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AGREEMENT  
(Southern California Marine Association)

**32313**

THIS AGREEMENT ("Agreement") is entered into on July 25, 2011, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting of July 5, 2011, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and the SOUTHERN CALIFORNIA MARINE ASSOCIATION, a California corporation ("Association").

1. RECITALS: This Agreement is made with reference to the following facts and objectives:

A. The Association has, in the past, held their annual Long Beach Boat Show at the Long Beach Convention and Entertainment Center and Rainbow Harbor. This event has promoted and accommodated commerce, navigation, fishing, and aquatic recreation and provided the City of Long Beach with favorable publicity of its facilities, attractions and resources. In conjunction with this show, the Association intends to use the Rainbow Harbor and the adjoining land area ("Rainbow Harbor").

B. The City shall allow the Association to conduct its 43rd Annual Long Beach Boat Show ("Boat Show") under the provisions and conditions set forth below.

2. EVENTS: The City authorizes and grants permission to the Association to conduct a Boat Show, and City shall use its best efforts to allow Association to use and occupy Rainbow Harbor. These areas are shown in the Attachment hereto and incorporated herein, highlighted in Yellow and shall be used and occupied by the Association, subject to the terms, conditions and limitations contained within this Agreement.

The City acknowledges that the Boat Show will be conducted during the month of October. The show will be open to the public for four (4) days from October 20 - 23, 2011. The exact hours of operation shall be approved in writing by the Director of

1 Parks, Recreation and Marine ("Director").

2 3. TERM: The term of this Agreement shall begin at 6:00 a.m. on  
3 October 8, 2011 and shall terminate at 10:00 p.m. on November 4, 2011.

4 4. RELATED BOAT SHOW ACTIVITIES: The Association and any of  
5 its officers, employees, agents, concessionaires, licensees, or other persons, firms, or  
6 entities acting pursuant to this Agreement and authority granted by this paragraph, shall  
7 obtain a City business license and such other permits as may be required by  
8 governmental agencies having jurisdiction. The governmental agency having jurisdiction,  
9 including without limitation, any department of the City, shall not be required to determine  
10 whether an applicant for a City business license or other permit shall first have obtained  
11 Association's permission and consent prior to the issuance of a business license or  
12 permit.

13 The Association will invite various exhibitors of boats and other marine  
14 products to participate in the Boat Show to be held in Long Beach. The Association will  
15 use its best efforts to require all exhibitors taking orders for boats and other marine  
16 products to report those transactions to the State of California Board of Equalization,  
17 declaring the City of Long Beach as the situs of those sales.

18 5. BOAT SHOW AREAS: The boat show areas and the improvements  
19 thereon which are highlighted in Yellow and shown in the Attachment shall be used for  
20 the purpose of conducting a Boat Show and such other related activities as are  
21 specifically agreed to herein and for no other purpose without the prior written consent of  
22 the Director.

23 6. RENTS, FEES, COMPENSATION AND REIMBURSEMENT:

24 A. Association shall pay City \$10,000 as a site use fee.

25 B. Association shall reimburse the City for all costs incurred as a  
26 result of the Boat Show, including, but not limited to, costs associated with  
27 relocating vessels for the purpose of the show, maintenance services, security,  
28 repair of damage to City facilities resulting from the event, City permits, and City

1 services required to support the event permits;

2 C. Association shall pay the sums due the City under  
3 subparagraphs (a) and (b) above, immediately upon receipt of invoice;

4 D. The City shall not become or be deemed a partner or joint  
5 venturer with Association by reason of the provision of this Agreement.

6 E. Association shall submit applications and acquire a facility use  
7 permit from the Department of Parks, Recreation and Marine for all of the activities  
8 on the water, docks, or gangways of Rainbow Harbor. Association shall submit an  
9 application and obtain a permit from the Office of Special Events and Filming for  
10 all land-based activities.

11 7. TEMPORARY IMPROVEMENTS: Association, at its cost, shall have  
12 the right to install and erect improvements and structures at Rainbow Harbor  
13 commencing twelve (12) days prior to the show opening to the public. Upon termination  
14 of the annual Boat Show, Association, at its costs and expense, shall remove all such  
15 improvements and structures placed by it at Rainbow Harbor and restore the area to a  
16 condition acceptable to the City Manager or his designee. Such removal and restoration  
17 following the Boat Show under the terms of this Agreement shall be made and  
18 accomplished within forty-eight (48) hours after the close of the Boat Show and as to the  
19 temporary dock structures, on or before November 4th to the satisfaction of the Director.  
20 If any improvement or structures erected by Association have not been removed or  
21 Rainbow Harbor is not restored to an acceptable condition as set forth above, the City  
22 shall have the right, but not the obligation, to remove, demolish and dispose of any such  
23 improvement or structure and to restore Rainbow Harbor at Association's expense.  
24 Association shall pay to the City upon demand all costs incurred by the City in  
25 accomplishing the removal of improvements and restoration of the area, together with  
26 interest thereon at the maximum rate allowable by law until paid.

27 The City, at its election, may waive the requirement that Association  
28 remove all or a portion of its improvements and structures placed at Rainbow Harbor and

1 restore the same, in which event title to all such structures and improvements, left at  
2 Rainbow Harbor, shall vest in the City of Long Beach without the payment of any  
3 compensation therefore.

4           8.     NO CITY DUTY TO REPAIR OR CONSTRUCT: The City shall have  
5 no duty to make any improvements or repair at Rainbow Harbor. Association's sole and  
6 exclusive remedy by reason of any condition at Rainbow Harbor (whether such condition  
7 now or hereafter exists) shall be the termination of this Agreement and vacation of the  
8 area. Any and all uses of Rainbow Harbor by Association, its agents, contractors, and  
9 their employees, shall be at their sole risk, cost and expense. Association, at its cost,  
10 shall keep and maintain Rainbow Harbor and all improvements thereon during its use  
11 and occupancy thereof, in good order, condition and repair, free and clear of all rubbish,  
12 debris and litter.

13           9.     UTILITY SERVICES: Association, at its cost, shall provide all utility  
14 services and installations being used by it and promptly pay all utility fees, costs and  
15 charges resulting from such use.

16           10.    USE OF TEMPORARY DOCK: Before and after the Boat Show and  
17 during the term of this Agreement, the City shall have the right to use the temporary dock  
18 structures and to assign the use thereof to visiting vessels. The City shall retain all fees  
19 and charges collected by it for such use of the temporary dock structures.

20           11.    SECURITY: Association, at its cost, shall provide all security,  
21 fencing and barriers required by it for the conduct of the Boat Show; provided, however,  
22 the placement of fencing and barriers for the Boat Show shall be subject to the prior  
23 approval of the Director.

24           12.    COMPLIANCE WITH LAWS: Association shall, during its use and  
25 occupancy of Rainbow Harbor, comply with all laws, ordinances, rules and regulations of  
26 and obtain permits from all federal, state and local government authorities having  
27 jurisdiction over Rainbow Harbor and Association's activities thereon.

28           13.    ASSIGNMENT: Association shall not assign this Agreement or any

1 interest thereon or allow the transfer thereof. Any attempted transfer or assignment shall  
2 be void and confer no rights whatsoever upon the transferee or assignee. If Association  
3 shall be adjudicated a bankrupt or become insolvent or any interest in this Agreement be  
4 taken by virtue of attachment, execution, or receivership, the City may terminate this  
5 Agreement upon one (1) day written notice to Association.

6           14. RIGHT OF ACCESS: The City's authorized representative(s) shall  
7 have access to Rainbow Harbor at any time and, in the event of an emergency, at any  
8 time for inspection, repair of publicly owned utilities and structures, and for fire and police  
9 purposes.

10           15. INDEMNITY: Association shall defend and indemnify the City of  
11 Long Beach and its officers and employees while acting within the scope of their duties  
12 from and against any and all actions, suits, proceedings, claims and demands, costs  
13 (including attorneys' fees and court costs), expense and liability of any kind or nature  
14 whatsoever ("claims") for injury to or death of persons or damage to property (including  
15 property owned by or under the control of the City) which may be brought, made, filed  
16 against, imposed upon or sustained by the City, its officers or employees based upon or  
17 arising out of:

18           A. An act or omission of Association, its officers, agents,  
19 employees, contractors, licensees or invitees or of any other person entering upon  
20 Rainbow Harbor with the express or implied invitation of Association;

21           B. A violation by Association, its officer, agents, employees,  
22 contractors, licensees or invitees or of any other person entering upon Rainbow  
23 Harbor with the express or implied invitation of Association of any law, ordinance  
24 or governmental order of any kind;

25           C. The use or occupancy of Rainbow Harbor by Association, its  
26 officers, agents, employees, contractors, licensees or invitees or of any other  
27 person entering upon Rainbow Harbor with the express or implied invitation of  
28 Association.

1 This indemnity shall not include claims based upon or arising out of the sole  
2 negligence, gross negligence, or willful misconduct of the City, its officers and  
3 employees. Further, this indemnity shall not require payment of a claim by the City or its  
4 officers or employees as a condition precedent to the recovery under the same.

5 16. INSURANCE: Concurrent with the execution of this Agreement and  
6 in partial performance of Association's obligations hereunder, Association shall procure  
7 and maintain, at its cost, during the term of this Agreement from an insurer admitted in  
8 California or having a minimum rating of or equivalent to A:VIII in Best's Insurance Guide  
9 comprehensive general liability insurance including products, watercraft, fire and legal  
10 liability with a combined single limit of at least Two Million Dollars (\$2,000,000.00). City,  
11 its officials, employees and agents, shall be covered as additional insureds with respect  
12 to liability arising from activities performed by or on behalf of Association. Said insurance  
13 shall be primary insurance with respect to City and shall include cross-liability protection.

14 Upon the execution of this Agreement, Association shall deliver to City  
15 certificates of insurance with original endorsements evidencing the coverage required by  
16 this Agreement. The certificates and endorsements shall be signed by a person  
17 authorized by the insurer to bind coverage on its behalf. City reserves the right to require  
18 complete certified copies of all policies at any time.

19 Said insurance shall contain an endorsement requiring thirty (30) days' prior  
20 written notice from insurers to City before cancellation or change of coverage.

21 Said insurance may provide for such deductibles as may be acceptable to  
22 the City Manager or his designee.

23 Any modifications or waiver of the insurance requirements herein shall only  
24 be made with the written approval of the City Risk Manager or designee.

25 The procuring of such policy of insurance shall not be construed to be a  
26 limitation in any respect upon Association's obligation of indemnity hereunder.

27 17. POSSESSORY INTEREST AND TAXES: This Agreement may  
28 create a possessory interest subject to property taxation, and Association may be liable

1 for the payment of property taxes levied on such possessory interest. Association shall  
2 pay or cause to be paid, prior to delinquency, all taxes, assessments and governmental  
3 and district charges that may be levied or assessed for building, improvements or  
4 property located at Rainbow Harbor and upon possessory interest created by this  
5 Agreement. Satisfactory evidence of such payments shall be delivered by Association  
6 upon demand therefor.

7           18. SECURITY DEPOSIT: Association agrees to provide the City with a  
8 Two Thousand Dollar (\$2,000.00) security deposit for the performance by Association of  
9 the provisions of this Agreement. If Association is in default, City can use the security  
10 deposit, or any portion of it, to cure or compensate City for all damages sustained by City  
11 resulting from Association's default. If Association is not in default of the provisions of  
12 this Agreement, City shall return the security deposit to Association within thirty (30) days  
13 after the end of the term of this Agreement provided Association has fully complied with  
14 the applicable provisions of this Agreement. City's obligations with respect to the security  
15 deposit are those of a debtor and not a trustee. City can commingle the security deposit  
16 with City's funds. City shall not be required to pay Association any interest on the  
17 security deposit. The security deposit shall be delivered to the City upon execution of the  
18 Agreement by the Association.

19           19. DEFAULT: Association shall be in default of this Agreement if it fails  
20 or refuses to perform any provision hereof that it is obligated to perform. Except as  
21 otherwise expressly provided in this Agreement, if the failure to perform is not cured  
22 within thirty (30) days after notice of default has been given by the City to Association,  
23 this Agreement shall terminate and be of no further force or effect as of the expiration of  
24 said thirty (30) day period.

25           20. NOTICE: Any notice, demand, request, consent, or communication  
26 that either party desires or is required to give to the other party or any other person shall  
27 be in writing and either served personally or sent by prepaid, first-class mail addressed  
28 as follows:

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TO CITY: City Manager  
333 West Ocean Boulevard  
Long Beach, California 90802

WITH A COPY TO: Director, Parks, Recreation & Marine  
2760 Studebaker Road  
Long Beach, California 90815

TO ASSOCIATION: Southern California Marine Association  
1006 East Chapman Avenue  
Orange, California 92866-2111  
Attn: David Geoffroy, Executive Director

Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

21. NON-DISCRIMINATION: In the performance of this Agreement, Association agrees not to discriminate against any employee or applicant for employment or service on the basis of race, color, religion, ancestry, sex, sexual orientation, gender identity, AIDS, AIDS related condition, national origin, age, marital status, disability, handicap or veteran status.

22. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT: Association agrees that compliance with the Americans with Disabilities Act of 1990 ("ADA") shall be its sole responsibility and shall defend, indemnify and hold harmless City for any liability arising from failure to comply therewith.

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OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

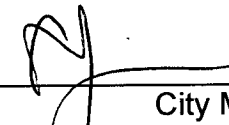
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CITY AND ASSOCIATION have executed this Agreement with all the formalities required by law.

CITY OF LONG BEACH, a municipal corporation

Assistant City Manager

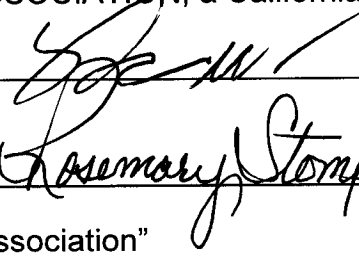
9-16, 2011

By  \_\_\_\_\_  
City Manager

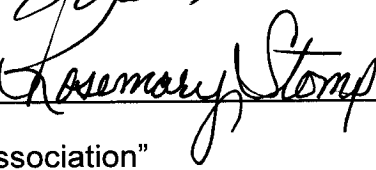
"City" EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

SOUTHERN CALIFORNIA MARINE ASSOCIATION, a California corporation

July 29, 2011

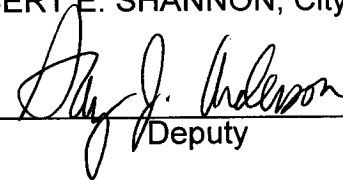
By  \_\_\_\_\_

July 29, 2011

By  \_\_\_\_\_  
"Association"

Approved as to form this 22<sup>nd</sup> day of August, 2011.

ROBERT E. SHANNON, City Attorney

By  \_\_\_\_\_  
Deputy



## **SOUTHERN CALIFORNIA MARINE ASSOCIATION**

**LONG BEACH YACHT AND BOAT SHOW  
October 20, 2011 through October 23, 2011**