



# County of Orange

---

County Executive Office

June 16, 2022  
Via Email

Dana Point Harbor Partners, LLC  
Bellwether Financial Group, Inc.  
450 Newport Center Drive, Suite 590  
Newport Beach, CA 92660  
Attn: Joseph Ueberroth, Manager

Re: Master Ground Lease Agreement: Subsection 5.5.6 Evidence of Financing

Dear Mr. Ueberroth:

The attached letter from Brian Schaeffgen, dated June 13, 2022 ("Letter"), requests approval pursuant to Subsection 5.5.6 of the Master Ground Lease Agreement ("Lease") dated October 29, 2018 between the County of Orange and Dana Point Harbor Partners, LLC ("DPHP"). This letter serves as written approval that DPHP has demonstrated that they have sufficient financial resources to initiate and complete the construction of Phase 1 of the Marina Improvement Project. Phase 1 of the Marina Improvement Project includes the demolition and installation of three West Basin docks, W10, W11, and W12, as described and depicted on pages 3-5 of the attached Letter.

Thank you for your continued partnership on this exciting project. If you have any questions or concerns, please contact Zoila Verdaguer at [Zoila.Verdaguer@ocgov.com](mailto:Zoila.Verdaguer@ocgov.com).

Sincerely,

Thomas A. Miller  
Chief Real Estate Officer

Enc: DPHP Letter Requesting Approval of Evidence of Financing

## Dana Point Harbor Partners, LLC

**To:** Thomas "Mat" Miller, Chief Real Estate Officer, County of Orange  
Zoila Verdaguer, CEO Real Estate | Land Development, County of Orange

**From:** Brian Schaeffgen, Dana Point Harbor Partners, LLC, Marina Component

**cc:** Joe Ueberroth, Dana Point Harbor Partners, LLC

**Date:** June 13, 2022

**RE: Dana Point Harbor Partners – Conditions Precedent to the Commencement of Marina Construction**

As we deliver the necessary items required as conditions precedent to the commencement of our Improvement Project, we are sending the following items to address the financial requirements:

In accordance with the Master Ground Lease **Subsection 5.5.6 – Evidence of Financing**, Lessee is delivering the attached bank statements of the two primary accounts for the marina property for the past six months reflecting an average cash balance of approximately \$7.5 million to demonstrate that we have access to sufficient financial resources to complete construction of Phase 1 of the Improvement Project as required under the Lease.

Phase 1 entails the mobilization of the approved general contractor, Bellingham Marine Industries, Inc., to the site as well as the removal and replacement of the West Basin docks W10, W11 and W12 per the contract's schedule of values. Please see the attached detailed description of work and area addressed in the Phase 1 work. This work is contracted for a total of \$4,913,188 (Contract 4.0 Pricing schedule of values attached) of which the Marina Component has sufficient financial resources and bonding to commence and complete this phase of the project.

Additionally, in accordance with the Master Ground Lease **Subsection 5.5.4 – Performance and Payment Bonds**, Lessee is submitting its updated licensed general contractor's payment and performance bonds issued by Western Surety Company in the amount of \$4,913,188 comprising Phase 1 of the Improvement Project. We believe both compliant with the subsection of the Lease and the requirements of the County of Orange.

610 Newport Center Drive, Suite 490  
Newport Beach, CA 92660  
(949) 723-7788

We believe that we have met all the conditions precedent to commencement of Phase 1 of the Marina Component of the Improvement Project such that construction may commence by June 15, 2022.

**Enclosures:**

- Dana Point Harbor Revitalization – Phase 1 Outline of Work
- Bellingham Marine Industries Contract Pricing – Schedule of Values
- Bellingham Marine Payment Bond
- Bellingham Marine Performance Bond
- Bellwether Bank of America Bank Statements November 2021 - April 2022 for accounts \*\*8628
- Bellwether Bank of America Bank Statements November 2021 - April 2022 for accounts \*\*8586

## **Dana Point Harbor Revitalization**

### **Phase 1 Description**

- 1. Mobilization**
  - a. Mobilize equipment and machinery to site
- 2. Demolition**
  - a. Demolition of existing docks
  - b. Demolition of existing piles
  - c. Demolition of existing guardrails
  - d. Demolition of existing gates
  - e. Removal and disposal of demolition
- 3. Repairs to Seawall and Revetment wall.**
- 4. Installation of Docks W12, W11 and W10**
  - a. 210 Floats
- 5. Installation of steel piles and HDPE sleeves**
  - a. 32 Piles and sleeves
- 6. Installation of aluminum gangways**
  - a. 3x 30' gangways
- 7. Installation of aluminum gates**
  - a. 3x aluminum gates
- 8. Installation of aluminum guardrail**

