

COYOTE POINT MARINA
1900 Coyote Point Drive
San Mateo, California 94401
Telephone: (650) 573-2594
Facsimile: (650) 343-5935

BERTH LICENSE AGREEMENT

Date _____

Name of Owner: _____ CDL: _____

Residence Address _____

City _____ Zip _____ Phone _____

Business Address _____

City _____ Zip _____ Phone _____

Name of Legal Owner _____

(Such as corporation, lienholder, or other name appearing on evidence of title)

Address _____ Phone _____

Permission is requested to berth the vessel described below in the Coyote Point Marina subject to the terms of the Agreement set forth below.

Name of Vessel _____

Registration or Documentation No. _____

Length _____ (Including bowsprit, pulpit, boarding step, outboard motor, etc.)

Manufacturer _____ Beam _____ Draft _____

By signing the following agreement, Owner represents and warrants that the foregoing information is complete and accurate, that no other party has any legal right, title or interest in or to the Vessel, and that Owner shall give the County written notice of any changes in the above information immediately upon the occurrence of any such change.

AGREEMENT

This Berth License Agreement is made by and between the County of San Mateo, Parks Department, a governmental agency (hereinafter referred to as "County") and _____ (hereinafter individually or collectively, as the case may be, referred to as "Owner"). As used throughout this Berth License Agreement, the term Owner means the individual or individuals, as the case may be, signing said Agreement as the Owner of the Vessel and Licensee.

RECITALS:

- A. County operates and maintains a berthing facility for use by members of the public commonly known as the Coyote Point Marina (the "Marina"), located in San Mateo County, California.
- B. Owner desires to berth Owner's vessel described above (hereinafter referred to as the "Vessel") at Berth No. _____ (hereinafter referred to as the "Berth") at said berthing facility.

NOW, THEREFORE, the parties hereby agree as follows:

- 1. Grant of License. County hereby grants to Owner and to Owner only, an exclusive license to berth the Vessel at the Berth on a month to month basis beginning on the _____ day of _____, 20__, and continuing thereafter until terminated pursuant to the provisions of this Agreement. During the term of this Agreement, Owner shall also have the non-exclusive right to use, in conjunction with other authorized members of the public, adjacent floats, docks, gangways, lighting, fresh water, power outlets, vehicle parking spaces, and restrooms owned by County, subject to such reasonable charges for using any one or more of the same as County may choose to assess from time to time.
- 2. Berth Fees.
 - a) Terms of Payment. Owner shall pay to County each month, in lawful money of the United States, berth license fees at the monthly rate posted in the Marina Office, as said rate may be modified by County from time to time. Said berth fees shall be due and payable in advance by the tenth day of each month during the term of this Agreement, without offset, at the Administrative Office of the Parks Department at 455 County Center, 4th Floor, Redwood City, CA 94063 or at the Marina Office at 1900 Coyote Point Drive, San Mateo, CA 94401.
 - b) Late Payment. Owner acknowledges that late payment by Owner to County of berth fees will cause County to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting, and collection costs.

Therefore, if any balance due is not received by County within fifteen (15) days after the date due, Owner shall pay to County an additional sum of \$ 3.00, or 10% of the balance due (including prior late fees) whichever is greater, which sum the parties agree represents a fair and reasonable estimate of the costs that County will incur by reason of late payment by Owner. Such amount may be increased by County from time to time to reflect increases in such costs. Any such increase in late charges shall be effective upon the posting of written notice of such increase in the Marina Office. Acceptance by County of such late charge shall not prevent County from exercising any of the rights and remedies available to County in connection with any repeated failure to pay on time, including termination of vessel berthing rights.

- c) Delinquent Charges. County may utilize any remedy available to it to recover delinquent charges, including those provided by the Harbors and Navigation Code. No boat may be removed from the Marina without the Harbormaster's written approval and or all delinquent fees are paid in full.
- d) Partial Payments. The County may accept and apply partial payments to any sums owed by Owner without waiving, compromising, settling or working an accord and satisfaction of any outstanding balance due. Late fee charges will be assessed on any monthly outstanding balance, including prior late fee charges.

