

CITY OF NEWPORT BEACH RELEASE OF LIABILITY AND WAIVER AGREEMENT FOR THE HUMAN LIFT

This City of Newport Beach Release of Liability and Waiver Agreement ("Agreement") is made and entered into this _____ day of _____, 20____, by and between the City of Newport Beach (hereinafter "City") and _____ (hereinafter "User") and is made with reference to the following facts, the existence and materiality of which are agreed to and acknowledged by the parties as follows:

- A. User has requested to use a Human Lift at City's Marina Park facility during the time that such Human Lift is operated by City personnel for the performance of their duties, both inside and outside of the Human Lift on the following day:
_____.
- B. User has been advised by the City and acknowledges that there is a real and actual possibility of death or serious injury to User while using the Human Lift operated by City personnel in the performance of their duties. User agrees to and does assume all such risk of death or serious injury.
- C. City has no obligation to and would not allow User to use the Human Lift until User agrees to waive all claims and liability as set forth below in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

- 1. City will permit User to use the Human Lift while wearing a personal flotation device at City's Marina Park facility while it is being operated by City personnel, and only by City personnel, during the performance of their duties, both inside and outside of the Human Lift, all pursuant to the request by User to do so.
- 2. As consideration for the Agreement of City to allow User to use the Human Lift, User agrees to and acknowledges all risk of death, injury, or damage to property involved in using the City's Human Lift; and voluntarily agrees to waive, give up, and release any and all claims against or right to sue the City or any of its elected or appointed officers, agents, volunteers, representatives or employees for death, serious or other bodily injury, or damage to property, that arises out of or is in any way related to this Agreement and the acts or omissions of City personnel as they perform their duties during any utilization or operation of the Human Lift permitted herein. User bears sole responsibility for any loss.
- 3. This assumption of risk, waiver, and release extends to death, serious or other bodily injury, or property damage, sustained by User and which was proximately caused, in whole or in part by any negligent or grossly negligent act, conduct or omission, of the City, its officers, agents, representatives, employees or any third party, but this waiver does not extend to death, serious or other bodily injury or property damage caused by the fraudulent or intentional misconduct of City and/or its elected or appointed officers, agents, volunteers, representatives, or employees, nor to death or any serious or other bodily injury caused by a willful act or violation of law, as contemplated in California Civil Code Section 1668.
- 4. User is aware and understands that the Human Lift has a maximum weight limit of approximately 450 pounds, and that User does not weigh more than the limit.

Additionally, User understands that the Human Lift is limited in its reach; up and over a gunwale eighteen inches (18") above the level of the dock, and out over water thirty inches (30"). User understands, agrees, and voluntarily chooses to use the Human Lift with these limitations, an all risks and dangers associated therewith. City is not responsible for User once transferred onto a vessel.

5. The responsibility for a User's decision to participate in boating or to continue to boat is theirs alone. By participating in boating each User agrees and acknowledges that boating is a potentially dangerous activity with inherent risks. These risks include strong winds and rough seas, sudden changes in weather, failure of equipment, boat handling errors, poor seamanship by other boats, loss of balance on an unstable platform and fatigue resulting in increased risk of injury. Inherent in the boating is the risk of permanent, catastrophic injury or death by drowning, trauma, hypothermia or other causes.
6. This Agreement shall be binding upon the heirs, executors, administrators, and personal representatives of User. User has read and understands this Agreement, the assumption of risks, and a release of liability. User acknowledges that City is materially relying on this Agreement and is allowing User to use the Human Lift.

USER

Signature of User (or Legal Guardian)

Date

Relationship to User (if signed by Legal Guardian)

Print Name

Address City State ZIP

Phone Number

CITY OF NEWPORT BEACH

Approving City Employee: _____
Title: _____ Date _____

Comments: _____
