



**CITY OF NEWPORT BEACH  
REQUEST FOR PROPOSALS  
for  
Mooring Management Services**

**Deadline for Proposals:  
*Thursday, November 12, 2009, at 12:00 noon***

**Pre-Proposal Conference:  
Wednesday, October 28, 2009 at 10:00 a.m.  
Newport Beach City Hall  
City Council Chambers  
3300 Newport Boulevard, Newport Beach, CA 92663**

**REQUEST FOR PROPOSALS (“RFP”)  
Mooring Management Services in Newport Harbor, Newport Beach, California**

The City of Newport Beach (“City”) invites all qualified organizations to submit proposals to manage the 1,229 public moorings (consisting of 439 onshore moorings and 790 offshore moorings) (“Project”) in Newport Harbor, California, via a Mooring Management Agreement. Most of these moorings are the responsibility of the City, but the County of Orange (“County”) controls a small amount of offshore moorings. The County may determine that the County moorings should be administered under the same agreement which shall manage the City moorings, and the City is open to having its contractor do so.

The selected proposer’s primary responsibilities shall include providing sufficient staff to ensure that the requirements of the City’s rules and regulations regarding moorings and City Municipal Code Chapter 17.60 (all attached hereto as Exhibits “C” through “H”) are properly administered, enforced and implemented. In addition, there are established rules and procedures that must be properly implemented to provide effective and efficient management of the mooring areas.

Additional copies of this RFP may be obtained online at [www.newportbeachca.gov](http://www.newportbeachca.gov). Copies may also be obtained in person at the Harbor Resources Division, City of Newport Beach, 829 Harbor Island Drive, Newport Beach, CA 92660.

**I. PROJECT INFORMATION**

The purpose of the Mooring Management Services Agreement is to establish and define the responsibilities of City and a mooring management services provider in conjunction with the mooring of vessels over City owned and controlled tidelands. County and City entered into a Joint Powers Agreement, dated February 21, 1989, as amended by various amendments, to provide this service. County and City have now mutually agreed to terminate this Joint Powers Agreement. City has determined that it is now appropriate to accept proposals from government entities and private mooring management services providers for future mooring management in the most cost-effective and efficient methods available based on an evaluation of submitted proposals.

The Mooring Management Agreement attached hereto as Exhibit “A” provides more detailed information regarding the Project.

**II. RFP TERMS AND CONDITIONS**

- A. This RFP does not commit the City (or County) to award a contract or bind the City (or County) to any action or to any party. No other party, including any proposer, is intended to be granted any rights hereunder. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City.

- B. It shall be the proposer's responsibility to review and verify the completeness of its proposal. Proposals which do not meet the minimum proposal submission requirements, may, at the sole discretion of City, be immediately rejected and may not be reviewed.
- C. No proposer may submit more than one proposal pursuant to this RFP. Entities that are legally related to each other or to a common entity may not submit separate proposals. Any proposal may be rejected because it, at City's sole discretion, violates these conditions or the spirit of these conditions.
- D. Submissions do not create or assume any relationship, agency or obligation by City, its officers or employees.
- E. Any response will become the property of City and, if required by law, may be subject to public disclosure by City or any authorized agent of City. Proposers must identify all copyrighted material, trade secrets or other proprietary information that the proposers claim are exempt from the California Public Records Act. In the event a proposer claims such an exemption, the proposer is required to state in the proposal the following: "The proposer will indemnify the City and its officers, employees and agents and hold them harmless from any claim or liability and defend any action brought against them for their refusal to disclose copyrighted material, trade secrets or other proprietary information to any person making a request thereof." Failure to include such a statement shall constitute a waiver of a proposer's right to exemption from this disclosure.
- F. City employees and officials are prohibited from responding to this RFP or being a party, direct or indirect, to any contract resulting from the RFP, and no proposal shall be accepted from, or contract awarded to, any City employee or official who submits a proposal or solicits any contract in which he or she may have any direct or indirect interest.
- G. The City is not liable for any costs associated with the development, preparation, transmittal or presentation of any proposal or material(s) submitted in response to this RFP. Any such costs shall be the sole responsibility of the proposer.
- H. Verbal communications made by any City employee or agent of the City with respect to this RFP are not binding and shall not in any way be considered as a commitment by the City. Only written responses to questions submitted in writing to the City or written addenda to this RFP issued by the City may be relied upon.
- I. The City reserves the following rights and options which it may exercise, at its sole discretion, with respect to the evaluation and selection of proposals for negotiation:

1. Accept, reject, or negotiate modifications to any and all proposals;
  2. Reject any proposal if such proposal is incomplete, non-responsive to the RFP, not in conformity with applicable law, conditioned in any way, deviates from the requirements of this RFP, or contains erasures, ambiguities, alterations, or items of work not called for by this RFP;
  3. Award the contract in whole, or in part;
  4. Ask specific companies to respond to this RFP or issue additional solicitations for proposals;
  5. Waive any informality, defect, non-responsiveness, irregularities and/or deviation from this RFP;
  6. Select any proposal as the basis for negotiations with any of the proposers, or select any proposal as the basis for an agreement;
  7. Make corrections or amendments due to errors identified in proposal by the City or the proposer;
  8. Permit or reject, at City's sole discretion, amendments (including information inadvertently omitted), modifications, alterations and/or corrections of proposals by some or all of the respondents following proposal submission;
  9. Request that some or all of the proposers modify proposals based upon the evaluation of the City;
  10. Supplement, amend, substitute or otherwise modify this RFP at any time;
  11. Cancel this RFP with or without issuing another RFP at any time; and
  12. Reject the proposal of a proposer who, in City's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City or other government entity; is financially or technically incapable of fulfilling the requirements of the agreement; or is otherwise not a responsible proposer.
- J. The City may enter into negotiations on terms and conditions satisfactory to the City with one or more selected proposers. However, the City reserves the right to terminate any negotiations at any time or conduct simultaneous, competitive negotiations with multiple proposers. The City also reserves the right to

negotiate acceptable terms in an otherwise unacceptable proposal. Such terms may include but shall not be limited to contract requirements, compensation, service level agreements, detailed scope of work specifications, ordering, invoicing, delivery, receiving and payment procedures, etc., in order to insure successful administration of the contract. Such negotiations may result in changes in terms material to this RFP. In such an event, the City shall not be obligated to inform other proposers of the changes, or permit them to revise their proposals accordingly, unless the City, in its sole discretion, determines that doing so is in the City's best interest. Should negotiations not prove satisfactory with the selected proposer(s), the City reserves the right to discontinue negotiations.

- K. The City may contact the proposer's references, call the proposer for clarification, conduct investigations with respect to the proposer's qualifications, and obtain any additional information deemed necessary to evaluate the proposer's experience and financial capability, and to determine the ability of the proposer to carry out its obligations under the proposed agreement.
- L. All proposals shall become the property of the City of Newport Beach.

### **III. PROPOSED AGREEMENT**

Applicants shall review the proposed agreement attached hereto as Exhibit "A" and:

1. Agree, in writing, to the agreement as-is; OR
2. Provide, in writing, counter-proposals to any provision in the proposed agreement at the time the proposer submits a response to this RFP.

#### Insurance

The selected proposer must meet all the insurance requirements required by the agreement.

All proposers are encouraged to contact their insurance carriers during the review of qualifications stage to ensure that the insurance requirements can be met if the proposer is selected for negotiation of a contract.

#### Prior Approvals

Any necessary approvals, permits and licenses required by City, State and Federal agencies (including, but not limited to, a City business license) must be secured prior to the execution of the agreement.

#### **IV. PROPOSAL**

The proposer shall include within its proposal:

1. The location of proposed local office facility – the proposer may identify a site, such as facilities at the Balboa Yacht Basin or the Harbor Patrol Headquarters, that are not leased by the proposer at the time of proposal;
2. The proposed operating schedule of office and field personnel;
3. A detailed description of the approach and methodology the proposer shall take to achieve client satisfaction and to fulfill the terms and conditions of the work described in this RFP;
4. The location of proposed impound facilities for abandoned or found vessels;
5. Demonstrated knowledge of local harbor facilities and issues;
6. Estimated monthly expenditures for personnel, administration costs and incidental expenses;
7. A detailed description of specific tasks the proposer may require from City staff, and what respective roles City staff and proposer's staff shall have to complete the scope of work described in this RFP and in the proposal; and
8. Proposer's fee for its scope of services.

