

Board of Commissioners

Robert Stevens – Chairman
 Frank Spence – Vice-Chair
 Tim Hill – Secretary
 James Campbell – Treasurer
 Dirk Rohne – Assistant Secretary/Treasurer

422 Gateway Ave, Suite 100
 Astoria, OR 97103
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Regular Session

March 19, 2024 @ 4:00 PM
 10 Pier 1, Suite 209, Astoria, OR*

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling the Port of Astoria at (503) 741-3300.

*This meeting will also be accessible via Zoom. Please see page 2 for login instructions.

Agenda

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. COMMISSION REPORTS
5. CHANGES/ADDITIONS TO THE AGENDA
6. PUBLIC COMMENT – for items on the agenda, when not covered by a public hearing
 This is an opportunity to speak to the Commission for 3 minutes regarding any item on the agenda.
 Public comment received by the deadline will be read aloud at the meeting.
7. CONSENT CALENDAR:
 - a. Minutes –
 - Regular Session 01/09/2024.....3
 - Workshop Session 1/23/2024...7
 - Regular Session 02/06/2024 11
 - b. Financials – January 2024..... 15
 - c. Event Calendar – March 2024 21
8. ACTION:
 - a. UCP Agreement22
 - b. MSRC Terminal Leases.....34
 - c. East Mooring Basin Moorage Rates63
 - d. RFE# 0182 Anchor Recovery.....64
9. PUBLIC COMMENT – for non-agenda items
 This is an opportunity to speak to the Commission for 3 minutes regarding Port concerns not on the agenda. Public comment received by the deadline will be read aloud during the meeting.
10. EXECUTIVE DIRECTOR COMMENTS
11. UPCOMING MEETING DATES:
 - a. Regular Session – April 2, 2024 at 4:00 PM
 - b. Workshop Session – April 16, 2024 at 4:00 PM
12. ADJOURN

Please Note:

Agenda packets are available online at: <https://www.portofastoria.com/CommissionMeetings/AgendaMinutes.aspx>

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Board of Commissioners
HOW TO JOIN THE ZOOM MEETING:

Online: Direct link: <https://us02web.zoom.us/j/86905881635?pwd=amhtTTBFcE9NUElxNy9hYTFPQTlzQT09>
Or go to [Zoom.us/join](https://zoom.us/join) and enter Meeting ID: 869 0588 1635, Passcode: 422

Dial In: (669) 900-6833, Meeting ID: 869 0588 1635, Passcode: 422

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Please Note:

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Please allow time for the normal posting procedure for agendas and meeting packets.

**MEETING MINUTES
JANUARY 9, 2024**

**PORT OF ASTORIA
REGULAR SESSION
PIER ONE BUILDING
#10 PIER 1, SUITE 209
ASTORIA, OR 97103**

Call to Order:

Chairman Stevens called the Regular Session to order at 4:00 PM.

Roll Call:

Commissioners Present: Robert Stevens; Frank Spence; Jim Campbell; Tim Hill; and Dirk Rohne.

Staff Present: Executive Director Will Isom; Deputy Director Matt McGrath; Finance & HR Director Melanie Howard; Maintenance Director Joe Tadei; Executive Assistant/Administrative Coordinator Stacy Bandy; and Executive Assistant Nicole Kelly.

Port Counsel: Eileen Eakins was not present at this session.

Also Attending: Rebecca Norden-Bright of *The Astorian*.

Pledge of Allegiance

Commission Reports:

Commissioner Campbell reported on the following:

- A physician will be on site at the airport on February 17th to perform physicals for aviators. Anyone interested can contact the airport or Dave West to schedule an appointment.

Commissioner Rohne did not have anything to report.

Commissioner Spence reported on the following:

- Welcome and congratulations to new administrative assistant Nicole Kelly, and congratulations to Stacy Bandy for her promotion.

Commissioner Hill reported on the following:

- Ran into a couple of individuals this week who are very excited to see logs return to Pier One; it's very encouraging.

Commissioner Stevens reported on the following:

- Attended an Astoria Rotary Club meeting and gave a presentation regarding current Port projects and priorities. Glad to see so many community members interested in the Port. There was also a recent radio broadcast highlighting the Port's progress.

Changes/Additions to the Agenda:

Action item 8a. Request for Expenditure #0173 Pier 1 pole lights was added to the agenda.

Public Comment for items on the agenda:

No public comment was received.

Consent Calendar:

The Consent Calendar consisted of the following:

- Meeting Minutes – 11/07/2023 Regular Session, 11/21/2023 Workshop Session, and 12/05/2023 Regular Session
- Financials – August 2023, September 2023, and October 2023
- Event Calendar – January 2024

Commissioner Campbell moved to approve the consent calendar as presented. Commissioner Spence seconded. The motion carried 5-0 amongst the Commissioners present.

Action Items:**8a. Request for Expenditure #0173 Pier 1 Pole Lights**

Deputy Director Matt McGrath refers to Request for Expenditure #0173 Pier 1 pole lights and provides background on the expenditure. The lights on Pier 1 have been failing at an alarming rate. After digging into the ground, it was determined that the cause of the failure was the underground electrical line. The failed lines were replaced and now there are 30 fixtures in need of replacement. The price for the fixtures is \$12,000, but there's an instant energy trust rebate of \$9,120. The total cost of the expenditure including the fixtures and the labor to install is \$8,200.

Commissioner Campbell moved to approve Request for Expenditure #0173 Pier 1 Pole Lights for \$8,200. Commissioner Rohne seconded. The motion carried 5-0 amongst the Commissioners present.

Advisory Items:**9a. 2024 Commission Goal Setting**

Commissioner Stevens refers to the 2024 Board of Commissioners Goals on page 32 of the packet and explains that the Commission needs to come to a consensus. Executive Director Isom elaborates that the purpose of the goals is to guide the organization and thereby for the Executive Director to manage for the next calendar year. Isom continues that there are several driving documents to guide the Port for long-range planning, such as the Capital Facilities Plan and the Strategic Business Plan, the Astoria Waterfront Master Plan, and the currently in progress Boatyard and Airport Master Plans. There should be a clear distinction between this discussion of the calendar year goals versus long-range goals. It is helpful to get feedback from the Commission on where we think those short-term priorities are so Isom can manage to them. This is an opportunity for the Commission and the public to hear what Port leadership is thinking about the port's top priorities in the short term and where some of those resources, in terms of financial and time resources, could be devoted in the upcoming year.

Isom emphasizes the importance of prioritizing projects with a high return on investment and potential for generating revenue. In general, coastal ports struggle financially due to inadequate infrastructure and revenue.

Isom has identified the top five goals for the calendar year are the rehabilitation of Pier 2, cleanup of Area of Concern 4, central waterfront hotel development Request for Proposal, Airport Industrial Park development, and the Boatyard Master Plan and infrastructure.

Discussion highlights include:

- Commissioner Rohne comments that he supports the Executive Director's prioritization of goals. Rohne adds that though it is disappointing to see the East Mooring Basin (EMB) in its current state, he understands that the other priorities identified develop the resources that would allow us to address those issues while the EMB does not.
- Commissioner Campbell comments that there is value for the community in having the Coast Guard as a tenant of the airport; the Coast Guard is the biggest payroll in Clatsop County.

- Commissioner Spence comments that the new flight school at the airport is attracting additional aeronautical business. Spence adds that with the Coast Guard and Life Flight stationed at the airport, the airport is a major hub for air and helicopter activity.
- Commissioner Hill comments that he is in agreement with the Executive Director's priorities. Hill adds that an issue remains at the EMB, with the remaining tenants still paying moorage rates for services that are no longer provided due to the deterioration of the basin.
- Commissioner Stevens suggests that the Pier 2 grant management be listed as its own goal separate from the rehabilitation of Pier 2.
- Stevens notes that the Federal Aviation Administration (FAA) has invested roughly five to six million dollars into the airport in the last five years and will be investing additional funds in upcoming years; it would be foolish not to prioritize the airport.
- Each commissioner is asked to submit their top five priorities.
- Isom refers to the Port's mission statement and notes that priorities should be viewed through the lens of job creation for the community.

Public Comment for items not on the agenda:

Citizen Thomas Teseniar speaks to the Commission regarding marina slip reservations for the Astoria Warrenton Crab & Wine Festival. Teseniar asks the Commission to consider a policy change for mooring during the wine-tasting festival weekend to ensure the availability of slips for individuals who want to attend. Teseniar suggests implementing a reservation system with an upfront payment and no refunds to address issues with yacht clubs reserving spots that go unused. Please see meeting audio for the complete comment.

Executive Director Comments:

- The Workshop Commission meeting has been pushed back one week and will be held on January 23rd, 2024.
- There will be presentations at the next Commission meeting from Greg Morrill of Bergerson Construction regarding the Pier 2 rehabilitation project and Julie Fahey of audit firm Talbot, Korvola, & Warwick (TKW) regarding the FY 2022-2023 audit results.

Upcoming Meeting Dates:

- Workshop Session – January 23, 2024 at 4:00 PM
- Regular Session – February 7, 2024 at 4:00 PM

Adjourned:

Chairman Stevens adjourned the meeting at 5:03 PM.

APPROVED:

ATTEST:

Robert Stevens, Board Chairman
Board of Commissioners

Tim Hill, Secretary
Board of Commissioners

Respectfully submitted by:
Stacy Bandy
Executive Assistant

March 19, 2024
Date Approved by Commission

DRAFT

**MEETING MINUTES
JANUARY 23, 2024**

**PORT OF ASTORIA
WORKSHOP SESSION
PIER ONE BUILDING
#10 PIER 1, SUITE 209
ASTORIA, OR 97103**

Call to Order:

Chairman Stevens called the Workshop Session to order at 4:00 pm.

Roll Call:

Commissioners Present: Robert Stevens; Frank Spence; Jim Campbell; Tim Hill; and Dirk Rohne.

Staff Present: Executive Director Will Isom; Deputy Director Matt McGrath; Finance and HR Director Melanie Howard; and Executive Assistant/Administrative Coordinator Stacy Bandy.

Port Counsel: Eileen Eakins was not present.

Also Attending: Julie Fahey of Talbot, Korvola, & Warwick; Greg Morrill of Bergerson Construction; and Rebecca Norden-Bright of *The Astorian*.

Pledge of Allegiance

Changes/Additions to the Agenda:

There were no changes or additions to the agenda.

Public Comment:

No public comment was received.

Presentation:

9a. Audit Results Presentation by Talbot, Korvola, & Warwick, LLP

Julie Fahey, a partner with Talbot, Korvola, & Warwick (TKW), presents the audit results for the fiscal year ending June 30th, 2023. Fahey shares a PowerPoint presentation highlighting the overview of the audit. For the complete presentation, please see meeting audio.

Audit presentation highlights include:

- Fieldwork began in August, and final fieldwork was completed in November and December.
- There was no need for a single audit for the fiscal year since federal expenditures did not exceed \$750,000.00
- There were no findings in the Port's internal controls over the financial period.
- The Independent Auditor Report on page one of the Financial Statements shows an unmodified clean opinion.
- The Management Discussion & Analysis on page four of the Financial Statements provides a good overview and synopsis of the activities of the Port for the year.
- There was an increase in net position of \$317,000 for the financial period.

- There are no disclosures to report.
- There was one over expenditure in the general fund for material and services.
- There were no auditor proposed adjusting journal entries.

Fahey comments that she'd like to express her appreciation to both Will Isom for his direction of the Port and its leadership and the support of the audit and Finance & HR Director, Melanie Howard, for working with TKW on a day-to-day basis to get through all the audit procedures. Stevens thanks Fahey for her thorough report and her hands-on approach throughout the audit with Port staff. Spence notes how refreshing it is to see how different the audit process is from eight years ago when the Port needed multiple audit firms to straighten the financials.

6b. Pier 2 West Update – Bergerson Construction

Greg Morrill of Bergerson Construction shares a PowerPoint presentation with updates regarding the rehabilitation of Pier 2 West.

Presentation highlights include:

- Bergerson Construction has been hired as the Construction Manager/ General Contractor (CM/GC). PND Engineers has been selected as the project engineer, and Campbell Environmental is the environmental consultant for the project. All three consultants are working in parallel and collaborating on the project.
- The project is in its early stages, near 30% engineering design. The structure is currently being considered is an open cell sheet pile system.
- Environmental permitting is currently a primary focus. The first milestone is the joint permit application which will be submitted to the United States Army Corps of Engineers (USACE) and simultaneously to the state of Oregon. It will then be submitted to various agencies, including the Department of State Lands (DSL), the Department of Environmental Quality (DEQ), the Department of Land Conservation & Development (DLCD), the National Marine Fisheries Service (NOAA Fisheries), and the State Historic Preservation Office (SHPO). The joint permit application can be challenging as there are set timelines for each agency to review permit applications.
- Due to the scope of the project and the receipt of federal funds, the National Environmental Policy Act (NEPA) process is underway. Once the NEPA review process is complete, the joint permit application will be submitted; this is tentatively scheduled for March submission. The approval process is expected to take between 18 to 24 months.
- The project team meets biweekly to collaborate and check on progress.
- Mitigation is needed as the design relies on additional fill to extend the seawall and encapsulate Area of Concern 4 (AOC4). The industrial piling area to be filled is viewed by state and federal agencies as a viable estuary. The Port is exploring wetland creation location options on the bank of the Skipanon river.
- The project is separated into three phases, which are roughly based on the seafood processors' lease lines, though there is a lot of flexibility in the design to pick where we start and stop in each phase. The distinct phases will make the project feasible and allow for operations to continue for the tenants.
- The project design includes three separate in-water work periods, which are typically November through February.
- The encapsulation of AOC4 is not in the current contract, but since it will not affect the Pier 2 tenant operations, it can be completed independently.

- Building stabilization is currently being evaluated. Over time, the sea wall has deteriorated and caused settlement under the building. The impact on the building is being evaluated, including reviewing geotechnical data and conducting additional borings. There are two options for stabilizing an annex to the building: installing a support structure or removing the current support structure and replacing it. The rest of the building will undergo phased construction, isolating sections to reduce costs.
- Stormwater management and processing are important considerations for the project; there will be separate systems for stormwater runoff and processed water from seafood operations.

The Commission thanks Morrill for his presentation and project update.

Action Items:

7a. MSRC – West Basin Moorage Agreement

Executive Director Isom explains that normally, moorage agreements are not brought to the Commission, but since the agreements are for more than a 12-month term, they will require Commission approval. The Marine Spill Response Corporation (MSRC) agreements, starting on page three of the packet, are for a five-year term. MSRC has made infrastructure investments in T-Dock power. The rate included in the agreements is the current standard rate for moorage at the West Basin Marina. The current marina rates will expire at the end of the fiscal year, and future rates will be set by the Commission, per staff recommendation, at the beginning of the next fiscal year.

Commissioner Campbell moved to approve the T-Dock moorage license agreements with the Marine Spill Response Corporation. Commissioner Rohne seconded. The motion carried 5-0 amongst the Commissioners present.

Commission Comments:

Commissioner Hill commented on the following:

- Read Commissioner Dirk Rohne's letter to the editor about Executive Director Will Isom, which was published in *The Astorian*. It was a fantastic letter, and it gives credit to Isom, Deputy Director McGrath, and the entire Port staff; Hill expresses that he wishes he had written the letter.

