

PORT OF NEWPORT COMMISSION SPECIAL MEETING AGENDA

Tuesday, June 27, 2017, 6:00 pm

Yaquina Bay Yacht Club

750 SE Bay Boulevard

Newport, OR 97365

- I. Call to Order 6:00
- II. ITSF Related Correspondence
 - A. ILWU Public Records Request 6:02.....p 3
 - B. Midwater Trawlers Cooperative Letter to Port Commission 6:05.....p 7
- III. Public Comment 6:08
- IV. General Manager’s Report and Recommendation..... 6:20.....p 13
- V. International Terminal Shipping Facility 6:30
 - 1. Terminal Usage Resolutionsp 19
 - 2. Agreement with Silvan Forestry for capital contribution.....p 25
 - 3. Lease with Teevin Bros. for 9-acre parcel.....p 37
 - 4. Three Party Agreement w/ Silvan, Teevin and Port.....p 49
 - 5. Agreement with Rondys for easements and property managementp 55
 - 6. Scope of Work and Contract with Stuntzner Engineering for engineering/project..p 127
 - 7. Resolution Accepting State of Oregon IFA loan.....p 169
- VI. Public Comment 6:45
- VII. Adjournment.....7:00

Regular meetings are scheduled for the fourth Tuesday of every month at 6:00 p.m.

The Yaquina Bay Yacht Club is accessible to people with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Newport Administration Office at 541-265-7758.

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INTERNATIONAL LONGSHORE & WAREHOUSE UNION COAST LONGSHORE DIVISION

Robert McEllrath Ray Familathe Frank Ponce De Leon Cam Williams

June 16, 2017

**VIA FACSIMILE: (541) 922-5609
(and First Class Mail)**

Mr. Kevin Greenwood
General Manager
Port of Newport
600 SE Bay Boulevard
Newport, Oregon 97635

Re: Public Record Request

Mr. Greenwood:

I am writing to request copies of the public records specified below pursuant to the Oregon Public Records Law, Section 192.410 *et seq.* of the Oregon Revised Statutes. Please produce the following:

1. From March 1, 2017 to the present, please produce all correspondence and drawings in any form (electronic or otherwise) between David Jencks and any employee or Director of the Port of Newport regarding the Port of Newport's International Terminal, ConnectOregon funds, the TIGER grant application, the Port of Newport laydown area, the Terminal Users Group, Teevin Bros. Land and & Timber Company, the International Longshore and Warehouse Union, Hampton Lumber and affiliates, Silvan Forest, and/or any traffic impact study related to Port of Newport issues;
2. From March 1, 2017 and the present, please produce all correspondence in any form (electronic or otherwise) between any associate of the Midwater Trawlers Cooperative and any employee or Director of the Port of Newport regarding the Port of Newport's International Terminal, ConnectOregon funds, the TIGER grant application, the Port of Newport laydown area, the Terminal Users Group, Teevin Bros. Land and & Timber Company, the International Longshore and Warehouse Union, Hampton Lumber and affiliates, Silvan Forest, and/or any traffic impact study related to Port of Newport issues; and
3. From March 1, 2017 to the present, please produce all correspondence and drawings in any form (electronic or otherwise) between Steve Beck and any employee or Director of the Port of Newport, or member of the public regarding the Port of Newport's

Kevin Greenwood
June 16, 2017
Page 2

International Terminal, ConnectOregon funds, the TIGER grant application, the Port of Newport laydown area, the Terminal Users Group, Teevin Bros. Land and & Timber Company, the International Longshore and Warehouse Union, Hampton Lumber and affiliates, Silvan Forest, and/or any traffic impact study related to Port of Newport issues. Note that this request for Mr. Beck's documents includes any sent to or from his personal email account while acting in the capacity of a Port Commissioner.

If you believe that any of the requested records are not subject to public disclosure, please redact all claimed exempt portions, provide copies of the remaining information, and provide me with a specific, detailed statement of your position with specific reference to the exemptions listed in the Oregon Revised Statutes or any other statute which would exempt the record from disclosure.

We agree to pay for all reasonable administrative, production, and copying costs as may be required under the Oregon Revised Statutes. Please let me know the projected cost, and I will arrange for payment in advance of production. Also, we ask that you respond to this request as soon as practicable (preferably no later than July 31, 2017) and without unreasonable delay as required by law.

Sincerely,



Kirsten Donovan
ILWU Coast Longshore Division

cc: Coast Committee
ILWU Local 53

ac:opeiu29/afl-cio

Port Staff: All Records Request Forms, along with Port Response Forms, are filed with the Custodian of Records/Administrative Assistant.



Attention: Custodian of Records
 600 SE Bay Boulevard Newport, OR 97365
 541-265-7758 / 541-265-4235 Fax
 khewitt@portofnewport.com

PUBLIC RECORDS REQUEST FORM*

*The Port will not recognize/accept any other means of public records request pursuant to Resolution 2015-04.

Requester Information (Please print clearly):

Name: Kirsten Donovan		Request Date: 6/16/2017	
Mailing Address: Coast Longshore Division, 1188 Franklin St. San Francisco 94109			
Daytime Phone: 415-775-0533, x138		Email Address: kirsten.donovan@ilwu.org	
		Fax Number:	
• Preferred method of contact: <input type="checkbox"/> Mail <input type="checkbox"/> Phone <input checked="" type="checkbox"/> Email			
Is this request related to a lawsuit in which the Port of Newport is a party, or a tort claims notice filed with the Port of Newport? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, claimant name and incident date:			
Description of Records Requested: (Describe in detail the type of document, date, author, title, etc. If you need more room, please attach additional sheet(s). Please indicate if you want to inspect the records or if you need certified copies of the records. If no indication is made, regular copies will be provided): List emailed to khewitt@portofnewport.com and kgreenwood@portofnewport.com <i>Also attached.</i>			
Copies may be furnished without charge or at a substantially reduced fee if the General Manager determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits and will be distributed to the public at large, not an individual or group. Does this request primarily benefit the general public? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please describe the particular or specific public benefit below:			
Preferred method of receiving the described records: <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Email <input type="checkbox"/> Fax *Fees are reviewed annually. Note: Additional charges may be assessed (e.g. postage or staff time for faxing material).			
The Port will respond to your request as soon as practicable and without unreasonable delay. <ul style="list-style-type: none"> • If the estimated costs involved in fulfilling your request exceed \$25, the Port will advise you of the estimated costs and require your approval before beginning the request. • If the fee estimate exceeds \$100, a 50% deposit may be required to begin work. • Full payment of the total amount of costs incurred is required before the public records are inspected or copies are released. 			

I HAVE READ AND AGREE TO COMPLY WITH THE ABOVE CONDITIONS, and further agree to pay the costs associated with fulfilling this Public Records Request according to the conditions as set forth above. These costs may include the cost of searching for records, reviewing records to redact exempt material, supervising the inspection of records, copying records, certifying records and mailing records. I agree to pay a maximum of \$25 without further approval.

Signature of Requester: _____

Date: _____

6/21/17



Board of Commissioners
Port of Newport
600 SE Bay Blvd
Newport, OR 97365

June 19, 2017

Dear Commissioners,

The Midwater Trawlers Cooperative (MTC) represents 26 midwater trawl catcher vessels, most of which are home-ported here in Newport. Most of them participate in the Pacific hake fishery here on the west coast. Many of them make up a part of Oregon's Distant Water Fleet and almost all of them utilize Newport's International Terminal to some degree. We have three specific asks:

1. If the Port moves forward with any type of shipping activities, now or in the future, prior arrangements should be made for commercial fishermen to have priority access to the International Terminal during the time periods of our heaviest use: between November 1st and January 10th and April 1st through May 15th. These set-aside times should be memorialized both between the Port and the fishing industry and in any contracts signed with shipping companies or others.
2. Before the Port Commission moves forward to approve or sign any agreements an outside financial impact analysis should be conducted that includes at a minimum a thorough examination of the financial risks to the Port of moving forward as well as the potential negative impacts to the existing primary users of the facility as well as the broader community and Lincoln County.
3. The Port Commission should not act during the lame duck period following the May 16th election and when the two new commissioners are sworn in. The Commission should wait to vote on or sign any agreements related to shipping activities until after the commissioners are sworn in. Anything less sparks ethical, legal and transparency issues with the public.

MTC is deeply concerned about the process that the Port of Newport has undertaken in your attempts to reintroduce shipping to Newport's International Terminal. For the last several months we have tried to engage with the Port of Newport commissioners and staff regarding our members' future access at the International Terminal. All the financial information that the public has been privy to demonstrate that the current endeavor is a financial risk for the Port of Newport and the citizens in the district. Setting aside the fact that what is being proposed currently is a bad deal financially, there has been no meaningful engagement between fishermen who have been the primary users of the facility for the last thirty years and the Port of Newport about our uses and needs. There has been no meaningful discussion about alternative ways to generate revenue to pay down debt and provide the income that can maintain the critical infrastructure in the Port that the commercial and recreational industries rely on. The Port, absent these discussions, seems to be moving full steam ahead to reintroduce shipping. And even then, there has been no meaningful discussion around developing an actual plan for successful seasonal integration of the primary users of the International Terminal. Providing two-week's

notice to fishing vessels when a log-ship is coming in is not an integration plan.

Set-aside Times for Priority Access for Fleet

Commercial fishing vessels utilize the International Terminal in all months of the year. Our requested set-aside dates of November 1 – January 10th and April 1st to May 15th are the times when MTC members utilize the facility most heavily. During that time, we prepare for upcoming fishing seasons that take place here locally and in Alaska. This is where and when we do maintenance on our vessels, when we are preparing for up-river boat work in the Toledo shipyards and where we stage to unload and load equipment and supplies. The Port also collects a large portion of the revenue they generate from fishing vessels for moorage during that time. The home-ported distant water vessels can pay the Port over \$20,000 a year just for one vessel, and the other Port Dock 5 vessels pay into the thousands of dollars each year in terminal services. In fact, the Port Fiscal Year 2015-2016 audit shows that the operational income for just the International Terminal was \$383,325.

During the heaviest periods of use there can be upwards of 15 vessels tied at the Terminal, two and sometimes three boats deep. There is currently no other place in the Port of Newport that can adequately accommodate these large vessels and provide not just the space they need, but the shore-power and other services they require. A question was posed to Port staff in May when there were 11 boats tied to the dock. “If a log ship were in port today where would the 11 vessels that are currently moored at the terminal go?” There was no response because there is no place to go. Since that time there has been mention of a few spots at Port Dock 5, but none that have been identified as something that could be reserved for the Distant Water Fleet. It is not clear that the Port staff has had these conversations with Port Dock 5 users, some of whom are represented by MTC and who say they currently have difficulty securing their own spots and who now fear they are going to be displaced due to downstream impacts from shipping operations.

If the large trawl vessels are displaced from the International Terminal some will have to leave the Port and seek services elsewhere. I have heard some suggest that the boats used to make it work “just fine” and they will again – that the fishermen are overstating their needs. This is irresponsible rhetoric. After catch shares were implemented in 2010 the fisheries changed. The boats are much larger than they were “back in the day” and the Port has absolutely no facilities to moor and work on these boats. They just don’t fit elsewhere in the Port! The shore-power they require is not available anywhere else in the Port. The nets are longer than they were and there is no other space adequate to stretch them out for building and repair. The fisheries are rebounding and there are more boats. Boats are being sponsored to take advantage of the rebounding fisheries. There is huge opportunity for substantial expansion and future growth in fisheries if the conditions are in place to foster this growth. Since the bond measure was passed in 2006, several new large trawl vessels have joined the fleet here in Newport accounting for approximately 600 feet in additional needed dock space. The Port of Toledo shipyard is attracting vessels from Alaska and the west coast and they need a place to stage before they head up river. Now, without proper accommodations, vessels will have to leave the community for their services if there is only room for three boats (tied 3-deep in one slip) at the dock – this hurts Newport and Lincoln County businesses. Anyone who says otherwise is either uneducated about the industry or unwilling to recognize the facts because they are inconvenient for accomplishing their own agenda. Crab and shrimp vessels are also heavily dependent on access to the terminal for loading pots and outriggers during certain times of the year.

Financial Impact Analysis

The Port of Newport should not move forward with finalizing any agreements to ship logs (or any other commodity) until an outside financial impact analysis is done. As of today (June 20th), the negotiations with Sylvan

and Teevin Brothers appear to be ongoing. Before the Commission agrees to sign-off on anything related to those negotiations, it is imperative that the Port have an outside financial review that examines the true financial risk and reward to the Port and the taxpayers in the district of moving forward. Currently there is no analysis on the negative impacts to the resident fleet from the leases and agreements you are hurrying to sign. No due diligence has been done on the impacts of shipping to the current and primary users of the facility. The draft leases released in April include troublesome language that potentially tie the Port's hands for twenty years and could result in shipping having priority access to the International Terminal for 12 months out of the year with no consideration whatsoever of the needs of the fishing industry. And where is the analysis of the broader financial impacts to the community and Lincoln County? The commercial fishing industry contributes millions of dollars into the local economy. These are local investments and local jobs. When fishing vessels are forced to leave the community, and seek services elsewhere because they have been displaced by log ships and have no place to go – they will take their money with them and spend that money in other places like Seattle. This hurts the Port through loss of moorage fees and it hurts the community and Lincoln County because the revenue local businesses are making off our vessels is transferred out of Oregon. Where is the outside financial impact analysis that examines all the impacts thoroughly? A Port Commissioner has the fiduciary responsibility to understand not only the benefits but the true risks and impacts to the Port, existing users and the community of moving forward with shipping.

Wait for New Commissioners to be Sworn in Before Moving Forward

The voters made their voice heard on May 16th and they voted in two new Port Commissioners. Whether you believe the election was a referendum on the reintroduction of shipping, moving forward with final votes or signing agreements on this issue before the new commissioners are sworn in raises ethical, legal and transparency issues for the stakeholders and the public. Using “in water construction windows” or “city permits” as an excuse to rush through these agreements during the lame duck session results in confidence issues. Allowing outgoing commissioners to make long-term decisions for the Port and our community without any accountability to the Port or the voters is bad policy and sends the wrong message to stakeholders.

Conclusion

MTC members do not believe there has been an acknowledgement of the importance of the International Terminal to the commercial vessels in this port. Further we don't believe that the Port has considered the negative impacts to the broader community when some of these trawl vessels must seek services elsewhere because there is no place for them to moor in Newport. We have no confidence that the Port of Newport has negotiated on our behalf with the shipping companies they have been courting. This point hit home for me when President Chuck (one of the liaisons negotiating on behalf of the port) announced in a meeting at the MTC office on Friday, May 26th, that the Port's highest priority is shipping and that it wasn't the Port's job to protect commercial fishing businesses.

Until the first Terminal User's Group meeting last month, there was not even an acknowledgement from the Port that shipping vessels would encroach on the east dock as well as the west. We feel so strongly about having priority use during the heavy traffic times that we will concede use of most the dock during the remainder of the year to facilitate shipping operations. The shippers, however, have not conceded one thing as far as we can tell.

President Chuck and Commissioner Brown have both said in public meetings that they have heard from members of the fishing industry that are fine with the Port moving forward on the current track, but when pressed for the names of those fishermen they are never revealed.

To be clear: the commercial fishermen that I work for who are the main users of the International Terminal are not supportive of the Port moving forward in the current fashion.

As it stands now it appears to us that the Port is clearly favoring the reintroduction of shipping over the commercial fishing industry and this is unacceptable to many in the community. In fact, it is likely unacceptable to most the community. You balk when we say we need priority access during certain times of the year. The response from the Port to the industry has been "that doesn't work with the shipping company's business plans." Clearly the Port is giving preference to the shipping companies. Being displaced from the docks during critical periods does not work for our business plans! Two port commissioners, the general manager and a longshoreman have all said publicly that fishermen have brought this on themselves. In some respects, this is true. In our defense, we never expected that the Port of Newport would intentionally or unintentionally harm the primary users of the facility, that the Port would even consider taking an action that harms local investments, that harms local people and local jobs.

Even if you cared nothing about the negative impacts to the fishing industry, moving forward with an incomplete and flawed deal during a lame duck period, which potentially puts the Port in financial jeopardy does not make sense for the Port of Newport or the voters in this district. Any agreements with shipping companies must take into consideration the importance of the commercial fishing industry and preserve our access to the terminal, which would not have been built without fishing industry support.

Shipping could be an important part of the Port of Newport's future. But it cannot be at the expense of either the Port of Newport or the commercial fishing industry. I urge you to reconsider rushing into any agreements that jeopardize the Port as well as local investments and jobs. I can be reached at 541-272-4544 or heathermunromann@gmail.com to provide more information or to answer any questions.

Sincerely,



Heather Munro Mann
Midwater Trawlers Cooperative

- cc Kurt Schrader, U.S. Congressman
David Gomberg, Oregon State Representative
Sandra Roumagoux, Newport Mayor
Spencer Noble, Newport City Manager
Terry Thompson, Lincoln County Commissioner
Bill Hall, Lincoln County Commissioner
Doug Hunt, Lincoln County Commissioner
Sara Skamser, Commissioner-elect
Jeff Lackey, Commissioner-elect
Steve Card, Newport News Times
David Morgan, News Lincoln County



Midwater Trawlers Cooperative
2017 Membership

F/V Bay Islander – Kurt Cochran
F/V Excalibur – Mike Retherford
F/V Excalibur II – Kent Leslie & Bill Jacobson
F/V Gold Rush – Don Ashley & Bert Ashley
F/V Golden Pisces – Dennis McMannus
F/V Grumpy J – Pacific Seafoods
F/V Leslie Lee – Dan Hall
F/V Lisa Melinda – Dave Smith & Jerry Bates
F/V Majesty – Trident Seafoods
F/V Marathon – Kurt Cochran
F/V Michelle Renee – Stoian Iankov
F/V Miss Berdie – Stan Schones & Tom Stam
F/V Miss Sarah – Todd Whaley
F/V Miss Sue – Jim Seavers
F/V Muir Milach – Aleutian Spray Fisheries
F/V Northern Ram – Trident Seafoods
F/V Pacific – Mark Cooper & Chris Cooper
F/V Pacific Future – Pacific Seafoods
F/V Pacific Ram – Trident Seafoods
F/V Pacific Storm – Skip Woodard
F/V Pegasus – Brian North
F/V Perseverance – Mark Cooper & Chris Cooper
F/V Predator – Mark Cooper & Chris Cooper
F/V Raven – Robert Smith & Lyle Yeck
F/V Seadawn – Fred Yeck
F/V Seeker – Jim Seavers

OLD BUSINESS AGENDA ITEM

DATE: 6/27/2017
RE: International Terminal Shipping Facility / Summary and Recommendation
TO: Port of Newport Board of Commissioners
ISSUED BY: Kevin Greenwood, General Manager

BACKGROUND

In the mid-90s, Don Mann, the newly hired General Manager for the Port, learned that bunker crude oil was seeping from the hulls of two old concrete WWII boats that served as the foundation for the aging and dilapidated terminal. The community rallied and in 2006 the district voters passed a General Obligation (GO) measure in the amount of \$15-million to remediate the environmental issues surrounding the terminal and to rebuild a facility that could serve both the commercial fishing fleet and deep draft shipping.

In the final design, the west berth was designed to accommodate larger (600-ft.) handysize vessels and the east berth was designed to serve fishing vessels when handysize vessels were in port. The intent was that the entire terminal would be multi-use and that there would be no exclusivity either for fishing or for shipping.

Unfortunately, even after the GO bonds and grants, the Port still had to incur additional debt to finance what ultimately became a \$28-million project. As of last fiscal year, the Port still has more than \$5-million in outstanding traditional debt (separate from the GO bonds), totaling \$441,000 in annual debt payments. Operations at the terminal add another \$162,000 (1 employee, materials and services) for a total annual expense of \$603,000. The current commercial fishing fleet – consisting of mid-water trawlers, distant water fleet and some larger local vessels – have been the primary user of the terminal. They do pay fees for moorage and services totaling \$380,000. But even with those revenues, the port loses over \$200,000 annually on the business operation. Clearly, what the current users pay does not cover the expenses to run the terminal. Commissions for over a decade understood that shipping was the best opportunity for the port to generate significant tariff revenue (\$100,000+ gross income per vessel) to cover the debt for the terminal but, perhaps more importantly, provide a long-term revenue stream for repairing and replacing the port's aging commercial fishing docks which totals tens of millions of dollars.

In 2006, fishing and shipping interests joined together to pass the GO bond, but it has been more difficult to find common ground on operational issues, the biggest issue being priority time usage and exclusivity. In recent months, members of the commission and management have met with the Midwater Trawlers Cooperative (MTC) and the Port has hosted two Terminal Users Group (TUG) meetings to get feedback from the users for development of an operations plan. All have agreed that these meetings should have been done months, if not years, ago in anticipation of shipping returning to Newport.

Since 2005, staff has worked to develop financing documents to complete the Commission's number one goal of developing a shipping facility at McLean Point. The Commission has given me feedback and Commission liaisons Walter Chuck and Ken Brown (and David Jincks before that) have given me direction on the shipping facility and the documents presented this evening.

POINTS IN FAVOR OF MOVING FORWARD

\$2MM TIGER grant:

- The Port received a \$2-million US Dept. of Transportation grant in October 2015 with significant support of our state and federal legislators.
- TIGER grants are extremely rare to obtain and in the history of the program, a grant has never been returned.
- Returning grant could jeopardize the Port's efforts in obtaining future grants.

Project Has Been #1 Goal of Commission since 2014:

- As part of the Port's Strategic Business and Capital Facility Plan annual review, the Commission adopts a list of priority capital projects used to determine budget goals.
- In each of the last few years, the ITSF has continued to be the #1 priority and is listed as the Port's top priority in its Strategic Business Plan contract with the state or Oregon.

Takes Advantage of Multi-Use Facility:

- Many felt that the use of the west berth would have priority for shipping use while the east berth would be priority for fishing services.

Holds up Port's Promise from 2006 GO Bonds:

- Environmental remediation and fishing access has been upheld. This would bring shipping back as promised.

Provides an opportunity for new and significant income for Port maintenance:

- Plan would decrease losses in first full year and provide hundreds of thousands of dollars in future revenue in 6 to 8 years.

Current fees generated by MTC and fishing users don't cover costs:

- Fees and charges generated by the users don't cover the costs to operate the facility.
- As much as \$200,000 a year has been pulled from positive net income from the South Beach marina and RV Park to subsidize the terminal.

Benefit to Undeveloped Property at McLean Point:

- Provides the opportunity for the Hall Family to begin plans to develop a maritime industrial park that would add warehousing to support water dependent uses.
- Cleans up and mitigates dredge spoils placed on lease land that would need to be dealt with when the Hall Family was ready to develop their property.

Feasibility study shows adequate supply of timber:

- 2016 plan identifies 30 year sustainable market on privately held lands for timber.
- Provides opportunities for other barge traffic.
- Export market bottomed out a few years ago and market appears to be recovering.

Public Private Partnership:

- Silvan Forestry is willing to put up unsecured investment (\$2.5-million) that is only repaid if shipments occur.

Last Opportunity for Shipping in Newport:

- Current land use and building permits will expire in 6-months and without private partners willing to help finance the project. To restart the process will be expensive and time consuming.

POINTS IN FAVOR OF STOPPING OR POSTPONING PROCESS

Project was Dead in early 2017. Rush to Save?

- In October 2015, Congressman Schrader's office informed the Port that it had received a coveted \$2-million Transportation Investment Generating Economic Recovery (TIGER) grant. This was a shot in the arm and the original grant application noted that the award would leverage state and local partnerships (i.e. other grants) to complete the financing. Staff worked in earnest to complete a number of additional grant applications.
- In May 2016, the Port, having learned that its \$4-million *ConnectOregon* application was not viewed favorably, approved applying for a \$2-million IFA loan to be used as leverage for other grant applications. The initial approval was to use the loan to leverage other grant opportunities and the hope was that the Port would not have to incur the debt.
- At this time, staff recommended a limit of \$2-million in debt service to ensure that there would be adequate cash flow to cover other port projects besides new debt service.
- The Port applied twice with the US Commerce Economic Development Administration (EDA) for a \$2.2-million grant before those applications were rejected as well. It was in January of 2017, that I felt that we had ran out of options to complete the financing and this chapter to see shipping return to Newport seemed to be closed.
- On February 15, however, Teevin Bros. introduced us to Silvan Forestry, a Chinese-sponsored company located in Bellevue, Wash. who offered to "invest" \$2.5-million into the project. Negotiations commenced through the spring to come to some sort of agreement while keeping the TIGER grant from being pulled.
- Though I have worked in earnest to get a good deal with Silvan, clearly as each subsequent round of grant funding was rejected, obtaining an equally beneficial deal for the port became less and less of a reality.

