

# Exhibit C

Agreement No. OCP10-010  
Newport Harbor  
(Mooring Management)

## **COOPERATIVE AGREEMENT BETWEEN COUNTY OF ORANGE AND CITY OF NEWPORT BEACH FOR MOORING MANAGEMENT SERVICES IN NEWPORT HARBOR**

THIS COOPERATIVE AGREEMENT ("Agreement"), dated \_\_\_\_\_, 2010, is entered into by and between the **County of Orange**, a political subdivision of the State of California (hereinafter "County") and the **City of Newport Beach**, a California municipal corporation (hereinafter "City"). The County and City may individually be referred to herein as a "Party" or collectively as the "Parties."

### **RECITALS**

WHEREAS, since the early 1980's, City and County have entered into a series of agreements ("Joint Powers Agreements") for Mooring Administration in Newport Harbor; and

WHEREAS, the purpose of these agreements was to establish and define the obligations of City and County in conjunction with the anchorage and mooring of vessels on City and County tidelands in Newport Harbor ("Mooring Management Services" or "Services"); and

WHEREAS, the most recent of these agreements, Agreement No. D89-035 entitled Joint Powers Agreement expired December 31, 2008; and

WHEREAS, the Joint Powers Agreement has continued on a month-to-month holdover basis since its expiration; and

WHEREAS, City issued a Request for Proposals ("RFP") in October 2009 to seek the most cost effective and efficient Mooring Management Services, for which County responded with an offer to enter a Joint Powers Agreement; and

WHEREAS, it is in the mutual interest of City and County to continue to work cooperatively on the management of moorings on City and County tidelands in Newport Harbor; and

WHEREAS, City and County both desire to continue to work cooperatively to identify service enhancements and efficiencies in the management of moorings in Newport Harbor;

NOW, THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

#### **1. PRIOR AGREEMENTS**

City and County acknowledge that this Agreement replaces and supplants earlier agreements between the Parties related to mooring administration, including that certain Agreement No. D89-035 dated February 21, 1989, as amended, entitled Joint Powers Agreement.

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## 2. TERM

This Agreement shall remain in force and effect for five (5) years, commencing July 1, 2010 and ending June 30, 2015. This Agreement may be renewed for up to twenty (20) years, for periods of no more than five (5) years each, by mutual written agreement of the Parties. When considering renewal, the Parties agree to evaluate the Scope of Services, cost of providing services and any changes in mooring management that may be desired. If both Parties desire to renew this Agreement, they agree to begin review of the Scope of Services and Compensation one (1) year prior to the expiration date.

## 3. MOORING MANAGEMENT SERVICES

County, through its Sheriff's Department, shall perform Mooring Management Services as outlined in Exhibit A Scope of Services, attached hereto and by reference made a part hereof. In addition to the Services identified in Exhibit A, City and County agree to work cooperatively to identify service enhancements and efficiencies in the management of moorings in Newport Harbor. The Parties acknowledge that City is revising its mooring transfer regulations, and the Parties agree to work together to develop a system to implement the new regulations. Any adjustment to compensation resulting from changes to mooring transfer regulations shall require an amendment to this Agreement.

## 4. FEES FOR ANNUAL MOORING PERMITS

A. Establishment of Mooring Permit Fees. City shall establish Mooring Permit Fees for moorings over City and County tidelands in Newport Harbor in accordance with Title 17 of the Newport Beach Municipal Code.

B. Collection of Mooring Permit Fees. City shall collect all Mooring Permit Fees for moorings over City and County tidelands in Newport Harbor. County shall be responsible for collecting delinquent annual Mooring Permit Fees over County tidelands, which fees are more than ninety (90) days in arrears.

C. Disbursement of Mooring Permit Fees. City shall remit to County one hundred percent (100%) of the Mooring Permit Fees collected by City for moorings over County tidelands annually on or before March 31 of each year during the term hereof.

## 5. FEES FOR GUEST MOORINGS

A. Establishment of Guest Mooring Fees. County shall establish fees for transient guest use of moorings over County tidelands in Newport Harbor as part of the OC Parks Fee Schedule. County shall recommend fees for transient guest use of moorings over City Tidelands in Newport Harbor as part of the OC Parks Fes Schedule. City shall adopt fees for transient guest use of moorings over City Tidelands and include such fees in its adopted fee schedule.

