

Board of Harbor Commissioners

Crescent City Harbor District

3 October 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, October 3, 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 August 18th, 2023 Special Meeting.**

2. Comptroller's Report, Review Balances

3. New Business

- a. Review and Vote to Approve Resolution 2023-12 to Open a New Financial Account and Line of Credit at Tri-Counties Bank.**
- b. Appoint a Commissioner to Serve on the Commercial Fishermen/Citizens' Input Committee for the Design and Permitting of the Citizens Dock Replacement Project.**

4. Unfinished Business

- a. Grants Update**
- b. Review and Vote to Approve Burnout Competition License Agreement.**

5. Communications and Reports

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

6. Adjourn to Closed Session

a. CONFERENCE WITH LEGAL COUNSEL – ONGOING LITIGATION

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

Ongoing Litigation: Two cases based on correspondence with Renewable Energy Capital regarding lease terms. Del Norte Superior Court - Case No.: CVUD-2023-2172 & CVUD-2023-2173

b. CONFERENCE WITH LEGAL COUNSEL – ONGOING LITIGATION

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

Ongoing Litigation: One case based on correspondence with Fashion Blacksmith, Inc., regarding claim for damages.

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, October 17, 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. Approval of the Meeting Minutes of the August 18th, 2023 Special 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

August 18, 2023
3:00 p.m.



Board of Harbor Commissioners of the Crescent City Harbor District

MINUTES

Special Session, Friday August 18, 2023, at 3:00 P.M.

CALL TO ORDER: **3:00 PM**

ROLL CALL:

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

<i>ABSENT:</i>	<i>Commissioner</i>	BRIAN STONE
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QUORUM: YES

PLEDGE OF ALLEGIANCE:

PUBLIC COMMENT:

No members of the public commented.

1) UNFINISHED BUSINESS

1A) Consider and Vote to Approve Amended Letter to Public Officials Advocating for Immediate Changes to the CDFW Fishery Closure Affecting Nearshore Groundfish

Brad Miller, owner of Crescent City Fishing Charters spoke in support of the letter. Steve Huber also expressed his support for the letter. Rich Signorello with StateLine SportFishing similarly expressed his support for the letter. Roger Gitlin suggested some minor edits to the letter, which were approved by the Board.

Commissioner Shepherd **motioned** to approve the letter. Commissioner Weber **seconded** the motion.

POLLED VOTE was called, **MOTION CARRIED**

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

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

2) ADJOURN SPECIAL SESSION

ADJOURNMENT TO THE BOARD OF HARBOR COMMISSIONERS NEXT REGULAR MEETING SCHEDULED FOR TUESDAY, SEPTEMBER 5, 2023, 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?



3. New Business

- a. Review and Vote to Approve Resolution 2023-12 to Open a New Financial Account and Line of Credit at Tri-Counties Bank.**

Public Comment?

RESOLUTION NO. 2023-12

A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT AUTHORIZING CERTAIN DESIGNATED HARBOR OFFICIALS TO ORDER THE DEPOSIT OR WITHDRAWAL OF MONIES, CONDUCT ESSENTIAL MANAGEMENT TASKS, AND ACT AS OFFICIAL SIGNATORIES ON FINANCIAL ACCOUNTS WITH THE TRI-COUNTIES BANK

WHEREAS, the Board of Harbor Commissioners (“Board”) of the Crescent City Harbor District (the “District”) desires the efficient management of funds the District has on deposit in financial accounts; and

WHEREAS, Tri Counties Bank (TCB) requires that the Board designate authorized Account Users, Administrators, and Signatories for maintaining the account profile, approving/assigning additional users, maintaining a line of credit, and other general account access, for the purposes of inter alia, deposit, withdrawal, and transfers.