The installation of Phase 1 comprises of three (3) docks, W12, W11 and W10. Phase 1 is located on the Eastern side of the West basin next to the bridge. Once demolition of the existing docks is complete, Bellingham Marine will begin splashing floats from the laydown area located near the shipyard in the East of the site.

Floats once splashed will be pushed into place with workboats, a total of 210 floats will be installed to make up the three (3) new docks. The piling will begin once the floats are in place and will continue throughout the phase until all Three (3) docks are complete. There is a total of 32No off 14" piles and 32No of 16" sleeves in phase 1.

Once installed the new dock arrangement will have a total of 119 slips made up of 111No off 25' and 8No off 21'.

Services including power, water and fire will be installed on the docks once the main walk is in. Service pedestals one (1) each per berth will be installed once finger docks are in place.

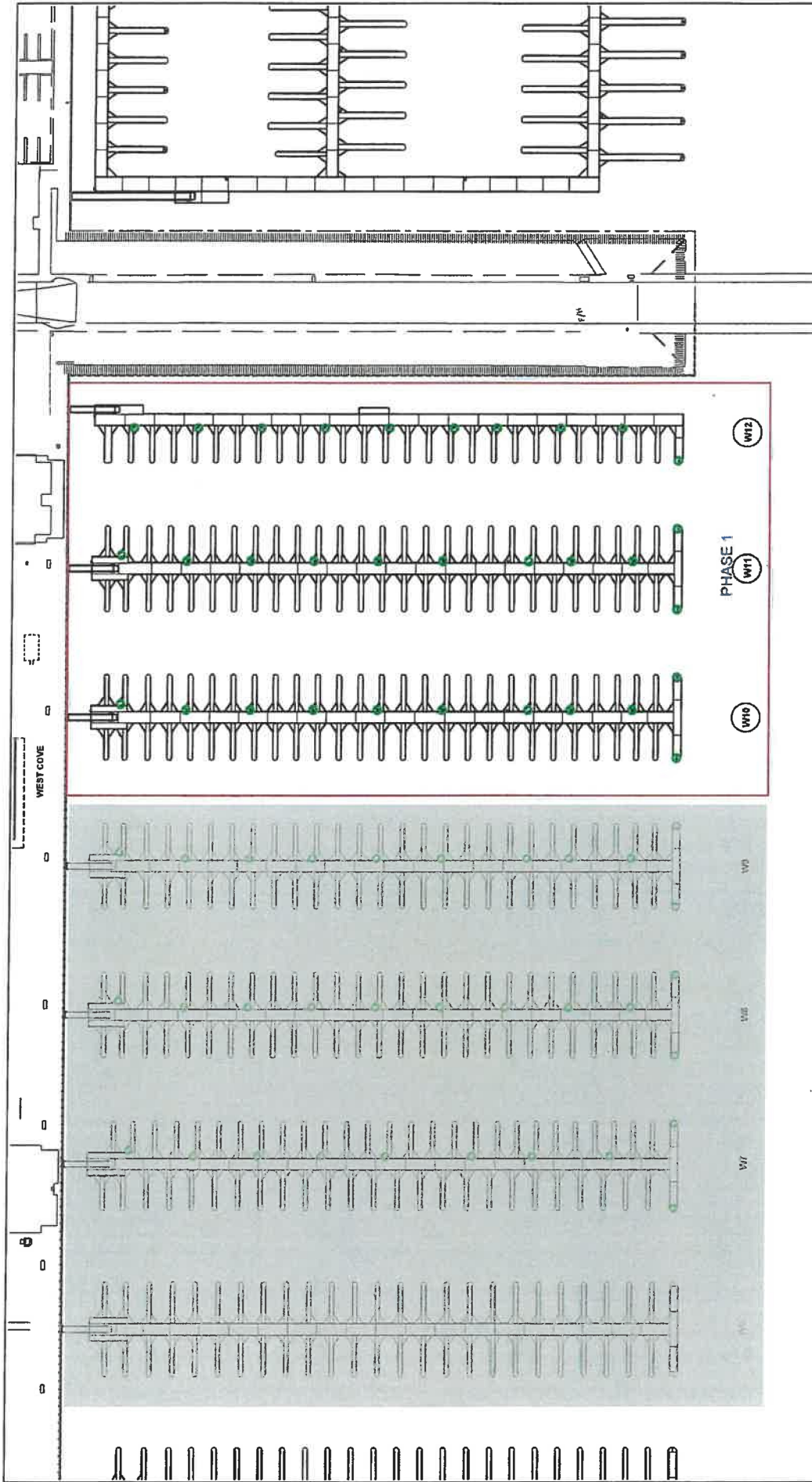
Gangways will be hung once gangway landing floats and main walkway floats are in place with gates being fitted soon after. Guardrails will be installed once gates have been fixed to abutment.