B. Collection of Guest Mooring Fees. County shall collect all Guest Mooring Fees for moorings over City and County tidelands in Newport Harbor in accordance with County payment policies as identified in the County of Orange Accounting Manual.

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C. Disbursement of Guest Mooring Fees. County shall remit to City one hundred percent (100%) of the Guest Mooring Fees collected by County for moorings over City Tidelands quarterly in arrears, on or before the end of the month following each quarter during the term hereof. However, County may deduct normal fees charged to County for payment via credit cards.

## 6. COMPENSATION

City shall pay County annually, July through June, in accordance with the following cost schedule. County shall invoice the City one-twelfth (1/12) of the applicable Mooring Management costs on a monthly basis. Invoices shall be issued on or before the first day of each service month. The payment due date shall be thirty (30) days after the beginning of each service month.

<u>Fiscal Year</u>	<u>Cost</u>
FY 2010-11	\$180,000
FY 2011-12	\$207,500
FY 2012-13	\$235,000
FY 2013-14	\$262,500
FY 2014-15	\$290,000

The compensation amounts above do not include special analysis of mooring information that City may request of County. Additional costs for such analysis may be approved by the Parties' Project Managers (as defined in Section 7), and do not require an amendment to this Agreement, up to Three Thousand Dollars and no/100 (\$3,000.00).

## 7. PROJECT MANAGERS

City and County shall designate Project Managers, who shall coordinate all services provided under this Agreement and shall have the authority to act for City and County under this Agreement. City designates its Harbor Resources Manager as its Project Manager ("City Project Manager"), and County designates its Sheriff's Department Marine Operations Bureau Commander as its Project Manager ("County Project Manager").

## 8. INDEMNIFICATION

A. County. Neither City nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by County under or in connection with any work or activity under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, County shall fully indemnify and hold City harmless from any liability arising out of the performance of the Agreement or injury of such nature that it would be actionable if inflicted by a private person, (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by County under or in connection with any work or activity under this Agreement.

B. City. Neither County nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work or activity under this Agreement. It is

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understood and agreed that, pursuant to Government Code Section 895.4, City shall fully indemnify and hold County harmless from any liability arising out of the performance of the agreement or injury of such nature that it would be actionable if inflicted by a private person (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City under or in connection with any work or activity under this Agreement

## 9. AMENDMENTS

This Agreement is the sole and only agreement between the Parties regarding the subject matter hereof, and other agreements on this subject matter either oral or written are void. Any amendments to this Agreement shall be in writing and shall be properly executed by both Parties and approved as to form by County's County Counsel and City's City Attorney.

## 10. TERMINATION

Either Party may terminate this Agreement by notifying the other Party in writing not less than ninety (90) days prior to the desired date of termination. The Parties agree that any termination of this Agreement should be effective on the last day of any fiscal year, unless extenuating circumstances require a different date. Should termination of this Agreement occur at any date other than the last day of a fiscal year, the Parties agree that each Party shall remit to the other all fees and payments as provided in Paragraphs 4, 5 and 6, prorated for that portion of the year in which the Agreement remained in effect.

## 11. NOTICES

Notices and correspondence in connection with this Agreement shall be addressed as set forth below or as either Party may hereinafter designate by written notice to the other. 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.

To County: County of Orange  
OC Parks  
13042 Old Myford Road  
Irvine, CA 92602-2304  
Attn: Director OC Parks

With a copy to:

Orange County Sheriff's Department  
Marine Operations Bureau  
Attn: Lieutenant  
1901 Bayside Drive  
Corona Del Mar, CA 92625

To City: City of Newport Beach  
Attn: City Manager  
3300 Newport Boulevard  
P.O. Box 1768

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Newport Beach, CA 92658

With a copy to:

City of Newport Beach  
Attn: Harbor Resources Manager  
829 Harbor Island Dr.  
Newport Beach, CA 92660

## **12. SEVERABILITY**

If any 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.

## **13. ATTORNEY'S FEES**

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 attorney's fees shall not be recoverable by the prevailing party.

