

Board of Harbor Commissioners

Crescent City Harbor District

18 April 2023

Regular Harbor Commission Meeting



Regular Meeting

Board of Harbor Commissioners of the Crescent City Harbor District

Wes White, President Harry Adams, Secretary
Rick Shepherd, Commissioner; Brian Stone, Commissioner; Gerhard Weber, Commissioner

AGENDA

- Date:** **Tuesday, April 18 2023**
- Time:** **Open Session 2:00 p.m., Closed Session follows**
- Place:** **101 Citizens Dock, Crescent City, CA, and via Zoom Webinar,**

VIRTUAL MEETING OPTIONS

TO WATCH (via online)

<https://us02web.zoom.us/j/6127377734>

TO LISTEN (via telephone)

Dial (669) 900-6833, please enter 612 737 7734# (meeting ID)
or, one tap mobile: +16699006833,,6127377734#

Call to Order

Roll Call

Pledge of Allegiance

Public Comment

This portion of the Agenda allows the public to comment to the Board on any issue not itemized on this Agenda, however, the Board may not take action or engage in discussion on any item that does not appear on the Agenda. Periods when public comments are allowed, Harbor Commissioners will allow attendees to submit questions and/or comments using the Zoom in-meeting chat function. The Harbor Commission asks that members of the public keep questions and comments succinct and relevant.

Regular Session

1. Consent Calendar

- a. Approval of the Meeting Minutes of the April 4, 2023 Regular Meeting.**

2. Comptroller's Report, Review Balances

3. New Business

- a. Review and vote to approve Procurement Policies and Procedures.**
- b. Review and vote to approve 2nd Annual Acton Crescent City Children's Business Fair, showcasing children's entrepreneurial genius!**
- c. Review and vote to approve two-year hoist renewal lease with Pacific Seafood.**
- d. Review and vote to approve new five-year lease for 151 Starfish Way with Pacific Seafood.**

4. Unfinished Business

- a. Review and vote to approve Resolution No. 2023-05 committing up to \$1,943,941 of CCHD provided funding to match \$7,917,766 of federal funding that was awarded under the MARAD 2023 Port Infrastructure Development Program.**
- b. Grants Update**
- c. Dredge Update**

5. Communications and Reports

- a. CEO/Harbormaster Report**
- b. Ad Hoc Committee Reports (as needed)**
- c. Harbor Commissioner Reports**

6. Closed Session

a. CONFERENCE WITH LEGAL COUNSEL – ONGOING LITIGATION

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: One case based on correspondence with Fashion Blacksmith regarding claim for damages.

b. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: One case based on correspondence with Renewable Energy Capital, LLC.

c. CONFERENCE WITH LABOR NEGOTIATORS

(Gov. Code section 54957.6)

Unrepresented Employee: CEO/Harbormaster

District's Designated Representative: Ruben Duran, General Counsel

7. MEETING ADJOURNMENT

Adjournment of the Board of Harbor Commissioners will be until the next meeting scheduled for Tuesday, May 2, 2023, at 2 p.m. PST. The Crescent City Harbor District complies with the Americans with Disabilities Act. Upon request, this agenda will be made available in appropriate alternative formats to person with disabilities, as required by Section 12132 of the Americans with Disabilities Act of 1990 (42 U.S.C. §12132). Any person with a disability who requires modification in order to participate in a meeting should direct such request to (707) 464-6174 at least 48 hours before the meeting, if possible.



1. Consent Calendar

- a. Approval of the Meeting Minutes of the April 4, 2023 Regular Meeting.**

Public Comment?

**Regular Meeting Minutes of the
Board of Harbor Commissioners of the Crescent City Harbor District**

Harbor District Office, 101 Citizens Dock Road
Crescent City, CA 95531

April 4, 2023
2:00 p.m.



Board of Harbor Commissioners of the Crescent City Harbor District

MINUTES

Open Session, Tuesday April 4, 2023 at 2:00 P.M.

CALL TO ORDER: 2:00 PM

ROLL CALL:

<i>PRESENT:</i>	<i>President</i>	WES WHITE
	<i>Secretary</i>	HARRY ADAMS
	<i>Commissioner</i>	RICK SHEPHERD
	<i>Commissioner</i>	BRIAN STONE
	<i>Commissioner</i>	GERHARD WEBER

ABSENT: NONE

QUORUM: YES

PLEDGE OF ALLEGIANCE:

PUBLIC COMMENT:

President White **moved** to add an urgent item to the meeting's agenda. President White explained that it was necessary to consider whether the Farmer's Market (operated by Rural Human Services, RHS) should be permitted to operate for another season in 2023. The agenda item was required to be considered on an urgent basis in order to coordinate with RHS timelines. Commissioner Stone **seconded** the motion to add the matter as an urgent agenda item.

POLLED VOTE was called, **MOTION CARRIED:**

AYES: STONE, WEBER, ADAMS, SHEPHERD, WHITE // **NAYS:** NONE

ABSENT: NONE // **ABSTAIN:** NONE

Having agreed to consider the matter on an urgent basis, the Board next discussed the merits of having the Farmer's Market return to the Harbor for another season and whether any terms or conditions needed to be adjusted.

The Board engaged in discussion with Angel Hanson, who was representing RHS. Ms. Hanson clarified certain proposed changes for the 2023 season. One significant proposed change was to operate the market without certification by the California Department of Food and Agriculture. Certification had been included as a feature of previous Farmer's Markets in the Harbor, verifying compliance with Dept. of Food & Ag. Standards, which some consumers prefer.

However, certification had also restricted the market in ways that were undesirable for Del Norte consumers, such as prohibiting the sale of Oregon grown produce, and prohibiting the sale of products that were not directly produced by market participants (i.e. resale items). In order to allow for greater flexibility, RHS decided to change to a non-certified status for the upcoming season. President White **moved** to approve the Farmer's Market for 2023.

A question was raised as to whether political merchandise would be allowed to be sold. Ms. Hanson stated that such merchandise would be allowed under the newly revised rules.

Commissioner Weber made an alternative motion to approve the Farmer's Market with additional conditions. Commissioner Weber **moved** that political organizations be allowed to operate in a designated space adjacent to the market that would be (1) in a location that was easily noticeable and accessible by Farmer's Market participants, and (2) in a location that was defined by clearly observable boundaries (comparable in size to Farmer's Market vendors). The intention was to avoid problems in the past where political booths were relegated to locations that were too far away from the Farmer's Market (e.g. a grassy area located away from the main parking lot), and areas that were sometimes impeded by having crab pots in the way.

President White **seconded** the alternative motion made by Commissioner Weber. President White then opened up public comment. No members of the public commented.

POLLED VOTE was called, **MOTION CARRIED:**

AYES: ADAMS, STONE, SHEPHERD, WEBER, WHITE // **NAYS:** NONE

ABSENT: NONE // **ABSTAIN:** NONE

1) COMPTROLLER'S REPORT/ REVIEW BALANCES

Comptroller Thomas Zickgraf presented his report and reviewed account balances with the Board. Comptroller Zickgraf noted little change in balances from the last meeting, and reminded the Board of an upcoming Third Quarter Review to be conducted in May.

Comptroller Zickgraf raised an issue of unusually harsh weather impacting AR collections. CEO/Harbormaster Petrick explained that foul weather had impeded fishing operations and thereby left many fishermen without typical revenue. Consequently, a higher number of fishermen were unable to make timely payments.

2) NEW BUSINESS

2A) Review and vote to approve Resolution No. 2023-04 regarding a MARAD 2023 Port Infrastructure Development Program Grant.

Commissioner Stone **moved** to approve Resolution 2023-04. Commissioner Adams **seconded** the motion.

POLLED VOTE was called, **MOTION CARRIED:**

AYES: STONE, WEBER, ADAMS, SHEPHERD, WHITE // **NAYS:** NONE

ABSENT: NONE // **ABSTAIN:** NONE

3) UNFINISHED BUSINESS

3A) Grants Update

Michael Bahr reported to the Board on the current status of multiple grants the Harbor was applying for. No members of the public commented.

4) COMMUNICATIONS AND REPORTS

4A) CEO/Harbormaster Report

CEO/Harbormaster Petrick reported that many legal issues were consuming much of his time. He also reported on an Easter Egg Hunt that was coming up. Many vendors had committed to participating, and special activities were planned, such as a T-shirt design contest. Mr. Petrick also discussed a local Chamber of Commerce/Visitors Bureau Mixer that would be hosted by the Harbor, scheduled for April 20th, 2023.

4B) Harbor Commissioner Reports

- a. Commissioner Stone reported on the Tri-agency, which had set a meeting with the KRRC group to discuss siltation in the Harbor in relation to removal of dams on the Klamath River.
- b. Commissioner Shepherd reported that he was spearheading buoy placement for the fishermen.
- c. Commissioner Weber reported that he found a copy of a letter from Caltrans to former Harbormaster Charlie Helms, stating that Caltrans would provide assistance constructing a pathway. Commissioner Weber asked for the matter to be put on the agenda for a future meeting.
- d. Commissioner Adams reported on successful planning activities for an upcoming Easter Egg Hunt, with many sponsors, vendors and volunteers committed to attend the event.
- e. President White reported on utility electricity balancing areas and how state lines create artificial electricity transmission barriers solely for political reasons. Because there are important practical reasons to transmit electricity freely across state lines, efforts are underway to remove political barriers.
President White created a new “signage” committee and assigned Commissioners Adams and Weber to serve on the committee.

5. Closed Session

a. CONFERENCE WITH LEGAL COUNSEL – ONGOING LITIGATION

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: One case based on correspondence with Fashion Blacksmith regarding claim for damages.

b. CONFERENCE WITH LABOR NEGOTIATORS

(Gov. Code section 54957.6)

Unrepresented Employee: CEO/Harbormaster

District’s Designated Representative: Ruben Duran, General Counsel

6. MEETING ADJOURNMENT

ADJOURNMENT TO THE BOARD OF HARBOR COMMISSIONERS NEXT REGULAR MEETING SCHEDULED FOR TUESDAY, APRIL 18, 2022 AT 2 P.M., VIA ZOOM WEB CONFERENCE AND IN-PERSON AT THE MAIN HARBOR OFFICE, LOCATED AT 101 CITIZENS DOCK ROAD.

Approved this ____ day of _____, 2023

Wes White, President

Harry Adams, Secretary



2. Comptroller's Report, Review Balances

Public Comment?



Thomas Zickgraf, Comptroller
Crescent City Harbor District
101 Citizens' Dock Road
Crescent City, CA 95531
www.ccharbor.com
Phone: 707-464-6174
Email: tzickgraf@ccharbor.com

COMPTROLLER'S REPORT

04-19-2023 Harbor Commission Meeting

For additional information
Please contact Thomas Zickgraf
via Telephone 707.266.7204
or email tzickgraf@ccharbor.com
prior to or after the
04-19-2023 Board Meeting

CRESCENT CITY HARBOR DISTRICT
MARCH 2023 INCOME STATEMENT

	AMOUNT
CCHD OPERATING ACCOUNT	\$ 149,422
CCHD SAVINGS ACCOUNT	\$ 5,021
RV - REDWWOD	\$ 5,198
RV - BAYSIDE	\$ 15,054
RESERVE LAIF	\$ 890,873
LESS VENDOR PAYMENTS - UNCLEARED CHECKS	\$ (18,854)
TOTAL CHECKING / SAVINGS	\$ 1,046,715
AR CURRENT	\$ (13,490)
TAX PROCEEDS RECEIVABLES	\$ 325,000
TOTAL CURRENT RECEIVABLES	\$ 311,510
TOTAL CURRENT ASSETS	\$ 1,358,225
SCHEDULED PAYROLL, ESTIMATED	\$ (35,000)
ACCOUNTS PAYABLE & SCHEDULED PAYMENTS	\$ (71,202)
TOTAL NEAR-TERM LIABILITIES	\$ (106,202)
TOTAL ADJUSTED LIQUIDITY	\$ 1,252,023
RESERVE: USDA LOAN	\$ (276,000)
RESERVE: SCHEDULED IMPROVEMENTS	\$ (30,000)
RESERVE: MATCH FUNDS SLC GRANT	\$ (321,000)
RESERVE: FASHION BLACKSMITH	\$ (50,000)
TOTAL: RESERVE PROJECT FUNDS	\$ (677,000)
TOTAL UNRESTRICTED / NEAR-TERM LIQUIDITY	\$ 575,023
AR SUMMARY	
COMMERCIAL CURRENT	\$ 704
MARINA CURRENT	\$ 6,097
RV CURRENT	\$ 385
ELECTRIC QUARTERLY BILLING	\$ 89
0 TO 30 DAYS LATE	\$ 9,788
31 TO 60 DAYS LATE	\$ 2,692
TOTAL CURRENT AR	\$ 19,052
PREPAID COMMERCIAL	\$ (28,818)
PREPAID ELECTRICAL	\$ (1,383)
PREPAID MOORAGE	\$ (2,659)
PREPAID RV	\$ (385)
LESS TOTAL PREPAID AR	\$ (33,246)
ADJUSTED CURRENT AR	\$ (14,194)
DOUBTFUL AR / BAD DEBT	
MARINA REVOCATIONS / SMALL CLAIMS	\$ 31,013
RV EVICTIONS / DOUBTFUL COLLECTIONS	\$ 22,972
TOTAL DOUBTFUL AR	\$ 53,985

ACCOUNT	AMOUNT
Commercial Concessions	\$ 1,017.12
Commercial Utilities	\$ 176.00
Freezer Commercial	\$ 888.00
Hoist Commercial	\$ 2,040.00
Leases Commercial	\$ 112,065.56
Poundage Fees	\$ 32,155.55
TOTAL COMMERCIAL	\$ 148,342.23
Moorage Income	\$ 34,759.44
Marina Fees and Sales	\$ 1,375.00
Gift Shop Sales	\$ 214.69
Events	\$ 375.00
Key FOB Fees	\$ 140.00
Late Fees	\$ 825.00
Launch Ramp Fees	\$ 370.00
Live-a-board fees	\$ 525.00
Mobile Crane	\$ 712.50
No Insurance Fee Revenue	\$ 2,200.00
Retail Storage Fee	\$ 6,288.50
Utility Reimbursements	\$ 5,728.89
Work Dock	\$ 775.00
TOTAL MARINA	\$ 54,289.02
Leases Bayside	\$ 13,215.00
Leases RHV-RV	\$ 13,260.00
Bayside Freezer	\$ 20.00
RHV Fees	\$ 180.00
TOTAL RV	\$ 26,675.00
COGS: GIFT SHOP	\$ (76.00)
COGS: LAUNDRY	\$ (927.00)
LESS COGS	\$ (1,003.00)
TOTAL INCOME	\$ 228,303.25
Bank Fees and Surcharges	\$ 3,577.01
Fuel Expenses	\$ 2,057.29
Insurance Expenses	\$ 8,521.39
Office Equipment Leases	\$ 369.49
Office Expenses	\$ 808.09
Outside Services	\$ 15,626.47
Promotions and Advertising	\$ 568.00
Repairs and Maintenance	\$ 8,210.54
Supplies and Small Tools	\$ 6,218.80
Travel Expenses	\$ 4,764.81
Truck Leases and Auto Expenses	\$ 7,849.82
Uniform Expenses	\$ 165.07
Utilities Propane	\$ 1,253.26
Utilities Telephone	\$ 798.45
Webhosting and Wifi Connection	\$ 780.26
WiFi Subscriptions and Software	\$ 5,991.23
TOTAL OPERATING EXPENSES	\$ 67,559.98
IT Support Services	\$ 1,400.00
Legal - Attorneys	\$ 31,377.23
Legal - Non Attorneys	\$ 1,000.00
Legal - Reimbursements	\$ 880.68
TOTAL PROFESSIONAL SERVICES	\$ 34,657.91

Payroll Wages & Salaries	\$	69,278.90
Payroll Taxes Employer	\$	8,135.82
HR & Payroll Services	\$	2,290.00
Calpers Medical	\$	14,377.44
Calpers Retirees Medical	\$	3,798.06
Calpers Retirement	\$	3,322.91
Calpers Additional	\$	5,564.33
Dental Benefits	\$	487.50
Life Insurance	\$	186.30
Rescue - Air Ambulance Benefit	\$	715.00
Vision Insurance	\$	224.30
Worker's Comp	\$	2,636.72
TOTA PAYROLL EXPENSES	\$	111,017.28
TOTAL EXPENSES	\$	213,235.17
GROSS PROFIT / LOSS	\$	15,068.08
LESS DEPRECIATION	\$	(306,000.00)
NET PROFIT / LOSS	\$	(290,931.92)
ADDITIONAL INCOME (Donations)	\$	600.00
ADJUSTED NET PROFIT / LOSS	\$	(290,331.92)



3. New Business

- a. Review and vote to approve Procurement Policies and Procedures**

Public Comment?