Most recent financing proposal is less profitable and longer payback schedule:

- The original plan – funded entirely by grants – still had costs. There would have been a need for an additional employee, set asides for maintenance dredging and asphalt repair, some loss of revenue from the fishing users, and administrative/operational costs related to each individual shipment. But even with those costs, on a typical year the Port could have cleared hundreds of thousands dollars, more than covered the ancient debt service and made significant improvements to commercial fishing docks almost immediately. There would have been ample contingency to stave off negative impacts from cyclical market adjustments realized by any commodity market.
- As pressure from Hampton Lumber and others made the *ConnectOregon* applications a political hot potato, the port's original "profit" margin began to erode.
- The debt service on the IFA loan was almost \$120,000 annually for 25 years; more than one shipment.
- The most recent Silvan arrangement included a 50% reduction in tariffs for six to eight years, clearing only \$50,000 annually until Silvan's loan was paid off through the tariff reduction abatement.
- This current plan makes the potential for negative market conditions much more dangerous for the Port and slow market years (i.e. less than six shipments) would require the Port to make up the difference through positive net income from the RV Park or other cash reserves from the General or NOAA Fund.

Concerns about ongoing or increased dredging and whether models adequately cover those costs:

- Another area that has come up is the cost and frequency of dredging and the importance of the 35-foot draft at the west terminal berth and where those dredge spoils will be placed. Handysize vessels shipping 4.8-5.2 million board feet of timber need 35-feet to leave Yaquina Bay on a high tide.
- The Port used left over terminal construction dollars to complete dredging to 35-feet in December 2014 and placed the dredge spoils at McLean Point.
- After a recent physical survey, the berth needs to have approximately 5,000 cubic yards removed to meet the Handysize draft requirements. Based upon historical information, I anticipate dredging the berth and dewatering on the McLean Point site to cost \$200,000. Permits are currently being obtained.

- That by itself seems reasonable; our maintenance reserves of \$100k a year would cover that cost. However, it doesn't take into account that our McLean Point dredge disposal site would not exist after shipping occurs due to the development of the proposed maritime industrial park at McLean Point. All future dredge spoils would need to be pumped or trucked to the NOAA site in South Beach. Efforts to generate cost estimates for that have been unsuccessful, though trucking the spoils to Mt. NOAA (or elsewhere) could cost an additional \$78,000. That additional cost would require an increase in the maintenance set aside and decrease the amount available for projects.

Prolonged negotiations has increased cost estimates and delayed shipments:

- We have lost the opportunity to begin shipping this winter.
- After a recent discussion with the Port's engineer, even if contracts were to be approved by the end of June, construction would not be completed until next spring.
- In addition, Stuntzner Engineering out of Coos Bay, Oregon, has been working out of contract on this to assist in the development of easements, final plans, cost estimates and scheduling updates. No further action (i.e. submitting plans to contractors to receive bids for the project) can take place until Stuntzner's contract is approved.
- At this point, the construction window is closing and the costs are increasing and the Port would be responsible for covering any additional costs.

Several issues in the Silvan/Teevin agreements do not benefit the Port:

- One, Silvan was unwilling to guarantee minimum shipments.
- Two, Silvan would not place their contribution in an escrow account.
- Three, the value of the facility and land, when completed, would be worth approximately \$3-4 million. Normally a land manager would like to see a 10% annual return on its asset. It's not unusual to see subsidized rents for leases generating tariffs, but \$60k a year on a multi-million dollar asset is a significant subsidy.
- Four, set aside periods in proposed resolution conflict with the Silvan's priority use of West berth stated in agreement.

Lack of consensus on current board; new commission coming on board:

- There is not consensus on the current board and the newly elected board members ran in part to protect fishing interests currently using the terminal.
- Current commission should allow next commission to vote on proposals.

Lack of MTC consensus and buy-in:

- The Port has met in earnest with members of the fishing community in recent months, and at the June 9th Terminal Users Group (TUG) meeting the Midwater Trawlers Coop (MTC) demanded that the Port secure the full use of the terminal (both east and west berths plus full use of the tarmac) for four months (November, December, April and May) during the fleet's high-use period.
- Shippers have insisted that they need one shipment in early November. Silvan has indicated they could take December off before another shipment in mid-January. Black out period should be included in Silvan agreement.
- It should be noted that even when a Handysize vessel is in Port at the west berth, Fishing vessels would have access to the east berth for services. Fishing vessels would not be able to moor at the west berth during ship loading.
- MTC and the fishing community have expressed concern about impacts and decreasing footprint for larger fishing vessels.
- With vessel sizes getting wider and longer, and the existing port infrastructure becoming less and less stable, there are fewer and fewer spaces for fishing vessels longer than 80-feet to moor.
- The terminal has become moorage for the larger fishing vessels which takes the pressure off of mid-size and smaller commercial fishing vessels moored at Port Docks three, five and seven.

- I will be recommending that with this chapter of shipping closed, the Port Commission should review the rate structure for the use of the terminal by large vessels during their high use periods. The Terminal loses over \$200,000 a year and rates should be adjusted to make up that loss by the larger fishing vessels.

OPTIONS FOR THE BOARD

Reject Contracts and Process

- Contracts/sample resolutions at this time have not been fully coordinated between the parties. Issues as of Thursday, June 22nd continue to be discussed.
 - Silvan agreement conflicts with resolution
 - Silvan agreement does not include set aside period and continues to reference priority to west berth.
 - In response to pursuing winter weather protection time for vessels less than 125-ft., Teevin will be pursuing additional land to lease from Hall Family. Those agreements have not been obtained.
- Close this chapter for shipping on Yaquina Bay.
- **SAMPLE MOTION: "...TO DISCONTINUE THE PROCESS, REJECT ALL CONTRACTS AND PAY ALL CONTRACTORS TO COMPLETE CURRENT WORK."**
- Budget Implications:
 - Engineer would need to be paid \$30,000 for work to develop easements and plan development.
 - Port has spent nearly \$90,000 on soft costs related to grant development, surveys, reports to develop the shipping facility.

Approve Contracts

- Documents could be approved but there are unresolved issues between the sample resolutions and Silvan agreements. Those issues could ensnare the Port in legal battles about a resolution contradicting a contract.
- If this Commission did approve the contracts and the bid documents were released to General Contractors, the next Commission could "reject all bids" and, in essence, kill the project at that time. This would also be the solution, if the bids came in over budget.
- **SAMPLE MOTION: "...TO APPROVE ALL CONTRACTS AND PROCEED WITH THE PROJECT."**
- Budget Implications:
 - Port would pay the \$30,000 to complete final plans and proceed with bid process.
 - Reimbursements would not occur until a General Contractor was selected and under contract.

Postpone Vote Until Consensus with MTC/Financial Partners Can Be Reached and More Coordinated Terms can be negotiated

- The Commission may table the vote until further negotiations with both current users and financial partners produce more secure understanding.
 - Continue to work with MTC to find compromise on scheduling with the aim of developing an agreement between Silvan/Teevin and MTC.
 - Continue to work with Silvan/Teevin and encourage additional land lease with Hall Family.
- There are two additional variations:
 - Consider putting bids out and getting contractors to submit bids during the interim. This would allow costs to be known. Would cost \$30k to proceed.
 - Put off putting bids out until other issues are resolved. Stop current work with engineer.
- **SAMPLE MOTION: "...TO TABLE DISCUSSION UNTIL CONSENSUS WITH USERS CAN BE COMMEMORATED IN A MULTI-PARTY AGREEMENT."**
- Budget Implications:
 - Engineer would stop current work until contract was approved.
 - TIGER contract states that construction needs to be started by mid-September.
 - Postponing delays construction and potentially increases costs.

Postpone Vote Until New Commission Takes Office

- Similar to the previous option, but focuses on the newly elected officials compared to the quality of the agreements.
- SAMPLE MOTION: "... TO TABLE DISCUSSION UNTIL NEW COMMISSION TAKES OFFICE"
- Previous options would still be considered.

GENERAL MANAGER'S RECOMMENDATION

I WOULD RECOMMEND THAT A COMMISSIONER MAKE A MOTION TO POSTPONE VOTE UNTIL CONSENSUS WITH THE MIDWATER TRAWLERS AND FINANCIAL PARTNERS CAN BE REACHED AND MORE COORDINATED TERMS CAN BE NEGOTIATED.

-###-

FROM: Commissioner Lamerdin
TO: Port of Newport Commission
DATE: 6/21/2017

Resolution 1:

The Newport International Terminal is a facility funded by the public to support a diversity of users. The operation and scheduling of activities at the Newport International Terminal rests exclusively with the Port of Newport. It is universally acknowledged that the winter months on the Oregon Coast present significant challenges to vessel operators given the potential for inclement weather. To help address these challenges as well as the operational needs of local vessel owners, I move that the Port of Newport adopt a resolution that prioritizes the pier space available to vessels at the Newport International Terminal between the first full week of November through the first full week of January. In that time period, both the east and west berths will be prioritized to accommodate as many vessels as possible. The highest priority will be given to vessels 125' or shorter. Vessels over this length will be required to find alternative mooring locations during this time period. Exceptions to this policy will only be considered on a case-by-case basis and must be submitted to the Port Commission in writing by Port of Newport staff. A unanimous vote by the Port Commissioners would be required to grant an exception to this policy.

Resolution 2:

As stated in earlier resolutions to this commission, the Newport International Terminal is a facility funded by the public to support a diversity of users. The Port of Newport acknowledges the importance of available pier face in effectively accommodating the greatest number of users. The Port of Newport also recognizes the dynamic nature of vessel operations and appreciates the need for all users of the Newport International Terminal to have advanced notice when a single user will occupy significant portions of the facility. To help address this concern, I move that the Port of Newport adopt a resolution requiring any perspective user of the Newport International Terminal who intends to occupy a majority (51%) of either continuous pier face or lay down area, provide a written request to the Port of Newport with a minimum of 21 days of advance notice prior to their arrival. Exceptions to this policy will only be considered on a case-by-case basis and must be submitted to the Port Commission in writing by Port of Newport staff. A unanimous vote by the Port Commissioners would be required to grant an exception to this policy. Exceptions to this policy will be granted in emergency situations where the safety of sea-going personnel, the vessel or the environment are in jeopardy.

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OLD BUSINESS AGENDA ITEM

DATE: 6/27/2017
RE: Contract Review
TO: Port of Newport Board of Commissioners
ISSUED BY: Kevin Greenwood, General Manager

SILVAN FINANCING AGREEMENT

Pg. 2 – PROJECT. Describes the project including the infrastructure improvements being made. Also notes that we'll keep access open between the Teevin parcel and the terminal, and keep our permits in good order.

Pg. 3 – FUNDING. 2.1. Describes Silvan's \$2.5-million contribution. Funding is disbursed to the Port on a pro-rated basis (38.8%) along with the TIGER grant (30.6%) and IFA loan (30.6%). Notes that the Port will be reimbursed within 30 days. *NOTE: Silvan objected to placing funds in escrow account.*

Pg. 3 – FUNDING. 2.2. Port is paying a flat \$60,000 a year for the use of Silvan money. There is a performance bond, which would be included in the General Contractor's agreement. *NOTE: Silvan has yet to confirm that they agree with this pass through of the GC bond.*

Pg. 3 – FUNDING. 2.2.3. Port needs to ensure that Teevin and Silvan have access to west berth. *NOTE: This conflicts with the terminal use Resolution 1 identifying a priority for vessels less than 125' during two months during the winter.*

Pg. 3 – FUNDING. 2.3. Port responsible for expenditures over \$6.5MM. Dredging not included and is reason for extra \$250,000 transfer from NOAA in case dredging is needed this year.

Pg. 3 – FUNDING. 2.4. Only funds that are required to be used to reimburse Silvan is from tariffs placed in "Restricted Fund".

Pg. 3 – FUNDING. 2.5. Describes "Restricted Fund". Includes all tariffs related to Silvan-related shipping and wharfage fees, service, facility and dockage fees.

Pg. 4 – FUNDING. 2.6. Lists the order of things to be paid for out of the tariffs. (1) \$120,000 annual debt payment to IFA; (2) \$75,000 to fund an additional port employee; (3) Whatever remains is split 50/50 with Silvan's portion applied as a credit against its \$2.5-million.

Pg. 4 – FUNDING. 2.7. Reporting of the Restricted Fund on quarterly basis.

Pg. 4 – FUNDING. 2.8. Tariffs to Silvan will not change during agreement. After the abatement is paid off, Silvan pays full tariffs.

Pg. 4 – FUNDING. 2.9. Port agrees to renew Teevin lease in accordance with the terms in the lease.

Pg. 4 – FUNDING. 2.10. If Silvan doesn't ship in a one year period the Port can terminate the agreement with no repayment of balance. *NOTE: Silvan objected to providing a minimum annual number of shipments.*

Pg. 4 – FUNDING. 2.11. Port has to keep the berth dredged to 35-ft.

Pg. 5 – FUNDING. 2.12. Project has to be completed by January 31, 2019 or Silvan can get its money back.

Pg. 5 – TERM. 6. The agreement is terminated when the abatement is completed. When Silvan earns its money back, the agreement ends.

Pg. 6 – TERMINATION. 7. If the construction bids are too expensive (as determined by the Port Commission) and additional funds can't be found, the agreement shall be terminated.

Pg. 6 – AUDIT RIGHT. 9. Port will provide reports to Silvan on the financial activity within the Restricted Fund.

TEEVIN BRO. LEASE AGREEMENT

Pg. 1 – PROPERTY. Includes 8.95 acre parcel for the yard and a 0.67 acre parcel for their admin trailer.

Pg. 1 – TERM. Five years, with three five year renewals. Lessee’s option. Teevin has to stay operational in order to keep the lease from terminating. If they’re not operating for 12 months, the lease can be terminated.
Pg. 2 – RENT. \$60,000 per year with annual CPI adjustments. Rent starts when the Premises is ready.
Pg. 2 – INITIAL IMPROVEMENTS. Describes what Teevin is allowed to install on site.
Pg. 2 – USE. Port agrees not to obstruct operations or impose any “unnecessary” restrictions. *NOTE: this could come in to play with Terminal Usage restrictions.*
Pg. 2 – CONDITION OF PROPERTY. Port is responsible for normal maintenance of asphalt; Teevin is responsible if there’s anything outside of normal wear and tear.
Pg. 3 – LANDLORD’S CONSENT. Port has to approve any sub-leasing arrangement and conditions.
Pg. 3 – ENVIRONMENTAL. Port responsible for any conditions upon completion of the project. Teevin responsible for any issues caused by their operations.
Pg. 4 – TAXES. Teevin responsible for all property taxes incurred.
Pg. 4 – INSURANCE. \$4MM coverages by Teevin.
Pg. 6 – ASSIGNMENT. Port can’t unreasonably deny assignment, though 3-Party agreement allows Silvan the right to the lease if Teevin can’t perform.

THREE PARTY AGREEMENT

Pg. 1 – THE FACILITIES. Includes the Teevin leased parcel.
Pg. 2 – THE PROJECT. Describes extent of the project and the capital investment being made. Also describes what Teevin can install on the property.
Pg. 2 – FUNDING. Can’t proceed unless all financing is in place. Also notes that the \$60,000 annual rent needs to coordinate with the \$60,000 annual payment for the use of Silvan’s money.
Pg. 2 – EASEMENTS. Describes that the Port has easements and the roadway use is “perpetual”.
Pg. 2 – UTILITY WORK. References Rondys Roadway Easement language that the Port is responsible for its prorated share of road maintenance.
Pg. 2 – APPROVALS.... States that the Port has and will maintain all of its permits. The Port recently received confirmation from the City that the 50 trip requirement will forever be with the property unless the use were to change. The building official also acknowledged that forward progress needs to happen by the end of this calendar year on the construction.
Pg. 3 – OPERATIONS. *NOTE: This would be a good spot to include any language addressing Terminal Usage restrictions.*
Pg. 3 – TERM. Lines up with Teevin lease and Silvan funding agreement terms.
Pg. 4 – TIMELINE. Updated timeline and includes language dealing with weather and seasonal concerns.

RONDYS AGREEMENTS

EASEMENT

This is a perpetual non-exclusive easement for the roadway, waterline and communication easement on Rondys property. The easements address the roadway and use from the Yaquina Bay Rd. down through the middle of McLean Pt. and then west to the terminal.

ROADWAY USE EASEMENT

This is a perpetual, non-exclusive easement to use the Northwest Natural Gas right of way (furthest east road).

WETLAND MITIGATION AGREEMENT

Rondys is allowing the port to use their property for the installation of a mitigation site located at the southern point of their property next to the NWN Gas tank location.

DRAINAGE EASEMENT (underground)

This easement allows for underground drainage along the Rondys roadway to the terminal connecting to Rondys property where it connects to the ditch system.

DRAINAGE EASEMENT (ditch)

This easement continues the drainage from the Rondys roadway to the south.

DREDGE SPOILS AGREEMENT

This agreement discusses how the Port will utilize the dredge spoils that have been placed on the Rondys property over the last two decades. The Port has placed 46,000 cy of material on Rondys property and the Port would use 22,000 cubic yard on the Teevin site. The balance will be used by Rondys to develop their property.

STUNTZNER ENGINEERING CONTRACT

The Agreement is a standardized document used by engineers.

Article 3.1 Services only rendered upon agreement being approved. *NOTE: Engineer has incurred \$30,000 out of contract in development plans for Rondys easement and plan development.*

Article 4.2 We have to pay engineer within 30 days.

Stuntzer cost is \$240,000 and he has incurred \$30,000 so far. The budgeted amount is \$288,000, so there could be some budget savings there.

Coordinate final plans and specs and issue bid docs ... \$30,660
Construction Management Services ... \$35,250
Environmental Assurance and Inspection Services ... \$138,400
Construction Surveying ... \$17,600
Project Closeout/Grant Administration/Recordings ... \$18,600

NOTE: Need first page of the schedule needs to be included

IFA LOAN

- Document originally shared with Commission on 4/17.
- Terms of the lease are 25 years at 3.3% interest.
- The State added to Section 4(B) that the rate would be reduced by 1% if the port ships two additional products (something other than log exports) through the facility within the first five years of the loan agreement.
- This is a reimbursement program meaning that the Port will submit qualifying invoices to be paid from loan proceeds. The Port only pays interest on the released portion of the loan.
- The State is requiring a Commission resolution to complete the transaction.
- Page 6 includes the requirement of an Operations plan which staff will develop using the recently adopted FMOP and CMMS software. It will be funded by taking \$100k annually from next tariff proceeds and placed into a reserve line for dredging and shipping facility maintenance.
- Page 8 requires that the Port produce a report on the project's progress at the one year anniversary.
- Exhibit B states that the Port is securing the loan with a "Full Faith and Credit Pledge" meaning that payments can be made from any port revenues. There is also a lien on the 9-acre parcel as collateral on the loan.

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**COOPERATIVE PROJECT FUNDING AGREEMENT
BETWEEN SILVAN FOREST, LLC AND
THE PORT OF NEWPORT**

This Cooperative Project Funding Agreement, is entered into and made effective this June____, 2017 (the "Agreement"), by and between the **PORT OF NEWPORT**, a port district organized and existing under Chapter 777, ORS, hereinafter called "Port", and the **SILVAN FOREST, LLC**, a Washington Limited Liability Company authorized to do business in Oregon, hereinafter called "Silvan". The Port and Silvan are each sometimes referred to in this Agreement as a "Party" or the "Parties."

WITNESSETH:

WHEREAS, it is the policy of the State of Oregon that ports should be directly and actively involved in creating and carrying out economic development objectives; and

WHEREAS, port districts have the power and authority, among other things, to improve bays, rivers and harbors for shipping and the commerce of the port, to exercise control of bays, rivers and harbors, to construct, improve, maintain and operate public marina facilities, establish, operate and maintain water transportation lines and acquire, construct, maintain and operate seawalls, jetties, piers, wharves, docks, boat landings and other facilities, and improve all or any portion of the waterfront of its harbors and rivers, to construct buildings and improvements and develop and lease land, to exercise other powers, and, in general, to do such other acts and things as tend to promote the maritime shipping, aviation and commercial interests of the port; and

WHEREAS, the Parties have agreed that Silvan will partially fund the development of a 9-acre portion of the Port's McLean Point property in the International Terminal area to promote economic development which will benefit the Port, Silvan, and other Port patrons; and

WHEREAS, the Port has agreements for funding from two other sources, a TIGER grant award (\$2M) and an Oregon IFA loan commitment (\$2M) which together with the project funding as defined in this Agreement will allow the Port to complete construction of a log handling facility; and

WHEREAS, The Port and Silvan have previously entered into a memo of understanding dated March 22, 2017 to delineate the terms of this Agreement; and

WHEREAS, Silvan is in the business as a shipping broker and has experience in investing in stumpage and American log exports; and

WHEREAS, The Port and Teevin Bros. Land & Timber Co., LLC ("Teevin") are parties to an agreement for option to lease dated April 28, 2015 ("the Option") and are parties to a lease agreement dated June____, 2017 ("the Lease")(attached hereto as Exhibit A) wherein Teevin is the log handling facility operator, more specifically described in said Lease; and

WHEREAS, the initial improvements described in said Lease require installation of a debarking system with supporting accoutrements, and portable office facilities, building and employee parking, additional improvements to the Property required to facilitate the use of the

Property as a log facility, the costs of which will be funded by the Port obtaining certain sums by TIGER grant (\$2M), an Oregon IFA loan (\$2M) and, the funds to be received from Silvan (\$2.5M) pursuant to the terms of this Agreement.

WHEREAS, Silvan has established and maintains an interest in log shipments out of Yaquina Bay, in conjunction with Teevin, through the Port of Newport International Terminal (“Terminal”); and

WHEREAS, the Port and Silvan find it to be in the best interest of the Port and Silvan to coordinate and fund the development of that certain Port property, including the initial improvements described in the Lease in and around and specifically including the 9- acre parcel designated as the log handling area; and

WHEREAS, the Port of Newport operates the shipping terminal and other facilities, on a non-exclusive basis; and

WHEREAS, the Port of Newport desires to pursue the economic development of its Terminal area properties and to promote the economic development of the area generally and the shipments of logs specifically; and

WHEREAS, Silvan desires to aid in the funding of the development of the initial improvement to and development of the 9-acre portion of the Terminal property to be used as a logging facility as provided for and described in the Lease and the TIGER grant (the “Facility”); and

WHEREAS, the Parties have determined that the needs and interests of the patrons of the Port can best be served by a common and cooperative effort between the parties hereto.

NOW, THEREFORE, the Parties, each in consideration of the other, enter into this cooperation agreement to pursue jointly the projects and objectives hereinafter described, and in furtherance thereof, do agree as follows:

1. Project

1.1 The Port and Silvan agree to proceed with infrastructure improvements for the development of a 9-acre log handling facility in the Terminal property as described in the Lease, the Three-Party Project Undertaking and Facility Operating Agreement (the “3-Party Agreement”) and, the TIGER grant (Statement of Work, attached hereto as Exhibit B). The improvements will include at a minimum, new and realigned access roads onto the site, maintaining maximum log shipping facilities and the relocation of underground utilities under the access road as required by the terms of the Port’s easement with adjacent land owner where required, including sewer, water, electric, telephone and cable access. In addition, the Port shall provide access to the Port of Newport’s lessees that are located at adjacent parcels.

1.2 The Port, Silvan, and Teevin will create a coordinated plan for the development and improvement of the Port’s property and the initial improvements contemplated in the Lease. In doing so, the Port and Silvan will jointly cooperate with Teevin and participate in the development of concepts, preliminary engineering work, permit application process construction and other steps necessary to jointly develop the project for mutual benefit.

1.3 The Port will ensure that all permits and easements necessary to operate the 9-acre parcel as a logging facility are secured and maintained and that the Port will be in compliance with all applicable laws and regulations throughout the term of this Agreement.

2. Funding

2.1 Silvan agrees to contribute Two Million Five Hundred Thousand Dollars (US\$2,500,00.00) (the "Silvan Funds") as partial funding for the Port's improvements to above-mentioned 9-acre parcel to create the log-handling facility. The Silvan Funds, Oregon IFA Funds (Two Million Dollars (US\$2,000,00.00)) and the TIGER grant funds (Two Million Dollars (US\$2,000,00.00)) will be disbursed to the Port on a pro rata (based on total amount to be contributed to the Project) expense reimbursement or costs-incurred basis divided as follows:

Oregon IFA Funds	30.6%
Tiger Grant Funds	30.6%
Silvan Funds	38.8%

Silvan agrees to reimburse Port within 30-days of completed request.

2.2 In exchange for the investment of the Silvan Funds, the Port agrees to pay, on a non-recourse basis, \$60,000.00 per year as return of investment on the Silvan Funds, beginning from the date of execution of the Lease until the Silvan Funds are fully abated through the distribution of the Restricted Funds described in sections 2.6 and 2.7 below. Collateral for the loan will be restricted to the Restricted Funds, Project Funds, and a Performance Bond for Project completion of the Facility in the amount of the Silvan Funds., as described more fully in the security agreement incorporated herein.

2.2.1 The Port shall provide a Performance Bond in form acceptable to Silvan; bond purchase the incurred expenses shall be borne by the Port.

2.2.2 If the Port does not complete the Project during the time set forth in the Project Schedule attached hereto as Exhibit C, Silvan will have recourse to the Performance Bond.