## **14. COUNTERPARTS**

This Agreement may be signed in counterparts, each of which shall constitute an original.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date and year first above written.

APPROVED AS TO FORM  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
David Hunt  
City Attorney  
For the City of Newport Beach

Attest:

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

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Resolution 79-1535

Attest:

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
Orange County, California

APPROVED AS TO FORM:  
County Counsel  
Orange County, California

By: Thomas A. Miller

Attachments: Exhibit A: Scope of Services

## City

City of Newport Beach, a California municipal corporation

By: \_\_\_\_\_  
Keith Curry  
Mayor

## County

County of Orange, a political subdivision of the State of California

By: \_\_\_\_\_  
Chair of the Board of Supervisors

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## Exhibit A

### Scope of Services

#### A. Facilities and Equipment

1. Utilize Harbor Patrol's office located at 1901 Bayside Drive, Newport Beach, 92625.
2. Provide sufficient signage at Harbor Patrol's dock identifying it as a temporary public side tie for mooring rental check in.
3. Provide at least one vessel for mooring administration duties.
4. Provide auction location at Harbor Patrol's facility.
5. Maintain an impound area for abandoned, found, and impounded vessels including, but not limited to, Harbor Patrol facility and available City and County moorings.

#### B. Staffing

1. Provide sufficient qualified and trained office staff 24/7 to provide administration and guest mooring check in.
2. Provide sufficient qualified field staff 24/7 for on-the-water public services including but not limited to on-the-water inspection, administration, and guest mooring check-in. Required services may vary seasonally.

#### C. Administration

1. Document current mooring locations and coordinate with City staff to record locations. Create a visual mooring field mapping system.
2. Maintain mooring and permittee information, including information on the availability of moorings for transient guest rental, in a management database and establish a mailing system for inspections and auctions. Make information available to City electronically, to the extent allowed by County's computer protocols, or in other format if data cannot be provided electronically. If County is unable to provide City with data in a form that City can use for analysis, City may request that County perform the analysis, which may result in extra costs to City.
3. Provide the City with updated billing information.
4. Maximize transient rental revenue and use by providing public access to available vacant moorings for guest use in accordance with established rules and procedures and Newport Beach Municipal Code ("NBMC") Title 17. Assist transient renters with safe vessel mooring as needed.
5. Assist City in the location of current owners of abandoned/found vessels on moorings. If vessel owner is not located, assist City with subsequent auction by processing lien sales and providing access to County approved contractors for the disposal of vessels not sold during lien sales. City shall be responsible for disposal fees.
6. Develop a Letter of Permission procedure for temporary mooring usage by a third party.

#### D. Enforcement of Codes, Rules and Procedures

1. Enforce all provisions of NBMC Title 17 as they relate to moorings over City tidelands, as they may be amended from time to time, including issuing Notices of Violation with timelines for correction, issuing City Administrative Citations as designee of City's

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Harbor Resources Manager and communicating with City regarding City issuance of Administrative Citations.

2. Conduct investigation of code violations and recommend mooring permit revocation to the Harbor Resources Manager when code compliance cannot be achieved with Notices of Violation and Citations. Assist City in the processing of permit revocations by participating in any appeal hearings, and impounding vessels and assisting with lien sale if vessels are not removed by permittees.
3. Implement mooring transfers per applicable sections of the Municipal Code and established local procedures and forms.
4. Manage the mooring area permits issued to the Yacht Clubs per the requirements of the Municipal Code.
5. Assist City in identifying violations of live-aboard provisions.
6. Ensure that the rules and procedures issued by the City's Harbor Resources Manager (Attachment 1), as may be amended from time to time, are followed.
7. Report water quality violations to City and/or appropriate agency.
8. Enforce all provisions of Division 2 of Title 2 of the Orange County Codified Ordinances ("Harbor") and the "Marine" section of the Orange County Parks Fee Schedule adopted by resolution of the Orange County Board of Supervisors as those provisions relate to moorings over both City and County Tidelands.

## **E. Inspections**

1. Establish routine weekly inspection services to properly monitor mooring equipment and mooring availability per the attached mooring regulations and specifications.
2. Maintain the mailing list and timing for mooring inspections and overhauls which occur every two years. Ensure these inspections and overhauls are completed. Provide written notification of permittee's failure to comply with inspection and overhaul requirements.
3. Provide weekly inspection services of the vessels on the moorings as to their compliance with seaworthiness, operability and nuisance requirements.
4. Provide weekly inspection of all on-shore moorings throughout the harbor including West Newport (Newport Island area). Identify grounded and derelict vessels registered to on-shore moorings.
5. Establish a procedure for vessel holding tank (dye tablet) and y-valve closure inspection for guest mooring renters who may rent on a short or long term basis (greater than thirty (30) days).
6. Continue the cooperative approach to dealing with the sea lion issues throughout the year, primarily between May to October. This includes communicating with the City's Harbor Resources Division as to which vessels have sea lion use, as well as assisting the City with advisory calls to mooring permittees whose vessels have sea lion use. Upon request of the Harbor Resources Manager or for vessels at risk from sea lion use, take immediate action including use of water cannon, relocation of vessel, etc., as appropriate.

## **F. Services to Mooring Permittees**

1. Provide towing services associated with impound, storage and hazardous material mitigation issues.
2. Provide information related to safe and proper mooring position to the local mooring service contractors.



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3. Provide emergency response to the mooring fields to mitigate dangerous situations in inclement weather.
4. Weather permitting, provide call-ahead service for returning permittees to meet them at their mooring if it has been rented to a transient guest.

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## Attachment 1

### Mooring Regulations

June 2010

1. All mooring permittees must provide up-to-date telephone numbers and addresses to the Harbor Patrol.
2. If a mooring is unoccupied, it may be temporarily assigned as a mooring for guest vessels by the Marine Operations Bureau Commander.
3. Vessels on moorings must be registered to the mooring permittee and assigned to the mooring permit by the Marine Operations Bureau Commander.
4. It is illegal to rent a mooring to anyone. Mooring permittees may loan their moorings to another party only with a letter of permission, submitted prior to the loan vessel going on the mooring, and approved by the Marine Operations Bureau Commander per Newport Beach Municipal Code Section 17.25.020(L). A mooring may be loaned to a party other than the permittee for no more than thirty (30) days in any one hundred eighty (180) day period.
5. Only one boat is allowed on a mooring at any one time with the exception of a tender as described in Newport Beach Municipal Code Title 17.
6. Spreader lines must be adequately marked and buoyed at all times.
7. Living aboard a vessel on a mooring, without a City live aboard permit, is a violation of the Newport Beach Municipal Code.
8. All offshore mooring buoys and onshore mooring posts must be painted white with the mooring number painted in black, 3" block letters, clearly visible.
9. Mooring pendants must be kept in good condition at all times.
10. Boats over 18' in overall length are not allowed on onshore moorings.
11. No boats with a fixed keel, fixed rudder, or fixed underwater propulsion apparatus or gear are allowed on onshore moorings.
12. Offshore moorings have been rated for a maximum size and cannot be decreased.

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## Off-shore Mooring Specifications

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

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

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## On-shore Mooring Specifications

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

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

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## Procedures for Mooring Transfers

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

1. The mooring equipment and the vessel currently assigned to that mooring must be sold to the same person.
2. The mooring permit can only be put in one (1) person's name. The permit cannot be put into a company name.
3. The seller must provide the buyer with two neatly written or typed letters. The first letter is for cancellation of his/her mooring permit and issuance to the new permittee. The second letter is a bill of sale, not the bill of sale form provided by the Department of Motor Vehicles. Below are samples of the two letters which must be notarized.
4. The new permittee must re-register the vessel in his/her name with the Department of Motor Vehicles prior to the transfer. The name on the registration must be the same as will be on the permit.
5. A fee of \$1.20 per foot of vessel length for offshore moorings and \$0.60 per foot for onshore moorings is charged for the transfer, due and payable at the time of transfer.
6. Anyone wishing to transfer a mooring must make an appointment with the Harbor Patrol by calling (949) 723-1002.

### Sample Cancellation Letter for a Mooring Transfer

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

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

Date: \_\_\_\_\_

### Sample Bill of Sale for Mooring Transfer

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

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

Date: \_\_\_\_\_