Crescent City Harbor District Procurement Procedures

In order to meet the requirements established by Federal and State agencies which make grant awards to the Crescent City Harbor District, the following procurement procedures are to be used for procurement under all federal and state grants awards.

The procedure set forth in this document establish standards and guidelines for the procurement of supplies, equipment, construction, and services to ensure that they are obtained as economically as possible through an open and competitive process, and that contracts are managed with good administrative practices and sound business judgment. The procedures are intended to ensure compliance with federal and state procurement guidelines including 2 CFR 200 requirements.

CCHD Procurement “Best Practice” Summary For Good and Services

For procurements under \$1,000, the decision may be made by CCHD Officers.

For procurements from \$1,000 to \$9,999, prior approval must be obtained from the CCHD Officers.

\$10,000- \$49,999 – sole source can be awarded with a finding of why that vendor was chosen.

\$50,000 – \$99,999 – can use formal or informal competitive process. Need three quotes. You can pick which vendor best meets needs of Harbor District.

\$100,000- up: Must follow formal competitive process

Procurement Code of Conduct

A Procurement Code of Conduct shall govern the performance, behavior, and actions of CCHD, including Board members, employees, directors, volunteers, or agents who are engaged in any aspect of procurement, including – but not limited to – purchasing goods and services; awarding contracts and grants; or the administration and supervision of contracts.

1. No employee, officer, director, volunteer, or agent of CCHD shall participate in the selection, award or administration of a bid or contract supported by Federal or State funds if a conflict of interest is real or apparent to a reasonable person.
2. Conflicts of interest may arise when any employee, officer, director, volunteer, or agent of CCHD has a financial, family, or any other beneficial interest in the vendor firm selected or considered for an award.
3. No employee, officer, director, volunteer or agent of CCHD shall do business with, award contracts to, or show favoritism toward a member of his/her immediate family, spouse's family or to any company, vendor or concern who either employs or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of Federal, State and local procurement laws and policies established to maximize free and open competition among qualified vendors.
4. CCHD's employees, officers, directors, volunteers or agents shall neither solicit nor accept gratuities, gifts, consulting fees, trips, favors or anything having a monetary value in excess of \$520 from a vendor, potential vendor, or from the family or employees of a vendor, potential vendor or bidder; or from any party to a sub-agreement or ancillary contract.
5. As permitted by law, rule, procedure, or regulation, CCHD shall pursue appropriate legal, administrative, or disciplinary action against an employee, officer, director, volunteer, vendor or vendor's agent who is alleged to have committed, has been convicted of or pled no contest to a procurement related infraction. If said person has been convicted, disciplined, or pled no contest to a procurement violation, said person shall be removed from any further responsibility or involvement with grants management, procurement actions or bids, consistent with Federal or State procedures.

Solicitation and Competition

All procurement transactions will be conducted to provide – to the maximum extent possible – free and open competition among suppliers in accordance with 2 CFR 200.319. CCHD must begin with an analysis of the need for the procurement, to avoid the purchase of unnecessary or duplicate items (this may include an examination of lease versus purchase alternatives). The purchaser must then identify and clearly specify standards for the goods or services desired and seek competitive offers where possible to obtain the best possible quality at the best possible price.

In general:

- Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted and market prices, together with discounts.
- Informal Bidding Procedures are contained in CHAPTER 10 – INFORMAL BIDDING PROCEDURES FOR PUBLIC PROJECTS, as part of CCHD Ordinance 50-21, Articles Number I and II.
- Micro-purchases, procurements under \$1,000, may be awarded without soliciting competitive price or rate quotations. Purchase price should be reasonable based on research, experience, purchase history or other information and documents. To the maximum extent practicable, micro-purchases should be distributed equitably among qualified suppliers.
- Small purchases, procurements from \$1,000 to \$9,999, may be made without bid for the acquisition of property or services, if the aggregate dollar amount threshold does not exceed the bid acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- For medium size purchases, from \$10,000- \$49,999, a formal or informal competitive process can be used. In addition, a sole source purchase agreement for goods and services can be awarded by the CCHD board with a finding of why that vendor was chosen and why a sole source purchase was in the best interest of the Harbor District.
- For large purchases, those in the \$50,000 - \$99,999, a formal or informal competitive process can be used. CCHD must solicit at least three quotes for the services or goods to be purchased. CCHD can pick the vendor which best meets the needs of the Harbor District.
- For very large purchases of \$100,000 and up, formal bids must be sought for both goods and services exceeding \$100,000, Competitive bids will be utilized and requests for these bids will be written in a way that does not restrict competition. This will include engaging in ways to ensure small businesses, minority-owned firms, and women's business enterprises have the opportunity to respond to solicitations.
- Bids will include formal procurement methods which require public advertising of the services or purchase needed.
- The invitation for bids must define the items or services and include any product/service specifications or pertinent attachments in order for the bidder to properly respond.
- A clear and accurate description of the technical requirements for the material, product, or service to be procured; all requirements which offerors must fulfill; and all other factors to be used in evaluating bids or proposals. Such description must not contain features which unduly restrict competition.

To protect the integrity of the bidding process, no bidder must be given a real or perceived advantage over any other bidder. CCHD will use the following guidelines to ensure that any information provided to one bidder is also provided to all other potential bidders for a particular project.

- Only designated Organization personnel must answer bidder inquiries.
- Before bid opening, CCHD will allow a minimum of 3 weeks for respondents to prepare their bids.
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
- Any or all bids may be rejected if there is a sound documented reason.
- Procurement files must include the following:
 - Basis for contractor selection.
 - Basis of award cost or price.
 - Justification for lack of competition when competitive bids or offers were not obtained. (For items over \$100,000, noncompetitive procurement can only be awarded if all circumstances under CFR 200.320 (c) apply.
- Whenever possible, CCHD must engage in affirmative efforts to utilize small businesses, minority-owned firms, and women's business enterprises.
- Price should be one of the factors in the evaluation of responses, but CCHD is not required to take the lowest price if other factors are important to the decision.
- There should be an objective method for selection, and any factors for evaluation and selection should be listed in the procurement documents.
- Awards shall be made to the bidder or offeror whose bid is responsive to the solicitation and is most advantageous to CCHD (price, quality, and other factors considered).
- A bid may be rejected when it is in CCHD's interest to do so.

Procurement Dispute Resolution

This policy defines a dispute resolution process for procurement under CCHD's procurement authority. A dispute process provides a mechanism to review a bidding or RFP process, if a participating supplier believes the process was not conducted in accordance with CCHD's procurement policies and disputes the award. This applies to sealed bids or request for proposals for service contracts that exceed the sealed bidding threshold.

The dispute language contained in this document shall be incorporated into sealed bids and requests for proposals, for services, valued over the sealed bidding threshold.

All Sealed Bids and RFPs shall contain the following language:

“Any dispute of the Crescent City Harbor District award must be made in writing no later than five (5) working days after the Crescent City Harbor District issues the intent to award notice. Written notice of dispute must be filed with the Chief Executive Officer in care of:

Chief Executive Officer
Crescent City Harbor District
101 Citizens Dock Road
Crescent City CA, 95531

A complete written dispute must be received by the Chief Executive Officer citing specific policy violations no later than five (5) working days after the award notice is issued. The Chief Executive Officer will resolve the dispute. If the dispute is not resolved, it can be appealed to CCHD’s Board for final disposition.

If there are concerns with the specifications or requirements of a sealed bid/ RFP, those concerns must be raised at the time of the issuance to be resolved. Disputes regarding a sealed bid for services or RFP issued by CCHD, shall be made to the Chief Executive Officer. A protesting supplier must have standing in the bid/RFP process, by having submitted a bid or proposal. The supplier must identify the alleged procurement policy violation in their letter of dispute.

The Chief Executive Officer has the authority to resolve and settle the dispute concerning the intent to award a contract. If the dispute is not resolved by mutual agreement, Chief Executive Officer will issue a decision in writing to the supplier with a copy to CCHD’s Board.

The supplier may appeal the decision of the Chief Executive Officer to CCHD’s Board within five working days of issuance of the decision.

The decision of CCHD’s Board will be final.

Items not subject to procurement dispute include:

- Concerns regarding specifications of a bid or the requirements in an RFP (which must be raised at time of issuance of the bid or RFP)

- Judgment of proposal evaluators for RFPs

If a supplier has concerns regarding specifications of a bid or the requirements in a RFP, the supplier shall notify CCHD of any concerns with the specifications or requirements at the time of the bid or RFP is issued.

If a supplier sends a letter of complaint, the Chief Executive Officer should reply and attempt to address the concerns in the letter. A letter of complaint does not invoke the formal dispute process.

Documentation

At a minimum, procurement records must clearly show how CCHD:

- Executed price sampling for small purchases.
- Selected the method of procurement and the type of contract to be used.
- Determined which bids or proposals to accept and which to reject.
- Determined the basis for the contract cost or price.

Contract Administration

CCHD has an overall system of contract administration to ensure proper oversight and management of procurement actions. CCHD is responsible for evaluating contractor performance and documenting, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract. This may include progress inspections, interim products, inspection of goods delivered, and other such methods that provide assurance that the goods or services purchased are being delivered within the scope of the contract.

CCHD's contract administration system must ensure that:

- The method of procurement is documented, and records maintained for five years after final payment is made.
- All activities are carried out and costs are incurred in compliance with applicable requirements.
- Before payment is made, services performed are adequate and consistent with the contract scope of services.



3. New Business

- b. Review and vote to approve 2nd Annual Acton Crescent City Children's Business Fair, showcasing children's entrepreneurial genius!**

Public Comment?



2nd Annual Crescent City Acton Children's Business Fair

2nd Annual Acton Crescent City Children's Business Fair, showcasing children's entrepreneurial genius!

On June 10, 2023 from 10am-1pm, the 2nd annual Acton Crescent City Children's Business Fair will host several entrepreneurial children from our community.

Setup will begin at 8 am. An awards ceremony will take place following the fair and then cleanup. I would like to host this event at the Old Englund Marine Building. Therefore, I am requesting a permit/access to this building on June 10, 2023 from 8am-3pm.

This event is FREE and OPEN TO THE PUBLIC.

Children create a product or service, develop a brand, build a marketing strategy, and then open for customers at this one-day marketplace. The children are responsible for the setup, sales, and interacting with customers, and any parent seen selling to the customer or promoting the child's product will result in disqualification from the competition.

Cash prizes of \$60 will be awarded in each of the four age groups (5-7, 8-10, 11-12, and 13- 14) for "Most Business Potential," "Most Creative Idea," and "Most Impressive Presentation."

This event is sponsored by Acton Academy, the Acton Next Great Adventure, and the generous support of our donors and volunteers, who all believe that principled entrepreneurs are heroes and role models for the next generation.

Please contact me at 707-458-5958 or anninehmer@gmail.com.

A handwritten signature in black ink, appearing to read "Annie Nehmer".

Annie Nehmer



3. New Business

- c. Review and vote to approve two-year hoist renewal lease with Pacific Seafood.**

Public Comment?

Hoist No. 7 Space Lease



This Lease is entered into the last day shown below between the **Crescent City Harbor District**, a public agency (“Landlord”), and **Pacific Seafood – Eureka, LLC, an Oregon limited liability company whose number is C1586978** (“Tenant”). Tenant’s present statistics are as follows:

Tenant’s Full Name: Pacific Seafood – Eureka, LLC, an Oregon limited liability company whose number is C1586978

Corporate Headquarters: 16797 SE 130th Avenue, Clackamas, OR 97015

California Office: 1 Commercial Street, Eureka, CA 95501

Phone: 707-442-2981, 503-905-0500

E-Mail: rharris@pacificseafood.com; jcincotta@pacificseafood.com

LANDLORD AND TENANT AGREE:

1. Premises

(a) For and in consideration of the rent to be paid and the covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to the Tenant, and the Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly set forth in this Lease, the “Premises” are described as **Hoist Space Number Seven (7)** on Citizens Dock (the “Dock”) in the County of Del Norte, State of California, more particularly illustrated in Exhibit A, attached hereto and incorporated by this reference, **and two (2) freezer spaces**. Tenant shall have the right to place **two hoists** within Hoist Space Number 7 of the Premises. Tenant shall have the exclusive right to possession of the space taken up on the Dock by the base of Tenant’s hoist, any office space located within the Premises, freezer space as allocated by this Lease, and for temporary storage containers so long as they do not unreasonably impede access through the Premises by vehicles and pedestrians for other harbor related activities. Placement of storage containers outside the boundary shown on Exhibit A is prohibited.

As to the remainder of the Premises, for the term of this Lease, Landlord grants Tenant and its employees, agents, customers and invitees, the nonexclusive right, in common with Landlord and all others to whom Landlord has or may grant the right, to use the Common Areas, subject to Tenant's compliance with any rules and regulations enacted or modified by Landlord that govern the use of the Common Areas. "Common Areas" means the space within the Premises excepting those areas to which Tenant is granted the exclusive right of possession, above. "Common Areas" is more fully defined in Article 9, herein. Tenant shall also have the nonexclusive right to use in common with Landlord, other tenants in the harbor and their employees and invitees, Landlord's common entrances, restrooms, parking lot and similar areas and facilities in the vicinity of the Premises that are not leased to other tenants, subject to Landlord's regulation of those facilities. Tenant shall not store anything off the Premises on Landlord's property.

All vehicles using the parking lots shall be operable and removed from the harbor's parking lots and other areas on a daily basis. Vehicles longer than twenty-three feet shall not be allowed in the harbor unless they are conducting transient loading and unloading. For such transient loading and unloading vehicles, any vehicle that exceeds thirty feet in length, including its semi-trailer, is hereafter referred to as a "Truck". All Trucks that are doing any business with Tenant shall be on the Dock only when they are actively loading or unloading. If the Truck is waiting, it shall be parked in the boat basin parking lot. Trailers shall never be disconnected from the motor truck or truck tractor. Trucks shall back out on Citizen's Dock. Trucks are prohibited from attempting to U-turn on the Dock. Trucks are prohibited from being left unattended. Additionally, Trucks doing business with the Tenant are prohibited from parking between the "Y" intersection of the Dock and the entrance of the Dock excepting the unloading area below the fuel dock.

(b) The rights of Tenant under this Lease are subject to and subordinate to any general obligation, bond, Certificate of Participation, loan or other indebtedness of the Landlord now in existence or hereafter created.

2. Term

The term of this Lease shall be for a period of twenty-four (24) months, commencing on the **1st day of January, 2023, and expiring at midnight on the 31st day of December, 2024**, unless terminated earlier or extended as provided in this lease. Any holding over by Tenant after the expiration of said term shall not constitute a renewal hereof but the terms hereof shall continue in force and effect on a month-to-month basis, except that the agreed upon base rent shall increase to 150% of the monthly rent in effect on December 31st, 2024.

3. Rent

(a) For each hoist space, Tenant shall pay Landlord a **basic minimum** rent in the sum of **fifteen thousand dollars (\$15,000)** in the aggregate for the first 12 months of the Lease term, and **eighteen thousand dollars (\$18,000)** in the aggregate for the period commencing with month 13 and ending with month 24 of the Lease term. These sums may, in the sole discretion of Tenant, be apportioned into equal monthly payments, in which case Tenant shall pay Landlord the sum of **one thousand two hundred and**

fifty dollars (\$1,250) per month, for the first 12 months of the Lease term and **one thousand five hundred dollars (\$1,500)** per month, for months 13 through 24 of the Lease term, payable on the first day of each calendar month. All such payments must be made in lawful money of the United States of America (“Minimum Rent”). The beginning of the 24-month Lease term shall commence on January 1, 2023. Each monthly installment of Minimum Rent shall be paid in advance, without prior demand by Landlord, and without any deduction, abatement, diminution, offset, or reduction or setoff. If the Minimum Rent payable under this lease is abated for any portion of any month pursuant to the terms of this Lease, the amount of the monthly installment of Minimum Rent for that month shall also be adjusted on a per diem basis calculated on a 30-day month. All rent payable under this Lease shall be paid (1) to Landlord at the address set forth in this Lease for giving notices to Landlord as may be changed by written notice from time to time, or (2) to Landlord's agent at the address designated in writing by Landlord.

