

CITY OF NEWPORT BEACH



Request for Proposals

BALBOA YACHT BASIN MANAGEMENT

August 2010

CITY OF NEWPORT BEACH

Request for Proposals

I. INTRODUCTION

The City of Newport Beach owns the property located at 829 Harbor Island Drive, known as the Balboa Yacht Basin (BYB). The BYB includes a 172 slip marina, restaurant, garages, shipyard and apartments. The City of Newport Beach Harbor Resources Division office is also located at the BYB.

The City is interested in receiving proposals from qualified marine facilities managers for management of the BYB.

After a careful review of each submitted proposal, the City will conduct an evaluation leading to the selection of a Contractor and the award of a contract. The resultant contract is intended as a three (3) year contract, with the possibility to be extended for a single two (2) year term or two one (1) year terms, renewable at the City's sole discretion based on the contractor's performance. The contract will be re-bid no less than every five (5) years.

Copies of this request for proposals may be obtained in person at the Harbor Resources Division, 829 Harbor Island Drive, Newport Beach, 92660, or from the City's website, at www.newportbeachca.gov/HarborResources.

II. SELECTION PROCESS AND ESTIMATED SCHEDULE of EVENTS from ISSUANCE of the RFP to AWARD of CONTRACT

Mailing Date	August 25, 2010
Proposal Due	September 15, 2010, 4:00 PM
Interview of Finalists	October 2010
Award of Contract	November 2010
Contractor In-Place	February 1, 2011

III. CITY POINT OF CONTACT

The sole source of contact regarding this RFP is Shannon Levin (949)644-3041 or shannon@newportbeachca.gov. Individuals or firms interested in submitting a proposal are asked not to contact other members of the City of Newport Beach staff in connection with the RFP prior to the announcement of the selected contractor.

IV. CONTENTS OF PROPOSAL

The Contractor is responsible for the following deliverables:

- A. Proposal in the format and content explained in Section II of Attachment A; and
- B. Completed Proposal Form (Attachment D) containing total monthly management services costs.
- C. Completed Statement of Compliance (Attachment E).

V. PROPOSAL CLOSING DATE

Contractor must submit one (1) original and three (3) additional complete copies of the proposal (copies must be marked "COPY"). All proposals must be received by the Harbor Resources office, 829 Harbor Island Drive, Newport Beach 92660, no later than 4:00 PM, September 15, 2010.

Proposals should be labeled:

PROPOSAL FOR BYB MANAGEMENT

Proposals will become a part of the official files of the City of Newport Beach and will not be returned.

VI. INSTRUCTIONS AND CONDITIONS

- A. City of Newport Beach Business License

The Contractor must possess and maintain in effect a valid City of Newport Beach Business License prior to commencement of work and during the entire time that work is being performed under the contract.

- B. Professional Licenses, Permits, Etc...

The Contractor must have, and keep in effect at all times during the term of a contract with the City, all licenses, permits, professional qualifications, and approvals of whatever nature that are legally required to practice his/her trade. See Attachment A.

VII. SCOPE OF WORK

See Attachment B

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CITY OF NEWPORT BEACH
Request for Proposal
Balbo Yacht Basin Marina Management
Attachment A: Instructions and Conditions

The following instructions and conditions apply to this RFP:

I. GENERAL CONDITIONS

Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by Contractor in:

- A. Preparing a proposal in response to this RFP.
- B. Submitting that proposal to the City of Newport Beach.
- C. Negotiating with the City of Newport Beach any matter related to this RFP, proposal, and/or contractual agreement.
- D. Any other expenses incurred by the Contractor prior to the date of an executed contract.

The City of Newport Beach shall not, in any event, be liable for any pre-contractual expenses incurred by any Contractor. In addition, no proposal shall include any such expenses as part of the price proposed to perform the BYB management services as described in this RFP.

Authority to Withdraw RFP and/or Not Award Contract

The City of Newport Beach reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any Contractor responding to the RFP. The City expressly reserves the right to postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s). The City also reserves the right to negotiate with the selected contractor concerning various alternatives.

Pricing Approach

The City of Newport Beach intends to award a contract based on a fixed annual contract price for the three (3)-year term of this contract, renewable for a single two (2) year or two one (1) year extension based on performance at the City's sole discretion.

