

AGREEMENT

THIS AGREEMENT is made by and between the CITY OF KEY WEST, FLORIDA, a municipal corporation, hereinafter referred to as "City" and SUPER BOAT INTERNATIONAL PRODUCTIONS, INC., a Florida corporation, hereinafter referred to as "SBI".

WITNESSETH:

WHEREAS, SBI desires to hold an annual event commonly referred to as the Key West World Championship at the Truman Waterfront in the City of Key West; and

WHEREAS, the parties desire to set forth their mutual understanding in a formal Agreement; and

WHEREAS, SBI requires the provision of additional or extraordinary support services from City in order that said the said event may be held in Key West, Florida; and

WHEREAS, this longstanding annual event stimulates significant economic investment in the City of Key West supporting local businesses.

NOW, THEREFORE, in consideration for the mutual promises and covenants contained herein, it is mutually agreed between City and SBI as follows:

1. Term:

The term of this agreement shall be for five (5) years commencing on the ___ day of _____, 2014, and shall apply to the Key West World Championship activities to be held during the years 2014 through 2018, inclusive.

2. Demised Area:

SBI shall have the use of the Truman Waterfront as shown on the attached Exhibits, hereinafter referred to as the "Demised Area". City reserves the right, upon 180 days notice, to re-locate the event to a comparable sized area in the Truman Waterfront during construction or upon completion of the park improvements. In the event that SBI does not agree with the re-location, SBI shall have the right at its sole option and as its sole remedy, to terminate this agreement, within 30 days of the receipt of the re-location notice.

3. A. Use:

- 1) SBI may utilize the Demised Area for the purposes of holding activities consistent with the Key West World Championship.
- 2) SBI shall coordinate its use of the Demised Area with all applicable entities owning properties surrounding the Demised Area such to provide for minimum business disruption. In no circumstance shall SBI's use of the Demised Area negatively affect ingress and egress to the Truman Waterfront. SBI will maintain unimpeded, 24/7, roadway access for staff and visitors to NASKW properties, Eco-Discovery Center/NOAA, and Fort Zachary Taylor State Park.
- 3) SBI will comply with all laws and city ordinances governing use of city property, including but not limited to, consumption of alcohol, noise control and exemptions, and will obtain any and all necessary permits, including special event permits, licenses and/or approvals that may be required.
- 4) Each year, at least 120 days before the event, SBI shall supply the City the schedule of events for that year, which schedule shall become an attachment to this Agreement. Provided, however, the said schedule and related activities shall be in be in substantial conformity with the following:

B. Race Village at Truman Waterfront Park, first Sunday through second Sunday of Race Week between 9:00 AM to 5:00 PM (Days 1 – 8) with race teams arriving at 5:00 AM

- 1) All boats will be arranged on the leased property in accordance with the map attached hereto as Exhibit "A".
- 2.) All vendors will be arranged on the leased property in accordance with the map attached hereto as Exhibit A".
- 3.) The entrance gate to the paid parking areas and the parking lots shall be located on the leased property in accordance with the map attached hereto as Exhibit "A".
- 4.) Security within the Race Village will be provided as determined by the City Manager and Police Chief based on demand for service and prior years'

- experience in 2013.
- 5.) A manned fire pumper truck shall be staged in the Race Village beginning on Tuesday and through Sunday of Race Week.
- B. Boat Parade on Duval Street, first Sunday of Race Week (Day 1)
1. The exact route of the procession starting at 4:00 PM and ending at approximately 6:00 PM will be as indicated on the map attached hereto as Exhibit "D".
 2. SBI shall contract and pay for law enforcement officers to ensure traffic control and the safety of the participants. The parade procession must have a law enforcement escort vehicle at the front and at the rear of the procession.
 3. Security along the parade route will be provided as determined by the City Manager and Police Chief based on demand for service and prior years' experience in 2013.
 4. Trash and recycling receptacles shall be placed at the staging area and at suitable locations throughout the parade route to ensure adequate collection.
- C. Welcome Party for U. S. and International Teams at Truman Waterfront Park, Monday of Race Week (Day 2)
1. Please refer to Exhibit "B" for event location on the US Navy Outer Mole Pier. Use of NASKW property by SBI will require the City to enter in a license with the Navy. SBI will be required to follow all requirements of that license.
- D. Testing for Race Boats Tuesday, Thursday and Saturday of Race Week (Days 3, 5 and 7)
1. Please refer to Exhibit "A" for locations of boat launch and fueling areas.
 2. Please refer to Exhibit "C" for locations of U.S. Coast Guard Sector Key West approved race courses for testing and competition during both good and inclement weather conditions.