(b) As **additional rent**, Tenant shall pay to Landlord the following amount per pound (poundage fees), for all seafood products unloaded or moved on or over the areas leased by Tenant, which areas include the Premises as well as the Fish Processing Plant (which each pound to be accounted for only once):

Species Unloaded or Moved in Dollars per Pound

All species of Tuna.....	\$0.0099
All species of Crab	\$0.022
All species of Salmon.....	\$0.033
Pink Shrimp (<i>Pandalus jordani</i>).....	\$0.00275
Coonstripe Shrimp (<i>Pandalus danae</i>).	\$0.0275
All trawl caught groundfish.....	\$0.0044
Pacific Whiting/Hake (<i>Merluccius productus</i>)	\$0.000275
Nearshore groundfish caught by hook & line (<i>Cabezon & Kelp Greenling, Rockfish: Black, Blue, Brown, China, Copper, Quillback, Gopher, Yelloweye, Black & Yellow, Grass</i>).....	\$0.01375
Sablefish caught with fixed gear (<i>Anoplopoma fimbria</i>).....	\$0.0165
All other species	\$0.0055

The poundage fees indicated above will vary annually, as established by Landlord’s fee schedule published on Landlord’s public website (www.ccharbor.com and/or www.ccharbor.ca.gov). The aggregate poundage fees will not be less than \$3,000 per year, per hoist space. This minimum fee is meant to incentivize tenant to make productive use of each hoist space. By the due date for

payment of the poundage-based additional rent, Tenant shall prepare and provide to Landlord a summary of the previous month's landing receipts showing the cumulative total of the following information compiled from the landing receipts detailing all of the following: (1) The accurate weight of the species of fish received, as designated pursuant to California Fish and Game Code § 8045. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight; and (2) The price paid. When reasonably requested by Landlord, Tenant shall provide Landlord with a photocopy of each landing receipt completed by Tenant pursuant to California Fish and Game Code §8043. If Tenant generates an automated report that complies with this paragraph, a copy of the automated report provided to Landlord shall suffice rather than a separate report by Tenant. Notwithstanding the foregoing duty to disclose landing receipt information, Tenant hereby specifically waives any privilege or confidentiality that it may have with the California Department of Fish and Game, National Marine Fisheries Service and Pacific States Marine Fisheries Commission as Tenant's landing receipts submitted to such agency to assist Landlord in auditing Tenant's submissions to further assure the accuracy of the information received. Tenant agrees to execute any further documents necessary for the Department of Fish and Game, National Marine Fisheries Service and Pacific States Marine Fisheries Commission to release information relating to Tenant's landings. This additional rent shall be due for all landings that occurred. **The poundage-based additional rent that accrues in any month is not payable to Landlord on the date the next minimum rent is payable, but shall instead, be paid at the following minimum rent due date. For instance, when tenant pays rent due on September 1st, it shall also pay the additional rent due for landings that occurred during the month of July.**

(c) Any undisputed rent due under this Lease not paid to Landlord on the due date hereunder or within five (5) days of any such due date, shall bear interest at the rate shown on Landlord's annual schedule of fees, or the highest lawful rate, whichever is greater, from the due date and payable until the same shall have been fully paid, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. Tenant hereby acknowledges that the late payment by Tenant to Landlord may cause Landlord to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs may include, but are not limited to, administrative processing, accounting charges, late charges that may be imposed on Landlord from third parties. Accordingly, if any installment of rent, or any other sum due from Tenant, shall not be received by the tenth day of the month, Tenant shall pay to Landlord, in addition to interest provided above, a late charge of two and a half percent (2.5%) of the amount unpaid.

The parties agree that such late charge represents a fair and reasonable estimate of the cost Landlord will incur due to late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights or remedies hereunder. Any payment, of any kind, returned for insufficient funds will be subject to an additional handling charge in the sum shown on Landlord's annual schedule of fees, from time to time amended.

Landlord shall have the right to accept all rent and other payments, whether full or partial, and to negotiate checks and payments thereof without any waiver of rights, irrespective of any conditions to the contrary sought to be imposed by Tenant.

4. Use

(a) The Premises shall be utilized for the purpose of receiving and unloading seafood products and indicated uses, and use of any building on the Premises for office space connected with such activities, and use of a designated freezer space. Tenant may not use the Premises or permit the Premises to be used for any other non-related purpose.

(b) Tenant shall ensure that all activities being engaged in by Tenant and/or Tenant's employees, licensees, subtenants, visitors, patrons, guests or invitees shall be conducted free from negligence in a reasonably careful manner to prevent harm to oneself or to others.

(c) Tenant shall at all times keep the Premises (including the interior and exterior business front surfaces) and walking surfaces on the Dock in a reasonably clean, safe, sanitary, and orderly condition. Tenant shall have the duty to repair any defective or dangerous walking surfaces fronting on the Premises. At its sole expense, Tenant shall replace any cracked or broken glass on the Premises with glass equal in quality and similar in kind to that originally installed on the Premises. Whenever a Tenant is actively loading and/or unloading vessels, Tenant shall have a two cubic yard dumpster to receive its waste. The dumpster shall be emptied at least once per week.

(d) Tenant shall comply with all statutes, ordinances, resolutions, policies, directives of the Harbor Commissioners, laws, regulations and general plans now in effect and hereafter promulgated by any agency having jurisdiction over the Harbor District and/or the Premises and the activities thereon. If any license (including, but not limited to, Commercial Fish Business License, Fish Receiving License, Fisherman's Retail License, Fish Processor's License, Fish Wholesaler's License or Fish Importer's License, Coast Guard Certificate of Adequacy for Reception Facilities), permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, Tenant shall procure and maintain it throughout the term of this lease. The final, non-appealable judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Landlord and Tenant and shall constitute grounds for termination of this lease by Landlord.

(e) Tenant and Tenant's guests and invitees shall use the premises and common areas of Citizens Dock so as not to block or interfere with access or use by the public and other tenants of the Dock. Tenant shall comply with the reasonable directives of Landlord regarding use of the common areas of Citizens Dock.

Tenant and its employees shall park only in those areas that are designated by Landlord as parking areas.

(f) Notwithstanding the foregoing, Tenant shall not use and shall not permit or suffer the Premises or any portion of the Premises or the hoist to be used, improved, developed, or occupied in any manner or for any purpose that will in any way conflict with any applicable law, statute, ordinance, resolution, policy or governmental rule or regulation (including but not limited to the Crescent City Harbor District and Coastal Commission regulations), now in force or which may hereafter be enacted or promulgated. Tenant agrees not to allow any fuel, toxic materials, or any fumes, waste, or matters that could damage Landlord's property, public waters or the environment to be released or spilled into the environment. Tenant shall not commit, or allow to be committed any waste upon the premises or any nuisance thereon.

(g) Landlord shall have the right from time to time to adopt, amend, or supplement reasonable rules and regulations relating to the Premises and the Common Areas. Landlord shall notify Tenant in writing in advance of the adoption of, and any amendment or modification made to the rules and regulations. Rules and regulations shall apply uniformly to all tenants. Tenant agrees to comply with all such rules and regulations; a failure by Tenant to so comply shall constitute a breach under this Lease.

(h) Tenant shall not do or permit anything to be done in or about the Premises that will in any way obstruct or interfere with the rights of Landlord's other tenants or injure or annoy them or use or allow the Premises to be used for any improper, unlawful, or reasonably objectionable purpose.

(i) Tenant shall surrender the Premises in good order and condition (reasonable wear and tear excepted).

(j) In the event that Tenant's actions solely trigger the need for structural changes based upon the applicability or enforcement of governmental regulations (e.g., the Americans with Disabilities Act), Tenant shall either vacate the premises prior to the need for the structural changes or be solely responsible for the payment of all expenses related to the structural improvement.

(k) Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything in the Premises that will in any way increase the existing rate of or affect any fire or other insurance on the Premises, any of its contents, or other harbor businesses or cause a cancellation of any insurance policy. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for any such policy due to Tenant's failure to comply with the provisions of this section.

(l) Sleeping and all other residential type of use is prohibited upon the Premises or the common areas.

(m) Tenant may not use the Premises or permit the Premises to be used for any other purpose not indicated herein.

5. Utilities

(a) Tenant shall pay for all utility services supplied to the Premises or used by Tenant, including but not limited to water, propane, electricity, waste disposal, telephone service, electrical power lines, cable lines, fuel, and any other sustenance, energy and communication utility services that may hereafter come into use by Tenant.

(b) Landlord reserves the right from time to time to provide any or all utilities to the Premises. In such case, Tenant shall pay such charges as Landlord may establish from time to time, which Landlord may determine based on the quantity of utilities used or consumed at the Premises by Tenant on a monthly or other regular basis. At the time of executing this Lease, the initial monthly charge for utilities each month is: (1) Twenty-Two Dollars (\$22) for water per hoist space; and (2) the Cost for Electricity plus an administrative charge of Ten Dollars (\$10) for each electric meter assigned to Tenant at any time during the billing period; and (3) One Hundred Eleven Dollars (\$111.00) for each freezer space reserved for Tenant's use, which amounts shall be due at the same time as the Minimum Rent monthly payments. On at least ten days' prior written notice to Tenant, Landlord may discontinue furnishing any utility service previously provided to Tenant. Whenever a utility service is not supplied by Landlord, Tenant shall apply to the appropriate local utility companies to begin service on the Premises and shall pay the cost of any required deposit, hook-up fee, metering charge, or other charge by the utility provider.

(c) The "Cost for Electricity" shall be determined as follows: The total kilowatts shown on the meter to have been used by Tenant, between each meter reading by Landlord on an approximately monthly basis, shall be multiplied by Landlord's cost per kilowatt hour. Landlord's cost per kilowatt-hour shall be determined by dividing the number of kilowatt-hours shown to be used by the meter, as specified in the Landlord's most recent invoice from its public utility supplier, into the total charges (including taxes) on said invoice. There shall be added an administrative fee for Landlord's cost of computing Tenant's electricity in the sum of ten dollars per month. Throughout the term of this Lease, Tenant shall pay, prior to delinquency, the cost of all utilities used on the Premises, whether supplied by a local utility company or by Landlord. When any service is separately metered and supplied by a local utility company, Tenant shall arrange for the utility company to bill Tenant directly.

(d) Under no circumstances shall Landlord be liable for any damages or liability for the lack of or inability to provide utility service to Tenant. Landlord shall have no responsibility for the curtailment or suspension of any utility services to the Premises or the freezer facilities provided by a local utility company or a default by Tenant under this Lease. Curtailment or suspension of utility services does not constitute a constructive eviction under this Lease unless such curtailment or suspension continues for a period of one (1) month. **THERE SHALL BE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** Landlord does not warrant that any utilities provided by Landlord will be free from shortages, failures, variations, or interruptions caused by repairs,

maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, weather, tsunami, acts of god, war, riot, terrorist act, earthquake, governmental requirements or requests, or other causes beyond Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of such shortage, failure, variation, or interruption beyond Landlord's reasonable control, including without limitation, loss of profits, spoilage of previously frozen items, business interruption or other incidental or consequential damages.

(e) In the event that Landlord directs tenant to obtain any service from an entity other than Landlord, Tenant shall: (i) make application in Tenant's own name for all utilities not provided by Landlord, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities directly from, and pay for the same when due directly to, the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, cold storage, gas, water, sewer, steam, fire protection, telephone and other communication and alarm services, heating air conditioning, and all taxes or other charges thereon. Tenant shall install and connect all equipment and lines required to supply such utilities to the extent not already available at or serving the Premises, or at Landlord's option shall repair, alter or replace any such existing items. Tenant shall maintain, repair and replace all such items located on the Premises, operate the same, and keep the same in good working order and condition. Tenant shall not install any equipment or fixtures, or use the same, so as to exceed the safe and lawful capacity of any utility equipment or lines serving the same. The installation, alteration, replacement or connection of any utility equipment and lines shall be subject to the requirements for alterations of the Premises set forth herein. Tenant shall ensure that all HVAC equipment is installed and operated at all times in a manner to prevent roof leaks, damage, or noise due to vibrations or improper installation, maintenance or operation.

6. Taxes

(a) Tenant shall be liable to pay on or before their due dates, all Taxes that may be levied or assessed against the land, personal property, buildings, or other improvements in the Premises and against Tenant's business and leasehold interest. "Taxes" means any sales taxes, use taxes, business property taxes, Landing Tax, personal property taxes, real property taxes and assessments, or other direct taxes or other levies or charges imposed by a governmental entity that are or may be levied, assessed, imposed, become a lien on, or arise in connection with this Lease or the use, occupancy, or possession of all or any portion of the Premises or the land, buildings, or other improvements in the Premises by Tenant. Tenant shall send Landlord copies of any notices, reports, or inquires received by Tenant from taxing authorities concerning delinquent taxes or other assessments.

(b) Tenant shall be liable for any fees for licenses, registrations, permits and other certificates that may be required for the lawful operation of Tenant's business and the

hoist.

(c) If any taxing authority requires that Landlord pay a Tax directly to the taxing authority, Tenant shall upon notice by Landlord, pay to Landlord the amount of the Tax, at the time the next rent installment is due.

7. Additional Rent and Miscellaneous Duties

(a) Tenant shall conduct its business in a businesslike and efficient manner. Further, because the rent payable by Tenant under this Lease is structured to incentivize the amount of seafood product handled by Tenant on the Premises, Tenant shall, except as otherwise provided in this Lease, continuously, actively, and diligently operate its business on the Premises in a manner intended to maximize Tenant's Additional Rent generated by the Premises to the extent commercially reasonable.

Landlord and Tenant acknowledge that (1) Landlord does not consider the Minimum Rent provided for under this Lease in itself to be fair and adequate compensation for the leasing of the Premises to Tenant, and (2) Landlord's consideration for entering into this Lease is based on the expectation that the Additional Rent to be paid by Tenant will supplement the Minimum Rent so as to provide Landlord with a fair and adequate rental return on the Premises. Therefore, if Tenant either fails to open for business on the date required under this Lease or, after opening, fails to continuously operate its business on the Premises as required under this Lease for reasons within Tenant's control, then, at Landlord's option, (1) Tenant shall be in default under this Lease, and (2) Landlord shall have the right to collect, in addition to all other sums due from Tenant under this Lease, liquidated damages from Tenant equal to one-thirtieth of the monthly amount of Minimum Rent payable by Tenant under this Lease for each day Tenant fails to open after the required opening date or for each day Tenant fails to operate its business after it has opened.

(b) Tenant shall maintain full and accurate books of account, records, Fish and Game records and other pertinent data showing poundage of all seafood unloaded or moved over the premises, including such information that will show the poundage of each species by date. The records shall be available for inspection by Landlord or its representatives at a place to be designated by Landlord upon forty-eight (48) hours reasonable written notice. Tenant shall also keep all supporting documentation for Additional Rent and exclusions or deductions, including daily receipts, sealed cash register rolls, and serialized sales slips (electronic records being acceptable). Tenant shall keep and maintain the foregoing books, records, and supporting documentation pertaining to each lease year for at least three years after expiration of that lease year.

Notwithstanding the foregoing, if any books, records, or supporting documentation kept and maintained by Tenant are the subject of an audit requested by Landlord or an unresolved controversy involving Landlord, Tenant shall keep and maintain them until the audit or controversy is terminated.