Upon the first anniversary of the Commencement Date of the Contract and upon each anniversary of the Commencement Date thereafter, the Contract Amount shall be adjusted in proportion to the changes in the Consumer Price Index, subject to the 3.0% adjustment increase set forth below. Such adjustment shall be made by multiplying the original Contract Amount by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month one (1) year prior. For example, if the adjustment is to occur effective June 1, 2008, the index to be used for the numerator is the index for the month of March 2008, and the index to be used for the denominator is March 2007. The "Consumer Price Index" to be used in such calculation is the Consumer Price Index, All Urban Consumers (All Items), for the Los Angeles Anaheim Riverside Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics (1982 84 = 100). If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables including in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Contract Amount in effect immediately preceding such adjustment. The maximum increase to the Contract Amount, for any year where an adjustment is made in proportion to changes in the Consumer Price Index, shall not exceed 3.0% of the Contract Amount in effect immediately preceding such adjustment

Right to Reject Proposals

The City of Newport Beach reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the Contractor, which, in the opinion of the City, is best qualified to execute the contract.

Proposal Evaluation Criteria

Proposals will be evaluated on the basis of the response to all provisions of this RFP.

The City of Newport Beach may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

1. The Contractor's demonstrated awareness of safety in all operations.
2. The Contractor's responsiveness to the requirements of the contract as set forth in the RFP.
3. Contractor's work plan and other proposal documents.
4. A logical, proven methodology for carrying out the work tasks described in the proposal and developing contract deliverables.

5. The Contractor's recent experience in providing services of similar scope, complexity, and magnitude.
6. Recent references from local clients.
7. The proposed contract costs.

II. PROPOSAL FORMAT AND CONTENT

Proposals should be as brief as possible. They should not include any elaborate or unnecessary promotional material. The following order and content of proposal sections should be adhered to by each Contractor:

A. Cover Letter

A cover letter not to exceed three (3) pages in length should summarize key elements of the proposals. The letter must be signed by an individual authorized to bind the Contractor. The letter must stipulate that the proposed price will be valid for a period of a minimum of three (3) years. It must also indicate the address and telephone number of the Contractor's office located nearest to Newport Beach, California, and the office from which the contract will be managed.

B. Background and Approach

The Background and Approach Section should describe the proposing firm's understanding of the City and the work to be done.

C. Methodology

Describe the sequential work tasks you plan to carry out in accomplishing this contract. Fully describe how your company will service the BYB (Attachment C).

D. Organization and Staffing

Provide an organization chart showing all proposed contract team members. Describe the responsibilities of each person on the contract team. Identify the Contract Director and/or Manager and the person who will be the key contact with the City of Newport Beach. Also include any additional information or staff support required from City personnel including during the course of the RFP preparation.

E. Related Experience

Describe recent, directly related marina management experience. Include on each listing the name of the contract agency or company; description of the work done; primary agency or company contact, address and telephone number; dates for the contract; name of the Contract Director and/or Manager and members of the proposed contract team who worked on the contract, as well as their respective responsibilities. At least three references should be included. For each reference, indicate the

reference's name, organization affiliation, title, complete mailing address, and telephone number. The City of Newport Beach reserves the right to contact any of the organizations or individuals listed.

F. Contract Schedule

Provide a schedule for marina services (Attachment B) and Proposal Form (Attachment D).

G. Cost Data

Indicate the total monthly cost and the total annual cost using the Proposal Form (Attachment D) for which you will conduct the contract based upon the information provided.

H. Statement of Compliance

Contractors must submit a Statement of Compliance (Attachment E) with all parts of the Request for Proposals and Draft Agreement (Attachment F) terms and conditions, or a listing of exceptions and suggested changes, along with a description of any cost implications or schedule changes the exceptions and/or changes cause. The Statement of Compliance must declare either:

1. This proposal is in strict compliance with the Request for Proposals and Draft Agreement and no exceptions to either are proposed; or
2. This proposal is in strict compliance with the Request for Proposal and Draft Agreement **except** for the items listed.

For each exception and/or suggested change, the Contractor must include:

- a. The suggested change in the RFP or rewording of the contractual obligations.
- b. Reasons for submitting the proposed exception or change.
- c. Any impact the change or exception may have on contract costs, scheduling, or other considerations.