2.2.3 During the term of this Agreement and the 3-Party Agreement, the Port will ensure that shipping has priority access at the west berth.

2.3 In the event that the Project exceeds the total projected budget of \$6.5M (to be invested in three parts, the TIGER grant, the Oregon IFA loan and the Silvan Funds, described above), the Port will be solely responsible for pursuing the necessary funding and completing the Project on or before the Completion Date as defined in Section 2.12.

2.4 Except as specifically provided for section 2.2 and otherwise in this Agreement, Silvan agrees that for abatement of the Silvan Funds it will look initially to the Restricted Funds, no other funds or assets of the Port shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of Silvan or for any abatement required to be made under this Agreement.

2.5 For the duration of this Agreement, all tariff income that the Port will charge for Silvan-related shipping and wharfage fees (including dockage, service and facility fees) shall be deposited in and accounted for as a restricted fund until the Silvan Funds described in this Agreement are totally abated (the "Restricted Fund"). As a shipper, Silvan will be responsible

for payment to the Port of such service and facility fees. Vessel owners, or carriers, moving Silvan's product will be responsible for payment of dockage fees to the Port, to be deposited in the Restricted Funds account.

2.6 Until the Silvan Fund balance is zero, the Restricted Fund will only be utilized for, and shall be distributed for the obligations listed below in the order listed:

1. Annual installment payment of principal and interest on that certain Oregon IFA loan Number L16012 in accordance with Section 4 to that loan agreement, not to exceed One Hundred Twenty Thousand dollars (\$120,000) per year;
2. As Port expenditure, labor costs, not to exceed Seventy Five Thousand Dollars (\$75,000) in the first year, subject to annual CPI adjustment the following years, for an additional employee to be hired by the Port to service the Terminal and;
3. The remainder of the Restricted Funds, after payment of the amounts set forth in 1 and 2, shall be distributed in equal parts (50/50) between the Port and Silvan.

Silvan's fifty percent (50%) portion of the Restricted Funds shall be applied as abatement of the Silvan Funds.

2.7 The Port shall provide balance sheets, on January 15, April 15, July 15 and September 15 of each year, reflecting all activity of the Restricted Fund account from the previous quarter.

2.8 This Agreement and the restrictions contained herein shall cease when Silvan's Funds have been fully abated and the Port will be relieved of the obligation to maintain the Restricted Funds account. The Port agrees to the extent of the law, to not increase tariff fees for Silvan-sourced log shipments (including dockage, service and facilities fees) during the term of this Agreement.

2.9 The Port agrees to renew the Lease with Teevin (or its successor in interest) in accordance with the terms of the Lease document, provided all terms of the Lease are performed as agreed.

2.10 In the event that Silvan, due solely to its own fault, fails to utilize the log export facility to ship any Silvan-sourced shipment in a single 12-month period from the Newport International Terminal, after the date of the first Silvan-sourced shipment from the log facility, the Port has a right to terminate this Agreement. In the event that Silvan's failure to utilize the log export facility is caused in whole or in part by a third party or a force majeure event, then the Port shall not have the right to terminate this Agreement. The decision to exercise the right to terminate for Silvan's failure to arrange a single shipment in a twelve-month period, where such failure is due solely to Silvan's fault, is in the sole discretion of the Port.

2.11 The Port agrees to maintain the Terminal berth depth to the surveyed depths as reported in the 2016 survey report (attached as Exhibit D) and sufficient to enable "handy" sized vessels to call into the International Terminal.

2.12 The Parties expect that the construction will be completed, on or before January 31, 2018 (the Completion Date) and that the facility will be ready to ship at least one Silvan-sourced shipment in 2017. In the event that the Port is unable to complete the Project within a year following the Completion Date then Silvan will have the right, in its sole discretion, to terminate this Agreement and the Port will be obligated to repay the Silvan Funds in full on a mutually agreed schedule

2.13 The Parties agree that they will work in good faith, one with the other, to develop supplements to this Agreement, more particularly defining the actions to be carried out and addressing funding of specific projects and other issues, as the occasion may require. Absent a specific agreement, any cost or expense not provided for herein or by an agreement supplemental hereto shall be borne by the Party desiring to acquire or carry forward such supplemental work, and neither Party hereto shall be obligated, absent its expressed consent or agreement, to incur or bear any expense not expressly allocated herein.

3. Fees and Revenue

Many of the improvements and facilities to be acquired, constructed, improved, repaired or rehabilitated as part of the Project are not revenue generating. However, if the Project does generate revenue such revenue shall inure to the Party having legal title to, or possession of, the facility producing such revenue, except as otherwise agreed. The Port is not granting Silvan any right, title or interest in the Port's assets, revenue or finances outside of the terms of this Agreement. Except as specifically provided in this Agreement, the Silvan Funds are not provided to the Port in the nature of a loan. As long as the parties exercise good faith in performing under the Agreement, the remedies, if any, are limited to the remedies contained in this Agreement.

4. Ownership of Improvements

Title to improvements shall be and remain in the Port. Termination of this Agreement for any reason will not afford Silvan any right or claim the initial improvements. Upon such termination, title to the improvements shall vest in, and belong to the Port without further action on the part of either Party and without cost or charge to the Port.

5. Personnel

Although each Party will work cooperatively with the other Party to this agreement, it is not contemplated that any personnel will be transferred from a position of employment with the Port to any private party. The Port may cause its additional employee (or other personnel) to provide services to or for the benefit of Silvan or any other party, but the employment or other relationship of such employees shall not be altered thereby.

6. Term

This Agreement shall remain in effect until the Silvan Funds are fully abated as set forth in Section 2 and all terms shall have been accomplished, unless sooner terminated in accordance with the terms of Section 2.10. This Agreement may be extended by mutual agreement of the Parties, upon the same or such other or additional terms as the Parties may agree. If no such extension is agreed upon, the Parties shall have no recourse against the other and all benefits inured to the Port shall be retained by the Port without further right of claim by Silvan.

7. Termination

7.1 The parties intentionally make no provision for early termination of this agreement, and the same shall remain in effect until the expiration date above set forth provided, however, that the duties and responsibilities of each party hereunder shall be subject to and limited by all applicable legal requirements. Each party agrees to exercise reasonably diligent efforts to obtain funds for its obligations hereunder, and to cause such funds to be duly and properly appropriated for such purposes in accordance with the provisions of law.

7.2 If either Party breaches any part of this Agreement, the non-breaching Party may terminate this Agreement by giving the breaching Party notice of the breach (the "Termination Notice"). The breaching Party shall have ninety (90) days (the "Remedy Period") after receipt of a Termination Notice to remedy the breach and provide sufficient evidence to the non-breaching Party that such breach has been remedied.

7.3 In no event shall the breaching Party be liable to the non-breaching Party for any indirect, incidental, punitive, consequential, or speculative damages, whether in contract or tort, which arise or which are claimed to arise out of the breaching Party's default. The remedies in this Section 7 are cumulative and in addition to all other remedies available at law or in equity.

7.4 In the event construction bids are beyond the scope of the budget and additional funds cannot be obtained, the agreement shall be terminated.

8. Insurance

Prior to the commencement of use of the 9-acre parcel as a log facility, each Party shall cause the other Party to add the other Party as named insureds in any Party's policy or policies of liability, casualty and business interruption insurance maintained by such Party that provide coverage with respect to shared activities of the Parties on the Terminal Property or upon personal property or improvements to Terminal Property.

9. Audit Right

In addition to the right to receive quarterly reports of the Restricted Funds balances set forth in Section 2.7, Silvan shall have the right to perform an annual audit of the Port's books and records relating to the 9-acre log facility Project and Facility operations.

10. Force Majeure

No Party shall be responsible for any failure or delay in its performance due to causes beyond its control which occur without the fault or negligence of such Party, including, without limitation, earthquake, fire, storm, flood, freeze, labor disputes, transportation and trade embargoes, acts of God or of any government (other than a tribal government) and acts of war or terrorism (any such event a "Force Majeure Event"). If, as a result of a Force Majeure Event, it becomes impossible or impractical for either Party to carry out its obligations hereunder (other than any obligation to pay money when due in accordance with the terms of this Agreement) in whole or in part, then such obligations shall be suspended to the extent necessary by such Force Majeure Event during its continuance. The Party affected by such Force Majeure Event shall give prompt written notice to the other Party of the nature and probable duration of such Force Majeure Event, and of the extent of its effects on such Party's performance hereunder. Each Party shall, in the event it experiences a Force Majeure Event, use all commercially

reasonable efforts to eliminate such Force Majeure Event and/or its effects on such Party's performance hereunder insofar as is practicable and with all reasonable dispatch.

11. Recitals, Exhibits and Schedules

The Recitals to this Agreement and any Schedules or Exhibits attached to this Agreement are incorporated herein by this reference.

12. Governing Law; Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to the principles thereof relating to conflicts of laws). Any suit brought in respect of this Agreement and any and all legal proceedings to enforce this Agreement shall be brought in the state court in Newport or Federal District Court of Oregon, as applicable. The Parties hereby waive any claim or defense that such forum is not convenient or proper and each Party hereby agrees that any such court shall have personal jurisdiction over it with respect to matters arising under this Agreement and voluntarily submits to such jurisdiction.

13. Entire Agreement

This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements with respect thereto. The Parties acknowledge and agree that there are no agreements or representations relating to the subject matter of this Agreement, either written or oral, express or implied, that are not set forth in this Agreement or in the exhibits and schedules to this Agreement. No supplement, modification or amendment of this Agreement is binding unless executed in writing. This Agreement may only be modified, amended or terminated upon the written agreement of the Parties (or their successors or permitted assigns, as applicable).

14. Counterparts, Execution and Authority

This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement. Each Party may rely upon the signature of each other Party on this Agreement that is transmitted by email or facsimile as constituting a duly authorized, irrevocable, actual, current delivery of this Agreement with the original ink signature of the transmitting Party. This Agreement shall become effective and in full force only when duly and properly executed, authorized, and delivered by the Parties hereto. Each individual who executes this Agreement on behalf of a Party warrants his or her authority to do so.

///

SIGNATURE PAGE FOLLOWS

The Parties execute this Agreement with the intention of being bound thereby.

PORT OF NEWPORT

BY: _____

Its: _____

ATTEST: _____

SILVAN FOREST LLC

BY: _____

Its: _____

ATTEST: _____

EXHIBIT A TO COOPERATIVE FUNDING AGREEMENT
Lease between Port of Newport and Teevin Bros. Land & Timber Co., LLC

EXHIBIT B TO COOPERATIVE FUNDING AGREEMENT
Statement of Work as set forth in TIGER Grant (Attachment A)

STATEMENT OF WORK

The project will create a 9 acre laydown area to accommodate cargo at the Port of Newport.

Elements of the project include:

- Grading a 9 acre area
- Installing underground utilities and conduit
- Storm water drainage
- New Sewer system
- New Water system
- Gravel Sub-base and Asphalt surface
- Fencing
- Lighting
- Small Work Shack
- Asphalt striping

EXHIBIT C TO COOPERATIVE FUNDING AGREEMENT
Estimated Project Schedule from TIGER Grant (Attachment B)

ESTIMATED PROJECT SCHEDULE

Actual Start of Preliminary Engineering:	January 1, 2016
Actual End of Preliminary Engineering:	March 1, 2017
Actual Completion of NEPA:	April 13, 2017
Actual Start of Final Design:	April 1, 2017
Planned Completion of Final Design:	July 1, 2017
Start of Right of Way Acquisition:	N/A
End of Right of Way Acquisition:	N/A
Planned PS&E Approval:	N/A
Planned Construction Contract Award Date:	August 1, 2017
Planned Construction Start Date:	September 1, 2017
Planned Construction Substantial Completion Date:	January 31, 2018

EXHIBIT D TO COOPERATIVE FUNDING AGREEMENT

2016 Harbor Depth Survey

LEASE AGREEMENT

This Lease Agreement made and entered into on this _____ day of _____, 2017 (the "Lease"), by and between PORT OF NEWPORT, an Oregon corporation ("Landlord"), with its principal office at 600 SE Bay Blvd., Newport, OR 97365 and TEEVIN BROS. LAND & TIMBER CO., LLC, an Oregon limited liability company ("Lessee") with its principal office at 29191 Dike Road, Rainier, OR 97048 (individually Landlord and Lessee are referred to herein as a Party and collectively as "Parties").

RECITALS:

WHEREAS, Landlord is the legal and rightful owner of the real property located adjacent to 1430 SE Bay Blvd., City of Newport, Lincoln County, Oregon consisting of Tax Lot Number 11-11-09-D0-00101-00, Account # R18777 (, the "Property") as generally depicted on the attached Exhibit A, attached hereto and made a part hereof.

WHEREAS, Lessee desires to lease the Property from Landlord, and Landlord agrees to lease the Premises to Lessee pursuant to this lease agreement and incorporating the terms set forth in the Option to Lease dated April 28, 2015

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

1. PROPERTY. The leased Property (alternatively referred to herein as "Premises") is shown on on Exhibit A, attached hereto and made a part hereof.

2. TERM, RENEWAL OPTIONS AND TERMINATION RIGHTS.

a. Initial Term and Renewal Options. The initial term of the Lease shall be five (5) years (the "Initial Term"). The Initial Term shall commence upon the completion of construction of the Initial Improvements (defined below). Lessee shall have the right to extend the term of the Lease for three (3) consecutive renewal options of five (5) years each (collectively, the "Option Period(s)"), commencing upon the expiration of the Initial Term. Lessee agrees to give Landlord notice of intent to renew not less than six months prior to the end of the then current term.

b. Termination Rights. After the Premises are operational, pursuant to Section 3b, then in the event Lessee ceases to perform substantial business activities consistent with the authorized use of the Property for a period in excess of twelve months, Landlord shall have the right to terminate the lease upon 60 days' notice.

3. RENT.

a. The ""Base Rent" for the first five (5) years of the Initial Term shall be \$5,000.00 per month. On each year anniversary of the Initial Term and any Option Period(s), the Base Rent shall be subject to increases based upon the Consumer Price Index (CPI). The CPI increase shall be determined by a percentage equal to the percentage change in the Consumer Price Index published by

the United States Bureau of Labor Statistics of the United States Department of Labor, specifically the index entitled U.S. City Average (Portland Index) - All items and Major Group Figures for all Urban Consumers for the latest available month preceding the month in which the lease year commenced, or the nearest comparable data on changes in the cost of living if such index is no longer published.

b. Early Occupancy. There shall be no Base Rent during the period when the lay down site is being constructed per Exhibit ___, which period is estimated to be six (6) months in duration. Base rent will commence when the improvements are complete and the Lessee deems the Premises ready for use as forest product handling facility. However, Lessee shall be responsible for all operating costs incurred with respect to the Premises during the period when the lay down site is being constructed.

4. INITIAL IMPROVEMENTS. To the extent required and requested by Lessee, and based upon reasonable design and specifications, which shall be mutually agreed upon in writing by the Parties, Lessee shall be allowed to install a 1) debarking system and supporting accoutrements 2) portable office facilities, buildings, and employee parking and 3) such additional improvements on the Property required to facilitate Lessee's Use of the Property at the commencement of the Initial Term, and 4 (collectively the "Initial Improvements"), which shall remain Lessee's personal property.

5. USE. The Premises shall be used and occupied for the storage, processing, and distribution of wood products and other operations related to the use of a deep-water dock facility, as such activities are legally permitted for operation on the Property (collectively, the "use"). Landlord shall cooperate, as needed, with the Lessee in seeking any requisite permits required for the operation of the Property. Landlord agrees not to obstruct operations or impose any unnecessary restrictions outside of the current or future city, county, state and federal laws governing the lay down facility.

6. CONDITION OF PROPERTY.

a. Lessee shall accept the Premises in its "as-is, where-is" condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Lessee acknowledges that neither Landlord nor any agent of Landlord, has made any representation as to the condition of the Premises or the suitability of the Premises for Lessee's intended use and is not relying on any representations of Landlord, except as may be set forth elsewhere herein or, in the Option to Lease.

7. MAINTENANCE AND REPAIRS. Lessee shall be responsible for the maintenance and repair of the Premises during the Initial Term and Option Periods, reasonable wear and tear excepted.

8. ALTERATIONS AND ADDITIONS. In addition to the Initial Improvements, Lessee shall have the right to make other commercially reasonable additions, alterations or other improvements to the Premises, subject to commercially reasonable limitations as may be agreed upon by the Parties.

9. SURRENDER OF PREMISES. Upon expiration or sooner termination of the Lease, Lessee shall vacate the Premises in broom clean condition and otherwise in the same condition as existed on the commencement of the Initial Term, ordinary wear and tear and fire and casualty loss excepted, except that any improvements made within and on the Premises by Lessee shall remain (except the debarker system, other portable structures and all other personal property and equipment belonging to Lessee), in the same condition and repair as when construction or installed, reasonable wear and tear excepted. In addition, Lessee shall remove from the Premises, upon the expiration or sooner termination of the Lease, all of Lessee's personal property and trade fixtures. Any removal of Lessee's

improvements, Lessee's property and/or trade fixtures by Lessee shall be accomplished in a manner which will minimize any damage or injury to the Premises, and any material damage or injury shall be repaired by Lessee at its sole cost and expense within thirty (30) days after the expiration of the Lease.

10. SUBLETTING AND ASSIGNMENT.

a. **Landlord's Rights.** Landlord may transfer the Property, and assign its rights under the Lease at any time, so long as the transferee or assignee (as applicable) agrees in writing to be bound by the terms of the Lease.

b. **Landlord's Consent Required.** Lessee shall not voluntarily or by operation of law assign, sublet, or otherwise transfer or encumber any part of Lessee's interest in the Lease or in the Premises without Landlord's prior written consent, which consent shall not be unreasonably conditioned, withheld or delayed. Without limiting the generality of the foregoing, it shall be deemed reasonable for Landlord to withhold such consent if 1) the proposed transferee does not have a tangible net worth and credit standing, calculated in accordance with generally accepted accounting principles consistently applied, that in Landlord's commercially reasonable opinion are sufficient to meet the obligations under this Lease, 2) there is then in existence an uncured event of default, beyond a notice or cure period, with respect to any obligation of Lessee under the Lease, or 3) the proposed transferee proposes to change the use of the Premises to a use that is inconsistent with the character of the property and/or would interfere with any existing agreements that encumber the Property. Any attempted assignment, transfer, encumbrance or subletting without the consent of Landlord required hereunder shall be void. Regardless of Landlord's consent, no subletting or assignment shall release Lessee from any of its obligations under the Lease, unless the Parties agree otherwise in writing. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

11. ENVIRONMENTAL. Landlord shall pay, save, protect, defend, indemnify and hold Lessee harmless from, for and against any conditions existing at the time Lessee takes possession of the Premises to commence the Initial Improvements and for and against any conditions caused by others. Lessee shall pay, save, protect, defend, indemnify and hold Landlord harmless from, for and against any contamination or liability related to the Premises, including the reasonable, actual cost of any required remediation where such contamination or liability arises solely during the Lease term or Lessee's occupancy of the Premises and solely as a result of Lessee's use of the Premises. To the extent remediation requires a covenant or use restriction consistent with the industrial nature of the Premises, Landlord shall reasonably cooperate with Lessee to provide such covenant. Further, Landlord shall pay, save, protect, defend, indemnify and hold Lessee harmless from, for and against any contamination or liability related to the Premises, including without limitation the reasonable, actual costs of required remediation, that arise from the acts or omissions of third parties other than Lessee, including (without limitation) Landlord. Further, should federal or state law require the investigation or remediation of any existing condition or a condition caused by Landlord or others, Landlord will conduct such activities in compliance with all applicable laws. In doing so, Landlord will coordinate directly with Lessee to minimize disruption to Lessee's operations and Use of the Premises.

12. INDEMNITY. Except for any liability or expense caused by Landlord or its employees, agents, contractors or invitees, Lessee shall pay, save, protect, defend, indemnify and hold Landlord harmless from, for and against any and all liability, cost or expense with regard to or arising during the Term or Lessee's use and occupancy of the Premises. To the extent allowed by law, Landlord shall

pay, save, protect, defend, indemnify and hold Lessee harmless from, for and against any liability, cost or expense caused by Landlord or its employees, agents, contractors or invitees or which exists at the time Lessee takes possession of the Property.

13. COMPLIANCE WITH APPLICABLE LAW. Lessee shall comply with all applicable laws, including statutes, regulations, permits, ordinances or zoning with respect to its Use of the Premises.

14. TAXES. Lessee shall reimburse Landlord for its proportionate share of real property taxes applicable to the Premises and all assessments levied on the Premises, to the extent the same apply during the term of the Lease. Landlord shall submit copies of real property tax statements when they become due and Lessee shall reimburse Landlord for its proportionate share due thereunder. Lessee shall pay prior to delinquency all taxes assessed against or levied on trade fixtures, furnishings, equipment and all other personal property in, on or about the Premises. When possible, Lessee shall cause trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property.

15. INSPECTIONS. Landlord and its agents and representatives shall have the right to enter and inspect the Premises upon 24 hours advance written notice to Lessee.

16. UTILITIES. Lessee shall be responsible for the payment of all utilities that serve the Premises, including, water, sewer, electrical, and telephone, and for the cost of establishment of any such service that currently does not exist at the Property.

17. INSURANCE.

a. Liability Insurance. Lessee shall maintain in effect commercial general liability insurance covering bodily injury liability and property damage naming Landlord as an additional insured in connection with the use and condition of the Premises in amounts of not less than \$4,000,000 each occurrence, \$4,000,000 general aggregate, \$4,000,000 products-completed operations aggregate. The aforementioned limits can be provided by any combination of primary and excess insurance.

b. Insurance Policies and Certificates of Insurance. Lessee shall deliver to Landlord a certificate(s) of insurance evidencing the required insurance. Insurance purchased by Lessee shall be with companies rated B+ or better in "Best's Insurance Guide", and shall not be cancelled without thirty (30) days advance notice to Landlord. It is the obligation of Lessee to purchase and to fully maintain at all times required insurance. Lapse of or cancellation of insurance, however caused, shall be deemed an event of default under this Lease. In the event of lapse or cancellation of any required insurance it is hereafter the specific responsibility of Lessee to notify Landlord immediately and to immediately reinstate the lapsed or cancelled insurance or to purchase replacement insurance that meets the requirements of this Lease. If replacement insurance is purchased, Lessee is to deliver immediately to Landlord a replacement certificate and additional insured endorsement.

c. Exemption of Landlord from Liability. Except for any damage or casualty caused by Landlord or its employees, agents, contractors or invitees, Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air

conditioning or lighting fixtures, or from any other cause, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Except in the event of Landlord's gross negligence or its breach of this Lease, Landlord shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

d. **Mutual Waiver of Subrogation and Recovery.** To the extent not prohibited by any property insurance policy issued to Landlord or to Lessee, Landlord and Lessee hereby mutually waive their respective rights of direct recovery and their insurers' rights of direct action by way of subrogation against the other for damages arising out of such other's negligence or otherwise tortious acts or omissions for loss or damage to the Premises, building(s), property or any personal property of such party. In the event a party is unable to obtain such waivers of subrogation from insurers, it shall immediately notify the other of this inability. In the absence of such notification, each party shall be deemed to have obtained such waiver of subrogation from its insurers and also agreed to waive its rights of direct recovery.

18. **LIENS.** Lessee shall promptly pay all sums legally due and payable by it on account of any labor performed or materials furnished in connection with work performed on the Property on which any lien is or can be validly and legally asserted against the leasehold interest in the Property.

19. **SUBORDINATION.** This Lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust or other security arrangement now or later placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default under the terms of the Lease, and Landlord agrees to obtain a written nondisturbance agreement in form and substance acceptable to Lessee in its sole discretion from any third party that holds the lien under any instrument to which the Lease is subordinated. Lessee agrees to execute such documents required to effectuate such subordination, subject to the immediately preceding sentence.

20. **RECOVERY OF PROPERTY.** In the event Lessee fails, within two (2) years of the possession of the Premises to complete the Initial Improvements and proceed with reasonable diligence to make use of the Property as an industrial user, Landlord shall be entitled to terminate the Lease and retain any Base Rent previously paid to Landlord under the Lease.

21. **NOTICES.** Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and personally delivered or sent by registered or certified mail to the addresses set forth below. Notices sent by personal delivery or overnight courier shall be deemed given when delivered, and notices sent by United States certified or registered mail return receipt requested shall be deemed given four (4) business days after the date of deposit, postage prepaid, in the United States mail. Either party may, by notice in writing to the other party, change the address to which notices to that party are to be given.