3. Conditions of Use. Owner shall perform and comply with each and every term and condition of this Agreement to be performed or complied with by Owner, including, without limitation, the conditions of use contained in this Paragraph 3.

- a) Use. Owner shall not cause or permit the Berth to be used for any purpose other than the berthing of the Vessel, recreational purposes, and other uses reasonably incidental thereto and not prohibited herein. Owner shall not live aboard the Vessel, use the Vessel as a residence, office, or for commercial purposes.
- b) Securing Vessel. At all times while the Vessel is berthed at the Marina, Owner shall cause it to be safely and properly secured in a manner acceptable to County. If County deems it necessary from time to time to re secure the Vessel for any reason, then on the third and all subsequent occasions necessitating re securing of the Vessel, Owner shall pay County a reasonable service charge for doing so plus the cost of all materials used therefore. However, proper securing of Vessel remains the responsibility of Owner and County does not assume and shall have no responsibility or liability whatsoever for the safety of the Vessel, and shall not be liable for fire, theft, or any damage to the Vessel, its equipment, or any property in or on the Vessel, by reason of County's decision either to re secure the Vessel or not to re secure the Vessel, except any such damage as is caused by County's willful injury or sole gross and active negligence in re securing the Vessel.

- c) Condition of Berth. Owner hereby acknowledges that Owner has inspected the Berth and those portions of the Marina associated with the Berth, including without limitation, the depth of the berth, the floats, walks, gangways, and ramps adjacent to the Berth, knows the condition of same, hereby accepts the Berth in such condition, and acknowledges that no statement or representation as to the condition of any of the same has been made by County.
- d) Guests. Owner shall insure that all guests, invitees and hired personnel of Owner shall conform their activities to the requirements of this Agreement. County shall have the right, but not the obligation, to ascertain that third parties aboard the Vessel are authorized by Owner to be aboard.
- e) Change of Berth. County reserves the right to reassign Owner to a different berth (of same size and fee) within the Marina at any time to facilitate management of the Marina, and County shall not be liable to Owner by reason of requiring such reassignment. From and after the date of any such reassignment, the new berth shall be deemed to be the Berth, as such term is herein defined, for all purposes under this Agreement. Further, the Harbormaster may require any vessel to relocate for storage to any other location in the Marina due to nonpayment of fees, boat damage, dock repair, maintenance, dredging or other reason.
- f) Assignment and Sublicense. Provided County first consents thereto, Owner may sublicense the Berth for a period not to exceed three (3) months, subject to a charge of their current rate or less. Owner shall remain liable for all of Owner's obligations hereunder during said period. Except as set forth above, Owner shall not assign this Agreement or any other rights hereunder, voluntarily or involuntarily, or sublicense the Berth or any part thereof, to any other party or for use by any other Vessel. Any assignment or sublicense in violation of this paragraph shall be void and shall automatically terminate this Agreement. This license is not transferable.
- g) Policies, Regulations and Laws. Owner at all times shall comply with all applicable policies, laws, ordinances, statutes, rules, regulations and rulings of federal, state and local governments and the boards, agencies and departments thereof relating to Owner's use of the Berth and Owner's activities within the Marina, including but not limited to County Ordinances and Marina policies, rules and regulations, as the same may from time to time be modified. Owner hereby acknowledges receipt of a copy of the current Marina policies, rules and regulations. County reserves the right to add to or otherwise modify said Ordinances, policies and rules and regulations. The Harbormaster, acting under the Director of the Parks Department, County Manager and Board of Supervisors, shall have full authority in the interpretation and enforcement of all ordinances, policies, rules and regulations affecting the Marina.

- h) Abandonment. If Owner's berth is vacated for a period exceeding sixty (60) days without notifying the Harbormaster in writing, the County may deem the berth space permanently abandoned, and terminate this berth license agreement.
 - i) Damage. The County assumes no responsibility whatsoever for damage or injury to any boat, person or persons, or contents, parts, or equipment on or about any boat or any float. This includes any damage to boat bottoms, rudders, props, stabilizers or bottom paint as a result of shallow water or shoaled areas.
 - j) Insurance. Boat Owner agrees to obtain and maintain insurance on the boat in his or her name in an amount not less than \$300,000.00 combined single limit, providing liability and property damage coverage.
 - k) Registration. Boat Owner will maintain in his or her name either current California Department of Motor Vehicles registration or United States Coast Guard documentation for the vessel.
 - l) Current Resident Address and Phone Number. Boat Owner will maintain a residence with a valid and current mailing address and phone number... Owner is responsible to immediately notify the Harbor Office of any change of address, phone, or emergency contact information.
 - m) Docking, Storage and Parking. The Boat Owner may use only the assigned berth and associated dock box, if any. Land vehicle parking is only for day use. Any other docking, storage or parking must be approved by the Harbormaster.
 - n) Living Aboard. Lodging or living aboard vessels for more than three (3) nights in any seven (7) day period is prohibited.
 - o) No Use for Commercial Purpose. No boat shall be used or licensed for a commercial purpose while berthed under this agreement. At such time as any boat is used or licensed for commercial purposes, its berthing space shall be automatically forfeited.
4. Repairs and Maintenance.
- a) Major Repairs. No boat shall be materially or structurally altered, repaired, or rebuilt in any area of the Marina.
 - b) Routine Maintenance and Repair. Licensed and insured or bonded persons engaged for a fee to perform normal repair or maintenance work shall be properly authorized by the County.
 - c) Paint Removal. No paint shall be removed by any means from any boat other than that which is necessary for normal maintenance.

- d) Dock Maintenance. All dock maintenance will be performed by the County. Owner shall report any needed repairs to the Marina office and they will be addressed at the earliest opportunity. Owner shall not undertake any repairs or make any additions or modifications to the dock facilities (including electrical and water service) without the express permission of the Harbormaster.
- e) Right of Entry for Inspection. The Harbormaster shall have the right to enter upon any boat for the purpose of inspection and safety in accordance with his or her duties.
- f) Right to Refuse Access. The Harbormaster shall have the right to refuse access to County facilities for any Vessel if the Harbormaster believes that said Vessel constitutes a hazard to the environment, County facilities or personnel, other vessels, or the public.
- g) Vessel Operability. The Harbormaster may require on thirty (30) days written notice, a demonstration of any Vessel's operability. Failure of Vessel to prove operability shall be grounds for immediate termination of this agreement.

5. Water Quality.

- a) No Use of Marine Heads; Holding Tanks Required. Any boat equipped with a Marine head shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device that will receive and retain sewage. Marina heads of boats without holding tanks or equivalent devices shall be rendered inoperable at all times when the boats are moored in the Marina.
- b) Right to Inspect. The Harbormaster is hereby given the right, in the presence of the Owner, to enter such boat to determine that the heads have been adequately rendered inoperative while the boat is in the Marina.
- c) Dumping Prohibited. Dumping of solid or liquid waste into the Marina is forbidden. Any dumping shall be cause of immediate cancellation of this agreement. It is the Owner's responsibility to remove and properly dispose of any petroleum products or other chemicals that collect in the boat's bilge. Any fuel or chemicals found entering Marina waterways through the boat's bilge pump(s) will be cause for immediate termination of this agreement. Owner shall be responsible for any fees associated with the cost of the spill or pollution cleanup.
- d) Fueling. Fueling shall only be done at the Fuel dock. Fueling at the berth from containers is prohibited.