NOW, THEREFORE, THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

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

Section 2. The following Harbor Officials, or their successors in office, shall be authorized to have the most extensive account access possible as Account Signatories, except that in the execution of documents relating to amounts over \$10,000.00, a minimum of two signatories must sign the document:

1. President of the Board of Harbor Commissioners (*currently Commissioner Wes White*)
2. Secretary of the Board of Harbor Commissioners (*currently Commissioner Harry Adams*)
3. Ad Hoc Finance Committee Member #1 (*currently Commissioner Wes White*)
4. Ad Hoc Finance Committee Member #2 (*currently Commissioner Gerhard Weber*)
5. CEO/Harbormaster (*currently Timothy Petrick*)

Section 3. The following Harbor Officials, or their successors in office, shall be authorized to manage accounts, but shall not be account signatories:

1. Comptroller (*currently Thomas Zickgraf*)
2. Office Manager (*currently Kristina Hanks*)

Section 4. The CEO/Harbormaster is authorized to negotiate lines of credit with Tri Counties Bank, and such other financial instruments as may be necessary for the effective management of the District.

Section 5. 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 6. This Resolution shall take effect immediately upon its adoption.

APPROVED, ADOPTED AND SIGNED this _____ day of October, 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

Clerk
Board of Harbor Commissioners
Crescent City Harbor District



3. New Business

- b. Appoint a Commissioner to Serve on the Commercial Fishermen/Citizens' Input Committee for the Design and Permitting of the Citizens Dock Replacement Project.**

Public Comment?



4. Unfinished Business

a. Grants Update

Public Comment?

UPDATED 09/28/2023

GRANT AWARD ANNOUNCED								
Grant Name	Grant Funder	Funded Projects	Project Amount	s	Match	Grant Start Date	Project Timeline	Next Steps
Port Infrastructure Development Grants (PIDP)	ODOT - Maritime Administration	1) Construction of a new seawall 2) repair and renovate the seafood packing and trucking area 3) replace the aged cargo handling equipment atop the seawall	\$9,208,207.00	\$7,366,565.60	\$1,841,641.40 (20% required)	Jan-23	1-Jan-28	Combined Environmental Study and Design with Citizens Dock ES. Contract awarded to Moffatt and Nichol. Contract at Attorney for review.
Port Economic Recovery Grant	California State Lands Commission	Create Technical Reports required for Seawall Construction Grant	\$437,001.65	\$321,195.65	\$115,806.00	Nov-22	Dec-23	Funds being used as match for PIDP grant.
STPG Climate Adaptation Transportation Planning (partnering with Del Norte Local Transportation Commission)	Caltrans and OPR	Planning study to identify climate mitigation projects along U.S. Hwy 101 and Anchor Way along South Beach.	\$250,000.00	\$120,000.00	\$4,000.00	Summer 2023	30 months	Awarded, Managed by Del Norte Local Transportation Commission.
CA Coastal Conservancy Grant Citizen's Dock Planning	CA Coastal Conservancy	Funds Design, Environmental Impact Studies and Permitting for a new Citizen's Dock.	\$927,000.00	\$927,000.00	\$237,000 (In-Kind)	Jun-23	36 months	Combined Environmental Study and Design with Seawall ES. Contract awarded to Moffatt and Nichol. Contract at Attorney for review.
CA Coastal Conservancy Grant South Beach Bathroom	CA Coastal Conservancy	Funds Design, Permitting and Construction of Bathrooms and Showers on Anchor Way, near Starfish Way.	\$450,000	\$450,000	\$117,000 (In-Kind)	Jun-23	36 months	Design and Construction contract awarded to Marshall Jones. Contract at attorney for review.

