

## MONTH TO MONTH RENTAL AGREEMENT

THIS INDENTURE OF A MONTH TO MONTH RENTAL AGREEMENT, dated the 1st day of June, 2023, by and between the PORT OF WILLAPA HARBOR, a municipal corporation of the State of Washington, hereinafter referred to as the "Lessor" and PACIFIC COUNTY EMERGENCY MANAGEMENT, a corporation, hereinafter referred to as the "Lessee", and \_\_\_\_\_, "Guarantor" in consideration of mutual covenants herein contained,

### WITNESSETH:

1. **Description of Rented Premises:** The Lessor does hereby rent to the Lessee and the Lessee does hereby rent from the Lessor certain land and improvements situated in Pacific County, Washington, described as follows:

**A portion of the building situated in the County of Pacific, State of Washington described as: A portion of the Port of Willapa Harbor real property and the northeastern portion of the Machine Shop Building located at the Stan Hatfield South Fork Industrial Park, which consists of approximately 1,725 square feet situated in the SE 1/4 of Section 24, Township 14 North, Range 9 West, W.M.**

2. **Purposes – Improvements:** The premises are to be used for the purposes of **storage of Emergency Response Mobile Command Vehicle**. Pursuant to said purposes, the Lessee agrees to improve, construct, maintain and operate all of said facilities in a manner which meets the requirements of Lessor and of the appropriate governing bodies of the City of Raymond, Pacific County, the State of Washington, and the federal government and to indemnify and hold Lessor harmless with respect thereto. Lessee shall use the premises only for the purposes stated above and shall not use them for any other purpose without the written consent of the Port. Lessee shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire length of this month to month rental agreement. Lessor is the Owner of the structures and improvements located upon the demised real property. Any construction or alterations other than ordinary maintenance and repair of the improvements located upon said land to be accomplished by the Lessee must receive the written approval of the Port Commission, prior to the commencement thereof, and Lessee agrees to submit detailed plans and specifications to Lessor for consideration in connection with such approval.

It is agreed between the parties that all Lessee owned improvements to the real estate herein demised shall remain the property of the Lessee during the term of this month to month rental agreement. At the termination date of the month to month rental agreement, all improvements shall become the property of the Lessor, unless within thirty (30) days after termination of the month to month rental agreement, Lessor makes written demand upon Lessee to remove all or a specified portion of said improvements. In the event Lessor gives such notice to Lessee, Lessee shall remove such improvements as are specified by Lessor to be removed, at its own expense, within thirty (30) days of the receipt of such

notice, and shall leave the remaining improvements which have not been specified by Lessor for removal, in good condition and repair. The remaining improvements, not specified for removal by Lessor, shall be and become the property of Lessor at the date of termination of the month to month rental agreement.

Lessee agrees to pay to Lessor double the rental of the land during such period after termination of the month to month rental agreement that said Lessee improvements which have been specified by Lessor for removal by Lessee, remain upon or at the demised premises. Lessee shall indemnify and hold Lessor harmless from any damage, expense or liability incurred by Lessor in connection with Lessee's removal of or failure to remove such improvements.

3. **Acceptance of Premises – Maintenance:** Lessee, having ascertained the physical condition of the premises from a careful and complete inspection thereof, accepts the premises in the present condition and "as is". As used herein, "premises" means the premises and improvements thereto now existing, and all structures and permanent improvements added to the premises hereafter.

Lessee shall, at its own expense, maintain and keep the premises in good, neat and sanitary physical condition. At the termination of the month to month rental agreement, Lessee shall re-deliver possession of the said premises to the Lessor and Lessee covenants and agrees that at the time of the termination, the premises will be in good, neat and sanitary physical condition, ordinary wear and tear not due to Lessee's failure of maintenance excepted. Lessor shall at all times have the right, either personally or through its designated agents, to go upon the land and structures for the purpose of determining the uses being made by the Lessee of the demised premises and the condition of the demised premises, such entries to be permitted to Lessor or its said agents at reasonable times and upon reasonable notice.

Lessee agrees that the alterations, maintenance or repair of any improvements now located upon said parcel or to be located thereon, will conform to the building and zoning codes of the State of Washington and Pacific County, and any other applicable laws. Any construction or alterations other than ordinary maintenance and repair of the structure or structures, located upon said parcel, or to be constructed, to be accomplished by the Lessee must receive the written approval of the Port Commission, prior to the commencement thereof, and Lessee agrees to submit detailed plans and specifications to Lessor for consideration in connection with such approval.

