

THIS REBATE AGREEMENT dated the ____ day of _____, 2020.

A M O N G:

PARRISH & HEIMBECKER, LIMITED

(“**P&H**”)

OF THE FIRST PART

- and -

GODERICH PORT MANAGEMENT CORPORATION

(“**GPMC**”)

OF THE SECOND PART

WHEREAS the Town and P&H entered into a letter of intent, dated _____ (the “**LOI**”) which sets out the parties’ mutual understanding with respect to the proposed construction by P&H of a mooring dolphin (the “**Mooring Dolphin**”) in the inner harbour of the Port of Goderich (the “**Project**”) and the subsequent transfer of the Mooring Dolphin to the Town;

AND WHEREAS GPMC is an agent of the Town, responsible for administration of the Port of Goderich;

AND WHEREAS GPMC and P&H now wish to enter into this Rebate Agreement in order to set out the terms of the proposed rebate of the construction costs of the Mooring Dolphin pursuant to the LOI;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to contemporaneous delivery of the executed construction agreement between P&H and the Town (the “**Construction Agreement**”), the executed funding agreement between the GPMC and P&H (the “**Funding Agreement**”), and the executed transfer agreement between P&H and the Town, the parties hereby covenant and agree as follows:

1. **Rebate.** Within thirty (30) days of the Substantial Performance of the Work (as such term is defined in the Construction Agreement), P&H and the GPMC shall finalize and deliver final accounting of the costs of the construction of the Project to the Town (including all applicable taxes and subject to adjustment following the issuance of the final certificate for payment) (the “**Total Construction Costs**”). The Total Construction Costs less fixed contribution by GPMC and federal funding under the National Trade Corridors Fund (if any) in accordance with the Funding Agreement (such difference hereinafter referred to as the “**Opening Balance**”) shall be subject to a rebate as follows:

- (a) Within fourteen (14) days of the Substantial Performance of the Work, GPMC shall deliver to P&H a report setting out the annual sum of all gross receipts and revenues received from P&H in connection with the wharfage and berthage for the Port of Goderich (the “**Gross Revenue**”) for the years 2017, 2018 and 2019.
 - (b) The Gross Revenue for the years 2017, 2018 and 2019 shall be averaged, and that average will form the baseline for the calculation of the rebate (the “**IRRA Baseline**”).
 - (c) Within sixty (60) days of the end of each calendar year following the date of the Substantial Performance of the Work, GPMC shall deliver to P&H a report setting out the Gross Revenue for such year (the “**Increased Annual Revenue**”).
 - (d) Within sixty (60) days of the GPMC’s delivery of the report setting out the Increased Annual Revenue for each calendar year, P&H shall provide to GPMC a written statement setting out the outstanding Opening Balance in the beginning of such calendar year, as well as the calculation of the increased revenue rebate amount for such calendar year (the “**Annual Rebate**”), which shall equal to eighty percent (80%) of the difference between the Increased Annual Revenue and the IRRA Baseline. For greater certainty, no Annual Rebate shall be payable for any calendar year where the annual Increased Annual Revenue is less than the IRRA Baseline.
 - (e) The determination of the Annual Rebate as set out in the written statement provided by P&H shall be final and binding on the parties (absent manifest error), and GPMC shall, within thirty (30) days of the receipt of the written statement from P&H, pay to P&H the Annual Rebate set out in such statement.
 - (f) GPMC’s obligation to pay the Annual Rebate shall continue until the entire amount of the Opening Balance is repaid to P&H.
 - (g) Calculation of the Annual Rebate for the first year shall be based on the Increased Annual Revenue for the period commencing on the date of the Substantial Performance of the Work and ending on December 31st of such year. The IRRA Baseline for the first year shall be prorated accordingly. By way of example only, if Substantial Performance of the Work is achieved on September 1, 2020, the Increased Annual Revenue for the first year shall be reported for the period commencing on September 1, 2020 and ending on December 31, 2020, and the IRRA Baseline shall be prorated for such period based on a three hundred sixty five (365) day year.
 - (h) Schedule “A” sets out two possible examples of the Annual Revenue payments, which are being provided for illustration purposes only.
2. **Force Majeure.** Notwithstanding anything to the contrary contained in this Rebate Agreement, if any party shall be bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour trouble, inability to procure materials for construction or services, power failure, restrictive governmental laws or regulations, pandemics, epidemics, riots, insurrections, sabotage, rebellion, war, act of God or other reason, whether of a like nature or not, which is not its fault and which could not have been avoided by the exercise of reasonable effort or foresight by it, then the performance of such term, covenant or act shall be excused for the

period of the delay and such party shall be entitled to perform such terms, covenant or act within the appropriate time period after the expiration of the period of such delay. The provisions of this Section 3 shall not, however, be construed as excusing any party from being required to make any payment of money or from the consequences of its own impecuniosity.

3. **Partial Invalidity.** If any term, covenant or condition of this Rebate Agreement, or any part thereof, or the application thereof to any person or circumstances is to any extent held or rendered invalid, unenforceable or illegal, the remainder of this Rebate Agreement or the application of such term, covenant or condition, or part thereof, to persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.
4. **Time of Essence.** Time shall be of the essence of this Rebate Agreement in all respects.
5. **Notice.** Any notice herein required or permitted to be given shall be sufficiently given if delivered or sent by registered mail or electronic mail:

in the case of P&H, to:

Parrish & Heimbecker Limited
201 Portage Ave, Suite 1400
Winnipeg, Manitoba

Attention: John Heimbecker
Email: jheimbecker@pandh.ca

in the case of the GPMC, to:

Goderich Port Management Corporation
P.O. Box 415
245 North Harbour Road W.
Goderich, Ontario
N7A 4C6

Attention: Rowland Howe
Email: presidentgpmc@gmail.com

6. **Governing Law.** This Rebate Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be in all respects an Ontario contract.

7. **Further Assurances.** Each party shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to give the other party the full benefit and effect of, or intended by this Rebate Agreement, and shall provide such further documents or instruments required by the other party as may be reasonably necessary or desirable to effect the purpose of this Rebate Agreement and carry out its provisions.
8. **Headings.** All headings contained in this Rebate Agreement, and its division into sections and subsections, are for reference purposes only and shall not be considered in the interpretation of this Rebate Agreement.
9. **Schedules.** All schedules to this Rebate Agreement are parts of this Rebate Agreement.
10. **Enurement.** This Rebate Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

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[signature page follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Rebate Agreement.

PARRISH & HEIMBECKER, LIMITED

Per: _____ c/s

I have the authority to bind the corporation.

GODERICH PORT MANAGEMENT CORPORATION

Per: _____

Per: _____ c/s

I/We have the authority to bind the corporation.

SCHEDULE "A"

SAMPLE FINANCIAL MODELS

Increased Revenue Rebate Agreement Examples

Scenario #1 Unsuccessful Funding Application

Forecast To Pay Down Mooring Dolphin Construction Account		GPMC- CAPEX Contribution	Increased Revenue Rebate at 80%
Construction Account Opening Balance	\$ 1,450,125	\$ 200,000	
Construction Account Initial Balance(s)			
Year 1	\$ 1,250,125		\$ 80,000
Year 2	\$ 1,170,125		\$ 90,000
Year 3	\$ 1,080,125		\$ 100,000
Year 4	\$ 980,125		\$ 110,000
Year 5	\$ 870,125		\$ 120,000
Year 6	\$ 750,125		\$ 130,000
Year 7	\$ 620,125		\$ 140,000
Year 8	\$ 480,125		\$ 150,000
Year 9	\$ 330,125		\$ 150,000
Year 10	\$ 180,125		\$ 150,000
Year 11	\$ 30,125		\$ 150,000

Scenario #2 Successful Funding from NTCF

Forecast To Pay Down Mooring Dolphin Construction Account		GPMC- CAPEX Contribution	Federal NTCF Grant	Increased Revenue Rebate at 80%
Construction Account Opening Balance	\$ 1,450,125	\$ 200,000	\$ 725,063	
Construction Account Initial Balance(s)				
Year 1	\$ 525,062			\$ 80,000
Year 2	\$ 445,062			\$ 90,000
Year 3	\$ 355,062			\$ 100,000
Year 4	\$ 255,062			\$ 110,000
Year 5	\$ 145,062			\$ 120,000
Year 6	\$ 25,062			\$ 130,000