Please be advised that the City's indemnity and insurance obligations are non-negotiable.

I. Other Information

Include any other information you consider to be relevant to the proposal. Additional optional services may be provided at the discretion of the Contractor.

CITY OF NEWPORT BEACH

Request for Proposals

Balboa Yacht Basin Management

Attachment B: Scope of Work

I. INTENT

The intent of this Scope of Work is to provide management of the Balboa Yacht Basin marina and City facilities at 829 Bayside Drive, Newport Beach.

SCOPE OF SERVICES

Furnish all labor, equipment, materials, and supervision to perform BYB Management as described herein including, but not limited to, the following:

- A. Oversee day to day marina operations and services including slip rental and rent collection.
- B. Conduct daily inspections of docks, garages, restrooms, parking lot, grounds and trash enclosures to maintain safety and cleanliness.
- C. Keep dock carts in order.
- D. Ensure trash bins and enclosures are clean, swept and free of any hazardous materials.
- E. Maintain proper disposal of hazardous waste and retain associated records and waste manifests.
- F. Inspect restrooms daily for cleanliness. Replace restroom supplies as needed. Does not include janitorial service.
- G. Provide excellent customer service to current tenants, slip renters, and general public.
- H. Maintain orderly records of marina and BYB property.
- I. Maintain wait list for slips and garages and accept applications and deposits.
- J. Coordinate maintenance activity with City and with contractors for repairs and maintenance.
- K. Prepare a line-item list (including estimated cost) of significant (greater than \$1000) repair and maintenance items to be considered by the City in their annual budget review process.

- L. Manage BYB as a *Clean Marina* and have marina certified within time frame not to exceed 18 months (www.cleanmarinasocalifornia.org).
- M. Cooperate with the City's Newport Bay Copper Reduction Program at the BYB. (Information located at www.coastkeeper.org)
- N. Maintain confidentiality of records including tenancy, disputes, and tenant information.
- O. Ensure that the terms of the various slip and garage rental agreements are adhered to by the respective tenants.
- P. Ensure that the marina rules and regulations are provided to each new tenant and adhered to during their tenancy.
- Q. Attempt to resolve all tenant versus tenant disputes and advise City of the nature of the dispute and resolution. If the dispute is not resolvable, refer to City for final determination.
- R. Maintain accurate records and assist City in collections of debts.
- S. Maintain the security camera system and keep electronic files for a period of not less than three months and assist the Newport Beach Police Department in reviewing files regarding suspected crimes committed in the marina.
- T. Conduct monthly meter readings and coordinate billing with Revenue Division.
- U. Conduct daily inspections of the public pump out facility at the Balboa Yacht Basin on E dock.
- V. Review marina operations annually with the City's Code and Water Quality Enforcement staff and implement their recommendations regarding water quality maintenance and improvement.
- W. Inspect all sidewalks around the bulkhead for settling on at least a semiannual basis and report any sidewalk settling over one half inch to the City for further review and/or replacement. Loss of material adjacent to the bulkhead is a significant safety issue in this marina and should be carefully monitored.
- X. Review slip and garage renter files to ensure that the required insurance is up to date and that the renters provide annual evidence that the Coast Guard documented vessel or DMV registration is in the name of the slip renter.
- Y. Prepare a quarterly newsletter to remind slip and garage renters of rules and regulations (especially those which during the last quarter were frequently violated) and to reinforce Clean Marina related issues.

II. WORKING HOURS

Normal working hours shall be considered 8:00 AM-5:00 PM. Contractor may identify work days and propose hours outside of this range, and must account for such separately. Time above and beyond a 40 hour work week may be included or rejected by City. No motorized equipment shall be operated before 7:00 AM nor after 6:00 PM.

Contractor must be available for emergency services and accommodate work before 8:00 AM or after 5:00 PM should there be a need for services. Contractor will be paid at the standard billing rate.