GRANTS APPLIED FOR UNDER REVIEW								
Grant Name	Grant Funder	Project Applied For	Project Amount	Grant Amount Requested	Match Requirement	Announcement Date	Project Timeline	Next Steps
Harbor Mitigation Grant Program (HMGP)	Cal OES and FEMA	Technical Reports; Design & Engineering; NEPA/CEQA; Construction Permits required for Harbor water area		\$1,125,000.00	\$375,000.00	Awaiting Announcement	Completed within 5 years of obligation	FEMA Final Grant Review underway.
Port Infrastructure Development Grants (PIDP) 2023-2024	ODOT - Maritime Administration	Construction of new Breakwaters to meet 100 year storm surge, 50-year tsunami events and sea level rise.	\$9,861,707.00	\$8,875,536.30	10%-20%	Nov-23	5 years	Application submitted to US DOT MARAD.
Storm Damage Disaster Response 4683	FEMA	Repair of Anchor Way Breakwater, Anchor Way road and Whaler Island Groin Breakwater	\$7,695,828.00	\$7,695,828.00	6% - 20%	Q4 2023	18 months	FEMA requested we submit Hazard Mitigation proposal. Working with M&N on submission items.

CA Coastal Conservancy Grant Fish Filet Bathroom	Coastal Conservancy	Construction for bathroom and pop-up store for fish filet station	\$500,000	\$500,000	20% -in-kind	Nov-23	36 months	Application submitted by FRRRC DNATL to Coastal Conservancy. Scheduled for November CC meeting.
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GRANTS WORKING ON

Grant Name	Grant Funder	Project Applying For	Project Amount	Grant Amount To Request	Cost Sharing/Match Requirement	Grant Submittal Date	Grant Announcement	Next Steps
Storm Damage Mitigation, Section 406	FEMA	Construct new Anchor Way Breakwater, Anchor Way road and Whaler Island Groin Breakwater.	TBD	TBD	TBD	Spring 2024	Q2 2024	FEMA requested we submit Section 406 plan for improvements to infrastructure.
CA Coastal Conservancy	CA Coastal Conservancy	Crescent City Harbor District Strategic Plan Implementation	\$1,000,000	\$1,000,000	TBD	9/27/23	January 24	Preapplication submitted on 9/27/23. Awaiting invitation to submit full application.
Boating Infrastructure Grant	DBW	Lighting, communications, buoys, beacons, signals, markers, signs, security features.	\$200,000	\$200,000	TBD	TBD	Apr-24	Working on Application
NOAA Climate Resilience Regional Challenge	NOS, NOAA	Construction of new Breakwaters to meet 100 year storm surge, 50-year tsunami events and sea level rise.	\$350,000	\$350,000	\$0	August 2023	November 1, 2024	Letter of Intent submitted for 4 ports - Del Norte, Humboldt, Mendocino, Sonoma

Grants Opportunities Being Reviewed

Grant Name	Grant Funder	Project Applying For	Project Amount	Grant Amount To Request	Cost Sharing/Match Requirement	Grant Submittal Date	Grant Announcement	Next Steps
EDA Public Works Program	U.S. EDA	Infrastructure Construction Projects and new equipment	\$ 3,450,000.00	\$ 3,000,000.00	\$ 450,000.00	Rolling Application	Funding available in 2024	Reviewing project eligibility criteria
Boat Launching Facility Grant Program	DBW	Replace boarding floats	TBD	TBD	TBD	Winter 2024	Funding available in 2024	Budget being prepared
CA Coastal Conservancy Grant Recreational Area Planning	Coastal Conservancy	Planning and Permitting for harbor recreational area including proposed food/beer garden	\$200,000	\$200,000	20% - can be in-kind	TBD	Rolling grant applications	Working on Application
Rural and Tribal Assistance Pilot Program	DOT	Fund staff to complete studies for climate and resiliency for roads in harbor	\$320,000-\$360,000	\$320,000-\$360,000	\$0	TBD	October 2023	Reviewing eligibility criteria

<p>Program to Support Offshore Wind Infrastructure Improvement</p>	<p>CA Department of Energy</p>	<p>Planning Studies and Commercial Area Development/Construction to support offshore wind efforts</p>	<p>\$2,000,000</p>	<p>\$2,000,000</p>	<p>\$200,000</p>	<p>3Q 2023</p>	<p>4Q 2023</p>	<p>Working on list of projects to include once the application is released</p>
<p>Boating Safety & Enforcement Equipment Grant Program (BSEE)</p>	<p>DBW</p>	<p>Purchase of new Patrol Boat</p>	<p>\$ 1,250,000.00</p>	<p>\$ 1,250,000.00</p>	<p>\$ 250,000.00</p>	<p>Spring 2024</p>	<p>Funding available in 2024</p>	<p>Grant application not released yet, due March-April 2024</p>



4. Unfinished Business

b. Review and Vote to Approve Burnout Competition License Agreement.