Notices to Port should be sent to:

Port of Newport

600 SE Bay Blvd

Newport, OR 97365

Attn: Kevin Greenwood, General Manager

Notices to Lessee should be sent to:

Teevin Bros. Land & Timber Co., LLC
29191 Dike Road
Rainier, OR 97048
Attn: Shawn M. Teevin

22. MODIFICATION. No amendment, modification or discharge of this Agreement shall be valid unless it is in writing and duly executed by the party to be charged therewith.
23. CONSTRUCTION. This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon.
24. SEVERABILITY. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.
25. BENEFIT. This Agreement shall inure to and be binding upon the parties, their heirs, personal representatives, successors and assigns.
26. ASSIGNMENT. Lessee shall have the right to assign its rights and obligations under this Lease, subject to prior approval by the Port of the assignee, which approval shall not be unreasonably conditioned, withheld or delayed.
27. ENTIRE AGREEMENT. The entire agreement between the parties is contained herein. This Agreement supersedes any and all prior agreements and understandings between the parties. There are no promises or representations made on behalf any party to induce the other to enter into this Agreement which are not set forth herein.
28. CAPTIONS. The section captions are for convenience of the parties and shall not affect the meaning or interpretation of this Agreement.
29. ATTORNEY FEES. In the event a suit or action is filed to interpret or enforce this Agreement or with respect to this Agreement, each party will pay its own attorney fees, costs, and expenses and will not seek to recover any attorneys' fees or costs in such suit, action, or proceeding from the other party.
30. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

The parties have executed this Lease effective as of the first date above written.

PORT:
PORT OF NEWPORT

LESSEE:
TEEVIN BROS. LAND & TIMBER CO., LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



TELEPHONE (541) 267-2872
 FAX (541) 267-0588
 ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
 COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT DESCRIPTION OF MAIN YARD LEASE AREA

Lease located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Leased parcel is that parcel described as Parcel “L” in Book 148, Page 2162 Lincoln County Book of Records, more particularly described as follows:

Commencing at a 2”Iron Pipe with a Brass Cap marking the meander corner common to said Section 9 and 10;

Thence South 87°12’51” West 747.24 feet more or less to a 5/8” iron rod;

Thence South 11°12’39” East 0.65 feet to the True Point of Beginning;

Thence South 11°12’39” East 198.22 feet to a 5/8” iron rod;

Thence South 01°02’57” East 380.17 feet to a 5/8” iron rod;

Thence South 81°30’39” West 724.54 feet to a 5/8” iron rod;

Thence North 01°00’55” West 470.22 feet to a 5/8” iron rod;

Thence North 67°57’16” East 120.57 feet;

Thence South 02°09’16” West 28.66 feet;

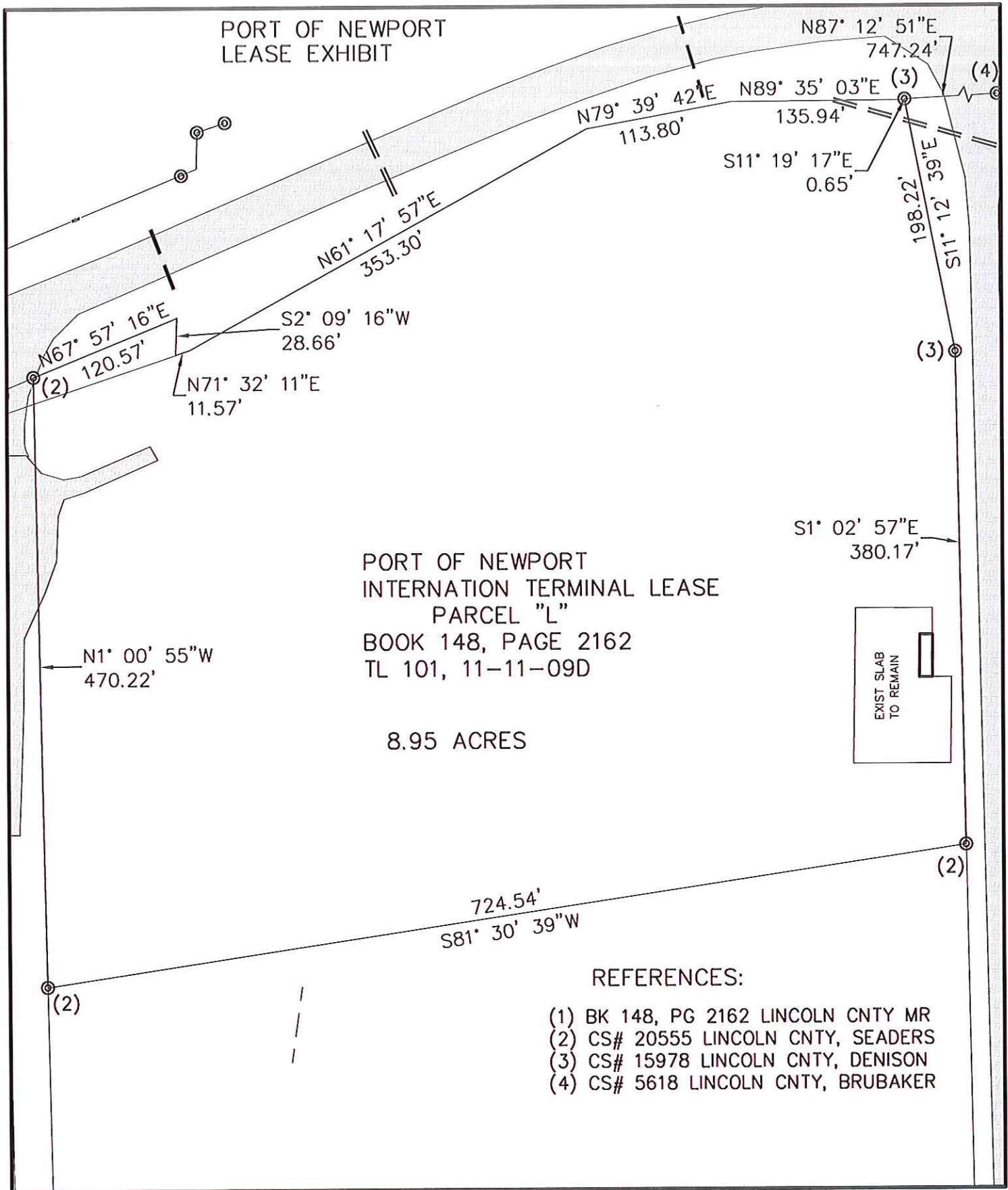
Thence North 71°32’11” East 11.57 feet;

Thence North 61°17’57” East 353.30 feet;

Thence North 79°39’42” East 113.80 feet;

Thence North 89°35’03” East 135.94 feet to the Point of Beginning;

Said bearings based upon Oregon State Plane Coordinate System, North Zone, North American Datum 83 (1991), said lease containing 8.95 acres, more or less.



**Stuntzner Engineering
& Forestry, LLC**

ENGINEERING * LAND SURVEYING * FORESTRY
LAND PLANNING * WATER RIGHTS

705 SOUTH 4TH STREET
P.O. BOX 118
COOS BAY, OREGON 97420

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

MAIN YARD LEASE

JOB NAME: PORT OF NEWPORT

DATE: June 2017

JOB NO: 112-100 DESIGN BY: XXX

PAGE: 1 OF 2 DRAWN BY: RED



TELEPHONE (541) 267-2872
 FAX (541) 267-0588
 ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
 COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
 DESCRIPTION OF OFFICE LEASE AREA

Lease located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Leased parcel is a portion of Parcel "G" as described in Book 148, Page 2161 Lincoln County Book of Records, more particularly described as follows:

Commencing at a 2" Iron Pipe with a Brass Cap marking the meander corner common to said Section 9 and 10;

Thence South 79°36'02" West 1,509.95 feet more or less to a 5/8" iron rod;

Thence South 01°00'55" East 16.01 feet to the True Point of Beginning;

Thence South 01°00'55" East 228.17 feet to a 5/8" iron rod;

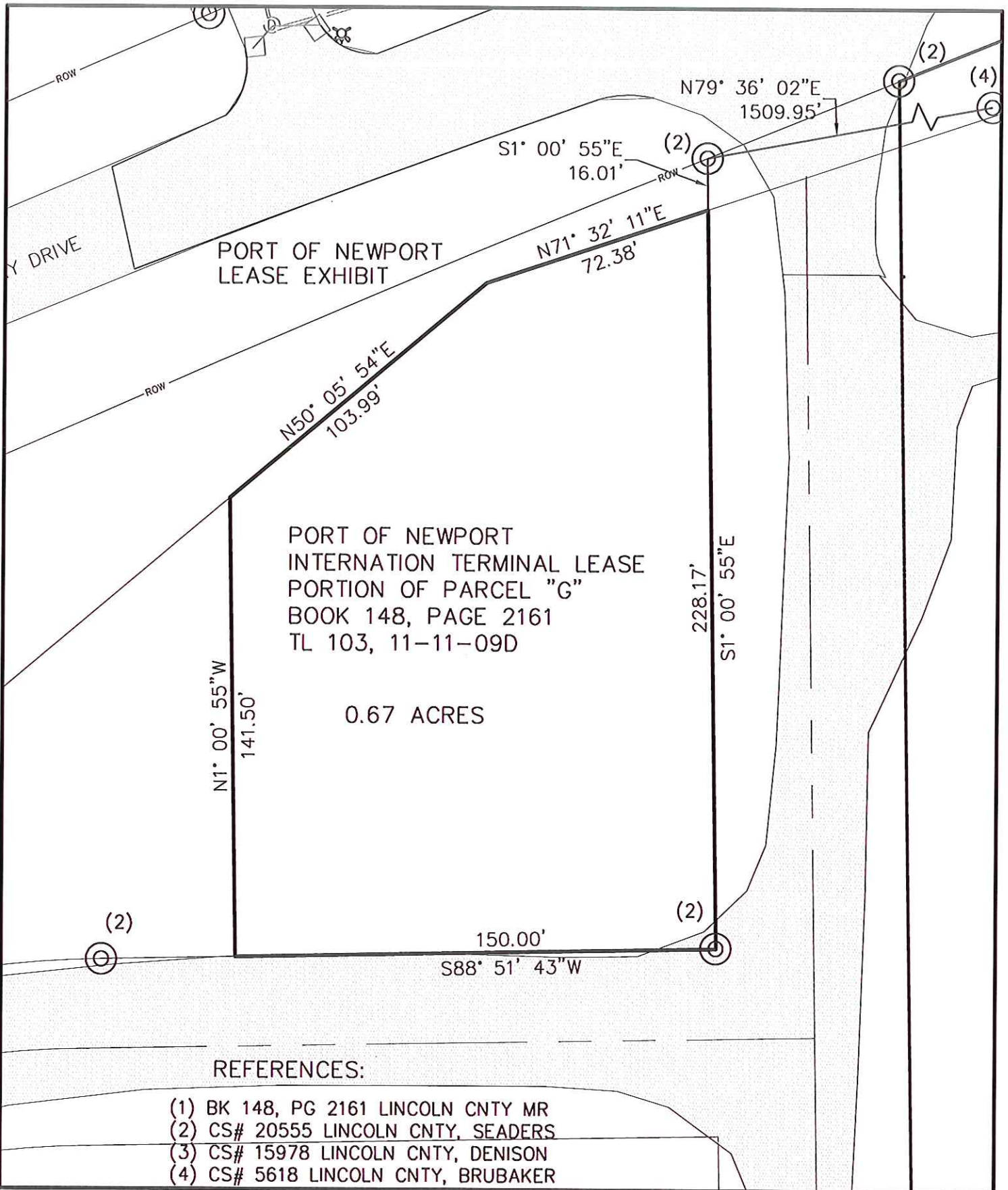
Thence South 88°51'43" West 150.00 feet;

Thence North 01°00'55" West 141.50 feet;

Thence North 50°05'54" East 103.99 feet;

Thence North 71°32'11" East 72.38 feet to the Point of Beginning;

Said bearings based upon Oregon State Plane Coordinate System, North Zone, North American Datum 83 (1991), said lease containing 0.67 acres, more or less.



Stuntzner Engineering & Forestry, LLC
 ENGINEERING * LAND SURVEYING * FORESTRY
 LAND PLANNING * WATER RIGHTS

705 SOUTH 4TH STREET
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 COOS BAY, OREGON 97420
 PHONE: (541) 267-2872
 FAX: (541) 267-0588
 www.stuntzner.com

OFFICE AREA LEASE	
JOB NAME: PORT OF NEWPORT	
DATE: June 2017	
JOB NO: 112-100	DESIGN BY: XXX
PAGE: 2 OF 2	DRAWN BY: RED

Three-Party Project Undertaking and Facility Operations Agreement

This Three-Party Project Undertaking and Facility Operations Agreement (“Agreement”) is made this and entered into this _____ day of _____, 2017 by and among SILVAN FOREST LLC (“Silvan”), whose address is 15450 114th Ave., Suite 210, Bellevue, WA 98804, and TEEVIN BROS. LAND & TIMBER CO., LLC, an Oregon limited liability company (“Teevin”), an Oregon limited liability company with its principal office at 29191 Dike Road, Rainier, Oregon, 97048 and the PORT OF NEWPORT, a port district organized and existing under Chapter 777, ORS, with its principal office at 600 SE Bay Blvd., Newport, Oregon 97365 (the “Port”). The Port, Teevin and Silvan are each referred to in this Agreement as a “Party” or collectively as the “Parties.”

Whereas, the Port is the legal and rightful owner of approximately 8.95 acres of real property located adjacent to 1430 SE Bay Blvd., City of Newport, Lincoln County, Oregon (the “Property”);

Whereas, the Port has agreed to develop an approximately 9-acre portion of the Port’s McLean Point property next to the International Terminal area as a forest product handling area together with off-site road and utility improvements (the “Facilities”) in order to promote economic development for the benefit of Port patrons;

Whereas, Teevin and the Port are parties to an Option to Lease dated April 28, 2015 and a Lease Agreement dated _____, 2017 (“Lease”)(attached hereto as Exhibit A), pursuant to which Teevin will operate a forest product facility on the McLean Point property (“the Property”) in accordance with the terms of the Lease;

Whereas, Silvan is in the shipping business as a broker and as an investor in stumpage and American forest product exports;

Whereas, the Port and Silvan have entered into that certain Memo of Understanding dated March 22, 2017, and a Cooperative Funding Agreement dated _____, 2017 (attached hereto as Exhibit B) delineating the terms of their agreement for partial funding of the improvements on this facility;

Whereas, the Parties have determined the needs and interests of the patrons of the Port will best be served by common and cooperative effort among the three Parties hereto to create and operate forest product facilities for the shipping of forest products; and

Whereas, the creation of forest product facilities for forest product handling at the Port will require the construction of or upgrades to specific property as well as road improvements and utilities (the “Project”) which the Parties will undertake jointly in accordance with the terms and conditions hereof.

Now, therefore, the Parties each in consideration of the other enter into this Agreement to pursue jointly the projects and objectives described herein and in furtherance thereof do agree as follows:

1. Use of the Property.

- a. The Facilities. The Facilities will include the Property, which shall be used and occupied for the storage, processing and distribution of forest products, related to the use of a deep-

water dock facility The parties agree to proceed with infrastructure improvements for the development of the Facilities in the manner described in this Agreement and in accordance with the Lease.

- b. **The Project.** The Project will include site preparation, grading of property, drainage, undergrounding of utilities, extension of water lines, sanitary sewer improvements (including extension of lines), subbase, paving, development of the Property with asphalt, fencing, lighting, small work building, storm water collection system. It will also include transportation improvements off SE Bay Blvd. The responsibilities for this work shall be allocated as follows:
 - i. The Port is responsible for the engineering and construction of the Facility. The Port shall at all times comply with all applicable rules, regulations and orders of any Court of governmental authority concerning, arising out of or, related to this Property.
 - ii. Silvan shall contribute Two Million Five Hundred Thousand Dollars (\$2,500,000) to supplement the Port's TIGER grant (\$2,000,000) and IFA Loan (\$2,000,000) necessary to enable the Port to undertake the Project.
 - iii. Pursuant to the Lease, Teevin may install on the Property a 1) debarking system and supporting accoutrements 2) portable office facilities, buildings, and employee parking and 3) such additional improvements on the Property required to facilitate Lessee's Use of the Property (collectively the "Initial Improvements"), all which shall remain Teevin's personal property.
- c. **The Plans.** The Parties have reviewed the Port's plans and agree that the plans will accommodate the Parties' needs.

2. Funding. Silvan's participation in the funding of the Project and is wholly dependent upon the Port's receipt and investment in the project of entire TIGER Grant and the IFA Loan amounts. The timing and dollar amounts of lease payments between Teevin and the Port and compensation paid to Silvan by the Port shall be the same.

3. Easements. The Port has secured all the necessary easements from adjacent property owners to enable the intended use of the Facility. The Port has been granted a perpetual easement, (the Easement) that shall run with the Property, over the road located on the adjacent property that runs from Bay Boulevard to the International Terminal. The easement is to be used for ingress and egress to the International Terminal and for utilities to serve the Port property.

4. Utility Work. All utilities that are in the road Easement shall be placed underground. The Port shall share maintenance of the road across the easement with the adjacent property owner on a pro rata based on usage. The condition to which the road will be maintained is a paved road approximately 40 feet in width with an adequate subbase for heavy trucks, equipment and machinery.

5. Approvals, Processes and Permits. The Port shall ensure that the all necessary permits, approvals and processes have been received and that the Project is at all times in compliance with all applicable state, federal and local laws, rules and regulations. The Port represents and warrants that all necessary

permits, approvals and permissions have been received, are currently in effect and, shall remain in effect throughout the Project. The Port represents and warrants that any wetlands mitigation and dredge spoils agreements and requirements on adjacent properties do not apply to the Facility and will not impact the Project. The Port represents and warrants that the following environmental actions have been taken and the necessary permits shall remain effective throughout the term of this Agreement:

Environmental Assessment, April 13, 2017

Finding of No Significant Impact, April 13, 2017

Completed Environmental actions:

- City of Newport Land Use Permit, **No. 1-TIA-13**, City of Newport, June 8, 2015.
- US Army Corps of Engineers, **NWP-2012-361-3**, August 9, 2016. Included approvals from Oregon DEQ, DLCD, local Tribes, SHPO, and NMFS.
- Oregon Dept. of State Lands, wetland restoration, **56824-RF**, August 26, 2014.
- Oregon Dept. of Environmental Quality, 1200-C Permit, File No. 122669, **Permit No. 29014**, December 29, 2015; re-issued December 15, 2015.
- Oregon Dept. of Environmental Quality, **1200-Z Permit**, File No. 122669, January 7, 2013.
- Lincoln County Public Works, Road Approach Permit, **Permit No. 2012-A-008**, November 21, 2012.
- City of Newport Electrical Permit, **No. E15-9007** issued December 30, 2015.
- City of Newport Plumbing Permit, **No. P15-2635** issued December 30, 2015.
- City of Newport Building Permit, **No. 13743** issued December 31, 2015.

6. Operations. The Port shall operate and maintain the docks and all access and support for the docks, and berthage and in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, improvements during the term of this Agreement, including maintenance and repair of pavement to the extent necessary due to normal wear and tear. Silvan and Teevin each shall be responsible for costs of pavement repairs required as a result of its own negligence or the negligence of its employees or contractors. Teevin will perform forest product storage operations on the Property in accordance with the terms of this Agreement and the Lease. Silvan shall deliver and export forest product shipments pursuant to the terms of its Services Agreement with Teevin and its Cooperative Funding Agreement with the Port.

7. Lease Assignment. In the event that Teevin defaults on the Lease, the Port shall assign the Lease for the Property to Silvan for completion of the term of the Lease.

8. Term. This Agreement shall be for a term of twenty (20) years commencing from the date of signing, to run with the Lease (if all options are exercised) and Cooperative Funding Agreement, provided the Lease between Teevin and the Port is for 4 five year terms. If the Lease between Teevin and the Port

terminates before twenty years has expired, Teevin is automatically released at termination from the terms of this Agreement.

9. **Timeline.** The Project work has begun in the form of permitting and approvals. The remaining work is to begin immediately upon execution of this Agreement on the following timeline:

Actual Start of Preliminary Engineering:	January 1, 2016
Actual End of Preliminary Engineering:	March 1, 2017
Actual Completion of NEPA:	April 13, 2017
Actual Start of Final Design:	April 1, 2017
Planned Completion of Final Design:	July 1, 2017
Start of Right of Way Acquisition:	N/A
End of Right of Way Acquisition:	N/A
Planned PS&E Approval:	N/A
Planned Construction Contract Award Date:	August 1, 2017
Planned Construction Start Date:	September 1, 2017
Facility Ready to Receive Forest products	May 2018
Planned Construction Substantial Completion Date:	April 30, 2018

Parties understand that weather and seasonal conditions can affect the ability to complete the facility. The Port is prepared to complete the project by January 31, 2018, but if weather conditions make completion impractical the Port will finish the project at the soonest available time.

10. Force Majeure. “Force Majeure” means any event or condition which wholly or partially delays or prevents a Party from performing any of its obligations hereunder and is beyond the reasonable control of, and occurs without the fault or negligence of, the Party affected thereby including, without limitation, acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damages to plants, equipment or facilities, interruptions to transportation, embargoes, or orders or acts of any court or government authority having jurisdiction or any military authority. If, as a result of Force Majeure, it becomes impossible or impractical for either Party to carry out its obligations hereunder (other than any obligation to pay money when due in accordance with the terms of this Agreement) in whole or in part, then such obligations shall be suspended to the extent necessary by such Force Majeure during its continuance. The Party affected by such Force Majeure shall give prompt written notice to the other Party of the nature and probable duration of such Force Majeure, and of the extent of its effects on such Party’s performance hereunder. Each Party shall, in the event it experiences Force Majeure, use all commercially reasonable efforts to eliminate such Force Majeure and/or its effects on such Party’s performance hereunder insofar as is practicable and with all reasonable dispatch.

11. Indemnity. To the extent permitted by law, each Party shall defend, indemnify and save harmless the other Parties and their officers, employees and, agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by the other Parties, or their employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

11. Insurance. Prior to the commencement of the Project and use of the Facility as a forest product facility, each Party shall cause the other Party to add the other Party as named insureds in any Party's policy or policies of liability or casualty insurance maintained by such Party that provide coverage with respect to shared activities of the Parties on the Terminal Property or upon personal property or improvements to Terminal Property.

12. Independent Contractors. The Parties shall at all times perform under this Agreement and conduct their operations hereunder as independent contractor. No relationship of employer-employee, master-servant, principal-agent, partnership or joint venture, or any similar relationship, is intended by this Agreement nor shall it be construed to exist. Each Party shall select and pay its own servants, agents, employees and/or suppliers. No Party nor its servants, agents, employees, or suppliers shall be subject to any orders nor the supervision or control of the other Parties hereto.

13. Miscellaneous

A. Survival. All representations and warranties set forth in this Agreement shall survive the expiration or termination of this Agreement. All provisions of this Agreement that contemplate performance after the expiration or termination of this Agreement, including without limitation, the reciprocal attorneys' fee provision and the waiver and indemnity provisions set forth herein, shall survive the expiration or termination of this Agreement and be fully enforceable thereafter.

B. Time is of the Essence. The Parties agree that time is of the essence with respect to all terms, provisions, covenants and conditions under this Agreement and the related Lease, funding, service and, other related agreements.

C. No Construction against Drafter. This Agreement is to be construed as if the Parties drafted it jointly.

D. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

E. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the Parties and, subject to the restrictions on assignment set forth herein, their respective successors and assigns, and, no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

F. Recitals, Exhibits and Schedules. The Recitals to this Agreement and any Schedules or Exhibits attached hereto are incorporated herein by this reference.

G. Amendments, Waivers. This Agreement may not be amended without the prior written consent of all Parties. No waiver or consent is effective unless in writing and executed by the Party (ies) against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

H. Attorneys' Fees and Other Expenses. To the extent permitted by Oregon law, the prevailing Party in any dispute arising from this Agreement is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal.

I. Choice of Law; Designation of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon (without regard to the principles thereof relating to conflicts of laws); venue for any dispute shall be in Lincoln County, Oregon.

J. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this instrument to be signed personally or by their duly authorized representatives with due authority, effective as of the date first above written.

PORT OF NEWPORT

BY: _____

Its: _____

ATTEST: _____

SILVAN FOREST LLC

BY: _____

Its: _____

ATTEST: _____

TEEVIN BROS. LAND & TIMBER CO., LLC

BY: _____

Its: _____

ATTEST: _____

AFTER RECORDING RETURN TO:

Dennis L. Bartoldus
Attorney at Law
P.O. Box 1510
Newport, OR 97365

DRAINAGE EASEMENT (Ditch)

This EASEMENT AGREEMENT is entered into this ____ day of _____, 2017, by and between Rondys Inc., a Washington corporation, licensed to do business in Oregon, as the Grantor, and the Port of Newport, an ORS 777 municipal corporation of the State of Oregon as the Grantee.

RECITALS

A. The Grantor and Grantee own adjacent properties located in Lincoln County, Oregon. The real property owned by the Grantor is described in Exhibit "A". The real property owned by the Grantee is described in Exhibit "B". A map depicting the relationship of the properties to one another is attached as Exhibit "C".

B. The Grantee has requested from Grantor an easement for installation of a storm drain, an easement for drainage and property on which to perform wetland mitigation.