Appendix 1 – Phasing Plan and Laydown Area

Appendix 2 – Pile Layout



Appendix 2 - Pile Layout



PERMIT DRAWING

1/2" = 1" (14" O.D.) SCH. XH (.500" WALL) PIPE PILE, ASTM A252, GR. 3 w/HOPE SLEEVE

<p><b>Bellingham MARINE</b>          THE WORLD'S MOST COMPREHENSIVE MARINA BUILDER</p>		<p><b>DANA POINT HARBOR REVITALIZATION</b>          Harbor Drive          Dana Point, CA 92629</p>		<p>SCALE: (Sheet Size 24" x 36")          DRAWN BY: KG          DATE: 5/10/2022          DRAWING: PLS          SHEET NO. 20</p>	
<p>PROPOSED MARINA          CA LICENSE #44280          1000 CALIFORNIA LANE          OLYMPIA WA          TEL: (360) 878-2285          FAX: (360) 878-1780</p>		<p>PROJECT NUMBER:          7341</p>		<p>ENGINEER / DESIGNER:          PROJECT MANAGER:          CHECKED BY:</p>	
<p>THE DRAWING COMPANY          PROPOSED MARINA          1000 CALIFORNIA LANE          OLYMPIA WA          TEL: (360) 878-2285          FAX: (360) 878-1780</p>		<p>NOT BE USED, REPRODUCED          PARTIAL OR IN FULL          WITHOUT WRITTEN          PERMISSION FROM          THE DRAWING COMPANY          MARINE INDUSTRIES, INC.</p>		<p>PILE LAYOUT FOR DOCKS W7 - W12</p>	
<p>REVISIONS</p>		<p>REVISIONS</p>		<p>REVISIONS</p>	
<p>NO. DATE DESCRIPTION</p>		<p>NO. DATE DESCRIPTION</p>		<p>NO. DATE DESCRIPTION</p>	
<p>1/2 PILE SIZE CHANGED FROM 12"</p>		<p>1/2 PILE SIZE CHANGED FROM 12"</p>		<p>1/2 PILE SIZE CHANGED FROM 12"</p>	

**4.0 PRICING:**

Our quoted price is One Hundred Six Million Nine Hundred Sixty-Three Thousand Eight Hundred Two Dollars and 07/100 (\$106,963,802) including use tax.

<b>DANA POINT HARBOR REVITILIZATION WATERSIDE COST SUMMARY</b>		
Description	Comment	Item Total Sell
<b>MOBILIZATION</b>	<b>MOB/DEMOB</b>	<b>\$313,670</b>
PHASE 1	W10, W11, W12 DOCKS	\$4,599,518
PHASE 2	W7, W8, W9 DOCKS	\$4,904,819
PHASE 3	W5, W6 DOCKS	\$3,578,676
PHASE 4	E1, E2, E3 DOCKS	\$7,996,711
PHASE 5	E10, E11, E12 DOCKS	\$7,494,138
PHASE 6	E4, E5, E6, E7, E8, E9 DOCKS	\$8,282,172
PHASE 7	W1, W2, W3, W4 DOCKS	\$6,651,081
PHASE 8A	BFD1 DOCK	\$1,574,216
PHASE 8B	BD1, E13, E14, E15 DOCKS	\$6,804,514
PHASE 9	E16, E17, E18, E19 DOCKS	\$6,799,716
PHASE 10	E20, E21, E22 DOCKS	\$5,114,095
PHASE 11	E23, E24, E25, E26 DOCKS	\$6,412,157
PHASE 12	W19, W20, W21 DOCKS	\$7,450,266
PHASE 13	W16, W17, W18 DOCKS	\$5,869,236
PHASE 14	W13, W14, W15 DOCKS	\$4,930,398
PHASE 15A	FUEL & OUTER BASIN DOCKS	\$5,731,606
PHASE 15B	SPORTFISHER & CHARTER DOCKS	\$2,087,578
YACHT CLUB	YACHT CLUB DOCKS	NIC
GUARDRAIL (CURVED)	2,887 LF @ \$472/LF	\$1,363,213
GUARDRAIL (STRAIGHT)	7,222 LF @ \$421/LF	\$3,039,487
SEAWALL REPAIR		\$937,676
FUEL SYSTEM		\$3,081,300
FUEL DOCK BUILDING		\$518,650
<b>TOTAL WATERSIDE COST</b>		<b>\$105,514,892</b>