#### **V. QUALIFICATIONS**

Proposers must provide information regarding its qualifications and knowledge of mooring management. Each proposal must include:

1. The background, experience and qualifications of the proposer, including a list of previous work that is similar to the work described in this proposal and the length of time the proposer has been providing similar services;
2. At least five (5) references that received services from proposer's company with the following information: company or municipality name, contact person, title, and telephone number;
3. A demonstrated ability to finance ongoing operations. Evidence shall include submission of the most recent two (2) years of audited financial statements and/or such relevant information;
4. A brief description of all key personnel for the mooring management office and field duties, and;
5. A completed Contractor Application Form (Exhibit "B").

In addition, the proposer may include information in forms such as video, photographs, etc., to demonstrate its existing operations at other cities or localities.

Proposers must not be currently indebted to the federal government, State of California, or the City of Newport Beach for non-payment of taxes, fines, judgments, liens, or fees.

## VI. Submission Date and Requirements

One original and five *unbound* copies of completed proposals must be submitted to:

**Evelyn Tseng  
Revenue Division  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92658-8915**

The following conditions apply to this submission:

- Proposals must be submitted by **12:00 noon, on Thursday, November 12<sup>th</sup> 2009**. Late proposals shall not be accepted.
- Proposals must be 1 1/2 spaced (or double-spaced) and in a font size of 12 or larger. ***Proposals typed single-spaced or in a font size smaller than 12 will not be accepted.***
- Proposals must conform to the RFP instructions, respond to the RFP requirements, and provide a complete and clear description of the offer.
- The address given in the proposal response must be an address to which certified mail can be delivered, and shall be considered the legal address of the proposer. In addition, the proposer must provide the address and telephone number of its office located nearest to Newport Beach, and, if not the same, the address and telephone number of its office from which the project will be managed.
- Please do not bind your proposals using binders, laminates, press-bindings, spiral binding, etc. Proposals should be simply stapled or clipped together to avoid excess packaging.
- Proposals or proposal components ***will not*** be accepted via facsimile (fax) transmission or e-mail.
- Proposals shall remain effective for one hundred eighty (180) days from the date of proposal submission.

- The City reserves the right, at its sole discretion, to reject and return, without evaluation, any proposal received after the proposal submission time and date, whether it is delivered by mail or otherwise.
- Proposals must be signed, in ink, by an individual duly authorized to bind the proposer and must be sealed and labeled on the cover with the RFP title and proposer's name.
- No questions other than written will be accepted, and no response other than written will be binding upon the City.

**All prospective proposers are encouraged to attend a pre-proposal conference at 10:00 a.m. on Wednesday, October 28, 2009 in the City Council Chambers at Newport Beach City Hall, 3300 Newport Boulevard, Newport Beach, CA.**

## **VII. REVIEW OF PROPOSAL RESPONSES**

All proposals received by the deadline will be evaluated by a committee ("Review Committee") established by the City Manager or his designated representative.

Upon review of the proposals, the City may contact proposers for clarification on any point in the proposal, or to schedule an interview. If an interview is scheduled, then the person who shall be directly responsible for carrying out the terms of the agreement, if awarded, should be present at the interview.

Negotiations shall be confidential and not subject to disclosure to competing proposers until an agreement is reached.

Upon the review and discussion of the quality and responsiveness of the proposals received, the Review Committee will make recommendations to the Newport Beach City Council.

The City discourages any proposer's advocacy before Members of the City Council until such time as the Review Committee has brought forth its recommendation to the City Council.

## **VIII. ATTACHMENTS**

- A. Proposed Mooring Management Services Agreement
  - Exhibit A: Scope of Services
  - Exhibit B: Schedule of Billing Rates
- B. Contractor Application Form
- C. Mooring Regulations
- D. Guest Mooring Regulations

