

Board of Commissioners

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

422 Gateway Ave, Suite 100
Astoria, OR 97103
Phone: (503) 741-3300
Fax: (503) 741-3345
www.portofastoria.com

Workshop Session

October 18, 2022 @ 4:00 PM
10 Pier 1, Suite 209

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. CHANGES/ADDITIONS TO THE AGENDA
5. PUBLIC COMMENT:
This is an opportunity to speak to the Commission for 3 minutes regarding any topic. In person, those wishing to speak must fill out a public comment form. Those participating via Zoom may raise their hands during the public comment period.
6. ADVISORY:
 - a. Real Estate Services RFP Discussion 3
7. ACTION:
 - a. Baxter Family Medicine Lease Renewal 7
8. COMMISSION COMMENTS
9. EXECUTIVE DIRECTOR COMMENTS
10. UPCOMING MEETING DATES:
 - a. Regular Session – November 1, 2022 at 4:00 PM
 - b. Workshop Session – November 15, 2022 at 4:00 PM
11. ADJOURN

Please Note:

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

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



Board of Commissioners

HOW TO JOIN THE ZOOM MEETING:

Online: Direct link: <https://us02web.zoom.us/j/86905881635?pwd=amhtTTBFcE9NUElxNy9hYTZFPQTizQT09>
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

This meeting is accessible to persons with disabilities or persons who wish to attend but do not have computer access or cell phone access. If you require special accommodations, please contact the Port of Astoria at least 48 hours prior to the meeting by calling [\(503\) 741-3300](tel:5037413300) or via email at admin@portofastoria.com.

PORT OF ASTORIA
REQUEST FOR PROPOSALS (RFP)

For a
REAL ESTATE AND LEASING AGENT

Proposal Contact:

Will Isom, Executive Director
(503) 741-330
wisom@portofastoria.com

Estimated Award Timeline:

Date of Issuance: _____, 2022
Proposal Due Date: _____, 2022
Tentative Date of Award: _____, 2022

INTRODUCTION. The Port of Astoria is a public port district formed in 1910. The Port derives its authority from Oregon Revised Statutes chapter 777. It is governed by a locally elected Board of Commissioners. The Port is located on the Oregon coast in the northwest corner of the state, where the Columbia River meets the Pacific Ocean. Its geographic boundary includes the entirety of Clatsop County, Oregon.

The Port owns and manages a combination of marine, marina, industrial, and aviation facilities. These facilities are primarily located in the City of Astoria (Port waterfront properties and infrastructure) and the City of Warrenton (airport and industrial properties). The Port offers services to commercial and recreational boaters at its two marinas and boatyard, and to commercial and cargo vessels, fish processing, cruise ships, and research vessels at its deep-draft marine terminals. It also operates the Astoria/Warrenton Regional Airport. The Port has industrial and commercial leasing opportunities on its properties at the Airport, Skipanon Peninsula, and waterfront locations.

The Port's Board of Commissioners recently approved an ambitious Waterfront Master Plan that contemplates a variety of expansions and improvements to Port facilities to benefit and promote the local economy, commercial interests, and tourism. The Master Plan can be viewed at the following link: [Port of Astoria - Waterfront Master Plan](#). For more information about the Port, including its current Strategic Business Plan, see the Port's website at [Port of Astoria - About the Port of Astoria](#).

PROJECT DESCRIPTION. The Port seeks an ongoing, long-term contract with one or more experienced, qualified individuals or firms to represent the Port in sales and purchases of real property, and to act as a leasing agent in procuring and negotiating commercial leases on behalf of the Port.

COMPENSATION. The selected Contractor(s) will be compensated on a commission basis as set forth in the contract agreed to by the parties. Necessary vehicle mileage and meal and lodging expenses incurred in the performance of the contract will be reimbursed at actual cost.

No Proposer, including the Contractor selected for award, if any, will be compensated for pre-award costs. All pre-award expenditures are made at the Proposer's own risk and expense.

