

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

A M O N G:

**THE CORPORATION OF THE TOWN OF
GODERICH**

(the “**Town**”)

OF THE FIRST PART

- and -

PARRISH & HEIMBECKER, LIMITED

(“**P&H**”)

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 the Town and P&H now wish to enter into this Construction Agreement in order to set out the terms of the construction 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 funding agreement between the Goderich Port Management Corporation (the “**GPMC**”) and P&H (the “**Funding Agreement**”), the executed increased revenue rebate agreement between GPMC and P&H (the “**Rebate Agreement**”), and the executed transfer agreement between P&H and the Town, the parties hereby covenant and agree as follows:

1. **Consultant, General Contractor and Project Manager.** The Town acknowledges and agrees that in connection with the Project, P&H has engaged the following parties:
 - (a) Riggs Engineering Ltd. (the “**Engineer**”) as the consultant for the Project. The Engineer shall be responsible for:
 - i. preparing specifications, drawings and models for the Project;
 - ii. progress review of the Project at intervals appropriate to the progress of the construction to become familiar with the progress and quality of the work (including rejecting non-conforming work), determine if the work is proceeding in general conformity with the Contract Documents (as defined below) and verify quantities of work performed under a schedule of prices;

- iii. issuing certificates for payment;
 - iv. furnishing supplemental instructions to the Contractor, and preparing change orders and change directives;
 - v. preparing as built drawings and delivering same to the Town; and
 - vi. such other items as may be required by P&H from time to time.
- (b) Facca Incorporated (the “**Contractor**”) as the general contractor for the Project pursuant to a standard construction document CCDC 18, dated December 6, 2019 (the “**CCDC 18**”). The Contractor shall be responsible for:
- i. applying for and obtaining the permits, licenses, inspections and certificates necessary for the construction of the Project all in accordance with the CCDC 18;
 - ii. commencing and thereafter diligently continuing with construction of the Project as soon as reasonably possible following the date hereof;
 - iii. constructing the Project in accordance with the Contract Documents and pursuant to the CCDC 18;
 - iv. using all reasonable efforts to attain Total Performance of the Work (as such term is defined in CCDC18) on or before July 31, 2020 subject to reasonable extension as required in the circumstances, provided that P&H provides written notice of such extension to the Town;
 - v. at its sole expense, maintaining appropriate insurance during the period of construction as may be reasonably required by P&H; and
 - vi. such other items as may be required by P&H in accordance with the CCDC 18.
- (c) CAMAR Mill System Ltd. (“**CAMAR**”) as the project manager for the Project. CAMAR shall be responsible for general project management of the Project and such other items as may be reasonably required by P&H from time to time.

2. **Contract Documents.** The Project shall be constructed in accordance with the provisions of the CCDC 18 and drawings and specifications dated December 6, 2019 and stamped March 11, 2020, as may be amended from time to time (collectively, the “**Contract Documents**”).

P&H has provided the Contract Documents for review and approval by the GPMC, and the GPMC has reviewed and approved the Contract Documents.

3. **Responsibilities of P&H.** P&H covenants and agrees with the Town as follows:

- (a) to provide general oversight of the construction of the Project;
- (b) to maintain or to cause its contractors and agents to maintain throughout the construction of the Project, commercial general liability insurance underwritten by an insurer licensed to conduct business in the Province of Ontario, for a limit of not

less than \$5,000,000 per occurrence, an aggregate limit of not less than \$5,000,000, within any policy year with respect to completed operations and a deductible of not more than \$100,000.00. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to: name the Town as an additional insured, cross-liability and severability of interest, blanket contractual, products and completed operations, premises and operations liability, personal injury liability, contingent employers liability, work performed on behalf of the named insured by sub-contractors, broad form property damage, firefighting expenses, elevator and hoist liability and attached machinery – while loading & unloading. Such insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Town. P&H shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement;

- (c) to defend, indemnify and save harmless the Town, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of P&H, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the Project, save where caused or to the extent contributed to by the negligent or wilful acts or omissions of the Town or GPMC. This indemnity shall be in addition to and not in lieu of any insurance to be provided by P&H in accordance with this Construction Agreement, and shall survive the termination of this Construction Agreement; and
- (d) to defend, indemnify and save harmless the Town from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related P&H's status with WSIB, save where caused or to the extent contributed to by the negligent or wilful acts or omissions of the Town or GPMC. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by P&H in accordance with this Construction Agreement, and shall survive this the termination of this Construction Agreement.

4. **Project Team.** Each of the Town, P&H, GPMC, the Engineer, the Contractor and CAMAR shall designate from time to time representatives of each of them to form a “project team” which shall meet as often as is necessary throughout the period of

construction of the Mooring Dolphin. It is acknowledged by all parties that regular meetings of the project team shall take place on site every other Thursday at 10:30 am. Minutes from the meetings of the project team will be created and distributed to the participants. The members of the project team shall work together in good faith to make decisions and resolve conflicts amicably and on the basis of consensus.

5. **Payment.** Subject to the provisions of the Contract Documents and any applicable law, P&H shall make progress payments to the Contractor, the Engineer and CAMAR on account of the estimated contract price in the amount of one million four hundred fifty thousand one hundred twenty five dollars (\$1,450,125.00) as may be adjusted from time to time (the “**Contract Price**”) together with all applicable taxes (the “**Value Added Taxes**”). Progress payments to the Contractor shall be certified by the Engineer in accordance with CCDC 18.

Upon Substantial Performance of the Work (as such term is defined in CCDC 18), P&H will pay to the Contractor the unpaid balance of the holdback amount when due together with such Value Added Taxes as may be applicable to such payment. Within thirty (30) days of the Substantial Performance of the Work, GPMC shall pay to P&H a fixed contribution payment in the amount of two hundred thousand dollars (\$200,000.00) in accordance with the terms and conditions set out in the Funding Agreement, and P&H and the GPMC shall deliver final accounting of the costs of the construction of the Project to the Town (including the Value Added Tax and subject to adjustment following the issuance of the final certificate for payment) which shall be subject to a rebate pursuant to the Rebate Agreement.

Upon the issuance of the final certificate for payment, P&H will pay to the Contractor, the Engineer and CAMAR any unpaid balance of the Contract Price together with such Value Added Taxes as may be applicable to such payment.

6. **Change Orders.** P&H may make changes to the scope of work and schedule for the Project consisting of additions, deletions and other revisions, in accordance with the provisions of the CCDC 18. The method and amount of adjustment of the Contract Price, if any, shall be determined in accordance with the CCDC 18. P&H shall act reasonably in requesting and approving such changes and adjustments. P&H shall also provide notice of such changes and adjustments to the Town and GPMC.
7. **Access.** The Town shall permit and shall direct the GPMC to permit P&H, the Contractor, the Engineer and CAMAR, and their respective employees, agents, representatives, consultants and contractors to have access to such parts of the Port of Goderich, from time to time, for the purpose of constructing the Project as P&H may deem necessary or desirable, including without limitations conducting tests, inspections and studies, attending to site preparation, placing of underwater concrete, and installing steel sheet pile. The parties shall work cooperatively and in good faith to coordinate such access if required.

8. **Ownership.** The Mooring Dolphin shall become and remain the property of the Town absolutely, forthwith upon the later of the following: (a) Substantial Performance of the Work; and (b) affixation to or incorporation of the Mooring Dolphin into the inner harbour of the Port of Goderich all in accordance with the Transfer Agreement.
9. **Force Majeure.** Notwithstanding anything to the contrary contained in this Construction 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 9 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.
10. **Partial Invalidity.** If any term, covenant or condition of this Construction 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 Construction 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.
11. **Time of Essence.** Time shall be of the essence of this Construction Agreement in all respects.
12. **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 the Town, to:

The Corporation of the Town of Goderich
57 West Street
Goderich, Ontario

Attention: Janice Hallahan
Email: jhallahan@goderich.ca

in the case of P&H, to:

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

Attention: John Heimbecker
Email: jheimbecker@pandh.ca

13. **Governing Law.** This Construction 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.
14. **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 Construction 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 Construction Agreement and carry out its provisions.
15. **Headings.** All headings contained in this Construction Agreement, and its division into sections and subsections, are for reference purposes only and shall not be considered in the interpretation of this Construction Agreement.
16. **Schedules.** All schedules to this Construction Agreement are parts of this Construction Agreement.
17. **Enurement.** This Construction 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 Construction Agreement.

PARRISH & HEIMBECKER, LIMITED

Per: _____ c/s

I have the authority to bind the corporation.

THE CORPORATION OF THE TOWN OF GODERICH

Per: _____

Per: _____ c/s

We have the authority to bind the Town.