Commissioner Spence commented on the following:

- Agrees with Hill's comments in regard to the letter to the editor.
- The recent storm brought snow, freezing rain, freezing temperatures, and ice, paralyzing the city and region for a period of roughly four days. It is a reminder of how rough the weather can be in this area and the importance of preparation.

Commissioner Campbell commented on the following:

- It is good to see logs on Pier 1.

Commissioner Stevens commented on the following:

- Mentions the Pier 2 West Rehabilitation project that is recently underway and recommends that it would be wise to recall that as elected officials, comments made in Port Commission meetings are on record and are public statements by the Commission.
- Thanks to Steve Kraske of the Port's Budget Committee for his letter to the editor regarding Port operations.

Commissioner Rohne did not have any comments.

Executive Director Comments:

- The Port is working on a proposal to bring to the Commission to reduce marina rates at the East Mooring Basina and to freeze future rate increases until adequate access is restored.

- Unfortunately, due to a family emergency, Nicole Kelly will not be able to fulfill the Executive Assistant role going forward. Commissioners are directed to continue to work with Stacy Bandy until the position is filled.

Upcoming Meeting Dates:

- Regular Session – February 6, 2024 at 4:00 PM
- Workshop Session – February 20, 2024 at 4:00 PM

Adjourned:

Chairman Stevens adjourned the meeting at 5:02 PM.

APPROVED:

Robert Stevens, Board Chairman
Board of Commissioners

ATTEST:

Tim Hill, Secretary
Board of Commissioners

Respectfully submitted by:
Stacy Bandy
Executive Assistant / Administrative Coordinator

March 19, 2024
Date Approved by Commission

**MEETING MINUTES
FEBRUARY 6, 2024**

**PORT OF ASTORIA
REGULAR SESSION
PIER ONE BUILDING
#10 PIER 1, SUITE 209
ASTORIA, OR 97103**

Call to Order:

Chairman Stevens called the Regular Session to order at 4:00 PM.

Roll Call:

Commissioners Present: Robert Stevens; Frank Spence; Jim Campbell; Tim Hill; and Dirk Rohne.

Staff Present: Executive Director Will Isom; Deputy Director Matt McGrath; Finance & HR Director Melanie Howard; and Executive Assistant/Administrative Coordinator Stacy Bandy.

Port Counsel: Eileen Eakins was not present at this session.

Also Attending: Rebecca Norden-Bright of *The Astorian*.

Pledge of Allegiance

Commission Reports:

Commissioner Hill reported on the following:

- Apologies to the other Commissioners and staff; he has not submitted his annual Executive Director goals. Commissioner Stevens comments that Hill may still submit his list to the Executive Director.

Commissioner Spence did not have anything to report.

Commissioner Rohne did not have anything to report.

Commissioner Campbell reported on the following:

- Inquires if the Port is planning on hosting an airport Air-Fair event again this year and comments that the Port will need to secure a date for the event as soon as possible. Deputy Director McGrath replies that he is working on event details with John Raichl, and they will be meeting this week.

Commissioner Stevens reported on the following:

- The SDAO annual conference is coming up later this week. Asks for each Commissioner to look through the conference agenda and attend the sessions that will be the most pertinent to each person.

Changes/Additions to the Agenda:

There were no changes to the agenda.

Public Comment for items on the agenda:

No public comment was received.

Consent Calendar:

The Consent Calendar consisted of the following:

- Financials – December 2023
- Event Calendar – February 2024

Commissioner Campbell moved to approve the consent calendar as presented. Commissioner Spence seconded. The motion carried 5-0 amongst the Commissioners present.

Action Items:**8a. Request for Emergency #0173 Emergency Pole Light Repairs P1**

Commissioner Stevens introduces the Request for Expenditure and notes that in January, the Commission discussed the pole light failure at Pier 1. Deputy Director Matt McGrath explains that much of the expense for this expenditure was to understand what was causing the lights to fail. It was discovered that the cause of the failure was that electrical wire was laid directly into metal conduit. Executive Director Isom comments that the contractor, Wells Electrical Contracting, has done a significant amount of work for the Port. The Port does not have an electrician on staff, and having a knowledgeable and responsive contractor to work with is valuable. Thanks to Ryan Wells. The Port Commission previously approved an expenditure in January in the amount of \$8,200 to replace the fixtures for the pole lights; this expenditure includes new conduit to each pole, a new lighting control box, and a new disconnect feed.

Commissioner Rohne moved to approve Request for Expenditure #0173 Emergency Pole Light Repairs P1 for \$23,133.62. Commissioner Campbell seconded. The motion carried 5-0 amongst the Commissioners present.

8b. Request for Expenditure #0174 NEPA Review Consultation

Deputy Director Matt McGrath refers to the Request for Expenditure on page 13 of the packet. The United States Department of Transportation, Maritime Administration (MARAD) requires a National Environmental Policy Act (NEPA) review under the Port Infrastructure Development Program (PIDP) grant for the Pier 2 West rehabilitation project. The Port solicited informal bids for the work, and despite several attempts, Campbell Environmental was the only responsive consultant. The Port has a good relationship with Campbell Environmental, and they have the knowledge and the capacity to take on the NEPA review. They will look at the proposal for the project and then determine if it falls in line with all the federal environmental and other laws that are going to be applicable, such as the Marine Mammal Protection Act (MMPA).

Commissioner Campbell moved to approve the agreement with the NEPA consultant and authorize the Executive Director to execute the contract once 1) MARAD has approved this expense under the PIDP award and 2) the federal supplement has been incorporated into the contract. Commissioner Spence seconded. The motion carried 5-0 amongst the Commissioners present.

8c. Donation for Crab Facility Fire Relief Fund

Commissioner Stevens comments that the Commission would like to make a donation to the fishermen who lost crab pots in the Ilwaco fire. Commissioner Spence notes that over 4,000 crab pots were lost in the fire. There was a consensus that the Ilwaco Tuna Fund would be the best organization to contribute to as it is the largest and most publicized fund for relief.

Commissioner Rohne moved to approve a donation of \$5,000 for the Ilwaco Tuna Fund. Commissioner Hill seconded. The motion carried 5-0 amongst the Commissioners present.

8d. Budget Committee

Executive Director Isom refers to the 2023 Budget Committee Member terms included on page 25 of the packet. Members John Lansing and William Young's terms have expired. Finance and HR

Director Melanie Howard has been in contact with Lansing and Young, and they have expressed interest in serving for an additional term.

Commissioner Rohne moved to renew John Lansing and William Young to a new term ending date of June 30, 2026. Commissioner Campbell seconded. The motion carried 5-0 amongst the Commissioners present.

Public Comment for items not on the agenda:

There were no public comments.

Executive Director Comments:

- The M/V Manila Trader is currently berthed at the Pier 1 face. They are working on engine repairs and are expected to remain for several weeks.
- Will be meeting with the Department of Environmental Quality (DEQ) on Thursday.
- The annual Pacific Northwest Waterways Association's (PNWA) Mission to D.C. trip is coming up in March.
- The March 5th Regular Commission meeting may need to be rescheduled as Isom and McGrath will be in Washington, D.C.
- Senator Wyden is hosting a town hall this Sunday at 12 pm.
- The Finance Committee will be meeting on February 14th.
- Welcome to new staff member Accounts Payable Specialist Susan Broom.
- The Special Districts Association of Oregon (SDAO) conference will be held later this week in Seaside. Isom and Howard will be attending the conference.
- Commissioner Stevens introduces Thaddeus Fickle of Astoria Aviation and inquires if he has any updates for the Commission. Fickle comments that there has been a lot of support for the flight school. There is a ground school training session tonight and there are already ten people signed up for the second round of ground school scheduled to begin in April. Fickle adds that he and his partners are thankful for the Port's support. Stevens thanks Fickle for his efforts at the airport in bringing fresh pilots to the area and for attending tonight's meeting.

Upcoming Meeting Dates:

- Workshop Session – February 20, 2024 at 4:00 PM
- Regular Session – March 5, 2024 at 4:00 PM

Adjourned:

Chairman Stevens adjourned the meeting at 4:32 PM.

APPROVED:

ATTEST:

Robert Stevens, Board Chairman
Board of Commissioners

Tim Hill, Secretary
Board of Commissioners

Respectfully submitted by:
Stacy Bandy
Executive Assistant

March 19, 2024
Date Approved by Commission

DRAFT



JANUARY 2024 FINANCIALS NARRATIVE*

For July through January 2024, the Port is showing an operating gain of \$834,300. This operating gain is ahead of budget expectations by \$49,200 and is ahead of prior-year profits by \$357,500. Operating revenue and expense YTD are both at 106% of the seasonally trended budget. Non-operating income and expense are both at 98% of budget. Total net profit YTD is \$343,700, which exceeds budget expectations by \$57,800.

Dockage revenues were up \$143,400 and \$210,600 from the budget and prior year, respectively. Lease and rental income was ahead of budget by \$46,300 and up \$310,600 from the prior year, while income from rebilled expenses (tenant utilities, longshore labor, etc.) was \$162,200 above budget and up \$185,200 from prior year. The increase in lease and rental income from FY23 can be partially attributed to the Bornstein warehouse pass-through, which dropped both lease & rental income and non-operating expense by roughly \$187,000 in fiscal year 2022-23. Two new lease agreements, Oregon DHS and NW Forest Link, add roughly \$23,500 a month to lease & rental income.

Gross Marina revenues were 96% of both budget estimates and prior year actuals, with a budget deficit of \$(15,700). Boatyard gross revenues were at 92% of budget and prior year with a budget deficit of \$(34,000). Net profits from marina fuel sales were down \$26,800 from the prior year, while net profits from airport fuel sales were up by \$3,300.

Personnel services came in under budget by \$67,300 and materials and services were \$355,000 above budget.

Looking at non-operating totals, property tax revenues and debt service expense were close to budget expectations. Capital spending in January was primarily for Pier 2 West CMGC work, P2 pile replacements, 422 Gateway upgrades, the Boatyard Master Plan, and the Tide Gate Study project.

Fuel Sales Summary:

Marina Fuel	Unleaded Sales \$	Unleaded Sales Gal	Unleaded COGS	Unleaded Profit	Diesel Sales \$	Diesel Sales Gal	Diesel COGS	Diesel Profit
Jul - Jan 2023	\$ 394,074	60,707	\$ 273,350	\$ 120,724	\$ 133,279	23,549	\$ 88,829	\$ 44,450
Jul - Jan 2022	\$ 440,795	63,978	\$ 312,476	\$ 128,319	\$ 193,875	30,817	\$ 130,169	\$ 63,706
Airport Fuel	Jet A Sales \$	Jet A Sales Gal	Jet A COGS	Jet A Profit	100LL Sales \$	100LL Sales Gal	100LL COGS	100LL Profit
Jul - Jan 2023	\$ 533,255	100,096	\$ 363,462	\$ 169,793	\$ 187,534	32,400	\$ 164,866	\$ 22,668
Jul - Jan 2022	\$ 562,928	94,394	\$ 396,513	\$ 166,415	\$ 100,108	14,272	\$ 77,426	\$ 22,682

*Numbers have been rounded to the nearest hundredth value.

Port of Astoria
Profit & Loss Actual vs. Budget
January 2024

	Actuals Jul 2023 - Jan 2024	Actuals Jul 2022 - Jan 2023	Budget Jul 2023 - Jan 2024	Budget Variance Through Jan	% of Budget Through Jan	Full '23-'24 Budget
<u>Operating Revenues</u>						
Dockage & Vessel Service	593,587	382,981	450,211	143,376	132%	807,555
Lease & Rental Income	1,839,997	1,529,431	1,793,703	46,294	103%	3,060,111
Rebilled Expenses	1,193,982	1,008,778	1,031,763	162,219	116%	1,731,006
Boat Haulout	382,574	395,240	416,581	-34,007	92%	717,840
Marina Revenues	370,316	363,162	386,090	-15,774	96%	691,060
Fuel Sales	1,248,142	1,297,707	1,207,605	40,537	103%	1,748,654
Ticket Revenues	1,785	2,170	2,525	-740	71%	3,600
Other Income	45,325	24,416	50,391	-5,067	90%	70,393
Total Operating Revenues	5,675,708	5,003,885	5,338,869	336,839	106%	8,830,219
<u>Operating Expenses</u>						
Personnel Services	1,688,371	1,566,881	1,755,692	-67,321	96%	2,994,266
Materials and Services	3,152,991	2,960,114	2,798,009	354,982	113%	4,483,128
Total Operating Expenses	4,841,362	4,526,995	4,553,701	287,661	106%	7,477,394
Income from Operations	834,346	476,890	785,168	49,178	106%	1,352,825
<u>Non-Operating Revenues</u>						
Property Tax Revenues-Genl Fund	891,450	868,526	899,280	-7,830	99%	954,000
Timber Tax Revenues	71,574	46,385	71,574	0	100%	0
Other County Revenues	7,740	128	39,269	-31,529	20%	39,500
Grants*	708,560	303,317	708,560	0	100%	21,764
Interest Income	17,237	2,564	4,655	12,582	370%	9,780
Total Non-Operating Revenues	1,696,560	1,220,920	1,723,337	-26,777	98%	1,025,044
<u>Total Non-Operating Expenses</u>						
Capital Outlay*	1,188,398	1,527,664	1,188,398	0	100%	113,581
Interest Expense	302,483	91,004	301,701	782	100%	447,114
Principal Expense	696,314	201,719	732,451	-36,137	95%	1,208,513
Total Non-Operating Expenses	2,187,195	1,820,388	2,222,550	-35,355	98%	1,769,208
Net Income (Loss)	343,711	-122,578	285,955	57,756	120%	608,662

**Capital Outlay/Grants year-to-date budget set to match Revenue/Expense, not seasonally adjusted.

Port of Astoria

Balance Sheet as of January 2024

January 31, 2024

ASSETS

Current Assets

Cash & Cash Equivalents

Cash Funds	745
Operating Account #1442	950,358
Payroll Account #5344	25,830
Bornstein MMA #0004	0
Money Market #1259	267,021
Restricted AOC4 MMA #0760	252,994