Landlord's and/or its accountants or representatives may examine the books and records

of Tenant for the purpose of conducting an audit of Additional Rent, provided that (1) at least three business days' advance written notice is given to Tenant, and (2) an audit is not performed more frequently than once each year. If an audit discloses that the actual poundage of seafood products for the period in question is greater than previously reported by Tenant to Landlord, Tenant shall pay the excess amount to Landlord. If the excess amount is greater than ten percent, Tenant shall pay the full cost of the audit; otherwise, Landlord shall pay the full cost of the audit. If the excess amount is greater than fifteen percent, then Landlord shall have the right to terminate this Lease. Any information obtained by Landlord in conducting an audit of Tenant's books and records shall be treated as confidential except in any litigation or proceeding between Landlord and Tenant. Landlord may also disclose information from an audit performed by it pursuant to any judicial proceeding or subpoena or if within the spirit of the California Public Records Act; provided that Landlord shall provide written notice to Tenant prior to any such disclosure.

Landlord may examine under oath the accountant and/or the bookkeeper who was involved in the particular record keeping, and any other persons who may have been involved in the preparation of the Additional Rent reports and calculations related thereto under the Lease.

(c) Subject to the limits of liabilities and release provisions in this Agreement, and further subject to Tenant's duties under this Lease, Landlord shall, at Landlord's own cost and expense, keep the Common Areas and structural supports of the Dock in good repair; provided, however, Landlord shall not:

(i) Be required to make any repairs to the exterior roof, sidewalls, structural supports, and foundations of the building on the Premises that are rendered necessary by the negligence of or abuse of that property solely by Tenant or any employees, agents, subtenants, or permittees of Tenant; or

(ii) Be liable for any damages resulting from Landlord's failure to make any repairs required by this section to be made by Tenant, for any claims made that are not covered by Landlord's insurance as provided in Paragraph 10 hereof.

8. Maintenance and Alterations

(a) Landlord shall not be required or obligated to make any changes, alterations, dredging, additions, improvements, or repairs in, on, or about the Premises, nor to the depth between the surface and the floor of the ocean nor to the floor of the harbor, or any part thereof, during the term of this lease.

(b) Tenant has inspected the Premises and accepts them in "as is" condition. Landlord makes no representations or warranties regarding the condition of the Premises, and Tenant acknowledges that neither Landlord nor Landlord's officers, elected official, employees or agents have made any representations to Tenant regarding the present or future condition of the Premises.

(c) Tenant at its own expense, shall keep and maintain in safe order, condition, and repair as reasonably determined by Landlord, the Premises and every part thereof and any and all appurtenances thereto wherever located, any pilings damaged by boats being unloaded by Tenant at the hoist, all hoists, cables, machinery, equipment, and other property situated in or upon the Premises, and further including all plumbing, water, gas and electric fixtures, pipes, wires and conduits, and every part thereof and any and all appurtenances thereto wherever located, and all improvements and installations made by or on behalf of Tenant whether such work, repair, replacement or restoration is foreseen or unforeseen, or is ordinary or extraordinary. Tenant, at its own expense, shall make all repairs to the Premises which are made necessary by any breach of this Lease of any misuse or neglect by: (1) Tenant or any of his partners, associates, employees or licensees; (2) Any visitors, patrons, guests or invitees of Tenant; (3) Any persons committing a crime to the Premises if Tenant has knowledge that such crime is being committed and Tenant fails to take reasonable action to prevent or curtail such crime (to the extent commercially feasible). If Tenant fails to make any necessary repairs within 10 business days after written notice from Landlord, or after reasonable notice to Tenant in the event of an emergency, Landlord may make the repairs and Tenant shall pay the actual cost of the repair to Landlord as Additional Rent. This payment shall accompany the next due monthly payment of Minimum Rent and shall include interest at the then-maximum legal rate.

(d) Tenant may not make any alterations or improvements to the Premises during the term of this Lease without first obtaining the written consent of Landlord. Landlord's consent to any such alterations or improvements shall be made in its sole and absolute discretion.

(e) Tenant shall not attach any fixtures, equipment or other items to the Premises or make any additions, changes, alterations or improvements to the Premises or the systems and equipment serving the Premises (all such work referred to collectively herein as the "Work"), without the prior written consent of Landlord (such consent not to be unreasonably withheld, conditioned or delayed). Landlord reserves the right to impose requirements as a condition of such consent or otherwise in connection with the Work, including without limitation, requirements that Tenant: (1) submit for Landlord's prior written approval detailed plans and specifications prepared by licensed and competent architects and engineers, (2) submit for Landlord's prior written approval the names, addresses and background information concerning all contractors, subcontractors and suppliers, (3) obtain and post permits, and additional insurance.

All Work shall be performed: (1) in a thoroughly first class, professional and workmanlike manner, (2) only with materials that are new, high quality, and free of material defects, (3) in accordance with plans and specifications approved by Landlord in advance in writing, (4) not to adversely affect the systems and equipment or the structure of the building, (5) diligently to completion and so as to cause the least possible interference with other harbor tenants, and (6) in compliance with all laws and other provisions of this Lease. If Tenant fails to perform the Work as required herein or the materials supplied fail to comply herewith or with the specifications approved by Landlord, and Tenant fails to cure such failure within 48 hours after notice by Landlord (except that notice shall not be required in emergencies), Landlord shall have the right

to stop the Work until such failure is cured which shall not be in limitation of Landlord's other remedies and shall not serve to abate the Rent or Tenant's other obligations under this Lease.

(f) All alterations, additions, fixtures and improvements, except for Tenant's stock in trade, trade fixtures, furniture, and furnishings, made or placed in or on the Premises by Tenant or any other person shall on expiration or earlier termination of this Lease, become the property of Landlord and remain on the Premises. Landlord shall have the option, however, on expiration or termination of this Lease, of requiring Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, and improvements from the Premises that were not consented to by Landlord (unless such consent was conditioned on their removal upon expiration or termination of this Lease). Should the items be required to be removed by Landlord, Tenant shall repair any reasonably unavoidable damage caused by such removal.

(g) Tenant shall keep the Premises and this Lease free from any mechanic's, materialman's or similar liens or encumbrances, and any claims therefore, in connection with any Work. Tenant shall post such performance and payment bonds as may be required by Landlord. Tenant shall give Landlord notice at least ten (10) days prior to the commencement of any Work or such additional time as may be necessary under applicable laws, except in the event of an emergency, to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall not commence Work until any payment and performance bonds required by Landlord have been obtained by tenant and approved and filed by Landlord. Tenant shall remove any such claim, lien or encumbrance by bond or otherwise within twenty (20) days after notice by Landlord. If Tenant fails to do so, Landlord may pay the amount or take such other action as Landlord deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs actually incurred by Landlord shall be deemed additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to Premises to any such notices, liens or encumbrances whether claimed by operation of statute or other Law or express or implied contract. Any claim to a lien or encumbrance upon the Premises arising in connection with any Work shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Premises.

9. Common Areas.

The term "Common Areas" herein means all areas of the Crescent City Harbor District's property or the property under its control which are now or hereafter made available by Landlord from time to time for the general use or benefit of Landlord, other tenants at the harbor, other parties to whom the right to use the Common Areas has been or is hereafter granted, and their employees and invitees, as such areas currently exist and as they may be changed from time to time. The Common Areas may, at Landlord's election, include areas in adjoining properties which are or become available to Landlord, tenants, employees and invitees of the harbor and Citizen's Dock and which are maintained with the Common Areas, operating agreement or other such agreement now or hereafter in effect. Without

limiting the generality of the foregoing, the Common Areas may include, as designated by Landlord from time to time, any parking arearooft, covering buildings, entrances, sidewalks, streets or roadways, passageways, loading platforms, wharves, docks, delivery areas, ramps, stairs, landscaped and vacant areas, public bathrooms, information and telephone booths, directory signs and equipment, common lighting facilities, drainage areas, decorations, fixtures, improvements, systems and equipment, and other facilities, located in or serving any of the foregoing, except to the extent reserved for use by one or more designated tenants.

(a) Landlord shall administer and operate the Common Areas. Landlord reserves the right at all times to determine the nature and extent of all Common Areas, and shall have exclusive control and management thereof. Landlord shall have the right to close all or a portion of the Common Areas to discourage non-customer parking or prevent a dedication thereof to public use or otherwise prevent the acquisition of public rights in such areas, and shall have the right to take such other actions as are further described in this Lease. Landlord reserves the right to use, permit or deny the use of the Common Areas for any purpose which in Landlord's sole reasonable opinion may be in the best interests of the harbor, including without limitation promotions, events, exhibits, displays, shows and other activities.

(b) Tenant may use the Common Areas to which, and for the purposes for which, other tenants are given access during the Term, subject to the following conditions:

(i) The Common Areas shall be used by Tenant and Tenant's employees and invitees on a non-exclusive basis in common with employees and invitees of Landlord and other tenants and parties to whom the right to use the Common Areas has been or is hereafter granted.

(ii) Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas that interferes in any way with the use of the Common Areas by other parties.

(iii) Tenant's use of the Common Areas shall be subject to the other provisions of this Lease, including without limitation, all rules, resolutions and ordinances adopted by Landlord's governing board or its designee.

(iv) Tenant's right to use the Common Areas shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises.

10. Nonliability of Landlord

(a) Notwithstanding anything herein to the contrary, to the extent allowed by law and to the extent the Landlord is uninsured, Landlord or his agents shall not be liable for, and Tenant specifically releases and discharges Landlord from any and all rights, claims, actions, liabilities, damages, or causes of action, of whatsoever kind or nature, whether known or unknown, presently in existence or occurring in the future, arising from, or in

connection with, any injury or damage to persons or property resulting from Tsunami, tidal action, weather, deterioration from biological action, fire, explosion, or electricity, except to the extent caused by Landlord's negligence or willful misconduct. Landlord or his agents shall not be liable for any defect in the Premises, Citizen's Dock or the Common Areas if such defect is latent and could not have been observable through a reasonably diligent inspection. To the extent that Landlord is uninsured (including, without limitation, noncovered damages and/or occurrences and damages in excess of Landlord's insurer's policy limits), Tenant, on Tenant's behalf and on behalf of its insurers, expressly releases and holds Landlord harmless from all risks from any cause whatsoever that may accrue to Tenant, so long as such cause was a direct result of Tenant's action or inaction. Tenant shall either obtain a waiver of subrogation from its insurer or name Landlord as an additional insured on its policies of insurance to effect the parties intent to hold Landlord harmless from noninsured liability. Tenant shall ensure that the equipment that it permits, invites or places upon Citizen's Dock shall not overload the ability of Citizen's Dock to bear in combination with all structures and other vehicles, equipment and other personalty that from time to time may be extant upon it.

Tenant expressly waives all rights under section 1542 of the California Civil Code, which section has been fully explained to Tenant by its legal counsel, and which Tenant fully understands. Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

11. Insurance and Indemnification

(a) Tenant shall, at its own cost and expense, procure and maintain during the entire term of this Lease the following insurance coverage:

(i) Workers' Compensation & Employer's Liability Insurance. The Workers' Compensation Insurance shall be in the form and amount required by State statute. If Tenant is required by law to maintain Workers' Compensation Insurance, the Employer's Liability minimum limits required are: (a) \$1,000,000 Each Accident; (b) \$1,000,000 Disease -Policy Limit; and (c) \$1,000,000 Disease -Each Employee. The Workers' Compensation policy shall contain endorsements providing (I) a waiver of subrogation in favor of Landlord; and (II) thirty (30) days' written notice to Contractor in the event of cancellation or material reduction in coverage.

(ii) General Liability Insurance. Occurrence basis with minimum limits of (a) \$1,000,000 Each Occurrence; (b) \$2,000,000 General Aggregate; and (c) \$1,000,000 Products/ Completed Operations Aggregate. General Liability Insurance shall be at least as broad as ISO "Occurrence" Form

CG 0001 and shall include coverages as follows: (I) Premises, operations and mobile equipment liability coverage for explosion, collapse and hoist operations; (II) independent contractor's coverage (liability a subcontractor may incur as a result of the operations, acts or omissions of subcontractors, suppliers and their agents or employees); (III) personal injury coverage; (IV) broad form property damage coverage; (V) Fire and extended coverage insurance, and vandalism and malicious mischief insurance, insuring Tenant's fixtures, goods, wares, and merchandise in or on the Premises for 100 percent of their full insurable and replacement cost, without deduction for depreciation. (VI) Business interruption insurance, payable in the event of a loss covered by the fire and extended coverage or vandalism and malicious mischief insurance Tenant is required to maintain, in an amount not less than the amount of Tenant's Minimum Rent and Additional Rent for a six month period following any damage or destruction. (VII) An endorsement naming Landlord and such additional parties as Landlord designates as additional insureds (the endorsement must be ISO Form CG2010 11/85 edition or its equivalent and must cover joint negligence, completed operations and the acts of subcontractors and suppliers); (VIII) an endorsement providing the insurance is primary as respects Landlord and that any insurance maintained by Landlord is excess and non-contributing; and (IX) an endorsement providing thirty (30) days' written notice to Landlord in the event of cancellation or material reduction in coverage. No endorsement limiting or excluding a standard coverage is permitted and claims-made coverage.

(iii) Business Auto Liability Insurance. \$1,000,000 each occurrence combined single limit for bodily injury and/or property damage liability, including coverage for (I) owned automobiles; (II) hired or borrowed automobiles; and (III) non-owned automobiles. Tenant shall provide an endorsement naming Landlord and such additional parties as Landlord reasonably designates as additional insureds. Said endorsement shall provide thirty (30) days' written notice to Landlord in the event of cancellation or material reduction in coverage.

(b) General requirements. A certificate and endorsement in a form reasonably acceptable to Landlord demonstrating compliance with the above insurance requirements (or, at Landlord's reasonable request, certified copies of Tenant's actual policies) shall be delivered to Landlord before Tenant occupies the Premises or performs any work at Premises. Tenant shall maintain all of the above insurance coverage in force until the expiration or earlier termination of the Lease.

If Tenant fails to purchase or maintain the insurance specified in this Section, Landlord shall have the right, but not the obligation, to purchase such insurance on Tenant's behalf and at Tenant's cost. Tenant shall deliver all information required in connection with such purchase. If Tenant's insurance is reasonably considered inadequate by Landlord, Landlord shall

have the right to charge Tenant any additional premium actually charged by Landlord's insurer. The use of self-insured retention or deductibles in excess of \$10,000 shall not be allowed unless specifically approved by Landlord in advance and in writing. Tenant is fully responsible for payment of any self-insured retentions or deductibles, regardless of their amount.

(c) Any insurance policy Tenant is required to procure and maintain under this Lease shall be issued by a responsible insurance company or companies licensed to do business in the State of California.

(d) Tenant may not do, omit to do, permit to be done, or keep anything in or on the Premises that will violate the provisions of Landlord's fire and extended coverage insurance policy or otherwise adversely affect the premiums paid by Landlord or Landlord's ability to maintain the insurance in effect. If any such act or omission by Tenant results in an increase in Landlord's premiums for any policies on the Premises, Tenant shall pay the amount of the increase for the remaining duration of the Term. Landlord may also, at Landlord's option, rectify the condition causing the increase if Tenant fails to do so. In that case, on demand of Landlord, the amount expended by Landlord shall be immediately due and payable by Tenant as Additional Rent.

(e) If during the term of this Lease Tenant fails to secure or maintain the insurance required under this Lease, Landlord may obtain the insurance for the Premises in Tenant's name or as the agent of Tenant, and Tenant shall compensate Landlord for the cost of the insurance premiums. Tenant shall reimburse Landlord the full amount paid no later than the date the next installment of rent is due. A failure by Tenant to make reimbursement within the time required shall be considered a default under this Lease.

(f) Tenant agrees that in the event of loss due to any of the perils for which Tenant has agreed in this lease to provide insurance, Tenant shall look solely to its insurance for recovery. Tenant hereby grants to Landlord, on behalf of any insurer providing insurance to Tenant with respect to the Premises, a waiver of any right of subrogation that any such insurer of one party may acquire against the other by virtue of payment of any loss under that insurance.

(g) Except as otherwise provided in this Lease, proceeds from any policy or policies shall be payable to either, or Landlord and Tenant as their respective interests may appear.

(h) To the fullest extent permitted by law, Tenant shall indemnify, defend (at Tenant's sole cost and expense and with legal counsel approved by Landlord, which approval shall not be unreasonably withheld), protect and hold harmless Landlord and Landlord's Related Parties (collectively, the "Indemnified Parties"), from and against any and all Liabilities which may arise from or in any manner relate to (directly or indirectly), arise out of, or in connection with, as the result of entering into this Lease and/or the construction, business operation, use, condition, occupation or possession of the Premises and any portion thereof, and the hoist including: 1) any accident in connection with the operation, use, condition or possession of the Premises, Dock and/or Common Areas by Tenant

resulting in damage to property or injury to or death to any person; 2) strict liability in tort as a consequence of the operation of the Premises and/or the seafood products processed by Tenant; 3) any claim based upon environmental law or regulation relating to the Premises or the waters directly surrounding the Premises arising from a period in which Tenant was in control of the Premises and for which it can be reasonably determined that Tenant's action or inaction was the cause of the condition that gave rise to such claim; 4) any claim of any nature directly arising from or related to the Tenant's business operation including that of the hoist, which claim is based upon Tenant's operation of the Premises from and after the commencement date of this Lease; 6) the existence, placement, delivery, storage or release of hazardous materials on the Premises or contamination of property, arising therefrom by Tenant; 7) claims relating to the dangerous condition of the Premises caused or created by Tenant; 8) access to Citizen's Dock; 9) Tenant's Activities or Tenant's presence or activities conducted on the Premises (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Tenant, its principals, officers, agents, employees, vendors, suppliers, consultants, invitees, licensees, subtenants, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any passive negligence of an Indemnified Party. Tenant understands and acknowledges that the indemnification obligation hereunder is intended to constitute a "Type II" indemnity under California law and extends to and includes Claims arising from the passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Tenant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

Without limiting Tenant's obligation to indemnify Landlord upon Landlord's request, Tenant shall indemnify, hold harmless, protect and defend with legal counsel reasonably acceptable to the Landlord at Tenant's sole cost, Landlord from and against all Liabilities, paid, incurred or suffered by, or asserted against Landlord in a judicial, administrative or regulatory forum or otherwise, whether well founded or not, arising or resulting in whole or in part, directly or indirectly, from actions or inactions of Tenant or Tenant's Related Parties, for any of Tenant's Activities, including, without limitation, any condition of the Premises relating to hazardous or toxic substances, including any one or more release or threatened release of any materials (including hazardous waste) and relating to closure/post closure costs of the Tenant ("Hazardous Materials Conditions"); provided, that this obligation to indemnify shall not include any Hazardous Materials Conditions that existed prior to Tenant's occupation of the Premises. This indemnity of Landlord by Tenant is intended to operate as an agreement pursuant to 42 U.S.C. §9607(e) and California Health and Safety Code §25364, to insure, protect, hold harmless and indemnify Landlord from liabilities in accordance with this paragraph. Landlord does not hereby waive or surrender any other indemnity or remedy available to it under applicable law, and Tenant shall be strictly liable to Landlord for Hazardous Materials Conditions arising out of, related to or resulting from Tenant's or Tenant's Related Parties, agents, invitees or Activities, including any repair, cleanup or detoxification thereof or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto as required by law. For purposes of defense and indemnification relating to this Lease:

- (i) "Liabilities" means liabilities, lawsuits, claims, judgments, demands, cleanup orders, damages (whether in contract or tort, including personal

injury, death at any time, or property damage), costs and expenses, (including, without limitation, reasonable attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs and Landlord's general and administrative expenses) obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, reasonable attorneys fees (whether Landlord's or Tenant's staff attorneys or outside attorneys) and court costs, whether under state or federal law except for liabilities caused by the sole negligence or willful misconduct of the indemnified party.

(ii) "Landlord's Activities" means: Any repairs or maintenance performed by Landlord, modification to the Premises or structures thereon, or supervision by Landlord of activities emanating outside the Premises.

(iii) "Landlord and Landlord's Related Parties" means Landlord and its elected officials, officers, volunteers, representatives, partners, designees, commissioners, employees, consultants, agents, successors and assigns.

(iv) "Tenant Activities" means any actions or omissions of Tenant or Tenant's Related Parties in the performance of this Lease including, but not limited to, receiving, loading, unloading, storage and/or transportation of seafood products in accordance with the use of the Premises under this Lease, operation and supervision of Tenant's equipment activities, operation and supervision of transportation activities on site, operation and supervision of container storage and movement on site, environmental impacts of business operation and transportation and, all other activities of Tenant or Tenant's related parties in connection with this Lease, except those listed in this section as Landlord's Activities as well as any breach of any representation or warranty of Tenant set forth in this Lease.

(v.) "Tenant and Tenant's Related Parties" includes Tenant and its respective officers, directors, shareholders, members, partners, agents, employees, subcontractors, consultants, licensees, invitees, guarantors or affiliates. "Affiliates" means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Tenant, where construction or interpretation of "control" shall be governed by Rule 144 of the Securities Act of 1993. Tenant shall use best efforts, or cause such persons to use best efforts, to provide Landlord's legal counsel all reasonably necessary information relevant to such persons, including proper and legal corporate names and relationship (or lack thereof) to Tenant's articles of incorporation, certificates of good standing, and other documentation related directly or indirectly to alleged liabilities.

(i.) The provisions of this section shall survive termination of this Lease.

12. Destruction of Premises

(a) Notice of Damage. Within 24 hours of Tenant's knowledge of its occurrence, Tenant shall notify Landlord of any damage or accident occurring on the Premises.

(b) Damage or destruction from insured casualty. Subject to the limitations set forth in this Paragraph, if at any time during the term of this Lease, the Premises are damaged or destroyed by fire or any other casualty Landlord shall have the right to terminate this Lease and shall have no obligation to repair, restore, or rebuild the Premises.

If Landlord elects to terminate this Lease under any of the above circumstances, Landlord shall give written notice to Tenant not later than 30 days after occurrence of the casualty. This notice shall set forth the date on which the termination is to be effective. That date shall be not less than 10 days nor more than 60 days after the date of the termination notice. If the type of partial or total destruction described in this Paragraph occurs, Tenant shall have the same right as Landlord to terminate this Lease, subject to the same notice requirements, provided that Tenant gives its notice of termination no more than 30 days after the date on which the partial or total destruction occurred.

(c) Abatement of Rent. If damage or destruction to the Premises renders the operation of Tenant's business wholly impossible and Tenant in fact ceases to operate its business, the Minimum Rent payable under this Lease shall abate either during the period beginning on the date of the casualty and ending on the date the repairs, restoration, or rebuilding is complete; or, if the damage or destruction results in the termination of this Lease, on the date of the casualty. If Tenant is able to continue partial operation of its business, the Minimum Rent shall be abated proportionately based on the percentage of area of the Premises Tenant is able to occupy. Notwithstanding any abatement or partial abatement of Minimum Rent provided for under this Paragraph, Tenant shall not be excused from continuing to pay Additional Rent required under this Lease.

(d) All insurance proceeds payable solely with respect to the Premises pursuant to this Section 12 shall belong to and be payable to Landlord. If Landlord does not elect to terminate this Lease, the portion of the insurance proceeds that are attributable solely to the Premises pursuant to this Section 12, subject to any prior rights of Landlord's lender, shall be disbursed in the following order: first, to Landlord's cost of rebuilding or restoration; second, to Tenant's cost of rebuilding or restoration, excluding costs covered by Tenant's insurance and also excluding the cost of any Tenant trade fixtures or stock in trade; and third, to Landlord, as Landlord's sole property. No amount shall be paid to Tenant until after the completion of Tenant's work and the expiration of the period during which a mechanic's lien arising from Tenant's Work could be filed.

13. Assignment and Sublease

(a) Tenant shall not do any of the following without first obtaining the written consent of Landlord: assign, sell, mortgage, or in any other manner transfer this Lease or any interest of Tenant in the lease (except to a commonly controlled affiliate of Tenant); sublet the whole or any part of the Premises (except to a commonly controlled affiliate of Tenant); or

permit all or any part of the Premises to be used or occupied by others (whether through the grant of concession, license, or otherwise), except for a commonly controlled affiliate of Tenant. Any consent requested from Landlord may be withheld by Landlord as Landlord in its sole discretion determines. The prohibitions against transfer described in this Paragraph include any transfer transaction described above that occurs by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

(b) Without in any way waiving its right to approve or disapprove any transfer transaction described in this Paragraph, Landlord may (1) collect rent from an assignee, subtenant, user, or occupant of the Premises following any transfer described in this Paragraph, whether or not Landlord gave its prior written consent for the transfer, and (2) apply the collected amount to the rent due from Tenant under this Lease.

(c) Any sublease, assignment, or other transfer agreement described in this Paragraph must recite the following: that it is subject and subordinate to this Lease; and that the termination by Landlord of this Lease will, at Landlord's sole option, terminate the sublease, assignment, or other transfer agreement.

(d) The transfer of corporate shares of Tenant by assignment, sale, bequest, inheritance, operation of law, or other disposition shall not be considered a prohibited transfer transaction under this Lease if it results in Tenant holding at least 51 percent of the voting power of the corporation.

(e) Whether or not Landlord grants consent, Tenant shall pay \$750.00 towards Landlord's review and processing expenses, plus any legal fees actually incurred by Landlord in connection therewith. Tenant shall pay the \$750.00 before Landlord begins to process any request for assignment, sublease, or other transfer transaction. Any balance remaining shall be paid to Landlord within ten days of written demand therefore.

(f) If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord, which notice shall include: (1) a reference to the Premises and this Lease, (2) the name and address of the proposed Transferee and a detailed description of the business operation proposed to be conducted in the Premises, (3) the proposed effective date which shall not be less than 45 nor more than 180 days after Tenant's notice, (4) the terms of the proposed Transfer, a copy of all documentation pertaining thereto, and a detailed description of any alterations to the Premises required in connection with the Transfer, and (5) such other information as Landlord may reasonably require.

14. Default and Termination

(a) "Default" Defined. The occurrence of any of the following constitutes a default and breach of this Lease by Tenant:

(i) Any failure by Tenant to pay the undisputed rent or to make any other undisputed payment required to be made by Tenant under this Lease, when the failure continues after the statutory period following

service of a Notice to Pay Rent or Quit has expired.

(ii) The abandonment of the Premises by Tenant. For these purposes, the absence of Tenant from or the failure by Tenant to conduct business on the Premises for a period in excess of 60 consecutive days for a reason other than a force majeure event may constitute abandonment, at Landlord's sole discretion.

(iii) A failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant, when the failure continues for 30 days or more after written notice of Tenant's failure is given by Landlord to Tenant; provided, however, that if the default cannot reasonably be cured within the 30-day cure period, Tenant shall not be deemed to be in default if Tenant commences the cure within the 30-day cure period and thereafter completes the curative action within a reasonable time.

(iv) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, when possession is not restored to Tenant within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, when that seizure is not discharged within 30 days.

(b) Termination of Lease and Recovery of Damages. In the event of any default by Tenant under this Lease that remains uncured in accordance with the terms hereof, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this Lease and all rights of Tenant under this Lease by giving written notice of the termination. No act of Landlord shall be construed as terminating this Lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the lease. In the event of such termination, the Tenant agrees to surrender immediately possession of the Premises, without let or hindrance, and to pay the Landlord or its assignee all damages recoverable at law that the Landlord or its assignee actually incur by reason of default by the Tenant, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such retaking possession of the Premises. In the event Landlord elects to terminate this Lease, Landlord may recover the following from Tenant:

(i) The worth at the time of award of any unpaid rent that had been earned at the time of termination of the lease;

(ii) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant reasonably proves

could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that Tenant reasonably proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate Landlord for all financial detriment actually incurred and directly caused by Tenant's failure to perform its obligations under this Lease.

(c) The term "rent" as used in this Paragraph shall mean the Minimum Rent, the Additional Rent, and all other sums required to be paid by Tenant pursuant to the terms of this Lease.

(d) Landlord's Right to Relet. In the event Tenant breaches this Lease and that breach remains uncured in accordance with the terms hereof, Landlord may enter on and relet the Premises or any part of the Premises to a third party for any term, at any rental, and on any other terms and conditions that Landlord in its sole discretion may deem advisable, and shall have the right to make alterations and repairs to the Premises. Tenant shall be liable for all of Landlord's costs in reletting.

(e) Cumulative Remedies. The remedies granted to Landlord in this Article shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or provided in this Lease.

(f) Waiver of Breach and Estoppel. No waiver of any provision of this Lease shall be implied by any failure of Landlord to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver by Landlord of any provision of this Lease must be in writing. Such written waiver shall affect only the provision specified and only for the time and in the manner stated in writing. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach of Tenant of any provision hereof other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

The Landlord's neglect or omission to provide notice to the Tenant as to why the Landlord is not enforcing any provision of this Lease, or the Landlord's neglect or failure to enforce any provision of this Lease, whether known to Landlord or not, and any statement made by the Landlord or conduct by the Landlord herein that the Landlord is not enforcing any provision of this Lease, shall not act as an estoppel on the Landlord to enforce any provision of this Lease.

(g) Surrender on Termination. On expiration of the term of this Lease or the earlier termination of this Lease, Tenant agrees to surrender the Premises in good order and condition (reasonable wear and tear excepted). Further, Tenant shall, at Tenant's expense,

remove all of its merchandise, inventory, and trade fixtures, and repair any damage caused by the removal. Landlord shall also have the right to require Tenant, at Tenant's expense, to remove any improvements made to the Premises by Tenant and to repair any damage caused by the removal.

(h) Holdover Tenancy. If Tenant remains in possession of the Premises after expiration of the term of this Lease without renewing or extending this Lease or entering into a new lease with Landlord, Tenant's continued occupancy of the Premises, at Landlord's option, shall be considered a month-to-month tenancy that may be terminated by either party on 30 days' prior notice to the other. All terms of this Lease shall be fully applicable to the month-to-month tenancy.

15. General Provisions

(a) Landlord has entered into various agreements with the owners of or occupants of other premises located in the Harbor District relating to the operation and use of the tenants of Landlord (hereafter collectively referred to in this Paragraph as "Operating Agreements"). These Operating Agreements include reciprocal common use agreements and leases. Landlord shall not be liable to Tenant for the breach of any Operating Agreement by any owner or occupant of other premises located in the harbor, and shall not be required for Tenant's benefit to institute efforts to enforce any party's obligations under an Operating Agreement or to terminate any Operating Agreement because of a party's default.

(b) Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any "Hazardous Material" (as defined below) upon or about the Premises, or permit Tenant's employees, agents, contractors, invitees and other occupants of the Premises to engage in such activities except for those substances customarily used in the business or activity expressly permitted to be undertaken in the Premises. If any hazardous materials or substances prohibited by law are found to exist on the Premises and the presence of the materials or substances has not been caused by Tenant or by Tenant's use of the Premises, Landlord shall, at Landlord's sole cost and expense, perform necessary removal and cleanup as required by law. If any hazardous materials or substances prohibited by law are found to exist on the Premises and the presence of the materials or substances has been caused by Tenant or by Tenant's use of the Premises, Tenant shall be responsible for any required cleanup or removal and for the cost of the foregoing.

(c) This Lease establishes a Landlord-Tenant relationship between the parties. It shall not be construed or deemed to create any other type of relationship between them, including one of agency, partnership, or joint venture.

(d) Landlord, at its discretion during tenant's regular business hours and with two hours' notice to Tenant will have the right to enter, for the purpose of inspection of the Premises or perform any repairs Landlord is permitted or required to make under this Lease, whether to the Premises, adjoining premises, or the building containing the Premises. If,

in the sole opinion of Landlord, the hoist or any portion of the Premises is not being properly maintained, Landlord shall have the right, but not the obligation, to have it repaired or maintained at the expense of Tenant. Tenant expressly agrees that Landlord shall have no duty to inspect or correct any defective condition of the hoist or other improvement within the Premises or the common area. For any entry made while Tenant is open for business, Landlord shall use its best efforts to minimize interference with the conduct of Tenant's business. Repairs required or permitted to be made by Landlord may, at Landlord's option, be scheduled for times when Tenant's business is not open, provided prior written notice is given to Tenant. In the case of an emergency, Landlord may enter the Premises at any time without prior notice to Tenant, but shall notify Tenant promptly afterwards of its emergency entry.

(e) Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party to this Lease shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed or any managing employee of that party, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Landlord at 101 Citizen's Dock Road, Crescent City, CA 95531 or to Tenant at #1 Commercial Street, Eureka, CA 95501. Either party may change its address for purposes of this Paragraph by giving written notice of that change to the other party in the manner provided in this Paragraph.

(f) This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Tenant, but nothing in this Paragraph shall be construed as a consent by Landlord to any assignment of this Lease or any interest in this Lease by Tenant except as provided in this Lease.

(g) Time is expressly declared to be of the essence in this Lease.

(h) This Lease contains all the terms and provisions between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect. Without limiting the generality of the foregoing, Tenant hereby acknowledges and agrees that Landlord's leasing and field personnel are only authorized to show the Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to make any agreements, representations, understandings or obligations binding upon Landlord, respecting the present or future condition of the Premises or Building, suitability of the same for Tenant's business, or any other matter, and no such agreements, representations, understandings or obligations not expressly contained herein shall be of any force or effect. **TENANT HAS RELIED ON TENANT'S INSPECTIONS AND DUE DILIGENCE IN ENTERING THIS LEASE AND NOT ON ANY REPRESENTATIONS OR WARRANTIES MADE BY LANDLORD CONCERNING THE CONDITION OR SUITABILITY OF THE PREMISES OR BUILDING FOR ANY PARTICULAR PURPOSE.** Neither this Lease, nor any Riders or Exhibits referred to above may be modified, except in writing signed by both parties.

- (i) Exhibit A, the Site Plan for the Premises is incorporated by reference in and constitutes a part of this Lease.
- (j) If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect.
- (k) No waiver of any term, condition, or covenant of this Lease shall be presumed or implied. Any such waiver must be expressly made in writing by the party waiving the term, condition, or covenant. The acceptance by Landlord from Tenant of any amount paid for any reason under this Lease in a sum less than what is actually owing shall not be deemed a compromise, settlement, accord and satisfaction, or other final disposition of the amount owing unless Landlord agrees otherwise in writing.
- (l) The captions and numbers of the Articles and Paragraphs of this Lease are for convenience only and are not intended to reflect in any way on the substance or interpretation of the provisions of this Lease.
- (m) Tenant agrees that in the use and occupancy of the Premises and in the conduct and operation of Tenant's business, Tenant shall not in any way restrict the use of said premises on the basis of race, sex, religion, color, creed, national origin, or ancestry.
- (n) This Lease and the obligations of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, inclement weather, government agencies, inability by Landlord to lease this trust land or any other cause beyond the control of Landlord.
- (o) This Lease shall be construed in accordance with the laws of the State of California.
- (p) Nothing in this agreement shall be construed to limit Landlord's legislative discretion as a governmental entity. Nothing in this agreement is intended to require Landlord to use a different standard than is applicable to legislative determinations of a government entity. This agreement shall not be deemed to waive any immunities or defenses available to a public entity and its employees. Landlord shall have no duty to take actions to ensure the profitability of Tenant's business enterprise. It is agreed that nothing in this agreement shall be construed to imply that Landlord has any duty to dredge the Crescent City Harbor. It is agreed that nothing in this agreement shall be construed to imply that Landlord has any duty to take action to ensure that other harbor tenants are restricted in their competition with Tenant. This agreement may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the provisions expressly set forth herein
- (q) This Lease, and any Riders and Exhibits hereto, have been mutually negotiated by Landlord and Tenant, and any ambiguities shall not be interpreted in favor of either party.

Any printed provisions that have been deleted shall not be used to interpret the remaining provisions.

(r) The parties fully understand all the terms used in this agreement and their significance. The parties are each satisfied with the provisions of this agreement and have signed this Agreement with sound mind and memory, freely and voluntarily without duress, menace, fraud or undue influence.

(s) This agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms. It is not to be construed as precedent binding Landlord to take the same action with other Tenants.

(t) The parties shall perform all acts and execute further documents necessary to effectuate the intent of this agreement.

(u) Tenant shall furnish Landlord with accurate information with regard to all matters under this agreement.

(v) The Tenant is duly organized and existing under the laws of the State of **Oregon** and has all necessary power and authority to enter into and perform its duties under this Lease.

(w) The execution and delivery by either party of this Lease and compliance with the provisions hereof will not conflict with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, charter, by-law or any agreement to which either party is subject or by which it is bound or by which its properties may be affected.

(x) There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Tenant to restrain or enjoin the execution or delivery of this Lease, or in any way contesting or affecting the validity of this Lease, or contesting the powers of the Tenant to enter into or perform its obligations under this Lease.

(y) The Tenant is not, to its knowledge, in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Tenant is a party or is otherwise subject which would have a material adverse impact on the Tenant's ability to perform its obligations under this Lease and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

(z) No consent or approval of any trustee or holder of any indebtedness of the Tenant, and no consent, permission, authorization, order or licenses of, or filing or registration with, any governmental authority is necessary in connection with the execution and

delivery of this Lease or the consummation of any transaction contemplated herein, except as have been obtained or made and as are in full force and effect.

(aa) The information relating to the Tenant and the Premises submitted by the Tenant to the Landlord, was true at the time submitted to the Landlord and as of the date of this Lease, remains true and correct in all material respects.

(bb) In the event that Tenant furnished or furnishes financial statements to the Landlord, they shall have been or will be prepared in conformity with generally accepted accounting principles and fairly present in all material respects the financial condition of the Tenant as of the date thereof and the results of its operations for the period covered thereby. Unless stated, there has been no material adverse change in the business, condition (financial or otherwise) or operations of the Tenant since the date of such financial statements.

(cc) Tenant agrees to notify the Landlord promptly in writing, if there is a stop notice, litigation or any other legal proceeding which shall materially impact the operation of Tenant's business.

(dd) The Tenant will adopt, make, execute and deliver any and all such further resolutions, deed, conveyances, instruments, assurances and such other documents as may be reasonably required to carry out the intention or to facilitate the performance of this Lease and for the better assuring and confirming unto the Landlord of the rights and benefits provided in this Lease.

(ee) Landlord shall have the right (but not the obligation) to limit or prevent access to all or any portion of the Premises, Common Areas and Dock, activate emergency controls or procedures, or otherwise take such action or preventive measures deemed necessary by Landlord for the safety of tenants or other occupants of the harbor district or the protection of the Premises, Dock, Common Area or other property located thereon or therein, in case of fire or other casualty, riot or other civil disorder, strike or labor unrest, public excitement or other dangerous condition, or threat thereof.

[Signatures follow]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the day and year last below written.

LANDLORD

Date:

By: _____
Timothy Petrick, CEO/
Harbormaster, CRESCENT
CITY HARBOR DISTRICT, a
public agency

ATTEST:

APPROVED AS TO FORM:

By: _____
Witness

Ruben Duran,
District General Counsel

TENANT

Date:

By: _____
Representative,
Pacific Seafood – Eureka, LLC

ATTEST:

By: _____



3. New Business

- d. Review and vote to approve new five-year lease for 151 Starfish Way with Pacific Seafood.**

Public Comment?

**LEASE AGREEMENT BY AND BETWEEN THE
CRESCENT CITY HARBOR DISTRICT AND
PACIFIC SEAFOOD – EUREKA, LLC**

This lease agreement ("**Lease**") is executed this ___ day of April, 2023 by and between the Crescent City Harbor District ("**Landlord**"), a special district organized pursuant to the California Harbors and Navigation Code, and Pacific Seafood – Eureka, LLC (f/k/a Pacific Choice Seafood Company), an Oregon limited liability company ("**Tenant**"), whose address is 333 Ohio Avenue, Richmond, California 94804, under the following terms and conditions:

1. Basic Terms

1.1 Leased Premises. The leased premises ("**Premises**"), located at 151 Starfish Way, Crescent City, California are shown on **Exhibit A** and consist of all of the following:

(a) A lease area ("**Lease Area**") of approximately 40,000 sq. feet, including an approximately 15,700 sq. ft industrial building, passageways, and the exclusive use of the two (2) hoist areas ("**Hoists**").

1.2 Rental. The monthly rental fee is: \$6,500.

1.3 Rent Commencement Date: January 1, 2023.

1.4 Use. Warehouse use, including fish offloading, sales and processing.

1.5 Term. One five-year term, subject to the option to renew pursuant to the terms of Section 2.3 below.

1.6 Tenant's Insurance. Tenant shall furnish proof of public liability property damage insurance, fire and casualty insurance, pollution legal liability insurance, and worker's compensation insurance pursuant to Section 6 with the following limits: \$2,000,000 per person and \$2,000,000 per occurrence public liability and \$2,000,000 property damage.

2. Premises, Use, Compliance with Laws

2.1 Leased Premises. Landlord hereby leases to Tenant and Tenant hires from Landlord on the terms, conditions and covenants hereinafter set forth the Premises listed in Section 1.1 and outlined or described on **Exhibit A** attached hereto and incorporated herein by reference. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or with respect to the suitability of either for the conduct of Tenant's business. The taking of possession of the Premises by Tenant shall establish that the Premises and the Building were at such time in satisfactory condition and that Tenant has accepted the condition of the Premises and the Building in their "as-is" condition.

2.2 Term. The Term of this Lease shall be as set forth in Section 1.5 unless extended pursuant to Section 2.3 or terminated pursuant to Section 4.

2.3 Option to Renew. Provided Tenant is not in default in any terms of this Lease, Tenant is hereby granted an option to renew this Lease, under the same terms and conditions as set forth in this Lease, for one (1) additional five (5)-year term from and after the expiration of the original Term of this Lease (the "**Renewal Term**") by providing landlord with notice of intent to renew no more than 180 and no less than 120 days before the termination date of the Lease.

2.4 Use. Tenant shall use the Premises only for the purpose specified in Section 1.4 and shall not use the premises for any other purpose without prior written consent of Landlord thereto.

2.5 Compliance with Law. Tenant shall, at its own cost and expense, conduct its business on the Premises in accordance with all applicable federal, state, county and municipal statutes, ordinances, rules and regulations.

(a) Tenant shall, at its sole cost and expense, comply with the State Water Resources Control Board Order NPDES No. CAS000001, *National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities*, as it currently exists or may hereafter be amended or reissued (the "**Industrial General Permit**"). Tenant shall keep itself and all subcontractors, staff, and employees fully informed of, adequately trained in, and in compliance with all applicable local, state, and federal laws, rules and regulations that may impact, or be implicated by Tenant's use of the Premises authorized by Section 2.4, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, ordinances, policies, or permits issued pursuant to any such authority.

(b) Tenant shall procure coverage under the Industrial General Permit to the extent required by law, shall prepare, update, and implement a Storm Water Pollution Prevention Plan, implement all other provisions, and monitoring and reporting requirements set out in the Industrial General Permit.

(c) Failure to comply with the Industrial General Permit may be a violation of federal and state law. Tenant hereby agrees to indemnify and hold harmless Landlord, its officials, officers, agents, employees, and authorized volunteers from and against any and all claims, demands, losses, or liabilities of any kind or nature which Landlord, its officials, officers, agents, employees, and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, ordinances, Industrial General Permit, and other regulatory mechanisms referenced in this Section arising out of or in connection with Tenant's use of the Premises in accordance with Section 6.

(d) In addition to any other remedy provided herein for a default, Landlord reserves the right to terminate this Lease for a violation this Section and to defend any enforcement action or civil action brought against the Landlord for Tenant's failure to comply with any applicable water quality law, regulation, or policy. Tenant hereby agrees to be bound by, and to reimburse the Landlord for the costs associated with, any settlement reached between the Landlord and any relevant enforcement entity. This Section survives Termination of the Lease.

2.6 Hazardous Materials. Tenant may operate its business so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all applicable governmental requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials, defined below, in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials to be present on the Premises and setting forth any and all governmental approvals or permits required in connection with the presence of Hazardous Materials on the Premises ("**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List at least once a year and shall also deliver an updated list before any new Hazardous Materials are brought onto the Premises or on or before the date Tenant obtains any additional permits or approvals. In connection with any Hazardous Materials utilized by Tenant on the Premises, Tenant shall be responsible, at its sole cost and expense, for making any necessary modifications or Improvements either to Premises or Tenant's equipment as required by applicable laws, or any governmental agency, Landlord's insurance company, Landlord's lender(s), Landlord's consultant(s), or prospective purchaser(s). Tenant will, at its sole cost and expense, promptly upon receipt of written notice from Landlord complete such Improvements. If such work is not promptly undertaken and completed, Landlord shall have the right, but not the obligation, to complete such work and to charge such amounts actually incurred as a pass-through cost to Tenant as additional Rent under this Lease.

(a) Hazardous Materials and Hazardous Materials Laws Defined. The term "**Hazardous Materials**" shall mean those substances (i) defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes" or "restricted hazardous wastes;" (ii) known to cause cancer or reproductive toxicity; or (iii) defined in similar terms as matters which are hazardous to the environment under (a) the applicable laws of the United States, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq., and the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., (b) the applicable laws of the State of California including, without limitation, Sections 25117 and 25316 of the California Health and Safety Code, and (c) any of the regulations adopted and publications promulgated pursuant to said laws described in (a) and (b) above, all as they may be amended from time to time ("**Hazardous Materials Laws**").

(b) Compliance With Hazardous Materials Laws. Tenant at Tenant's sole cost and expense, shall comply (and cause sublessees to comply) with all Hazardous Materials Laws pertaining to any Hazardous Materials which are used, generated, stored or disposed on, under or about the Premises by Tenant, its sublessees and invitees, or other persons and entities that are under the control of or at the direction of Tenant.

(c) Tenant's Indemnity Obligations. Tenant shall indemnify, defend, and hold Landlord harmless from and against all claims, demands, actions, damages, liability, and expense including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal by Tenant, its sublessees, and invitees of any or all of them, of Hazardous Materials, including, without limitation, the cost of any required or necessary repair, clean up or detoxification and the preparation of any closure or other required

plans, to the full extent that such action is attributable, directly or indirectly, to such use, generation, storage or disposal of Hazardous Materials by Tenant.

(d) Landlord's Indemnity Obligations. Landlord shall indemnify, defend, and hold Tenant harmless from and against all claims, demands, actions, damages, liability, and expense including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal by Landlord, its sublessees, and invitees of any or all of them who are not Tenant or Tenant's sublessees or invitees, of Hazardous Materials, that occurred or existed prior to the date upon which Tenant first occupied the Premises as a tenant, including, without limitation, the cost of any required or necessary repair, clean up or detoxification and the preparation of any closure or other required plans, to the extent that such action is attributable, directly or indirectly, to the use, generation, storage or disposal of Hazardous Materials by Landlord.

2.7 Homeland Security. Tenant shall, at Tenant's sole cost and expense, comply with all laws and regulations, including, but not limited to, those of the United States Coast Guard and Landlord applicable to the Crescent City Harbor District insofar as they pertain to Tenant and Tenant's use of the Premises.

2.8 Harbor Regulations. This Lease is subject to the rules and regulations governing the operation of the Crescent City Harbor District. Such rules and regulations and such changes as may subsequently be made or added thereto are incorporated herein by reference.

2.9 Inspection. Landlord or its duly authorized representative shall have the right to enter the Premises at reasonable times during business hours to inspect the condition or the operations of Tenant's conduct thereon.

2.10 Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises Initials: _____

Tenant waives its right to have a CASp inspection of the Premises Initials: _____

3. Rent

3.1 Rent. Tenant shall pay Landlord in advance without notice, demand, or setoff, a monthly rental payment during the Term hereof in the total amount determined at the rates specified in Section 1.2 for the area leased (the "**Rent**"). All Rent is payable in advance on the first day of each month. If the Term of this Lease commences on a day other than the first day of the month, Rent for the first month of the Term shall be pro-rated.

3.2 Rent Adjustment. Each of the monthly rental rates, and the monthly Rent payable by application of these rates, as set forth in Section 1.2 shall be adjusted each year on July 1 for changes in the Consumer Price Index during the preceding calendar year by application of the following formula:

$$\text{Adjusted Monthly Rental Rate} = \text{Rent specified in Section 1.2} \times \frac{\text{CPI for May of Year of Adjustment}}{\text{CPI for May next preceding the commencement of this Lease}}$$

The term "Consumer Price Index" means the Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (1982, 1984 = 100) for the Los Angeles Riverside Orange Co. California area, all items. In the event the Consumer Price Index referred to above ceases to be published during the Term of this Lease or any revised or substituted index ceases to be comparable to the Consumer Price Index as defined above, then the most reasonably comparable figures available shall be substituted therefore in determining increases or decreases in Rent.

The May CPI figure shall be used since it will be the latest published CPI figure as of July 1 of any year.

3.3 Late Charge. Tenant acknowledges that late payment by Tenant to Landlord of Rent or other charge may cause Landlord to incur costs not contemplated by this Lease. If any installment of Rent, or any other payment due to Landlord, due from Tenant is not received by Landlord within five (5) days after such payment is due, it shall be considered late, and Tenant shall pay to Landlord an additional sum of the greater of \$100 or 6% of the overdue amount as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord may incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

3.4 Document Fee. Tenant must pay to Landlord a clerical and legal fee for entering or, upon Tenant's request only, modifying a lease with the Landlord. The current amount of that fee is Five Hundred Dollars (\$500) for each document submitted for approval by the Harbor Master

or Board of Commissioners of the Harbor (“**Board**”), provided, however, that the amount of the fee specified in this section will be superseded by the amount of such fees specified in the Service Fee Schedule adopted by the Board. The fee for entering into or modifying a lease must be remitted for payment prior to the approval of such documents by the Board.

3.5 Taxes. Tenant shall pay, before the same become delinquent, all taxes assessed upon the Premises, appurtenances or improvements thereto or upon any interest of Tenant therein. Tenant hereby recognizes and understands that this Lease may create a possessory interest subject to property taxation under California Revenue and Tax Code Section 107.6, and that Tenant may be subject to the payment of property taxes levied on such interest. Any such imposition of a possessory interest tax shall be a tax liability of Tenant solely and shall be paid for by Tenant; and any such tax payment shall not reduce any Rent due to Landlord. Tenant shall also pay all interest and penalties any government entity assesses for late payment of any possessory interest taxes that this Lease requires Tenant to pay. Tenant shall within a reasonable time after written notice from Landlord give Landlord reasonable proof that Tenant has paid any possessory interest taxes that this Lease requires Tenant to pay. Nothing herein shall prohibit Tenant from the right to challenge any assessment of possessory interest tax in accordance with the procedures set forth by the taxing authority and where applicable withhold any overcharge by such taxing authority until the disputed matter is resolved. Landlord is a non-taxable entity and any taxes assessed against the Property as a result of Tenant’s occupancy shall be Tenant’s responsibility.

3.6 Utilities. Landlord is not obligated to furnish utilities or services to the Premises. Tenant shall pay for all utilities and services supplied to said Premises including all installation and connection charges. If utilities or services are furnished by Landlord for use by Tenant, Tenant shall on demand reimburse Landlord for the cost thereof attributable to Tenant. In no event shall Landlord be liable to Tenant for any failure or interruption of any utilities or other services being furnished to the Premises, and no such failure or interruption shall entitle Tenant to abate payment of Rent or to terminate the Lease, unless the failure or interruption of any such utility or other service were directly attributable to the negligent action or inaction of Landlord.

3.7 Refuse Collection and Janitorial Service. Tenant shall provide, or obtain, a refuse collection service for the Premises at Tenant's sole cost and expense. Tenant shall provide janitorial service to the Premises at Tenant's cost and expense if Tenant desires such services.

3.8 Poundage Fees. The monthly Rent payable under this Lease does not include any poundage fees for product offloads that may be assessed against Tenant pursuant to the provisions of Landlord's Fee Schedule. The Poundage Fees will vary annually, though will not be less than \$3,000 per year per hoist.

4. Termination

4.1 Harbor Expansion or Improvements. Landlord, at its option, may terminate this Lease in the event Landlord, in its sole discretion, requires the Premises (or any portion thereof) to implement any harbor expansion or improvement program or project undertaken by Landlord. This Lease shall terminate on the date specified in a notice of termination served on Tenant by Landlord in the manner provide by Section 11.1 of this Lease. Said notice shall be served not less than sixty (60) days prior to the termination date. If Landlord terminates this Lease as to a portion

only of the Premises and Tenant, in its commercially reasonable judgment, believes that an insufficient portion of the lease premises remains for use by Tenant for the purpose specified in this Lease, Tenant may terminate this Lease as to the remaining portion of the Premises by serving on Landlord, during the notice of termination period, a written notice of Tenant's election to terminate this Lease as to all the Premises.

If Landlord exercises its option to terminate pursuant to the terms of this Section 4.1, Landlord will in good faith endeavor to relocate Tenant on other premises of Landlord for the duration of the Term (including any Renewal Term, if exercised by Tenant) of this Lease; provided, that acceptance of any such relocation shall be at the sole discretion of Tenant.

5. Remedies Upon Default

5.1 Events of Default. The following shall constitute an "**Event of Default**":

(a) Monetary Default. Except as otherwise provided herein, should Tenant default in the performance of any covenant or provision herein with reference to the payment of Rent or other payment of money or the furnishing of the public liability and property damage insurance required by Section 6, and such default continues for five (5) business days after service on Tenant of a written notice from Landlord of such default.

(b) Non-monetary Default. Should Tenant default in the performance of any other covenant or provision herein other than payment of money, other than those stated in subsections (c) and (d) below, and such default, if curable, is not cured within thirty (30) days after service upon Tenant of a written notice thereof from Landlord, or, if not curable within thirty (30) days, a cure is not commenced within fifteen (15) days and diligently prosecuted to completion.

(c) Insolvency, Receivership or Bankruptcy. It shall constitute an Event of Default under this Lease and Landlord, at its option and upon giving written notice of termination to Tenant, may immediately terminate this Lease if any of the following events occur:

(i) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant;

(ii) A general assignment for the benefit of creditors by Tenant;

(iii) The filing of a petition in bankruptcy by or against Tenant and the Lease is not assumed with approval of the Bankruptcy Court within the time prescribed by the Bankruptcy Code; or

(iv) Any other action taken or suffered by Tenant because of insolvency.

5.2 Landlord's Remedies.

(a) Upon an Event of Default, Landlord may terminate Tenant's right of possession of the Premises and may recover all of the following from Tenant:

(i) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(ii) The worth at the time of the award of the amount by which the unpaid Rent, which would have been earned after termination until the time of award, exceeds the amount of such rental loss that Tenant proves could have reasonably been avoided or mitigated;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided or mitigated; and

(iv) Any other amount actually incurred by the Landlord for all the detrimental costs proximately caused by Tenant's failure to perform its obligation hereunder or which in the ordinary course of things would be likely to result therefrom.

As used in Subparagraphs (i) and (ii) above of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted by law to charge. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) In the event of the vacation or abandonment of the Premises by Tenant, or in the event that Landlord shall elect to reenter as provided herein or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then Landlord shall have the remedy specified by Civil Code Section 1951.4, in which Landlord may from time to time recover all rental as it becomes due or relet the Premises or any part thereof for the account of Tenant on such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect so to relet, then rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness, other than rent due hereunder, owed by Tenant to Landlord; second, to the payment of any cost (including commissions) of such reletting; third, to the payment of the reasonable cost of any customary alterations and repairs to the Premises; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord upon demand. Tenant shall also pay to Landlord, as soon as ascertained, any and all costs and expenses actually incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

(c) No reentry or taking possession of the Premises by Landlord pursuant to this Section shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

5.3 No Waiver. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not waive Landlord's right to recover damages under this Section 5. For the purpose of Section 5.2 above, the following shall not constitute a termination of Tenant's right to possession:

(a) Acts of maintenance of preservation or efforts to relet the property.

(b) Appointment of a receiver upon initiative of Landlord to protect Landlord's interest under the Lease.

5.4 Re-entry. Upon an Event of Default of Tenant not cured within the time specified in Section 5.1 or if Tenant vacates or abandons the premises, Landlord shall have the right to re-enter the Premises and take possession thereof with or without terminating this Lease upon giving notice of re-entry required by law.

5.5 Remedies Cumulative. All of Landlord's rights, privileges and elections or remedies are cumulative and not alternative, to the extent permitted by law and except as otherwise provided herein.

6. Indemnification and Insurance

6.1 Indemnification. Tenant agrees to indemnify, defend (with counsel reasonably selected by Landlord at Tenant's expense), protect and hold harmless Landlord, its employees, agents, officers, legal counsel, assigns, public officials of Crescent City, any successor or successors to Landlord's interest in the Premises and any future owners of the Premises to whom this Lease is assigned (hereinafter collectively referred to as the "Indemnitees") from and against all claims, actual damages (including but not limited to special and consequential damages), injuries, costs, response costs, losses, demands, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses arising out of any damage to any person or property occurring in, on, or about the Premises while Tenant occupied the Premises, except for any acts of negligence or willful misconduct by Landlord. Landlord and Tenant shall not be liable to the other party for any damage by or resulting from any act or negligence of any other tenant of property adjoining the Premises or by the owner or occupant of any adjoining or contiguous property. The preceding provisions shall not be construed to relieve Landlord from any liability Landlord may have to Tenant, or third persons, by reason of the California Government Claims Act or resulting from any liability resulting from the negligence or willful misconduct of Landlord, its employees or agents.

6.2 Insurance.

(a) Tenant shall furnish to Landlord a certificate of insurance, duplicate policy, or other evidence satisfactory to Landlord that Tenant has obtained the insurance required by Section 1.6. Each policy shall also provide for at least thirty (30) days' written notice by the insurer to Landlord prior to the cancellation thereof. If such insurance is to be cancelled, Tenant shall promptly notify Landlord of such proposed cancellation. All insurance obtained by Tenant pursuant to this Section shall be with a company licensed by the Insurance Commissioner of the State of California to do business within the State of California and shall have financial and policy holder Best ratings of no less than A-VIII. All insurance shall name Landlord, its Board of Harbor

Commissioners, its officers, agents and employees as additional insured in such policies, and shall include a waiver of subrogation in favor of Landlord.

(b) Waiver of Subrogation. The parties release each other, and their respective authorized representatives, from any claims (for damage to any person or to the Premises and/or the building in which the Premises are located, and to the fixtures, personal property, Tenant's improvements, and alterations of either Landlord or Tenant in or on the Premises and/or the building in which the Premises are located) that are caused by or result from risks which are insured against under any insurance policies carried by the parties and in force at the time of any such damage and to the full extent of any proceeds paid under said policies.

(c) Public Liability Insurance. Tenant shall carry and maintain in full force during the Term of this Lease an insurance policy for public liability and property damage in an amount not less than the amount set forth in Section 1.6 insuring any liability arising, or alleged to arise, on account of the death or injury to any person, or loss or damage to property occurring on the Premises, or as a result of the activities of Tenant on or off the Premises, or resulting from the use of the premises by Tenant under this Lease, or resulting from the negligence or intentional acts of Tenant, its employees, agents, or contractors. The public liability and property damage insurance policies obtained by Tenant pursuant to this paragraph shall be primary policies and any public liability and property damage insurance carried by Landlord shall be excess and noncontributing.

(d) Fire and Casualty Insurance. Except for fixtures, trade fixtures, or personal property installed or placed on the Premises by Tenant, fire and extended coverage casualty insurance on the Premises shall be the sole responsibility of Landlord. However, no use except that which is expressly provided in this Lease shall be made of the Premises nor acts done which will increase the existing rate of fire or extended coverage insurance on the Premises or any part thereof, nor shall Tenant sell or permit to be kept, used or sold in and about said premises any article that is prohibited by the standard form of fire insurance policy. Tenant shall, at Tenant's sole cost and expense, comply with any and all requirements pertaining to the Premises of the insurance company providing the fire insurance with a standard extended coverage casualty endorsement covering the Premises.

Fire and extended coverage casualty insurance on fixtures, trade fixtures or personal property installed or placed on the Premises by Tenant shall be the sole responsibility of Tenant at Tenant's sole cost and expense.

(e) Pollution Legal Liability. At all times during the Term of this Lease, and for sixty (60) months following the termination of this Lease, the Tenant shall maintain Pollution Legal Liability insurance. Tenant's employees, agents, and contractors, who have a reasonable probability of coming into contact with hazardous materials, shall be adequately trained to comply with and shall comply with all applicable laws and regulations relating to the care and protection of the environment for the duration of the term of this Lease.

(f) Worker's Compensation Insurance. At all times during the Term of this Lease, Tenant shall maintain or cause to be maintained with regard to its employees, Workers' Compensation Insurance as required by law.

7. Maintenance and Alterations

7.1 Repair and Maintenance. Tenant shall keep the Premises in good condition and repair, and free from accumulation of dirt and waste. Tenant at its own cost and expense shall repair any damage to the interior of the Premises, including, but not limited to windows, doors, glass, floor coverings, HVAC system, electrical equipment and plumbing and sprinkler systems, if any; and any damage to the exterior of the Premises (including parking area, roof and structural members) resulting from Tenant's use of the Premises under this Lease including any damage to the piles and common loading dock from the use of the hoists.

7.2 Installations, Alterations and Improvements. Tenant shall not make any alterations, additions, improvements or changes to the Premises without the prior written approval of Landlord. All fixtures installed on the Premises (other than all trade fixtures) shall immediately become a part of the realty and belong to Landlord and shall not be removed therefrom by Tenant without the prior written consent of Landlord to such removal.

Tenant may, at Tenant's own cost and expense, install or place such furniture, equipment and machinery or other personal property in or upon the Premises as may be necessary for Tenant's use of the Premises for the purpose for which they are leased. Tenant shall have the right to remove any furniture, equipment and machinery, or other personal property (including without limitation, all trade fixtures) installed or placed in or upon the Premises at Tenant's own expense at any time prior to the expiration or termination of this Lease. In the event of termination of this Lease on less than thirty (30) days' notice as provided in this Lease, Tenant shall have a reasonable time not to exceed thirty (30) days from the date of service of the notice of termination to make such removal. All personal property not removed by Tenant following the expiration or termination of this Lease within the time allowed for removal shall be deemed abandoned by Tenant and may be used or disposed of by Landlord in the manner prescribed by law without any liability to Tenant therefor. Such abandonment shall in no way reduce the obligation of Tenant to make restoration under Section 8.2 of this Lease.

In the event that during the Term of this Lease any alteration, addition or change of any nature to the Premises or to any portion thereof is required by law, regulation or rule (other than a law, regulation or rule of Landlord), the same shall be made by Tenant at Tenant's own cost and expense.

Before making any alteration, addition, improvement or change to the Premises with the prior written consent of Landlord, Tenant shall obtain all approvals and permits as may be required by law, including but not limited to, those of the California Coastal Commission. All such permits and approvals shall be obtained by Tenant at Tenant's sole cost and expense. Tenant also agrees that if any construction projects on the Premises are paid for by Landlord's funds, including offsets, then such construction projects will comply with the same legal requirements applicable to the Landlord (including, but not limited to, competitive bidding requirements, prevailing wage requirements, and public works bonding requirements).

7.3 Adjustment to Rent. The parties acknowledge and agree that Tenant may be required to undertake installations, repairs and improvements (collectively "**Improvements**"). As such, Landlord agrees to offset up to fifty percent (50%) of the Rent for Improvements made by

the Tenant in accordance with the requirements described in Section 7.2. This section is limited to the initial Term of this Lease, and does not apply to any Renewal Term.

8. Surrender, Restoration, Holdover

8.1 Surrender. Upon expiration of this Lease or its prior termination, Tenant shall quietly and peacefully vacate the Premises and surrender possession thereof to Landlord.

8.2 Restoration. Prior to the expiration of this Lease (and only to the extent directed by Landlord), Tenant shall restore the Premises to the condition in which received, ordinary wear and tear excepted, or to such improved condition as may have resulted from improvements made thereon by Landlord or Tenant. In the event this Lease is terminated on less than thirty (30) days' notice, Tenant shall be allowed a reasonable period of time not to exceed thirty (30) days from the date of service of the notice of termination within which to complete restoration.