Public Comment?



REVOCABLE LICENSE AGREEMENT

between

Tristan Smith

and

Crescent City Harbor District

This REVOCABLE LICENSE AGREEMENT (the “Agreement”), is made and entered into as of the date of the last signature, as set forth below (“Execution Date”), by and between TRISTAN SMITH and CRESCENT CITY HARBOR DISTRICT (hereinafter “CCHD”), a California Independent Enterprise Special District, collectively referred to as the “Parties,” with an effective date of ***October 7, 2023*** (“Effective Date”).

RECITALS

A.) TRISTAN SMITH is involved in developing, organizing, operating, and managing Burnout Competitions and various other motorsports events.

B.) TRISTAN SMITH desires to organize, operate, maintain, and manage a Burnout Competition on property owned and maintained by CCHD for the benefit of, and use by, members of the general public.

C.) CCHD desires to allow use of its premises by TRISTAN SMITH provided that the public health, safety, and welfare are not thereby impinged, diminished, or adversely affected.

AGREEMENT

NOW THEREFORE, in consideration of the recitals and mutual obligations contained herein, TRISTAN SMITH and CCHD hereby agree as follows:

1.) Recitals Conclusive. *California Evidence Code* section 622 applies to the recitals stated above, which are therefore conclusively determined to be true as between the parties to this Agreement.

2.) Nature of Agreement. The nature of the right granted by CCHD to TRISTAN SMITH is that of a revocable license. The Parties expressly acknowledge and agree that

this Agreement is not a lease, and that it does not create nor convey to TRISTAN SMITH any interest in the License Area (as described more fully below). TRISTAN SMITH will be entitled to occupy the License Area solely for the purposes herein provided for the term stated herein. In the event of breach by TRISTAN SMITH of any of the covenants hereof, and in any event upon the expiration of the term of the Agreement, CCHD shall be entitled to immediate possession of the License Area, and TRISTAN SMITH shall not be entitled to any of the rights of a tenant under law, including the law of forcible entry and detainer. No property right is granted hereby; notwithstanding the foregoing, TRISTAN SMITH hereby knowingly waives and relinquishes any rights it may have or claim to have pursuant to *California Government Code Sections 7260 through 7277*.

3.) License Area. The real property permitted to be used under this Agreement is a portion (“License Area”) of that certain property located northwest of Citizens Dock Road, and adjacent to Starfish Way, being certain frontage at the Inner Boat Basin, within the Crescent City Harbor District, more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference.

4.) Grant of License and Use of License Area. A revocable license is hereby granted for the development, organization, operation, maintenance, and management of a Burnout Competition in accordance with and pursuant to all applicable permits and Laws, and for no other use or uses whatsoever. CCHD shall have the right to audit and monitor any and all sales to ensure adherence to all applicable permits and laws. CCHD shall retain access to the License Area at all times, for the purpose of monitoring compliance of TRISTAN SMITH with this agreement, while giving reasonable care to avoid interference with the Burnout Competition activities. The Harbormaster employed by CCHD, or his or her designee (hereinafter referred to inclusively as “Harbormaster”), shall have the discretion to regulate TRISTAN SMITH’s use of the License Area as prescribed herein.

5.) Term of License. This license available under this Agreement shall be effective on the effective date only, and such license shall expire at 11:59 PM Pacific Time on the effective date.