III. SCOPE OF WORK

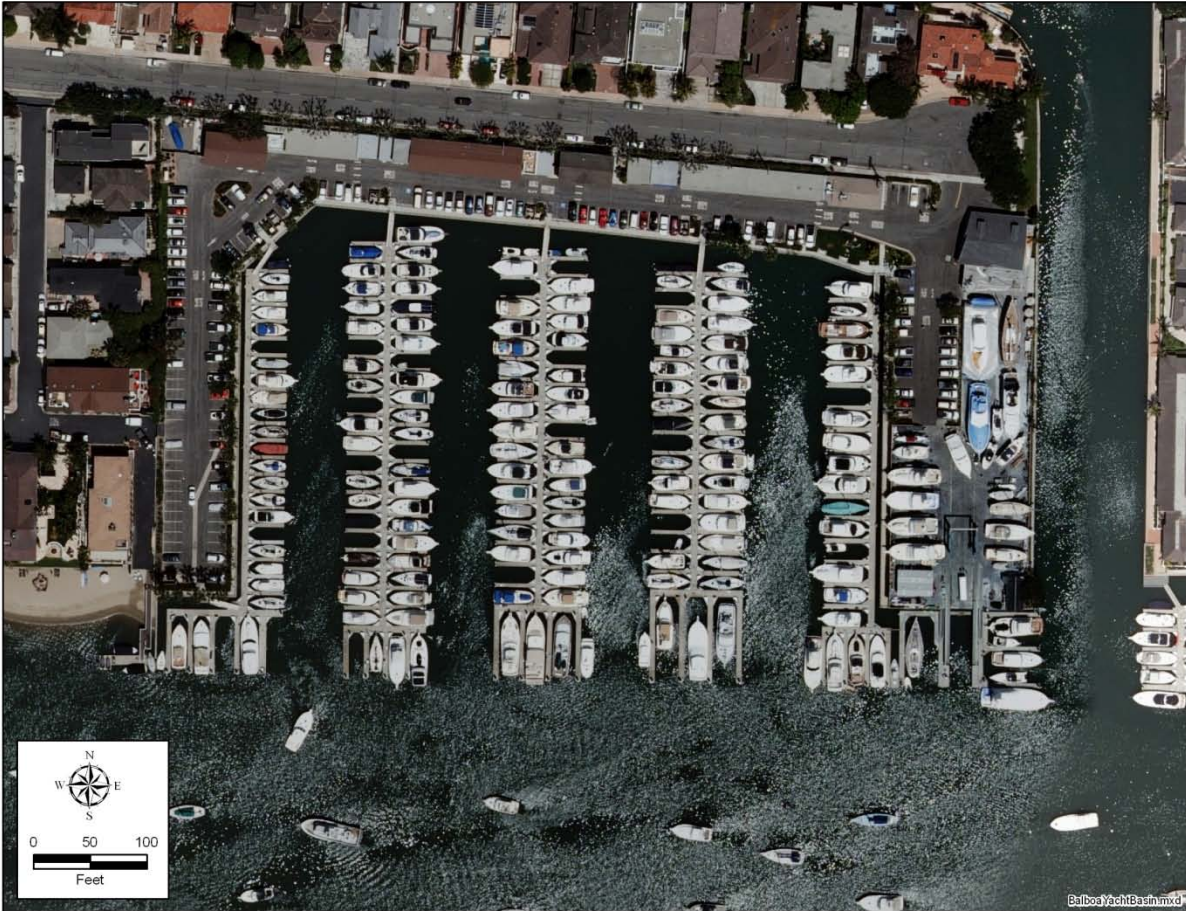
This Scope of Work is intended to cover all labor, material and standards of workmanship to be employed in the work called for in this RFP or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as if described in the specifications.

CITY OF NEWPORT BEACH

Request for Proposals

Balboa Yacht Basin Management

Attachment C: Balboa Yacht Basin Map



CITY OF NEWPORT BEACH

Request for Proposals

Balboa Yacht Basin Management

Attachment E: Statement of Compliance

Each proposal must be accompanied by a signed Statement of Compliance. The Contractor must sign one of the declarations stated below.

I. The person signing below declares that the proposal submitted by (Name of Firm) _____ to manage the Balboa Yacht Basin for Harbor Resources as described in the RFP dated _____ 2010 was prepared in strict compliance with the instructions, conditions, and terms of the RFP, the Scope of Work, and Draft Agreement.

Signature

Date

Printed Name and Title

II. By signing below, the Contractor states that the proposal submitted by (Name of Firm) _____ has been prepared in consideration of and with exception to some of the terms of the RFP, Scope of Work, and Draft Agreement. The Contractor is advised that exceptions and/or a suggested change to any of the terms of the RFP, the Scope of Work, or Draft Agreement must be submitted in writing as an attachment to the proposal submittal. By signing below, the Contractor declares that the proposal includes a statement that identifies each item to which the Contractor is taking exception or is recommending change, includes the suggested rewording of the contractual obligations or suggested change in the RFP, identifies the reasons for submitting the proposed exception or change, as well as, any impact the change or exception may have on contract costs, scheduling, or other considerations. The City reserves the right to reject any declarations that are not accompanied with the required documentation as described above.

Signature

Date

Printed Name and Title

CITY OF NEWPORT BEACH

Request for Proposals Balboa Yacht Basin Management *Attachment F: Draft Agreement*

CONTRACTOR AGREEMENT

THIS BALBOA YACHT BASIN SERVICE AGREEMENT (Agreement), is made and entered into this _____ day of _____, 2011 (“Commencement Date”) by and between the **CITY OF NEWPORT BEACH**, a Municipal Corporation and Charter City (“City”), and [NAME OF CONTRACTOR], a [Type of Entity] located at [ADDRESS] (“Contractor”), 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 the City of Newport Beach.
- B. In _____, 2010 the City issued a Request for Proposal (RFP) seeking proposals from qualified marine facilities management companies to provide marina management at the Balboa Yacht Basin (BYB). Contractor submitted the winning qualified bid among the firms that responded to the RFP.
- C. City desires to engage Contractor to manage the BYB as outlined in the RFP and this Agreement (the “Project”).
- D. Contractor and its staff possess the training, experience, expertise, and background to provide the services described in this Agreement.
- E. City has reviewed the previous experience of Contractor and desires to retain Contractor to manage the BYB under the terms and conditions set forth in this Agreement.
- F. Contractor acknowledges that City has relied upon Contractor’s representations and Contractor commits to faithfully perform the services required by this Agreement and to perform the services in accordance with the terms and conditions set forth in this Agreement.
- G. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications relative to the type and frequency of the work to be performed, 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

Unless terminated earlier in accordance with Section 24 of this Agreement, the Term of this Agreement shall be for a period of three (3) years. The term shall commence on February 1, 2011 after City Council approval of this Agreement.

The term of this Agreement may be extended for a single two (2) year term or two one (1) year terms with the extension to automatically commence upon the expiration of the initial term or any extended term, unless the City notifies Contractor in writing at least thirty (30) days before the end of the initial term or any extended term, of its intent to terminate this Agreement. Time is of the essence in the performance of services under this Agreement. Following expiration, this agreement may be extended by the parties for an additional three (3) months if required by the City to complete the Request for Proposals process to locate a replacement provider of the services.

2. SCOPE OF SERVICES

A. Contractor shall perform the services set forth in the Scope of Services attached hereto as Exhibit A. These services shall be provided at the locations listed in Exhibit B. Contractor shall meet all the requirements specified in Exhibit C. Reports shall be submitted by the Contractor in accordance with Exhibit D. Bid Unit Prices and Costs are contained in Exhibit E. All of these Exhibits are considered to be a part of, and are incorporated into, this Agreement by reference.

B. As a material inducement to the City for entering into this Agreement, Contractor warrants that all work and services to be provided hereunder shall be performed in a competent, professional and satisfactory manner by an adequate level of staff with the appropriate level of training. Contractor covenants that it shall follow the highest professional standards in performing the work and services and that all equipment and supplies used will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

3. PERSONNEL REQUIREMENTS AND SUPERVISION

A. The Contractor shall have present on the job at all times during the working hours a competent Supervisor, who shall be responsible for adherence to the specifications outlined in the Scope of Services and the service requirements

set forth in Exhibit C. The Supervisor shall be able to communicate effectively in the English language (both orally and in writing). Prior to the commencement of work, Contractor shall submit to the Harbor Resources Supervisor for prior approval the name of the person intended to be employed as Supervisor for the duration of the contract, along with his qualifications and past experience. The Supervisor shall be required to report regularly to the Harbor Resources Supervisor or his or her designee, as necessary to review daily operations.

- B. All contract services shall be performed by competent and experienced employees. The Contractor shall comply with all state and federal legal requirements regulating the right to work in the United States of America to ensure that all members of the work force have the legal right to perform work under this Agreement. Contractor shall make any records related thereto available to the City within ten (10) days of receiving a written request for said records by the City.
- C. All supervisors and lead workers must be able to communicate effectively in English (both orally and in writing). Any order given to these supervisors or lead workers shall be deemed delivered to the Contractor.
- D. The City reserves the right to conduct a background investigation of any employee of Contractor and to require the Contractor to remove any employee whose performance is deemed unsatisfactory in the City's sole discretion. Persons employed by the Contractor who are found unsatisfactory by the City shall be discharged or reassigned by the Contractor on fifteen (15) days notice from the City.
- E. Contractor shall be responsible for compliance with all local, state, and federal laws and regulations regarding chemical usage. Contractor shall employ or retain, at its sole cost and expense, all professional and technical personnel necessary to properly perform contract services.
- F. All Contractor personnel working under this Agreement shall be neat in appearance.
- G. All work shall be performed in accordance with the highest professional standards.
- H. Contractor shall provide an Operations Manager to coordinate work with the Harbor Resources Supervisor or his/her designee and ensure satisfactory performance of contract services.
- I. The City will periodically inspect all work performed by the Contractor.
- J. Contractor shall ensure there is no lapse in service as set forth in Exhibit A.

4. LICENSES, FEES, PERMITS AND TAXES

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

5. COMPLIANCE WITH ALL LAWS

All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City and any Federal, State, or local governmental agency of competent jurisdiction.

6. COMPENSATION TO CONTRACTOR

City shall pay Contractor 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 through D. Payment for services shall be made to the Contractor once a month upon submission and approval 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 Contractor as specified in Section 23 entitled "Notices."

Upon the first anniversary of the Commencement Date of the Contract and upon each anniversary of the Commencement Date thereafter, the Contract Amount shall be adjusted in proportion to the changes in the Consumer Price Index, subject to the 3.0% maximum adjustment increase set forth below. Such adjustment shall be made by multiplying the original Contract Amount by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month one (1) year prior. For example, if the adjustment is to occur effective June 1, 2008, the index to be used for the numerator is the index for the month of March 2008, and the index to be used for the denominator is March 2007. The "Consumer Price Index" to be used in such calculation is the Consumer Price Index, All Urban Consumers (All Items), for the Los Angeles Anaheim Riverside Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics (1982 84 = 100). If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables including in such new index. In no event, however,

shall the amount payable under this Agreement be reduced below the Contract Amount in effect immediately preceding such adjustment. The maximum increase to the Contract Amount, for any year where an adjustment is made in proportion to changes in the Consumer Price Index, shall not exceed 3.0% of the Contract Amount in effect immediately preceding such adjustment.

7. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of 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 expressed terms of this Agreement. 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 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 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.

8. EQUIPMENT

At its sole cost, the Contractor shall supply all necessary tools, equipment, and labor that may be necessary to perform the work outlined herein. Equipment used by the Contractor must be of quality and in good working condition at all times.

9. REPAIR/REPLACEMENT

A. The Contractor shall adopt reasonable methods to furnish continuous protection to City property and equipment to prevent loss or damage, and shall be responsible for all such damages, to persons or property, except such loss or damage as may be caused by City's sole negligence or willful misconduct.

B. Contractor shall advise the Harbor Resources Supervisor of any damage to City equipment or property immediately upon becoming aware of the damage.

C. Contractor shall repair, at its sole cost and expense, any damage to City or private equipment or property caused by Contractor or its agents, employees, representatives or officers.

10. FAMILIARITY WITH WORK AND WORK SITE

A. By executing this Agreement, Contractor warrants that Contractor: (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. Contractor warrants that Contractor has

investigated the sites listed in Exhibit B and is fully acquainted with the conditions there existing, prior to commencement of services hereunder.

B. City and Contractor agree that City has made no representation regarding the order or condition of any area or location for which Contractor is to provide services or that the site or location of work will be free from defects, apparent or hidden, at the commencement of, or at any time during the term of this Agreement.

11. HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents 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 work performed or services provided under this Agreement (including, without limitation, defects in workmanship and/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, Contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them).

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.

12. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant 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.

A. Proof of Insurance. Consultant 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. 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.

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or subconsultants. The cost of such insurance shall be included in Consultant's bid.

B. 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.

C. Coverage Requirements.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Consultant's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Consultant shall require each subconsultant to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subconsultant'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 (ten (10) calendar days written notice of non-payment of premium) prior to such change.

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

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant 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.

iv. Professional Liability (Errors & Omissions) Coverage. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) limit per claim and in the aggregate.

D. Other Insurance Provisions or Requirements.

The policies are to contain, or be endorsed to contain, the following provisions:

i. 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 Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

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

iii. 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.

iv. Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to 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.

E. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement.

F. Additional Insurance. Consultant 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.

13. PROHIBITION AGAINST TRANSFERS OR ASSIGNMENT

A. Contractor may not assign any right or obligation of this Agreement or any interest in this Agreement without the prior written consent of City. Any attempted or purported assignment without the consent of the City shall be null and void. Contractor acknowledges that these provisions relative to assignment are commercially reasonable and that Contractor does possess special skills, abilities, and personnel uniquely suited to the performance of contract services and any assignment of this Agreement to a third party, in whole or in part, could jeopardize the satisfactory performance of contract services. Contractor may not employ any subcontractors unless specifically authorized by City.

B. 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 venture which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement.

14. RECORDS AND REPORTS

A. All Contractor's books and other business records, or such part as may be used in the performance of this Agreement, shall be subject to inspection and audit by any authorized City representative during regular business hours.

B. Contractor shall complete a monthly maintenance report indicating work performed and submit this completed report to the Harbor Resources Supervisor or his/her designee within ten (10) days after the end of each month.

C. Contractor shall keep records and invoices in connection with its work to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs, including man hours, incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records. Contractor shall maintain and allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

15. ADMINISTRATION

This Agreement will be administered by Harbor Resources. The **Harbor Resources Supervisor, Shannon Levin**, or his/her designee, shall be considered the City's Administrator and shall have the authority to act for the City under this Agreement. The Administrator or his/her authorized representative shall represent the City in all matters pertaining to the services to be rendered under this Agreement.

16. INCREASE OR DECREASE IN SCOPE OF SERVICES

A. Contractor may be asked to perform additional management and maintenance services by the Administrator. The Administrator may give verbal authorization for additional services up to \$500. Administrator shall provide Contractor with written authorization prior to the performance of any additional services that exceed \$500.

B. City reserves the right to withdraw task(s) from the work to be performed by Contractor pursuant to this Agreement. City shall notify Contractor in writing of its intent to do so at least thirty (30) days prior to the effective date of withdrawal of any location. In the event a task is withdrawn from the Scope of Services, compensation to Contractor shall be reduced in accordance with the bid unit costs as specified in Exhibit E. In the event the task is withdrawn for a period of less than a full one (1) year term, Contractor's compensation shall be reduced on a prorated basis.

17. WORK DEFICIENCIES AND CORRECTIONS

A. The Contractor's performance will be evaluated on a regular basis. When problems are identified, the City will notify Contractor. If issues are serious or go unresolved, a Notice of Deficiency will be issued to Contractor in writing. This notice will detail the issues and give a cure period to resolve them.

B. Failure to correct the deficiencies listed in the Notice of Deficiency within the timeframe specified by the City may, in the City's sole discretion, result in action being taken by the City, including, but not limited to, (a) withholding payment for the subject deficiency until the work is completed; (b) correcting the deficiency (using the City's own work force and/or by contracting out) and deducting any associated costs plus overhead incurred thereby from the total monthly compensation due the Contractor; (c) deletion of the task(s) from the Contract and reducing the corresponding compensation for that month; (d) contracting with another vendor to perform the maintenance and other services required for the remainder of the term of the Agreement and deducting from the Contractor's total compensation under the contract any costs that City pays or becomes obligated to pay the new Contractor, including expenses City incurs over and above the monthly billing rate by the Contractor; (e) terminating the Agreement; and/or (f) taking any other action and exercising any other legal remedy available to the City under law.

C. The City reserves the right to make appropriate deductions in payments for unsatisfactory performance or failure to perform contract duties. Payment deductions shall be based upon the Unit Prices outlined in Exhibit E.

18. DISPUTES PERTAINING TO PAYMENT FOR WORK

Should any dispute arise respecting the value of the work done, or of any work omitted, or of any extra work which Contractor may be required to do, or respecting any payment to Contractor during the performance of the Agreement, such dispute shall be decided by the City Manager and his decision shall be final and binding upon Contractor and his sureties.

19. REIMBURSEMENT FOR EXPENSES

Contractor shall not be reimbursed for any expenses unless the City approves the expense in advance in writing.

20. LABOR

Intentionally omitted.

21. NONDISCRIMINATION BY CONTRACTOR

Contractor represents and agrees that it does not, and will not, discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, handicap, national origin, or other basis that is violation of the federal or state constitution or federal or state law. Contractor's obligation not to discriminate shall apply, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

22. CONFLICTS OF INTEREST

A. 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 financial interest that may foreseeable be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeable financially affect such interest. The Contractor will provide a complete disclosure form noting the above. Contractor will comply with the Act and relevant City Resolutions.

B. 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 termination of this Agreement by the City. The Contractor shall indemnify and hold harmless the City for any claims for damages resulting from the Contractor's violation of this Section.

23. NOTICES

All notices, demands, requests or approvals to be given under this Agreement must be given in writing and will be deemed served when delivered personally or on the second

business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

Attn: Shannon Levin
Harbor Resources
City of Newport Beach
829 Harbor Island Drive
Newport Beach, CA 92660

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

Attn: _____

24. TERMINATION/DEFAULT

A. In the event Contractor fails or refuses to timely perform any of the provisions of this Agreement in the manner required or if Contractor violates any provisions of this Agreement, Contractor shall be deemed in default. If such default is not cured within a period of two (2) working days, or if more than two (2) working days are reasonably required to cure the default and Contractor fails to give adequate assurance of due performance within two (2) working days after Contractor receives written notice of default from City, City may terminate the Agreement forthwith by giving written notice. City may, in addition to the other remedies provided in this or authorized by law, terminate this agreement by giving written notice of termination.

B. This agreement may be terminated without cause by the City upon thirty (30) days written notice. Upon termination, City shall pay to Contractor that portion of compensation specified in the Agreement that is earned and unpaid prior to the effective date of termination. The Contractor may only terminate the Agreement in the event of nonpayment by the City. In the event of nonpayment by the City, Contractor shall give the City thirty (30) days written notice thereof and the City shall have fifteen (15) working days to cure the alleged breach.

C. In addition to, or in lieu of, remedies provided in this Agreement or pursuant to law, City shall have the right to withhold all or a portion of Contractor's compensation for contract services if, in the judgment of the City Manager, the level of service falls below appropriate standards and/or Contractor fails to satisfactorily perform contract services. City shall have the right to retain funds withheld until the City Manager determines that contract services are performed as well and as frequently as required by this Agreement.

25. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason for an alleged breach of any provisions of this Agreement, the parties agree that attorneys' fees **shall not** be recoverable by the prevailing party.

26. WAIVER

A waiver by City 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.

27. INTEGRATED CONTRACT

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties and all preliminary negotiations and agreements of whatsoever kind or nature are merged in this Agreement. No verbal agreement or implied covenant shall be held to vary the provisions hereon.

28. 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.

29. 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.

30. 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.

31. 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.

[SIGNATURES ON NEXT PAGE]

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 THE CITY ATTORNEY

CITY OF NEWPORT BEACH
A Municipal Corporation

By: _____
Leonie Mulvihill
Assistant City Attorney

By: _____
Keith D. Curry, Mayor
City of Newport Beach

ATTEST:

CONTRACTOR:

By: _____
Leilani Brown
City Clerk

By: _____
Title: _____

By: _____
Title: _____

[END OF SIGNATURES]

List of Exhibits

- Exhibit A** Scope of Services
- Exhibit B** Map of Balboa Yacht Basin
- Exhibit C** Proposal Form and Cost Breakdown
- Exhibit D** Statement of Compliance