<b>OTHER COSTS (PASS-THROUGH)</b>		
Description	Comment	Item Total Sell
REGULATORY COMPLIANCE	PRELIMINARY	\$425,510
BUILDER'S RISK	W/EARTHQUAKE	\$187,000
PAYMENT & PERFORMANCE BOND	LUMP SUM	\$836,400
CONTINGENCY	NOT INCLUDED	\$0
<b>TOTAL OTHER COSTS</b>		<b>\$1,448,910</b>

<b>TOTAL WATERSIDE WITH OTHER COSTS</b>		<b>\$106,963,802</b>
---	--	----------------------

 **Document A312™ – 2010**

**Payment Bond**

Bond Number: 30161687

**CONTRACTOR:**

*(Name, legal status and address)*

Bellingham Marine Industries, Inc.  
8810 Sparling Street  
Dixon, CA 95620

**SURETY:**

*(Name, legal status and principal place of business)* Western Surety Company

151 N. Franklin St.  
Chicago, IL 60606

**OWNER:**

*(Name, legal status and address)*

Dana Point Harbor Partners, LLC  
610 Newport Center Drive, Suite 490  
Newport Beach, CA 92660

**CONSTRUCTION CONTRACT**

Date: March 4, 2022

Amount: \$4,913,188.00

Description:

*(Name and location)* Dana Point Harbor Marina Revitalization

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**BOND**

Date: June 7, 2022

*(Not earlier than Construction Contract Date)*

Amount: \$4,913,188.00

Modifications to this Bond:  None  See Section 18

**CONTRACTOR AS PRINCIPAL**

*(Corporate Seal)*

Company: Bellingham Marine Industries, Inc.

Signature: 

Name and Title: Tina Belfcoat

*(Any additional signatures appear on the last page of this Payment Bond.)*

**SURETY**

*(Corporate Seal)*

Company: Western Surety Company

Signature: 

Name and Title: Roger Kaltenbach

CA Lic. No. 6006876



*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

Parker, Smith & Feek  
2233 112th Avenue NE  
Bellevue, WA 98004  
(425) 709-3600

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

[a] corporate surety payment bond, issued by a surety company licensed to transact business as such in the State, with Lessee as principal, said company as surety, County as obligee ... guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the construction of the Improvement Project or for labor used thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

DUAL OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Bond No. 30161687 (hereafter "Bond") issued by the Western Surety Company as Surety, on behalf of Bellingham Marine Industries, Inc. hereafter referred to as the Principal, in favor of Dana Point Harbor Partners, LLC hereafter referred to as the Primary Obligee for Dana Point Harbor Marina Revitalization (the "Contract").

WHEREAS, the Primary Obligee requests that Surety and Principal add County of Orange, a political subdivision of the State of California as an additional obligee under the Bond; and

WHEREAS, the Surety and Principal agree to the above referenced changes requested by the Primary Obligee which are set forth in this Rider which is executed concurrently with the execution of the Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree as follows:

- 1. County of Orange, a political subdivision of the State of California

is added to the Bond as an additional obligee ("Additional Obligee").

2. The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligee, or either of them unless the Primary Obligee, the Additional Obligee or either of them shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract at the time and in the manner therein set forth. Notwithstanding anything in the Contract to the contrary, the Surety shall have no obligations or liability to the Additional Obligee unless they fulfill all of the Primary Obligee's obligations under the Contract which shall include all of the Primary Obligee's payment obligations to the Principal.

