

C-5322

**MAINTENANCE AND REPAIR SERVICES AGREEMENT
WITH SOUTH MOORING COMPANY
FOR HARBOR RELATED SERVICES**

THIS MAINTENANCE AND REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this ^{15th} ~~26th~~ day of ^{JANUARY, 2013} ~~December, 2012~~ ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and NEWPORT DREDGING CO. INC, California corporation DOING BUSINESS AS ("DBA") SOUTH MOORING COMPANY ("Contractor"), whose principal place of business is 177 Riverside Drive, Ste F, Newport Beach, CA 92663 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform regularly scheduled maintenance and repair services for service to City moorings and log boom, clean up harbor debris, and other miscellaneous harbor related duties as requested. ("Project").
- C. Pursuant to the authority conferred to City as a charter city under California Constitution, Article XI, Section 5, the City hereby exempts this Project from the payment of prevailing wages because the funds used to finance this Project are local funds and this Project is a matter of local concern.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by the City for the Project, and is familiar with all conditions relevant to the performance of services and has committed to perform all work required for the price specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on January 1, 2015, unless terminated earlier as set forth herein.

2. SCOPE OF WORK

2.1 City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement. Contractor shall perform all the work described in the Scope of Work and Schedule of Rates attached hereto as Exhibit A and incorporated herein by this reference ("Services" or "Work"). As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and Contractor is experienced in performing the Work contemplated herein and, in light of such status and

experience, Contractor covenants that it shall follow the highest industry standards in performing the Work required hereunder and that all materials will be of good quality. For purposes of this Agreement, the phrase "highest industry standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

2.2 Contractor shall perform all Work required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary for the Project.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A. The failure by Contractor to strictly adhere to the schedule may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice to the other party within two (2) calendar days of the occurrence of the delay so that all delays can be addressed.

3.2 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.3 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis, in accordance with the provisions of this Section and the Scope of Work and Schedule of Rates attached hereto as Exhibit A. No rate changes shall be made during the term of this Agreement without the prior written approval of the City. Contractor's total compensation for Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Fifty Thousand Dollars and no/100 (\$50,000.00)** without written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name of the person and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task from the Scope of Work and Schedule of Rates attached hereto to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any

reimbursable expenditures. City shall pay Contractor no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically approved in the Scope of Work and Schedule of Rates attached hereto. Unless otherwise approved, such costs shall be limited and include nothing more than the actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Contractor in the performance of this Agreement.

4.4 Contractor shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the Project Administrator to be necessary for the proper completion of the Project, but which is not included within the Scope of Work and Schedule of Rates and which the City and Contractor did not reasonably anticipate would be necessary. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Rates set forth in Exhibit A.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Chuck South to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any key personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants this it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Harbor Resources Division. The Harbor Resources Supervisor shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

7.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

7.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a

manner commensurate with highest industry standards. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the industry standard.

7.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

7.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

8. RESPONSIBILITY FOR DAMAGES OR INJURY

8.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

8.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project, or the Work of any subcontractor or supplier selected by the Contractor.

8.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

8.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the

sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Contractor.

8.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

8.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

8.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

9. INDEPENDENT CONTRACTOR

It is understood that City has retained Contractor as an independent contractor and neither Contractor nor its employees are to be considered employees or agents of the City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of the City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

10. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Contractor on the Project.

11. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with the Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

12. PROGRESS

Contractor is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

13. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit B, and incorporated herein by reference.

14. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

15. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

16. OWNERSHIP OF DOCUMENTS

Each and every report, draft, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or

any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

17. CONFIDENTIALITY

All Documents, including drafts, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

18. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

19. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

20. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other Contractors in connection with the Project.

21. CONFLICTS OF INTEREST

21.1 The Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

21.2 If subject to the Act, Contractor shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless

City for any and all claims for damages resulting from Contractor's violation of this Section.

22. NOTICES

22.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, to City by Contractor and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Shannon Levin, Harbor Resources Supervisor
Harbor Resources Division/Public Works Department
City of Newport Beach
3300 Newport Blvd.
PO Box 1768
Newport Beach, CA 92658
Phone: 949-644-3041
Fax: 949-723-0581

22.2 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Chuck South
SOUTH MOORING COMPANY
P.O. Box 528
Newport Beach, CA 92661-0528
Phone: 949-645-0334
Fax: 949-645-1041

23. NOTICE OF CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under the Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and the City expressly agree that in addition to all claims filing requirements set forth in the Agreement, the Contractor shall be required to file any claim the Contractor may have against the City in strict conformance with the Tort Claims Act (Govt. Code §§ 900 *et seq.*).

24. TERMINATION

24.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured

within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

24.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than thirty (30) calendar days prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all materials purchased and Documents created in performance of this Agreement.

25. LABOR

25.1 Contractor shall conform with all applicable provisions of State and Federal law including, but not limited to, applicable provisions of the Federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

25.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

25.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

25.4 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorney's fees, and other costs of defense by reason of actual or alleged violations of any applicable Federal, State and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

26. STANDARD PROVISIONS

26.1 Compliance with all Laws. Contractor shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

26.2 Waiver. A waiver by City of any term, covenant, or condition in the Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

26.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all

preliminary negotiations and Agreements of whatsoever kind or nature are merged herein. No verbal Contract or implied covenant shall be held to vary the provisions herein.

26.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits attached hereto, the terms of this Agreement shall govern.

26.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

26.6 Effect of Contractor's Execution. Execution of this Agreement by Contractor is a representation that Contractor has visited the Project Site, has become familiar with the local conditions under which the Work is to be performed, and has taken into consideration these factors in submitting its Project proposal and Scope of Work.

26.7 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

26.8 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

26.9 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

26.10 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.11 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

26.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 12/7/12

By: [Signature] (6-)
Aaron C. Harp
City Attorney
KSA
12/7

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 12-15-12

By: [Signature]
David A. Webb
Public Works Director

ATTEST:
Date: 1-25-13

By: [Signature]
Leilani I. Brown
City Clerk

CONTRACTOR: SOUTH MOORING
COMPANY, a California corporation

Date: 1/18/13

By: [Signature]
Chuck South
President

Date: 1-18-13

By: [Signature]
Thomas Fee
Treasurer RMO



[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Work and Schedule of Rates
Exhibit B – Insurance Requirements

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EXHIBIT A
SCOPE OF WORK AND SCHEDULE OF RATES

Website:
www.SouthMooring.com
License # 957414
email: abcsouth@yahoo.com



South Mooring Company
a division of Newport Dredging Co. Inc.

P.O. Box 528
Newport Beach, CA 92661
Direct: 949.645.0334
Fax: 949.645.1047

South Mooring Co
A dba of Newport Dredging
P.O. Box 528
Newport Beach CA 92661-0528
949-645-0334

November 6, 2012

Harbor Resources
Attn. Shannon Levin
829 Harbor Island Drive
Newport Beach, CA 92660

Dear Shannon

After many years of working with the city on different projects, communication and cooperation has been established.

The City is, at this time, an additional insured on our liability insurance.

You recently requested pricing information from us.

Below is a list of services we have done in the past.

Mooring service:

Includes inspection, testing, painting, and numbering of the mooring buoy.

Inspection of mooring weight, and replacement of worn chain as needed.

Sign buoys and shore moorings	\$ 166.00 plus parts at cost plus 15%
Off shore moorings	\$ 334.00 plus parts at cost plus 15%
Mooring realignment	\$ 50.00

Log boom:

Deployment and retrieval \$ 250.00 hr plus parts at cost plus 15%

Diver if needed \$ 100.00 hr

(\$1,600.00 to \$1,750.00 in the past)

Log boom adjustment \$ 250.00 hr

Sea lion abatement boat: \$ 50.00 hr

Harbor clean up boat: \$ 70.00 hr

Salvage work: \$ 250.00 hr

Dock repair and refurbishment, piling work, boat demo, ramp lifting etc. can be bid on per job.

South Mooring has all City licenses, State licenses, Workers Comp. and Harbor Workers Insurance. All work is managed and supervised by Chuck South

EXHIBIT B

1. INSURANCE REQUIREMENTS – MAINTENANCE AND REPAIR

1.1 Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

1.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

1.3 Coverage Requirements.

1.3.1 Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

1.3.1.1 Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, officials, employees and agents.

1.3.2 General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate and two million dollars (\$2,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

1.3.3 Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

1.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

1.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability (if required), shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

1.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

1.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

1.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

1.5.1 Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

1.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

1.5.3 Right to Review Subcontracts. Contractor agrees that upon request, all contracts with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such contracts will not impose any liability on City, or its employees.

1.5.4 Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

1.5.5 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage,

limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

1.5.6 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

1.5.7 City Remedies for Non Compliance If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

1.5.8 Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

1.5.9 Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

ATTACHMENT E: CERTIFICATE OF INSURANCE CHECKLIST

**CERTIFICATE OF INSURANCE
CHECKLIST**

City of Newport Beach

This checklist is comprised of requirements as outlined by the City of Newport Beach.

Date Received: _____ Dept./Contact Received From: _____
 Date Completed: _____ Sent to: _____ By: _____
 Company/Person required to have certificate: CHUCK SOUTH

I. GENERAL LIABILITY

- A. INSURANCE COMPANY: _____
- B. EFFECTIVE DATES: _____
- C. AM BEST RATING (A- : VII or greater): _____
- D. ADMITTED Company (Must be California Admitted):
 Is Company admitted in California? Yes No
- E. LIMITS (Must be \$1M or greater): What is limit provided? _____
- F. PRODUCTS AND COMPLETED OPERATIONS (Must include):
 Is it included? (completed Operations status does not apply to
 Waste Haulers) Yes No
- G. ADDITIONAL INSURED WORDING TO INCLUDE (The City its
 officers, officials, employees and volunteers): Is it included? Yes No
- H. PRIMARY & NON-CONTRIBUTORY WORDING (Must be
 included): Is it included? Yes No
- I. CAUTION! (Confirm that loss or liability of the named insured is
 not limited solely by their negligence) Does endorsement include
 "solely by negligence" wording? Yes No
- J. NOTIFICATION OF CANCELLATION: Although there is a provision that requires
 notification of cancellation by certified mail; per Lauren Farley, the City will accept the
 endeavor wording.

II. AUTOMOBILE LIABILITY

- A. INSURANCE COMPANY: STATE FARM
- B. EFFECTIVE DATES: 10/10/2012
- C. AM BEST RATING (A- : VII or greater) A+
- D. ADMITTED COMPANY (Must be California Admitted):
 Is Company admitted in California? Yes No
- E. LIMITS (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min
 for Waste Haulers):
 What is limits provided? 250/500/100
- F. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste
 Haulers only):
 Is it included? n/a Yes No
- G. NOTIFICATION OF CANCELLATION: Although there is a provision that requires
 notification of cancellation by certified mail; per Lauren Farley, the City will accept the
 endeavor wording.

III. WORKERS' COMPENSATION

- A. INSURANCE COMPANY: State Compensation Insurance Fund
- B. EFFECTIVE DATES: 12/00/11 - 12/00/12
- C. AM BEST RATING (A- : VII or greater): Not rated
- D. LIMITS: Statutory
- E. WAIVER OF SUBROGATION (To include): Is it included? Yes No

HAVE ALL ABOVE REQUIREMENTS BEEN MET? Yes No

IF NO, WHICH ITEMS NEED TO BE COMPLETED? _____

Approved:

 Agent of Brown & Brown Date
 Broker of record for the City of Newport Beach

Requires approval/exception/waiver by Risk Management _____ B&B initials

Comments:

Approved:

 Risk Management Date



P.O. BOX 420807, SAN FRANCISCO,CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 06-28-2012

GROUP:
POLICY NUMBER: 0804781-2011-2
CERTIFICATE ID: 8
CERTIFICATE EXPIRES: 12-20-2012
12-20-2011/12-20-2012
THIS CERTIFICATE SUPERSEDES AND CORRECTS
CERTIFICATE # 7 DATED 06-14-2012

CITY OF NEWPORT BEACH
ATTN SHANNON LEVIN
829 HARBOR ISLAND DR
NEWPORT BEACH CA 92660-7235

SG

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

James Neary
Authorized Representative

Thomas Elone
President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 01-20-2012 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

----- ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2012-06-28 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME:
CITY OF NEWPORT BEACH

EMPLOYER

NEWPORT DREDGING COMPANY INC DBA: SOUTH SG
MOORING CO
PO BOX 528
NEWPORT BEACH CA 92661

ENDORSEMENT AGREEMENT
WAIVER OF SUBROGATION



804781-11-2
RENEWAL
SG

PAGE 1

HOME OFFICE
SAN FRANCISCO

ALL EFFECTIVE DATES ARE
AT 12:01 AM PACIFIC
STANDARD TIME OR THE
TIME INDICATED AT
PACIFIC STANDARD TIME

EFFECTIVE JUNE 28, 2012 AT 12.01 A.M.
AND EXPIRING DECEMBER 20, 2012 AT 12.01 A.M.

SOUTH MOORING CO

PO BOX 528
NEWPORT BEACH, CA 92661

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING,
IT IS AGREED THAT THE STATE COMPENSATION INSURANCE FUND
WAIVES ANY RIGHT OF SUBROGATION AGAINST,

CITY OF NEWPORT BEACH

WHICH MIGHT ARISE BY REASON OF ANY PAYMENT UNDER THIS
POLICY IN CONNECTION WITH WORK PERFORMED BY,

SOUTH MOORING CO

IT IS FURTHER AGREED THAT THE INSURED SHALL MAINTAIN
PAYROLL RECORDS ACCURATELY SEGREGATING THE REMUNERATION
OF EMPLOYEES WHILE ENGAGED IN WORK FOR THE ABOVE
EMPLOYER.

IT IS FURTHER AGREED THAT PREMIUM ON THE EARNINGS OF SUCH
EMPLOYEES SHALL BE INCREASED BY 03%.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE
OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS, OR LIMITATIONS OF THIS
POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE
HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR
LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO:

JULY 2, 2012

2570

A handwritten signature in black ink, appearing to read "Kurt R. Van Lan", written over a horizontal line.

AUTHORIZED REPRESENTATIVE

A handwritten signature in black ink, appearing to read "Thomas E. Rome", written over a horizontal line.

PRESIDENT AND CEO



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/30/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Mariners General Insurance Group 206 Riverside Avenue, Ste. A License #: 0D36887 Newport Beach CA 92663	CONTACT NAME: House Account	
	PHONE (A/C, No, Ext): (949) 642-5174	FAX (A/C, No): (949) 642-0252
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A Atlantic Specialty Insurance		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES CERTIFICATE NUMBER: CL1283004621 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB OCCUR CLAIMS-MADE DED RETENTIONS						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	P&I Liability SRLI	X		B5JH71259	5/5/2012	5/5/2013	\$1,000,000
		X		B5JH71260	5/5/2012	5/5/2013	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 As respects the 1978 23' Barge Hull ID#CFZ8801G0270K

The certificate holder is named as an additional insured.

CERTIFICATE HOLDER The City of Newport Beach, It's Officers, officials, employees and volunteers 3300 Newport Blvd Newport Beach, CA 92663	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Craig Chamberlain/ERS

**CERTIFICATE OF INSURANCE
CHECKLIST
City of Newport Beach**

This checklist is comprised of requirements as outlined by the City of Newport Beach. *

Date Received: 6-15-12 Dept./Contact Received From: Tania
 Date Completed: 11/30/12 Sent to: Tania By: Renee
 Company/Person required to have certificate: South Mooring
 Type of contract: All Other

I. PROTECTION AND INDEMNITY

- EFFECTIVE/EXPIRATION DATE: 5/5/12 to 5/5/13
- A. INSURANCE COMPANY: Atlantic Specialty Insurance Company
- B. AM BEST RATING (A- : VII or greater): A XII
- C. ADMITTED Company (Must be California Admitted):
 Is Company admitted in California? Yes No
- D. LIMITS (Must be \$1M or greater): What is limit provided? \$1,000,000
- E. ADDITIONAL INSURED ENDORSEMENT – please attach Yes No
- F. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers or Recreation) Yes No
- G. ADDITIONAL INSURED FOR PRODUCTS AND COMPLETED OPERATIONS ENDORSEMENT (completed Operations status does not apply to Waste Haulers) Yes No
- H. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? Yes No
- I. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? Yes No
- J. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? Yes No
- K. ELECTED SCMAF COVERAGE (RECREATION ONLY): N/A Yes No
- L. NOTICE OF CANCELLATION: N/A Yes No

N/A

N/A

N/A

II. AUTOMOBILE LIABILITY

- EFFECTIVE/EXPIRATION DATE: Doesn't own vehicles per Tania 11/30/12
- A. INSURANCE COMPANY: State Farm General Insurance Company
- B. AM BEST RATING (A- : VII or greater) A: XV
- C. ADMITTED COMPANY (Must be California Admitted):
 Is Company admitted in California? Yes No
- D. LIMITS - If Employees (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers): What is limits provided? \$1,000,000
- E. LIMITS Waiver of Auto Insurance / Proof of coverage (if individual) (What is limits provided?) N/A
- F. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste Haulers only): N/A Yes No
- G. HIRED AND NON-OWNED AUTO ONLY: N/A Yes No
- H. NOTICE OF CANCELLATION: N/A Yes No

III. WORKERS' COMPENSATION

EFFECTIVE/EXPIRATION DATE: 12-20-11 to 12-20-12

- A. INSURANCE COMPANY: State Fund
- B. AM BEST RATING (A- : VII or greater): Not Rated
- C. ADMITTED Company (Must be California Admitted): Yes No
- D. WORKERS' COMPENSATION LIMIT: Statutory Yes No
- E. EMPLOYERS' LIABILITY LIMIT (Must be \$1M or greater) 1,000,000
- F. WAIVER OF SUBROGATION (To include): Is it included? Yes No
- G. SIGNED WORKERS' COMPENSATION EXEMPTION FORM: N/A Yes No
- H. NOTICE OF CANCELLATION: N/A Yes No

ADDITIONAL COVERAGE'S THAT MAYBE REQUIRED

IV. PROFESSIONAL LIABILITY

N/A Yes No

V POLLUTION LIABILITY

N/A Yes No

V BUILDERS RISK

N/A Yes No

**HAVE ALL ABOVE REQUIREMENTS BEEN MET?
IF NO, WHICH ITEMS NEED TO BE COMPLETED?**

Yes No

Their insurance carrier advised they do not have general liability coverage because their work is done on the water, so they have Protection & Indemnity, which is liability for watercraft. They have provided us with the additional insured endorsement for this coverage.

Approved:



12/14/12

Agent of Alliant Insurance Services
Broker of record for the City of Newport Beach

Date

RISK MANAGEMENT APPROVAL REQUIRED (Non-admitted carrier rated less than ____;

Self Insured Retention or Deductible greater than \$ _____) N/A Yes No

Reason for Risk Management approval/exception/waiver:

Approved:

Risk Management

Date

* Subject to the terms of the contract.