8.3 Holding Over. Tenant may only hold over after the expiration or earlier termination of the Term hereof with the express prior written consent of Landlord. Acceptance of Rent is not Landlord's consent to holdover. Without Landlord's express consent, Tenant shall become a tenant at sufferance only at a rental rate equal to one hundred fifty percent (150%) of the Rent in effect upon the date of such expiration. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Section 8.3 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. Such indemnity shall survive the expiration of this Lease.

9. Assignment and Subletting

9.1 Assignment and Subletting. Tenant shall not permit the Premises to be occupied or used by any person other than Tenant, its agents, employees and invitees without Landlord's prior written consent to such operation or use. This Lease may not be assigned nor the Premises sublet by Tenant without the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall not be released from any obligations under this Lease due to any assignment or subletting.

10. Destruction of Premises; Condemnation

10.1 Destruction.

(a) Total Destruction. In the event the Premises or a substantial portion thereof are destroyed by any cause so as to render the Premises unfit for purposes designated in Section 1.5, or if the Premises are so badly damaged that they cannot be repaired within ninety (90) days from the date of such damage, either party may terminate this Lease by giving to the other party a written notice of termination served in the manner provided by Section 11.1 of this Lease. After such notice of termination has been given, Rent shall be prorated to the date Tenant actually vacates the Premises.

(b) Insured Partial Destruction. If the Premises are partially destroyed by any cause covered by insurance, and the destroyed portion can be rebuilt or repaired within ninety (90) days from the date of destruction, Landlord shall repair the same with reasonable diligence to the extent permitted by the insurance proceeds. In such event, this Lease shall remain in full force and effect, but until the destroyed premises are repaired, Rent paid by Tenant to Landlord shall be reduced in the same proportion that Tenant's actually usable square footage leased is reduced by such destruction at the rates specified in Section 1.2 as adjusted from time to time for changes in the Consumer Price Index.

(c) Non-insured Partial Destruction. If the Premises are partially destroyed by any cause not insurable by fire insurance with extended coverage casualty endorsement but can still be used for the purpose designated in Section 1.5 of this Lease, Tenant may, at its option, terminate this Lease unless Landlord rebuilds or repairs the destroyed portion of the Premises within 90 days from the date of destruction. Such termination by Tenant shall be accomplished by serving on Landlord a written notice of termination in the manner prescribed by Section 11.1 of this Lease. This Lease shall terminate on the date such notice of termination is served on Landlord which date shall not be less than 90 days after the date of destruction. If Landlord accomplishes such repair or if Tenant fails to exercise its option to terminate, this Lease shall remain in full force and effect, but until the destroyed premises are repaired, Rent paid by Tenant to Landlord shall be reduced in the same proportion that Tenant's actually usable square footage is reduced by such destruction at the rates specified in Section 1.2 as adjusted from time to time for changes in the Consumer Price Index.

(d) Glass Breakage. Glass breakage shall not be deemed a partial destruction within the meaning of Subsections (b) and (c) above.

(e) Waiver of Civil Code Sections. Tenant waives the provisions of California Civil Code Section 1932(2) and California Civil Code Section 1933(4) with respect to any destruction of the Premises.

(f) Tenant's Fault. Notwithstanding anything herein to the contrary, if the Premises or any other portion of the property in which the Premises are located is damaged by casualty resulting from the fault, negligence, or breach of this Lease by Tenant, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the property caused thereby to the extent such cost and expense is not covered by insurance proceeds.

10.2 Condemnation.

(a) Condemnation Resulting in Termination. If the whole or any substantial part of the Premises should be taken or condemned for any public use under any regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking would prevent or materially interfere with Tenant's Use of the Premises, either party shall have the right to terminate this Lease at its option.

(b) Condemnation Not Resulting in Termination. If a portion of the property of which the Premises are a part should be taken or condemned for any public use under any

regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking prevents or materially interferes with the Tenant's use of the Premises, and this Lease is not terminated as provided in Section 10.2(a) above, the Rent payable hereunder during the unexpired portion of this Lease shall be reduced, beginning on the date when the physical taking shall have occurred, to such amount as may be fair and reasonable under all of the circumstances, but only after giving Landlord credit for all sums received or to be received by Tenant by the condemning authority. Notwithstanding anything to the contrary contained in this Paragraph, if the temporary use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Rent payable hereunder by Tenant during the Term; in the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the unexpired Term.

(c) Award. Landlord shall be entitled to (and Tenant shall assign to Landlord) any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for any sums paid by virtue of such proceedings, whether or not attributable to the value of any unexpired portion of this Lease, except as expressly provided in this Lease. Notwithstanding the foregoing, any compensation specifically and separately awarded Tenant for Tenant's personal property and moving costs, shall be and remain the property of Tenant.

(d) Waiver of Code of Civil Procedure § 1265.130. Each party waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either party to petition the superior court to terminate this Lease as a result of a partial taking.

11. Miscellaneous

11.1 Notice. All notices required herein shall be served by personal service or by registered or certified mail, or by nationally recognized overnight delivery services. Notices shall be addressed as follows:

(a) Notice to be served on Landlord shall be sent to Landlord addressed to Crescent City Harbor District, Attn: CEO/Harbor Master, 100 Citizens Dock Road, Crescent City, California 95531.

(b) Notice to be served on Tenant shall be sent to Tenant addressed to Tenant at the address shown in the introductory paragraph to this Lease.

(c) The date of service of any notice shall be deemed to be 24 hours after the date such notice is deposited in the United States mail or with such overnight delivery service.

11.2 Liens. Tenant shall promptly discharge or cause to be discharged any valid lien, right *in rem*, claim or demand of any kind (except one in favor of Landlord) arising or existing with respect to the Premises or for materials or equipment furnished therefor or for any part thereof. If the same is not promptly discharged by Tenant, Landlord may discharge the same and Tenant shall immediately reimburse Landlord the cost thereof.

11.3 Failure to Insist on Compliance. Landlord's or Tenant's failure to take advantage of any default or breach of covenants on the part of the other party or to insist upon the performance of any terms, covenants and conditions of this Lease shall not be a waiver or relinquishment of such party's right to the future performance of such terms, covenants or conditions. Tenant's or Landlord's obligations with respect to such future performance shall continue in full force and effect. No custom or practice which may develop between the parties in the course of administering this Lease shall be construed to waive or lessen the right of either party to insist upon the performance by either of any term, covenant or condition hereof.

11.4 Successors in Interest. The terms, covenants and conditions contained herein shall apply to and bind the successors and assignees of all the parties hereto.

11.5 Attorney's Fees. If either party employs an attorney or attorneys to enforce the provisions hereof, the prevailing party (whether by negotiation, settlement or suit) shall be paid his reasonable attorney's fees by the non-prevailing party.

11.6 Amendments, Changes or Additions to Statutes. Whenever reference is made in this Lease to any provision of law such reference applies to all amendments, changes and additions now or hereafter made to such provisions.

11.7 Time. Time is of the essence of this Lease.

11.8 Non-discrimination. In conducting Tenant's activities on the Premises, Tenant must not unlawfully discriminate against employees or applicants for employment or for services or segregate any person or group of any member of the public on account of sex, sexual orientation, marital status, age, race, color, creed, national origin, ancestry, medical condition or physical handicap in the leasing, subleasing, renting, transferring, use, occupancy, or enjoyment of the premises. Tenant must abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to the Act

The foregoing provision includes, but is not limited to, the following: employment upgrading, demotion, transfer, recruiting, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, including apprenticeship. Tenant shall post notices provided by the State of California or the United States of America or its local government representative setting forth the provisions of this non-discrimination clause in conspicuous places available for employees and applicants for employment.

Tenant shall insert the foregoing provision in all contracts entered into by Tenant in the performance of any work permitted under this Lease except contracts for standard commercial supplies or raw materials.

11.9 Tenant's Representations and Warranties. Tenant hereby represents and warrants as follows:

(a) Tenant has full right, power and authority to execute, deliver, and carry out the terms of this Lease and all documents and agreements necessary to give effect to the provisions contained in this Lease.

(b) Neither Landlord nor any agent or employee of Landlord has made any representation, promise, or warranty except as expressly set forth in this Lease.

11.10 Captions. The captions of this Lease are not a portion of the substantive terms hereof.

11.11 Signs. With the exception of any signs present on the Premises as of the date hereof, Tenant shall not erect, install, or make any signs on the Premises without the prior written consent of Landlord thereto. Landlord will not unreasonably withhold its consent to the erection or installation of signs stating the name of Tenant's business of reasonable dimensions and decor.

11.12 Estoppel Certificate. Tenant shall execute and deliver to Landlord within ten (10) days of request a commercially reasonable estoppel statement. Landlord and Tenant intend that any estoppel statement delivered pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the building or any interest therein and failure to execute and return such estoppel shall be a material breach of the Lease.

11.13 Integration. This Lease is the final agreement between Landlord and Tenant with regard to the Premises and supersedes all prior agreements (oral or written), negotiations or representations. This lease may only be modified in writing, approved by Landlord's Board of Harbor Commissioners or CEO/Harbor Master, as applicable, and signed by both Landlord and Tenant.

11.14 Authorized Representatives. Each of the persons whose signature is subscribed hereto warrants that he or she has the proper authority to execute this Lease on behalf of Landlord or Tenant as appropriate.

11.15 Force Majeure. Except with respect to Tenant's payment of Rent or any amounts owed to Landlord hereunder, if performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes for those items, government actions, civil commotions, tsunami, pandemic, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform (a "**Force Majeure Event**"), performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused. Either party shall have the right to terminate this Lease in the event of continuation of a Force Majeure Event for a consecutive six (6)-month period. For avoidance of doubt, Tenant's ability to pay amounts owed or general market conditions shall not constitute a Force Majeure Event under this Lease, and shall not excuse Tenant's performance of payment hereunder.

11.16 Choice of Law. This Lease shall in all respects be governed by the laws of the State of California.

11.17 Subordination. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be and is hereby declared to be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or the land upon which the Premises are located; and (b) any mortgage or deed of trust which may now exist or be placed upon the land upon which the Premises is situated, or said ground leases or underlying leases, or Landlord's

interest or estate in any of said items which is specified as security. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord provided that Tenant shall not be disturbed in its possession under this Lease by such successor in interest so long as Tenant is not in default under this Lease. Within ten (10) days after request by Landlord, Tenant shall execute and deliver any additional documents evidencing Tenant's attornment or the subordination of this Lease with respect to any such ground leases or underlying leases or any such mortgage or deed of trust, in the form requested by Landlord or by any ground landlord, mortgagee, or beneficiary under a deed of trust, subject to such nondisturbance requirement.

[signatures on following page]

**SIGNATURE PAGE TO
LEASE
BY AND BETWEEN THE CRESCENT CITY HARBOR DISTRICT AND
PACIFIC SEAFOOD – EUREKA, LLC**

TENANT:

LANDLORD:

Pacific Seafood – Eureka, LLC

Crescent City Harbor District

By: _____
[Authorized Signatory]

By: _____
Tim Petrick, Harbor Master

Approved as to form:

Approved as to form:

By: _____
Daniel Occhipinti, Corporate Secretary

By: _____
Ruben Duran, General Counsel



4. Old Business

- a. Review and vote to approve Resolution No. 2023-05 committing up to \$1,943,941 of CCHD provided funding to match \$7,917,766 of federal funding that was awarded under the MARAD 2023 Port Infrastructure Development Program.**

Public Comment?

RESOLUTION NO. 2023-05

**A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE
CRESCENT CITY HARBOR DISTRICT FOR PORT INFRASTRUCTURE GRANT
FUNDING MATCH**

WHEREAS, The Crescent City Harbor District applied to the Department of Transportation, Maritime Administration 2023 Port Infrastructure Development Program to assist with funding construction of a new Inner Boat Basin Breakwater, Anchor Way Breakwater, and Whaler Island Groin Breakwater. Estimated construction costs are \$9,861,707.

WHEREAS, The federal share requested is \$8,875,536.30

WHEREAS, The required match under Department of Transportation guidelines is \$1,972,341.40.

WHEREAS, The Harbor is requesting the Secretary of Transportation increase the Federal share of costs above 80%, to reduce the amount of match required from the Crescent City Harbor District to \$986,170.70

WHEREAS, The Department of Transportation, Maritime Administration, as part of the grant application, requests that the Crescent City Harbor District provide a letter of commitment from the applicant that the funds are available and committed by resolution to the project.

WHEREAS, The Department of Transportation, Maritime Administration instructed that the requested information be submitted to Grants.gov as part of the Harbor's grant application, by 11:59:59 p.m. E.D.T. on April 28, 2023. (No extensions are possible for this deadline).

WHEREAS, The Board of the Crescent City Harbor District now resolves that it will leverage Federal Funding by bringing in up to 20% of the project costs from its revenue and tax sources.

WHEREAS, In November of 2018, the voters of Del Norte County passed Measure C to authorize the County of Del Norte to raise the local hotel tax from 8 percent to 10 percent to fund debt repayment for the USDA disaster loan issued following the 2006 and 2011 tsunamis and to fund further harbor repairs. The measure was also designed to expand the application of the hotel tax to spaces rented at recreation vehicle parks at a rate of 2 percent.

WHEREAS, These funds and other Harbor revenue will be used as matching funds for the Department of Transportation, Maritime Administration 2023 Port Infrastructure Development Program.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF HARBOR
COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT THAT:**

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. The District does hereby commit up to \$1,972,341.40 of CCHD provided funding to match between \$7,889,365.60 and \$8,875,536.30 of federal funding that was awarded to the District under the Department of Transportation, Maritime Administration 2023 Port Infrastructure Development Program.

Section 3. The CEO/Harbormaster and/or his designee (“Authorized Person”), is hereby authorized and directed to do any and all things necessary to carry out, give effect to, and comply with the terms and intent of this Resolution.

Section 4. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application and, to this end, the provisions of this Resolution are severable. The Board declares that the Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 5. This Resolution shall take effect immediately upon its adoption.

APPROVED, ADOPTED AND SIGNED this 18th day of April, 2023, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Wes White, President
Board of Harbor Commissioners
Crescent City Harbor District

ATTEST:

Mike Rademaker, Clerk
Board of Harbor Commissioners
Crescent City Harbor District



4. Old Business

b. Grants update

Public Comment?



4. Old Business

c. Dredge update

Public Comment?

5. Communications and Reports

a. CEO/Harbormaster Report

The Crescent City Harbor District is hosting a Chamber of Commerce Mixer at the Old England Marine Building on Thursday April 20th at 5pm. House of Jambalaya will be catering the event and Mike Bahr of Community Systems Solutions will be presenting on a lot of the upcoming improvements to the harbor.

We are working our way through updating old leases and are currently negotiating a couple of new leases so keep your eyes open for some more changes and new businesses in the harbor soon.

Commissioners Stone and White and I met with Senator McGuire to discuss offshore wind power and the infrastructure improvements we're working on. The Senator has been a huge supporter and has written letters of support for all of our grants.

FEMA sent a team of representatives to meet with harbor staff. We had a productive meeting discussing the damage to the Whaler Island Groin and Anchor way. The process is progressing, and we look forward to the next steps.



5. Communications and Reports

b. Ad Hoc Committee Reports (as needed)

Public Comment?



5. Communications and Reports

c. Harbor Commissioner Reports

- (1) Commissioner Gerhard Weber**
- (2) Commissioner Rick Shepherd**
- (3) Commissioner Brian Stone**
- (4) Secretary Harry Adams**
- (5) President Wes White**

Public Comment?



6. Adjourn to Closed Session

a. CONFERENCE WITH LEGAL COUNSEL – ONGOING LITIGATION

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: One case based on correspondence with Fashion Blacksmith regarding claim for damages.

b. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: One case based on correspondence with Renewable Energy Capital, LLC.

c. CONFERENCE WITH LABOR NEGOTIATORS

(Gov. Code section 54957.6)

Unrepresented Employee: CEO/Harbormaster

District's Designated Representative: Ruben Duran, General Counsel

7. Report out of Closed Session

8. MEETING ADJOURNMENT

Adjournment of the Board of Harbor Commissioners will be until the next meeting scheduled for Tuesday, May 2, 2023, at 2 p.m. PDT. The Crescent City Harbor District complies with the Americans with Disabilities Act. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 12132 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132). Any person with a disability who requires modification in order to participate in a meeting should direct such request to (707) 464-6174 at least 48 hours before the meeting, if possible.

