

## RESOLUTION NO. 2023-12

### A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT FINDING AN UNREASONABLE HARDSHIP AND AUTHORIZING INSTALLMENT PAYMENTS FOR JUDGMENT PURSUANT TO GOVERNMENT CODE SECTION 970.6

**WHEREAS**, the Crescent City Harbor District (“District”) is currently engaged in arbitration and litigation regarding the Fashion Blacksmith vs. Crescent City Harbor District matter;

**WHEREAS**, the ongoing litigation with Fashion Blacksmith has resulted in substantial time, legal expenses, and a significant commitment of District resources to resolve the matter, including but not limited to expenses incurred for dredging and repairs to the Fashion Blacksmith building;

**WHEREAS**, on April 20, 2023, the arbitration panel that presided over the proceeding issued an interim award, wherein the panel issued an award to Fashion Blacksmith in the amount of \$1,298,545, and the panel indicated that this amount could be increased in a further proceeding if the District does not repair the Fashion Blacksmith building by the end of September 2023 and does not dredge by the end of October 2023.

**WHEREAS**, on June 5, 2023, the arbitration panel issued a final award arbitration award, wherein the panel also awarded Fashion Blacksmith costs in the amount of \$134,927 and attorneys’ fees in the amount of \$418,925, with interest on the entire award accruing at 7% per annum.

**WHEREAS**, on June 13, 2023, Fashion Blacksmith filed a petition to confirm the arbitration award in the Superior Court of the State of California, County of Del Norte, in a case entitled *Fashion Blacksmith, Inc. v. Crescent City Harbor District*, Case No. DNSU-CVPT-2023-116-1.

**WHEREAS**, the Fashion Blacksmith petition to confirm the arbitration award is pending in the Superior Court

**WHEREAS**, the current financial status of the District does not provide assurance that it will possess adequate financial resources to fully cover the potential expenses arising from any judgment rendered against the District that may be entered by the Superior Court;

**WHEREAS**, the California Government Code sets forth the procedures for the payment of claims rendered against local public entities;

**WHEREAS**, pursuant to Government Code section 970.6, a court may order a local public entity to pay the judgment, along with interest, in up to ten equal annual installments, subject to the satisfaction of the two conditions specified in that Section;

**WHEREAS**, to satisfy the first condition of Government Code Section 970.6, the local public entity is required to adopt a resolution finding that an unreasonable hardship will result unless the judgment is paid in installments;

**WHEREAS**, the second condition of Government Code Section 970.6 mandates that the court determines payment of the judgment in installments is necessary to avoid an unreasonable hardship;

**WHEREAS**, if judgment is rendered against the District in the Fashion Blacksmith matter, the anticipated total judgment to date is estimated to exceed \$1.8 million dollars, and if the District is unable to complete the repairs to the Fashion Blacksmith building and complete the dredging work as ordered by the arbitration panel, the damages could be significantly higher;

**WHEREAS**, the District foresees such a judgment in the Fashion Blacksmith matter would significantly deplete its limited financial reserves;

**WHEREAS**, the District's approved budget for FY 2023-24 includes a general fund balance of only \$609,712.44;

**WHEREAS**, in addition to the judgment amount, there are further costs associated with attorney fees and expert retainers for the ongoing litigation that will further exacerbate the District's financial situation;

**WHEREAS**, the District's current insurance coverage is insufficient to cover the debts arising from the potential judgment;

**WHEREAS**, the District requires maximum fiscal flexibility to ensure the continued provision of services to the Crescent City Harbor District and its residents and harbor customers;

**WHEREAS**, exhaustive efforts have been made by the District to identify viable funding sources to cover the judgment, but no secure revenue stream was found that would not adversely impact the District's essential operational expenses; and

**WHEREAS**, after careful consideration of the circumstances, the Board of Harbor Commissioners ("Board") finds that the payment of the judgment in the Fashion Blacksmith matter would impose an unreasonable hardship upon the District, as contemplated under Government Code Section 970.6

NOW, THEREFORE, BE IT RESOLVED, by the Board of Harbor Commissioners of the Crescent City Harbor District, as follows:

**SECTION 1.** The above recitals are true and correct and are incorporated herein by this reference, and adopted as findings of the Board of Harbor Commissioners as if fully set forth herein.

**SECTION 2.** The Board, having considered all relevant factors, has reached the determination that an unreasonable hardship will result unless any potential judgment that is rendered against the District in the Fashion Blacksmith matter is paid in installments. In line with this decision, the District hereby declares its intent to seek a court order that would allow for the payment of the judgment in installments in accordance with the provisions of Government Code Section 970.6, provided that judgment is ultimately rendered against the District.

**SECTION 3.** In accordance with Government Code Section 970.6, the Board hereby authorizes legal counsel to petition the court upon entry of a final judgment for an order permitting the District to satisfy any potential judgment in up to ten (10) equal annual installments in an effort to ensure the District's ability to manage its financial obligations effectively.

**SECTION 4.** The Board hereby grants the District's legal counsel full authority and direction to take any and all actions that they may consider necessary or advisable to execute the authorized actions and ensure the successful implementation of this Resolution in accordance with its terms and objectives.

**SECTION 5.** If any provision or clause of this Resolution is held invalid, unconstitutional, or otherwise repealed by act of law, such invalidity shall not affect any other provisions or clauses of the same which can be given effect without the invalid provision, clause, or application. To this end, the provisions and clauses of this Resolution hereto are declared to be severable.

**SECTION 5.** This Resolution shall take immediate effect after its adoption by the Board of Harbor Commissioners.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
WES WHITE, PRESIDENT

ATTEST:

\_\_\_\_\_  
HARRY ADAMS, SECRETARY

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
GENERAL COUNSEL FOR DISTRICT

STATE OF CALIFORNIA )  
COUNTY OF DEL NORTE )  
CRESCENT CITY HARBOR DISTRICT )

I, HARRY ADAMS, City Clerk of the Crescent City Harbor District, DO HEREBY CERTIFY that foregoing Resolution No. 2023-12 was duly introduced at a regular meeting of the Board of Harbor Commissioners of the Crescent City Harbor District held August 1, 2023 and adopted at the regular meeting held August 1, 2023 by the following roll call vote, to wit:

AYES:

NOES:

0000

ABSENT:

\_\_\_\_\_  
HARRY ADAMS, SECRETARY

(SEAL)

I hereby certify that the foregoing is the original of Resolution No. \_\_\_\_\_ duly passed and adopted by the Crescent City Harbor District Board of Harbor Commissioners at their regular meeting held August 1, 2023.

\_\_\_\_\_  
HARRY ADAMS, SECRETARY

(SEAL)