3. The aggregate liability of the Surety under this Bond to any, all or either of the Primary Obligee or the Additional Obligee, as their interests may appear, is limited to the penal sum of the Bond. Further, the Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee. The Surety may, at its option, make any payments under said Bond by check issued jointly to the Primary Obligee and the Additional Obligee.

- 4. Except as modified herein, all other terms and conditions of the Bond shall remain in full force and effect.

SIGNED, SEALED AND DATED this 07th day of June, 2022.

Dana Point Harbor Partners, LLC Primary Obligee By: [Signature] Title: Manager County of Orange, a political subdivision of the State of California Additional Obligee By: [Signature] Title: CHIEF REAL ESTATE OFFICER

Western Surety Company Surety By: [Signature] Roger Kaltenbach Attorney-in-fact CA Lic. No. 6006876

Bellingham Marine Industries, Inc. Principal By: [Signature] Title: Chairman and CEO

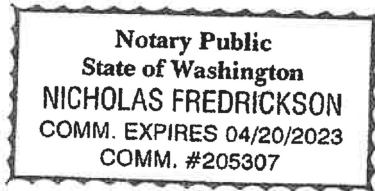
Approved as to form, County of Orange:

ACKNOWLEDGMENT BY SURETY

State of Washington)  
County of King)

On this 07th day of June, 2022, before me, Nicholas Fredrickson, notary public in and for the State of Washington, with principal office in the County of King, residing therein, duly commissioned and sworn, personally appeared Roger Kaltenbach known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of Western Surety Company as surety in said instrument, and acknowledged to me that he subscribed the name of said corporation thereto as surety, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



NOTARY PUBLIC

A handwritten signature in cursive script, appearing to read "Nicholas Fredrickson", written over a horizontal line.

Commission Expires: 04/20/2023

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Susan B Larson, Deanna M French, Ronald J Lange, Scott Fisher, Elizabeth R Hahn, Jana M Roy, Scott McGilvray, Mindee L Rankin, Roger Kaltenbach, John R Claeys, Guy P Armfield, Andrew P Larsen, Nicholas Fredrickson, Scott Garcia, Andrew Kerslake, John M Miller, Derek Sabo, Charla M Boadle, Alec Gumpfer, Katelyn Cooper, Individually, of Bellevue, WA  
Drew DNeessen, Charles Floberg, William M Smith, Mason M Marks, Individually, of Portland, OR**

its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 3rd day of December, 2021.



WESTERN SURETY COMPANY

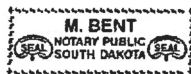
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 3rd day of December, 2021, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 07th day of June, 2022.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Oblique Services > Validate Bond Coverage, if you want to verify bond authenticity.

# AIA<sup>®</sup> Document A312™ – 2010

## Performance Bond

Bond Number: 30161687

**CONTRACTOR:**

*(Name, legal status and address)*

Bellingham Marine Industries, Inc.  
8810 Sparling Street  
Dixon, CA 95620

**SURETY:**

*(Name, legal status and principal place of business)*

Western Surety Company  
151 N. Franklin St.  
Chicago, IL 60606

**OWNER:**

*(Name, legal status and address)*

Dana Point Harbor Partners, LLC  
610 Newport Center Drive, Suite 490  
Newport Beach, CA 92660

**CONSTRUCTION CONTRACT**

Date: March 4, 2022

Amount: \$4,913,188.00

Description: Dana Point Harbor Marina Revitalization  
*(Name and location)*

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**BOND**

Date: June 7, 2022

*(Not earlier than Construction Contract Date)*

Amount: \$4,913,188.00

Modifications to this Bond:  None  See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

Bellingham Marine Industries, Inc.

Signature: 

Name and Title: Tina J. Pfeiffer, Office Pres. ADM

*(Any additional signatures appear on the last page of this Performance Bond.)*

**SURETY**

Company: *(Corporate Seal)*

Western Surety Company

Signature: 

Name and Title: Roger Kaltenbach, Attorney-in-Fact CA Lic. No. 6006876

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

Parker, Smith & Feek  
2233 112th Avenue NE  
Bellevue, WA 98004  
(425) 709-3600

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*



**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title:

Address:

Address: