

## **Operating Agreement For Port San Luis Harbor District Boatyard Facility**

This Operating Agreement ("Agreement"), effective July 1, 2012, is between the Port San Luis Harbor District ("District"), a public agency organized under the California Harbors and Navigation Code, and Marty Codorniz and Del Kyle ("Operators"), individuals associating for the purposes of this Agreement.

1. Facility. Subject to the terms herein, District hereby grants Operators the right to operate the Port San Luis Harbor District Boatyard ("Facility"), which Facility is located in the Port San Luis Harbor District, and more particularly described in the attached Exhibit "A".

2. Term. The "Term" of this Agreement is for one (1) year, beginning on the date indicated above. Operators or District may terminate this Agreement by delivering written notice, as prescribed in Section 30 of the Operating Agreement, at least ninety (90) days prior to termination date.

3. Facility Operating Fee. Operators shall calculate and pay to the District a "Facility Operating Fee" which shall be:

- a. \$1,053.00.00 per month for the months of November through March; and
- b. \$1,579.00.00 per month for the months of April through October.
- c. Operators shall pay the Facility Operating Fee within five (5) days after the close of

each month.

4. Accounting. Operators agree to use appropriate accounting methods and reports to enable the District to establish on a monthly basis the amount of goods and services being provided and charged by Operators in their operation of the Facility. The Operators will provide written reports each month to the District at the time of payment of the Facility Operating Fee. The District shall provide the form which will include the following categories: 1) Vessel haul charges; 2) Laytime charges; 3) Vessel repair charges; 4) Motor and part sales; 5) Other charges and surcharges. The District may change the form at its discretion. If Operators fail to supply such report, a \$50 monthly penalty shall be charged.

5. Rate Setting and Posting. The Operators will consult with the District in setting the initial and any revised charges for any services or facilities provided to customers for use of the Facility. Laytime rates will be twelve dollars (\$12) per day for the first thirty (30) days, twenty dollars (\$20) per day for the 31<sup>st</sup> to 60<sup>th</sup> days, and thirty dollars (\$30) per day for all days past 60. Rates may be increased by the percentage increase in the Consumer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics, for All Urban Consumers for the Los Angeles, Orange County, Riverside (1982-84=100) areas for the preceding twelve months. The District reserves the right to establish and revise the final rate structure for all rental and service fees charged at the Facility. In no event will Operators be required to charge a price for goods or services that results in a loss to Operators for the goods or services provided. The Operators recognize that the Facility is a public facility and that all charges and fees must be fair, consistent and based on reasonable factors. All rates charged will be posted at the Operators' central place of business for the Facility and shall be the same rates identified in any other postings of charges for Facility services regardless of where such fees or charges are posted.

6. Operating the Facility. Operators will be responsible for the day-to-day operations of the Facility. The day-to-day operations include, but are not limited to, negotiating supply contracts, ordering and maintaining supplies, scheduling customer appointments, billing and collections, hours of operation, and developing and implementing policies and procedures for the Operators' use of the Facility to the extent such policies and procedures do not conflict with any relevant District policies in place or which the District adopts in its due course of business. Operators agree to operate and manage the Facility in a competent and efficient

manner at least comparable to other well managed operations of similar type. When Operator requires assistance from the District, a District Work Order will be submitted to the District Harbor Office.

Work requested by Operators shall be charged to Operators at the Districts published rates. Operators shall at all times use sound hiring and employment practices and shall closely supervise attendants and employees to insure the maintenance of a high standard of service to the public. Operators shall replace any employee whose conduct is detrimental to the best interest of the public.

7. District Use. Operators acknowledge that the District shall have unrestricted access to the Facility at no charge, including access to perform all duties required of it by law or under the terms of this Agreement or to protect its interests. Operators shall do nothing to the Facility that blocks the District from use of its facilities or property adjacent to or included within the Facility. The District will continue to use the Facility for its own use including the hauling and launching of District owned boats, docks, camels, or any other equipment. District will use the Facility with its own crew at no charge for such hauling and launching. District may request Operators to assist in hauling and launching and will pay standard rates for this service. District will utilize yard space for its own use at no charge, except for utility fees. District will consult with Operators and mutually determine the location of space. In addition, the District may utilize a portion of the Boatyard for placement of a 40' by 8' storage container, at no cost to the District. The placement of the storage container shall not impede the use of the mobile hoist.

In the event that a vessel in Port San Luis Harbor is deemed unseaworthy by the Harbor Manager, the Operator shall haul-out vessel at the earliest possible opportunity. The District shall be given first priority. A vessel space shall be available for District's use at all times.

8. District's & Operator's Cooperation. The District shall reasonably cooperate with Operators in obtaining, reviewing or maintaining all of the permits, governmental approvals and licenses necessary to effect Operators' operation of the Facility, as allowed by this Agreement. Operators shall indemnify, defend, and hold District harmless from any claims or losses District may suffer arising out of such cooperation. Operators shall obtain and pay for a hazardous waste generator permit, if required.

