) one representative from Omega 9, LLC; (2) the Eastport Marina Operations Manager; and (3) one City representative designated by the Mayor.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

## **EASTPORT MARINA MANAGEMENT AGREEMENT**

**THIS MANAGEMENT AGREEMENT** (“Agreement”) is made this 1st day of March, 2022, by and between the **CITY OF EAST PEORIA**, an Illinois Municipal Corporation (hereinafter referred to as the “City”), **Omega 9, LLC** (hereinafter referred to as the “Operator”).

**WHEREAS**, the City owns property located within the City on the Illinois River and known as Eastport Marina, consisting of a marina for recreational watercraft and other related improvements, including but not limited to service, storage, fueling and launching facilities for watercraft (hereinafter collectively referred to as “Eastport”); and

**WHEREAS**, the Operator is located in and does business in the City; and

**WHEREAS**, the Mr. Jason Payne, the principal with the Operator, has experience as a boater and a business owner; and

**WHEREAS**, the City desires that Eastport shall be managed locally and that its operations shall be fully integrated into the City’s general operations; and

**WHEREAS**, the Operator shall employ an Operations Manager approved by the City; and

**WHEREAS**, as a means to ensure the smooth operation of Eastport, the City and the Operator hereby agree that an Eastport Operations Committee shall oversee Eastport operations in a manner that is consistent with this Agreement (the “Operations Committee”); and

**WHEREAS**, the City seeks to have the Operator participating on the Operations Committee, and the Operator is willing to accept such appointment to the Operations Committee upon the terms and conditions hereinafter set forth;

**WHEREAS**, the Operations Manager shall also be appointed to the Operations Committee, and the Operations Committee shall further include at least one City representative designated by the Mayor;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Appointment**: The City hereby appoints the Operator to the Operations Committee of Eastport, and the Operator hereby accepts such appointment and agrees to serve on the committee and operate Eastport in accordance with the terms and conditions of this Agreement.

## 2. **Term:**

(a) **Term:** The one-year term of this Agreement shall commence March 1, 2022, and continue thereafter until February 28, 2023. The term of this Agreement shall not extend or rollover after February 28, 2023.

(b) **Severe Damage:** In the event that Eastport is rendered substantially unusable so as not to be usable for normal business due to storm, flood, fire, ice, or other cause, nothing in this Agreement shall require the City to rebuild the damaged property.

## 3. **Operator's Personnel:**

(a) The Operations Manager shall hire and pay all persons necessary to be employed in order to properly market, maintain, operate and provide security for Eastport, including the marina office, service department, storage, parts, seasonal attendants, boat launch, accounting, fuel docks, sanitary pump-outs, etc., and to adequately keep records for Eastport in accordance with standard marina operating practice and generally accepted accounting principles. Such personnel paid by the Operator shall include the Operations Manager, who shall be hired with consent and approval of the City. The supervision of all other employees will be the responsibility of the Operations Manager, under the direction of the Operations Committee.

The Operations Manager shall use due care and diligence in the hiring of such employees. All such employees shall be the employees of the Operator, as an independent contractor hereunder, and not the employees of the City. Because customer-relations are crucial to the success of Eastport, however, employees determined by the City to be unsatisfactory shall be released.

(b) The Operator shall pay all employees hired pursuant to §4(a) and shall maintain adequate payroll records and shall make and remit to proper authorities all income tax deductions, unemployment insurance, worker's compensation payments, social security payments, pensions and other similar deductions or payments which may from time to time be applicable to such persons or other similar employees of the Operator. The Operator shall pay the costs of standard medical insurance, including hospitalization, medical, surgical and group life insurance plans hereinafter imposed by or included in agreements implemented with the consent of the City as indicated by approval of the annual budget, such approval to not be unreasonably withheld. Whenever possible, the Operator shall use City administrative resources so as to minimize administrative costs of Eastport.

(c) The Operator shall cause to be prepared and filed the necessary forms for unemployment insurance, social security and withholding taxes, and all other forms required by any federal, state or municipal authority or insurance company with respect to all persons employed pursuant to this §(4). All costs of personnel including but not limited to salaries, wages, and benefits shall be Expenses of Operation of Eastport.

(d) During the term of this Agreement, the Eastport Operations Committee shall ensure that the Operations Manager will provide management services in connection with the management of Eastport. The Operator may not assign this Agreement to a corporate or other business entity with prior approval of the City.

#### 4. **Payment of Expenses:**

(a) The City agrees to reimburse the Operator promptly for any disbursement which the Operator may elect to advance for the Eastport Account of the City pursuant to the terms of this Agreement.

(b) The Operations Manager shall ensure that all employees with access to receipts are bonded in an amount mutually agreed by the parties hereto or the Operator shall maintain sufficient dishonest employee insurance coverage. The cost of said insurance shall be considered an operating expense of Eastport.

#### 5. **Insurance:**

(a) The Operator shall obtain umbrella insurance coverage in an amount of not less than One Million Dollars (\$1,000,000) with respect to its operation of Eastport for the benefit of both the City and the Operator and agrees to name the City as additional insured. The cost of said insurance shall be considered an operating expense of Eastport.

(b) The Operator shall obtain workers compensation insurances at levels of not less than required by the State of Illinois for all Eastport employees. The cost of said insurance shall be considered an operating expense of Eastport.

(c) Property, casualty, and liability insurance coverage in an amount of not less than One Million Dollars (\$1,000,000) with respect to its operation of Eastport for the benefit of both the City and the Operator and agrees to name the City as additional insured. This insurance shall cover liability on the entire Marina and boat launch and the property and casualty on the break walls, slips, docks and the boat launch. The City shall provide property and casualty insurance on the other buildings within the Marina.

The cost of said insurance shall be considered an operating expense of Eastport.

(d) The Operator shall obtain a pollution insurance coverage in an amount not less than One Million Dollars (\$1,000,000) with respect to its operation of Eastport for the benefit of both the City and the Operator and agrees to name the City as additional insured. This insurance shall cover liability on the entire Marina. The cost of said insurance shall be considered an operating expense of Eastport.

**6. Representations and Warranties; Indemnification:**

(a) The City and the Operator, each represent and warrant to the other that it has the authority to enter into this Agreement and to fully perform its respective obligation hereunder.

(b) The Operator shall defend, indemnify and hold the City of East Peoria and its respective officers, directors, employees and agents harmless from and against any and all claims, actions, damages, expenses (including attorneys' fees), losses or liabilities arising out of any claim made as a result of the Operator's bad faith, recklessness, gross negligence, gross misconduct in its management and operation of Eastport, or arising out of any breach or claimed breach of any representation or any of the Operator's obligations pursuant to this Agreement.

(c) The City shall defend, indemnify and hold the Operator and its respective officers, directors, employees and agents harmless from and against any and all claims, actions, damages, expenses (including attorney's fees), losses or liabilities arising out of any claim made as a result of the City's bad faith, recklessness, gross negligence, gross misconduct in its management and operation of Eastport, or arising out of any breach or claimed breach of any representation or any of its obligations pursuant to this Agreement.

(d) The parties shall notify each other of the existence of claims relating to Eastport and shall cooperate with each other in defense of third-party claims.

**7. Termination of Agreement by City:**

(a) The City may terminate this Agreement by notice to the Operator (with a copy to the Operations Manager) if the Operator files a petition for adjudication as a bankrupt, for reorganization or for an arrangement under any bankruptcy or insolvency law, or if any involuntary petition under such law is filed against the Operator and not dismissed within ninety (90) days thereafter.

(b) Upon the occurrence of one or more events under (a) above, the City may exercise any or all of the following remedies in addition to termination of the Agreement:

(i) The City may, immediately, or at any time thereafter, and without further notice or demand, enter on Eastport premises and expel the Operations Manager and remove the Operator's effects (forcibly if necessary); and/or

(ii) The City may require that the Operations Manager immediately deliver to the City all slip leases, boat storage rental agreements and similar agreements.

(c) The rights of termination granted to the City in this paragraph shall be in addition to any other right or remedy that may otherwise be available to the City including, but not limited to, recovery of amounts due and owing, to the City, any and all damages, and equitable relief resulting from any or all of the above event or events.

**8. Termination of Agreement by Operator:**

(a) the Operator may terminate this Agreement by giving notice to the City, if the City shall be in material default in the performance of any material term, covenant or condition which this Agreement requires it to perform and shall fail to cure such material default within thirty (30) days of notice from the Operator specifying such default (unless such default cannot reasonably be cured within such thirty (30) day period and during such thirty (30) day period the City commences to cure such default and proceeds with diligence to complete such cure), provided that the City shall not be deemed to be in default pursuant to this Agreement if its failure to satisfy the requirements hereof is caused by the Operator's failure to perform its obligations hereunder.

(b) The right of termination granted to the Operator in this paragraph shall be in addition to any other right or remedy that may otherwise be available to the Operator including, but not limited to, recovery of amounts due and owing to the Operator, any and all damages, and any equitable relief resulting from the City's default.

**9. Operator's Rights Upon Termination:**

(a) Upon termination of this Agreement, the Operator shall be entitled to the following unless this Agreement is unilaterally terminated by the Operator without cause or is terminated by the City under §7(a):

(i) Reimbursement of all expenses incurred with respect to Eastport, provided such expenses are authorized by this Agreement and are within the parameters of the Annual Plan for Eastport as approved by the Operations Committee and the City ("Annual Plan);

(ii) Payment of any other sums due the Operator hereunder.

(b) The obligations contained in this paragraph shall survive expiration or other termination of this Agreement. Upon termination of this Agreement, the Operator shall have the right to assign, and the City shall have the obligation to assume, all contracts entered into on behalf of the City, provided said contracts are within the parameters of the Annual Plan.

10. **Notices:**

Any notices required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to the City: City of East Peoria  
401 W. Washington Street  
East Peoria, IL 61611

With copy to: Scott A. Brunton  
Miller, Hall & Triggs, LLC  
416 Main Street, Suite 1125  
Peoria, IL 61602

If to the Operator: Jason Payne  
Omega 9, LLC  
703 Mariner Way  
East Peoria, IL 61611

and any party may change such address by notice given to the other party in the manner set forth above.

11. **Miscellaneous:**

(a) **Governing Law:** This Agreement shall be governed by and construed under the laws of the State of Illinois.

(b) **Counterparts:** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) **Headings:** Titles and headings of the paragraphs and subparagraphs of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) **Amendment:** No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) **Successors and Assigns:** Except for the restrictions on assignability contained in §4 hereof, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

(f) **Waiver:** The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(g) **Severability:** If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) **Relationship of the Parties:** The relationship of the City and the Operator shall be solely as owner and manager with the Operator acting as an independent contractor and in no event and for no purpose shall the City and the Operator be deemed partners or joint venturers.

(i) **Entire Agreement:** This Agreement supersedes and replaces in its entirety any prior agreement between the parties for management of Eastport.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the first date set forth above.

**CITY OF EAST PEORIA**

**Omega 9, LLC**

\_\_\_\_\_  
Mayor  
**Attest:**

\_\_\_\_\_  
Jason Payne,  
Its Manager/Owner

\_\_\_\_\_  
City Clerk