E. Instructions for Mooring Transfer

F. Offshore Mooring Specifications

G. Onshore Mooring Specifications

H. Municipal Code Chapter 17

**Exhibit "A"**  
**"PROPOSED"**  
**PROFESSIONAL SERVICES AGREEMENT FOR**  
**MOORING MANAGEMENT SERVICES**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF NEWPORT BEACH**, a Municipal Corporation ("**City**"), and \_\_\_\_\_an\_\_\_\_\_, whose address is \_\_\_\_\_, California, \_\_\_\_\_ ("**Provider**"), 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. Pursuant to a State trust, City manages the tidelands at Newport Harbor, which includes 1,229 public moorings ("Moorings").
- C. The County of Orange ("County") and City entered into a Joint Powers Agreement, dated February 21, 1989, as amended by various amendments (collectively, "Joint Powers Agreement"), in which City paid County to administer and manage City's moorings. County and City agreed to terminate the Joint Powers Agreement, which expired as of \_\_\_\_\_, 2009.
- D. City requires a mooring management services provider ("Project").
- E. City issued a Request for Proposals, dated \_\_\_\_\_, and selected Provider. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- F. City desires to engage Provider to assist the City's Harbor Resources Manager in the management of the mooring of vessels on City (and, if applicable, County) granted and controlled tidelands.

**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 above written date, and shall last, at most, 60 months and shall terminate on the 31<sup>st</sup> day of December, 2014, unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED**

Provider shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference. City may elect to delete certain tasks of the Scope of Services at its sole discretion. A list of the proposed tasks undertaken by the City to provide a complete program of mooring management services to the public is also delineated in Exhibit "A".

**3. TIME OF PERFORMANCE**

Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner. The failure by Provider to perform the services in a diligent and timely manner may result in termination of this Agreement by City.

Notwithstanding the foregoing, Provider shall not be responsible for delays due to causes beyond Provider'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 so that all delays can be addressed.

**3.1** Provider shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) 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 Provider's control.

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

**4. COMPENSATION TO PROVIDER**

[to be negotiated]

City shall pay Consultant the sum of **Insert Written Dollar Amount and** \_\_\_/100 (\$\_\_\_\_\_.00) per month for a total of **Insert Written Dollar Amount and** \_\_\_/100

(\$\_\_\_\_\_.00) per year (“Contract Amount”) to perform all the work and services contemplated by and described in Exhibits “A” and “B”, and incorporated herein by reference. Payment for services shall be made to the Consultant once a month upon submission of an invoice explaining in sufficient detail the services performed. City shall pay invoices within thirty (30) days after approval of the invoice by the City. Payment shall be deemed made when deposited in the United States mail, first-class postage pre-paid, and addressed to Consultant as specified in Section entitled “Notices.”

## 5. PROJECT MANAGER

Provider 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. Provider has designated \_\_\_\_\_ to be its Project Manager. Provider shall not remove or reassign the Project Manager or any personnel listed in Exhibit “B” 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.

Provider, 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. Provider warrants that 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 of the CITY MANAGER’S OFFICE. Chris Miller, Harbor Resources Manager** (“Project Administrator”) shall have the authority to act for City under this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

## 7. CITY’S RESPONSIBILITIES

In order to assist Provider in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

- A. Provide access to, and upon request of Provider, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Provider’s work schedule.
- B. Participate in the cooperative management of the moorings by completing those tasks listed in the Scope of Services – Exhibit “A”.

## 8. STANDARD OF CARE

- 8.1** All of the services shall be performed by Provider or under Provider's supervision. Provider represents that it possesses the professional and technical personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with community professional standards. All services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed work, Provider certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.
- 8.2** Provider represents and warrants to City that it has, shall obtain, and shall keep in full force in 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 Provider to practice its profession. Provider shall maintain a City of Newport Beach business license during the term of this Agreement.
- 8.3** Provider shall not be responsible for delay, nor shall Provider 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 Provider's work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

**9. HOLD HARMLESS**

To the fullest extent permitted by law, Provider 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 Provider's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Provider, 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).

Notwithstanding the foregoing, nothing herein shall be construed to require Provider 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 Provider.

**10. INDEPENDENT CONTRACTOR**

It is understood that City retains Provider on an independent contractor basis and Provider is not an agent or employee of City. The manner and means of conducting the work are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Provider or any of Provider's employees or agents, to be the agents or employees of City. Provider shall have the responsibility for and control over the means of performing the work, provided that Provider is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Provider as to the details of the performance or to exercise a measure of control over Provider shall mean only that Provider shall follow the desires of City with respect to the results of the services.

**11. COOPERATION**

Provider 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 Provider on the Project.

**12. CITY POLICY**

Provider shall discuss and review all matters relating to policy and Project direction with City's 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.

**13. PROGRESS**

Provider 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.

**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 Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Provider is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Provider. 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. INSURANCE

Without limiting Provider's indemnification of City, and prior to commencement of work, Provider shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

- A. Certificates of Insurance. Provider shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City's Risk Manager prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.
- B. Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.
- C. 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.
- D. Coverage Requirements.
  - i. Workers' Compensation Coverage. Provider shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Provider shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Provider for City.

- ii. General Liability Coverage. Provider shall maintain commercial general liability insurance in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.
  - iii. Automobile Liability Coverage. Provider shall maintain automobile insurance covering bodily injury and property damage for all activities of the Provider 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 and 00/100 Dollars (\$1,000,000.00) combined single limit for each occurrence.
- E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:
- i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Provider.
  - ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from Provider's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
  - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.
  - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.

- vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.
- F. Timely Notice of Claims. Provider shall give City prompt and timely notice of claim made or suit instituted arising out of or resulting from Provider's performance under this Agreement.
- G. Additional Insurance. Provider 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.

**16. SUBCONTRACTING**

The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Provider. Assignments of any or all rights, duties or obligations of the Provider under this Agreement will be permitted only with the express written consent of City. Provider shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of City.

**17. OWNERSHIP OF DOCUMENTS**

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Provider, 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 Provider or any other party. Provider shall, at Provider's expense, provide such Documents to City upon prior written request.

**18. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

**19. RECORDS**

Provider shall keep records and invoices in connection with the work to be performed under this Agreement. Provider 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 Provider under this Agreement. All such records and invoices shall be clearly identifiable. Provider shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Provider 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 Provider under this Agreement.

**20. WITHHOLDINGS**

City may withhold payment to Provider 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. Provider shall not discontinue work as a result of such withholding. Provider shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Provider 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.

**21. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Provider which result in expense to City greater than what would have resulted if there were not errors or omissions in the work accomplished by Provider, the additional design, construction and/or restoration expense shall be borne by Provider. Nothing in this paragraph is intended to limit City's rights under the law or any other sections of this Agreement.

**22. CITY'S RIGHT TO EMPLOY OTHER PROVIDERS**

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

**23. CONFLICTS OF INTEREST**

The Provider 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.

If subject to the Act, Provider 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. Provider shall indemnify and hold harmless City for any and all

claims for damages resulting from Provider's violation of this Section.

**24. NOTICES**

All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, 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 Provider to City shall be addressed to City at:

Attn: Harbor Resources Manager  
Harbor Resources Division  
City of Newport Beach  
829 Harbor Island Dr.  
Newport Beach, CA, 92660  
Phone: 949-644-3034

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

Attention: \_\_\_\_\_

**25. TERMINATION**

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, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days prior written notice to Provider. In the event of termination under this Section, City shall pay Provider for services satisfactorily performed and costs incurred up to the effective date of termination for which Provider has not been previously paid. On the effective date of termination, Provider shall deliver to City all reports, Documents and

other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

**26. COMPLIANCE WITH ALL LAWS**

Provider 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. In addition, all work prepared by Provider shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

**27. WAIVER**

A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

**28. 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 agreement or implied covenant shall be held to vary the provisions herein.

**29. CONFLICTS OR INCONSISTENCIES**

In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

**30. 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.

**31. AMENDMENTS**

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

**32. 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.

**33. 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.

**34. EQUAL OPPORTUNITY EMPLOYMENT**

Provider 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 or age.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and year first written above.

APPROVED AS TO FORM:  
OFFICE OF CITY ATTORNEY

CITY OF NEWPORT BEACH,  
A Municipal Corporation

By: \_\_\_\_\_  
Mynette D. Beauchamp,  
Assistant City Attorney

By: \_\_\_\_\_  
Edward D. Selich,  
Mayor

ATTEST:

PROVIDER: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown,  
City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attachments:      Exhibit "A" – Scope of Services  
                         Exhibit "B" – Schedule of Billing Rates

## **Exhibit "A"**

### **Scope of Services**

I. Provider shall:

- A. Establish a near waterfront office within Newport Harbor that is easily accessible by water and/or land to the boating public interested in the many aspects of mooring management listed below.
- B. Provide sufficient qualified office staff (as determined acceptable by City in post-proposal review negotiations) to provide the public services defined below, eight hours per day and seven days per week, year-round. Additional manpower may be requested by City during holiday periods at a defined extra work hourly fee.
- C. Provide sufficient qualified on-the-water staff to effectively implement the public services defined below. Required services will vary seasonally and specific scheduling will be delineated in post-proposal review negotiations. Base staffing shall include one 40 hour per week person with assigned extra work at a defined hourly rate.
- D. Ensure the requirements of City Municipal Code Title 17 as they relate to moorings are properly administered and implemented. City shall issue administrative citations, if determined necessary.
- E. Ensure that the rules and procedures that are not included in the City Municipal Code, which are delineated local practice and listed below, are followed by authorized mooring permit holders and guests.
- F. Refer recommended mooring permit revocation requests to the City Harbor Resources Manager for consideration under Municipal Code 17.70.020 and assist in the processing of the permit revocation.
- G. Provide public access to available vacant moorings for guest use in accordance with established rules and procedures during normal business hours and establish a self-help procedure for after-normal business hours.
- H. Provide weekly inspection services of mooring equipment per the attached mooring regulations and specifications; provide written notification of permittees failure to comply with biannual inspection and service requirements.
- I. Provide weekly inspection services of the vessels on the moorings as to their compliance with seaworthy, operability and nuisance requirements.
- J. Maintain the wait list for mooring permit availability and provide a biannual mailing to determine continued interest and contact update information.
- K. Implement mooring transfers per applicable sections of the Municipal Code and attached procedures and forms.
- L. Coordinate with City to update billing information.
- M. Maintain an impound area for abandoned and/or found vessels.

- N. Assist City in the location of current owners of abandoned/found vessels on moorings and subsequent auction if owner not located.
- O. Assist local mooring inspection and repair contractors in the adjustment of mooring positioning where vessel spacing becomes an issue due to variable vessel characteristics and environmental factors.
- P. Assist mooring permittees in maintaining safe vessel mooring during inclement weather.
- Q. Accept changes in procedures recommended by the City Harbor Resources Manager and/or the Harbor Commission and its subcommittees. If the changes affect the cost of services provided, then an amendment to this agreement may be negotiated.
- R. Accept changes in the Municipal Code implemented by City Council. If the changes affect the cost of services provided, then an amendment to this agreement may be negotiated.
- S. Manage the mooring area permits issued to the Yacht Clubs per the requirements of the Municipal Code.
- T. Complete an annual survey of mooring fees charged in other regions (including in the counties of San Diego, Los Angeles, Ventura, and Santa Barbara) and make a recommendation to the City as to the rates and fees that the City should charge for onshore and offshore moorings.

II. City shall:

- A. Prepare necessary billing and bill each mooring permit holder an annual mooring fee (bimonthly billing with utilities invoice if a City of Newport Beach property owner) for moorings located over City granted and controlled tidelands.
- B. Allow the Provider to rent any vacant moorings over City tidelands and monthly submit fees collected to City.
- C. Coordinate with the Mooring Master Plan Subcommittee (MMPSC) of the Harbor Commission to evaluate mooring regulations and procedures and draft changes for consideration by the Harbor Commission and/or City Council.
- D. Coordinate mooring area boundary changes with the MMPSC and the appropriate federal and state agencies.
- E. Maintain the mooring live-aboard list; provide annual inspection of live-aboard vessels; collect appropriate live-aboard fees; and revoke live-aboard permits for violation of the Municipal Code.
- F. Conduct bimonthly (if necessary) auctions of abandoned vessels and coordinate proper notification and form processing with California Department of Motor Vehicles.
- G. Conduct lien sales of impounded vessels per local and state procedures and requirements.
- H. Approve/disapprove plans and specifications of proposed non-standard moorings or buoys.
- I. Cancel mooring permits per the Municipal Code requirements related to unpaid fees.

- J. Approve/disapprove the transfer of a mooring permit per Municipal Code requirements.
- K. Revoke a mooring permit per Municipal Code requirements.
- L. Coordinate the temporary movement of moorings with the Army Corps of Engineers and the mooring permittees during maintenance dredging projects.

**Exhibit "B"**

**Schedule of Billing Rates and Personnel**

(To be supplied by Provider)

**Exhibit "B"**

**CITY OF NEWPORT BEACH  
CONTRACTOR APPLICATION FORM**

TYPE OF PROPOSER:  NEW  CURRENT OPERATOR

Legal Contractual Name of Business: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

General Business

Contact Person for Business Operations: \_\_\_\_\_

Title: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Business Fax: \_\_\_\_\_

Fiscal

Contact Person for Fiscal Operations: \_\_\_\_\_

Title: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Business Fax: \_\_\_\_\_

Is your business: (check one)

NON PROFIT CORPORATION

FOR PROFIT CORPORATION

Is your business: (check one)

- CORPORATION
- INDIVIDUAL
- PARTNERSHIP

- LIMITED LIABILITY PARTNERSHIP
- SOLE PROPRIETORSHIP
- UNINCORPORATED ASSOCIATION

Names & Titles of Co-Owners, Partners, or Board Members:

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Name	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Names and Titles of Business Officers:

Name	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Does business have any liens or claims?

(If so, please indicate by whom and specify lien or claim, including any tax delinquencies)

Name of Company	Claim	Lien	Amount
_____	_____	_____	_____
_____	_____	_____	_____

Please provide the following:

Federal Tax Identification Number: \_\_\_\_\_

City of Newport Beach Business License Number: \_\_\_\_\_

(If none, selected proposer must obtain a Newport Beach Business License prior to execution of contract.)

## **Exhibit "C"**

### **MOORING REGULATIONS**

1. Telephone numbers and addresses of all mooring permittees must be up-to-date at all times through the Mooring Manager's Office.
2. It is illegal to rent your mooring to anyone. If said mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the City Manager, via the Mooring Manager.
3. Mooring permittees may not loan their moorings out to anyone without a letter of permission, submitted prior to the vessel going on the mooring, and approved by the Mooring Manager. Note: A mooring may only be loaned out for 30 days out of a 90-day period.
4. Vessels on moorings must be registered to the permit holder and assigned to the mooring permit through the Mooring Manager.
5. Only one boat is allowed on a mooring at any one time with the exception of a tender as described in Title 17.
6. Spreader lines must be adequately marked and buoyed at all times.
7. Living aboard a vessel on a mooring, without a City live aboard permit, is a violation of the Newport Beach Municipal Code.
8. All offshore mooring buoys and onshore mooring posts must be painted white with the mooring number painted in black, 3" block letters, clearly visible.
9. Mooring pendants must be kept in good condition at all times.
10. Boats over 18' in overall length are not allowed on onshore moorings.
11. No boats with a fixed keel, fixed rudder, or fixed underwater propulsion apparatus or gear are allowed on onshore moorings.
12. Offshore moorings have been rated for a maximum size and cannot be decreased.

## **Exhibit "D"**

### **Newport Harbor Guest Mooring Regulations**

#### A. Visiting Vessels:

May 1<sup>st</sup> to October 31<sup>st</sup>

Mooring rentals will be allowed for a 5-day maximum continuous stay during a 30-day period. 5-Day extensions are allowed with a not-to-exceed total of 15 days during a 30-day period. All extensions are based upon availability and on the condition the rental applicant has satisfactorily complied with all harbor rules and regulations.

November 1<sup>st</sup> to April 30<sup>th</sup>

Mooring rentals will be allowed for a 5-day maximum continuous stay. 5-Day extensions are allowed with a not-to-exceed total of 60 days between November 1<sup>st</sup> and April 30<sup>th</sup>. All extensions are based upon availability and on the condition the rental applicant has satisfactorily complied with all harbor rules and regulations.

#### Other Rental Rules

- Renters must remain onboard during the evening hours, and based upon weather conditions, renters may be required to remain on board continuously.
- Checkout time is 12:00 noon. Renters in violation of the checkout time are subject to their vessel being impounded. Extension requests must be made in person prior to 12:00 noon.
- All vessels must register regardless of the length of stay. All vessels must be present, currently registered or documented, seaworthy and mechanically operable.