PROPOSAL FORMAT. Proposals must be in the form of a Proposal package that includes the following:

- 1) A narrative no more than ten (10) pages in length that describes the Proposer's:
 - (a) Project understanding;
 - (b) Familiarity with the commercial real estate market in Oregon generally, and in Clatsop County in particular;
 - (c) Project approach, including the Proposer's methods and strategies for:

- Marketing commercial properties for sale or lease by the Port, including deliverables provided to the client;
 - Identifying properties available for possible purchase by the Port, including deliverables provided to the client; and
 - Negotiating purchases, sales, and leases of commercial properties;
- (d) Staff who will be performing the services described in this RFP;
- (e) Contractor qualifications, including any licenses and certifications required under Oregon law;
- (f) Examples of at least three (3) projects within the previous five (5) years that demonstrate experience and success in completing purchases and sales of commercial properties. For each example, include contact information for the client represented in the transaction. Specifically identify transactions completed on behalf of a public entity in Oregon;
- (g) Examples of at least three (3) projects within the previous five (5) years that demonstrate experience and success in locating prospective lessees and negotiating commercial leases. For each example, include contact information for the client represented in the transaction. Specifically identify transactions completed on behalf of a public entity in Oregon;
- 2) A one-page description of compensation terms, including expected rates of commission on completed transactions, and reimbursable expenses. Describe any financial incentives or discounts available to the Port.

PROPOSAL DELIVERY INSTRUCTIONS. Proposals must be submitted in the form of one PDF file that does not exceed 5MB size, exclusively by email to wisom@portofastoria.com, with the subject line “Proposal for Real Estate and Leasing Agent.” **Proposers are encouraged to confirm delivery with the contact person prior to proposal due date.**

Proposals must be received no later than the due date specified on the cover page. Late proposals will not be accepted.

PROPOSAL EVALUATION. The Port will create an evaluation committee to evaluate and score Proposals. Any attempt by a Proposer to improperly influence a member of the evaluation committee during the Proposal review and evaluation process will result in the elimination of that Proposer’s Proposal from consideration. Qualifying Proposals will be evaluated based on the following criteria, with no specific weight assigned to each:

- 1) Proposal Suitability: Quality and clarity of the approach that will be used to successfully complete the project specifications.

- 2) Demonstrated Experience and Success: Staff expertise, qualifications, and past performance as they apply to the project specifications.
- 3) Cost and Value: Proposed costs for the services requested, considering industry standard and market rates.

CONTRACT AWARD. In its sole discretion, the Port may select one or more Proposers for an interview, or award one or more contracts without conducting interviews. All contracts are subject to approval by the Port's Board of Commissioners. The Port makes no guaranty that a contract, if awarded, will be exclusive to the successful Proposer. If an apparent successful Proposer and the Port are not able to execute a mutually acceptable agreement within ten (10) business days of the contract award, or such later date as the Port may authorize, the Port may terminate negotiations with the Proposer. If all Proposals are rejected, all Proposers will be promptly notified.

RESERVATION OF RIGHTS. The Port of Astoria reserves all rights regarding this RFP including, without limitation, the right to:

- Cancel the solicitation, or reject in whole or in part any or all Proposals when doing so is in the best interest of the Port or the public;
- Modify the proposed timeline for this RFP with appropriate notice to prospective Proposers. The proposed dates represent a tentative schedule of events. All times are local;
- Waive any minor irregularity, informality, or non-conformance with the provisions or procedures of this RFP, and seek clarification of any Proposal, if required;
- Reject any Proposal that fails to substantially comply with all prescribed RFP procedures and requirements;
- Engage contractors by selection or procurement independent of this RFP and/or any contracts awarded pursuant to this RFP; and
- Negotiate with one or more successful Proposers to develop a Scope of Services and contract terms consistent with this RFP.

QUESTIONS. All questions regarding this solicitation must be directed to the Proposal Contact listed on the cover page of this RFP. No other person or entity is authorized to provide information regarding this RFP and any information so obtained shall be of no effect.

COMMERCIAL LEASE AGREEMENT

Date: September 30, 2022

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

And: **Kevin Baxter dba Baxter Family Medicine**
P.O. Box 450
38108 Labiske Lane
Astoria, OR 97103
Ph: 503-325-9221
E: kjbaxter1@msn.com (“Tenant”)

1. **PREMISES.** Port leases to Tenant and Tenant leases from Port the following described property (“Premises”) according to the terms and conditions stated herein (“Lease”).

Address: 10 Pier 1, Astoria, OR 97103
Suite 301 (1402 Square Feet)
Suite 303 (270 Square Feet)
[Map is attached as Exhibit A.]

2. **TERM.** The Term of the Lease shall be as follows:

- 2.1 **Original Term.** The original term (“Original Term”) of this Lease shall be a five-year lease, commencing on November 1, 2022 (“Commencement Date”). Tenant’s obligations under this Lease shall commence on the Commencement Date.
- 2.2 **Renewal Term.** Unless terminated as provided herein, the Lease shall automatically renew on a monthly basis (each successive *monthly* period defined as a “Renewal Term”).
- 2.3 **Amendment.** Port reserves the right to amend the terms and conditions of the Lease at the end of the Original Term or at the end of any Renewal Term.
- 2.4 **Termination Without Cause.** Either Port or Tenant may terminate this Lease without cause by providing a written Notice of Termination to the other no less than 90 days prior to the end of the Original Term or Renewal Term, as applicable.

3. **POSSESSION.** Tenant’s right to possession shall commence on November 1, 2022 [*Commencement Date*].

4. **CONDITIONS FOR OCCUPANCY.** Tenant’s occupation of the Premises is conditioned upon the following:

- 4.1 **Zoning.** Occupancy is permitted under local zoning ordinances or by obtaining a Conditional Use Permit.
- 4.2 **Highest and Best Use.** The Port does not have a higher and better use for the Premises based on rental income, creation of employment opportunities, or other criteria as determined by the Port.

5. RENT. During the Term of the Lease, Tenant shall pay to Port the following Rent:

- 5.1 Base Rent. During the Original Term, Tenant shall pay to Port as Base Rent the sum of \$3,807.39 per month.
- 5.2 Additional Rent. In addition to the Base Rent, Tenant shall pay as Additional Rent all taxes (including property taxes), insurance costs, utility charges, and any other sum that Tenant is required to pay to Port or third parties under this Lease.
- 5.3 Escalation. After the Original Term, the Base Rent shall be increased in the month of November 2023, and every November thereafter during the Lease Term, 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"), using the most recently published index titled "CPI-All Urban Consumers, Area West (1982-84=100)," or the nearest comparable data if such index is no longer published. In no event shall the Base Rent be reduced below that of the prior year.

6. PAYMENT TERMS.

- 6.1 First and Last Month's Rent. First and last month's Base Rent shall be payable in advance prior to occupancy. Tenant has paid \$3,344.00 to the Port for the last month's rent. Tenant consents that \$3,344.00 from previous agreement will be transferred to serve as last months' rent/prepaid rent for this agreement.
- 6.2 Due Date. Rent shall be payable in advance on the first (1st) day of each month at the Port address on Page One (1) of this Lease. Additional Rent shall be paid in the manner specified on the invoice for the charges.
- 6.3 Forms of Payment. Acceptable forms of payment are:
 - Check
 - ACH
 - Money Order
 - Other _____
- 6.4 Late Charges. Any Rent or other payment to the Port required of Tenant under this Lease, including but not limited to Additional Rent, shall, if not paid within ten (10) days after it becomes due, shall bear compound interest at the rate of nine percent (9%) per annum (but in no event exceeding the maximum rate of interest permitted by law) from the due date until paid. In addition to interest, the Port may charge and collect as a penalty a late charge equal to five percent (5%) of the amount of the late payment.
- 6.5 Other remedies. In addition to any Late Charges, the Port shall have all other remedies available at law for Tenant's default. Collection of a Late Charge shall not be in lieu of nor be deemed a waiver of the breach caused by the late payment.
- 6.6 Collections: Per ORS.697.105, if Tenant has an overdue balance, it may be assigned to a private collection agency for collection. A collection fee will be added to the Tenant's overdue balance if assigned to a private collection agency per the following schedule:

Balance of \$0 - \$50,000.00 = 50% collection fee
Balance of \$50,001.00 - \$75,000.00 = 40% collection fee
Balance of \$75,001.00 - \$100,000.00 or over = 35% collection fee

7. SECURITY DEPOSIT.

- 7.1 Amount. In addition to payment of First and Last Month's Rent under paragraph 6.1, Tenant shall deposit with Port the sum of \$5,016.00 (1.5 x Base Rent) as security for Tenant's faithful performance and observance of the terms, provisions and conditions of this Lease ("Security Deposit"). Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. Tenant has paid \$5,016.00 to the Port for a security deposit. Tenant consents that \$5,016.00 from previous agreement will be transferred to serve as security deposit for this agreement.
- 7.2 Deductions on Termination. Upon moving out of the Premises, Tenant shall be responsible for the costs to the Port of carpet-cleaning and rekeying the Premises, which amounts will be deducted from the Security Deposit.
- 7.3 Deductions Upon Default. If Tenant defaults on any of the terms, provisions, or conditions of this Lease, including without limitation the payment of Base Rent and Additional Rent when due, Port may use, apply, or retain any part of the Security Deposit required for the payment of costs incurred by Port by reason of Tenant's default, including but not limited to costs to remedy any damages or deficiencies required to be remedied for Port to reenter or relet the Premises. Deductions Upon Default shall be in addition to, and not in lieu of, any Deductions on Termination due under paragraph 7.2 of this Lease.
- 7.4 Deposit Reimbursement. If Port is required to deduct any portion of the Security Deposit in accordance with the provisions of this Lease, upon demand Tenant will immediately reimburse Port for the amount of the Security Deposit so deducted to fully restore the Security Deposit required under paragraph 7.1 of this Lease
- 7.5 Return of Deposit. Except as provided in paragraph 17.4 of this Lease, upon Tenant's full and faithful compliance with all of the terms, provisions, covenants and conditions of this Lease, including but not limited to delivery of possession of the Premises to Port as provided herein, the Security Deposit, less any deductions due to Port in accordance with this Lease, shall be returned to Tenant within thirty (30) days of the effective date of termination.
- 7.6 Attempted Assignment Void. Tenant shall not assign or encumber, or attempt to assign or encumber, the Security Deposit, and neither Port nor its successors or assigns shall be bound by any such assignment, encumbrance or attempted assignment or encumbrance. Any such assignment shall be void.

8. USE OF THE PREMISES.

- 8.1 Permitted Use. The Premises shall be used for a professional medical office ("Permitted Use") and for no other purpose without the consent of Port, which consent shall not be unreasonably withheld. If this use is or becomes prohibited by law or governmental regulation, or the Conditions for Occupancy cease to apply pursuant to Section 4 of this Lease, this Lease shall terminate on thirty (30) days' written notice to Tenant.
- 8.2 Parking. Tenant shall be provided four (4) parking permits which will allow non-exclusive parking adjacent to the 10 Pier 1 Building. In addition, Tenant, its customers, agents and invitees shall have the non-exclusive right to use common parking areas on Port properties. Additional parking permits adjacent to the 10 Pier 1 Building may be purchased from the Port.

8.3 Terms of Use. In connection with the Permitted Use, Tenant shall:

- (1) Comply, at Tenant's sole cost and expense, with all applicable laws, rules, and regulations of Port and any other public authority, including but not limited to complying with all applicable permitting and licensing requirements and all directives and orders issued by any regulatory agency. Unless expressly stated otherwise in this Lease or prohibited by law, penalties for violations of Port rules and regulations shall be in addition to, and not exclusive of, Port's remedies under this Lease.
- (2) Refrain from any activity that would make it impossible for Port to insure the Premises against casualty; increase the insurance rate to the Port; or prevent Port from taking advantage of any ruling of the Oregon Insurance Rating Bureau or successor that enables Port to obtain reduced premium rates for fire and/or casualty insurance policies, unless Tenant pays the additional cost of the insurance as Additional Rent.
- (3) Refrain from any use that would be reasonably offensive to the public or to occupants or users of neighboring premises, or that does or may create a nuisance or damage the structural value or commercial reputation of the Premises. Such uses may include, but are not limited to, causing or permitting the presence or accumulation of garbage, refuse, or other debris that may attract pests or vermin and/or emit a foul odor; obstructing Common Areas, public walkways, parking areas, or any other area outside the Premises; or creating or allowing the presence of any condition that creates a hazard to the health or safety of any person.
- (4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Port.
- (5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Port. Tenant is permitted to hang and/or mount medical equipment and art to walls in suites.
- (6) 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 paragraph 8.1. 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. As used in this paragraph, "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. "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.

9. COMMON AREAS.

- 9.1 Definition. "Common Areas" shall mean any parking areas, roadways, sidewalks, landscaped areas, security areas and any other areas owned by Port and located within or without the Building in which the Premises are located, where such areas have been or may be designated by Port for use by the general public or for tenants' common use.

9.2 Tenant's Use. Tenant, its customers, agents and invitees shall have the non-exclusive right to use Common Areas.

9.3 Port's Rights. With respect to Common Areas, Port reserves the following rights:

- (1) To establish reasonable rules and regulations for the use of Common Areas.
- (2) To close all or any portion of Common Areas temporarily or permanently as needed to achieve Port's business or operational objectives.
- (3) To construct, alter, or remove buildings or other improvements in Common Areas, and to change the layout of such Common Areas, including modifying their shape and size.
- (4) To exercise any of Port's governmental powers over Common Areas.

10. COMMON AREA CHARGE.

Common Area Charge. Costs and expenses incurred by the Port for the repair and maintenance of the Common Areas and the facilities therein, shall be shared by all who benefit from such services (herein the "**Common Area Expenses**"), which term excludes:

- (i) capital improvements;
- (ii) repairs, maintenance and replacements paid for by insurance proceeds or third parties; and
- (iii) costs incurred to remove or remediate any Hazardous Materials existing in, on or under the Property as of the Commencement Date.

Tenant's annual proportionate share of Operating Expenses shall be calculated by multiplying the total Operating Expenses for the Common Area for each year during the lease term by the Tenant's Percentage (as defined below).

The term "Tenant's Percentage" shall mean the percentage, the numerator of which is the number of square feet of the Premises and the denominator of which is the total number of square feet of land owned by the Port and rented to or made available for rent by tenants within the 10 Pier 1 Building area. Please see Exhibit B.

Lessee agrees to pay the Port, within thirty (30) days of billing therefor its pro rata share ("Tenant's Percentage") of the Common Area Expenses, including but not limited to a reasonable allocation of overhead costs (not to exceed five percent (5%) of the expenses being billed) for the Port to manage such Common Areas. Upon written request from the Lessee, Port shall supply reasonable and appropriate supporting documentation for the invoiced Common Area Expenses, but no such request shall act as an extension of the due date for such payment.

11. REPAIRS AND MAINTENANCE.

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

- (1) Routine repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, floors, heating and air conditioning, structural members, floor slabs, and foundation.

- (2) Routine repairs and maintenance of Common Areas' interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, heating and air conditioning, and wiring and plumbing from the exterior to the point of entry to the Premises.
- (3) Routine repairs and maintenance of sidewalks, driveways, curbs, parking areas, and areas used in common by Tenant and Port or tenants of the same Building.
- (4) Routine repairs and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the Premises.
- (5) Respond within a reasonable time to Tenant's written notification to Port of the need for repairs or maintenance under this paragraph.

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

- (1) Repairs and routine maintenance of Premises' interior walls, ceilings, doors, windows, and related hardware and light fixtures.
- (2) Repairs to any area necessitated by the deliberate acts or negligence of Tenant, its agents, employees, or invitees.
- (3) Any repairs or alterations required pursuant to Tenant's obligations under Section 8 of this Lease.
- (4) Provide written notice to Port of the need for repairs or maintenance pursuant to paragraph 10.1. Port's obligation to make such repairs shall not mature until a reasonable time after Port has received such written notice.

11.3 Correction by Tenant. Tenant's obligations under paragraph 10.2 shall be at Tenant's sole expense.

11.4 Reimbursement of Costs. If Tenant fails or refuses to perform its obligations under this Section 10, the Port may, but is not obligated to, complete the maintenance and repairs and charge the actual costs thereof to Tenant as Additional Rent. Tenant shall reimburse Port for such expenditures upon demand, together with interest at the rate of nine percent (9%) per annum from the due date of any and all invoices for such work issued by the Port. Except in an emergency, which for purposes of this Section shall include any circumstance creating an immediate risk of personal injury, property damage, or violation of any applicable environmental regulation, rule, code, ordinance or statute, Port shall provide Tenant with a minimum of five (5) days' written notice outlining with reasonable particularity the maintenance or repairs required. If Tenant fails within that time to initiate or perform to completion such maintenance or repairs, Port may commence work as provided in this paragraph.

11.5 Inspection of Premises. Port shall have the right to inspect the Premises at any reasonable time or times pursuant to paragraph 22.6. However, such inspection shall not be deemed to waive Tenant's obligation to provide notice as provided in paragraph 10.2(4).

11.6 Interference with Tenant. In performing its obligations under this Section, Port shall not cause unreasonable interference with Tenant's use of the Premises. Tenant shall have no right to an abatement of rent nor any claim against Port for any reasonable or necessary inconvenience or disturbance resulting from Port's performance of its obligations under this Section.

12. ALTERATIONS.

COMMERCIAL LEASE AGREEMENT (Revised October 2020)

- 12.1 Consent. Tenant shall make no improvements or alterations of any kind on the Premises without first obtaining the Port's Tenant Improvement Permit. All permitted 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.
- 12.2 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by the Port shall be the property of Port when installed. All improvements and alterations performed on the Premises by the Tenant shall be the property of Tenant when installed and shall become the property of Port upon expiration or termination of the Lease; or, at Port's option, be required to be removed by Tenant at Tenant's expense and the Premises restored to their original or better condition.

13. INSURANCE.

- 13.1 Insurance Required. Before taking possession of the Premises, Tenant shall procure and thereafter during the term of the Lease continue to carry the following insurance coverage at Tenant's expense:
- (1) Worker's Compensation Insurance coverage as required by law.
 - (2) 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 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. The Port allows for Tenant to complete the "Insurance Requirements Questionnaire" to apply for lower insurance limits based on Tenant's business operations. Upon receipt of a completed form, the Port will notify Tenant in writing if they qualify for a lower insurance requirement. The Port reserves the right to request an updated "Insurance Requirements Questionnaire" in the event that the Tenant's business operations change. If Tenant does not complete and submit the "Insurance Requirements Questionnaire", the aforementioned insurance coverage limits will be required.
- Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities under the Lease.
- 13.2 Property Insurance Cost. As Additional Rent, Tenant shall be responsible for its pro-rata share of the property insurance for fire and other property damage maintained by the Port for the Building in which the Premises are located. At the time of execution of this Lease such share shall be assessed at \$0.03/square foot/month, and such amount shall be pro-rated for any year in which Tenant occupies the Premises for only a portion of the year. Port may adjust this assessment from year to year, based upon adjustments to the premium charged to the Port.
- 13.3 Certificates. Prior to occupancy, Tenant shall provide to Port certificates evidencing the policies required in paragraph 12.1, and thereafter on Port's request. Such certificates shall name Port as an additional insured and require that written notice be given to Port a minimum of ten (10) days prior to any change or cancellation of the policy.
- 13.4 Modifications. Port reserves the right to unilaterally modify insurance requirements under 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. Port shall not adjust any specific policy or coverage requirement more frequently than once every calendar year without good cause.

13.5 Additional Security. In addition to the insurance requirements in this Section, the Port may, for good cause, require Tenant to post a bond or other form of security to protect Port assets or otherwise ensure repair of excessive damage specifically attributable to Tenant's use of the Premises, including but not limited to damage to parking lots, driveways, and roads caused or substantially increased by operation of vehicles or equipment.

13.6 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 policy. 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.

14. TAXES AND UTILITIES.

14.1 Property Taxes and Assessments. As a public entity, Port does not pay property taxes, but Tenant may be assessed directly by the County for property taxes specific to the Premises. Tenant shall pay as due all real property taxes and special assessments assessed against the Premises and all taxes on its personal property located on the 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 such payments become past-due.

14.2 Utilities Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including but not limited to charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, internet and janitorial services. If any utility services are provided by or through Port, charges to Tenant shall be comparable with prevailing rates for comparable services. If the charges are not separately metered, Port shall apportion the charges on an equitable basis, and Tenant shall pay its apportioned share on demand. [Tenant is hereby notified that the utilities to the Premises () are (X) are not separately metered. Tenant shall pay to the Port a flat fee of \$120.00 per month for water, sewer, garbage, electric and gas. Phone and internet service are not included.] Utility rates are subject to change. Port will provide thirty (30) days' notice to Tenant of these changes.

15. DAMAGE AND DESTRUCTION.

15.1 Partial Damage. If the Premises are partly damaged and Section 10.2 does not apply, Port shall repair the Premises at Port's expense. Repairs shall be accomplished with all reasonable dispatch, subject to interruptions and delays beyond the control of Port, such as but not limited to labor strikes and extreme weather events.

15.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds fifty percent (50%) of the value of the structure before the damage and Section 10.2 does not apply, either party may elect to immediately terminate the Lease by providing written notice to the other not more than forty-five (45) days following the date of damage. All rights and obligations of the parties shall terminate as of the date of the notice, and Tenant shall be entitled to the reimbursement of any prepaid amounts for the remainder of the Lease term. If neither party terminates as provided in this paragraph, Port shall proceed as soon as reasonably possible to restore the Premises to substantially the same condition as prior to the damage or destruction, without interruption except for work stoppages beyond the Port's reasonable control, such as but not limited to labor strikes and extreme weather events.

- 15.3 Rent Abatement During Repairs. Rent shall be abated during the repair period to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage is the result of Tenant's deliberate or negligent acts.
- 15.4 Damage Late in Term. If damage or destruction to which Sections 14.1 or 14.2 would apply occurs within sixty (60) days before the end of the then-current Lease term, notwithstanding any other provisions in this Lease Tenant may elect to terminate the Lease by providing written notice to Port within thirty (30) days after the date of the damage. Such termination shall have the same effect as termination by Port under Section 2.4.

16. LIABILITY AND INDEMNITY.

- 16.1 Liens. Except for activities for which Port is responsible under the Lease, 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 a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure 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.
- 16.2 Failure to Discharge Lien. If Tenant fails to pay any claims of lien or to discharge any lien upon demand by Port, Port may do so and collect the cost as Additional Rent, which amount shall bear interest at the rate of nine percent (9%) per annum from the date expended by Port. Such action by Port shall not constitute a waiver of any right or remedy which Port may have on account of Tenant's default.
- 16.3 Disputed Liens. Notwithstanding the parties' rights and obligations under paragraphs 15.1 and 15.2, Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, provided Tenant notifies Port in writing of the dispute and bonds around the lien as provided under Oregon law.
- 16.4 Indemnification. Tenant shall indemnify, hold harmless, and defend Port from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant. Port shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises for which Port is not responsible under this Lease.

17. "AS-IS"; QUIET ENJOYMENT.

- 17.1 Condition of Premises. Except as specifically agreed to by the parties under this Lease, Tenant takes the Premises "AS IS," with all faults.
- 17.2 Port's Warranty. Port warrants that it is the owner of the Premises and has the right to lease them. Port warrants that the Tenant shall have the right to quiet enjoyment of the Premises for the purposes described in this Lease, subject to the terms and conditions stated herein.
- 17.3 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.

18. ASSIGNMENT AND SUBLETTING.

- 18.1 Port's Consent to Assignment or Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises 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 be deemed a waiver in a subsequent instance. Port may withhold or condition such consent in its sole and arbitrary discretion.
- 18.2 Release of Liability for Security Deposit Reimbursement. If Port sells or leases to a third party all or part of the Building in which the Premises are located, Port shall have the right to transfer Tenant's Security Deposit to the purchaser 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 such purchaser or lessee for the return of the Security Deposit.

19. DEFAULT.

19.1 By Tenant. The following shall be events of default by Tenant:

- (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 stated in paragraph 6.2 of this Lease. It is the responsibility of Tenant to ensure Port has on record accurate and current contact information, including any special instructions regarding where invoices for charges due under this Lease are to be sent. Tenant's failure to receive an invoice due to incorrect contact information will not relieve Tenant of liability for late fees, interest, or any other charges due under this Lease as a result of late payment.
- (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 under paragraph 18.1(1), within twenty (20) days after the date of Port's written notice to Tenant 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, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable.
- (3) Insolvency. Insolvency of Tenant; 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 paragraph 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.
- (4) Abandonment. Failure of Tenant to occupy the Premises for one or more of the purposes permitted under this Lease for twenty (20) days or more, unless such failure is excused under another provision of this Lease.

19.2 By Port. The following shall be events of default by Port:

- (1) Breach of Obligations. Failure to comply with any of Port's duties and obligations under this Lease within thirty (30) days of receipt of a written notice from Tenant describing with reasonable particularity the basis for the claimed default. If the claimed default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Port begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable.

20. REMEDIES ON DEFAULT.

20.1 Termination.

- (1) Default by Tenant. In the event of a default by Tenant, at its sole option the Port may terminate the Lease by providing thirty (30) days' written notice to Tenant. Whether or not the Lease is terminated under this paragraph, 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. In addition, Port shall be entitled to damages as provided in paragraph 19.2.
- (2) Default by Port. In the event of a default by Port, Tenant may terminate the Lease by providing a minimum of thirty (30) days' written notice of termination to Port. On the effective date of such termination, Tenant's duties and obligations under the Lease, including payment of Rent and Additional Rent, shall be excused, provided Tenant has vacated the Premises and complied with all requirements for Surrender at Expiration as provided in Section 20 of this Lease. Tenant's damages for termination under this paragraph shall be limited to reimbursement of any costs paid in advance to Port, including pre-paid Rent for any unfinished term and Tenant's Security Deposit, less any deductions by Port pursuant to the terms of this Lease. Port shall not be liable to Tenant for any economic nor non-economic damages, including incidental or consequential damages, resulting from or attributable to Tenant's early termination of the Lease under this paragraph.

20.2 Port's Damages. In the event of termination or retaking of possession pursuant to paragraph 19.1(1), 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.

20.3 Reletting. In the event of termination or retaking of possession following default by Tenant, Port may relet the Premises but shall not be required to relet for any use or purpose other than that specified in the Lease or for a purpose 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.

- 20.4 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.
- 20.5 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 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 nine percent (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.
- 20.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Port under applicable law.

21. SURRENDER AT EXPIRATION OR TERMINATION.

- 21.1 Condition of Premises. Upon expiration of the Lease term or earlier termination for 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 depreciation and wear from ordinary use for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.
- 21.2 Fixtures. 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 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.
- 21.3 Personal Property. Except as provided in paragraph 21.2, upon expiration or termination of the Lease Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. Tenant's failure to do so shall be deemed an abandonment of such property, and Port may retain such property and all rights of Tenant in such property shall cease. Alternatively, by notice in writing given to Tenant within twenty (20) days after removal was required, Port may elect to require Tenant to remove the property, or to affect 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.
- 21.4 Holdover. 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. Tenant's failure 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 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.

22. MISCELLANEOUS.

- 22.1 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.
- 22.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party in such suit or action shall be entitled to recover from the other party its reasonable costs incurred in such action as well as attorney fees determined reasonable by the court, at trial, on petition for review, and on appeal.
- 22.3 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.
- 22.4 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.
- 22.5 Recording. This Lease shall not be recorded without the written consent of Port.
- 22.6 Entry for Inspection. Port shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this Lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser. In addition, Port shall have the right, at any time during the last two (2) months of the term of this Lease, to place and maintain upon the Premises notices for leasing or selling of the Building or the Premises.
- 22.7. Proration or Refunding of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of a specified rental period, the Rent shall be prorated as of the date of commencement or termination. In the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.
- 22.8 Severability. If a provision hereof shall be declared void or illegal by any court or administrative agency having jurisdiction over the parties to this Agreement, the entire Agreement 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.
- 22.9 Time of Essence. Time is of the essence of the performance of the parties' obligations under this Lease.
- 22.10 Applicable Laws. This Lease shall be interpreted according to the laws of the State of Oregon without regard to conflict of law provisions. ORS 777.120, ORS 777.258 and U.S.C., Section 46, Chapter 411, shall apply to this Lease.
- 22.11 Entire Agreement. 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. No waiver, consent, modification, or change of terms of this Lease shall bind either party unless in writing and signed by both parties. Any 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, understand it, and agree to be bound by its terms and conditions.

PORT OF ASTORIA:

TENANT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____

Exhibit A

Port of Astoria
10 Pier One, Suites 301 & 303
Astoria, OR 97103



Suite 301 = 1402 sq. ft.

Suite 303 = 270 sq. ft.

(Total Sq. Ft. = 1672)

EXHIBIT B

10 Pier 1 Building CAM



Disclaimer: The information contained in this GIS application is NOT AUTHENTICATED and has NO WARRANTY OR GUARANTEE assuring the information presented is correct. GIS applications are intended for a visual display of data and do not carry legal authority to determine a boundary or the location of these marks, including parcels of land. They are intended as a location reference for planning, including survey management and general information only. The Port of Astoria assumes no liability for any decisions made or actions taken or inaction by the user of the GIS application. The Port of Astoria provides this GIS map on an "as is" basis without warranty of any kind, expressed or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no liability for any errors, omissions, or inaccuracies in the information provided.

Printed 7/8/2021