4. **Rental:** The Lessee covenants and agrees to pay the Lessor as rental for said land the sum of **\$50.00** per month, plus **\$6.42** per month leasehold tax, commencing as of the **1st** day of **June, 2023**. The monthly rental shall be adjusted annually on each anniversary date of this month to month rental agreement by adjusting the monthly rent charged for the preceding year in an amount not less than the current percentage increase in the Consumer Price Index in effect for Southwest Washington as published by the Washington State Employment Security Department.

All rental amounts shall be paid in advance on or before the fifth (5<sup>th</sup>) day of each

month. Any rental amounts unpaid after the fifth (5<sup>th</sup>) day of each month shall be delinquent. If Lessee shall fail to pay rent by the tenth (10<sup>th</sup>) day of any month, said rent shall be in default. In the event of such delinquency, the sum of Fifty Dollars (\$50.00) shall be due and payable as a late charge for every monthly installment thus unpaid, and Fifty Dollars (\$50.00) shall be added for each additional month that such monthly payment remains unpaid. These remedies are in addition to any other remedies provided for herein.

5. **Parking:** Lessee agrees that its employees and customers will not park on Port District property except as may be designated by Lessor and if permitted by Lessor that Lessee will make reasonable efforts to require its customers to do likewise.

6. **Illegal Uses Prohibited:** The Lessee further agrees that the premises and any improvements thereon will not be put to any use, which is contrary to the laws of the United States of America, State of Washington, Pacific County, City of Raymond, or regulations of the Port of Willapa Harbor.

7. **Leasehold Tax:** The Lessee shall pay to the Lessor at its address in Raymond, Washington, the leasehold tax, if applicable, as set forth in Chapter 51, Laws of 1976, Second Ex. Sess., or as may be amended. The tax shall be due and payable at the same time any payment charged herein is due and payable. Failure to pay said tax when due and payable shall be considered a breach of the provisions of this month to month rental agreement and the Lessor shall be entitled to all remedies to which it is entitled by law, and the remedies provided herein for a breach of a provision of this month to month rental agreement. Taxes as defined herein exclude taxes by or for Lessor. Any delinquent taxes shall be a debt to the Lessor under this month to month rental agreement and in the event the Lessor is subject to any penalties or interest or charges of any kind because of the failure of the Lessee to pay such taxes, such penalties and interest shall be payable by the Lessee to the Lessor and shall be considered a debt to the Lessor. In the event Lessor suffers or incurs any costs of whatsoever nature, including, but not limited to, attorneys' fees, such costs shall be payable by the prevailing party and shall be considered a debt due and owing under this month to month rental agreement.

8. **Other Taxes:** In the event of any laws or changes in the laws or policies of any federal, state or local governmental body which require that Lessor must pay or collect any tax, fee, license, or charge of any kind to such federal, state or local government body on account of Lessor's ownership or renting of the property herein demised, Lessee agrees to pay any such tax, fee, license, or charge when due, to such federal, state or local governmental body, or Lessor, as the law requires. Lessee agrees to furnish all information necessary to Lessor as may be reasonably required to enable Lessor to comply with or be assured of Lessee's compliance with such laws.

9. **Liability Insurance:** To the fullest extent permitted by law, the Commercial General Liability insurance carried by Lessee pursuant to this Lease shall name Lessor and Lessor's employees as additional insureds with respect to liability arising out of or related to this Lease or the operation of Lessee. Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the

benefit of Lessor or Lessor's employees. Such insurance shall also waive any right of subrogation against any Additional Insured. For the avoidance of doubt, each primary policy and each excess/umbrella policy through which Lessee satisfies its obligations under this Lease must provide coverage to the Additional Insureds that is primary and non-contributory.