6.) Period of Use. In the event of emergency or disaster, as determined by CCHD in its sole judgment, the Harbormaster shall have discretion to cancel the Burnout Competition event without prior notice.

7.) Compliance with Laws and Regulations. As pertains to the operation and use of the License Area for the Burnout Competition, TRISTAN SMITH shall at all times comply with, and shall pay all costs, expenses, penalties and fines which may be incurred or required to be paid in order to comply with, any and all permitting requirements, laws, statutes, labor codes, ordinances, rules and regulations, including those of the State of California, the County of Del Norte, CCHD, or other applicable public agency (“Laws”) which apply.

8.) Compliance Requirements and Costs. As relates to the operation of the Burnout Competition in the License Area, TRISTAN SMITH shall install and maintain all safety appliances or devices required to be maintained or installed in, on, or about the License Area under any Laws now or hereafter adopted, enacted, or made and applicable to the License Area, and shall pay any fees, charges, or assessments arising out of, or in any way connected to TRISTAN SMITH’s use of the License Area. TRISTAN SMITH shall not permit or suffer any mechanic's lien to be filed against CCHD, and shall immediately discharge any such lien.

9.) Exercise of Due Care. TRISTAN SMITH shall ensure that he does, along with his participants and vendors, and his employees, observe and exercise all necessary caution and discretion, so as to avoid personal injuries and property damage.

10.) Insurance. TRISTAN SMITH shall obtain and maintain for the duration of this Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with use of the License Area by TRISTAN SMITH or its agents, representatives, employees, or subcontractors. The insurance will be obtained from an insurance carrier authorized to do business in the State of California. The policy shall cover motorized vehicle events with a minimum policy limit of \$1,000,000. Prior to CCHD's execution of this Agreement, TRISTAN SMITH will furnish certificates of insurance evidencing compliance with the insurance requirement. If TRISTAN SMITH fails to maintain insurance coverage, then CCHD will have the option to declare TRISTAN SMITH in breach, or may purchase replacement insurance at TRISTAN SMITH's expense.

11.) Hold Harmless. To the extent permitted by law, TRISTAN SMITH, as a material part of the consideration to be rendered to CCHD under this Agreement, shall exercise his privileges hereunder at his own risk and shall indemnify, defend, reimburse and hold harmless CCHD, its officers, officials, employees, agents, representatives, volunteers, and each of them (collectively, "CCHD Parties"), from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Claims"), arising in any manner out of TRISTAN SMITH's Burnout Competition activities on CCHD premises. The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this Agreement.

12.) Hold Harmless Parameters. The "hold harmless" section 11 above, shall explicitly extend to: (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about CCHD Property, or any part thereof including the License Area, whether such injury, death, damage or destruction is caused by the person or property of TRISTAN SMITH, his officers, directors, members, employees, agents, consultants, contractors or subcontractors, invitees, guests, or visitors (collectively, "TRISTAN SMITH Parties"), relating to any use or activity under this Agreement, (b) any failure by TRISTAN SMITH to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, (c) the use of the License Area or any activities conducted thereon by TRISTAN SMITH or TRISTAN SMITH Parties, or (d) any failure by TRISTAN SMITH to faithfully observe or perform any terms, covenants, or conditions of this Agreement; except solely to the extent of Claims resulting directly from the sole negligence or willful misconduct of CCHD or CCHD Parties. In addition to TRISTAN SMITH's obligation to indemnify CCHD, TRISTAN SMITH specifically acknowledges and agrees that he has an immediate and independent obligation to defend CCHD from any claim that actually or potentially falls within the indemnity provisions of this Agreement even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to TRISTAN SMITH by CCHD and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs and all other reasonable costs and expenses incurred by CCHD and CCHD Parties, including, without limitation, damages for decrease in the value of the CCHD Property (including the License Area) and claims for damages or decreases in the value of adjoining property. TRISTAN

SMITH's obligations under this Section shall survive the expiration or other termination of this Agreement.