Total Clatsop Community Bank 1,496,203

Total Cash & Cash Equivalents 1,496,948

Accounts Receivable 553,610

Other Current Assets 3,399,885

Total Current Assets 5,450,443

Fixed Assets 35,349,762

Other Assets

Long-term Receivables 16,349,726

TOTAL ASSETS 57,149,931

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Accounts Payable 786,200

Other Current Liabilities 14,676,232

Total Current Liabilities 15,462,433

Long Term Liabilities

Accrued Vacation Payable 156,798

Accrued Sick Leave 167,614

Notes Payable 13,007,848

Net Pension Liability 1,337,577

OPEB Liability 738,399

Lease Liability 132,494

Pollution Remediation AOC 4 Liability 2,564,338

Less Current Portion LT Debt -1,342,522

Total Long Term Liabilities 16,762,546

Total Liabilities 32,224,979

Equity

Retained Earnings 24,581,241

Net Income 343,711

Total Equity 24,924,952

TOTAL LIABILITIES & EQUITY 57,149,931



Capital Projects
January 2024
Budget to Actual

DEPARTMENT AND PROJECT		CAPITAL PROJECTS & GRANTS As Budgeted			CAPITAL PROJECTS & GRANTS Actual Spending To-Date			REMAINDER & PRIORITY	
		Adopted Capital Expenditure	Adopted Grant Funding	Adopted POA Expense	Expenses through 01/31/2024	Grants Received through 01/31/2024	Expenses through 01/31/2024 NET OF GRANTS	Budgetary Estimate of Remaining POA Expense	Priority (1-10) 9=Comp 10=Rem
Department	Description								
WFW	P2 West Preconstruction	1,500,000	1,325,000	175,000	267,963	273,778	(5,815)	180,815	1
Airport	Airport Master Plan	88,885	82,470	6,415	62,520	21,764	40,756	(34,341)	2
WFW	Slip 1 Sampling and Analysis Plan	50,000		50,000	53,142	-	53,142	(3,142)	2
Administration	2023-24 IT Upgrades	30,000	-	30,000	1,172	-	1,172	28,828	3
Airport	Backfill and Site Prep Behind Overbay	60,000	-	60,000	-	-	-	60,000	3
WFW	Fender Pile Replacement (25) Pier 1 West, Pier 2 East, Pier 2 West	195,049	-	195,049	286,133	-	286,133	(91,084)	3
WFW	Security Upgrades: Trident equipment; Pier 1 Generator; Pier 1 Booth; Cyber Security	122,800	92,100	30,700	77,426	53,971	23,455	7,245	3
WFW - Boatyard	Boatyard Master Plan	87,500	76,000	11,500	72,499	48,335	24,164	(12,664)	3
Airport	Hangar Maintenance	25,000	-	25,000	6,800	-	6,800	18,200	4
Airport	Vegetation Management	-	-	-	50,393	-	50,393	(50,393)	4
WFW	2023-24 Security Upgrades: Security cameras, Marina security fencing	75,000	56,250	18,750	-	-	-	18,750	4
WFW	Pier 2 East - Repairs based on ODOT reports	50,000		50,000	-	-	-	50,000	4
Airport	Industrial Park	300,000	250,000	50,000	-	250,000	(250,000)	300,000	5
Airport	Terminal Building Upgrades	75,000	-	75,000	38,275	-	38,275	36,725	5
Airport	Tide Gate Feasibility Study	49,800	49,800	-	28,319	17,618	10,701	(10,701)	5
WFW	Fire Suppression/System Upgrades - Pier 2	20,000	-	20,000	2,104	-	2,104	17,896	5
WFW	Pier 1 Building - New HVAC Outdoor Units (3)	25,000	-	25,000	8,380	-	8,380	16,620	5
WFW	Repave Gateway Avenue / Restripe	110,000	82,500	27,500	-	-	-	27,500	5
WFW - Boatyard	Boatyard Upgrades	150,000	-	150,000	19,671	-	19,671	130,329	5
WFE - Marinas	Dumpster Enclosure	10,000	-	10,000	-	-	-	10,000	7
WFW	Waterfront Master Plan - Wayfinding Signage	15,000	-	15,000	-	-	-	15,000	7
Airport	Backfill and Site Prep Behind Recology	100,000	-	100,000	1,407	-	1,407	98,593	8
WFW	Dredge Repairs - repair dredge pipe/replace cutter head	25,000	-	25,000	19,373	-	19,373	5,628	9
WFW	Link Belt Crane - load cells and wind meter	15,000	-	15,000	9,570	-	9,570	5,430	9
WFW	422 Gateway Building - Remodel/Upgrades	100,000	-	100,000	24,904	-	24,904	75,096	9
WFE - Marinas	West Basin T-Dock Power	60,000	51,000	9,000	67,962	-	67,962	(58,962)	9
WFW	413 Gateway Building - Replace Siding/Flooring	55,000	-	55,000	-	-	-	55,000	10
WFW - Cruise	Gangway Landing Tower	65,000	-	65,000	-	-	-	65,000	10
	Misc	-	-	-	90,386	42,611	47,775	(47,775)	
TOTALS		3,459,034	2,065,120	1,393,914	1,188,398	708,077	480,321	913,593	

12:18 PM

02/06/24.

Accrual Basis

Port of Astoria
Vouchers Paid -- Operating Acct

Type	Date	Num	Name	Memo	Credit
102-00 - Cash					
102-02 - CCB Operating #1442					
Bill Pmt -Check	02/06/2024	83380	A Coastal Lock & Key, LLC		53.50
Bill Pmt -Check	02/06/2024	83381	AT&T	Acct # 019 295 1870 001	24.85
Bill Pmt -Check	02/06/2024	83382	Bergerson Construction, Inc	Project # 23101 - POA PIER 2 CMGC	1,655.00
Bill Pmt -Check	02/06/2024	83383	CenturyLink	Acct # 497163267	106.01
Bill Pmt -Check	02/06/2024	83384	Cintas Corporation	10829	188.34
Bill Pmt -Check	02/06/2024	83385	Citi Cards	1985	1,477.16
Bill Pmt -Check	02/06/2024	83386	City Lumber	Cust # 7259	237.16
Bill Pmt -Check	02/06/2024	83387	City of Astoria - utilities		520.15
Bill Pmt -Check	02/06/2024	83388	DSL		42,064.78
Bill Pmt -Check	02/06/2024	83389	Eastern Pacific Fabrication LLC		975.00
Bill Pmt -Check	02/06/2024	83390	Englund Marine (Airport)	Acct 18868 closing date 1/31/24	972.24
Bill Pmt -Check	02/06/2024	83391	Englund Marine (Boatyard)	Acct 15589 Closing Date 1/31	136.49
Bill Pmt -Check	02/06/2024	83392	Englund Marine (Marina)	Acct 14130 Closing Date 1/31	914.61
Bill Pmt -Check	02/06/2024	83393	Englund Marine (MX)	Acct 14129 Closing Date 1/31/2024	5,483.30
Bill Pmt -Check	02/06/2024	83394	Fastenal	ORAST0062	831.02
Bill Pmt -Check	02/06/2024	83395	Inland Electric, Inc.	Job # S14321S	172.00
Bill Pmt -Check	02/06/2024	83396	Jackson and Son Oil		26,071.27
Bill Pmt -Check	02/06/2024	83397	Lawson Products		429.60
Bill Pmt -Check	02/06/2024	83398	Lower Columbia Engineering LLC		5,150.90
Bill Pmt -Check	02/06/2024	83399	Marine Surveyors & Consultants		988.80
Bill Pmt -Check	02/06/2024	83400	Napa Auto Parts	Cust # 76004	222.70
Bill Pmt -Check	02/06/2024	83401	Northwest Local Government Legal Advi...	January 2024	1,664.18
Bill Pmt -Check	02/06/2024	83402	NW Natural	Acct #2737126-9	133.05
Bill Pmt -Check	02/06/2024	83403	P & L Johnson Mechanical, Inc.		8,678.88
Bill Pmt -Check	02/06/2024	83404	Pacific Power		7,731.51
Bill Pmt -Check	02/06/2024	83405	PacificSource Administrators	Employer ID: P00431	3,300.03
Bill Pmt -Check	02/06/2024	83406	PERS Health		280.08
Bill Pmt -Check	02/06/2024	83407	PND ENGINEERS, INC	Project # 234038 Astoria Pier 2 West	58,918.73
Bill Pmt -Check	02/06/2024	83408	Recology Western Oregon		3,137.96
Bill Pmt -Check	02/06/2024	83409	Recology Western Oregon (LA)	A1080000232	1,854.72
Bill Pmt -Check	02/06/2024	83410	S&F Land Services		540.00
Bill Pmt -Check	02/06/2024	83411	S. Bruce Conner	February 2024	2,100.00
Bill Pmt -Check	02/06/2024	83412	Shane Jensen - Grant Writer	Grant Writing - Jan 2024	11,457.50
Bill Pmt -Check	02/06/2024	83413	Shred-It	Cust # 16971101	64.20
Bill Pmt -Check	02/06/2024	83414	Spectrum - 5501	8787 14 001 0420590	39.99
Bill Pmt -Check	02/06/2024	83415	Staples Advantage		117.77
Bill Pmt -Check	02/06/2024	83416	STAR RENTALS	Cust #144733	588.40
Bill Pmt -Check	02/06/2024	83417	State of Oregon - Employment Tax	BUS ID#: 0504015-4	950.57
Bill Pmt -Check	02/06/2024	83418	TKE (Thyssenkrupp Elevator Corp)	Cust # 71259	724.68
Bill Pmt -Check	02/06/2024	83419	Todd Newton		141.25
Bill Pmt -Check	02/06/2024	83420	Verizon Wireless #7705-1	270297705-00001	570.53
Bill Pmt -Check	02/06/2024	83421	Walter E. Nelson Co.	Cust # 1629	208.06
Bill Pmt -Check	02/06/2024	83422	Wood's Logging Supply	Cust #202695	15.09

Total 102-02 - CCB Operating #1442

191,892.06

Total 102-00 - Cash

191,892.06

TOTAL

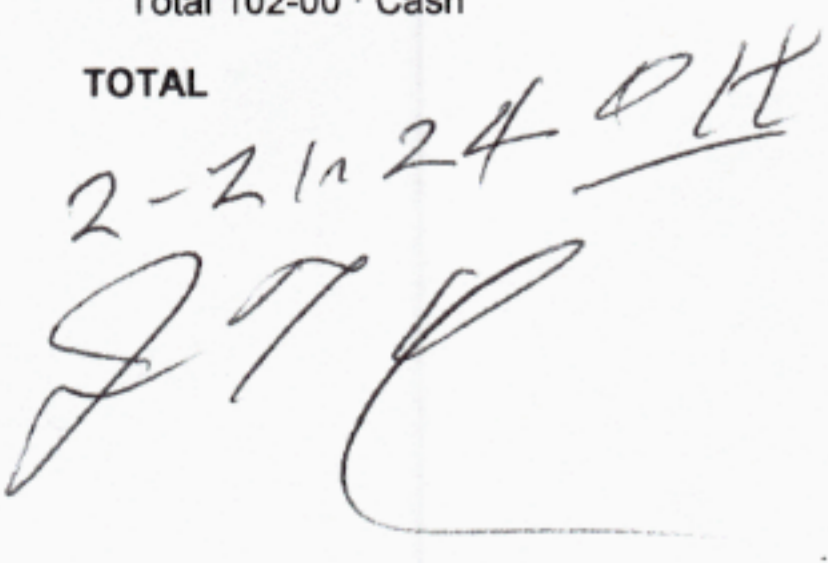
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JJC

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Port of Astoria
Vouchers Paid -- Operating Acct

Type	Date	Num	Name	Memo	Credit
102-00 - Cash					
102-02 - CCB Operating #1442					
Bill Pmt -Check	02/21/2024	83423	Affordable Towing & Repair		165.00
Bill Pmt -Check	02/21/2024	83424	Ag-Bag Forage Solutions		3,730.06
Bill Pmt -Check	02/21/2024	83425	Airside Solutions, Inc.		260.40
Bill Pmt -Check	02/21/2024	83426	ALS Environmental		3,120.00
Bill Pmt -Check	02/21/2024	83427	America's Phone Guys		817.49
Bill Pmt -Check	02/21/2024	83428	Art's Automotive		775.44
Bill Pmt -Check	02/21/2024	83429	B.I.G. Enterprises, Inc.		51,634.00
Bill Pmt -Check	02/21/2024	83430	Brandon C Willson		175.00
Bill Pmt -Check	02/21/2024	83431	Business Oregon	Acct # 1230000433 Loan # W04002	187,000.00
Bill Pmt -Check	02/21/2024	83432	Campbell Environmental		6,015.00
Bill Pmt -Check	02/21/2024	83433	Cartomation, Inc.		650.00
Bill Pmt -Check	02/21/2024	83434	Cintas Corporation	10829	188.34
Bill Pmt -Check	02/21/2024	83435	Citi Cards	1985	637.47
Bill Pmt -Check	02/21/2024	83436	City Lumber	Cust # 7259	1,311.13
Bill Pmt -Check	02/21/2024	83437	City of Warrenton		19,242.39
Bill Pmt -Check	02/21/2024	83438	CityServiceValcon	Acct # 0017404	34,887.54
Bill Pmt -Check	02/21/2024	83439	Clatsop County Lawn & Tractor	544212	139.99
Bill Pmt -Check	02/21/2024	83440	Clean Water Technologies, LLC	January support	8,567.81
Bill Pmt -Check	02/21/2024	83441	Columbia Pacific EDD	Annual Dues	1,000.00
Bill Pmt -Check	02/21/2024	83442	Earthworx Excavation, LLC	Inv#1358 Underpaid by mistake invoice 1358 (2) is th...	1,132.02
Bill Pmt -Check	02/21/2024	83443	Fastenal	ORAST0062	831.01
Bill Pmt -Check	02/21/2024	83444	Green Hills Construction	Cust # 12824	6,800.00
Bill Pmt -Check	02/21/2024	83445	Harold Culver (Retiree)		278.28
Bill Pmt -Check	02/21/2024	83446	HOFMANN ADC		1,700.00
Bill Pmt -Check	02/21/2024	83447	Home Depot	6035 3225 3191 4798	2,110.35
Bill Pmt -Check	02/21/2024	83448	iFocus Consulting, Inc.		5,547.00
Bill Pmt -Check	02/21/2024	83449	Island Creative	2023 Columbia River Cruise Guide Ad	390.00
Bill Pmt -Check	02/21/2024	83450	J P Plumbing Company, Inc.	Cust ID: AS75	292.00
Bill Pmt -Check	02/21/2024	83451	Jim Varner's Automotive		885.00
Bill Pmt -Check	02/21/2024	83452	Lawson Products	Cust # 10075026	205.96
Bill Pmt -Check	02/21/2024	83453	Lower Columbia Engineering LLC	Proj 3553 Boat Haulout Evaluation	2,823.75
Bill Pmt -Check	02/21/2024	83454	Matthew McGrath (A/P)	Reimbursement - Jan 2024	391.28
Bill Pmt -Check	02/21/2024	83455	Maul Foster & Alongi, Inc.		25,652.50
Bill Pmt -Check	02/21/2024	83456	Mead & Hunt	Project R3143900-202203.01 AST Master Plan and ...	1,390.16
Bill Pmt -Check	02/21/2024	83457	Melanie Howard (A/P)		162.03
Bill Pmt -Check	02/21/2024	83458	North Coast Truck Parts	W/O#3552	135.00
Bill Pmt -Check	02/21/2024	83459	NW Marine Terminal Assn	2024 Dues - renewal	1,277.00
Bill Pmt -Check	02/21/2024	83460	NW Natural		897.29
Bill Pmt -Check	02/21/2024	83461	Pacific Habitat Services, Inc.	Environmental Consulting Services for Wetlands Miti...	10,157.61
Bill Pmt -Check	02/21/2024	83462	Pacific Power		5,777.27
Bill Pmt -Check	02/21/2024	83463	Performance Systems Integration, LLC	901626	928.33
Bill Pmt -Check	02/21/2024	83464	PERS Health	AS - Group: 10013822 Subscriber: H80550901	278.28
Bill Pmt -Check	02/21/2024	83465	Quadient (postage)	X3391	275.00
Bill Pmt -Check	02/21/2024	83466	Recology Western Oregon		2,979.58
Bill Pmt -Check	02/21/2024	83467	Recology Western Oregon (LA)	A1080000232	43.54
Bill Pmt -Check	02/21/2024	83468	Robert D Hanks	RH - Group: 10013822 Subscriber: J24129553 JAN ...	278.28
Bill Pmt -Check	02/21/2024	83469	Sierra Springs	928320221793628	99.28
Bill Pmt -Check	02/21/2024	83470	Solutions YES, LLC	Acct # PO03	98.36
Bill Pmt -Check	02/21/2024	83471	Special Districts Health Premiums	Cust # 03-0016324	46,270.59
Bill Pmt -Check	02/21/2024	83472	Spectrum - 0901	Acct # 176560901	189.97
Bill Pmt -Check	02/21/2024	83473	Spectrum - 1001	Acct # 176561001	39.99
Bill Pmt -Check	02/21/2024	83474	Spectrum - 6401	Acct # 176526401	2,059.65
Bill Pmt -Check	02/21/2024	83475	Staples Advantage	Cust #LA 1833939	314.47
Bill Pmt -Check	02/21/2024	83476	Sweet Septic and Portable Service	February 2024	260.00
Bill Pmt -Check	02/21/2024	83477	TKE (Thyssenkrupp Elevator Corp)	Cust # 71259	2,214.13
Bill Pmt -Check	02/21/2024	83478	ULINE	Cust # 21657453	462.49
Bill Pmt -Check	02/21/2024	83479	VenTek International	Cust # PORTASTORIA	475.00
Bill Pmt -Check	02/21/2024	83480	Walter E. Nelson Co.	Cust # 1629	38.92
Bill Pmt -Check	02/21/2024	83481	Warren L. Junes LTD	Inv #71443	1,253.96
Bill Pmt -Check	02/21/2024	83482	Whitney Equipment Co., Inc.		2,435.00
Total 102-02 - CCB Operating #1442					450,147.39
Total 102-00 - Cash					450,147.39
TOTAL					450,147.39

2-21-24




March 2024

March 2024							April 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Feb 25	26	27	28	29	Mar 1	2
3	4 6PM Astoria City Council Mtg	5 6PM CB City Council Mtg	6 6PM Gearhart City Council Mtg	7	8	9
10	11 6PM Seaside City Council Mtg	12 6PM CB City Council Work Mtg 6PM Warrenton City Council Mtg	13 5PM Clatsop Cnty Commission	14 1PM NW ACT Clatsop Comm College	15	16
17	18 6PM Astoria City Council Mtg	19 4PM Regular Workshop Session	20	21	22	23
24	25 6PM Seaside City Council Mtg	26 530PM Astoria Planning Commission 6PM Warrenton City 7:45AM AWACC	27 5PM Clatsop Cnty Commission	28	29	30
31	Apr 1	2	3	4	5	6

Intergovernmental Agreement
Administering the Disadvantaged Business Enterprise
Unified Certification Program

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," the State of Oregon, acting by and through its Oregon Business Development Department, hereinafter referred to as "OBDD," referred collectively as "State;" and cities, counties or local partners signing onto this Agreement, hereinafter referred to as "Agency" or "Agencies," all herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes ("ORS") 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The Disadvantaged Business Enterprise ("DBE") program requirements set out in Title 49 United States Code of Federal Regulations ("CFR") § 26.81 (2003) require that all State Agencies receiving federal transportation funds establish a single Unified Certification Process ("UCP") to certify businesses owned by socially and economically disadvantaged, or historically marginalized, individuals as "DBEs". 49 CFR § 26.81 requires that all such state agencies of federal transportation funds sign an agreement establishing the UCP and submit same to the U.S. Secretary of Transportation.
3. As provided in 49 CFR § 26, only firms owned and controlled by socially and economically disadvantaged person(s) are eligible for the DBE Program. The ODOT Office of Civil Rights ("OCR") is responsible for ensuring compliance with the federal regulations in the determination of DBE certification and will act in the capacity of Lead Department for coordinating program participation of the Agencies hereunder. ODOT is responsible to the United States Department of Transportation ("USDOT") for assuring certification of DBEs is performed consistent with 49 CFR § 26.
4. As provided under ORS 200.055(5), OBDD is the sole state agency authorized to certify DBEs as eligible to perform on public contracts in this state. Pursuant to ORS 200.055, the OBDD herein delegates authority for administration of the Oregon UCP DBE Certification Component to its Certification Office for Business Inclusion and Diversity ("COBID").
5. Pursuant to ORS 183.341, OBDD has adopted certification procedures for DBEs under Oregon Administrative Rule ("OAR") 123-200.

The Parties therefore agree as follows:

TERMS OF AGREEMENT

1. Partnership.

- a. ODOT, OBDD and Agency agree to cooperate and coordinate the administration of DBE certification services as required under 49 CFR § 26.
- b. This Agreement defines the roles and responsibilities of ODOT, OBDD and Agency to continue participation in the UCP. The collective effort of the Parties is hereinafter referred to as the “UCP Partnership” or “Partnership.”

2. Funding.

- a. Each Party shall be responsible for funding their own duties and obligations under this Agreement, unless the Parties allocate funding duties or obligations differently amongst themselves by entering into a separate funding agreement.

3. Exhibits Attached and Incorporated.

- a. This Agreement includes the following exhibit, which is attached and incorporated into this Agreement by reference:
 - Exhibit TCD –Terms, Conditions and Definitions

4. Order of Precedence.

Unless a different order is required by law, this Agreement shall be interpreted in the following order of precedence:

- 1) This Agreement (including all amendments, if any) less all Exhibits, attachments and other documents and information incorporated into this Agreement,
- 2) Exhibit TCD,
- 3) All other Exhibits,
- 4) Any other attachments,

This provision survives termination of the Agreement.

5. **Term of Agreement; Effective Date.** The term of this Agreement shall begin upon the date all required ODOT and OBDD signatures are obtained. This Agreement shall terminate for all Parties 5 years from the initial date of execution, including Agencies who join the Partnership at a later date.

6. **Termination.**

- a. Any Party may terminate its participation in this Agreement by providing at least 30 calendar days written notice to the other Parties.
- b. Upon mutual agreement of ODOT and OBDD, either ODOT or OBDD may terminate this Agreement effective upon delivery of written notice to all Parties, or at such later date as may be established by ODOT or OBDD; or under the following condition:
 - i. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such services from the planned funding source.
- c. Upon mutual agreement of ODOT and OBDD, either ODOT or OBDD may terminate any Agency or all Agencies participation in this Agreement effective upon delivery of written notice to said Agency or Agencies, and under any of the following conditions:
 - i. If Agency or Agencies fail(s) to provide the services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If Agency or Agencies fail(s) to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
- d. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Certification.** Each Party certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.

8. **No Third Party Beneficiaries.** ODOT, OBDD and Agencies are the only parties to this Agreement, and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This provision survives termination of the Agreement.

9. **Waiver; Amendment.** No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by both ODOT and OBDD, and all necessary approvals have been obtained. Such waiver, consent, modification or change,

if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. This provision survives termination of the Agreement.

10. **Notice.** Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to each Party's Project Manager, and Agencies Contact Representative, at the physical address or email address set forth on the signature page(s). Any notice so addressed and mailed becomes effective 5 days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective when the sender receives confirmation of receipt from the recipient (not an auto-reply).
11. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This provision survives termination of the Agreement.
12. **Counterparts.** This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. **Integration.** This Agreement and attached exhibit constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
14. **Electronic Signatures.** The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

MUTUAL PARTIES OBLIGATIONS

1. As provided under ORS 200.055(5) the Parties mutually agree that all DBE certification decisions by COBID shall be binding on all recipients of federal transportation funds within Oregon.

2. The Parties mutually agree to have open and regular communication on matters concerning the UCP and DBE certification. Matters of concern to all Parties include, but are not limited to, process time, staffing, budget, certification issues, directory maintenance and changes in the UCP.
3. The Parties shall cooperate in the administration of the USDOT required UCP, striving for the most efficient use of individual Agency resources in carrying out the UCP.
4. The Parties agree that all certifications shall be pre-certifications, i.e., certifications that have been made final before the due date for bids or offers on a contract in which a firm seeks to participate as a DBE.
5. The Parties mutually agree to notify and make available (via email) to all Parties of the Partnership, any communication to or from the USDOT and respective state or federal agencies regarding DBE certification.
6. The Parties agree to work in partnership during federal audits and performance reviews, this may include but is not limited to, sharing of reports, small business data or holding meetings to work through audit or performance review requirements needed for compliance.
7. The Parties shall not exclude certified DBE firms from participation; deny benefits; or otherwise discriminate against any firms in connection with the award and performance of any contract governed by 49 CFR § 26 on the basis of any federally or state protected class.
8. The Parties shall not directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishments of the objective of this program with respect to individuals of any federally or state protected class.

AGENCIES OBLIGATIONS

1. Each Agency shall designate a representative to attend semi-annual UCP Partnership meetings and any special sessions. In-person, virtual or attendance by teleconference is acceptable. Semi-annual meetings occur in the summer (July or August) and the fall (October or November). OBDD will provide all Agencies reasonable notice of the meeting.
2. Agencies shall list their named representative and contact information to this Agreement on their individual Agency Signature Page, and shall notify ODOT's Project Manager of any contact information changes via email, within 5 business days of said change during the term of this Agreement.
3. Agencies agree that ODOT is the Lead Department for the Partnership.
4. Agencies shall notify OBDD and COBID of any DBE certification issues affecting DBE eligibility for participation in federally assisted projects. OBDD agrees to respond to any requests

associated with this Agreement within 10 calendar days, unless additional time is requested and mutually agreed upon at the time of request. Agencies shall promptly notify OBDD and COBID of complaints received relating to DBE certification or program administration.

ODOT OBLIGATIONS

1. As Lead Department for this Agreement, ODOT will:
 - a. Notify and advise OBDD and Agencies of any change in federal law, USDOT regulation, and changes to ODOT's DBE Program Plan document.
 - b. Notify OBDD and Agencies of training programs relevant to DBE certification function and procedures.
 - c. Review OBDD's COBID determination in any third-party complaints that challenge a DBE's certification status or eligibility.
 - d. Provide ongoing DBE certification expertise, oversight, and conduct process reviews when required.
 - e. Perform annual audits of DBE certification files.
 - f. Assist OBDD in conducting appeals challenging DBE certification decisions, this may include but is not limited to, notifying COBID in writing of any certification issues affecting any DBE's eligibility for participation on federally-assisted projects, or of received relating to DBE certification or program administration
2. ODOT will notify OBDD of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.
3. ODOT will promptly notify OBDD of complaints received relating to DBE certification or program administration.
4. ODOT's Project Manager is Deponker Mukherjee, DBE Program Manager, ODOT – Office of Civil Rights, 800 Airport Road SE Salem, OR 97301; phone 971-283-4636; email diponker.mukherjee@odot.oregon.gov, or assigned designee upon absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

OBDD OBLIGATIONS

1. ODOT and OBDD shall ensure that COBID has sufficient resources and expertise to carry out the requirements of 49 CFR § 26.81.
2. OBDD will promptly notify Agencies regarding any changes in state rules, regulations, statutory proposals or amendments conflicting with federal guidelines in DBE certification.

ODOT/OBDD/Agencies
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3. OBDD will not be required to process an application for certification from a firm having its principle place of business outside the State of Oregon, if the firm is not already certified by the UCP in the state in which it maintains its principal place of business.
4. OBDD will share its information and documents concerning DBE applicants with other certifying state agencies that are considering the firm's application.
5. OBDD will maintain a DBE certification database and directory.
6. OBDD will provide Agencies with all necessary DBE certification information required to complete federal reports and data collection.
7. OBDD will follow all certification procedures and standards prescribed in 49 CFR § 26.
8. OBDD will cooperate fully with ODOT in the oversight, review, and monitoring activities of the USDOT and its operating administrations, and implement USDOT's directives and guidance concerning certification matters.
9. OBDD will act in accordance with 49 CFR § 26.83(k). As provided under ORS 200.055(5) COBID may make decisions on applications for certification within 90 calendar days of receiving all information required from the applicant firm. This review period may be extended once, for no more than 60 calendar days, upon written notification to the applicant firm, explaining fully and specifically the reasons for the extension.
10. Subject to Oregon Public Records Law, ORS 192.410 to 192.505, OBDD may not release any information that may be reasonably construed as confidential business information to any third party without the written consent of the DBE applicant, including any and all information not publicly available.
11. OBDD will submit to ODOT the following documentation on each DBE certification within 7 calendar days of receipt of ODOT's written request:
 - a. Copy of letter of determination.
 - b. Copy of site visit.
12. OBDD will notify ODOT and Agency within 7 calendar days upon receipt of written request from ODOT, local agency, or interested party, of any of the following:
 - a. De-certification or denial of DBE certification;
 - b. Third-party challenge;
 - c. Closures or cancellations of any DBE certifications due to a firm's failure to file an annual no-change affidavit; or
 - d. Any withdrawals of DBE certification applications.
13. OBDD will participate in DBE staff training.

14. OBDD will coordinate participation for DBE certification workshops with Agencies, this may include but is not limited to securing a workshop location, inviting attendees, drafting agenda, presenting information, and providing additional required resources.
15. OBDD will provide technical assistance to firms seeking DBE certification, this may include but is not limited to, assistance in filling out forms, gathering required documentation, and identifying firm net worth and ownership.
16. OBDD's Project Manager for this Project is Carrie L. Baxandall, Program Manager- COBID, 775 Summer Street SE, Suite 200, Salem, OR. 97301; phone 971-301-1271; email carrie.baxandall@biz.oregon.gov, or assigned designee upon individual's absence. OBDD shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

STATE OF OREGON, by and through its
Business Development Department

By _____
Chris Cummings, Assistant Director
Economic Development Division

Date _____

OBDD Contact:

Carrie L. Baxandall
Program Manager
OBDD – COBID Section
775 Summer Street SE, Suite 200
Salem, OR 97301
971-301-1271
carrie.baxandall@biz.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By Angela M. Crain
Angela M. Crain, Office of Civil Rights Manager

Date 11/16/2022

ODOT Contact:

Diponker Mukherjee
DBE Program Manager
ODOT Office of Civil Rights
800 Airport Road SE
Salem, OR 97301
971-283-4636
diponker.mukherjee@odot.oregon.gov

Note: The Oregon Department of Transportation is committed to complying with all statutory requirements to ensure that it is providing information that is more accessible to people with disabilities, as required by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and 36 C.F.R. 1194 Appendix A. To request reasonable accommodation for access, due to a disability, to information related to this document, please contact the Oregon Department of Transportation's Procurement Office at phone #503-986-2710 or OPOAdmin@odot.oregon.gov.

EXHIBIT TCD – TERMS, CONDITIONS AND DEFINITIONS

THIRD PARTY CLAIMS: The following paragraphs 1 through 4 shall survive termination of the Agreement.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
2. With respect to a Third Party Claim for which ODOT or OBDD is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT or OBDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the other Party or Parties in such proportion as is appropriate to reflect the relative fault of ODOT or OBDD on the one hand and of the other Party or Parties on the other hand, singularly or in combination, in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT or OBDD on the one hand and of the other Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT or OBDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT or OBDD had sole liability in the proceeding.
3. With respect to a Third Party Claim for which any other Party or Parties are jointly liable with ODOT or OBDD (or would be if joined in the Third Party Claim), the other Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT or OBDD in such proportion, singularly or in combination, as is appropriate to reflect the relative fault of the other Party or Parties on the one hand and of ODOT or OBDD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the other Party or Parties on the one hand and of ODOT or OBDD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each other Party's contribution amount in

any instance is each capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

4. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

DISPUTE RESOLUTION BETWEEN ODOT AND OBDD:

1. ODOT and OBDD agree that any tort liability claim, suit, or loss resulting from or arising out of either ODOT or OBDD's performance of any activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. ODOT and OBDD agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of ODOT's or OBDD's performance of, or activities under, this Agreement.
2. ODOT and OBDD understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT and OBDD agree to accept that coverage as adequate insurance of the other state agency with respect to personal injury and property damage.

OREGONBUYS (State's Electronic Procurement System)

State (ODOT) shall, upon execution of this Agreement, enter the required data into its Electronic Procurement System, per ORS 190.115.

RECORDS

The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of 6 years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. This provision survives termination of the Agreement.

INDEPENDENT CONTRACTOR; EMPLOYMENT COSTS

1. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126.

Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.

2. All Parties shall perform the services under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
3. Agencies understand and agree that they are not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between the State and individual Agency or Agencies that arise(s) from or relates to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCIES HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon. This provision survives termination of the Agreement.

COMPLIANCE WITH LAW

The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**Unified Certification Program Agreement
Agency Signature Page**

The Unified Certification Program process is developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department. Agency recognizes the UCP program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State or Oregon, as required by 49 CFR § 26.81.

Information regarding the Disadvantaged Business Enterprise Program and certification can be found at this link:
<https://www.oregon.gov/biz/programs/COBID/Pages/Frequently-Asked-Questions-%26-Answers.aspx>

[Print Agency name here: _____] Agency, by execution of this Agreement, hereby acknowledges that its signing representative(s) have reviewed the UCP process and agree to be bound by the terms and conditions of Agreement No. PO-73000-00011634 titled "Administering the Disadvantaged Business Enterprise Unified Certification Program".

Agency has executed this Agreement by its duly authorized representative(s) as of the final date of the signature(s) below:

_____ Agency Signature	_____ Date	_____ Title
_____ Second Agency Signature (if required in Agency's process)	_____ Date	_____ Title
_____ Agency Counsel (if required in Agency's process)	_____ Date	_____ Counsel's Title

Name & Title of Agency Contact Representative: _____
Address: _____
Phone: _____
E-mail: _____

Agency must send the fully signed Unified Certification Program Agreement Signature Page, including Agency Contact Representative information, as an email attachment to the following:

- ODOT Procurement Office at intergovernmental.agreements@odot.oregon.gov
- ODOT Project Manager for this Agreement, as listed in ODOT Obligations, paragraph 4.

Agreement number PO-73000-00011634 must be referenced in the email subject line.

MOORAGE AGREEMENT

Date: April 1, 2024

Between: Port of Astoria (“Port”)
422 Gateway Avenue, Suite 100
Astoria, Oregon 97103
503-741-3300

And: Contact Name: Kris Calvin (“Licensee”)
Company Name: Marine Spill Response Corporation
Address 1: 1330 Industry Street
Address 2: Everett, WA 98203
Cell Phone: 425-308-0178
Email: calvin@msrc.org

Section 1. PIER SPACE & VESSEL(S)

- 1.1 **License.** Subject to the terms and conditions set forth in this Moorage Agreement (“Agreement”), Port hereby grants to Licensee 286 linear feet of pier space (“Pier Space”) located within Port Property (“Site”) boundaries for the **Moorage of the Barge MSRC 404**. The Pier Space is further described in Exhibit A, attached hereto and incorporated herein by this reference.
- 1.2 **Vessel Documentation.** Except as otherwise provided in this Agreement, the Pier Space may be used for the sole purpose of mooring the following Vessel(s) (“Vessel”):
- Vessel Name: MSRC 404
LOA: 286’
Registration #: 652757
Beam: 76’
Draft: 18’
Year: 1982
Color: Blue and White
- 1.3 **Vessel Roster and Information.** As a condition of this Agreement, Licensee shall provide to Port a Coast Guard Vessel Documentation document (“CGVD”) for the Vessel listed in Section 1.2. All applicable CGVDs are hereby incorporated into this Agreement by reference. If the Coast Guard or any other governmental or administrative agency with proper authority requires any updates to the Vessel’s CGVDs, excluding expiration date updates, Licensee shall notify Port in writing within ten (10) business days of such requirement and send Port the updated CGVD document as soon as it is available.

Section 2. TERM AND POSSESSION

- 2.1 **Term.** The term of this Agreement is for five (5) Years, commencing on April 1, 2024, and terminating March 31, 2029 ("**Term**"). This Term shall automatically renew thereafter on an annual basis unless sooner terminated as hereinafter provided.
- 2.2 **Possession.** The Licensee's right to use the Pier Space and the obligations under this Agreement shall commence on April 1, 2024 ("**Effective Date**").

Section 3. MOORAGE RENT

- 3.1 **Base Rent.** On or before the first day of each month during the Term, Licensee shall pay to Port the sum of Eight Thousand One Hundred Nine and 72/100 (\$8,109.72) per month ("**Base Rent**") at the Port address listed on the first page of this Agreement or at such address as Port may designate from time to time in writing. If this Agreement is initiated or renewed after the first day of any month, the Base Rent shall be prorated based on the number of days of moorage for that month.
- 3.2 **Escalation.** The Base Rent shall be increased on August 1, 2024 and every year on August 1st thereafter, as long as this Agreement remains in effect, by a percentage equal to the percent annual increase in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor (the "**CPI**"). Comparisons shall be made using the index entitled CPI-All Urban Consumers, Area West (1982-84=100) or the nearest comparable data on changes in the cost of living if such index is no longer published. The increase shall be determined by using the CPI most recently published before the applicable adjustment date. In no event, however, shall base rent be reduced below that of the prior year.
- 3.3 **Additional Charges.** In addition to the Base Rent, Licensee is responsible for the following ("**Additional Charges**"):
- (1) **Pier Space and Vessels.** Notwithstanding the limitations in paragraph 1.2 of this Agreement, Licensee shall have the right, as part of its enjoyment of the Pier Space, and with no requirement for additional payment to Port, to berth at the Pier Space at all times any vessels, barges and other watercraft of Licensee, its agents, subcontractors and invitees, provided that such Persons comply with all reasonable rules and regulations of Port relating to safety and security. If Licensee moors or otherwise allows any other party to moor a vessel exceeding the linear feet of the Pier Space described in Section 1.1, Licensee shall be assessed the current (daily) rates for that amount of linear feet of moorage that exceeds the number of feet for the moorage of such vessel.
 - (2) **Other Fees and Charges.** All Additional Charges shall be paid timely. In the event of any failure on the part of Licensee to pay any of the Additional Charges, Licensee shall also promptly pay and discharge every fine, penalty, interest and cost which may be added for nonpayment or late payment of such items and Port shall have all legal, equitable and contractual rights, powers and remedies provided either in this Agreement or by statute or otherwise in the case of non-

payment of the Additional Charges as in the case of non-payment of the Base Rent.

- (3) "Rent" Defined. Unless the text indicates otherwise, the term "**Rent**," as used in this Agreement, shall be defined to include Base Rent, Additional Charges, and any other charge due from Licensee to Port under this Agreement.

- 3.4 **Interest and Late Charges**. Any Rent required of Licensee under this Agreement shall, if not paid within ten (10) days after it is due, bear interest at the rate of nine percent (9%) per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. Port may also assess and collect a late charge equal to five percent (5%) of the late payment in addition to the above-referenced interest, as well as enforce all other remedies available for Licensee's default. Collection of a late charge shall not be in lieu of nor waive the breach caused by the late payment.

Section 4. USE OF THE PIER SPACE

- 4.1 **Permitted Use**. Except as specifically provided in this Agreement, the Pier Space shall be used only for moorage of the Vessel and for parking and storage (as defined in Sections 14.4 and 14.5) and for no other purpose without the prior written consent of Port, which consent shall not be unreasonably withheld. This Agreement is conditioned upon Licensee's certification that Licensee's intended use of the Pier Space is not prohibited by law or other government regulations. Usage of any space outside of the agreed area will be billed at tariff rates.

- 4.2 **Restrictions on Use**. In connection with the use of the Pier Space, Licensee and any employee, agent, visitor, customer, vendor, or other invitee or licensee of Licensee ("Licensee's Party") shall comply with the following restrictions:

- (1) With the exceptions shown below, side tying another vessel to Licensee's Vessel is not permitted without pre-arranged written authorization from the Port.

Exceptions:

- Training and vessel maintenance activities will be permitted **with prior notification** to Port. Licensee will inform Port if training and vessel maintenance will exceed forty-eight (48) hours.
 - Emergency drill and response activities will not require notification to Port.
- (2) Licensee shall conform to all applicable laws and regulations of any public authority, including but not limited to Port, its harbor master or agents, affecting the Pier Space and the use thereof; all permitting requirements including, but not limited to, city business licensing; and any and all orders and regulatory approvals issued by Port or any regulatory agency and applicable to the Pier Space.

- (3) Licensee shall refrain from any activity that would make it impossible to insure the Pier Space against casualty; would increase the insurance rate; or would prevent

Port from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Port to obtain reduced premium rates for long-term fire insurance policies, unless Licensee pays the additional cost of the insurance.

(4) Licensee shall refrain from any use that would be reasonably offensive to Port, other licensees, owners or users of neighboring Pier Space or that would tend to create a nuisance or damage the reputation of Port. A determination of violation of this subsection shall be in the sole, and reasonable, discretion of the Port.

Licensee must be familiar with all rules and regulations noted in Port's Tariff. The Port of Astoria Tariff can be accessed through the Port's website.

Licensee's current use of the Pier Space does not constitute a breach of any of the provisions of this Section 4.2 and Licensee may continue to use the Pier Space in the same manner.

Section 5. COMMON AREAS

- 5.1 **Licensee Use.** Licensee and any Licensee's Party shall have the non-exclusive right to use any parking areas, roadways, sidewalks, landscaped areas, security areas and any other areas owned by Port where such areas have been designated or may be designated in the future by Port as areas to be used by the general public or in common by Licensee or Licensee's Party ("Common Areas"), expressly excluding any area(s) granted by Port to other parties for their exclusive use.
- 5.2 **Port's Rights.** With respect to the Common Areas, Port reserves the following rights:
- (1) To establish reasonable rules and regulations for their use;
 - (2) To close all or any portion to make repairs or changes, so long as the closure does not materially interfere with Licensee's operations and a prior mitigation plan has been accepted in writing by Licensee.
 - (3) To construct, alter, or remove building or other improvements and to change the layout, including the right to add to or subtract from their shape and size and otherwise re-configure the areas so long as the proposed changes do not materially interfere with the operations of the Pier Space without a prior mitigation plan having been accepted in writing by the Licensee; and
 - (4) To exercise any of Port's governmental powers over such areas.

Section 6. LIABILITY, INSURANCE AND INDEMNITY

- 6.1 **Insurance Required.** Licensee shall bear the expense of insuring its Vessel on the Pier Space and all other insurance required under this Section. Licensee shall obtain and maintain Worker's Compensation Insurance coverage as required by law throughout the term of this Agreement, or while any extension thereof is in force.

- 6.2 **Liability Insurance.** Before taking possession of the Pier Space, Licensee shall procure and thereafter during the Term shall continue to carry, at Licensee's cost, comprehensive general liability insurance with an insurance company licensed to do business in Oregon having a Financial Strength Rating (FSR) of not less than 'A' and a Financial Size Category (FSC) of not less than 'X' according to Best's Insurance Guide, with limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate, with a \$1,000,000 umbrella, or a policy with \$3,000,000 per occurrence limits. Such insurance shall cover all risks arising directly or indirectly out of Licensee's activities on or any condition of the Pier Space, shall protect Licensee against the claims of Port on account of the obligations assumed by Licensee under this Agreement, and shall name Port as an additional insured. Certificates evidencing such insurance and bearing any required endorsements in favor of Port shall be furnished to Port prior to Licensee's occupancy of the Pier Space and thereafter on Port's request. Licensee hereby agrees to notify Port of any cancellation or change in the insurance coverage within seventy-two (72) hours of such change or cancellation, or within seventy-two (72) hours of receiving notice of such change or cancellation regardless of whether Licensee or Licensee's insurer cancelled or changed the policy. Licensee failure to provide proof of such insurance to Port shall not constitute or in any way be construed as Port's waiver of this condition or any other terms of this Agreement. Port reserves the right to unilaterally adjust any insurance coverage required by this agreement, including adding new policies or requiring higher limits of coverage to the extent reasonable, and require Licensee's compliance within sixty (60) days of providing a written notice to the Licensee. Notwithstanding this prerogative, Port shall not adjust any specific policy or coverage requirement more frequently than once every calendar year, absent good cause.
- 6.3 **Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.
- 6.4 **Waiver of Responsibility.** The liability and obligation of Port is limited to furnishing the Pier Space for Licensee's moorage use. Port does not accept any vessel for storage, and shall not be responsible for or liable in any manner for the safekeeping or condition of the same. Port shall not be responsible or liable for any damage or loss to, or theft of, the Vessel or any other property owned or permitted by Licensee upon the Pier Space from any cause whatsoever, or for injury to Licensee or Licensee's Party upon the Pier Space, Common Areas or on any of Port's other property that Licensee knows of or reasonably should know of, except to the extent of the negligence or willful misconduct of Port.
- 6.5 **Licensee's General Agreement to Indemnify.** Licensee hereby releases Port, its commissioners, officers, representatives, employees, agents, successors and assigns (individually and collectively, the "Port Indemnitee") from, assumes any and all liability for and agrees to indemnify the Port Indemnitee against, all claims, liabilities,

obligations, damages, penalties, litigation, costs, charges and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses, including claims for wrongful death but excluding environmental claims), imposed on, incurred by or asserted against the Port Indemnitee or its interest in real property in the Site arising out of (i) the use of the Site or the use or occupancy of the Pier Space by Licensee or Licensee's Party, (ii) the project operations by Licensee, its officers, representatives, agents and employees, (iii) any claim arising out of the use of the Site or the use, occupancy, or operation of the Pier Space by Licensee, its officers, representatives, agents and employees, and (iv) activities on or about the Site by Licensee, its officers, representatives, agents and employees of any nature, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the use, occupancy, operation, maintenance or repair of any improvements or the use of the Site by Licensee, its officers, representatives, agents and employees; provided, however, that any such claim, liability, obligation, damage or penalty to the extent arising as a result of the negligence or willful misconduct of the Port Indemnitee shall be excluded from this indemnity obligation.

Any and all claims brought under the authority of or with respect to any local, state, or federal environmental statute or regulation shall be covered by Section 10.4(2) and not this section.

- 6.6 **Port's General Agreement to Indemnify.** Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), Port hereby releases Licensee, its officers, representatives, employees, agents, successors and assigns (individually and collectively, the "Licensee Indemnitee") from, assumes any and all liability for and agrees to indemnify the Licensee Indemnitee against, all claims, liabilities, obligations, damages, penalties, litigation, costs, charges, and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses, and including claims for wrongful death but excluding environmental claims), imposed on, incurred by or asserted against the Licensee Indemnitee or its interest in real property in the Site to the extent arising out of the negligence or willful misconduct of Port, its commissioners, its third-party tenants, or their respective officers, representatives, agents, or employees, of any nature, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the fulfillment of this Agreement or in the conduct of activities on or near the Site by Port, its commissioners, its third-party tenants, or their respective officers, representatives, agents and employees; except when any such claim, liability, obligation, damage or penalty arises from or is a result of the negligence or willful misconduct of the Licensee Indemnitee.

Any and all claims brought under the authority of or with respect to any local, state, or federal environmental statute or regulation shall be covered by Section 10.4(1) and not this section.

Section 7. REPAIRS AND MAINTENANCE.

- 7.1 **Port's Maintenance Obligations.** Port shall maintain the Common Areas and the portion of the dock adjacent to the Pier Space in reasonably good condition. Port will keep in reasonably good state of repair any and all structural components of any improvements

on the Pier Space and shall maintain the electrical, plumbing and other utility lines to the boundary of where Licensee connects to the utility, in a reasonably good state of repair. Port will perform repairs as often as may be necessary in order to keep in reasonably good repair and condition those improvements which Port is obligated to repair under this Section.

7.2 **Licensee's Obligations.** The following shall be the responsibility of Licensee:

(1) Any repairs necessitated by the intentional, negligent, or non-culpable acts of Licensee or Licensee's Party.

(2) Any repairs or alterations required under Licensee's obligation to comply with laws and regulations.

(3) Corrections, at Licensee's own expense, of any failure of compliance created through Licensee's fault or by reason of Licensee's use, but Licensee shall not be required to make any structural changes to effect such compliance unless such changes are required because of Licensee's specific use. The parties agree that Licensee's current specific use is acceptable with no changes required.

7.3 **Port's Interference with Licensee.** In performing any repairs, replacements, alterations, or other work on or around the Pier Space, Port shall not cause unreasonable interference with Licensee's use of the Pier Space. Licensee shall have no right to an abatement of Rent nor any claim against Port for any inconvenience or disturbance resulting from Port's activities performed consistent with this Section. Port reserves the right, in its sole discretion, to temporarily assign or permanently reassign Licensee's Vessel to other moorage space in Port's facilities to accommodate repairs, improvements, maintenance or emergencies, or where necessary to permit the orderly administration or maximum efficient public utilization of Port's facilities.

7.4 **Relocation of Vessel.** In the event that it shall become necessary for the Port to perform dredging or repairs to the dock and such activities conflict with Licensee's use of the Pier Space, Port shall have the right to require Licensee, upon reasonable advance notice, to temporarily relocate its Vessel or other watercraft, for a period up to thirty (30) consecutive days but not more than forty-five (45) days in any calendar year, to the pier space located behind the MSRC 404 barge's home berth location as noted in Exhibit A ("Alternate Berth Area"). Port shall have electrical power and potable water available for use by Licensee at the Alternate Berth Area. If it should become necessary for Port to relocate Licensee's Vessel or other watercraft to the Alternate Berth Area for more than thirty (30) consecutive days or for more than 45 days in any calendar year, Port may require such relocation provided that Port first, at its own expense, furnishes the Alternate Berth Area with all utilities and other services available to Licensee at the Pier Space. Costs of the Vessel's relocation are Licensee's responsibility. Port shall use all due diligence in completing its work in order to minimize the duration of relocation under this Section 7.4.

7.5 **Reimbursement for Repairs Assumed.** If Licensee fails or refuses to make repairs that are required under this Agreement, Port may make the repairs and charge the actual costs of repairs to Licensee as Additional Charges. Such expenditures by Port shall be

reimbursed by Licensee on demand together with interest at the rate provided in Section 3.3 of this Agreement from the date of expenditure by Port. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge the other party for the resulting expense unless the defaulting party is given notice in writing at least ten (10) days before work is commenced, outlining with reasonable particularity the repairs required, and the party so notified fails within that time to initiate the repairs in good faith.

- 7.6 **Inspection of Pier Space.** Port shall have the right to inspect the Pier Space at any reasonable time to determine the necessity of repair. Whether or not such an inspection is made, Port shall have no duty to make repairs unless Port has received from Licensee written notice of the repairs that are required.
- 7.7 **Dredging.** Port shall maintain, at its sole cost and expense, the area identified as Slip 2 on Exhibit A (which includes the waters adjacent to the Pier Space) dredged to a depth of no less than sixteen (16) feet at all times during the Term. Port shall furnish to Licensee upon request such engineering data, surveys or other information as may be reasonably requested by Licensee in order to evidence the maintenance of such dredging. Port shall maintain in effect all permits necessary to perform its dredging responsibilities hereunder and shall perform all such dredging in compliance with all applicable laws.

Section 8. ALTERATIONS

- 8.1 **Consent.** Licensee shall make no improvements or alterations of any kind to or on the Pier Space without first obtaining the written consent of Port, which Port may give in its sole discretion. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.
- 8.2 **Ownership and Removal of Alterations.** All improvements and alterations performed on the Pier Space by Port shall be the property of Port when installed. All improvements and alterations performed on the Pier Space by Licensee shall be the property of Licensee when installed, until this Agreement expires or is terminated, then shall be the property of Port. Improvements and alterations installed by Licensee shall, at Port's option, be removed by Licensee and the Pier Space restored to its original or better condition on expiration or any earlier termination of this Agreement.

Section 9. TERMINATION

- 9.1 After the initial Term, either party may terminate this Agreement by giving ninety (90) days' written notice to the other party. Licensee shall remove all personal property from the Pier Space prior to termination. Any property left on the Pier Space after this Agreement is terminated shall be deemed abandoned and become the property of Port or shall be removed by Port at Licensee's expense.

Section 10. HAZARDOUS MATERIALS

- 10.1 **Definition of Environmental Laws.** The term "**Environmental Laws**" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment.
- 10.2 **Definition of Hazardous Materials.** The term "**Hazardous Materials**" shall mean and include any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws.
- 10.3 **Environmental Obligations.**
- (1) Licensee shall keep and maintain the Pier Space in compliance with any and all Environmental Laws.
 - (2) Licensee shall not cause or permit the use, generation, manufacture, storage or disposal on, under or about the Pier Space, or the transportation to or from the Pier Space, of any Hazardous Materials in violation of any Environmental Laws. No storage tanks for fuel or other Hazardous Materials are permitted on, under or about the Pier Space without written consent, at the sole discretion of Port, which may be subject to additional insurance requirements and other management and containment requirements that Port may elect to impose on the Licensee.
 - (3) Licensee shall not cause or permit any Hazardous Material to be spilled, leaked, disposed of, or otherwise released on or under the Pier Space or anywhere within Port.
 - (4) Licensee shall give to Port immediate verbal notice, as well as follow-up written notice, of any spills, releases, discharges, emissions, or migrations of Hazardous Materials, on, under, or about any portion of the Pier Space, in any Common Areas, or on any of Port's other property that Licensee knows of or reasonably should know of.
- 10.4 **Environmental Indemnities**
- (1) **Port's Indemnification for Pre-existing Conditions.** Port represents to Licensee that, to the best of Port's knowledge, at the time of the execution of this Agreement, the Site does not have any condition of contamination that could give rise to liability of Licensee for remediation, cleanup, damages, penalties, or costs of any kind. Port agrees to indemnify and hold harmless each Licensee Indemnitee against and in respect of, any and all damages, claims, losses, liabilities, and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), which may be imposed upon, incurred by, or assessed against any Licensee Indemnitee by any other party or parties (including, without limitation, a government entity), arising out of, in connection with, or relating to the subject matter of: (a) any environmental condition of contamination existing on the Site as of the Agreement commencement date, even if not discovered until after the date thereof; (b) any violation of any environmental law or regulation with respect to the Site existing as of or prior to the date hereof, even if not discovered until

after the date hereof, not caused by Licensee's operations or facilities; or (c) any environmental condition of contamination occurring on the Site or any violation of any environmental law with respect to the Site, after the date hereof, not caused by Licensee's operations or facilities.

- (2) **Licensee's Environmental Indemnification.** Licensee agrees that it will comply with all environmental laws and regulations applicable to Licensee, including without limitation, those applicable to the use, storage and handling of Hazardous Materials in, on or about the Site. Licensee agrees to indemnify and hold harmless each Port Indemnitee against and in respect of, any and all damages, claims, losses, liabilities, and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), which may be imposed upon, incurred by, or assessed against any Port Indemnitee by any other party or parties (including, without limitation, a government entity), arising out of, in connection with, or relating to the subject matter of: (a) Licensee's breach of the covenant set forth above in this Section, or (b) any environmental condition of contamination on the Site or any violation of any federal, state or local environmental law with respect to the Site first occurring after the Agreement commencement date and caused by Licensee's operations or facilities.

- 10.5 Port's and Licensee's obligations and liabilities under the provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

Section 11. UTILITIES

DO NOT CONNECT YOUR OWN UTILITIES UNDER ANY CIRCUMSTANCES. *Any damage to Port property due to abuse or misuse or unauthorized connections or tampering by Licensee will be charged to your Vessel's account. Repeat offenders can and will be denied further access and moorage to the Port of Astoria's facilities.*

- 11.1 **Electricity.** Port will maintain the electrical utility lines to the Pier Space. Port does not guarantee the continuity or characteristics of electrical service or its compatibility with the Vessel's electrical circuit protector, if any. Use of electrical services is at Licensee's own risk. Port shall not be liable for any damages caused by Licensee's use of electrical services. Electrical service must be requested through the Port Administrative Office prior to connection. Licensee's current use of Electrical service constitutes Port's approval of such use.
- 11.2 **Water.** Port will maintain the water utility lines to the Pier Space. Port does not guarantee the continuity or characteristics of water service or its compatibility with the Vessel's watering equipment, if any. Use of water services is at Licensee's own risk. The Port shall not be liable for any damages caused by Licensee's use of water services. Water service must be requested through the Port Administrative Office prior to connection. Licensee's current use of Water service constitutes Port's approval of such use.
- 11.3 **Utilities in General.** Licensee shall pay prior to delinquency all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of

the Pier Space, the Vessel, and any vessels owned or permitted by Licensee to use the Pier Space, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Port, charges to Licensee shall be comparable with prevailing rates for comparable services. If the services are not separately metered, Port shall apportion the charges on an equitable basis, and Licensee shall pay its apportioned share on demand as additional Rent.

Section 12. DEFAULT

The following shall constitute events of default under this Agreement ("**Event of Default**"):

- 12.1 **Default in Rent.** Failure of Licensee to pay Base Rent, Additional Charges, or other charges due under the Agreement within ten (10) days of the applicable due date. Port will notify Licensee if payment is not received by the due date. Unless provided for in this Agreement, the due date for all charges is as specified on the invoice issued to Licensee for any such charge. Licensee hereby agrees that any invoice sent by email shall be deemed to have been received by Licensee on the date that the mail was sent by Port to Licensee.
- Licensee's claim to have not received an invoice shall not relieve Licensee of any liability for a late payment.
- 12.2 **Default in Other Covenants.** Failure of Licensee to comply with any term or condition or fulfill any obligation of Licensee (other than the payment of Rent or other charges) within twenty (20) days after written notice by Port specifying the nature of the default with reasonable particularity. It shall not be considered an event of default if Licensee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- 12.3 **Abandonment.** Failure of Licensee to occupy the Pier Space for one or more of the purposes permitted under this Agreement, unless such failure is excused under other provisions of this Agreement. Absences relating to Licensee's business operations are excluded from this provision.
- 12.4 **Other Agreements.** Failure of Licensee to perform any other obligation under any other agreement to which Licensee and Port are parties.

Section 13. REMEDIES ON DEFAULT

- 13.1 **Termination.** In the Event of a Default, at its option Port may terminate the Agreement. Whether or not Port elects to terminate the Agreement, Port shall be entitled to recover damages from Licensee for the default.
- 13.2 **Port's Right to Cure Defaults.** If Licensee fails to perform any obligation under this Agreement, Port shall have the option to do so after thirty (30) days' written notice to Licensee. All of Port's expenditures to correct the default shall be reimbursed by Licensee on demand with interest at the rate provided in Section 3.3 from the date of expenditure by Port. Such action by Port shall not waive any other remedies available to Port because of default.

- 13.3 **Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Port under applicable law.

Section 14. MISCELLANEOUS

- 14.1 **Vessel Access.** Subject to compliance with governmental regulations, and with timely notice to Licensee, Licensee grants Port free access at all times to the Vessel for purposes of inspection for compliance with this Agreement or Port ordinances, or for any emergency in the discretion of Port. Port, its agents, employees, or subcontractors will not assume any responsibility for damage done to or by the vessel, its equipment or contents in asserting the foregoing rights.
- 14.2 **Condition of Vessel.** Licensee agrees to keep the Vessel seaworthy, fully operational and securely moored, and shall otherwise attend to the needs of the Vessel. Failure to maintain and secure the Vessel may result in it being deemed a hazardous vessel and subject to removal in the manner provided by Port ordinance. The cost of such removal shall be charged to Licensee. Nothing contained herein shall be construed as creating any obligation on the part of Port for the Vessel's safekeeping.
- 14.3 **Condition of Pier Space.** Licensee has inspected the Pier Space and adjacent pier space and accepts them in their present condition. Licensee agrees to keep the Pier Space neat, clean, free from flammable substances and all encumbrances to facilitate access and will preserve the space in as good condition and repair as exists at the time of execution of the Agreement. All personal property items, including but not limited to any Vessel items, must be stored on the Vessel.
- 14.4 **Pier Storage.** This Agreement authorizes the storage of one set of mooring lines on the Pier Space. If any other personal property is left on the dock and no separate agreement is in place, the items may, if not removed within thirty (30) days of notice by Port, be confiscated and disposed of at the expense of Licensee. The expenses will include, but are not limited to, labor, equipment, disposal and administrative fees.
- 14.5 **Parking.** Licensee shall have the non-exclusive right to use the Port parking facilities, subject to the rights of Port or any other tenants to exclusive use of designated parking spaces. In the event Licensee is responding to an oil spill, Licensee shall have the right to use such parking spaces on the Site as may be available, provided such use does not materially interfere with the operations of Port or other tenants at the Site.
- 14.6 **Non-Waiver.** Nothing contained in this Agreement shall be construed as a waiver by Port of any rights and privileges existing under any law, statute or ordinance which Port may have against Licensee or Licensee's Vessel. Nothing contained herein shall constitute a waiver by Port of its right to arrest any vessel to enforce a maritime lien under federal law or a waiver of any other right or remedy under the laws of the State of Oregon.
- 14.7 **Notices; Change of Address.** Any written notice required or permitted under this Agreement shall be effective when actually delivered or seventy-two (72) hours after deposited in United States mail as certified mail addressed to the address first given in this Agreement or to such other address as may be specified from time to time by either

of the parties in writing. Licensee is responsible for notifying Port of all address changes. All billings and notices shall be deemed properly mailed to Licensee when mailed to the last address provided to Port in writing by Licensee.

- 14.8 **Entire Agreement.** With the sole exception of Port's authority granted and/or otherwise defined in ORS Title 58, Chapter 777, this Agreement constitutes the entire agreement between the parties. This Agreement supersedes all prior negotiations and agreements between the parties with respect to the subject matter hereof, including, without limitation, the Moorage Agreement effective August 1st, 2020. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement. The parties, by signature below of their respective authorized representatives, hereby acknowledge that the parties have read this Agreement, understand it, and agree to be bound by its terms and conditions.
- 14.9 **Time of Essence.** Time is of the essence of the performance of parties' obligations under this Agreement.
- 14.10 **Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.
- 14.11 **Assignment, Transfer, Subleasing Prohibited.** This Agreement is not transferrable. Licensee shall not add, sublicense or otherwise transfer any interest in this Agreement or the Pier Space. Any attempted assignment of this Agreement shall be void. This Agreement is valid only for those Vessel(s) specified in Section 1.2. Except as provided in Section 3.2(1), additional vessels are prohibited from mooring at the Pier Space or Port unless Licensee obtains advance consent from Port and submits the new Vessel's Coast Guard Vessel Documentation form. Licensee shall notify Port within ten (10) days of the sale of Vessel or change in Vessel's operator, including the name and address of the purchaser or new operator. Sale of a Vessel covered by this Agreement is not an implied assignment of this Agreement and transfers no right or privileges to the new owner or operator nor does it guarantee issuance of a new Agreement for the new owner. Sale of any Vessel does not release Licensee of any liability for charges incurred under this Agreement.

14.12 **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. For convenience of the parties the signature pages to any counterpart may be detached and reattached to a single counterpart.

PORT:**Port of Astoria**

Signature: _____

Printed Name: _____

Title: _____

LICENSEE:**Marine Spill Response Corporation**

Signature: _____

Printed Name: Kris CalvinTitle: Sr. Contracts Administrator

PIER 2 – Slip 2

Exhibit A



Moorage

Barge 404 (286 LOA)

COMMERCIAL LEASE AGREEMENT

Date: April 1, 2024

Between: Port of Astoria

422 Gateway Avenue, Suite 100

Astoria, OR 97103

Ph: 503-741-3300

("Port")

And: Marine Spill Response Corporation

1330 Industry Street

Everett, WA 98203

Ph: 425-304-1542

Cell: 425-308-0178

Email: calvin@msrc.org

("Tenant")

Port leases to Tenant and Tenant leases from Port the following described property (the "Premises") on the terms and conditions stated below:

SECTION 1 PREMISES DESCRIPTION

1.1 **Lease Area.** The Premises are defined as 4,250 square feet of tarmac space located North of 422 Gateway, Astoria, OR 97103, further illustrated on Exhibit A.

SECTION 2 OCCUPANCY

2.1 **Original Term.** The Original Term of this Lease shall be for five (5) years, commencing on April 1, 2024 ("Commencement Date"), and automatically renewing on an annual basis thereafter (each successive annual period defined as a "Renewal Term") until notice of termination is given by either party to this Lease, which notice must be given no less than ninety (90) days prior to the end of the Original Term or Renewal Term, if applicable.

(1) Tenant waives any other notice requirements that would otherwise be required by law with respect to a year-to-year tenancy.

(2) Port reserves the right to amend the terms and conditions of the Lease at the end of the Original Term and at the end of any Renewal Term. One hundred twenty (120) days prior to the end of the Original Term or any renewal Term, Port will provide Tenant with the proposed amended terms and conditions.

(3) This Lease grants no renewal option rights upon Tenant. The automatic renewal provision above is intended to streamline administrative processes only. Tenant's right to each Renewal Term is subject to the sole discretion of Port and Port reserves the right to terminate this Lease without cause at the end of the Original Term or any Renewal Term by giving notice of termination ninety (90) days in advance of the termination date.

2.2 **Possession.** The Tenant's right to possession and obligations under this lease shall commence on April 1, 2024.

2.3 **Higher and Better Use.** Tenant's occupation of the premises is granted provided, a). Occupancy is permitted under local zoning ordinances or by obtaining a Conditional Use Permit and b). Tenant will be responsible for relocating Tenant's equipment, at Port's request, to facilitate work needed to improve infrastructure. The site Tenant will be relocated to will be substantially similar in condition to the site Tenant is relocating from.

SECTION 3 RENT.

3.1 **Base Rent.** During the Original Term, Tenant shall pay to Port as base rent the sum of \$764.30 per month. Rent shall be payable on the first day of each month in advance at the address of Port on page one (1) of this Lease. Acceptable forms of payment are limited to check or money order.

3.2 **Additional Rent.** All taxes (including property taxes), insurance costs, utility charges that Tenant is required to pay by this Lease, and any other sum that Tenant is required to pay to Port or third parties pursuant to this Lease shall be additional rent. All additional rent shall be paid when and in the manner specified on the invoice issued for the charges.

3.3 **Late Charges.** Tenant acknowledges that late payment of any rent or other payment required by this Lease from Tenant to Port or any third party will result in costs to Port, the extent of which is extremely difficult and economically impractical to ascertain. Any rent or other payment required of Tenant by this Lease shall, if not paid within ten (10) days after it is due, bear, as a late charge, interest at the rate of nine percent (9%) per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. Port may charge and collect a late charge equal to five percent (5%) of the late payment, in addition to the above-referenced interest, as well as enforce all other remedies available for Tenant's default, and collection of a late charge shall not be in lieu of nor shall it waive the breach caused by the late payment.

3.4 **Escalation.** The base rent provided in Section 3.1 shall be increased in the month of August 1, 2024, and every August thereafter as long as this Lease remains in effect, by a percentage equal to the Percent Annual Increase in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor (the "CPI"). Comparisons shall be made using the index entitled CPI-All Urban Consumers, Area West (1982-84=100), or the nearest comparable data on changes in the cost of living if such index is no longer published. The increase shall be determined by using the CPI most recently published before the applicable adjustment date. In no event, however, shall base rent be reduced below that of the prior year.

SECTION 4 SECURITY DEPOSIT

4.1 **Security Deposit.** Tenant has deposited with Port the sum of \$00.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease (the "Security Deposit"). In the event that Tenant defaults in respect to any of the terms, provisions and conditions of this Lease, including without limitation the payment of base rent and additional rent, Port may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any base rent, additional rent, or any other sum as to which Tenant is in default of, or any sum which Port may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including without limitation, any damages or deficiency in re-letting the Premises accrued before or after any summary proceedings or other reentry by the Port.

4.2 Return of Deposit. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security Deposit, except as same may have been applied by Port in accordance with this Lease, shall be returned to Tenant after the expiration or termination of this Lease and after Tenant has delivered entire possession of the Premises to Port in accordance with all of the terms and provisions of this Lease.

4.3 Deposit Reimbursement. Tenant agrees that in the event Port applies any portion of the Security Deposit in accordance with the provisions of this Lease, Tenant will immediately upon demand of Port reimburse or pay Port for the amount of the Security Deposit so applied so that the amount constituting the Security Deposit during the Term of this Lease shall always be equal to the amount stated above as the Security Deposit.

4.4 Release of Liability for Security Deposit Reimbursement. In the event of a sale of the Premises or leasing of the Premises, Port shall have the right to transfer the Security Deposit to the vendee or lessee and Port shall thereupon be released by Tenant from all liability for the return of the Security Deposit, and Tenant agrees to look solely to the new landlord for the return of the Security Deposit, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new landlord.

4.5 Attempted Assignment Void. Tenant further agrees that it will not assign or encumber or attempt to assign or encumber the funds constituting the Security Deposit and that neither Port nor its successors or assigns shall be bound by any such assignment, encumbrance or attempted assignment or encumbrance. Any such attempted assignment shall be void. Port shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit.

SECTION 5 USE OF THE PREMISES.

5.1 Permitted Use. The Premises shall be used for storage and maintenance of Tenant equipment and trailers and for no other purpose without the consent of Port, which consent shall not be withheld unreasonably. Tenant is aware that this is an area of concern and the storage items may need to be moved to a mutually agreeable location. Port agrees that Tenant's prior use of the Premises complies with the permitted use, the local zoning ordinance requirement in Section 2.3 and is not prohibited by law or governmental regulations.

5.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

- (1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use thereof, with any and all permits including, but not limited to, city business licensing, and any and all orders and regulatory approvals issued by any regulatory agency and applicable to the Premises.
- (2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Port from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Port to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.
- (3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

(4) Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 5.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

SECTION 6 COMMON AREAS

6.1 **Tenant's Use.** Tenant, its customers, agents and invitees shall have the non-exclusive right to use areas designated by Port as common areas. "Common Areas" means any parking areas, roadways, sidewalks, landscaped areas, security areas and any other areas within or without the building in which the Premises are located owned by Port where such areas have been designated or may be designated in the future by Port as areas to be used by the general public or in common by tenants.

6.2 **Port's Rights.** With respect to the Common Areas the Port reserves the following rights;

- (1) To establish reasonable rules and regulations for the use of the Common Areas;
- (2) To close all or any portion of the Common Areas to make repairs or changes, as long as such closure does not materially affect Tenant's use of the Premises.
- (3) To construct, alter, or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size or to eliminate such Common Areas; and
- (4) To exercise any of Port's governmental powers over the Common Areas.

SECTION 7 REPAIRS AND MAINTENANCE

7.1 **Port's Obligations.** The following shall be the responsibility of Port:

- (1) Repair of sidewalks, driveways, curbs, parking areas, and areas used in common by Tenant and Port or tenants of other portions of the same location/area.

7.2 **Tenant's Obligations.** The following shall be the responsibility of Tenant:

- (1) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees.
- (2) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations.
- (3) Tenant shall correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance unless such changes are required because of Tenant's specific use.

7.3 Port's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Port shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Port for any inconvenience or disturbance resulting from Port's activities performed in conformance with the requirement of this provision.

7.4 Reimbursement for Repairs Assumed. If Tenant is in default under this Lease for failing or refusing to perform the maintenance or make repairs that are required by this Section 7, Port may, but is not obligated to, perform the maintenance or make the repairs and charge the actual costs thereof to Tenant as additional rent. Such expenditures by Port shall be reimbursed by Tenant on demand, together with interest at the rate of nine percent (9%) per annum from the due date of any and all invoices issued by Port for such repairs. Except in an emergency (defined here as any circumstance creating an immediate risk of personal injury, property damage, or violation of any applicable environmental regulation, rule, code, ordinance or statute), Port may not perform maintenance or repairs that are the obligation of Tenant and charge Tenant for the resulting expense unless at least five (5) days before work is commenced, Port gives Tenant written notice outlining with reasonable particularity the maintenance or repairs required, and Tenant fails within that time to initiate or perform to completion such maintenance or repairs.

7.5 Inspection of Premises. Port shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Port to make repairs shall not mature until a reasonable time after Port has received from Tenant written notice of the repairs that are required.

SECTION 8 ALTERATIONS.

8.1 Consent. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Port's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. As used herein, "alterations" includes the installation of computer and telecommunications wiring, cables, and conduit.

8.2 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by Port shall be the property of Port when installed. All improvements and alterations performed on the Premises by Tenant shall be the property of Tenant when installed, until this Lease expires or is terminated, then shall be the property of Port. Improvements and alterations installed by Tenant shall, at Port's option, be removed by Tenant and the Premises restored to its original or better condition on expiration or any earlier termination of this Lease.

SECTION 9 INSURANCE.

9.1 Insurance Required. Tenant shall bear the expense of any insurance insuring the property of Tenant on the Premises. Tenant shall obtain and maintain throughout the term CGL and Worker's Compensation Insurance coverage as required by law while this Lease, and any extension thereof, is in force.

9.2 Insurance. Before taking possession of the Premises, Tenant shall procure and thereafter during the term of the Lease shall continue to carry comprehensive general liability insurance with an insurance company licensed to do business in Oregon having a Financial Strength Rating (FSR) of not less than 'A' and a Financial Size Category (FSC) of not less than 'X' according to Best's Insurance Guide, with limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate, with a \$1,000,000 umbrella or a policy with \$3,000,000 per occurrence limits. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any

condition of the Premises, shall protect Tenant against the claims of the Port on account of the obligations assumed by Tenant under Section 12.2, and shall name Port as an additional insured. Certificates evidencing such insurance shall be furnished to Port prior to Tenant's occupancy of the Premises and thereafter on Port's request. Tenant hereby agrees to notify Port of any cancellation or change in the insurance coverage within seventy-two (72) hours of such change or cancellation, or within seventy-two (72) hours of receiving notice of such change or cancellation regardless of whether Tenant or Tenant's insurer cancelled or changed the policy. Port reserves the right to unilaterally adjust any insurance coverage required by this Lease, including adding new policies or requiring higher limits of coverage to the extent reasonable, and require Tenant's compliance within sixty (60) days of providing a written notice to Tenant. Notwithstanding this prerogative, Port shall not adjust any specific policy or coverage requirement more frequently than once every calendar year, absent good cause.

9.3 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

SECTION 10 TAXES AND UTILITIES.

10.1 Property Taxes and Assessments. Tenant shall pay as due all taxes on its personal property located on the Premises and all real property taxes assessed against the Premises. Tenant shall pay as due all real property taxes and special assessments levied against the Premises before the same become past due. As a public entity, Port does not pay property taxes, but Tenant may be assessed directly by the County for its demised Premises. As used herein, "real property taxes" includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Port or Tenant. Tenant will provide Port with proof of payment of real property taxes before the same become past due.

10.2 Payment of Utilities Charges. Not applicable.

SECTION 11 DAMAGE AND DESTRUCTION.

11.1 Partial Damage. If the Premises are partly damaged and Section 11.2 does not apply, the Premises shall be repaired by Port at Port's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Port.

11.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, provided such damage is not caused or contributed to by Tenant, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than forty-five (45) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If neither party elects to terminate, Port shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Port's reasonable control.

11.3 **Rent Abatement.** Rent shall be abated during the repair of any damage to the extent the Premises are un-tenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

11.4 **Damage Late in Term.** If damage or destruction to which Section 11.2 would apply occurs within sixty (60) days before the end of the then-current lease term, Tenant may elect to terminate the lease by written notice to Port given within thirty (30) days after the date of the damage. Such termination shall have the same effect as termination by Port.

SECTION 12 LIABILITY AND INDEMNITY.

12.1 Liens.

(1) Except with respect to activities for which Port is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Port may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Port and shall be payable on demand. Such action by Port shall not constitute a waiver of any right or remedy which Port may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Tenant bonds around the lien as provided under Oregon law. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or file with the County Recorder cash or sufficient corporate surety bond or other surety to bond around the lien as provided under Oregon law.

12.2 **Tenant's General Agreement to Indemnify.** Tenant hereby releases Port, its commissioners, officers, representatives, employees, agents, successors and assigns (individually and collectively, the "Port Indemnitee") from, assumes any and all liability for and agrees to indemnify the Port Indemnitee against, all claims, liabilities, obligations, damages, penalties, litigation, costs, charges and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses, including claims for wrongful death but excluding environmental claims), imposed on, incurred by or asserted against the Port Indemnitee or its interest in real property in the Premises arising out of (i) the use of the Premises or the use or occupancy of the Premises by Tenant, its officers, representatives, agents and employees, (ii) the project operations by Tenant, its officers, representatives, agents and employees, (iii) any claim arising out of the use of the Premises or the use, occupancy, or operation of the Premises by Tenant, its officers, representatives, agents and employees, and (iv) activities on or about the Premises by Tenant, its officers, representatives, agents and employees of any nature, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the use, occupancy, operation, maintenance or repair of any improvements or the use of the Premises by Tenant, its officers, representatives, agents and employees; provided, however, that any such claim, liability, obligation, damage or penalty to the extent arising as a result of the negligence or willful misconduct of the Port Indemnitee shall be excluded from this indemnity obligation.

Any and all claims brought under the authority of or with respect to any Environmental Law shall be covered by Sections 12.4 and 12.5 and not this section.

12.3 **Port's General Agreement to Indemnify.** Port hereby releases Tenant, its officers, representatives, employees, agents, successors and assigns (individually and collectively, the "Tenant Indemnitee") from, assumes any and all liability for and agrees to indemnify the Tenant Indemnitee against, all claims, liabilities, obligations, damages, penalties, litigation, costs, charges, and expenses

(including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), imposed on, incurred by or asserted against the Tenant Indemnitee or its interest in real property in the Premises to extent arising out of negligence of Port, its commissioners, its third-party tenants, or their respective officers, representatives, agents, or employees, of any nature, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the fulfillment of this Lease or in the conduct of activities on or near the Premises by Port, its commissioners, its third-party tenants, or their respective officers, representatives, agents and employees; provided, however, that any such claim, liability, obligation, damage or penalty to the extent arising as a result of the negligence or willful misconduct of the Tenant Indemnitee shall be excluded from this indemnity. This Section shall include within its scope but not be limited to any and all claims or actions for wrongful death, but any and all claims brought under the authority of or with respect to any Environmental Law shall be covered by Sections 12.4 and 12.5 and not this section.

12.4 Port's Indemnification for Pre-existing Conditions. Port represents to Tenant that, to the best of Port's knowledge, at the time of the execution of this Lease, the Premises do not have any condition of contamination that could give rise to liability of Tenant for remediation, cleanup, damages, penalties, or costs of any kind. Port agrees to indemnify and hold harmless each of the Tenant Indemnitees against and in respect of, any and all damages, claims, losses, liabilities, and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), which may be imposed upon, incurred by, or assessed against any Tenant Indemnitee by any other party or parties (including, without limitation, a government entity), arising out of, in connection with, or relating to the subject matter of: (a) any environmental condition of contamination existing on the Premises as of the Lease commencement date, even if not discovered until after the date thereof; (b) any violation of any Environmental Law with respect to the Premises existing as of or prior to the date hereof, even if not discovered until after the date hereof, not caused by Tenant's operations or facilities; or (c) any environmental condition of contamination occurring on the Premises or any violation of any Environmental Law with respect to the Premises, after the date hereof, not caused by Tenant's operations or facilities.

12.5 Tenant's Environmental Indemnification. Tenant agrees that it will comply with all Environmental Laws applicable to Tenant, including without limitation, those applicable to the use, storage and handling of Hazardous Substances in, on or about the Premises. Tenant agrees to indemnify and hold harmless each Port Indemnitee against and in respect of, any and all damages, claims, losses, liabilities, and expenses (including, without limitation, reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), which may be imposed upon, incurred by, or assessed against any Port Indemnitee by any other party or parties (including, without limitation, a government entity), arising out of, in connection with, or relating to the subject matter of: (a) Tenant's breach of the covenant set forth above in this Section, or (b) any environmental condition of contamination on the Premises or any violation of any Environmental Law with respect to the Premises first occurring after the Lease commencement date and caused by Tenant's operations or facilities.

SECTION 13 QUIET ENJOYMENT; AS IS.

13.1 Port's Warranty. Port warrants that it is the owner of the Premises and has the right to lease them. Tenant takes the Premises "AS IS", with all faults.

13.2 Estoppel Certificate. Either party will, within twenty (20) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate

was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

SECTION 14 ASSIGNMENT AND SUBLETTING.

14.1 Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Port. Any attempted assignment shall be void. This provision shall apply to all transfers by operation of law. If Tenant is a corporation or partnership, this provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Tenant. No consent in one instance shall prevent the provision from applying to a subsequent instance. Port may withhold or condition such consent in its sole and arbitrary discretion. In determining whether to consent to assignment, Port may consider the following factors: financial ability of assignee; business experience of assignee; and the environmental impact of assignee's business.

SECTION 15 DEFAULT.

The following shall be events of default:

15.1 Default in Rent. Failure of Tenant to pay base rent, additional rent, or other charge due under the Lease within ten (10) days of the applicable due date. Port will notify Tenant if payment is not received by the due date. The due date for rent is the 1st day of every month per Section 3.1 of this Lease agreement. The due date for all other charges will be specified on the invoice sent to Tenant for such charges. It is the responsibility of Tenant to ensure Port has on record accurate and up to date contact information, including any special instructions regarding where invoices for charges due under this Lease are to be sent. Tenant's non-receipt of an invoice or notice of overdue payment will not relieve Tenant of liability for late fees, interest, or any other charge due under this Lease that is incurred as a result of late payment of an invoice.

15.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within twenty (20) days after written notice by Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, it shall not be considered an event of default if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

15.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Port that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

15.4 **Abandonment.** Failure of Tenant for twenty (20) days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

SECTION 16 REMEDIES ON DEFAULT.

16.1 **Termination.** In the event of a default, the Lease may be terminated at the option of Port by written notice to Tenant. Whether or not the Lease is terminated by the election of Port or otherwise, Port shall be entitled to recover damages from Tenant for the default, and Port may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

16.2 **Reletting.** Following reentry or abandonment, Port may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Port shall not be required to relet for any use or purpose other than that specified in the Lease or which Port may reasonably consider injurious to the Premises, or to any tenant that Port may reasonably consider objectionable. Port may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

16.3 **Damages.** In the event of termination or retaking of possession following default, Port shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease term, the following amounts as damages:

- (1) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying rent.
- (2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

16.4 **Right to Sue More than Once.** Port may sue periodically to recover damages during the period corresponding to the remainder of the Lease term, and no action for damages shall bar a later action for damages subsequently accruing.

16.5 **Port's Right to Cure Defaults.** If Tenant fails to perform any obligation under this Lease, Port shall have the option to do so after thirty (30) days' written notice to Tenant. All of Port's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 9% per annum from the date of invoicing by Port. Such action by Port shall not waive any other remedies available to Port because of the default.

16.6 **Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Port under applicable law.

SECTION 17 SURRENDER AT EXPIRATION.

17.1 **Condition of Premises.** Upon expiration of the Lease term or earlier termination on account of default, Tenant shall deliver all keys to Port and surrender the Premises in first-class condition and broom (vacuum) clean. Alterations constructed by Tenant with permission from Port shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Repairs due to damage caused by factors other than depreciation and wear from ordinary use, for which Tenant is responsible, shall be completed by the latest practical date prior to such surrender.

17.2 Fixtures

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Port's option, become the property of Port. If Port so elects, Tenant shall remove any and all equipment, fixtures, furniture, and trade fixtures that would otherwise remain the property of Port, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Port may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the Lease term, Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be deemed an abandonment of such property, and Port may retain such property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within twenty (20) days after removal was required, Port may elect to hold Tenant to its obligation of removal. If Port elects to require Tenant to remove, Port may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Port for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Port.

17.3 Holdover

(1) If Tenant does not vacate the Premises at the time required, Port shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to one-hundred-fifty percent (150%) of the rent last paid by Tenant during the Original Term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Port for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section, the tenancy shall be terminable at the end of any monthly rental period on written notice from Port given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

SECTION 18 MISCELLANEOUS.

18.1 **Nonwaiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

18.2 **Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

18.3 **Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

18.4 **Succession.** Subject to the above stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

18.5 **Recordation.** This lease shall not be recorded without the written consent of Port.

18.6 **Entry for Inspection.** Port shall have the right to enter upon the Premises at any time with reasonable notice, to determine Tenant's compliance with this Lease, to make necessary repairs to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

18.7 **Proration of Rent.** In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

18.8 **Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction over the parties to this Lease, the entire Lease shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

18.9 **Time of Essence.** Time is of the essence of the performance of each of Tenant's obligations under this Lease.

18.10 **Compliance with Applicable Laws.** This lease shall be construed to comply with ORS 777.120, ORS 777.258 and U.S.C., Section 46, Chapter 411.

18.11 **Entire Agreement.** With the sole exception of the Port of Astoria’s authority granted and/or otherwise defined in ORS 777, this Lease, including all referenced Exhibits, constitutes the entire agreement between the parties and there are no understandings, agreements, or representations, oral or written, not specified herein. This Lease supersedes all prior negotiations and agreements between the parties with respect to the subject matter hereof, including, without limitation, the Commercial Lease Agreement effective August 1st, 2020. No waiver, consent, modification, or change of terms of this Lease shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The parties, by signature below of their respective authorized representatives, hereby acknowledge that the parties have read the entire Lease as modified herein, understand it, and agree to be bound by its terms and conditions.

Port of Astoria:**Tenant:**

By: _____

By: _____

Name: _____

Name: Kris Calvin

Title: _____

Title: Sr. Contracts Administrator

EXHIBIT A



Outside Storage on Pier 2

4,250 square feet

 Port of Astoria COMMISSION MEETING
--

<u>BRIEFING DATE/TIME:</u>	March 19, 2024	
<u>DEPARTMENT:</u>	Marina / Operations	
<u>STAFF CONTACT:</u>	Janice Burk	
<u>TOPIC:</u>	East Mooring Basin Moorage Rates	
<u>PURPOSE:</u>		Information only
<i>Check all that apply</i>	<input checked="" type="checkbox"/>	Decision needed
		Follow up from previous briefing
<u>BACKGROUND & OVERVIEW OF SURROUNDING ISSUES:</u>		
<p>The recent East Basin Causeway collapse in mid-August 2023 has produced a hardship for East Mooring Basin tenants. In addition to being unable to access Q & R docks except by water / dinghy, water and power are no longer available.</p> <p>Due to the failed infrastructure, tenants are seeking reduced moorage rates for the East Mooring Basin infrastructure.</p>		
<u>DOCUMENTS ATTACHED:</u>		
NA		
<u>SUMMARY & FINANCIAL IMPACT:</u>		
Though diminished by the inconveniences resulting from failed infrastructure, Q & R dock moorage spaces retain value due to limited moorage options in the area.		
<u>NEXT STEPS/TIMEFRAME:</u> <i>Based on the Commission's recommendation, describe the next steps required in order to bring this item to conclusion. Include the time frame for each step.</i>		
<u>STAFF RECOMMENDATION:</u>		
10% rate reduction and rate freeze in the East Mooring Basin only until the Causeway is repaired, access is restored, and utilities are again functional. This rate change will be retroactive to August 1, 2023, two weeks prior to the recent collapse of the causeway that resulted in termination of electrical service.		

RE# 0182

REQUEST FOR EXPENDITURE

SECTION A	Date:	03/14/2024	Department:	Maintenance
	Staff Contact:	Joe Tadei	Vendor (if determined):	HME Construction, Inc
	Description of Product or Service being requested:	Provide assistance to Port of Astoria dredge operations for recovery of the discharge pipe anchor.		
	Purpose of Product or Service being requested:	Recovery of anchor.		
Cost Estimate:		\$12,895.59		

SECTION B	1. Does this expenditure exist within the current budget? (Original Budget Amount)	<input checked="" type="checkbox"/> No (Skip to Section C-2) / <input type="checkbox"/> Yes (Proceed)	\$
	2. Does this expenditure exceed \$5,000?	<input type="checkbox"/> No (Skip to Section D) / <input type="checkbox"/> Yes (Proceed to Section C-1)	
	3. Will services be performed on Port of Astoria property?	<input type="checkbox"/> No / <input checked="" type="checkbox"/> Yes	

SECTION C	1.	TOTAL	NET OF GRANTS
	Account # for Budgeted Item (ex: XXX-XX)		
	FY 2023-2024 Budget for this Account	\$	\$
	Amount Spent Year-to-Date for this Account	\$	\$
	Amount Available to Spend for this Account	\$	\$
	Does this Request for Expenditure require Commission Approval (>=\$25,000)?	<input type="checkbox"/> Yes / <input type="checkbox"/> No	

SECTION C	2.	TOTAL	NET OF GRANTS
	If Not included in the current budget or the current budget for this account # has been spent:		
	Does this Request for Expenditure require Commission Approval (>=\$5,000)? <input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No		
	Account # to deduct funds from to reallocate & accommodate this expenditure (ex: XXX-XX)	710-00	
	FY 2023-2024 Budget for the Account being reduced	\$ 3,489,034	\$ 1,423,914
	Amount Spent Year-to-Date for this Account	\$ 1,319,937	\$ 568,553
Amount Available to Spend for this Account	\$ 2,169,097	\$ 855,361	

SECTION D	3	If Commission approval is required, please specify date Request for Expenditure will be submitted to Commission for approval.
		(Specify date of Commission meeting when item is scheduled to be heard/approved) 03/19/2024

SECTION E	Signature of Department Head	<i>Joe Tadei</i>	Date	3-15-24
	Signature of Deputy Director	<i>M.D. McLeod</i>	Date	3-15-24
	Signature of Finance Manager	<i>[Signature]</i>	Date	3-15-24
	Signature of Executive Director	<i>[Signature]</i>	Date	3-15-24

(required if cost is unbudgeted, or > \$5,000 budgeted)

(over for Quotation Analysis)

Project: Anchor Recovery

Project Manager: Joe Tadei

Quotes obtained by: Joe Tadei

Procurement Method: Small procurement Intermediate procurement Request for Bid
 Sole source Emergency Request for Proposal

Solicitation Method: Verbal quotes (informal) Requests for written quotes (informal) Public solicitation (formal)

Vendor	Amount	Description	Availability	Specific expertise	Other information
HME Construction, Inc	\$12,895.59	Anchor recovery	Immediate. Tug, barge and crane were currently moored at Port of Astoria - P2E	Marine Construction	
WCT, Inc.	unknown	Anchor recovery	Need to ready equipment and mobilize from North Tongue Point.	Marine Construction and vessel repair.	
Bergerson Constr., Inc.	unknown	Anchor recovery	Two weeks	Marine construction	

Vendor selection & justification: (REQUIRED) HME Construction was the only marine contractor that was immediately available to assist port crew with dredge operations.

HME Construction, Inc.
 PO Box 291
 Vancouver, WA 98666
 Phone: (360) 695-4553
 Fax: (360) 695-3295

INVOICE

INVOICE NO
 4366

SOLD TO Port of Astoria
 422 Gateway Avenue
 Suite 100
 Astoria, OR 97103

SHIP TO 24-306 PoA Anchor Recovery
 422 Gateway Ave
 Astoria, OR 97103

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
PORTOFAS				Net 30	3/12/2024	1

HME supplied divers and hook service to recover an anchor for the Port of Astoria on 3/7/24.

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
1	1	Diver & Hook Service to Recover Anchor	12,822.50	12,822.50

Please note Corporate Activity Tax is added to this invoice.

ITEM TOTAL	12,822.50
TAX	73.09
TOTAL AMOUNT	12,895.59