6. Liability.

- a) Waiver of Claims. Incident to the operation of the Marina, County has provided certain fencing and gates, flood lighting and staff for protection of persons using the Marina and their personal property. Nonetheless, because of the many feet of unfenced and exposed shoreline of the Marina, and because of the many users of the Marina with varied boating experience, it is financially infeasible for County completely to protect boats berthed in the Marina from damage inflicted by other persons, or to protect those persons using the Marina from physical harm caused by the negligence or willful misconduct of other persons within the Marina. In acknowledgment of the foregoing, Owner hereby holds County harmless and waives any and all claims of liability against County, including but not limited to its officers, agents and employees (all hereinafter collectively referred to as the "Indemnities"), for any personal injury to or death of any Owner and/or any member of Owner's family, and/or Owner's guests, agents, or employees, or for damage to or destruction of any property, including, without limitation, the Vessel, occurring on or about the Marina, arising from any cause whatsoever other than the sole gross and active negligence or willful misconduct of County. Such waiver shall extend to, but not be limited to, damage or loss from fire, theft, vandalism, malicious mischief, or collision, sustained by any boat, automobile or other personal property belonging to Owner permanently or temporarily maintained, stored, berthed, parked or operated in or about the Marina, including but not limited to its floats, piers, parking lots, small boat launching ramp, and fuel float.
- b) No Liability for Dredging. County conducts dredging operations, for the benefit of all Marina users, with certain dredging equipment. Nevertheless, because of natural conditions existing at the Marina, and because of the nature of the dredging operations, County cannot and does not agree to protect boats and persons using the Marina from damage or injury to persons and/or property resulting from the dredging operations, the dredging equipment or the resulting condition of the Marina. In acknowledgment of the foregoing, Owner hereby agrees that, to the full extent permitted by law, the foregoing waiver shall apply to and County shall not be liable or responsible for any claims, demands, damages, debts, liabilities, obligations, costs, expenses, liens, actions or causes of action of any kind whatsoever, resulting (1) from any collision with any of the dredging equipment or any other boat, (2) from any collision or contact with the bottom of the Marina or any obstructions on the bottom of the Marina, (3) from any collision or contact with the jetties or surrounding beaches, or (4) from, or in any way relating to, the dredging operations or the lack of dredging operations, including, but not limited to, the closure of the Marina entrance for any reason or under any circumstances whatsoever. County shall to the full extent permitted by law, specifically have no liability or responsibility to Owner for the conditions of the Marina, the availability of ingress to or egress from the waters of the San

Francisco Bay, or the Marina, or damages caused to the Vessel by such conditions. Such non-liability and non-responsibility shall include, without limitation, any failure by County to dredge any portion of the Marina, regardless of the length of time during which County may have failed to dredge. In the event the Berth is an “inside tie,” then without limiting the generality of the foregoing provisions, Owner specifically acknowledges that the Berth is by its very nature shallow and that rocks are commonly found under the Berth, and agrees that County shall in no event be responsible for any damage sustained by the Vessel from its resting on the bottom.

- c) Hold Harmless and Indemnification. In addition to and without limiting the foregoing, Owner shall indemnify and hold harmless the County Indemnities from and against any and all damage, loss and expense, including but not limited to costs and expenses of litigation, and shall at Owner’s sole cost, upon the request of County, defend all suits brought against all or any of the Indemnities, resulting from or arising out of any act or omission of Owner or its agents, employees, or invitees, occurring on or about the Marina, including but not limited to the breach of this Agreement or the County Ordinances by any of such parties.
- d) Possessory Interest Property Tax. Owner recognizes and understands that this Agreement may create a possessory interest subject to property taxation and the Owner may be subject to payment of any property taxes levied on such interest.

