

# *City of Brisbane*

## *Agenda Report*

**TO:** City Council via City Manager  
**FROM:** Director of Marina & Aquatic Services  
**SUBJECT:** Charter Boat Business in the Marina  
**DATE:** Meeting of July 23, 2012

### **CITY COUNCIL GOALS:**

4. To promote economic development that stabilizes and diversifies the tax base.

### **PURPOSE:**

To encourage and develop new business activity in the Marina.

To encourage and provide new opportunities for leisure, recreation and enjoyment for the City's citizens, businesses and the general public.

### **RECOMMENDATION:**

To approve the Charter Boat Agreement between the City and John Stahl, d/b/a "Spirit of Sacramento".

### **BACKGROUND:**

We were approached by John Stahl, the owner and operator of the "Spirit of Sacramento", about the possibility of operating a charter boat business out of Brisbane Marina.

All of the necessary documentation has been provided and verified, such as the U.S. Coast Guard Certificate of Inspection, Captain's License and insurance covering hull, dock and liability coverage. If approved by the City Council, The Charterer will also enter into a Berthing License Agreement that will bind him to the conditions to that extent as well as the Charter Boat Agreement.

This agreement was crafted, using as a guide, the usual and customary requirements of similar charter operations in other major marinas and harbors throughout California. It has also been customized relevant to the City's requirements. The Agreement has been reviewed, edited and approved by the City Attorney.

Instead of charging the industry's usual gross receipts formula plus berth fees for an already well-established charter operation, we have opted for berth fees plus multiplier 1.5 times berth rent due to the large area of water the vessel will occupy.

In Addition, a Concession Fee of \$200.00 will be charged for each sailing or per single event. We feel this is a fair and equitable approach for a new and fledgling business in the Marina.

### **DISCUSSION:**

In the past, the City has entertained several charter operators that were interested in establishing their business in Brisbane Marina. For various reasons including the customer base, target market, limited Marina amenities, maneuverability of the craft or better business opportunities, those operators sought out other locations. In 2007, San Francisco Bay Boat Cruises Charter Boat Agreement was approved by the City Council. San Francisco Bay Boat Cruises Charter Boat was a 45' motor vessel authorized by the Coast Guard to carry up to 49 passengers. They violated the terms of the Charter Boat Agreement and the Agreement was terminated by the City Attorney. Their berth privileges were revoked by the Harbor Master.

In 2009, berth renter and yacht owner, Mr. Grant Gilliam, created Golden Gate Charter, LLC, and was approved by the City Council to conduct luxury charters on his 53' motor yacht approved by the Coast Guard to carry up to six passengers. Due to the global recession at that time, Mr. Gilliam stopped marketing the Charter Business and secured other employment.

The *Spirit of Sacramento* is an 85' steel power vessel, paddle wheel river boat, that is authorized by the Coast Guard to carry up to 270 passengers.

On July 4, 2012, the *Spirit of Sacramento* was given permission to conduct a trial charter out of the Marina to gauge the boarding of passengers, the operations of Captain and Crew, the maneuverability of the craft and the popularity of their marketing efforts. The vessel sailed with approximately 170 people, including crew and passengers.

That trial proved to be successful, so we are seeking approval of a three year Charter Boat Agreement that may be terminated by either party with 30 days written notice or ten days written notice if either party has committed default.

The berth rent formula uses the existing berth rate approved by the City Council, times one half, based on the wide beam of the vessel.

The Concession Charge was based on extrapolating current industry charges that were customized for Brisbane's operation. See appendix 1. The Concession Charge is meant both as a financial enhancement to the City and to offset additional costs on City infrastructure, such as garbage, sewage pumpout and water.

### **FISCAL IMPACT:**

The revenue received from a 99' berth (\$10,727.64) during the first year.

The charterer will be charged the usual 99' single finger berth rate currently at \$595.98 (6.02/ft x 99') per month, times 1.5, or \$9.03 per foot x 99' = 893.97 per month x 12 months = \$10,727.64.

In addition to the berth fee, the Concession Fee of \$200.00 per sailing or per single event would be imposed.

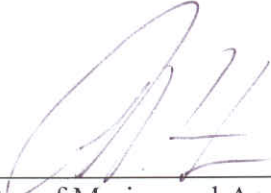
This would continue for a period of three years and hopefully with the success of the business, a new agreement would be negotiated at the end of the three year term.