13.) Alterations. TRISTAN SMITH shall not make alterations, additions, or improvements to the License Area, or any part thereof, without prior written approval of CCHD. It is explicitly understood that permanent paint shall not be used to mark off vendor areas. Furthermore, no permanent fixtures nor other equipment shall be attached to CCHD Property, including the License Area.

14.) Maintenance of Premises. TRISTAN SMITH shall keep and maintain the CCHD Property free and clear of any and all trash, refuse, garbage, debris, or litter arising from or incidental to its use of the License Area. TRISTAN SMITH shall keep and maintain the CCHD Property, including the License Area, in a clean, safe, orderly manner, with clear pedestrian areas. TRISTAN SMITH shall not commit, suffer, or permit any waste on the CCHD Property, including the License Area. At the end of the Burnout Competition, TRISTAN SMITH shall remove, or cause to be removed, all refuse, and other market products, debris, rubbish, boxes, booths, stands, structures and materials of any sort resulting from the use of the License Area and shall leave the CCHD Property, including the License Area, in a clean, safe condition.

15.) Termination; Suspension. This Agreement may be terminated and the license revoked by the Harbormaster or TRISTAN SMITH for convenience and with or without cause upon 1 day advance written notice to the other party. Notwithstanding the foregoing to the contrary, CCHD may, in the sole and absolute discretion of the Harbormaster, terminate or suspend this Agreement on shorter notice as follows:

15(a) Immediately, CCHD may, in the sole and absolute discretion of the Harbormaster, terminate this Agreement if (i) TRISTAN SMITH discontinues or abandons operations; (ii) TRISTAN SMITH is adjudged bankrupt or is reorganized under any bankruptcy law; (iii) TRISTAN SMITH fails to keep in force any required insurance policies or bonds; or (iv) TRISTAN SMITH fails to comply with any Section or part of this Agreement.

15(b) Immediately, CCHD may, in the sole and absolute discretion of the Harbormaster, terminate or suspend this Agreement due to emergency circumstances, in the sole and absolute discretion of the Harbormaster.

15(c) Upon 1 day verbal and/or written notice to TRISTAN SMITH, CCHD may, in the sole and absolute discretion of the Harbormaster, suspend any Burnout Competition events due to the need to access CCHD Property for other uses.

15(d) Upon 1 day advance written notice to TRISTAN SMITH, CCHD may, in the sole and absolute discretion of the Harbormaster, terminate this Agreement (i) upon sale or lease of the CCHD Property.

16.) Notice. Notices required hereby shall be deemed to have been fully given when served personally on TRISTAN SMITH or CCHD or when deposited in the United States mail, postage prepaid, and addressed as follows:

To CCHD: Crescent City Harbor District, Attention: Harbormaster, 101 Citizens Dock Rd, Crescent City, CA 95531.

To TRISTAN SMITH: Tristan Smith, Attention: Burnout Competition, 1133 US-101, Crescent City, CA 95531

17.) Independent Contractor. TRISTAN SMITH is an independent contractor and is not an employee of CCHD. Furthermore, CCHD and TRISTAN SMITH are not partners, coventurers, or in a joint enterprise. Wherever the term "Burnout Competition" is

used herein, the term shall mean, be interpreted, and include TRISTAN SMITH, and his officers and agents.

18.) Subcontracts. No portion of the Burnout Competition or any obligations in this Agreement shall be subcontracted without prior written consent of CCHD. In the event TRISTAN SMITH desires to subcontract some or all of the work or obligations specified in this Agreement, TRISTAN SMITH shall furnish CCHD with the names, qualifications, and experience of the proposed subcontractor. TRISTAN SMITH shall remain fully liable to CCHD for the Burnout Competition events and responsible for the work or obligations to be handled by any approved subcontractor and shall assure compliance with all requirements of this Agreement.

19.) Community Outreach; Signs. TRISTAN SMITH shall be solely responsible for community outreach and publicizing the Burnout Competition event, including the signage and advertising. All signage and advertising shall be conducted in compliance with Laws. CCHD agrees to cooperate with TRISTAN SMITH in strategizing its marketing approach as CCHD deems appropriate. For purposes of TRISTAN SMITH's signage program only, the Burnout Competition events are deemed CCHD co-sponsored events. Any and all signs for the Burnout Competition shall include the CCHD Logo.

20.) Amendment. This Agreement may be amended by a written instrument signed by both parties.

21.) Applicable Law and Venue. This Agreement is made, entered into, and shall be performed in Del Norte County, California, and all rights and remedies of the Parties hereto shall be construed and enforced in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the Parties agree that venue shall be exclusively vested in the State courts of the County of Del Norte.

22.) Taxes. CCHD is exempt from the payment of federal excise taxes and State Sales and Use Tax on all tangible, personal property for its use or consumption. TRISTAN SMITH recognizes and understands that it is responsible for the payment of all CCHD, County, State, and Federal taxes that may be applicable to TRISTAN SMITH and required by law.

23.) Relocation Waiver. TRISTAN SMITH fully releases and discharges CCHD from any and all manner of rights, demands, liabilities, obligations, claims, or causes of action, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the License Area, the full or partial termination of TRISTAN SMITH's right to use the License Area as permitted under this Agreement, or the relocation of TRISTAN SMITH's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the License Area, including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under *Government Code* Sections 7260 *et seq.* ("Relocation Assistance Law"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal law, and compensation for any interest in TRISTAN SMITH's business operations or the License Area including, but not limited to, improvements; license or leasehold bonus value; fixtures, furniture, or equipment; loss of business goodwill; severance damage; attorneys' fees or any other compensation of any nature whatsoever. TRISTAN SMITH acknowledges and agrees that the release and waiver set forth in this paragraph is material consideration for CCHD's licensing of the License Area to TRISTAN SMITH on the terms set forth herein and that, but for this release and waiver, CCHD would not have licensed the License Area

to TRISTAN SMITH. It is hereby intended that the above release relates to both known and unknown claims that TRISTAN SMITH may have, or claim to have, against CCHD with respect to the subject matter contained in this Agreement or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, TRISTAN SMITH expressly waives any rights under *California Civil Code* Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

24.) Personal to TRISTAN SMITH. This Agreement and rights granted hereunder are personal to TRISTAN SMITH and may not be transferred in whole or part without the prior written consent of CCHD, which CCHD may withhold in its sole and absolute discretion.

25.) Entire Agreement. This Agreement, including all Exhibits (which are hereby incorporated by reference), contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No waiver of any condition in, or breach of, and no alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by the waiving party.

26.) Miscellaneous General Provisions.

a. Severability. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

b. No Obligations to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon any person or entity other than the parties hereto, or make any person or entity a third party beneficiary of this Agreement, or to obligate either party to any person or entity other than the parties to this Agreement.

c. Conditions Precedent. TRISTAN SMITH's obligations under this Agreement shall be conditioned upon the representations, warranties, and covenants of CCHD made herein. CCHD's obligations under this Agreement shall be conditioned upon the representations, warranties, and covenants of TRISTAN SMITH made herein.

d. Survival. The parties' representations, warranties, and obligations contained in this Agreement shall survive the execution of this Agreement.

e. Liabilities and Obligations Not Assumed. CCHD shall not assume or become obligated in any way to pay any liabilities, debts, or obligations of TRISTAN SMITH whatsoever. Including but not limited to: any taxes, fines, penalties, or interest, imposed, assessed, or collected by or under the authority of any governmental body and/or agency.

f. Joint Participation. This Agreement has been jointly drafted, negotiated, and prepared by the Parties, and any ambiguities or uncertainties herein shall be construed neither for nor against either of the parties.

27.) Payment. In consideration of the commitments made and obligations incurred by CCHD under the terms of this Agreement, TRISTAN SMITH agrees to pay to CCHD

75% (SEVENTY-FIVE PERCENT) of all net profit over \$1,000 for each day that TRISTAN SMITH conducts a Burnout Competition event, unless the event is discontinued on such day, for any reason, within one hour of its opening to the general public.

IN WITNESS WHEREOF, TRISTAN SMITH and CCHD have caused this Agreement to be executed, as of the day and year indicated below.

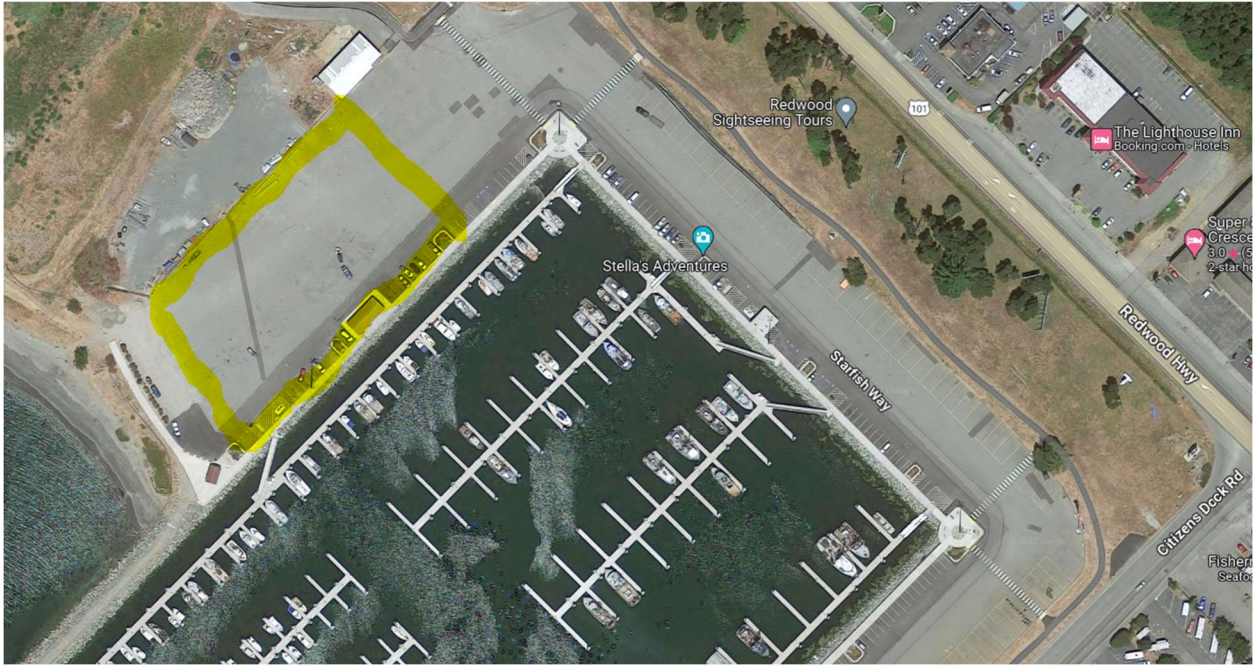
Tim Petrick (for CCHD as CEO/Harbormaster)

Dated:

Tristan Smith

Dated:

EXHIBIT "A"





5. Communications and Reports

a. CEO/Harbormaster Report



5. Communications and Reports

b. Ad Hoc Committee Reports

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))

Ongoing Litigation: Two cases based on correspondence with Renewable Energy Capital regarding lease terms. Del Norte Superior Court - Case No.: CVUD-2023-2172 & CVUD-2023-2173

b. CONFERENCE WITH LEGAL COUNSEL – ONGOING LITIGATION

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

Ongoing Litigation: One case based on correspondence with Fashion Blacksmith regarding claim for damages

7. Adjourn Closed Session

8. Report out of Closed Session

9. MEETING ADJOURNMENT

Adjournment of the Board of Harbor Commissioners will be until the next meeting scheduled for Tuesday, October 17, 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.