7. Termination. This Agreement may be terminated only as provided in this Paragraph 7.

- a) Thirty Days Notice. This Agreement may be terminated at any time by either party for any reason whatsoever upon giving the other party not less than thirty (30) days’ prior written notice of termination. Such notice to County shall be delivered directly to the Harbormaster at the Marina Office.
- b) Transfer of Vessel. Owner shall be entitled to transfer all or any part of Owner’s right, title or interest in the Vessel to any other party or parties. However, the Berth is not transferable to any person. Further, Owner must promptly apply to County for a renewed berth berthing license in the event Owner desires to continue using the Berth for berthing a different boat.
- c) Breach of Agreement. If Owner fails to abide by or perform any of the terms, conditions and promises as set forth in this Agreement to be abided by or performed by the Owner, or if Owner fails to inform County of any changes in the information set forth in the Application for Berth License, County, without waiving any other rights or remedies it may have under this Agreement or at law, may immediately terminate this Agreement upon giving Owner written notice of termination.
- d) Destruction of Berth. This Agreement shall automatically terminate upon destruction of the Berth by situation, or upon destruction of the walkways or

gangways adjacent thereto by reason of fire, storm or any other cause; provided that, in the event a suitable berth for the Vessel is available elsewhere in the Marina at the time of such termination, County shall offer Owner an opportunity to enter into a license agreement respecting such berth.

- e) Continuing Obligations. The termination of this Agreement shall not relieve Owner of any obligation or liability which arose or accrued prior to such termination.
8. Surrender. Upon termination of this Agreement, Owner shall pay in full, the remaining balance of his account. No boats with outstanding balances may be removed from the Harbor without the Harbormaster's written approval or until all delinquent fees are paid in full. Boats with unpaid balances will be billed the current Visitor rate from the date of termination until their accounts have been paid in full and the boat has been removed from the Marina.. Owner will be billed for the disposal of any household hazardous waste products (paints, oils, varnish, thinner, etc.) that were left on the dock or inside the dock box after the vessel was removed from the Marina. If the Vessel remains in the Berth after termination of this Agreement, the Vessel shall be considered abandoned, and shall be subject to County and State law pertaining to disposition of abandoned vessels.
9. Remedies for Default. If Owner fails to pay berth fees or any other charges to be paid by Owner, or in the event of any other default or breach under this Agreement by Owner, County may at its option, pursue any and all rights and remedies it may have under this Agreement and at law, including without limitation, the right to take possession and control of and remove and store the Vessel anywhere at the Marina for the purpose of perfecting and executing upon County's statutory lien rights in the Vessel.
10. Relationship of Parties. Nothing in this Agreement shall be deemed to create a relationship between County and Owner other than that of licensor and licensee. In particular, this Agreement shall not be deemed to be a lease or rental agreement, or to create a landlord-tenant relationship between County and Owner.
11. No Waiver. No delay or omission on the part of the County in exercising any right or remedy shall operate as a waiver or relinquishment thereof or of any other right or remedy hereunder or at law or equity, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or of any other right or remedy. The acceptance by County of partial berth fees or other sums owed by Owner to County hereunder shall not constitute a waiver of County's right to payment in full of such fees or other sums.
12. Notice. Except as otherwise provided herein, or required by law, any notice or communication given pursuant to this Agreement shall be in writing and may be delivered personally or be sent by certified mail, postage prepaid, addressed to the party to whom given at its address as shown hereinabove and deposited in the United States mail in California. Either party hereto may change its address to which notices or

communications are to be given by giving written notice thereof to the other party in conformity with the provisions of this paragraph.

13. General.

- a) Joint and Several Liabilities. If Owner consists of more than one person, then the obligations of each said person as Owner, including but not limited to the waiver and hold harmless and indemnification provisions of Paragraph 6, shall be joint and several.
- b) Time of Essence. Time is of the essence of this Agreement and each and every provision hereof.
- c) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and terminates and supersedes as of the date hereof any prior agreement(s) between the parties, written or oral. Any subsequent modification of this Agreement shall be in writing and signed by both parties.
- d) California Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any court proceeding involving this Agreement shall be the Superior Court of San Mateo County.

IN WITNESS WHEREOF, the parties have executed this Berth License Agreement as of the ____ day of _____, 20__.

“COUNTY OF SAN MATEO”

By _____
Harbormaster
Parks Department

“OWNER”

By _____

BERTH LICENSE EFFECTIVE: _____

BERTH LICENSE VOID: _____