3. Security on the race course to prevent spectator traffic will be provided by the Police Marine Boat if requested by the U.S. Coast Guard.
4. Fire Services on the race course will be provided by the Fire Marine Boat if requested by the U.S. Coast Guard.
5. Ambulance Service by the City is required on the US Navy Outer Mole during race testing.

E. Race Day Events, Wednesday, Friday and Sunday of Race Week (Days 4, 6 and 8)

1. Please refer to Exhibit "A" for locations of boat launch and fueling areas.
2. Please refer to Exhibit "C" for locations of U.S. Coast Guard Sector Key West approved race courses for testing and competition during both good and inclement weather conditions.
3. Security on the race course to prevent spectator traffic will be provided by the Police Marine Boat if requested by the U.S. Coast Guard.
4. Fire Services on the race course will be provided by the Fire Marine Boat if requested by the U.S. Coast Guard.
5. Ambulance Service by the City is required on the US Navy Outer Mole during race days.

F. Duval Street Party on Friday of Race Week (Day 6)

4. Payment for City Services

- 1) Attached hereto as Exhibit "G" is City's good faith estimate of costs for City services for the power boat race events approved under this Agreement. It is understood this good faith estimate is based on actual services provided by the City during the 2009 through 2013 Key West World Championship event and the information provided by SBI for the same years as represented in Exhibit "F". In accordance with the labor agreement between the City and the Police Benevolent Association, SBI is obligated to hire City police officers as per Exhibit "E".

- 2) City will provide to SBI an itemized invoice of actual costs incurred for all services rendered in connection with the events approved by this Agreement. SBI will be reimbursed above the annual cap by the City upon presenting evidence of full payment directly for all police and fire services. Reimbursable expenses are limited to fire and police services and cost incurred by the City of Key West Community Services.
- 3) SBI will remit payment to City within forty-five (45) days of invoice date an amount up to the sum of \$35,000.00 for those services itemized on the invoice with the understanding SBI will remit payment directly to all contracted off-duty law enforcement officers and its fire department personnel.
- 4) SBI shall make arrangements for privately contracted clean-up services to assist with the clean-up during the entire power boat race events. These costs will not be reimbursable by the City. Each year thereafter, SBI will be billed in an amount up to the sum of \$35,000.00, and shall increase by 3% each year through 2018 as follows: 2014 \$35,000; 2015 \$36,050; 2016 \$37,132; 2017 \$38,246; and 2018 \$39,393.

The annual fee cap includes all services paid for directly by SBI.

5. Additional Provisions.

- 1) Prior to occupancy by SBI inspections of the park will occur with City of Key West Community Services Director and a representative of SBI documenting existing conditions of the park. At the conclusion of the event and within 10 days, an inspection of the park will occur noting changes to those documented conditions or any new conditions. A written report will be provided to the City Manager..
2. The City department spokesperson or contact person providing the services shall immediately advise the City Manager of the action to add extra labor or equipment.
- 3) SBI will provide portable toilets to be available to event attendees during all events, as required by the city manager or designee. These costs will not be reimbursable by the City.
- 4) City will provide extra trash receptacles for use during the events. SBI shall pay costs for extra pick-ups and disposal charges for the referenced

trash receptacles. These costs will not be reimbursable by the City. Cardboard trash receptacles are not permitted. In each instance that result in closure of a street, SBI shall provide additional garbage cans. SBI will arrange for private trash and recycle receptacles for both the Truman Waterfront and US Navy Outer Mole Pier.

- 5) SBI will adhere to the recycling plan of the City of Key West, which provides that one (1) recycling container for every one (1) trash barrel will be used and that they be placed side by side.
- 6) City will provide clean-up crews to remove all litter during race days only on the outer mole, event with costs of said clean-up to be paid by SBI, as provided for in Exhibit "G" of this Agreement.
- 7) SBI will pay City for electric services as estimated by the City or Keys Energy no later than 45 days after Key West World Championship ceases use of the Demised Area each year of the event.
- 8) No vendors are permitted in the pedestrian right-of-way or allowed to block any intersections or parking lots in the Truman Waterfront Park, US Navy Outer Mole Pier, or Eco-discovery Center/NOAA facility at any time and are subject to relocation or removal by the City.
- 9) Outside of the Truman Waterfront, SBI agrees to keep one lane of all streets open at all times during the events to allow access to any areas of the streets for emergency vehicles. Within the Truman Waterfront, two full lanes of traffic will be maintained through the park.
- 10) SBI will be responsible for any damage to City property as a result of the event. SBI will repair damage at its own sole cost and expense to pre-event conditions.
- 11) SBI may begin using the Truman Waterfront Park starting on the Monday prior to the race week and ending the Friday following race week.
- 12) The City will block cruise ships on race days and race testing days at the US Navy Outer Mole Pier. The City cannot block out cruise ships at the privately owned Pier B or publicly owned Mallory Square Pier.
- 13) The key contacts for the City to this agreement are the City Manager, Assistant City Manager of Operations, and

Director of Port and Marine Services.

- 14) SBI will provide the City with a race schedule at least 120 days prior to the event for discussion and approval as relates to the use of the Truman Waterfront Park and U.S. Navy Outer Mole Pier. See Exhibit "J".

6. Security Deposit

SBI agrees to provide a security deposit in the amount of \$5,000.00 at least thirty (30) days prior to the event each year for the faithful performance of all repairs necessary due to damage caused by SBI, it's agents, employees, invitees. The parties agree to walk through and inspect the premises before and after the event to confirm exact condition of the premises and any necessary repairs.

7. Insurance and Indemnity Requirements.

SBI shall:

- a) Provide comprehensive liability insurance insuring itself and City against all claims of damages or injury to persons or property arising for any reason as a result of the activities associated with events permitted by City. The insurance policy shall be written by a solvent insurance company in good standing and shall provide a minimum of \$2,000,000 coverage for bodily injury arising out of one incident and \$10 Million Dollars aggregate along with a minimum of \$2,000,000 products aggregate and a minimum \$300,000 fire damage/legal. This policy shall show City as an additional named insured and a copy shall be provided to the Special Events Section of the City Manager's Office no later than three weeks before the first event.
- b) To the fullest extent permitted by law, SBI expressly agrees to indemnify and hold harmless the City of Key West and their respective officers, directors, agents, and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property caused in whole or in part by any act, omission, or default by SBI. or its subcontractors, material men, or agents of any tier or their employees, arising out of this Agreement or its performance, including any such damages caused in whole or in part by any act, omission, or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive

damages are caused by or result from the acts or omissions of SBI. or its subcontractors, material men, or agents of any tier or their respective employees.

8. Assignment and Hypothecation

This Agreement is not transferable or assignable, except as provided by Resolution of the Key West City Commission.

9. Default, Remedies

In the event that SBI fails to comply with the terms of this agreement, the City shall have the right to terminate the Agreement upon thirty days written notice which shall be delivered pursuant to Section 10 hereof.

10. Independent Contractor

SBI is an independent contractor with respect to the City. No employee or agent of SBI shall be entitled to the wages or benefits of an employee of the City of Key West.

11. Notice

All notices, demands, or other writings in this Agreement provided to be given or made or sent, or which may be given or made or sent, by either party to this Agreement to the other, shall be deemed to have been fully given or made or sent when made in writing and received by hand delivery or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination and addressed as follows:

To City: City Manager
P.O. Box 1409
Key West, FL 33040

To SBI: John Carbonell
1323 20th Terrace
Key West, FL 33040

The address to which any notice, demands, or other writing may be given or made or sent to any party mentioned above may be changed by written notice.

12. Severability

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be impaired thereby, but such remaining provisions shall be interpreted and enforced so to achieve, as near as may be, the purpose of this Agreement to the extent permitted by law.

13. Governing Law.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

14. Entire Agreement.

This Agreement sets forth all the covenants, promises, agreements, and understandings between the City and SBI. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the City or SBI unless reduced to writing and duly executed by both parties.

IN WITNESS WHEREOF, SBI and City hereby accept and agree to abide by the terms and condition set forth herein, and have hereunto executed this Agreement, this _____ day of _____, 2014.

CITY OF KEY WEST

By: _____
BOGDAN VITAS, CITY MANAGER

ATTEST:

CHERYL SMITH, CITY CLERK

SUPER BOAT INTERNATIONAL
PRODUCTIONS, INC.

By: _____
JOHN CARBONELL, PRESIDENT

ATTEST:

Secretary

Exhibit "A" Demised Area