C. Grantor is willing to grant the easements to the Grantee upon the terms and conditions set forth herein.

GRANT AND TERMS OF EASEMENT

1. **Grant of Easement.** Grantor hereby grants to Grantee an easement for a storm drain and drainage over real property owned by Grantor. The location of the storm drain is described in Exhibit "D" and the location for the continued drainage way is described in Exhibit "E". The easements granted herein are appurtenant to the real property owned by the Grantee described in Exhibit "B". The easement granted herein are non-exclusive and may be used in conjunction with others to whom an easement may be granted and also may be used by the Grantor.

2. **Placement.** The storm drain and drainage way to be installed herein shall be installed, maintained and repaired solely by the Grantee. The storm drain and drainage way must be installed at an adequate depth so as to not interfere with any surface activity on the Grantor's property. The Grantee is aware that a road carrying heavy vehicles will run over the storm drain

and the Grantee shall take all care and precaution to engineer and install the storm drain so as to avoid damage to the roadway and to avoid interruption in the use of the road.

3. **Conditions of Use.** Grantee agrees that it will not allow any hazardous or toxic materials from Grantee's property to be drained onto the Grantor's through this drainage channel or otherwise. The Grantee covenants and agrees that all water entering the Grantor's storm drainage system must be treated to comply with NOAA Slopes V requirements and the DEQ NPDES 1200-Z Permit.

4. **Maintenance.** In the event the drain easement is in need of maintenance or repair, Grantee shall contribute on a pro rata basis with Grantor to pay the costs of maintaining, cleaning or repairing the easement to allow it to serve its purpose of serving as a drain for runoff and storm water. Grantor will coordinate and organize the work within the easement, notifying the Grantee of the reason for the work and the breakdown of the cost for each party. Grantee shall pay its share of the cost within 30 days after being provided a statement of the amount due from Grantee. In the event the maintenance or repair is due to the negligence of one party, such as allowing pollutants in prohibited amounts to enter the drainage, the party causing the need for the maintenance or repair shall pay for those costs of maintenance or repair.

5. **Compliance with all Laws.** In installing, maintaining, repairing and utilizing the storm drain and drainage way and mitigation site, the Grantee shall comply with all applicable governmental laws, rules and regulations, including all provisions of the clean water acts that provide for the filtering and/or treatment of drain water so as to not violate any law, rule or regulation. Compliance with all laws shall be required as long as this easement is in effect.

6. **Indemnification.** The Grantee shall indemnify and hold Grantor harmless from any damages, claims and demands caused by the construction, repair and maintenance of the storm drain and drainage way and any obligation of Grantee under this agreement. The duty to indemnify shall include a duty to indemnify and hold harmless Grantor from any attorney fees and costs incurred by Grantee in defending or responding to any claim, demand or litigation, regardless of whether any litigation is actually filed and includes attorneys fees and costs on any appeal. It is understood that this indemnification is a contractual obligation of the Grantee and the Grantee's obligation to indemnify the Grantor is not limited by any provision of the tort claim limitations imposed by Oregon law. The parties agree that the contractual limit of indemnification shall be \$10,000,000.00.

7. **Insurance.** The Grantee shall maintain adequate insurance which is defined as a general liability policy of at least \$10,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The Grantee's insurance policy shall name the Grantor as an additional insured and Grantee shall provide a copy of the policy to Grantor upon the request of Grantor.

8. **Binding Effect.** This agreement shall be binding on the heirs, successors and assigns of each of the parties.

9. **Notice and Cure.** Neither party shall be in default hereunder until it has received written notice from the other specifying the nature of its failure to comply with the terms hereof and such failure shall have continued for a period of 30 days after receipt of notice. Provided, however, that such party shall not be in default if the failure to comply is not reasonably curable within the 30 day period and the party proceeds with diligence to cure the failure to comply. In the event an emergency exists or when damage would occur as a result of delay, the 30 day notice provided herein is not necessary. Provided, however, that the right to cure shall not relieve a party from paying damages or equitable remedies if the other party has suffered damage as a result of a breach of this agreement.

10. **Notices.** All notices to be given hereunder shall be sent as follows:

To Grantor: Rondys, Inc.
1301 West Oregon Street
Bellingham, WA 98225

To Grantee: Port of Newport
600 SE Bay Blvd.
Newport, OR 97365

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested to the addresses listed in this section. The addresses may be changed by written notice, given in the same manner. Notice given in any other manner other than the manner set forth herein will be effective when received by the party for whom it is intended.

11. **Attorney Fees.** In the event any suit or action is filed to enforce any term, condition or omission under this agreement, the prevailing party shall be entitled to recover from the losing party the prevailing party's reasonable costs and attorney fees, including any attorney fees and costs incurred on any appeal.

12. **Governing Law.** This agreement shall be governed by the laws of the State of Oregon.

13. **Entire Agreement.** This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and merges and replaces all prior and contemporaneous negotiations, discussion, representations, warranties, promises and agreements of the parties with respect to the subject matter hereof.

14. **No Waiver.** No waiver of any action or default by any party will be implied from a failure or delay by the other party to take any action in respect to such action or default.

15. **Right of Approval.** Rondys has the right to approve all plans and improvements placed within the easement.

16. **Non-Exclusive.** The easements granted herein are non-exclusive and the Grantor reserves the right to grant other easements to other parties and to utilize the easement area for improvements to the Grantor's property.

17. **Easement over Grantee's Property.** In consideration of the grant of this easement, the Port of Newport hereby grants, gives and conveys to Rondys and its heirs, successors and assigns, an easement over the Port property for utilities, including but not limited to, power, water, sewer, communication cables, to serve the Rondys property. The location of said easement shall be in a location reasonable in scope and nature so as to not unreasonably interfere with the Port's property.

IN WITNESS WHEREOF, the parties have entered into this agreement this _____ day of _____, 2017.

PORT OF NEWPORT

RONDYS, INC.

By: _____

By: _____

Its: _____

Its: _____

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of the Port of Newport, an ORS 777 municipal corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of Rondys Inc., a Washington corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

PARCEL I: (TL 600)

That portion of land lying above the "Ordinary Low Water" line (Mean Low Water; +1.3 M.L.L.W. Datum) and within the herein described parcel;

Beginning at the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence South 0 deg. 37' 45" East, 1,489.38 feet, along said Section line; thence leaving said Section line South 79 deg 05' 40" West, 561.95 feet to a point on the "Ordinary High Water " line (Mean High Water; + 7.5 M.L.L.W. Datum); thence along said "Ordinary High Water" line as follows; Thence North 04 deg. 30' 06" West 898.42 feet; thence North 01 deg. 18' 14" West, 445.57 feet; thence North 11 deg. 03' 28" East 192.23 feet; thence North 74 deg. 58' 49" East 129.12 feet; thence North 86 deg. 45' 06" East 230.53 feet; thence South 89 deg. 56' 29" East 141.93 feet; thence North 45 deg. 52' 08" East 112.70 feet to a point on the East line of Section 9, T 11 S, R 11 W, W.M.; thence along said Section line South 01 deg. 30' 00" East, 59.03 feet to the Meander Corner and the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

PARCEL II: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11, S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "Ordinary High Water line(Mean High Water, + 7.5 M.L.L.W. Datum) the following bearings and distances: thence South 01 deg. 18' 14" East 182.28 feet; thence South 04 deg. 30' 06" East 898.42 feet; thence South 07 deg. 35' 00" East 346.12 feet; thence South 05 deg. 44' 50" East 176.97 feet; thence South 00 deg. 41' 31" West 170.71 feet; thence South 29 deg. 29' 42" West 105.01 feet; thence South 64 deg. 29' 57" West 302.14 feet; thence South 74 deg. 09' 48" West 91.76 feet; thence South 74 deg. 36' 04" West 106.43 feet; thence South 82 deg. 25' 07" West 67.60 feet; thence North 53 deg. 46' 58" West 213.35 feet; thence North 45 deg. 24' 33" West 442.89 feet; thence North 48 deg. 30' 25" West 473.05 feet; thence South 79 deg. 14' 06" West 102.30 feet; thence leaving said High Water line the following bearings and distances; thence North 59 deg. 00' 00" West 218.00 feet; thence North 14 deg. 59' 11" East 607.90 feet; thence North 66 deg. 37' 09" East 35.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 160.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 270.00 feet returning to said Ordinary High Water Line; thence along said High Water Line the following bearings and distances; thence South 66 deg. 37' 09" West 442.42 feet; thence North 79 deg 18' 23" West 363.57 feet; thence North 75 deg. 47' 46" West 50.47 feet; thence North 69 deg. 39' 06" West 16.82 feet; thence North 40 deg. 28' 56" West 15.90 feet; thence North 03 deg. 54' 48" East 15.23 feet; thence North 57 deg. 15' 49" East 16.20 feet; thence North 84 deg. 09' 41" East 9.71 feet; thence South 85 deg. 27' 31" East 29.11 feet; thence North 05 deg. 37' 46" West 132.99 feet; thence North 06 deg. 23' 52" West 132.55 feet; thence North 48 deg. 16' 05" West 156.69 feet; thence North 53 deg. 06' 28" West 231.05 feet; thence North 21 deg. 00' 00" East 22.80 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 42 deg. 17' 57" East 19.97 feet; thence South 57 deg. 44' 00" East 175.80 feet; thence South 54 deg. 39' 31" East 134.93 feet; thence South 72 deg. 55' 33" East 193.87 feet; thence South 69 deg. 30' 32" East 161.53 feet; thence South 77 deg. 14' 36" East 168.78 feet; thence South 85 deg. 55' 21" East 119.45 feet; thence North 88 deg. 26' 06" East 180.76 feet; thence North 74 deg. 58' 04" East 299.55 feet; thence North 14 deg. 26' 08" West 242.29 feet to a point on the "1953 Mean Low Tide, National Ocean Survey (Hydrographic Sheet No. 8041)" line; thence along said Low Tide line the following bearings and distances; thence North 83 deg. 11' 10" East 417.96 feet; thence South 73 deg. 48' 38" East 63.52 feet; thence South 59 deg. 47' 58" East 250.66 feet; thence North 58 deg. 18' 10" East 96.59 feet; thence North 32 deg. 07' 55" East 192.28 feet; thence North 40 deg. 55' 25" East 111.41 feet; thence South 87 deg. 05' 06" East 164.38 feet; thence North 65 deg. 41' 34" East 124.87 feet; thence North 70 deg. 07' 01" East 140.90 feet; thence North 60 deg. 34' 58" East 109.29 feet; thence South 65 deg. 41' 15" East 79.08 feet; thence South 57 deg. 43' 35" East 105.25 feet; thence South 84 deg. 31' 08" East 0.10 feet to the point of beginning on said "Ordinary High Water" line.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

ALSO EXCEPTING Parcels A, G and L as described in instrument recorded April 2, 1984, Book 148, page 2144 Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded August 7, 2006, Document No. 200611998, Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

PARCEL III: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "1953 Mean Low Tide National Ocean Survey" (Hydrographic Sheet No. 8041) line the following bearings and distances; thence North 84 deg. 31' 08" West 0.10 feet; thence North 57 deg. 43' 35" West 105.25 feet; thence North 65 deg. 41' 15" West 79.08 feet; thence South 60 deg. 34' 58" West 109.29 feet; thence South 70 deg. 07' 01" West 140.90 feet; thence South 65 deg. 41' 34" West 124.87 feet; thence North 87 deg. 05' 06" West 164.38 feet; thence South 40 deg. 55' 25" West 111.41 feet; thence South 32 deg. 07' 55" West 192.28 feet; thence South 58 deg. 18' 10" West 96.59 feet; thence North 59 deg. 47' 58" West 250.66 feet; thence North 73 deg. 48' 38" West 63.52 feet; thence South 83 deg. 11' 10" West 417.96 feet; thence South 14 deg. 26' 08" East 242.29 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 74 deg. 58' 04" West 299.55 feet; thence South 88 deg. 26' 06" West 180.76 feet; thence North 85 deg. 55' 21" West 119.45 feet; thence North 77 deg. 14' 36" West 168.78 feet; thence North 69 deg. 30' 32" West 161.53 feet; thence North 72 deg. 55' 33" West 193.87 feet; thence North 54 deg. 39' 31" West 134.93 feet; thence North 57 deg. 44' 00" West 175.80 feet; thence North 42 deg. 17' 57" West 19.97 feet; thence South 21 deg. 00' 00" West 22.80 feet; thence North 37 deg. 22' 27" West 66.69 feet; thence North 51 deg. 36' 30" West, 117.06 feet; thence North 49 deg. 20' 47" West 4.16 feet; thence North 39 deg. 56' 57" East 171.84 feet to the Southerly line of that parcel recorded in Volume 98, page 1415, Lincoln County Records; thence along the Southerly line South 62 deg. 54' 03" East 177.42 feet to the Southeast corner; thence along the East line North 38 deg. 24' 37" East 108.97 feet to the Northeast corner of said parcel; said point also being on the Southerly boundary of County Road No. 515; thence along the Southerly right of way South 50 deg. 51' 58" East, 66.57 feet; thence an arc length of 329.99 feet along a curve to the left having a radius of 622.96 feet; thence South 81 deg. 05' 08" East 328.37 feet; thence an arc length of 165.17 feet along a curve to the left having a radius of 1768.87 feet; thence an arc length of 325.46 feet along a curve to the left having a radius of 622.96 feet; thence North 63 deg. 37' 52" East 422.68 feet to the Northwest corner of that parcel conveyed to Dean Warren and recorded in Book 276, page 39, Lincoln County Records on 16th, March 1967; thence South along the West line of said parcel a distance of 86.2 feet, more or less, to the Mean High Water of 1912 line of Yaquina Bay; thence along said Mean High Water line as established by C. S. 5618, the following bearings and distances; thence North 64 deg. 39' 15" East 95.72 feet; thence North 47 deg. 48' 52" East 241.88 feet; thence North 68 deg. 44' 27" East 263.16 feet; thence North 59 deg. 08' 15" East 353.30 feet; thence North 77 deg. 30' 00" East 113.80 feet; thence North 86 deg. 29' 15" East 327.80 feet to a point along the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence South 74 deg. 58' 49" West, 28.54 feet; thence South 11 deg. 03' 28" West 192.23 feet; thence South 01 deg. 18' 14" East 263.29 feet along said High Water Line to the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

ALSO EXCEPTING Parcels A, G and L as described in instrument recorded April 2, 1984, Book 148, page 2144 Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded August 7, 2006, Document No. 200611998, Microfilm Records for Lincoln County, Oregon.

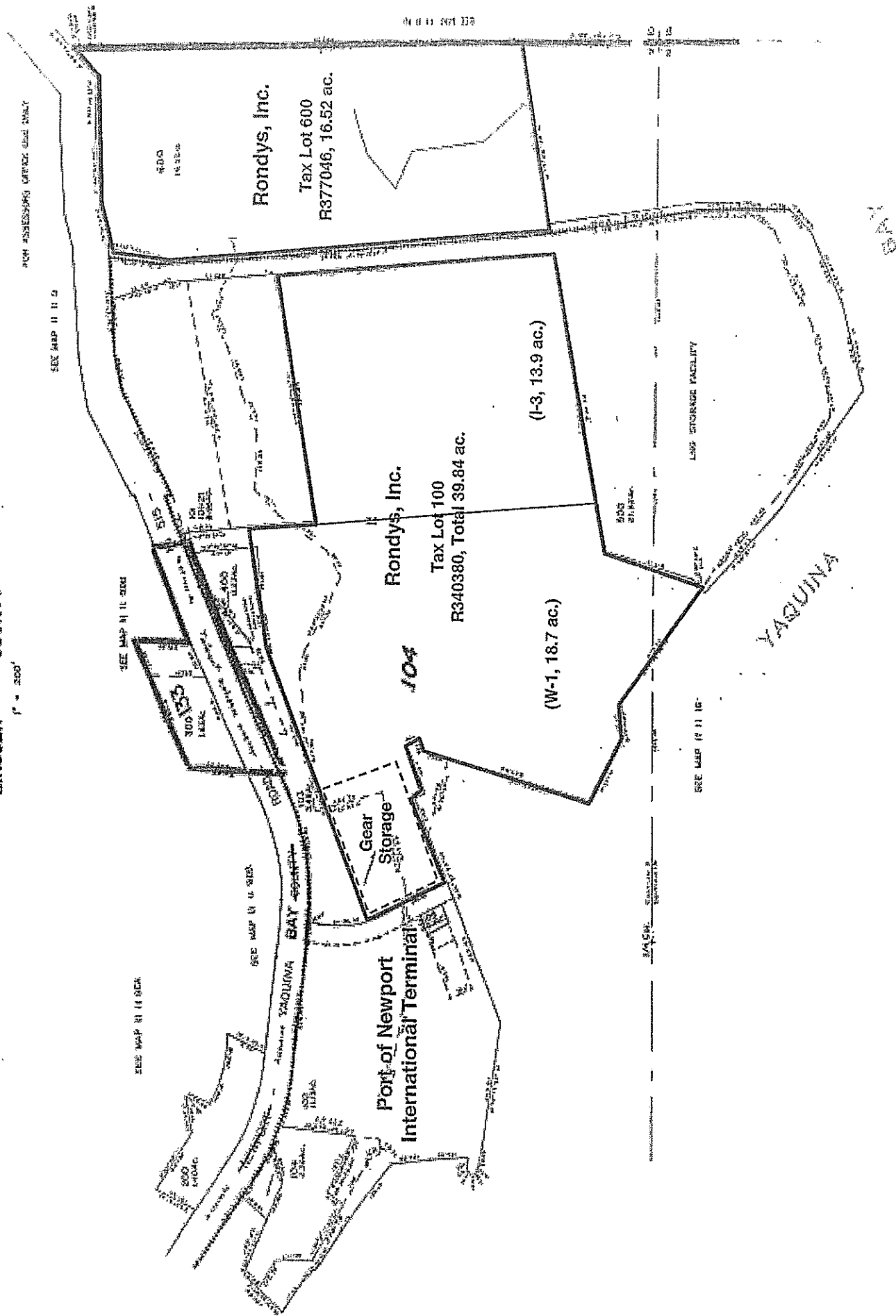
AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

EXHIBIT B
DESCRIPTION OF PORT PROPERTY

EXHIBIT C

SE 1/4 SECTION 9 T11S R11W WM
LINCOLN COUNTY

1" = 200'



Rondys, Inc.
Tax Lot 600
R377046, 16.52 ac.

Rondys, Inc.
Tax Lot 100
R340380, Total 39.84 ac.

Port of Newport
International Terminal

Gear Storage

LONG STORAGE FACILITY

YAGUINA

SEE MAP N 11 12

SEE MAP N 11 13

SEE MAP N 11 16

SEE MAP N 11 16

SEE MAP N 11 16

11 11 9D

11 11 9D



TELEPHONE (541) 267-2872
 FAX (541) 267-0588
 ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
 COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
 DESCRIPTION OF 10 FOOT WIDE NON-EXCLUSIVE STORM DRAINAGE
 EASEMENT FOR THE PORT OF NEWPORT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

The following is the described centerline of a 10 foot wide storm drainage easement, extending 5 feet perpendicular to said centerline in each direction;

Commencing at a point 337.42 feet south and 1,471.95 feet west of the Meander Corner on the East line of Section 9, Township 11 South, Range 11 West, W.M. in Lincoln County, Oregon, said point marked by a 5/8" iron rod with a "MSS Engineering" plastic cap at the intersection of the western edge of an existing 60 foot wide access road easement and the southern boundary of County Road No. 515 right of way;

Thence South 03°34'30" East, 244.18 feet to a 5/8" iron rod with a "MSS Engineering" plastic cap being on the North line of that access easement described in Book 148, Page 2163 Lincoln County Book of Records;

Thence South 86°25'30" West 19.75 feet to the True Point of Beginning;

Thence South 26°18'19" East 64.87 feet to a point;

Thence South 03°34'30 East 143.14 feet to a point perpendicular to the Southwest corner of that property owned by the Port of Newport, said point bears North 86°25'30" East 54.67 feet to a 5/8" iron rod set in Lincoln County Survey No. 20555 marking the southwest corner of that property described in Lincoln County Book of Records as Parcel "L" Book 148, Page 2162.

Said easement containing 0.05 Acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north. Monuments noted as per Lincoln County Survey No. 20555, by Peter Seaders.

EXHIBIT D

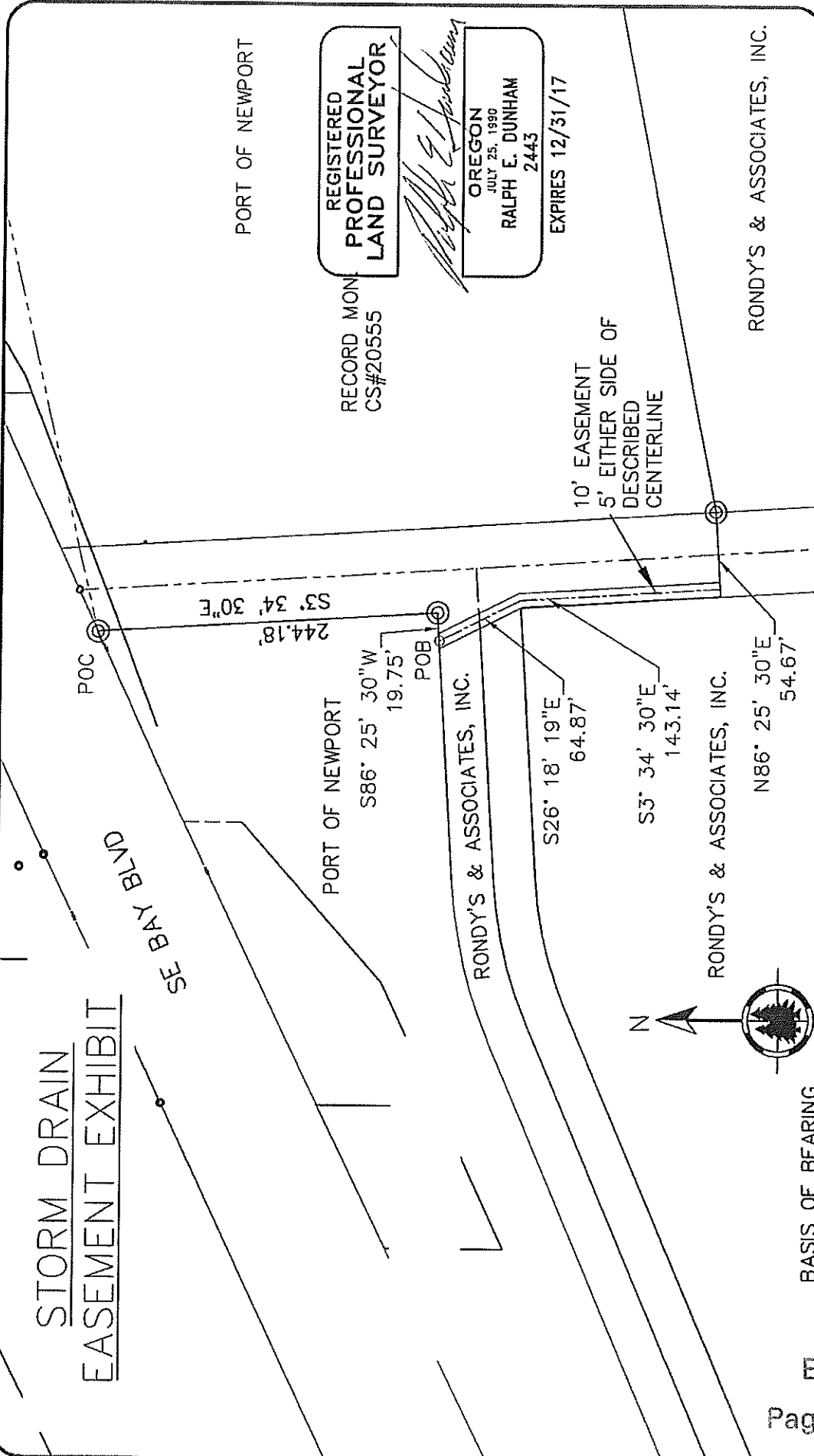
Page 1 of 2

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

Ralph Dunham
 OREGON
 JULY 25 1999

EXPIRES 12/31/17

STORM DRAIN EASEMENT EXHIBIT



PORT OF NEWPORT

REGISTERED
PROFESSIONAL
LAND SURVEYOR

RECORD MON
CS#20555

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2443

EXPIRES 12/31/17

RONDY'S & ASSOCIATES, INC.

10' EASEMENT
5' EITHER SIDE OF
DESCRIBED
CENTERLINE

RONDY'S & ASSOCIATES, INC.

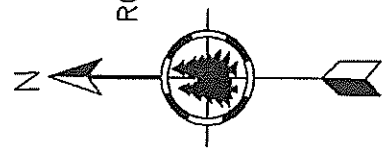
RONDY'S & ASSOCIATES, INC.



705 S. 4TH ST.
P.O. BOX 118
COOS BAY, OREGON 97420
Engineering - Land Surveying - Forestry - Land Planning - Water Rights

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

JOB #: 112-2-100	Port of Newport
DATE: APR. 2017	Storm Drain Easement Exhibit
DRAWN BY: AER	FILE NAME: Port Site 2016 Easements.dwg
CHECKED BY: RED	SHEET 1 OF 1



BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER

EXHIBIT D

Page 2 of 2



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
DESCRIPTION OF A NON-EXCLUSIVE DRAINAGE EASEMENT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Beginning at the Southwest corner of that property owned by the Port of Newport, recorded as Parcel "L" in Book 148 Page 2162 marked with a yellow plastic cap marked "MSS Engineering" per Lincoln County Survey No. 20555, said point having the coordinates of Northing 370,085.42' and Easting 7,283,922.58' in conformance with the Oregon State Plane Coordinate System, North Zone, North American Datum 83 (1991), Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be True North;

Thence North 78°59'06" East 15.12 feet;

Thence South 03°34'30" East 968.88 feet more or less to the north line of that property owned by NW Natural Gas Co.;

Thence along said north line of NW Natural Gas Co. South 79°05'10" West 173.88 feet to a 5/8" Iron Rod per Lincoln County Survey No. 20555;

Thence South 79°05'10" West 12.82 feet;

Thence South 15°43'30" West 267.90 feet;

Thence South 46°21'19" West 58.82 feet more or less to the Ordinary High Water Line;

Thence North 48°32'17" West along said Ordinary High Water Line 30.11 feet;

Thence North 46°21'19" East 53.17 feet more or less;

Thence North 15°43'30" East 284.08 feet;

Thence North 63°18'16" East 92.72 feet;

Thence North 79°05'10" East 45.52 feet;

EXHIBIT E
Page 1 of 3

Thence North 03°34'30" West 915.61 feet:

Thence North 86°25'30" East 60.00 feet to the Southwest corner of the property owned by the Port of Newport and the Point of Beginning;

Said easement containing 2.05 acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north. Monuments noted as per Lincoln County Survey No. 20555 by Peter Seaders.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Ralph E. Dunham
OREGON
JULY 25, 1990
RALPH E. DUNHAM
2448

EXPIRES 12/31/17

EXHIBIT ^E _____

Page ² _____ of ³ _____

DRAINAGE EASEMENT EXHIBIT

PORT OF NEWPORT

NORTHING: 370085.42'
EASTING: 7283922.58'
BASED ON OREGON
STATE PLANE NORTH
ZONE NAD83 91

RONDY'S &
ASSOCIATES, INC.

(S1° 03' 01"E GRID)
S3° 34' 30"E
968.88'

N78° 59' 06"E
15.12'

N86° 25' 30"E
60.00'

N3° 34' 30"W
915.61'

N79° 05' 10"E
45.52'

N63° 18' 16"E
92.72'

N15° 43' 30"E
284.08'

BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER



LOCATED SE 1/4 OF SEC 9,
T11S, R11W, W.M.
LINCOLN CO. OREGON

© MONUMENT FROM
CS #20555

NW NATURAL

S79° 05' 10"W
173.88'

S79° 05' 10"W
12.82'

S46° 21' 19"W
58.82'

S15° 43' 30"W
267.90'

N46° 21' 19"E
53.17'

N48° 32' 17"W
30.11'

RONDY'S &
ASSOCIATES, INC.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2443

EXPIRES 12/31/17



705 S. 4TH ST.
P.O. BOX 118
COOS BAY, OREGON 97420
PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com
Engineering - Land Surveying - Forestry - Land Planning - Water Rights

JOB #: 112-2-100
DATE: MAY 2017
DRAWN BY: AER
CHECKED BY: RED

Port of Newport
Drainage Easement Exhibit

FILE NAME: Port Site 2016 Easements.dwg SHEET 1 OF 1

DREDGE SPOILS AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2017 by and between Rondys, Inc., a Washington corporation, licensed to do business in Oregon, hereinafter "Rondys", and the Port of Newport, an ORS 777 Municipal corporation of the State of Oregon, hereinafter "Port".

RECITALS:

- A. The Port has completed a dredging project in Yaquina Bay, Lincoln County, Oregon and has deposited dredge spoils on property owned by Rondys.
- B. The dredge spoils have been stored on Rondys property for a period of time.
- C. Rondys has used of a portion of dredge spoils for filling Rondys property and preparing property owned by Rondys for commercial and industrial development.
- D. The parties desire to enter into an agreement regarding the storage and use of the dredge spoils.
- E. The real property owned by Rondys is described in Exhibit A.

AGREEMENT:

1. **Consideration.** In consideration of the Port being allowed to store and to the extent set forth herein dispose of dredge spoils on property owned by Rondys, the Port agrees to perform the acts required by it to be performed under this agreement.
2. **Use of Spoils.** The Port agrees, at its expense, to grade, level and compact as necessary the dredge spoils over the Rondys property as directed by Rondys to provide a base suitable for the development of commercial and industrial buildings on the Rondys property.
3. **Removal of Spoils.** As of the date of this agreement, the Port has placed approximate 46,000 cubic yards of buildable dredge spoils on Rondys property. Port will remove and use approximately 22,000 cubic yards of buildable dredge spoils from Rondys property with the balance to be used by Rondys. In addition, Port agrees to relocate up to 16,000 cubic yards of unbuildable materials (topsoil) to a site located on Rondys property as directed by Rondys. The parties agree to the specifications for handling this material as shown in the Port's shipping facility construction documents.

The work to be performed under this section shall be completed by December 31, 2017. If the work is not completed by that time, then the work shall be completed by Port within 120 days after written notice is sent by Rondys to Port to complete the work.

4. **Obtaining Permits.** The Port shall obtain all necessary permits from any government agencies that are necessary to perform the word required under this agreement at the

sole expense of the Port. Rondys, as the property owner, shall cooperate in signing applications and other documents necessary and convenient to allow the work to progress.

5. **Port Representations.**

a. The Port represents that the dredge spoils are clean and are free from hazardous materials and that in the event any hazardous materials are found or placed, the Port shall be solely responsible for any remediation of the hazardous material so placed.

b. The Port represents that it gave notice to the State of Oregon pursuant to ORS 274.550 and OAR 141-014-0320 so that Rondys will not be charged for dredge spoils used on Rondys property. In the event any compensation is sought by the State of Oregon for any of the dredge spoils used on the Rondys property, the Port shall indemnify and defend Rondys and make any payment that may be required to the State.

6. **Indemnification.** The Port shall indemnify and hold Rondys harmless for any liability for work done in grading, leveling and compacting the dredge material and also from any other work in hauling and removing the dredge spoils on the property. It is understood that this indemnification is a contractual obligation of the tort and the obligation to indemnify is not limited by any provision of the Port claim limitations imposed by Oregon law. The parties agree that the contractual limit of indemnification shall be \$10,000,000.00.

7. **Insurance.** The Port shall carry and maintain comprehensive liability insurance for all work done on the Rondys property in the minimum amount of \$10,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The Port's policy shall name Rondys as an additional insured. The Port shall furnish a copy of the policy to Rondys upon the request of Rondys.

8. **Binding Effect.** This agreement will be binding on the heirs, successors and assigns of each party.

9. **Notice and Cure.** In the event the Port is in breach of this agreement, Rondys shall give the Port not less than 30 days' written notice of the nature of default and an opportunity to cure for a period of 30 days after mailing or delivery of the notice. Provided, however, that if the default is not reasonably curable within the 30 day period and the Port is proceeding diligently to cure the failure, the Port will be allowed additional time to cure provided it is proceeding with all due diligence and the default continues to be curable. In the event an emergency exists or when damage would occur as a result of delay, the 30 day notice provided herein is not necessary. Provided, however, that the right to cure shall not relieve a party from paying damages or equitable remedies if the other party has suffered damage as a result of a breach of this agreement.

10. **Notices.** All notices to be given hereunder shall be sent as follows:

To Rondys: Rondys, Inc.
1301 West Oregon Street
Bellingham, WA 98225

To Port: Port of Newport
600 SE Bay Blvd.
Newport, OR 97365

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested to the addresses listed in this section. The addresses may be changed by written notice, given in the same manner. Notice given in any other manner other than the manner set forth herein will be effective when received by the party for whom it is intended.

11. **Attorney Fees.** In the event any suit or action is filed to enforce any term, condition or omission under this agreement, the prevailing party shall be entitled to recover from the losing party the prevailing party's reasonable costs and attorney's fees, including any attorney's fees and costs incurred on any appeal.

12. **Governing Law.** This agreement shall be governed by the laws of the state of Oregon.

13. **Entire Agreement.** This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and merges and replaces all prior and contemporaneous negotiations, discussions, representations, warranties, promises and agreements of the parties with respect to the subject matter hereof.

14. **No Waiver.** No waiver of any action or default by any party will be implied from a failure or delay by the other party to take action in respect to such action or default.

IN WITNESS WHEREOF, the parties have entered into this agreement this _____ day of _____, 2017.

PORT OF NEWPORT

RONDYS, INC.

By: _____

By: _____

Its: _____

Its: _____

[Acknowledgements appear on the following page]

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of the Port of Newport, an ORS 777 municipal corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of Rondys Inc., a Washington corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

PARCEL I: (TL 600)

That portion of land lying above the "Ordinary Low Water" line (Mean Low Water; +1.3 M.L.L.W. Datum) and within the herein described parcel;
Beginning at the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence South 0 deg. 37' 45" East, 1,489.38 feet, along said Section line; thence leaving said Section line South 79 deg 05' 40" West, 561.95 feet to a point on the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence along said "Ordinary High Water" line as follows; Thence North 04 deg. 30' 06" West 898.42 feet; thence North 01 deg. 18' 14" West, 445.57 feet; thence North 11 deg. 03' 28" East 192.23 feet; thence North 74 deg. 58' 49" East 129.12 feet; thence North 86 deg. 45' 06" East 230.53 feet; thence South 89 deg. 56' 29" East 141.93 feet; thence North 45 deg. 52' 08" East 112.70 feet to a point on the East line of Section 9, T 11 S, R 11 W, W.M.; thence along said Section line South 01 deg. 30' 00" East, 59.03 feet to the Meander Corner and the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

PARCEL II: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11, S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "Ordinary High Water line (Mean High Water, + 7.5 M.L.L.W. Datum) the following bearings and distances: thence South 01 deg. 18' 14" East 182.28 feet; thence South 04 deg. 30' 06" East 898.42 feet; thence South 07 deg. 35' 00" East 346.12 feet; thence South 05 deg. 44' 50" East 176.97 feet; thence South 00 deg. 41' 31" West 170.71 feet; thence South 29 deg. 29' 42" West 105.01 feet; thence South 64 deg. 29' 57" West 302.14 feet; thence South 74 deg. 09' 48" West 91.76 feet; thence South 74 deg. 36' 04" West 106.43 feet; thence South 82 deg. 25' 07" West 67.60 feet; thence North 53 deg. 46' 58" West 213.35 feet; thence North 45 deg. 24' 33" West 442.89 feet; thence North 48 deg. 30' 25" West 473.05 feet; thence South 79 deg. 14' 06" West 102.30 feet; thence leaving said High Water line the following bearings and distances; thence North 59 deg. 00' 00" West 218.00 feet; thence North 14 deg. 59' 11" East 607.90 feet; thence North 66 deg. 37' 09" East 35.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 160.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 270.00 feet returning to said Ordinary High Water Line; thence along said High Water Line the following bearings and distances; thence South 66 deg. 37' 09" West 442.42 feet; thence North 79 deg 18' 23" West 363.57 feet; thence North 75 deg. 47' 46" West 50.47 feet; thence North 69 deg. 39' 06" West 16.82 feet; thence North 40 deg. 28' 56" West 15.90 feet; thence North 03 deg. 54' 48" East 15.23 feet; thence North 57 deg. 15' 49" East 16.20 feet; thence North 84 deg. 09' 41" East 9.71 feet; thence South 85 deg. 27' 31" East 29.11 feet; thence North 05 deg. 37' 46" West 132.99 feet; thence North 06 deg. 23' 52" West 132.55 feet; thence North 48 deg. 16' 05" West 156.69 feet; thence North 53 deg. 06' 28" West 231.05 feet; thence North 21 deg. 00' 00" East 22.80 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 42 deg. 17' 57" East 19.97 feet; thence South 57 deg. 44' 00" East 175.80 feet; thence South 54 deg. 39' 31" East 134.93 feet; thence South 72 deg. 55' 33" East 193.87 feet; thence South 69 deg. 30' 32" East 161.53 feet; thence South 77 deg. 14' 36" East 168.78 feet; thence South 85 deg. 55' 21" East 119.45 feet; thence North 88 deg. 26' 06" East 180.76 feet; thence North 74 deg. 58' 04" East 299.55 feet; thence North 14 deg. 26' 08" West 242.29 feet to a point on the "1953 Mean Low Tide, National Ocean Survey (Hydrographic Sheet No. 8041)" line; thence along said Low Tide line the following bearings and distances; thence North 83 deg. 11' 10" East 417.96 feet; thence South 73 deg. 48' 38" East 63.52 feet; thence South 59 deg. 47' 58" East 250.66 feet; thence North 58 deg. 18' 10" East 96.59 feet; thence North 32 deg. 07' 55" East 192.28 feet; thence North 40 deg. 55' 25" East 111.41 feet; thence South 87 deg. 05' 06" East 164.38 feet; thence North 65 deg. 41' 34" East 124.87 feet; thence North 70 deg. 07' 01" East 140.90 feet; thence North 60 deg. 34' 58" East 109.29 feet; thence South 65 deg. 41' 15" East 79.08 feet; thence South 57 deg. 43' 35" East 105.25 feet; thence South 84 deg. 31' 08" East 0.10 feet to the point of beginning on said "Ordinary High Water" line.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

ALSO EXCEPTING Parcels A, G and L as described in instrument recorded April 2, 1984, Book 148, page 2144 Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded August 7, 2006, Document No. 200611998, Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

PARCEL III: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "1953 Mean Low Tide National Ocean Survey" (Hydrographic Sheet No. 8041) line the following bearings and distances; thence North 84 deg. 31' 08" West 0.10 feet; thence North 57 deg. 43' 35" West 105.25 feet; thence North 65 deg. 41' 15" West 79.08 feet; thence South 60 deg. 34' 58" West 109.29 feet; thence South 70 deg. 07' 01" West 140.90 feet; thence South 65 deg. 41' 34" West 124.87 feet; thence North 87 deg. 05' 06" West 164.38 feet; thence South 40 deg. 55' 25" West 111.41 feet; thence South 32 deg. 07' 55" West 192.28 feet; thence South 58 deg. 18' 10" West 96.59 feet; thence North 59 deg. 47' 58" West 250.66 feet; thence North 73 deg. 48' 38" West 63.52 feet; thence South 83 deg. 11' 10" West 417.96 feet; thence South 14 deg. 26' 08" East 242.29 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 74 deg. 58' 04" West 299.55 feet; thence South 88 deg. 26' 06" West 180.76 feet; thence North 85 deg. 55' 21" West 119.45 feet; thence North 77 deg. 14' 36" West 168.78 feet; thence North 69 deg. 30' 32" West 161.53 feet; thence North 72 deg. 55' 33" West 193.87 feet; thence North 54 deg. 39' 31" West 134.93 feet; thence North 57 deg. 44' 00" West 175.80 feet; thence North 42 deg. 17' 57" West 19.97 feet; thence South 21 deg. 00' 00" West 22.80 feet; thence North 37 deg. 22' 27" West 66.69 feet; thence North 51 deg. 36' 30" West, 117.06 feet; thence North 49 deg. 20' 47" West 4.16 feet; thence North 39 deg. 56' 57" East 171.84 feet to the Southerly line of that parcel recorded in Volume 98, page 1415, Lincoln County Records; thence along the Southerly line South 62 deg. 54' 03" East 177.42 feet to the Southeast corner; thence along the East line North 38 deg. 24' 37" East 108.97 feet to the Northeast corner of said parcel; said point also being on the Southerly boundary of County Road No. 515; thence along the Southerly right of way South 50 deg. 51' 58" East, 66.57 feet; thence an arc length of 329.99 feet along a curve to the left having a radius of 622.96 feet; thence South 81 deg. 05' 08" East 328.37 feet; thence an arc length of 165.17 feet along a curve to the left having a radius of 1768.87 feet; thence an arc length of 325.46 feet along a curve to the left having a radius of 622.96 feet; thence North 63 deg. 37' 52" East 422.68 feet to the Northwest corner of that parcel conveyed to Dean Warren and recorded in Book 276, page 39, Lincoln County Records on 16th, March 1967; thence South along the West line of said parcel a distance of 86.2 feet, more or less, to the Mean High Water of 1912 line of Yaquina Bay; thence along said Mean High Water line as established by C. S. 5618, the following bearings and distances; thence North 64 deg. 39' 15" East 95.72 feet; thence North 47 deg. 48' 52" East 241.88 feet; thence North 68 deg. 44' 27" East 263.16 feet; thence North 59 deg. 08' 15" East 353.30 feet; thence North 77 deg. 30' 00" East 113.80 feet; thence North 86 deg. 29' 15" East 327.80 feet to a point along the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence South 74 deg. 58' 49" West, 28.54 feet; thence South 11 deg. 03' 28" West 192.23 feet; thence South 01 deg. 18' 14" East 263.29 feet along said High Water Line to the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

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AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

AFTER RECORDING RETURN TO:
Dennis L. Bartoldus
Attorney at Law
P.O. Box 1510
Newport, OR 97365

EASEMENT

This EASEMENT AGREEMENT is entered into this ____ day of _____, 2017, by and between Rondys Inc., a Washington corporation, licensed to do business in Oregon, as the Grantor, and the Port of Newport, an ORS 777 municipal corporation of the State of Oregon as the Grantee.

RECITALS

A. The Grantor and Grantee own adjacent properties located in Lincoln County, Oregon. The property owned by the Grantor is described in Exhibit "A". The property owned by the Grantee is described in Exhibit "B". A map depicting the relationship of the properties to one another is attached as Exhibit "C".

B. The Grantee has requested certain easements from Grantor. Grantor is willing to grant the easements subject to the terms and conditions of this Easement Agreement.

C. Grantor previously granted an easement for roadway purposes to the Grantee by document recorded at Volume 241, page 149 on March 4, 1992. The terms and provisions of this Easement Agreement supersede any prior easements granted by Grantor or any predecessor of Grantor to the Grantee or any predecessor of the Grantee.

D. It is the intent of this document to grant to the Grantee three easements, a roadway easement, a waterline easement and a communication utilities easement. A description and diagram of the roadway easement is attached as Exhibit "D". A description and diagram of the waterline easement is attached as Exhibit "E". A description and diagram of the communication utilities easements is attached as Exhibit "F".

GRANT OF AND TERMS OF EASEMENT

1. **Grant of Easement.** The Grantor hereby grants to Grantee an easement for the roadway, the waterline and the communication utilities as set forth in the respective exhibits hereto. The easements granted herein are perpetual and appurtenant to the real property owned by the Grantee described in Exhibit "B", provided, however, the easements are subject to the provisions of Section 5 herein concerning "Dedication as Public Road". The easements are non-

exclusive and may be used in conjunction with others to whom easements may be granted by the Grantor and also used by the Grantor.

TERMS OF EASEMENT APPLICABLE TO ROAD EASEMENT

2. Maintenance and Repair.

a. The parties each acknowledge that the roadway herein will be utilized by themselves, their tenants, guests, contractors, invitees and others utilizing the road under permission from the Grantor and Grantee. The Grantor's and Grantee's property being served by this roadway is commercial and industrial in nature and the road serves as access to the shipping terminal operated by the Grantee. The parties also acknowledge that certain portions of the road may be used more by one party than the other because the Port's terminal is at the end of the road and Rondys may not be using the road to the extent it is used by the Port and those operating under the Port. The parties also recognize that there will be a variety of vehicles using the roadway from passenger vehicles to trucks carrying heavy shipments to be delivered.

b. The Grantor and the Grantee shall, as a matter of normal business, meet on a regular basis to discuss the operation, maintenance and function of the road. At all times, communications among onsite representatives of the Grantor and the Grantee are encouraged to resolve problems or improve roadway fluidity.

c. The Grantor and Grantee shall coordinate any improvements for the purpose of making the road suitable for vehicular use. The parties may agree upon appropriate signage and other traffic management control devices that facilitate the use of the road.

d. The costs of maintaining and repairing the easement shall be as set forth in ORS 105.170 through 105.185. In applying the criteria found in the statute, the number of vehicle trips and the types of vehicles, including size and weight in addition to any other relevant factors shall be considered. The owner of the Grantor's property will coordinate maintenance and repairs on the road. It will give the Grantee 30 days' notice of repairs to be done and the proposed breakdown of each party's percentage of repair cost. The Grantee shall respond in writing within 30 days if it disagrees with the proposal. If the Grantee does not respond in writing within the 30 day period, it is deemed to have accepted the breakdown and to be responsible for payment of its share of the costs of maintenance and repairs. If the parties cannot agree on the repairs or maintenance to be done and the division of costs, the matter shall be submitted to binding arbitration. If the parties cannot agree on an arbitrator, then arbitration shall be done by the Arbitration Association of Portland or by the American Arbitration Association or by such other method by which the parties may agree. The amount due from each party shall be promptly paid so as to not allow any account to become past due. If either party has a concern that the work was not done in a good and worker like standard, the party shall promptly provide in writing a list of how the work was not properly done in order to facilitate a resolution to the issue.

e. The condition to which the road will be maintained is a good and passable paved road approximately 40 feet in width with an adequate sub-base for heavy trucks, equipment and machinery.

f. The parties shall prepare a baseline report of the road within 90 days of the date of this agreement detailing the condition of the road and shall list any improvements to the road which are needed. In the absence of an agreement to the contrary, Grantee shall prepare the baseline report and submit it to the Grantor. The Grantor shall have 45 days to comment on the report.

3. **Indemnification.** Each party will indemnify and hold harmless the other party for each other's use of the road and those using the road under the auspices of one party or the other. Indemnification includes payment of attorney fees and other costs reasonably incurred in defending any claim brought against the party being indemnified including any attorney's fees and costs on any appeal. It is understood that this indemnification is a contractual obligation of each party and the Grantee's obligation to indemnify Grantor is not limited by any tort claim limitations imposed by Oregon law. The parties agree that the contractual limit of indemnification shall be \$10,000,000.00.

4. **Insurance.** Each party will maintain adequate insurance which is defined as a general liability policy of at least \$10,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The Grantee's insurance policy shall name the Grantor as an additional insured. The Grantee shall furnish a copy of the policy to Grantor upon the request of Grantor.

5. **Dedication as Public Road.** The easement road shall remain a private road. However, the Grantor may elect at any time to either deed or dedicate the described road to the public or any governing body with jurisdiction for a public right of way. In the event the easement road is dedicated as a public right of way, the rights under this agreement as they pertain to the roadway shall terminate and the laws and regulations pertaining to public road or way, city streets or county roads, whichever is appropriate shall apply.

WATERLINE EASEMENT

6. The location of the waterline easement granted by Grantor to the Grantee shall be as set forth in Exhibit "E".

7. **Placement.** The waterline shall be placed underground at a depth that will not interfere with reasonable operations on the Grantor's property.

8. **Maintenance and Repairs.** The Grantee shall be solely responsible for the installation, maintenance, repair and reinstallation of the waterline. In entering onto the Grantor's property to install, maintain or repair the waterline, the Grantee and anyone acting under or through the Grantee shall take care not to damage the Grantor's property and shall complete all installation, maintenance and repair as promptly as reasonably possible with minimal disruption to the Grantor's property and the activities thereon.

9. **Indemnification.** The Grantee agrees to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement and for any damage caused to the Grantor's property by any malfunction of the waterline or damages caused by installation, maintenance or repairs on the waterline. Indemnification includes payment of attorney fees and costs reasonably incurred by the Grantor including any attorney's fees and costs on any appeal in defending any claim brought against the Grantor. It is understood that this indemnification is a contractual obligation of the Grantee and the obligation to indemnify is not limited by any provision of any tort claim limitations imposed by Oregon law. The parties agree that the contractual limit of indemnification shall be \$10,000,000.00.

COMMUNICATION UTILITIES EASEMENT

10. The Grantor hereby grants to Grantee an easement to install communication utilities in the locations set forth in Exhibit "F".

11. **Placement.** Any communication utilities installed pursuant to the terms of this easement shall be located underground at an adequate depth so as not to interfere with any reasonable surface use on the property. It shall be the responsibility of the Grantee to place the utilities at an adequate depth to avoid damage from other activities on the Grantor's property.

12. **Maintenance and Repairs.** The Grantee shall be solely responsible for the installation, maintenance, repair and reinstallation of the utility communications lines. In entering onto the Grantor's property to install, maintain or repair the utility communications lines, the Grantee and anyone acting under or through the Grantee shall take care not to damage the Grantor's property and shall complete all installation, maintenance and repair as promptly as reasonably possible with minimal disruption to the Grantor's property and the activities thereon.

13. **Indemnification.** The Grantee agrees to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement and to any damage caused to the Grantor's property by any malfunction of the utility communications lines or damages caused by installation, maintenance or repairs of the utility communications lines. Indemnification shall include payment of any attorney fees and costs reasonably incurred by the Grantor including any attorney's fees and costs on any appeal in defending any claim by the Grantor. It is understood that this indemnification is a contractual obligation of the Grantee and the obligation to indemnify is not limited by any provision of any tort claim limitation imposed by Oregon law. The parties agree that the contractual limit of indemnification shall be \$10,000,000.00.

PROVISIONS APPLICABLE TO ALL EASEMENTS

14. **Binding Effect.** This agreement will be binding on the heirs, successors and assigns of each party.

15. **Notice and Cure.** Neither party shall be in default hereunder until it has received written notice from the other specifying the nature of its failure to comply with the terms hereof and such failure shall have continued for a period of 30 days after receipt of notice. Provided, however, that such party shall not be in default if the failure to comply is not reasonably curable

within the 30 day period and the party proceeds with diligence to cure the failure to comply. In the event an emergency exists or when damage would occur as a result of delay, the 30 day notice provided herein is not necessary. Provided, however, that the right to cure shall not relieve a party from paying damages or equitable remedies if the other party has suffered damage as a result of a breach of this agreement.

16. **Notices.** All notices to be given hereunder shall be sent as follows:

To Grantor: Rondys, Inc.
1301 West Oregon Street
Bellingham, WA 98225

To Grantee: Port of Newport
600 SE Bay Blvd.
Newport, OR 97365

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested to the addresses listed in this section. The addresses may be changed by written notice, given in the same manner. Notice given in any other manner other than the manner set forth herein will be effective when received by the party for whom it is intended.

17. **Attorney Fees.** In the event any suit or action is filed to enforce any term, condition or omission under this agreement, the prevailing party shall be entitled to recover from the losing party the prevailing party's reasonable costs and attorney fees, including any attorney fees and costs incurred on any appeal.

18. **Governing Law.** This agreement shall be governed by the laws of the state of Oregon.

19. **Entire Agreement.** This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and merges and replaces all prior and contemporaneous negotiations, discussion, representations, warranties, promises and agreements of the parties with respect to the subject matter hereof.

20. **No Waiver.** No waiver of any action or default by any party will be implied from a failure or delay by the other party to take any action in respect to such action or default.

21. **Right of Approval.** Grantor has the right to approve all plans and improvements placed within the easement.

22. **Non-Exclusive.** The easements granted herein are non-exclusive and the Grantor reserves the right to grant other easements to other parties and to utilize the easement area for improvements to the Grantor's property.

23. **Insurance.** The Grantee shall at all times maintain adequate insurance to repair any damage to the Grantor's property caused by the Grantee or anyone using under the Grantee. The Grantor shall be named as an additional insured on any policy and Grantee shall provide a copy of the policy to Grantor upon the request of Grantor.

24. **Easement over Grantee's Property.** In consideration of the grant of this easement, the Port of Newport hereby agrees to grant to Rondys and its heirs, successors and assigns, an easement over the Port property for utilities, including but not limited to, power, water, sewer, communication cables, to serve the Rondys property described in Exhibit A. The location of said easement shall be in a location reasonable in scope and nature so as to not unreasonably interfere with the Port's property.

25. **Compliance with All Laws.** In installing, maintaining, repairing and utilizing the easements granted herein the Grantee shall comply with all applicable governmental laws, rules and regulations.

IN WITNESS WHEREOF, the parties have entered into this agreement this _____ day of _____, 2017.

PORT OF NEWPORT

RONDYS, INC.

By: _____

By: _____

Its: _____

Its: _____

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of the Port of Newport, an ORS 777 municipal corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

[Acknowledgements continued on the following page]

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of Rondys Inc., a Washington corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

PARCEL I: (TL 600)

That portion of land lying above the "Ordinary Low Water" line (Mean Low Water; +1.3 M.L.L.W. Datum) and within the herein described parcel;
Beginning at the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence South 0 deg. 37' 45" East, 1,489.38 feet, along said Section line; thence leaving said Section line South 79 deg 05' 40" West, 561.95 feet to a point on the "Ordinary High Water " line (Mean High Water; + 7.5 M.L.L.W. Datum); thence along said "Ordinary High Water" line as follows; Thence North 04 deg. 30' 06" West 898.42 feet; thence North 01 deg. 18' 14" West, 445.57 feet; thence North 11 deg. 03' 28" East 192.23 feet; thence North 74 deg. 58" 49" East 129.12 feet; thence North 86 deg. 45' 06" East 230.53 feet; thence South 89 deg. 56' 29" East 141.93 feet; thence North 45 deg. 52' 08" East 112.70 feet to a point on the East line of Section 9, T 11 S, R 11 W, W.M.; thence along said Section line South 01 deg. 30' 00" East, 59.03 feet to the Meander Corner and the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

PARCEL II: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11, S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "Ordinary High Water line(Mean High Water, + 7.5 M.L.L.W. Datum) the following bearings and distances: thence South 01 deg. 18' 14" East 182.28 feet; thence South 04 deg. 30' 06" East 898.42 feet; thence South 07 deg. 35' 00" East 346.12 feet; thence South 05 deg. 44' 50" East 176.97 feet; thence South 00 deg. 41' 31" West 170.71 feet; thence South 29 deg. 29' 42" West 105.01 feet; thence South 64 deg. 29' 57" West 302.14 feet; thence South 74 deg. 09' 48" West 91.76 feet; thence South 74 deg. 36' 04" West 106.43 feet; thence South 82 deg. 25' 07" West 67.60 feet; thence North 53 deg. 46' 58" West 213.35 feet; thence North 45 deg. 24' 33" West 442.89 feet; thence North 48 deg. 30' 25" West 473.05 feet; thence South 79 deg. 14' 06" West 102.30 feet; thence leaving said High Water line the following bearings and distances; thence North 59 deg. 00' 00" West 218.00 feet; thence North 14 deg. 59' 11" East 607.90 feet; thence North 66 deg. 37' 09" East 35.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 160.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 270.00 feet returning to said Ordinary High Water Line; thence along said High Water Line the following bearings and distances; thence South 66 deg. 37' 09" West 442.42 feet; thence North 79 deg 18' 23" West 363.57 feet; thence North 75 deg. 47' 46" West 50.47 feet; thence North 69 deg. 39' 06" West 16.82 feet; thence North 40 deg. 28' 56" West 15.90 feet; thence North 03 deg. 54' 48" East 15.23 feet; thence North 57 deg. 15' 49" East 16.20 feet; thence North 84 deg. 09' 41" East 9.71 feet; thence South 85 deg. 27' 31" East 29.11 feet; thence North 05 deg. 37' 46" West 132.99 feet; thence North 06 deg. 23' 52" West 132.55 feet; thence North 48 deg. 16' 05" West 156.69 feet; thence North 53 deg. 06' 28" West 231.05 feet; thence North 21 deg. 00' 00" East 22.80 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 42 deg. 17' 57" East 19.97 feet; thence South 57 deg. 44' 00" East 175.80 feet; thence South 54 deg. 39' 31" East 134.93 feet; thence South 72 deg. 55' 33" East 193.87 feet; thence South 69 deg. 30' 32" East 161.53 feet; thence South 77 deg. 14' 36" East 168.78 feet; thence South 85 deg. 55' 21" East 119.45 feet; thence North 88 deg. 26' 06" East 180.76 feet; thence North 74 deg. 58' 04" East 299.55 feet; thence North 14 deg. 26' 08" West 242.29 feet to a point on the "1953 Mean Low Tide, National Ocean Survey (Hydrographic Sheet No. 8041)" line; thence along said Low Tide line the following bearings and distances; thence North 83 deg. 11' 10" East 417.96 feet; thence South 73 deg. 48' 38" East 63.52 feet; thence South 59 deg. 47' 58" East 250.66 feet; thence North 58 deg. 18' 10" East 96.59 feet; thence North 32 deg. 07' 55" East 192.28 feet; thence North 40 deg. 55' 25" East 111.41 feet; thence South 87 deg. 05' 06" East 164.38 feet; thence North 65 deg. 41' 34" East 124.87 feet; thence North 70 deg. 07' 01" East 140.90 feet; thence North 60 deg. 34' 58" East 109.29 feet; thence South 65 deg. 41' 15" East 79.08 feet; thence South 57 deg. 43' 35" East 105.25 feet; thence South 84 deg. 31' 08" East 0.10 feet to the point of beginning on said "Ordinary High Water" line.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

ALSO EXCEPTING Parcels A, G and L as described in instrument recorded April 2, 1984, Book 148, page 2144 Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded August 7, 2006, Document No. 200611998, Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

PARCEL III: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "1953 Mean Low Tide National Ocean Survey" (Hydrographic Sheet No. 8041) line the following bearings and distances; thence North 84 deg. 31' 08" West 0.10 feet; thence North 57 deg. 43' 35" West 105.25 feet; thence North 65 deg. 41' 15" West 79.08 feet; thence South 60 deg. 34' 58" West 109.29 feet; thence South 70 deg. 07' 01" West 140.90 feet; thence South 65 deg. 41' 34" West 124.87 feet; thence North 87 deg. 05' 06" West 164.38 feet; thence South 40 deg. 55' 25" West 111.41 feet; thence South 32 deg. 07' 55" West 192.28 feet; thence South 58 deg. 18' 10" West 96.59 feet; thence North 59 deg. 47' 58" West 250.66 feet; thence North 73 deg. 48' 38" West 63.52 feet; thence South 83 deg. 11' 10" West 417.96 feet; thence South 14 deg. 26' 08" East 242.29 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 74 deg. 58' 04" West 299.55 feet; thence South 88 deg. 26' 06" West 180.76 feet; thence North 85 deg. 55' 21" West 119.45 feet; thence North 77 deg. 14' 36" West 168.78 feet; thence North 69 deg. 30' 32" West 161.53 feet; thence North 72 deg. 55' 33" West 193.87 feet; thence North 54 deg. 39' 31" West 134.93 feet; thence North 57 deg. 44' 00" West 175.80 feet; thence North 42 deg. 17' 57" West 19.97 feet; thence South 21 deg. 00' 00" West 22.80 feet; thence North 37 deg. 22' 27" West 66.69 feet; thence North 51 deg. 36' 30" West, 117.06 feet; thence North 49 deg. 20' 47" West 4.16 feet; thence North 39 deg. 56' 57" East 171.84 feet to the Southerly line of that parcel recorded in Volume 98, page 1415, Lincoln County Records; thence along the Southerly line South 62 deg. 54' 03" East 177.42 feet to the Southeast corner; thence along the East line North 38 deg. 24' 37" East 108.97 feet to the Northeast corner of said parcel; said point also being on the Southerly boundary of County Road No. 515; thence along the Southerly right of way South 50 deg. 51' 58" East, 66.57 feet; thence an arc length of 329.99 feet along a curve to the left having a radius of 622.96 feet; thence South 81 deg. 05' 08" East 328.37 feet; thence an arc length of 165.17 feet along a curve to the left having a radius of 1768.87 feet; thence an arc length of 325.46 feet along a curve to the left having a radius of 622.96 feet; thence North 63 deg. 37' 52" East 422.68 feet to the Northwest corner of that parcel conveyed to Dean Warren and recorded in Book 276, page 39, Lincoln County Records on 16th, March 1967; thence South along the West line of said parcel a distance of 86.2 feet, more or less, to the Mean High Water of 1912 line of Yaquina Bay; thence along said Mean High Water line as established by C. S. 5618, the following bearings and distances; thence North 64 deg. 39' 15" East 95.72 feet; thence North 47 deg. 48' 52" East 241.88 feet; thence North 68 deg. 44' 27" East 263.16 feet; thence North 59 deg. 08' 15" East 353.30 feet; thence North 77 deg. 30' 00" East 113.80 feet; thence North 86 deg. 29' 15" East 327.80 feet to a point along the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence South 74 deg. 58' 49" West, 28.54 feet; thence South 11 deg. 03' 28" West 192.23 feet; thence South 01 deg. 18' 14" East 263.29 feet along said High Water Line to the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

ALSO EXCEPTING Parcels A, G and L as described in instrument recorded April 2, 1984, Book 148, page 2144 Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded August 7, 2006, Document No. 200611998, Microfilm Records for Lincoln County, Oregon.

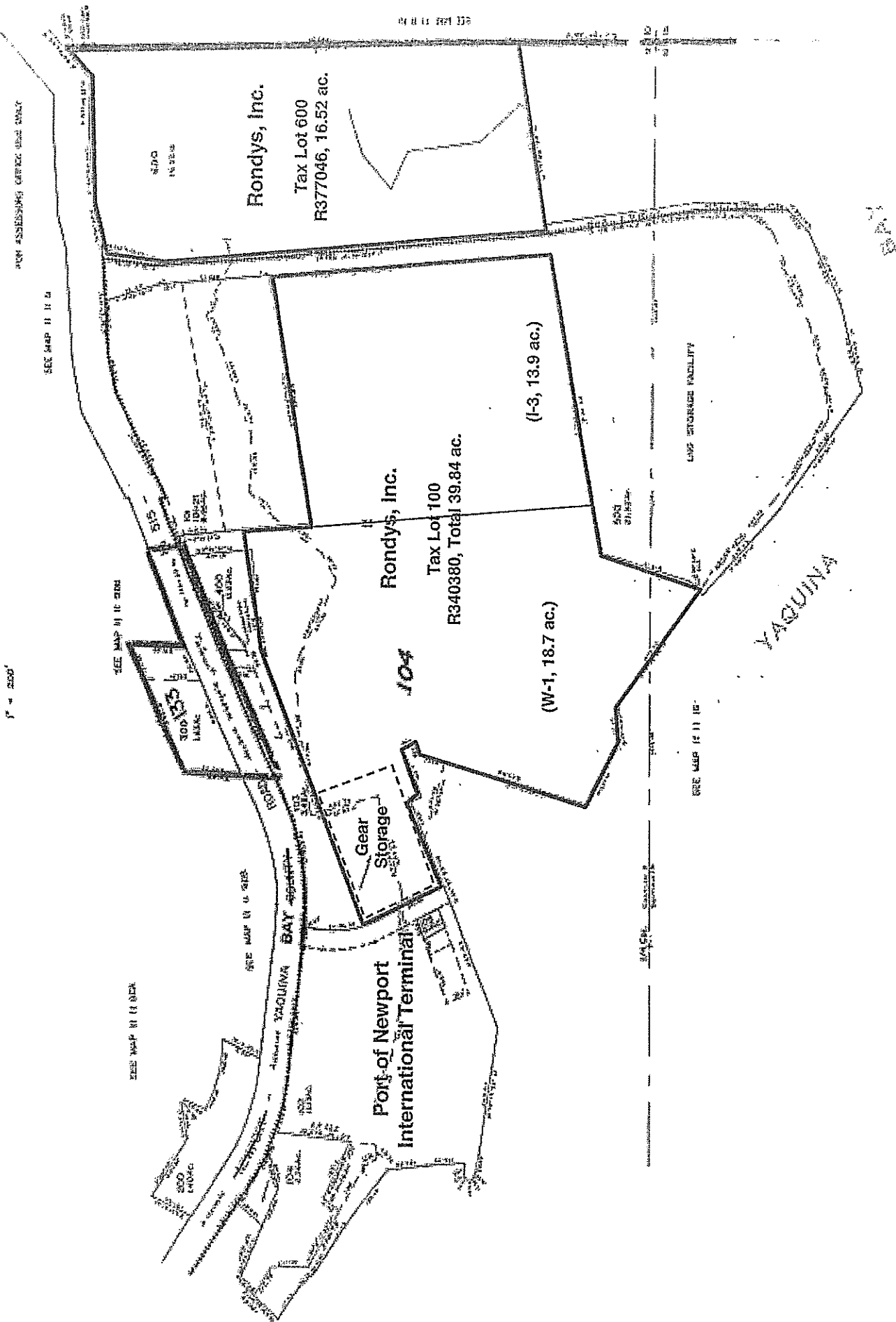
AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

EXHIBIT B
DESCRIPTION OF PORT PROPERTY

EXHIBIT C

SE 1/4 SECTION 9 T11S R11W WM
LINCOLN COUNTY

1" = 200'



11 11 9D



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
DESCRIPTION OF A NON-EXCLUSIVE ACCESS ROAD EASEMENT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Commencing at a point 323.35 feet south and 1,442.85 feet west of the Meander Corner on the East line of Section 9, Township 11 South, Range 11 West, W.M. in Lincoln County, Oregon, said point lying North 65°25'43" East 32.14 feet from a 5/8" iron rod with a "MSS Engineering" yellow plastic cap marking the northwest corner of that easement described in Book 148, Page 2163 Lincoln County Book of Records . Said point being the centerline of an existing 60 foot wide access road at the intersection of the southern boundary of County Road No. 515 right of way;

Thence South 03°34'34" East, 284.95 feet more or less to the true Point of Beginning, said point of beginning being the end of the 60 foot wide easement described in Book 148, Page 2163 Lincoln County Book of Records;

Thence South 03°34'30" East 173.05 feet along the west line of an existing access easement describe in said Book 148, Page 2163 to a point 30 feet west and perpendicular to a 5/8" iron rod set in Lincoln County Survey # 20555;

Thence South 86°25'30" West 30.00 feet;

Thence North 03°34'30" West 143.05 feet;

Thence South 86°25'30" West 191.82 feet;

Thence Westerly along a 270 foot radius curve to the left, an arc length of 93.34 feet;

Thence South 66°37'00" West 847.81 feet more or less to the easterly boundary of the Port of Newport property line;

Thence North 23°23'00" West 30.00 feet to the south line of said access easement described in Book 148, Page 2163;

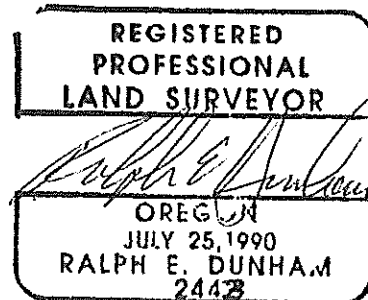
Thence North 66°37'00" East 847.81 feet more or less along the south line of said easement to a point of curvature;

Thence Easterly along a 300 foot radius curve to the right, along the south of said easement, an arc length of 103.72 feet;

Thence North 86°25'30" East 221.82 feet, along the south line of said easement, to the Point of Beginning;

Said easement containing 0.90 acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north, lines extended to property lines established in Lincoln County Survey No. 20555.



Expires 12/31/17

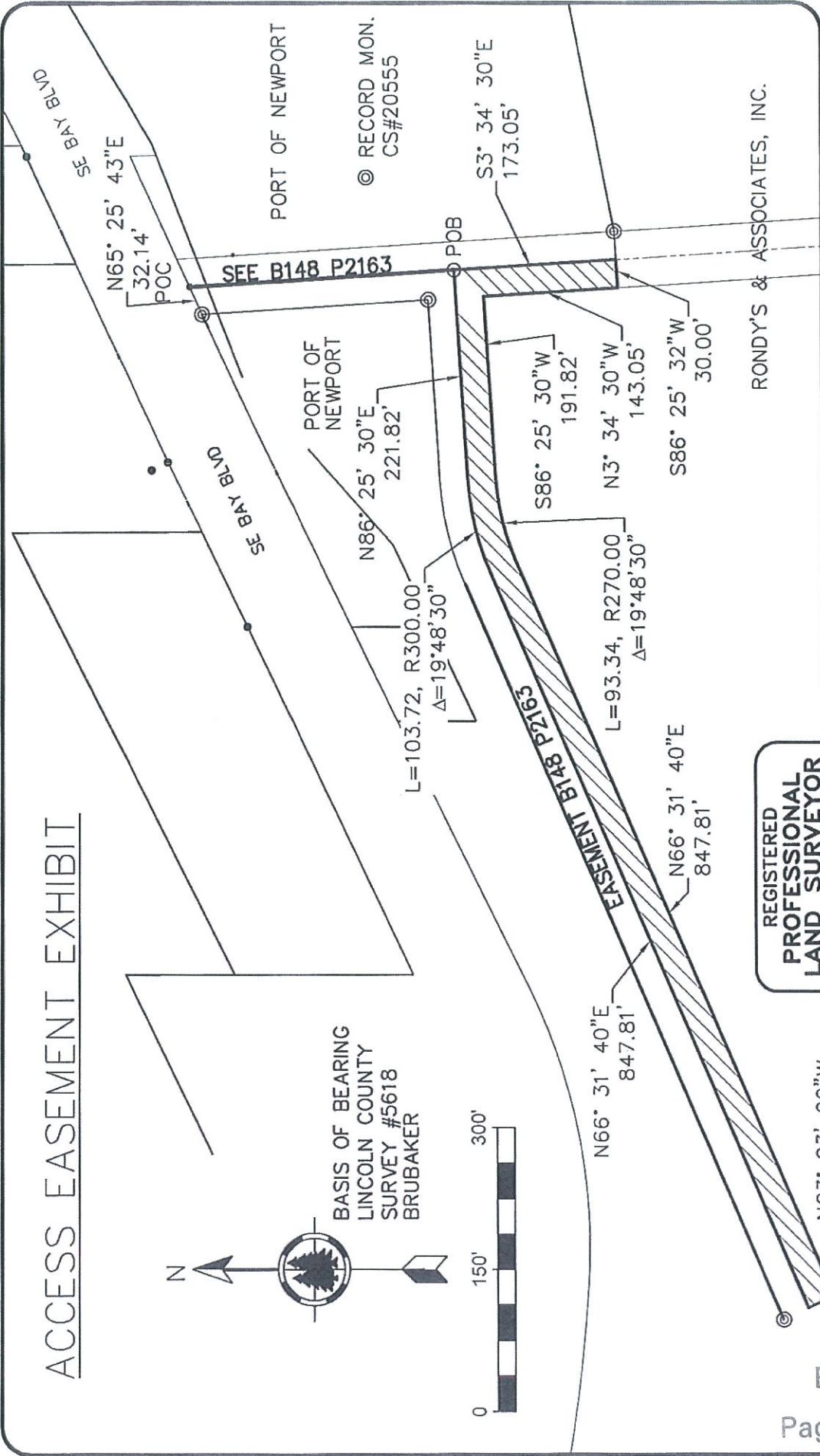
EXHIBIT D

Page 2 of 3

ACCESS EASEMENT EXHIBIT



BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2443
EXPIRES 12/31/17



705 S. 4TH ST.
P.O. BOX 118
COOS BAY, OREGON 97420
Engineering - Land Surveying - Forestry - Land Planning - Water Rights
PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

JOB #:	112-2-100
DATE:	APR. 2017
DRAWN BY:	AER
CHECKED BY:	RED
FILE NAME:	Port Site 2016 Easements.dwg
SHEET:	1 OF 1

EXHIBIT D

Page 3 of 3



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
DESCRIPTION OF 20 FOOT WIDE NON-EXCLUSIVE WATERLINE UTILITIES
EASEMENT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Commencing at a point 337.42 feet south and 1,471.95 feet west of the Meander Corner on the East line of Section 9, Township 11 South, Range 11 West, W.M. in Lincoln County, Oregon, said point marked by a 5/8" iron rod with a "MSS Engineering" plastic cap at the intersection of the western edge of an existing 60 foot wide access road easement and the southern boundary of County Road No. 515 right of way;

Thence North 65°25'43" East, 30.77 feet to the true Point of Beginning, said point of beginning being on the south right of way line of said County Road No. 515;

Thence South 24°02'50" East 8.46 feet;

Thence South 03°34'30" East 104.71 feet;

Thence South 86°25'30" West 31.76 feet to that property owned by the Port of Newport;

Thence South 03°34'30" East 20.00 feet along the Port of Newport property boundary;

Thence North 86°25'30" East 31.76 feet;

Thence South 03°34'30" East 128.52 feet;

Thence South 86°25'30" West 285.91 feet to the north line of that easement described in Lincoln County Book of Records, Book 148, Page 2163 to a point on a 330 foot radius curve to the left;

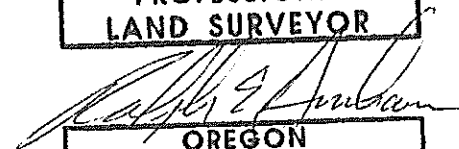
Thence Westerly along a 330 foot radius curve to the left, an arc length of 51.31 feet, long chord of which bears South 71°04'15" West, 51.26 feet;

Thence South 66°37'00" West 18.97 feet;
Thence North 86°25' 30" East 353.18 feet;
Thence South 03°34'30" East 177.38 feet;
Thence North 86°25'30" East 20.00 feet;
Thence North 03°34'30" West 14.11 feet;
Thence North 86°25'30" East 8.28 feet to that property owned by the Port of Newport;
Thence North 03°34'30" West 20.00 feet along the Port of Newport property boundary;
Thence South 86°25'30" West 8.28 feet;
Thence North 03°34'30" West 336.43 feet;
Thence North 86°25'30" East 8.24 feet to that property owned by the Port of Newport;
Thence North 03°34'30" West 20.00 feet along the Port of Newport property boundary;
Thence South 86°25'30" West 8.24 feet;
Thence North 03°34'30" West 63.68 feet;
Thence North 24°02'56" West 12.26 feet to the south right of way line of said County Road No. 515;
Thence South 65°25'43" West 20.00 feet along said south right of way line of said County Road No. 515 to the Point of Beginning.