#### B. Guests of a mooring permittee:

A mooring permittee may allow a guest to use his/her mooring with written permission and submission of the written permission to the Mooring Manager for approval. The guest's vessel may stay on the mooring in 30 day increments up to 90 days maximum per calendar year. The mooring permittee cannot charge his/her guest a fee for the use of the mooring.

## **Exhibit "E"** **Procedures for Mooring Transfers**

Whenever a person wishes to cancel his/her mooring permit and have it issued to another person, it is permissible to do so under the following conditions:

1. The mooring equipment and the vessel **currently** assigned to that mooring must be sold to the same person.
2. The mooring permit can only be put in one (1) person's name. The permit cannot be put into a company name.
3. The seller must provide the buyer with two neatly written or typed letters. The first letter is for cancellation of his/her mooring permit and issuance to the new permittee. The second letter is a bill of sale, not the bill of sale form provided by the Department of Motor Vehicles. Below are samples of the two letters which must be notarized.
4. The new permittee must re-register the vessel in his/her name with the Department of Motor Vehicles prior to the transfer. The name on the registration must be the same as will be on the permit.
5. A fee of \$1.20 per foot of vessel length for offshore moorings and \$0.60 per foot for onshore moorings is charged for the transfer, due and payable at the time of transfer.
6. Anyone wishing to transfer a mooring must make an appointment with the Mooring Manager by calling (949) \_\_\_\_\_.

### **Sample Cancellation Letter for a Mooring Transfer**

I wish to cancel my mooring permit (Mooring # \_\_\_\_\_), and have it re-issued to (new permittee's name).

Previous Mooring Permittee's Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

### **Sample Bill of Sale for Mooring Transfer**

I have sold my vessel, (description: size, type, CF or Documentation numbers), along with mooring equipment on (Mooring# \_\_\_\_\_) to (new permittee's full name).

Previous Mooring Permittee's Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit "F"

### Offshore Mooring Specifications

1. All mooring weights must be metal.
2. All mooring buoys shall be of such type as approved by the City's Harbor Resources Manager, painted in compliance with State regulations, with numbers assigned by the Mooring Manager and painted per the requirements described in the Municipal Code.
3. All vessels must be moored fore and aft except in exposed areas designated as single point areas.
4. All mooring locations must be allocated by the Harbor Resources Manager and all moorings must be inspected before installation.
5. Top and bottom chain must be shackled together to form one continuous length. Material other than chain may be used only upon approval of the Harbor Resources Manager.
6. The length of chain is to be determined by the Harbor Resources Manager or his designee and is governed by the depth of water in various mooring areas.
7. Minimum Requirements:

<u>Length of boat</u>	<u>weight of mooring</u>	<u>size of bottom chain</u>	<u>size of top chain</u>
20 feet	500 pounds	½ inch	½ inch
25	650	½	½
30	750	½	½
35	1000	5/8	½
40	1500	5/8	½
45	2000	¾	½
50	2000	¾	½
55	2500	¾	½
60	3000	¾	½
65	3000	1	½
70	3500	1	5/8
75	3500	1	5/8
80	4000	1	¾
85	4500	1	¾
90	5000	1	¾
95	5000	1	¾

## Exhibit "G"

### Onshore Mooring Specifications

1. All mooring weights shall be metal.
2. A 4 inch by 4 inch redwood post, painted white, and with numbers assigned painted thereon at all times shall be placed against the seawall and project not more than 12 inches above the sand.
3. As an alternative to a post, on-shore moorings may connect directly to the seawall with an eyebolt.
4. Buoy and post / eyebolt shall have a pulley attached with a line of not less than 3/8 inch diameter at all times. Vessel is to be moored securely thereto, bow and stern and must not be left on the beach.
5. Mooring buoy shall be metal or of such type as approved by the Harbor Resources Manager, painted in compliance with State regulations, with numbers assigned by the Mooring Manager and painted per the requirements described in the Municipal Code.
6. Minimum requirements:

<u>Length of Boat</u>	<u>Weight of Mooring</u>	<u>Size of Chain</u>	<u>Length of Chain</u>
12 feet	200 pounds	3/8 inches	25 feet
15 feet	250 pounds	3/8 inches	25 feet
18 feet	300 pounds	3/8 inches	25 feet

**Exhibit "H"**

**Municipal Code Chapter 17**

**May be found at:**

**<http://www.codepublishing.com/CA/NewportBeach/>**