District and Operators shall meet on a monthly basis to discuss any and all matters related to the Operation of the Facility. The monthly meeting will occur at a regularly scheduled place and time convenient for both the Operators and the District. A monthly inventory of boats and their estimated departure times, accounts receivable aging analysis, dredging schedules, LCM haul out and launching, and standard operating procedures for launching and hauling boats of different drafts are examples of topics for monthly meetings.

9. Alterations. The Facility is to be operated as is. If, at any time during the Term of this Agreement, or during any extension thereof, Operators wish to change the Facility or the equipment contained thereon in any way, including installing, removing, constructing, reconstructing or altering any or all of the Facility, the Operators will first obtain written permission from the District. Unless otherwise agreed to by District, should Operators remove, reconstruct, alter or improve the Facility, they shall restore the Facility to the condition in which it existed prior to Operators' removal, reconstruction, alteration or improvement. Operators shall retain title to those items it places on or under the Facility or affixes thereto, whether trade fixtures or not as long as those items can be removed from District owned property without damage to such property.

10. District Alterations & Boatyard Capital Improvements. Operators acknowledge that the District may engage in harbor capital improvement projects from time to time which may affect the operation of the Facility. The extent and scope of the improvements will depend on available funding and Harbor Commission approval of the improvement plans. The District agrees to give the Operators advance notice of all planned or scheduled improvements and to work with the Operators to accommodate their services at the Facility in the least disruptive manner. Operators acknowledge that any and all improvements to the Facility

shall be at the sole discretion of the District. The District acknowledges that the Facility Operating Fee may be reduced or pro-rated if operation of the Facility is restricted to the Operators during any District alteration or capital improvement project. This Agreement shall remain in full force and effect during any alterations or improvements by the District, unless the District and Operators otherwise agree or modify the Agreement in writing.

11. Utilities. Operators shall pay all utility costs and expenses incurred in the operation of the Facility, including, but not limited to, the cost of all garbage and debris removal, electrical or other power, water, sewer, and any other utilities used or consumed in operating the Facility.

12. Operators' Maintenance Responsibilities. Operators shall be responsible for day-to-day maintenance of the Facility and equipment contained thereon. The Operators specifically agree to perform and pay for all maintenance and repairs to the ACME Mobile Hoist and to comply with the Maintenance responsibilities for the Hoist and related Facility equipment, outlined in Exhibit "B" to this Agreement. Operators will terminate the use of the Hoist if there is any malfunction, damage, excessively worn parts or improper function of equipment that constitutes a safety hazard or causes additional damage. Operators agree to immediately notify District if the Hoist malfunctions and to cease operating the Hoist until needed repairs are made and/or safety hazards are corrected. Operators will schedule and pay for the annual inspection and certification and for quadrennial load tests referred to in the attached Exhibit "B". Operators hereby accept any and all responsibility, and agree to indemnify the District accordingly, for any damage or loss to the District or any third parties as a result of Operators' failure to carry out the maintenance or insurance responsibilities under this Agreement.

13. District Maintenance Responsibilities. Upon written and advance notice, together with supporting documentation to the District by the Operators, District will pay costs in excess of \$500.00 for any repairs and replacement parts for utilities, water treatment plant and related Facility equipment, if the District determines, after reviewing the written notice, that such single repair reasonably exceeds the cost of \$500.00. In no event will the District be obligated to pay any amount for any repair or replacement parts for the Hoist. Operators will be responsible for the first \$500.00 in costs for any repairs to utilities, water treatment plant and related Facility equipment. Any tests and repairs will be completed according to the District's scheduling needs, with reasonable notice to Operators of the approximate date of the tests and/or repairs. Operators shall cooperate with the District to insure access to the machinery or the Facility when tests and/or repairs are required. The District will repair pavement, fences and underground electrical and water infrastructure within the Facility. Operators acknowledge that the District shall be under no obligation to insure that dredging is performed in the Harbor. Operators further acknowledge that the District's, or any other party's, failure to dredge or any delay in dredging activities might have an adverse effect on the Operators' ability to launch or hoist vessels. The District accepts no responsibility for the Operators' inability, inconvenience, delay, or increased costs associated with the District's failure to dredge the Harbor, and in no event will such failure or delay in dredging excuse any of Operators' other duties or obligations under the terms of this Agreement.