**ATTACHMENTS:**

Photo of the motor vessel *Spirit of Sacramento*

Charter Boat Agreement

Appendix 1



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Director of Marina and Aquatic Services



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City Manager





## CHARTER BOAT AGREEMENT

**THIS AGREEMENT**, dated, \_\_\_\_\_, 2012, between THE CITY OF BRISBANE, a municipal corporation ("City"), and JOHN STAHL, d/b/a "SPIRIT OF SACRAMENTO" a sole proprietorship ("Charterer"), is made with reference to the following facts:

A. City is the owner and operator of the Brisbane Marina ("Marina") located within the area of the City commonly known as Sierra Point.

B. Charterer desires to establish a charter boat business at the Marina for the operation of a for-hire charter boat and related items and City has agreed to provide space and other services needed for the conduct of such business, on the terms and conditions hereinafter set forth.

### **NOW, THEREFORE, the parties agree as follows:**

**1. Grant of Concession: Conduct of Charter Boat Business:** City hereby grants to Charterer a concession to operate a charter boat business at the Marina. The Charterer is expressly required to obtain, at his sole cost and expense, a City of Brisbane Business License and all governmental permits and approvals required for the operation of his business from the berth, (and shall provide evidence of same to City prior to commencing its business operations as herein specified), and shall be solely responsible for the payment and performance of all work necessary to comply with all applicable governmental rules and regulations. Charterer shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities now in effect or which hereafter may be in effect pertaining to the registration, licensing, operation, equipping, repair, maintenance, sanitation systems and use of Charterer's vessels. Charterer shall obtain such permits and licenses from any other governmental agencies as may be required for the conduct of his business and shall keep the same in full force and effect at all times during the term of this Agreement. Charterer shall not conduct any other business or activity at the Marina without the prior written consent of City. Which City shall be entitled to grant or withhold at City's sole discretion.

**2. Use of Dock Space:** It is understood and agreed that this Agreement relates to the use of the berth only. Charterer's agents, employees, representatives, invitees and patrons shall have no right to use any of the other boater-only facilities at the Marina, without the express written consent of the Director of Marina and Aquatic Services.

This Agreement is for the use of space only, such space to be used at the sole risk of Charterer, and City shall not be responsible or liable for the care or protection of vessels, including gear, tackle, appurtenances, contents, or any other property of Charterer or Charterer's agents, employees, representatives, partners or guests, or any loss or damage of whatever kind or nature to vessels, contents or equipment howsoever occasioned. There is no warranty of any kind as to the condition of the floats, walks, gangways, ramps, mooring gear or other improvements, nor shall City be responsible therefore or for injuries to persons or property occurring thereon or on any part of the berth or for any other reason whatsoever whether herein specifically stated or not. In addition, Charterer hereby releases City from any and all claims for damage to said vessels or



their contents from soot, smoke, oil, wake, storm or any foreign substance existing upon, in or over waters in the anchorage, landing and approaches of the Berth at the Marina.

Charterer is granted the right to use berth and Guest Dock subject to the terms and conditions of this Charter Boat Agreement and the terms and conditions of the License Agreement executed between City and Charterer concurrently herewith (the "License Agreement"), which is incorporated herein by reference. The berth and the Guest Dock shall be used for the sole purpose of loading and unloading passengers on its vessel moored in said berth in connection with its business of offering chartered trips on San Francisco Bay to the general public ("Basic Charter Business"). Charterer shall not use or permit the berth to be used for any other purpose or purposes whatsoever without the prior written consent of the Director of Marina and Aquatic Services or his authorized agents, which consent may be withheld in the Director of Marina and Aquatic Services sole subjective discretion, except as otherwise provided in the License Agreement.

Charterer will be allowed to use the Guest Dock area or designated berth at the discretion of the Director of Marina and Aquatic Services. Charterer shall pay to the City the customary rental charges for such berth, in accordance with City's adopted fee schedule for the Marina, as defined in Section 6. Charterer shall be solely responsible for all costs and expenses related to the acquisition, equipment maintenance, use, and occupancy of the Charter Boat and any storage. Charterer further agrees that said boat and storage will be kept and maintained in compliance with all regulations governing boats in the Marina as set forth in City's Municipal Code. Any storage beyond a usual customary dock box will constitute an additional rental agreement beyond the scope of this Agreement.

Charterer shall not use or permit the berth to be used for any purpose in violation of the laws, ordinances, regulations or requirements of the United States of America, State of California, City of Brisbane, or any other lawful authority. Charterer shall keep the berth and the surrounding docks and walkways and every part thereof in a clean and wholesome condition, free from any objectionable noises, odors or nuisances, and will fully comply with all health and public regulations. Charterer shall not commit, permit or suffer waste to be committed on or to occur to the berth and surrounding docks, walkways and waterways. Charterer further agrees not to use or permit the berth to be used in any way which will interfere with the peaceful, quiet enjoyment of any other occupant of a berth in the Marina or cause the cancellation of any insurance policy.

Charterer shall have sufficient personnel to immediately and efficiently secure the vessel to the Landing Site, to control Charterer's crowds, to provide for safe embarkation and debarkation and to direct Charterer's passengers to and from the dock area. Charterer shall use its best efforts to ensure that in the dock areas, there is no drinking, no eating and no loitering by Charterer's passengers, and to keep such areas of the Landing Site free and clean of litter and other debris generated by Charterer's passengers.

**3. Hours of Operation:** Charterer shall conduct its business within the Marina only from 8:00 a.m. to 2:00 a.m., daily. Charterer shall be subject to a mandatory injunction to compel the specific performance of the provisions of this paragraph. The Director of Marina and Aquatic Services reserves the right to alter the hours of operation at its sole discretion, provided at least thirty (30) days notice in writing is given to Charterer.



**4. Entry on Boat:** The Director of Marina and Aquatic Services and/or his authorized agents and representatives shall have the right to enter upon Charterer's vessel at any time for emergency services and at reasonable times (after reasonable prior notice) for periodic inspections to determine the safety and condition of Charterer's vessel. Charterer agrees to pay the City reasonable charges for any emergency work performed by the Director of Marina and Aquatic Services and/or his authorized agents and representatives on Charterer's vessel. Nothing herein shall be deemed to impose upon Director of Marina and Aquatic Services any obligation to render any work to any of Charterer's vessels at any time, even in emergency.

**5. Signs:** Charterer shall not affix or maintain upon the berth or on any portion of the Marina Common Areas any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items without the prior written consent of the Director of Marina and Aquatic Services, and unless such are in compliance with all applicable laws, ordinances, rules, regulations and requirements of governmental authority.

**6. Business Berth Fees:** In consideration for the granting of a berth to operate his Charter Boat business at the Marina, the berthing fees will be as set forth in the following formula due to the breadth of the vessels square footage over Marina waters at one and one half times berth fee, currently \$6.02 per foot x 1.5 = \$9.03 per foot.

It is further understood that the customary berth rent may be subject to increases as the Marina fee schedule is subject to adjustment by action of the City Council.

The formula would be based each year on the adjusted customary monthly berth rent amount times the multiplier.

**7. Concession Charge:** In consideration for the granting of a concession to operate his Charter Boat business at the Marina, and in addition to any berthing charges for use of a boat slip, Charterer agrees to pay City a concession charge (the "Concession Charge") in an amount of \$200.00 per single voyage or per each single event, if multiple during a single day.

**8. Payment of Concession Charge:** Not later than the fifth (5th) day of the month following the previous quarterly period, beginning with the calendar year, Charterer shall furnish to City a statement showing each voyage from the Marina during the preceding calendar quarter, if any, and a calculation of the Concession Charge owed to City based upon total voyages.

**9. Audit of Charterer's Records:** City shall have the right to audit the books and records of Charterer at any time during regular business hours to determine whether Charterer has complied with the terms and conditions of this Agreement. The right of inspection shall include the right to make extracts and copies. In the event such audit discloses that Charterer owes an additional Concession Charge to City, such additional Charge shall be immediately due and payable and shall be considered delinquent if not paid within five (5) after written demand by City.



**10. Term:** The term of this Agreement shall be for a period of three (3) years, commencing on \_\_\_\_\_, 2012, and expiring on \_\_\_\_\_, 2015.

**11. Termination of Agreement:** Charterer may terminate this Agreement at any time upon giving thirty (30) days prior written notice to City. Either party may terminate this Agreement upon ten (10) days prior written notice to the other party if the other party has committed a default under this Agreement and has failed to cure such default within ten (10) days after written notice thereof from the non-defaulting party; provided, however, if the nature of the default is such that it cannot reasonably be cured within ten (10) days, then no termination shall occur if the defaulting party commences a cure within such time and prosecutes the same diligently to completion.

**12. Indemnification:** Charterer shall indemnify, defend, and hold City, and its officers, officials, boards, commissions, employees, agents, and volunteers harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including attorney's fees, occasioned by or in any way connected with the conduct of Charterer's business under this Agreement or the use of the dock space by Charterer, or occasioned by any negligent act or omission or willful misconduct by Charterer or Charterer's agents, servants, employees, or invitees, or resulting from any breach of this Agreement by Charterer, and City shall not be liable for any acts or omissions of Charterer. The indemnity obligations of Charterer set forth herein shall survive and continue beyond the term of this Agreement.

**13. Insurance:** During the term of this Agreement, Charterer shall procure and maintain in full force and effect at Charterer's expense comprehensive general liability insurance with an aggregate limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence, insuring against all liability of Charterer and City for bodily injury and property damage arising out of or in connection with Charterer's use or occupancy of the Marina for the conduct of his business, and also insuring performance by Charterer of the indemnity provisions set forth in Section 11 of this Agreement. Such general liability insurance shall not limit Charterer's liability nor relieve Charterer of any obligations under this Agreement. The liability insurance policy shall name City, and its officers, officials, boards, commissions, employees, agents, and volunteers as insured parties thereunder, and shall be endorsed to provide that: (i) the insurance coverage thereunder shall be primary with respect to City and its officers, officials, boards, commissions, employees, agents, and volunteers; and (ii) no cancellation or reduction in coverage will be made without twenty (20) days prior written notice to City by the carrier. Said policy shall also contain an endorsement for Dram Shop Act liability. Upon request, Charterer shall provide City with a copy of the insurance policy required to be maintained hereunder, and such policy shall be subject to approval as to form, content and amount by City or its authorized representatives.

In addition to the insurance specified in the License Agreement, Charterer shall obtain and maintain at his sole cost and expense for each vessel moored in the Berth comprehensive general liability insurance including Protection and Indemnity, against any and all damages and liability resulting from, arising out of, or relating to the berth, the operations therein and therefrom, and the operation of any owned and/or non-owned water craft against claims for bodily injury, personal injury and property damage in an amount not less than \$1,000,000.00 per occurrence; Charterer shall also carry and maintain at its own cost and expense Worker's Compensation and Employers' Liability insurance covering employees for California Worker's Compensation



benefits, including Employer's Liability with limits of at least \$500,000.00 for each accident. Such policy or policies shall be endorsed to provide the benefits of the United States Longshoremen and Harbor Workers Act and Jones Act.

**14. Independent Contractor:** City and Charterer acknowledge that that neither party is acting as the agent or representative of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Charterer, or the affairs of City, or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a party and signatory to this Agreement.

**15. Assignment:** Charterer shall not assign his interest in this Agreement to any other party without the prior written approval of City. An approval of such assignment shall not release or discharge Charterer from any liability under this Agreement.

**16. Costs of Suit:** If either party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

**17. Notices:** Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows:

To City:                                   City of Brisbane  
Attn.: Director of Marina & Aquatic Services  
400 Sierra Point Parkway  
Brisbane, CA 94005

To Consultant:                           John Stahl  
751 Laurel #104  
San Carlos, CA 94070

**18. Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral. This Agreement can only be modified by a written amendment hereto executed by both parties.

**19. Binding Effect:** Except as otherwise set forth in the Brisbane Marina License Agreement attached, and as otherwise expressly provided elsewhere in this Agreement, each and all of the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors in interest and assigns.

**20. Severability:** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**21. Calendar Days:** All references herein to any acts or obligations to be performed within a certain number of days shall mean calendar days.

**22. Choice of Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

**23. Successors and Assigns:** Subject to the restrictions against assignment and subletting by Charterer, this Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**THE CITY OF BRISBANE**

By: \_\_\_\_\_  
Clifford R. Lentz, Mayor

ATTEST:

\_\_\_\_\_  
Sheri Marie Schroeder, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Harold S. Toppel, City Attorney

**CHARTERER:**

\_\_\_\_\_  
John Stahl

**APPENDIX 1  
CHARTER BOAT REVENUE SURVEY**

Port of SF	Landing Fee + 7% Gross Receipts
Pier 39	Berth Rent + 7% Gross Receipts
South Beach	Berth Rent + \$2.50 per foot additional
Berkeley	\$35.00/day + \$1.00 per passenger
Berkeley Marriot	Berth Fee + \$0.50 per passenger + 10% Gross Receipts
Vallejo	Landing Fee + \$1.00 per passenger
Moss Landing	Berth Rent + \$125.00 Yearly Permit Fee
Long Beach	Berth Rent + 5-8% Gross Receipts
Avalon	Mooring Ball Rent +\$2.00 per passenger + 7% Gross Receipts
Santa Cruz	Berth Rent + 5% Gross Receipts