

# CONSULTING AGREEMENT

## Coral Reef Restoration and Maintenance Program FY25

This consulting agreement made on this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between MOTE MARINE LABORATORY, hereinafter referred to as "MOTE" and City of Key West hereinafter referred to as "CITY" on the following terms and conditions:

### RECITALS

WHEREAS, according to MOTE, the coral reefs of Key West are an integral part of Florida's larger coral reef tract, the only barrier reef in the continental U.S., attracting millions of visitors every year, and acting as the frontline defense of our infrastructure against major storms;

WHEREAS, according to MOTE, Key West's coral reefs are now essentially functionally extinct, with less than 5% of living coral in many areas due to impacts of disease, rising water temperatures, and ocean acidification; and

WHEREAS, in 2020, MOTE became the first scientific organization to carry out every step of the staghorn coral sexual propagation process - from spawning and outgrowing in the laboratory, to out planting and maintaining corals on the reef until they reached sexual maturity, became gravid, and spawned again to create an entire second generation of disease-resistant and climate-resilient corals;

WHEREAS, with such innovative science and success in demonstrating that coral genetic resilience is the key for successfully restoring the coral reefs of the Florida Keys, MOTE has been designated as a core partner with NOAA in their Mission: Iconic Reefs program;

WHEREAS, MOTE's overarching vision for response, restoration and recovery is called 'The Florida Keys Coral Disease Response & Restoration (FKCDRR) Initiative' and with its 1) demonstrated experience and expertise in developing innovative technologies for coral restoration, 2) significant existing coral research and restoration infrastructure and ongoing activities in the Florida Keys, 3) ability to coordinate closely with appropriate federal and state agencies, as well as university and NGO partners, and 4) significant local community engagement and public outreach, MOTE is uniquely positioned to lead this initiative;

WHEREAS, CITY, pursuant to City of Key West code section 80-3, shall establish a fund for the express purpose to restore and maintain coral reefs adjacent to the City of Key West and engage certified, independent, qualified reef restoration experts, to be identified by resolution of the City of Key West annually, to restore and maintain such reefs and shall allocate annually these funds to the respective programs;

WHEREAS, CITY wishes to engage MOTE for the express purpose of restoring and maintaining coral reefs adjacent to the City of Key West

IT IS THEREFORE agreed as follows:

1. This Agreement shall commence on the effective date, defined as the date the last party has executed the agreement, and ending February 28, 2025. This Agreement may be extended for one additional one-year term, March 1, 2025, through February 28, 2026, upon the mutual consent of both parties and the approval of the City of Key West City Commission and in accordance with the City of Key West Code of Ordinances and State of Florida law.

2. Pursuant to City of Key West code section 80-3, CITY agrees to pay \$100,000.00 to MOTE for the purposes of science-based coral reef restoration and maintenance. In the event of unforeseen circumstances, any unused funds must be acknowledged to City for reimbursement, extension of time or approval of alternate use.

3. MOTE agrees to outplant over 1,000 corals to restore nearly 100 m<sup>2</sup> of a targeted coral reef to ~30% coral cover in Key West waters at a mutually agreed upon area for maximum species diversity and historically & culturally important local reefs upon the mutual consent of both parties and the approval of the City of Key West City Commission and in accordance with the City of Key West Code of Ordinances.

4. MOTE further agrees to:

- a. utilize endemic coral species' genetic strains that demonstrate enhanced resiliency to 10 primary threats (increasing water temperatures/acidification & coral disease);
- b. conduct multi-year monitoring to assess survival and ecosystem health;
- c. implement a Key West public outreach campaign stressing importance of local coral reefs while highlighting City-sponsored conservation and restoration efforts; AND
- d. provide City with a report on funding expenditures within thirty (30) days of the annual anniversary of this agreement, which said report will include but not be limited to:
  - i. Accounting of how all dollars are spent;
  - ii. Accounting of number of services provided;
  - iii. Description of how funds aided in reef restoration and maintenance; and
  - iv. Acknowledgement of how funding was recognized via a press

release, social media, or other outreach effort pursuant to paragraph 3.c. above.

5. MOTE shall not commence work under this contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the CITY nor shall MOTE allow any Subcontractor to commence work on its subcontract until all similar such insurance required of the subcontractor has been obtained and approved. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the CITY. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the City. Insurance shall be in force and effect until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the CITY. If any of the insurance was provided on a "Claims Made" basis, coverage shall be maintained by MOTE for a minimum of 4 years following the termination of the Agreement, including all renewals. In the event that insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, MOTE shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. MOTE shall not continue to work pursuant to this contract unless all required insurance remains in full force and effect. MOTE shall name the CITY as an additional insured under the policy.

6. The Consultant shall maintain the following types and amounts of insurance throughout the term of the Agreement:

GENERAL INSURANCE REQUIREMENTS:

- 1.01 During the Term of the Agreement, Mote Marine shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida ("City"), the types of insurance described herein.
- 1.02 All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 1.03 The City shall be specifically included as an additional insured on Mote Marine's Liability policies with the exception of MOTE's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The City's additional insured status should be extended to all Completed Operations coverages.
- 1.04 MOTE shall deliver to the City, prior to commencing work/activities under the

Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the City, on a timely basis, if requested by the City.

- 1.05 If MOTE fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if MOTE refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the City, the City may, at the City's sole discretion, terminate or suspend this Agreement and seize the amount of Contractor's performance bond, letter of credit, or other security acceptable to the City).
- 1.06 MOTE shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the City requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit. Mote Marine shall promptly authorize and have delivered such statement to the City.
- 1.07 MOTE authorizes the City and/or its insurance consultant to confirm all information furnished to the City, as to its compliance with its Bonds and Insurance Requirements, with MOTE's insurance agents, brokers, surety, and insurance carriers.
- 1.08 All insurance coverage of MOTE shall be primary to any insurance or self-insurance program carried by the City. The City's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of MOTE in this Agreement.
- 1.09 The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- 1.10 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the City.
- 1.11 The insurance coverage and limits required of MOTE under this Agreement are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for MOTE. MOTE alone shall be responsible for the sufficiency of its own insurance program. Should MOTE

have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.

- 1.12 During the Term of this Agreement, the City and its agents and contractors may continue to engage in necessary business activities during the operations of MOTE. No personal property owned by City used in connection with these business activities shall be considered by MOTE's insurance company as being in the care, custody, or control of MOTE.
- 1.13 Should any of the required insurances specified in this Agreement provide for a deductible, self- insured retention, self-insured amount, or any scheme other than a fully insured program. MOTE shall be responsible for all deductibles and self-insured retentions.
- 1.14 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 1.15 All policies of insurance required herein shall require that the insurer give the City thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- 1.16 Renewal Certificate(s) of Insurance shall be provided to the City at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of MOTE.
- 1.17 If MOTE utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, MOTE will ensure all contractors and sub-contractors to maintain the same types and amounts of insurance required of MOTE. In addition, MOTE will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for MOTE contained within this Agreement. MOTE shall obtain Certificates of Insurance comparable to those required of MOTE from all contractors and sub-contractors. Such Certificates of insurances shall be presented to the City upon request. Contractor's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Contractor from the direct primary responsibility Contractor has to the City hereunder. The City will look directly to Contractor for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contractor's insurance coverages.

## 2.0 SPECIFIC INSURANCE COVERAGES AND LIMITS:

- 2.01 All requirements in this Insurance Section shall be complied with in full by MOTE unless excused from compliance in writing by the City.
- 2.02 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the City.

Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the Laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each Employee

If MOTE has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*, MOTE will be required to issue a formal letter (on MOTE's letterhead) stating that it has less than four (4) employees and has elected not to purchase Workers' Compensation/Employers Liability coverage as permitted by *Florida Statutes*. This exception does not apply to firms engaged in construction activities.

Marine General Liability Insurance shall be maintained by Mote Marine on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$2,000,000.00 Combined Single Limit each Occurrence and Aggregate
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Completed Operations Liability Coverage shall be maintained by MOTE for a period of no less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess and/or Umbrella policy is equal to or more comprehensive than the Primary Marine General Liability policy.

Protection & Indemnity Insurance (P&I) shall be maintained by MOTE and shall include Water Craft Liability coverage, Crew coverage, and Wreckage Removal coverage. The limits of such coverage shall not be less than \$2,000,000.

Business Automobile Liability Insurance shall be maintained by MOTE as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury	\$1,000,000.00 Limit Each Accident
Property Damage Liability	\$1,000,000.00 Limit Each Accident
or	
Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit Each Accident

If MOTE does not own any vehicles, this requirement can be satisfied by having MOTE's Commercial General Liability policy endorsed with "Non-Owned and Hired Automobile" Liability coverage.

Professional Liability Insurance shall be maintained by MOTE which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of MOTE arising out of activities governed by this Agreement. The minimum acceptable limits of liability shall be \$1,000,000 per Occurrence and \$1,000,000 Annual Aggregate. If the policy is structured on a "Claims Made" basis, the policy must contain a "Retroactive Date" of no later than the commencement date of the Agreement and will have an extended reporting period of four (4) years following expiration or termination of the Agreement.

7. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Vendor Certification Regarding Scrutinized Companies List Affidavit is attached hereto as Exhibit A.

8. MOTE agrees to protect, defend, indemnify, save and hold harmless City of Key West, all its Departments, Agencies, Boards, Commissions, officers, City's Consultant, agents, servants and employees, including volunteers, from and against any and all claims, debts, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act of omission of the MOTE, its SUBCONTRACTOR(S), its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all its Departments, Agencies, Boards, Commissions, officers, agents, servants and employees. The City of Key West does not waive any of its sovereign immunity rights, including but not limited to, those expressed in Section 768.28, Florida Statutes. Nothing obtained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. MOTE understands and agrees that any and all liabilities regarding the use of any subcontractor for services related to this agreement shall be borne solely by MOTE. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for MOTE under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of MOTE or of any third party to whom MOTE may subcontract a part or all of the Work. These indemnifications shall survive the term of this agreement. In the event that any action or proceeding is brought against the City of Key West by reason of such claim or demand, MOTE shall, upon written notice from the City of Key West, resist and defend such action or proceeding by counsel satisfactory to the City of Key West.

9. Should litigation be necessary to enforce any provision of this agreement then the prevailing party shall be entitled to recover a reasonable attorney's fee from the oilier side subject to the Sovereign Immunity limitations of Section 768.28 Florida Statutes. Nothing contained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. MOTE acknowledges that this provision may be unenforceable under Florida Law, and that the City of Key West does not waive any legal defense based on the unenforceability of such provision.



10. MOTE shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to MOTE's records, including but not limited to any subcontractors, MOTE shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

11. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court or the Southern District of Florida. This Agreement is not subject to arbitration.

12. MOTE and its employees, volunteers, agents, vendors and subcontractors, etc., shall be and remain an independent contractor and not agents or employees of the CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

13. This Agreement shall not be assignable by either party unless such assignment is first approved by CITY in the same manner that this Agreement is approved.

14. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

15. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

16. The failure of CITY to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

17. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

18. This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

19. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Signature Pages to Follow]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

CITY OF KEY WEST

ATTEST

By \_\_\_\_\_

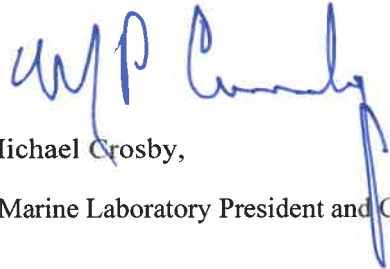
By: \_\_\_\_\_

Clerk

Teri Johnston,

Mayor of the City of Key West

MOTE MARINE LABORATORY

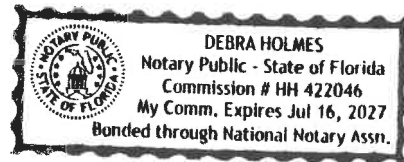
By:   
Dr. Michael Crosby,  
Mote Marine Laboratory President and CEO

STATE OF: FLORIDA

COUNTY OF: MANATEE

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on 07-31-2024 (date) by MICHAEL P. CROSBY (name of affiant). He/She is personally known to me or has produced (type of identification as identification).

  
NOTARY PUBLIC



## Chapter 80 - CRUISE SHIP REGULATIONS

### Sec. 80-1. - Definitions.

As used herein, the following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section.

*"Vessel"* shall mean a cruise ship holding more than five hundred (500) passengers and such cruise ship's owner(s).

*"Discharge"* shall mean any spilling, leaking, pumping, pouring, emitting, releasing, emptying or dumping.

*"Pollutant"* shall mean ballast, dunnage, untreated sewage, garbage, liquid or solid matter, oil, gasoline, residuum of gas, calcium, carbide, trade waste, tar or refuse, or any other floating matter or scum on the surface of the water, obstruction on the bottom of the waterways, or odors or gases of putrefaction as such discharge is defined as a pollutant by state or federal law.

*"Waterways of City of Key West"* shall mean the water six hundred (600) feet into the tidal waters adjacent to the City of Key West's corporate limits.

(Ord. No. 22-07, § 1, 4-5-2022)

### Sec. 80-2. - Pollution of water.

- (1) It shall be unlawful for any vessel to deposit, place or discharge any pollutant into the waterways of the City of Key West.
- (2) Vessels docking at the City of Key West shall at all times be in full compliance with all applicable state, federal and international safety, health and environmental protection statutes, regulations, standards and requirements, including, but not limited to, the Oil Pollution Act of 1990, the International Convention for Safety of Life at Sea, the International Convention for Prevention of Pollution from Ships, and shall have a valid certificate of inspection. In the event of a vessel pollutant discharge into the waterways of the City of Key West, the vessel responsible for the discharge shall take immediate action to clean up the discharge. Cleanup is to be accomplished in the shortest time possible, using

industry approved standard methods, so as to limit in every way possible, damage to the environment. In any instance where it is determined by the City of Key West that cleanup efforts are not being undertaken in a timely and/or adequate manner by the responsible Vessel, the City of Key West may order resources, as necessary, to commence and complete the pollutant discharge cleanup. In such cases, the actual cost of the cleanup plus an administrative fee of 15% of the actual cost of cleanup will be charged to the responsible vessel.

- (3) Full payment of the cleanup costs, including administrative fee, must be paid by vessel before the vessel will be permitted to sail from the City of Key West. In instances where a vessel is prohibited from sailing due to failure to pay actual cleanup costs and administrative fee as prescribed by this section: (a) an additional one thousand (\$1,000) dollar per-day pollutant discharge cleanup management fee will assessed until such time as vessel sails from the City of Key West (b) the City of Key West will provide dock space or other anchorage and (c) the vessel prohibited at then prevailing rates.
- (4) In the event any oil or hazardous substance is discharged into or upon the waterway of the City of Key West, in a harmful or reportable quantity, the responsible vessel shall immediately notify all appropriate state and local agencies and the National Response Notification Center.

(Ord. No. 22-07, § 1. 4-5-2022)

Sec. 80-3. - Coral reef restoration; water quality monitoring.

The City of Key West shall establish a fund for the express purpose to restore and maintain coral reefs adjacent to the City of Key West. The City of Key West shall engage certified, independent, qualified reef restoration experts. to be identified by resolution of the City of Key West annually to restore and maintain such reefs.

The City of Key West shall also establish a water quality monitoring fund for the monitoring of water quality violations of Sec. 80-2 in the Waterways of the City of Key West, via certified, independent, qualified water quality monitoring expert, or governmental entity to be identified by resolution annually.

Revenue for coral reef restoration and maintenance fund and administrative fee established in Section .8Q:2. herein, the cruise ship passenger disembarkment fee revenue share paid to the City of Key West, and any donation made to the funds. Allocation of funds to the

respective programs shall be made annually via resolution of the city commission.

(Ord. No. 22-07, § 1, 4-5-2022)

Sec. 80-4. - Passenger healthcare services.

Vessels shall use best efforts to utilize on-board healthcare services regarding the medical needs of its passengers, with the exception of life-threatening emergencies. With the exception of life-threatening emergencies, Vessels shall transport any passenger-patient with COVID-19, or other confirmed or suspected highly transmissible illness requiring medical service, using an isolated emergency transportation method to a treatment facility outside of the City of Key West.

(Ord. No. 22-07, § 1, 4-5-2022)

Sec. 80-5. - Enforcement.

The City of Key West shall coordinate with state and federal agencies to ensure that vessel operations conform to all applicable laws relating to Sec. 80-2(2).

(Ord. No. 22-07, § 1, 4-5-2022)