The Lessee further agrees that it will maintain Protection and Indemnity Liability Insurance for any injuries or damages to Lessor or third parties arising out of its operations, including extension of said coverage to injuries or damages occurring on Lessor's docks, ramps, parking areas and ground, with Lessor named as an additional insured party, in an amount not less than \$500,000.00 property damage and bodily injury single limit per occurrence and \$1,000,000.00 aggregate. Lessee further agrees that Lessor will maintain Special Form Property Insurance upon the premises in an amount not less than the replacement value of the demised premises and improvements of which Lessee will reimburse the Lessor for the premium on an annual basis. Lessee will provide Lessor with a certificate of insurance evidencing the coverage required by this paragraph and will immediately upon cancellation of any of the required coverage, provide the Lessor with the maximum period of written notice possible but not less than thirty (30) days.

The Lessor reserves the right to unilaterally, at its sole discretion, require Lessee, at any time, to increase the policy limits or to change the form of the insurance coverage required under this paragraph. Provided, however, that Lessor shall not require any increase or change in form that is unreasonable.

9. **Environmental Standards:** (a) Definitions:

(i) "Toxic or Hazardous Substances" means any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 9601 (14); any hazardous waste or regulated substance as defined by the Resource Conservation and Recovery Act, 42 U.S.C. sec. 6901 et seq.; any chemical substance or mixture regulated under the Toxic Substances Control Act, 15 U.S.C. sec. 2601, et seq.; any Hazardous Substance as defined under the Washington State Hazardous Waste Cleanup Act, RCW 70.105B.020 or any similar state superfund law; and petroleum and petroleum byproducts.

(ii) "Environmental Laws" means all federal, state and local laws, regulations, and ordinances relating to the environment, pollution control, control of Toxic or Hazardous Substances, and land use. "Environmental Laws" includes, without limitation, the Washington State Superfund, RCW Ch. 70.105B; and any similar state superfund law; the Washington Water Pollution Control Act, RCW Ch. 90.48; the state Hazardous Waste Management Act RCW Ch. 70.105; the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. 9601, et seq.; and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq. "Environmental Laws" also means all amendments to the said existing laws which are hereafter enacted, and all new laws pertaining to the environment which are hereafter enacted.

(b) (i) Lessee acknowledges sole responsibility for any and all Toxic and Hazardous Substances which are now or may hereafter be found to have been released or disposed of on or from the demised premises.

(b) (ii) Prior to termination of the month to month rental agreement, Lessee shall remove all Toxic and Hazardous Substances from the property. Lessee shall further restore the demised premises to a condition satisfactory to Lessor, in its sole judgment. Demonstration of this removal to the Lessor's satisfaction shall be a condition precedent to the Port's release of any security it may be holding, as set forth in paragraph 27.

(c) Lessee shall fully comply with all Environmental Laws. If Lessee is in violation of any such Environmental Laws it shall promptly take whatever action is necessary to mitigate and correct the violation.

(d) Lessee shall not operate a nuisance, nor cause harm or injury to any third parties by its activities on the premises, nor shall it allow the release or migration of Toxic or Hazardous Substances onto or off of the premises.

(e) (i) Lessee shall provide the Port, if required by law, with Lessee's U.S. Environmental Protection Agency Waste Generator Number, any state or federal hazardous waste permit, any state or federal pollutant discharge permit, all Generator Annual Dangerous Waste Reports, all Materials Safety Data Sheets for all materials generated, used, stored, disposed or released on the premises, and all Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reports generated or required under Title III of the Superfund Amendments and Reauthorization Act of 1986.

(ii) Lessee shall immediately notify the Port of any release of any quantity of a Toxic or Hazardous Substance at or upon the demised premises or within the boat basin.

(iii) Lessee shall promptly notify the Port and provide copies of any correspondence that it receives from or provides to any federal, state or local governmental body regarding any Environmental Laws.

(f) Lessee agrees to allow the Port and its agents access to the premises at any time for inspection to verify compliance with the terms of this paragraph 10 of this month to month rental agreement. If the Port reasonably believes that the Lessee is violating any Environmental Law, is releasing toxic or hazardous substances, is damaging the premises in any way, or is not acting in a prompt and prudent manner to fulfill its obligations under this paragraph, the Port reserves the right, but not the obligation, to come onto the premises, to act in place of the Lessee and to take such action as the Port deems necessary to ensure compliance or to correct, cure or mitigate the violation, release, or damage to the premises. All costs and expenses incurred by the Port in connection with such actions shall be payable by the Lessee upon demand by the Port. Payment of such costs and expenses shall be a condition precedent for the release of any security held by the Port, as set forth in paragraph 27. Notwithstanding anything in this month to month rental agreement to the contrary, the Port is not the operator of the premises and is not responsible for the compliance with

Environmental Laws at the premises. Such compliance is solely the responsibility of the Lessee. Lessee shall be liable to Lessor for damages for any harm caused to Lessor by any breach of paragraph 10, and shall indemnify Lessor and hold it harmless from any such damages and from any claim by third parties arising out of any breach of said paragraph. The foregoing is not an exclusive remedy, but is in addition to any other or further remedies provided by law.

10. **Indemnification/Liability Insurance:** Lessor, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Lessee or by others as a result of any condition (including existing or future defects in the premises), or occurrence whatsoever related in any way to Lessee's premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the premises and areas adjacent thereto, so long as such injury or damage is not proximately caused or contributed to by action of the Lessor, its employees or agents. Lessee agrees to indemnify, defend and to hold and save the Lessor harmless from all liability or expense (including expense of litigation) in connection with any such items of actual or alleged injury or damage. In addition, Lessee shall, at its own expense, maintain property liability insurance as set forth in paragraph 9, to insure the Lessee and to indemnify the Lessor against such liability or expense.

11. **Entire Agreement:** This month to month rental agreement contains the entire agreement of the parties and no representations, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Neither this month to month rental agreement nor any provision hereof may be changed, waived, discharged or terminated orally but only by instrument in writing executed by Lessor and Lessee.

12. **Utilities and Services:** After Lessee's installation of all utilities and services as may be required by Lessee, Lessee shall be liable for and shall pay for all utility services furnished to the premises, including but not limited to, electricity, water, sewer and garbage service, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Lessor and such local authorities or as imposed by ordinance or statute.

13. **Waiver of Subrogation:** The Lessor and the Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent it would have the effect of invalidating the insurance coverage of the Lessor and Lessee.

14. **Inspection:** The Lessor or its authorized representatives reserves the right to inspect the premises at any and all reasonable times throughout the term of this month to month rental agreement, provided that it shall not interfere unduly with Lessee's

operations. The right of inspection reserved to the Lessor hereunder shall impose no obligation on the Lessor to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Lessor, for failure to make such inspections. The Lessor shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for a reasonable period of time prior to the termination of the month to month rental agreement.

15. **Advances by Port for Lessee:** If Lessee shall fail to do anything required to be done by it under the terms of this month to month rental agreement, except to pay rent, the Lessor may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof to the Lessor, Lessee shall promptly pay the Lessor the amount of that cost. However, if the Lessor shall pay any monies on Lessee's behalf, Lessee shall repay such monies, together with interest thereon commencing on the date the Port paid such monies and shall be calculated at the rate set forth in paragraph 26.

17. **Termination:** This month to month rental agreement may be terminated by either party, for any reason, by written notice delivered or mailed by the terminating party within thirty (30) days prior to the termination date specified in the notice.

18. **Invalidity of Particular Provisions:** If any term or provision of this month to month rental agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this month to month rental agreement or the application of such provision to such persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

19. **Waiver:** The acceptance of rental by the Lessor for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Lessor shall so intend and shall so advise Lessee in writing. No waiver by the Lessor of any default hereunder by Lessee shall be construed to be or act as a waiver or any subsequent default by Tenant.

20. **Non-Discrimination:** The Lessee covenants and agrees that in the performance of this month to month rental agreement, the Lessee shall conduct its activities in a manner that will assure fair, equal and non-discriminatory treatment of all persons regardless of race, creed, sex, marital status or ethnic origin. The Lessee shall comply with all applicable federal, state and local laws, rules or regulations concerning hiring and employment and assuring the service of all patrons, customers, members or invitees, without discrimination as to any person's race, creed, sex, marital status or ethnic origin.

21. **Premises To Be Clean:** Lessee shall at all times keep the premises, as well as any work areas, and other areas adjacent to the premises, neat, clean, in a safe and sanitary condition and free from infestation of pests. Lessee shall keep all areas in the vicinity of the premises and the building free from the accumulation of disposable products and other litter generated by the operation of Lessee's business.

22. **Liens, Insolvency, Etc.:** The Lessee shall keep the leased premises (excluding improvements) free from any lien arising out of any work performed, materials furnished or obligations incurred by the Lessee. In the event the Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver or their liquidating officer be appointed for the business of the Lessee, then the Lessor may cancel this month to month rental agreement at the Lessor's option.

23. **Subletting or Assignment:** The Lessee shall not let or sublet the whole or any part thereof, nor assign this month to month rental agreement nor any part thereof.

This month to month rental agreement shall not be assignable by operation of law.

24. **Notices:** Any notice required to be served in accordance with the terms of this month to month rental agreement or as required by law shall be sent by mail, the notice from the Lessee to be sent to the Lessor at its office at the Port of Willapa Harbor, 1725 Ocean Avenue, Raymond, Washington 98577, and the notice from the Lessor to be sent to the Lessee at its office at **Pacific County Emergency Management, P.O. Box \_\_\_\_\_ South Bend, Washington, 98586.**

25. **Default:** Time is of the essence of this month to month rental agreement, and if any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if the Lessee shall violate or default in any of the covenants and agreements herein contained, then the Lessor may cancel this month to month rental agreement upon giving notice required by law (except that thirty (30) days' notice and opportunity to cure shall be given with respect to a violation of paragraph 20, Non-Discrimination) and if such defaults are not cured by the Lessee in the notice period, Lessor may re-enter the said premises, but notwithstanding such re-entry by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the month to month rental agreement, and the Lessee covenants and agrees to make good to the Lessor any deficiency arising from the re-entry and re-letting of the premises at a lesser rental than herein agreed to. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Lessor.

26. **Interest During Default:** All monthly payments under this month to month rental agreement are due on the first day of each month, and if not paid within ten (10) days of that date, all monthly payments and any other charges then due under this month to month rental agreement shall bear interest from the due date until paid, at the highest rate permissible under RCW 19.51.020, being the higher of 12% per annum or four (4) percentage points above the equivalent coupon issue yield (as published by the Federal Reserve Bank of San Francisco at the average rate for twenty-six (26) week Treasury Bills as determined at the first bill market auction conducted during the preceding calendar month), or as said statute may be amended from time to time.

27. **Surety Bond:** The Lessee agrees that its undertaking herein shall be secured by a bond with surety satisfaction to the Lessor, or other security acceptable to Lessor, in the amount equal to one month's rental and leasehold tax. Said bond or other



security shall be forfeited to the Lessor in the event of breach by the Lessee and retained by the Lessor in the amount of unpaid rent, or other amounts owing under this month to month rental agreement.

Said bond shall be forthwith adjusted to equal one month's rental payments based upon any new rental rate which is agreed upon between both parties.

28. **Disposition of Personal Property:** In the event of any entry in, or taking possession of, the leased premises as aforesaid, the Lessor shall have the right, but not the obligation, to remove from the rented premises all personal property located therein, and may store the same in any place selected by Lessor, including, but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, with fifteen (15) days' written notice to Lessee, after it has been stored for a period of thirty (30) days, or more, the proceeds of such sale to be applied to the costs of said sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Lessor under any of the terms hereof, and the balance, if any, to be paid to Lessee.

29. **Risk of Loss or Damage/Liens, Bankruptcy:** All property on the rented premises shall be at the risk of the Lessee. The Lessee shall keep the rented premises free from any lien arising out of any work performed, materials furnished or obligations incurred by the Lessee, provided, however, that Lessee shall be afforded the right to reasonably contest the validity of any lien by litigation or other appropriate remedy, if pursued with reasonable diligence. In the event the Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for the business of the Lessee, then the Lessor may cancel this month to month rental agreement at Lessor's option.

30. **Signs – Advertisements:** All signs or symbols posted or displayed on the rented premises by Lessee shall be subject to the prior approval of the Lessor or Lessor's agent.

If Lessee utilizes the name of the Lessor in any of its advertisements or publicity of any type, Lessor shall have the unilateral right to approve or disapprove of such use. If the Port disapproves of such use, Lessee shall not utilize the name of the Lessor.

31. **Offensive Conditions:** Lessee further agrees that it will not cause or permit offensive sights, sounds or odors to exist upon or at the leased premises.

32. **Assignment:** The covenants of this month to month rental agreement shall be binding upon the legal heirs, successors and assigns of any or all of the parties hereto.

33. **Expenses Due to Breach:** If, by reason of any default on the part of any party in the performance of any of the provisions of this month to month rental agreement, it becomes necessary for the non-defaulting party to incur any expense, or to employ an