14. Environmental Matters.

a. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

i. "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Facility. Hazardous Material includes: (a) Any "hazardous substance as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and Amendments Title 42 Chapter 103 United States Code (U.S.C.) sections 9601-9675; (b) "Hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. sections 6901-6992k; (c) Any pollutant, contamination, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or

requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect); (d) Petroleum products; (e) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code sections 2011-2297g-4; (f) Asbestos in any form or condition; and (g) Polychlorinated biphenyls ("PCBs") and substances or compounds containing PCBs.

ii. "Environmental Laws" shall mean any and all present and future federal, state and local law (whether under common law, statute, rule, ordinance, agreement, regulation or otherwise), requirement under any permit issued with respect thereto, and other requirements of Agencies having jurisdiction thereunder relating to the protection of human health or the environment, including (without limitation) the Federal Insecticide, Fungicide, and Rodenticide Act and Amendments, 7 U.S.C. 136, et seq; the Toxic Substances Control Act, 15. U.S.C. 2601, et seq.; National Emission Standards for Asbestos, 40 C.F.R. Part 61 Subpart M; California Labor Code 6501.5 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.); the Federal Water Pollution Prevention and Control Act, 33 U.S.C. 1251 et seq.; the California Hazardous Waste Control Act, Health & Safety Code 25100 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code 25300 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code 25249.5 et seq. ("Proposition 65"); the California Health & Safety Code 25500 et seq. (Hazardous Materials Response Plans and Inventory); the California Porter-Cologne Water Control Act, Water Code 13000 et seq.; the California Health & Safety Code 25280, et seq. (Underground Storage of Hazardous Substances); the Solid Waste Disposal Act, 42 U.S.C. 6901, et seq.; Air Pollution Prevention and Control 42 U.S.C. 7401 et seq. (the "Clean Air Act") as heretofore and hereafter amended.

b. Compliance with Laws. Operators and all employees, agents, subsidiaries, divisions, dealers of Operators, contractors, subcontractors, authorized representatives, customers, or invitees shall use, store, and dispose of all Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and policies in effect during the term of this Agreement, including but not limited to, the Environmental Laws.

c. Indemnification. Operators shall, at Operators' sole expense and with counsel reasonably acceptable to District, indemnify, defend, and hold harmless District and District's employees, commissioners, partners, affiliates, contractors, subcontractors and agents with respect to all losses arising out of or resulting from the release of any Hazardous Material in or about the Facility or the violation of any Environmental Law, by Operators or their representatives. This indemnification includes, but is not limited to, losses attributable to diminution in the value of the Facility and all liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation. This indemnification shall survive the expiration or termination of this Agreement. If Hazardous Materials were released or violations of Environmental Laws existed prior to Operators' possession of the Facility under the terms of Agreement and all previous agreements between Operators and District, Operators will not be liable for clean-up of such release or for payment of such violation.

d. Environmental Notice. Operators shall give the District notice regarding any release of Hazardous Materials on the Facility which violates any Environmental Law or must be reported to a governmental agency under the Environmental Laws.

e. Operators Enforcement Responsibility of Facility Rules. Operators shall be responsible for enforcement of specific rules as presented in Exhibit "C". If Operators need assistance in enforcement activities, Operators shall contact District Harbor Patrol staff. However, District is not obligated to ensure such enforcement.

15. Surrender. At the expiration, termination or cancellation of this Agreement as provided herein, or as soon thereafter as is reasonably possible, Operators shall surrender operation of the Facility, together with all improvements thereon, except for any improvements Operators have purchased from the District, elect to remove or are required to remove pursuant to this Agreement. Title to any remaining improvements not removed at the end of this Agreement shall pass to District upon surrender of possession. Operators shall bear all expenses associated with removing all of their property from the Facility at the end of this Agreement. Operators shall leave the Facility in as good an order and condition as when Operators took possession of the Facility, except for reasonable wear and tear.

16. Assignment and Subcontracting. Operators may not assign this Agreement, or subcontract the whole or any part of the operation of the Facility, without the written consent of District. Should this Agreement be assigned or the Facility subcontracted, Operators shall remain fully liable at all times for the fulfillment of Operators' covenants hereunder and shall indemnify, defend, and hold harmless District from any claims or losses resulting from said assignment or subcontracting.

17. Operators' Cancellation Rights. In the event of (i) a governmental or governmental agency's action, (ii) changes in the statutes, laws, or regulations applicable to Operators' business on the Facilities which make said business unlawful or commercially impossible, (iii) Operators, through no action or inaction of its own, loses the ability to obtain and maintain the Permits that allow Operators' continued business operation, (iv) a casualty or act of God which renders Operators' improvements on the Facilities or Operators' use of them unlawful or commercially impossible, Operators may cancel this Agreement by giving District thirty (30) days prior notice of said cancellation.

18. Non-discrimination.

Operators agrees not to discriminate in any manner against any person or persons on account of race, marital status, religious creed, color, sexual orientation, ancestry, national origin, age (40 or above), sex, medical condition (cancer/genetic characteristics), or disability (mental and physical) including HIV and AIDS in the performance of this Agreement or in Operators' use of the Facilities, including but not limited to the providing of goods, services, privileges, advantages, and accommodation, and the obtaining and holding of employment.

a. Operators shall require that a provision identical to that stated above be incorporated in all of its contracts or other forms of agreement made in connection with the use of the Facilities pursuant to this Agreement.

19. Fair Employment Practices.

In the performance of this Agreement, the Operators will not discriminate against any employee or applicant for employment because of race, marital status, religious creed, color, sexual orientation, ancestry, national origin, age (40 or above), sex, medical condition (cancer/genetic characteristics), or disability (mental and physical) including HIV and AIDS. Operators will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, marital status, religious creed, color, sexual orientation,, ancestry, national origin, age (40 or above), sex, medical condition (cancer/genetic characteristics), or disability (mental and physical) including HIV and AIDS. Such action shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training including apprenticeship. The Operators shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this Section. Operators will permit access to records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practice Commission, or any other agency of the State of California designated by the awarding authority, for the purpose of investigation to ascertain compliance with this Section to the Agreement.

20. Indemnification and Insurance.

The procuring of required policies of insurance shall not be construed to limit Operators' liability thereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policies of insurance, Operators, its agents, employees, agents, contractors, subcontractors, authorized representatives, customers and invitees shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement or with Operators, its agents, employees, agents, contractors, subcontractors, authorized representatives, customers and invitees use or occupancy of any portion of the Premises.

The Operators shall purchase, maintain and keep in force during the term of this Agreement at Operators' sole cost and expense the following insurance:

a. Certificate of Workers' Compensation Insurance as required by the statutory laws of the State of California Labor Code. If Operators accept boats greater than 65 feet in length, Longshoremen's and Harbor Workers' Compensation Insurance is required.

b. Certificate of General Liability Insurance and Auto Liability Insurance with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number.

Commercial General Liability and Auto Liability policies shall include endorsements naming Port San Luis Harbor District, Its Officers, Agents, Volunteers and Employees as additional insured.

Endorsements for General Liability and Auto Liability shall state that the Operators insurance is "primary" and Port San Luis Harbor District is "non-contributory," or copies of the complete policy which state the equivalent may be submitted in their entirety.

Minimum Insurance Requirements – General Liability Insurance:

One million dollars (\$1,000,000) each occurrence (combined single limit)

One million dollars (\$1,000,000) for personal injury liability

Two million dollars (\$2,000,000) in the aggregate

One million dollars (\$1,000,000) for damage to rented premises including fire protection

Minimum Insurance Requirements – Auto Liability Insurance:

One million dollars (\$1,000,000) per occurrence for bodily injury and/or property damage

Policy shall cover any auto

c. Marine Commercial Carrier Insurance of \$1,000,000 including pollution coverage endorsement with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number.

d. Cancellation.

No cancellation or non-renewal of the insurance policy(ies), or reduction of coverage afforded under the policy(ies), shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to the District.

e. Deductible and Self-Insurance Retentions.

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Operators and approved by the District before execution of Agreement. At the option of the District, Operators shall either reduce or eliminate such deductibles or self-insured

retentions or shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

f. Failure to Provide Proof of Coverage.

District may direct Operators to immediately cease all activities with respect to this Agreement if it determines that Operators fail to carry, in full force and effect, all insurance policies with coverage at or above the limits specified in this Agreement. Any expense caused due to stopping of work and change of insurance shall be considered Operators' expense.

g. Operators' Discretionary Insurance

The following insurance may be purchased at the Operators' discretion, unless required by law: Employment Liability Insurance, including Third Party discrimination and harassment; and Property Insurance.

The District is not liable for claims against the Operators for employment liability claims, Operators' property loss, or loss of business revenues due to interruptions.

i. Indemnification

Operators shall indemnify, defend, protect and hold District harmless from and against any and all claims, losses, liability, damages, fines, penalties, costs, expenses or other liabilities arising from or in connection with Operators possession, occupancy, maintenance or use of the Facility or from the operation or conduct of Operators business or from any activity, work or things done, permitted or suffered by Operators in, on or about the Facility or elsewhere.

Operators shall further indemnify, defend, protect and hold District harmless from and against any and all claims, losses, liability and damages arising from or in connection with any breach or default in the performance of any obligation on Operators part required to be performed under the terms of this Agreement or incurred as a result of Operators violation of any law, regardless of whether such damages are actual, direct, indirect, special, incidental, consequential, or punitive ("Damages"), or arising from or in connection with any negligent or intentional act or omission of Operators, or of Operators' agents, employees, contractors, subcontractors, authorized representatives, customers, or invitees.

Operators shall further indemnify, defend, protect and hold District harmless from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or action or proceeding brought thereon. In the event of any action or proceeding brought against District by reason of any claim specified herein, Operators shall, upon demand by District, defend the same at Operators' expense by counsel satisfactory to District.

j. Exculpation of District.

To the extent allowable by law, District shall not be liable to Operators, and Operators waive all claims against District, for any damage to Operators or Operators' property or to any person or property arising from any cause, except that District shall be liable to Operators for damage to Operators arising from the intentional acts of District.

21. District Obligations. Failure of the District to perform its obligations as herein provided, which by exercise of reasonable diligence or effort it is unable to prevent, if occasioned by a contingency beyond its reasonable control, including Acts of God, fires, floods, wars, sabotage, accidents, labor disputes, and shortages, plant shutdown, equipment failure, voluntary or involuntary compliance with any law, order, rule or regulation of governmental agency or authority, or inability to obtain material (including power or fuel, equipment or transportation), shall not be deemed a default hereunder and shall not subject District to any liability whatsoever to the other party. In addition, Operators waive all rights against the District, its

officers, commissioners, employees, and agents for loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to Operators' property caused by, arising out of or resulting from the District's inability or failure to perform its obligations under this Agreement, including any obligation the District has with regard to maintenance of the Facility.

22. Events of Default. The following events constitute Default by Operators under this Agreement:

a. Failure of Operators to pay any Facility Operating Fee identified in Section 3, or any other monetary obligation on the due date, unless such failure is cured within ten (10) days after notice of such default by District. In the event Operators are late in the payment of Facility Operating Fee, Operators shall pay to District a one-time late charge equal to five percent (5%) of the amount due for the month, regardless of whether Operators otherwise cure such default within the ten (10) day notice period. In addition, Operators shall pay twelve percent (12%) per annum for each day payment is late. Operators acknowledge that District's exact damages as a result of any default on payment of Facility Operating Fees would be difficult to ascertain and that the late charge prescribed herein is a reasonable estimate of said damages;

b. Failure by Operators to cure, immediately after receipt of notice from District, any hazardous condition which Operators have created in violation of law or this Agreement;

c. Failure by Operators to observe or perform any other covenant, agreement condition or provision of this Agreement, if such failure continues for thirty (30) days after notice thereof from District to Operators;

d. The levy upon, under writ of execution or the attachment by legal process of the leasehold interest of Operators or the filing or creation of a lien with respect to such leasehold interest, which lien shall not be released or discharged within ten (10) days from the date of such filing;

e. Operators vacate or abandon the Facility or fail to take possession of the Facility when available or fails to open for business for more than 72 consecutive hours without prior notification and approval by the Harbor Manager (hereafter "abandonment"). An abandonment shall constitute an automatic event of default and forfeiture of this Agreement and entitle District to reenter and retake facilities without allowing Operators a period to cure the event of default; and

f. Operators become insolvent or bankrupt or admit in writing an inability to pay debts as they mature, or make an assignment for the benefit of creditors, or apply for or consent to the appointment of a trustee or receiver for any one or both of the Operators or for the major part of either Operators' property.

23. Remedies. In the event of Operators' default and failure to cure, the District shall have the right to terminate this Agreement, at which time Operators will surrender the Facility, together with payment of all amounts due under the terms of this Agreement. Operators shall reimburse the District for any attorneys' fees and other related costs as a result of Operators' breach or default.

24. Possessory Interest Tax. Operators acknowledge that this document may create a "possessory interest" subject to property tax under the California Revenue and Taxation Code and Operators agree to be liable for any such tax imposed.

25. Enforcement of Agreement. The District may enforce the provisions of this Agreement and may enforce and protect the rights of District hereunder by a suit or suits in equity or a law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Operators under any of the provisions of this Agreement.

26. Survival of Indemnities. All releases, warranties, representations, and indemnities in this Agreement shall survive the expiration or termination of this Agreement.



27. Legal Effect. The parties understand and agree that this Agreement shall not be construed to form a partnership, joint venture, a principal-agent or employer-employee relationship between the District and Operators for any purpose whatsoever.

28. No Waiver of Rights. No waiver of any covenant or condition contained in this Agreement, or of any breach of any such covenant or condition shall (a) constitute a waiver of the rights of either party to act upon any subsequent breach of such covenant or condition or (b) justify or authorize the nonobservance of any other occasion of the same or any other covenant or condition hereof of either party.

29. Dispute Resolution. In the event a dispute arises concerning this Agreement, the parties shall endeavor to settle the matter by mutual consultation as promptly as possible. Operators shall not be relieved from its (their) obligations under this Agreement pending the outcome of the such mutual consultation. Any claim or controversy arising out of or relating to this Agreement or any breach thereof that is not settled by the parties, shall be determined by arbitration in San Luis Obispo County, California (or such other location as the parties shall mutually agree upon) before a panel or arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Either party's request for arbitration shall be given in writing by first-class mail, postage prepared, addressed to the party at the address set forth in Section 30. The arbitration hearing shall be held within thirty (30) days after arbitration is requested. The panel of arbitrators shall consist of three people, who shall be independent of either party's business. Operators and District each shall select an arbitrator and these two arbitrators will select a third arbitrator.

30. Notices. Notices relating to this Agreement shall be in writing and shall be deemed given when personally delivered or when deposited with the U.S. Postal Service, certified mail, postage prepaid, or when deposited with a common carrier, freight prepaid, addressed as provided below or in accordance with subsequently provided written instructions, or when sent by electronic facsimile. Notices to any one Operator shall be deemed notice to all Operators. Notices shall be sent to:

District: Port San Luis Harbor District  
Post Office Box 249  
Avila Beach, California 93424  
Phone: (805) 595-5400  
Facsimile: (805) 595-5404  
Attention: Steve McGrath, Harbor Manager

With copy to:  
Thomas D. Green, Esq.  
6633 Bay Laurel Place  
Avila Beach, CA 93424  
Facsimile: (805) 543-0980

Operators: Marty Codorniz, Del Kyle  
Port San Luis Boatyard  
Post Office Box 520  
Avila Beach, California 93424  
Phone: (805) 595-7895

31. Compliance with Laws. Operators shall comply with all applicable statutes, regulations, ordinances, and laws applicable to the operation of its business and the Facility. The Operators will be responsible for paying all fines, penalties and costs related to any and all incidents, accidents, violations or other catastrophes related to the operation of the Facility. This Section will not apply to any non-conforming status of the Facility which exists or existed prior to the effective date of the first Agreement between the Operators and the District.

32. Successors and Assigns. The rights and obligations of District and Operators shall continue to the benefit of, and be binding upon, their respective successors and assignees.

33. Captions and Headings. The Section captions or headings in this Agreement are for convenience only and shall not in any way be held to explain, modify, amplify or add to the interpretation, construction or meaning of the provisions of this Agreement.

34. Entire Agreement and Amendments. This Agreement and its Exhibits constitute the entire agreement of the parties hereto. No promise or obligation exists unless stated herein. Any oral understandings are hereby repudiated. No amendments or modifications can be made to this Agreement, except in a writing executed by the parties hereto.

35. Governing Law. This Agreement shall be construed in accordance with the substantive laws of the state of California.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

District:

Operators:

By: \_\_\_\_\_  
Steve McGrath, Harbor Manager

By: \_\_\_\_\_  
Marty Codorniz

By: \_\_\_\_\_  
Del Kyle

**EXHIBIT "A"**

**DESCRIPTION OF THE FACILITY**

The Facility referred to in this Agreement is situated in the State of California, County of San Luis Obispo.

The boatyard area is between the Fat Cats Restaurant, District Maintenance Shop, and District Main Office. The Mobile Hoist area is between Port Harford Chandlery and the Harford Pier plus an additional area for waste water discharge treatment facility between Port Harford Chandlery and the District Coastal Gateway Building.

The boatyard contains the following:

1. Approximately 25 boat spaces, with utilities located throughout the yard;
2. A 400 square foot building located in the west boatyard for uses in support of boatyard operations;

The Mobile Hoist area contains the following:

1. A concrete pad and concrete piers to operate the Mobile Hoist for boat hauling and launching;
2. Fresh water facilities to wash down boats once hauled; and
3. A waste water discharge treatment facility to handle water run-off from hull cleaning.

## **EXHIBIT "B"**

### **MAINTENANCE RESPONSIBILITIES**

1. Perform daily, weekly, monthly, and 6-12 month services on the ACME Mobile Boat Hoist as recommended by the manufacturer. Refer to "Lubrication and Maintenance Schedule" published by ACME Hoist Incorporated.

The District shall provide Operators with the Boom Truck at no cost once every quarter for four (4) hours during maintenance and repairs of the ACME Mobile Boat Hoist. The Boom Truck will be operated by District staff.

2. Repair and replace all Hoist parts and components such as tires, shieves, hydraulic pumps, hoses, cables, straps, etc.

3. Supply and maintain accessory equipment such as lines, boat stands, and blocking.

4. Material that is required to lift, move, or support boats.

5. Perform all maintenance and repairs in preparation for, and correct all deficiencies resulting from the following inspections, certifications, and tests required by law:

- a. Annual inspection and certification for Hoist; and
- b. Quadrennial (every four years load testing and certification) for Hoist.

6. Maintain and repair the Boatyard Wastewater Treatment System, a 350-gallon equipment package manufactured by Delta Pollution Control.

7. Maintain tractors, dollies or other equipment purchased by and/or supplied by the District at the time of the original Agreement dated July 1, 1998; or which the District may purchase in the future for use with or in association with the Facility.

## **EXHIBIT "C"**

### **FACILITY RULES**

The following Rules are meant to maintain a quality environment, provide safety and health measures, and assist in meeting the District's regulatory obligations to prevent pollution. These Rules shall be provided to all Operators' employees, contractors, subcontractors and customers (collectively referred to as "Users") of Operators' Facility; and shall be posted in a central location. It is important that Operators and Users are familiar with these Rules to help prevent air, water, soil contamination, and public safety concerns.

All vessel repair maintenance performed in the Facility shall comply with the "Best Management Practices" (BMP's) for Marinas, Boatyards and Ports, issued by the California Stormwater Quality Association and California Clean Marinas. Copies are available on-line at: <http://www.cabmphandbooks.com/Documents/Industrial/MarinasBoatyardsPorts.pdf> and <http://www.cleanmarina.org/cleanmanual.shtml>

Operators shall educate Users of Facility with the Port San Luis Harbor Spill Prevention Control and Counter Measures Plan.

#### **GENERAL HOUSEKEEPING**

1. Operators shall inspect the Facility daily to ensure that Users are following proper Rules and regulations and that the Facilities are clean.
2. Operators shall always be on the lookout for violations of Facility Rules by Facility Users. Any violations shall be addressed immediately, and then reported to the District Harbor Patrol or Facilities staff.
3. Waste Water Treatment System shall be visually inspected monthly and cleaned as necessary to ensure the interception and retention of solids entering the drainage system.
4. Operators shall post hours of operation and strictly prohibit trespassing while Facility is closed.
5. Operator shall sweep or vacuum facility areas weekly.
6. Waste must be disposed of on a daily basis in the appropriate containers which is detailed in the Disposal Section of these rules.
7. Operators shall keep spill response equipment in an easily accessible area which is clearly marked.
8. As required by California Harbors and Navigation Code Section 754, Operators shall keep a written record of every vessel subject to registration with the Department of Motor Vehicles which is stored therein for compensation for a period longer than 12 hours. The record shall contain the name and address of the person storing the same and a brief description of the vessel including its builder and builder's hull number. All records shall be open to inspection by the District.

#### **HAZARDOUS MATERIALS & WASTE MANAGEMENT**

The following activities are regulated due to potential pollutants: vessel maintenance, fueling, repairing, and breaking; wet sanding, painting; cleaning; changing oil and other fluids; flushing radiators; cleaning engines and parts; using hull repair products; scrapping operations; leakage of vessel sewage or bilge water; vessel pier deck and floor cleaning.

Potential pollutants from the above activities include: Heavy metals (copper, lead, tin, and zinc) - spent abrasive grits, anti-corrosive compounds, paint chips, scrap metal, welding rods; Hydrocarbons (fuels, oils and grease, PAHs); Toxic chemicals (solvents, ethylene glycol, cleaners/detergents, resins,

**EXHIBIT “C”- continued**

**FACILITY RULES**

glass fibers); PCBs (electrical equipment (e.g., transformers and capacitors), hydraulic fluids, flame retardants, lubricants, paints, dyes, sealants, and plasticizers); Asbestos (insulation); Sewage; Trash; Fish wastes.

**Prevention**

1. Prior to haul out or in, Facility Users must ensure that all gear and equipment in the boat is secured against lurching or swinging of the vessel prior to lift. Materials stored on the vessel should similarly be secured from spilling. Sails deployed utilizing a roller furling must be removed and stowed prior to vessel being blocked. All other sails shall be secured.
2. Pump out of sewage and bilge is required prior to haul out. Pump out station is located on Harford Pier and is free of charge.
3. Operators shall insure that the valve is turned to an “off” position when using the Mobile Hoist wash down area during boat washdown activities so that runoff goes to the waste water treatment facility. All vessel bottom washing will take place at the Mobile Hoist area of the Facility. Operators are responsible for washing down the Mobile Hoist area pad after each use.
4. Stripping wastes should be cleaned up immediately to reduce potential release into the air or water.
5. Drip pans, tarps or other devices shall be used during the transferring of oil, solvents, paints, contaminated bilge water, and during paint mixing.
6. Users shall cover open areas between decks (railings, scuppers, freeing ports, ladders, doorways, etc.). Users shall plug scuppers to contain dust and debris.
7. A vacuum sander or rotary tool meeting minimum performance standards shall be used for all paint removal where a sander is appropriate. Paint sanded, scraped, or otherwise removed from boats shall be prevented from contaminating the area or becoming airborne. It may be necessary to drape the boat with visqueen or tarps in order to prevent dust, etc. from becoming airborne.

a. Minimum Performance Standards:

Sander:

- 98% dust extraction
- Suitable for lead abatement
- Electric or air powered

Vacuum:

- Static water lift = 60 inches minimum
- Air flow = 116 cfs minimum
- Power = 900 watts minimum
- Filter= 1 micron cartridge minimum, recommended filtration – 5 micron bag filter, plus a 1 micron cartridge filter, plus a 0.5 micron filter

Vacuum sanders that have dust-containment bags shall be used to remove paint from hulls and collect paint dust. Users shall wipe down small amounts of sanding dust with a damp rag.

8. If hosing boatyard area is unavoidable, Operator shall dry sweep thoroughly first to collect potential pollutants.

### **EXHIBIT “C”- continued**

#### **FACILITY RULES**

9. Engine parts shall be washed over a container or in a parts washer, not over water or ground.
10. Detergents and cleaning compounds used for washing boats should be phosphate-free and biodegradable, and amounts used should be kept to a minimum. Operators shall discourage the use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye.
11. Operators and Users shall: (A) utilize “natural” cleansers instead of solvents when ever possible (B) use alternative anti-fouling paints; (C) use water-based paint when ever possible; (D) minimize volume of paints and chemical strippers purchased and stored to minimize waste; and (E) reuse solvents and thinners.
12. Operators and Users shall paint using brushes or rollers. Spray painting is prohibited.
13. Operators and Users shall seal open fittings prior to removal of machinery from the vessel to prevent leakage of lubricating and cooling fluids. Through-hull fittings shall similarly be sealed to prevent leakage of contaminated bilge water.
14. Operators shall store paints, solvents, motor oil and other related products in metal storage buildings.
15. Users shall not leave open containers or oily equipment exposed to the weather. Containers and equipment should be stored under cover (inside boats or under tarps). All such containers must have lids that are capable of being sealed to prevent spillage.

#### **Disposal**

1. Operators shall ensure that hazardous materials generated by the Facility are stored and disposed of in accordance with federal, state and local laws (applicable laws are listed in Section 14 of this Agreement).  
Disposing of hazardous wastes such as fuels, paints, thinners, solvents, liquid epoxy resins, or other volatile or hazardous substances, dangerous wastes or debris must be disposed of in a manner approved by applicable regulations or regulatory agencies.
2. The District’s Hazardous Material Shed provides temporary storage for: (A) Oily/Bilge Water, (B) Solids (rags and oil absorbent pads), (C) Flammables, (D) Used Oil Filters, and (E) Two Spare Drums. The District accepts these items Monday through Friday, from 9 a.m. to 2 p.m. Maximum amount accepted at one- time is 5-gallons. Different types of chemicals shall not be mixed. Any intercepted Facility-generated chemical spill shall be recycled back to the appropriate chemical barrel in the District’s Hazardous Material shed.
3. Ordinary trash generated by Users of the Facility should be placed in dumpsters located in the boatyard on a daily basis. Paint chips may be disposed of in boatyard trash dumpsters. Paint cans must be completely dry before being placed in trash dumpsters. Dry, empty containers may be disposed of in the dumpsters.
4. Covers on dumpsters shall remain closed except during the process of actual trash disposal in order to minimize rainwater entry.
5. No garbage, trash, oil, fuel, sewage, bilge water, debris, or other material, liquid or solid, shall

be deposited in the water.

6. Users are required to recycle appropriate materials and use recycle containers that are provided in the boatyard.

### **EXHIBIT "C"- continued**

#### **FACILITY RULES**

7. Facility Users who bring their pets on site shall clean up and dispose of their pet's waste in the dumpster.

#### **Hazardous Waste Spills**

1. If a spill occurs contact District Harbor Patrol and Facilities staff immediately.
2. Appropriate action should be taken to stop or contain the spill if possible and as long as it safe to do so.
3. Paint (oil-based), paint thinner, and adhesives may be flammable and are regulated as hazardous wastes. These spills must be treated as a hazardous waste spill. Latex paint that has solidified completely can be placed in the normal trash. All spills should be cleaned up immediately.
4. In case of a spill Users shall:
  - Shut of all ignition sources in the area.
  - NO SMOKING
  - Recover the spill as quickly as possible
  - If the substance spills near or in the water, use containment booms, as appropriate. Do not use emulsifiers or dispersants.
  - As appropriate, cover spill with absorbent material.
  - If spill is in an enclosed area, keep the area ventilated.
  - Properly dispose of used spill response supplies.

#### **PROHIBITED ACTIVITIES**

1. Living aboard a vessel while blocked in the boatyard area, or living in any other area in the boatyard is strictly prohibited.
2. Trespassing after posted hours is strictly prohibited.
3. Sand blasting, wet blasting or power spraying of any abrasive grit or substance is prohibited.
4. Non-vacuum grinding or sanding of paint is prohibited.
5. Spray painting is not allowed at the Facility.
6. No containers of paint, thinners or similar materials larger than 10 gallons shall be allowed in the Facility
7. Abandoning wastes is prohibited.
8. Storage of oily rags, open paints, open solvents, open thinners, gasoline, or other flammable or explosive material is prohibited on or within the boatyard area, except for gasoline stored aboard a vessel in U.L. or Coast Guard approved gasoline containers.
9. The use of antifouling paint containing tributyl tin is prohibited.
10. Discharge of sewage from vessel toilet facilities is prohibited.
11. Discharge of bilge water is prohibited.



12. Tarps or other covers shall not be attached to boats stands.

**EXHIBIT "C"- continued**

**FACILITY RULES**

13. Open fires or barbeques are prohibited on vessels and any other area of Facility.

14. Operators shall not allow the launching of any vessel which is unseaworthy or unable to get under way. If so requested by the District, Operators shall provide a copy of a marine survey report deeming boat to be seaworthy.

15. Ship Breaking is prohibited unless prior written permission is granted by the Harbor Manager.

**REPORT OF VIOLATIONS TO DISTRICT**

1. Leaks from boats or from equipment shall be reported to the District Facilities staff immediately.

2. Any materials found abandoned at the Facility shall be reported to the District Facilities staff immediately.