Said easement containing 0.38 acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north. Point of Commencement monument as per Lincoln County Survey No. 20555 by Peter Seaders.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 25, 1990
RALPH E. DUNHAM
2442

EXPIRES 12/31/17

EXHIBIT E

WATERLINE EASEMENT EXHIBIT

© MONUMENT FROM CS #20555

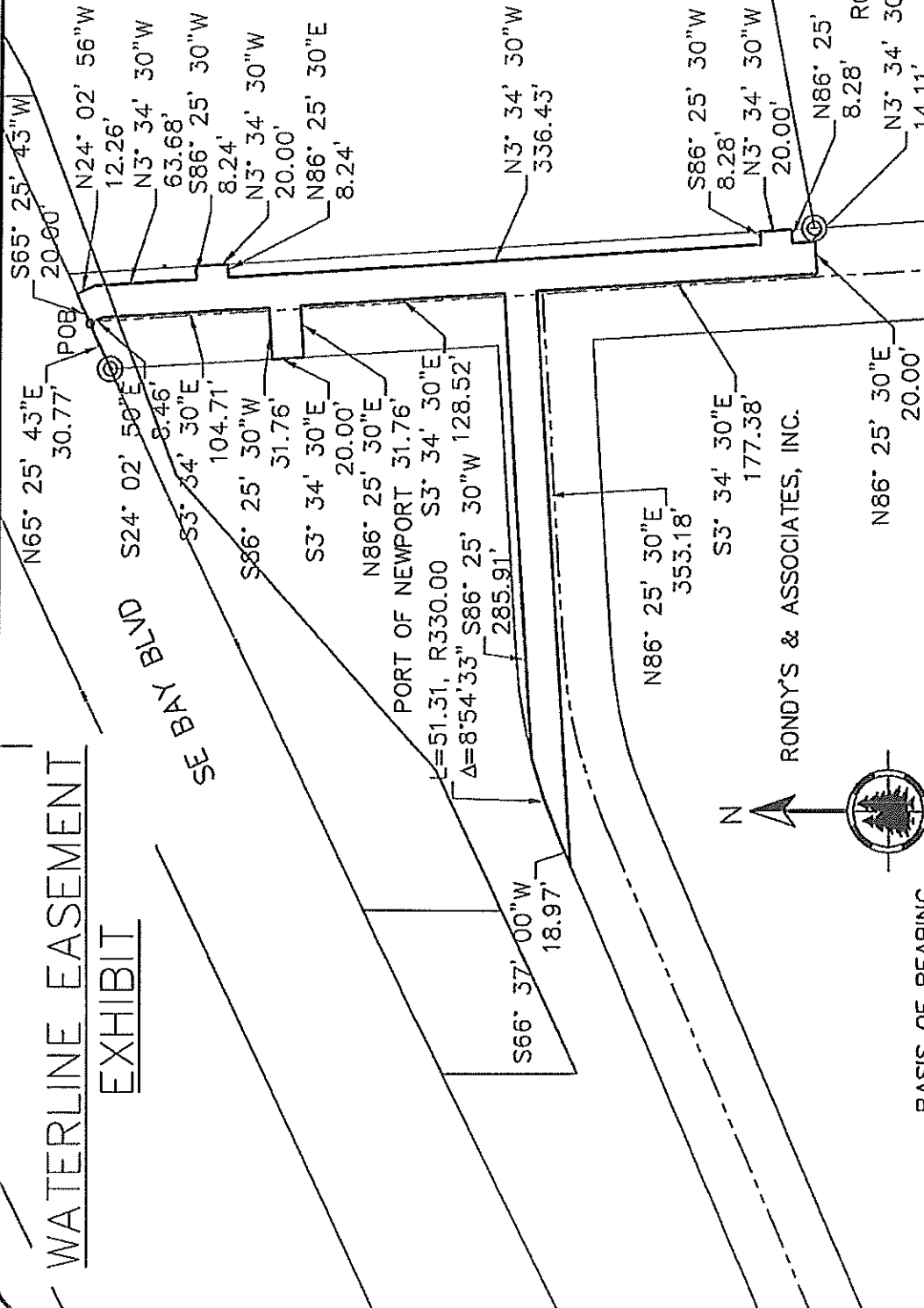
PORT OF NEWPORT

REGISTERED PROFESSIONAL LAND SURVEYOR

Ralph E. Dunham

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2445

EXPIRES 12/31/17

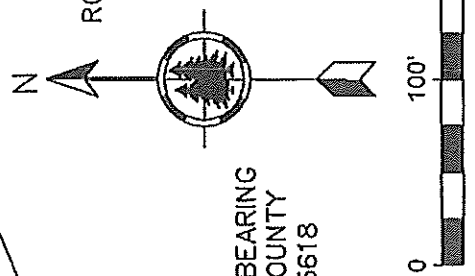


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FAX: (541) 267-0588
www.stuntzner.com

JOB # 112-2-100
DATE: APR. 2017
DRAWN BY: AER
CHECKED BY: RED

Port of Newport
Waterline Easement Exhibit

SHEET 1 OF 1



BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER

EXHIBIT E



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
DESCRIPTION OF 10 FOOT WIDE NON-EXCLUSIVE COMMUNICATION
UTILITIES EASEMENT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

The following is the described centerline of a 10 foot wide communications easement, extending 5 feet perpendicular to said centerline in each direction, said centerline lying 5 feet East of, and parallel to the West line of that easement described in Book 148, Page 2163 Lincoln County Book of Records;

Commencing at a point 337.42 feet south and 1,471.95 feet west of the Meander Corner on the East line of Section 9, Township 11 South, Range 11 West, W.M. in Lincoln County, Oregon, said point marked by a 5/8" iron rod with a "MSS Engineering" plastic cap. Said point being the intersection of the western edge of an existing 60 foot wide access road and the southern boundary of County Road No. 515 right of way;

Thence South 03°34'30" East 11.42 feet more or less to the true Point of Beginning, said point of beginning being on the West line of that easement described in Book 148, Page 2163 Lincoln County Book of Records;

Thence South 24°34'18" East 13.83 feet;

Thence South 03°34'30" East 422.85 feet to a point located 55.00' South 86° 25'30" West of the South West corner of that property described as Parcel "L" in Bk. 148 Pg 2162 owned by the Port of Newport.

Said easement containing 0.10 acres, more or less, sidelines extended or retracted to meet property boundaries.

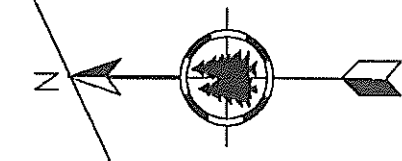
Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north. Point of Commencement monument as per Lincoln County Survey No. 20555 by Peter Seaders.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Ralph Dunham
OREGON
JULY 25, 1990

EXHIBIT F
Page 1 of 4
June 27, 2017

PUBLIC UTILITY EASEMENT EXHIBIT



BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER

SE BAY BLVD

SE BAY BLVD

S3° 34' 30"E
11.42'

S24° 34' 18"E
13.83'

S3° 34' 30"E
422.85'

MONUMENT FROM
CS #20555

PORT OF NEWPORT

RONDY'S & ASSOCIATES, INC.

10' EASEMENT
5' EITHER SIDE OF
DESCRIBED
CENTERLINE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2443

EXPIRES 12/31/17

EXHIBIT FJ

Page 2 of 4



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JOB # 112-2-100	Port of Newport
DATE: APR. 2017	Public Utility Easement Exhibit
DRAWN BY: AER	FILE NAME: Port Site 2016 Easements.dwg
CHECKED BY: RED	SHEET 1 OF 1



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
DESCRIPTION OF 10 FOOT WIDE NON-EXCLUSIVE PRIVATE
COMMUNICATION UTILITIES EASEMENT FOR THE PORT OF NEWPORT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

The following is the described centerline of a 10 foot wide communications easement, extending 5 feet perpendicular to said centerline in each direction;

Commencing at a point 337.42 feet south and 1,471.95 feet west of the Meander Corner on the East line of Section 9, Township 11 South, Range 11 West, W.M. in Lincoln County, Oregon, said point marked by a 5/8" iron rod with a "MSS Engineering" plastic cap. Said point being the intersection of the western edge of an existing 60 foot wide access road and the southern boundary of County Road No. 515 right of way;

Thence South 03°34'30" East, 83.11 feet to the true Point of Beginning, said point of beginning being on the West line of that access easement described in Book 148, Page 2163 Lincoln County Book of Records;

Thence North 54°58'02" East 70.36 feet to a point located on the East line of that access easement described in Book 148, Page 2163 Lincoln County Book of Records.

Said easement containing 0.02 Acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north. Point of Commencement monument as per Lincoln County Survey No. 20555 by Peter Seaders.

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

**OREGON
JULY 25, 1990
RALPH E. DUNHAM
2442**

EXPIRES 12/31/17

EXHIBIT F

PRIVATE UTILITY EASEMENT EXHIBIT

SE BAY BLVD

SE BAY BLVD

MONUMENT FROM
CS #20555

PORT OF NEWPORT

POB

10' EASEMENT
5' EITHER SIDE OF
DESCRIBED
CENTERLINE

S3° 34' 30"E
85.11'

N54° 58' 02"E
70.36'

RONDY'S & ASSOCIATES, INC.

PORT OF NEWPORT

RONDY'S & ASSOCIATES, INC.

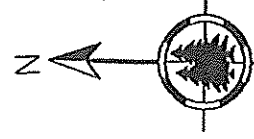

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Ralph E. Dunham

OREGON
JULY 25, 1890
RALPH E. DUNHAM
2443

EXPIRES 12/31/17

BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER

705 S. 4TH ST.
P.O. BOX 118
COOS BAY, OREGON 97420
Engineering - Land Surveying - Forestry - Land Planning - Water Rights

PHONE: (541) 267-2872
FAX: (541) 267-0388
www.stuntzner.com

JOB #: 112-2-100	Port of Newport
DATE: APR. 2017	Private Utility Easement Exhibit
DRAWN BY: AER	
CHECKED BY: RED	
FILE NAME: Port Site 2016 Easements.dwg	SHEET 1 OF 1

RONDY'S & ASSOCIATES, INC.

EXHIBIT F

AFTER RECORDING RETURN TO:

Pete Gintner
Macpherson, Gintner & Diaz
423 North Coast Hwy.
P.O. Box 1270
Newport, OR 97365

ROADWAY USE EASEMENT

This ROADWAY USE EASEMENT is entered into this ____ day of _____, 2017, by and between the Grantor, Northwest Natural Gas Company, an Oregon corporation (the "Roadway Owner") and the Grantees, Port of Newport, an ORS 777 municipal corporation, and Rondys Inc., a Washington corporation (the "Easement Holders").

RECITALS

A. The Roadway Owner is the sole owner of a certain roadway and surface street in the City of Newport, Lincoln County, Oregon; which is referred to herein as the "Northwest Natural Access Road", which is described in Exhibit "A" and by this reference incorporated herein.

B. The Easement Holders intend to utilize their property that fronts the Northwest Natural Access Road for commercial and industrial activities. The property owned by the Easement Holders is described in Exhibit "B" attached hereto and may be referred to herein as the "McLean Point Property".

C. An easement was previously retained by the predecessor to Rondys to benefit property owned by Rondys. However, the parties agree that this agreement is entered into to clarify the terms of the easement. The previous retention of easement by Rondys' predecessor was recorded in book 48, page 148, Deed Records of Lincoln County, Oregon on March 29, 1974.

D. The Port of Newport is entering into this agreement to obtain an easement for vehicular access over the Northwest Natural Access Road for normal business operations, on a not-to-impede access basis with the Roadway Owner.

GRANT OF ACCESS EASEMENT

In consideration of the facts recited above, the Roadway Owner and the Easement Holders agree as follows:

1. **Grant of Easement.** The Roadway Owner hereby grants to the Easement

Holder an appurtenant, non-exclusive, rent-free surface easement (the "Access Easement") for ingress to and egress from the McLean Point Property (as it may be expanded), to which it shall be appurtenant, over the Northwest Natural Access Road, as indicated on the "Access Easement Map" attached hereto as Exhibit "C" and by this reference incorporated herein. The Roadway Owner represents that it has the authority to Grant this Access Easement and that it will be enforceable in accordance with its terms.

2. **Use of Easement.** The purpose of the Access Easement is to provide year-round vehicular access to and from the McLean Point Property (as it may be expanded) by the Easement Holders, its agents, licensees, personnel, customers and guests; with a duty not to impede the day-to-day operations of Northwest Natural plant and its agents, licensees, personnel, customers and guests.

3. **Obstructions to Use.** Neither the Roadway Owner nor the Easement Holders nor any person permitted to use the easement under the terms of this Access Easement may utilize the Access Easement in a way that interferes with the unfettered use of the Northwest Natural Access Road. However mutually agreed upon temporary obstructions may occur as planned. Any obstructions or impediments to use of the Northwest Natural Access Road may be removed, without notice, by the Roadway Owner or Easement Holder, as the case may be, and the cost of such removal shall be borne by the party causing or responsible for such obstruction or impediment.

4. **No Queuing.** The use of the Northwest Natural Access Road by the Roadway Owner shall not be constricted by vehicles entering the Easement Holders' operations on the McLean Point Property queuing along the Northwest Natural Access Road.

5. **Improvements.** The Easement Holders shall coordinate any approved improvements to the Northwest Natural Access Road for the purpose of making it more suitable for vehicular use with the Roadway Owner. The Easement Holders shall have the right to post signs, which meet City of Newport Sign Code Ordinances, along the Northwest Natural Access Road, to delineate ingress and egress points, and any other traffic-management issues, as mutually agreed upon between the Roadway Owner and Easement Holders. The Roadway Owner shall not be obligated to install any of these improvements. Any improvements made by the Easement Holders shall be subject to the prior written approval of the Roadway Owner, which shall not be unreasonably withheld.

6. **Maintenance.** The Easement Holders shall be responsible for maintaining ingress and egress and related junction points between the Northwest Natural Access Road and Yaquina Bay Road to their current "as is" condition when the need for maintenance is directly attributable to its use of the roadway. There may be maintenance that is mutually beneficial to both the Roadway Owner and the Easements Holder; such maintenance shall be mutually negotiated and agreed upon by both parties in writing.

7. **Damage.** Any damage to the Northwest Natural Access Road caused by Easement Holders operations must be repaired immediately by the party causing the damage. Repairs must restore the roadway to the same functionality as before the damage. If delay in

repair is required, site managers shall coordinate repair and keep each other informed daily. Any damage caused by the Roadway Owner shall be repaired by the Roadway Owner.

8. **Amendments.** This Roadway Use Easement contains the complete agreement of the parties regarding the subject hereof and may not be modified except by execution of a written instrument signed by both the Roadway Owner and the Easement Holder.

9. **Successors.** All the terms, covenants, conditions and obligations set forth in this Roadway Use Easement shall inure to the benefit of and bind the Roadway Owner, Easement Holders and their successors and assigns.

10. **Term of Agreement.** The easement granted herein is perpetual and is appurtenant to the real property described in Exhibit "B".

11. **Good Neighbor Cooperation.** The Roadway Owner and Easement Holders shall, as a matter of normal business, meet on a regular basis to discuss the operation, maintenance and function of the Northwest Natural Access Road. At all times communications among on-site representatives of the Roadway Owner, Easement Holders are encouraged to resolve problems or improve roadway fluidity.

12. **Governing Law.** This Roadway Use Easement shall be governed by the laws of the State of Oregon.

13. **Insurance.** Throughout the term of this Roadway Use Easement, Easement Holders shall, at its expense, maintain the insurance policies which are described in Exhibit "D" hereto and by this reference incorporated herein.

14. **Indemnification.** Notwithstanding Section 13, Grantee, to the fullest extent permitted by applicable law, shall indemnify and save harmless Grantor and its directors, officers, shareholders, employees, agents, successors, and assigns from and against any and all loss, cost, expense, damage and liability, and from any and all claims for damages, and from any and all costs and expenses, including attorney and expert witness fees, in any suit, action, appeal, or proceeding, which may be brought against Grantor, caused by or arising out of (i) any negligent act or omission of Grantee or (ii) willful misconduct of Grantee or its agents or employees, including under (i) and (ii) above Grantee's non-compliance with legal and governmental requirements. Grantee shall, at its own expense, defend any such claims, suits, actions, appeals, or proceedings which may be made or commenced against Grantor by reason thereof or in connection therewith, and shall pay all costs and expenses, including attorney and expert witness fees, incurred by reason thereof, and all judgments, which may be recovered therein. If Grantor elects to retain independent counsel, Grantee agrees to reimburse Grantor for costs and attorney and expert witness fees reasonably incurred by Grantor to defend itself through attorneys of its choice.

15. **Notice and Cure.** Neither party shall be in default hereunder until it has received written notice from the other specifying the nature of its failure to comply with the terms hereof and such failure shall have continued for a period of thirty (30) days after receipt of notice;

provided that such party shall not be in default if the failure to comply is not reasonably curable within the thirty (30) day period and the party proceeds with diligence to cure the failure to comply. If the party responsible to repair the easement does not timely repair the road as set forth herein, that party's use and any user claiming under that party shall be suspended until the party responsible for repairs makes the repairs or pays for the repairs if such repairs were made at the expense of another party. Payment for repairs shall include interest at 9% per annum and reasonable costs and attorney fees incurred by the repairing party. All notices to be given hereunder shall be sent to the addresses set forth on Exhibit "F" hereto, which is by this reference incorporated herein.

IN WITNESS WHEREOF, Northwest Natural Inc. has agreed to and executed this Roadway Use Agreement this _____ day of _____, 2017.

By: _____

Its: _____

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Roadway Use Easement is hereby accepted by the Port of Newport, this _____ day of _____, 2017.

By: _____

Its: _____

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Roadway Use Easement is hereby accepted by Rondys Inc., this _____ day of _____, 2017.

By: _____

Its: _____

[Acknowledgements appear on the following page]

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of Northwest Natural Gas Company, an Oregon corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of the Port of Newport, an ORS 777 municipal corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of Rondys Inc., a Washington corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

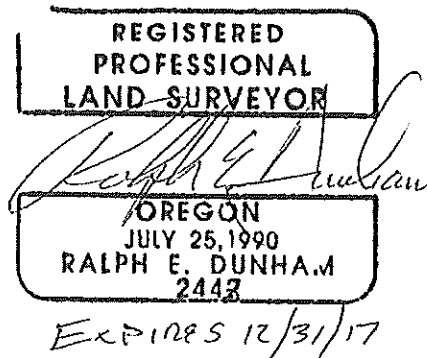
EXHIBIT A
DESCRIPTION OF NORTHWEST NATURAL ACCESS ROAD EASEMENT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Beginning at a 5/8" iron rod with plastic cap that bears South 84°17'15" West 627.20 feet from the North Meander Corner on the east line of said Section 9, thence South 06°36'00" West 198.09 feet; thence South 03°34'30" East 1344.02 feet; thence South 79°05'40" West 50.41 feet to a 5/8" iron rod; thence North 03°34'30" West 1350.45 feet; thence North 13°44'51" West 198.22 feet to a 5/8" iron rod; thence North 86°29'15" East 120.0 feet to the original point of beginning.

Said easement containing 1.93 acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north.



NEED EXHIBIT B

“MCLEAN POINT PROPERTY” DESCRIPTION

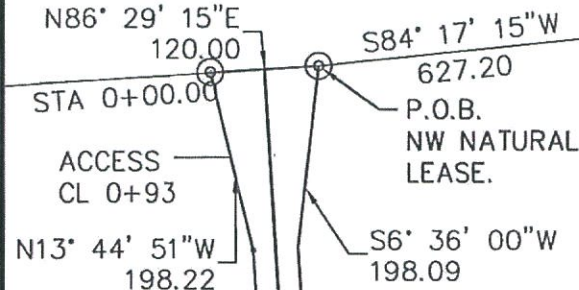
(Combined Rondys and Port property description)

PORT OF NEWPORT
ACCESS ROAD LEASE EXHIBIT A

PROPERTY OWNER
NORTHWEST NATURAL GAS CO.

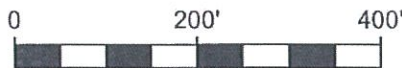
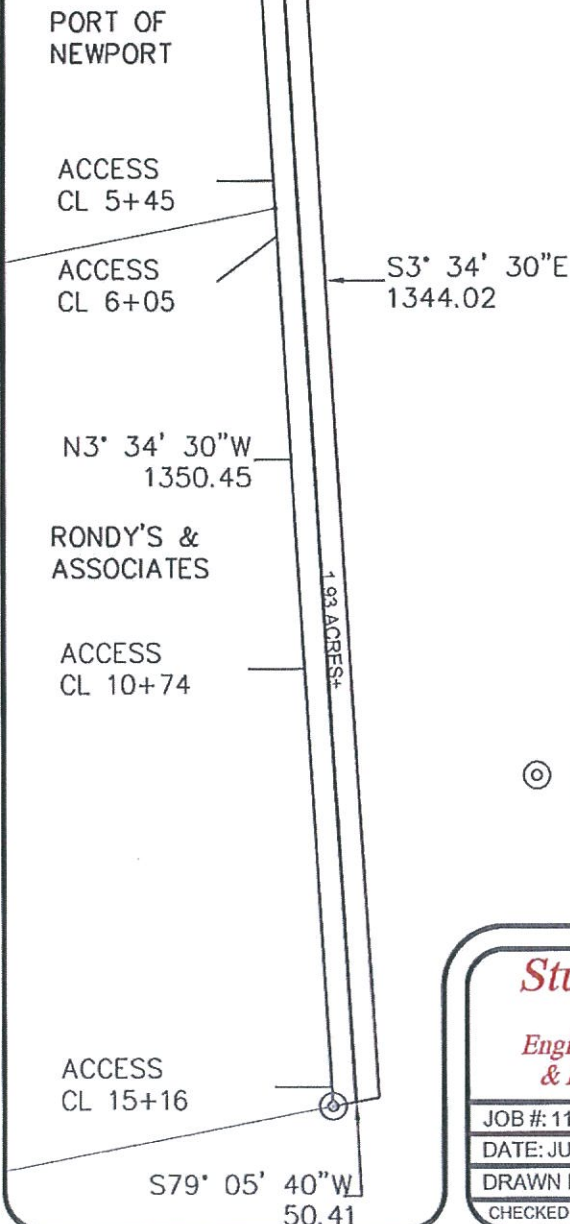
SE BAY BLVD.

NORTH MEANDER
CORNER, EAST
LINE SECT. 9.
PER CS #5618



LOCATED SE 1/4 OF SEC 9,
T11S, R11W, W.M.
LINCOLN CO. OREGON

ALL ACCESS POINTS
SHOWN AT CL OF ACCESS
PRESUMED WIDTH 60'±



BASIS OF BEARING
LINCOLN COUNTY
SURVEY #15978

⊙ FOUND MONUMENT
5/8" IR W/YPC
PER CS #15978
OR AS NOTED

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2443

EXPIRES 12/31/17

		705 S. 4TH ST.	PHONE: (541) 267-2872
		P.O. BOX 118	FAX: (541) 267-0588
		COOS BAY, OREGON 97420	www.stuntzner.com
Engineering - Land Surveying - Forestry - Land Planning - Water Rights			
JOB #: 112-2-100	PORT OF NEWPORT		
DATE: JUNE 18 2014	NW NATURAL LEASE EXHIBIT		
DRAWN BY: TEK			
CHECKED BY: RED	FILE NAME: Easement Exhibits.dwg	SHEET 1 OF 1	

AFTER RECORDING RETURN TO:

Dennis L. Bartoldus
Attorney at Law
P.O. Box 1510
Newport, OR 97365

**DRAINAGE EASEMENT
(Underground)**

This EASEMENT AGREEMENT is entered into this ____ day of _____, 2017, by and between Rondys Inc., a Washington corporation, licensed to do business in Oregon, as the Grantor, and the Port of Newport, an ORS 777 municipal corporation of the State of Oregon as the Grantee.

RECITALS

A. The Grantor and Grantee own adjacent properties located in Lincoln County, Oregon. The real property owned by the Grantor is described in Exhibit "A". The real property owned by the Grantee is described in Exhibit "B". A map depicting the relationship of the properties to one another is attached as Exhibit "C".

B. The Grantee has requested a drainage easement from Grantor. Grantor is willing to grant the easement, subject to the terms and conditions of this easement agreement.

GRANT OF AND TERMS OF EASEMENT

1. **Grant of Easement.** Grantor hereby grants to Grantee an easement to allow Grantee to channel drainage water from Grantee's property through a drainage system constructed by Grantor. The easement granted herein is appurtenant to the real property owned by the Grantee described in Exhibit "B". The easement granted herein is non-exclusive and may be used in conjunction with others to whom an easement may be granted by the Grantor and said drainage system may also be used by the Grantor for Grantor's property.

2. **Location.** The location of the easement across Grantor's property is described in attached Exhibit "D".

3. **Consideration.** In consideration of receiving this easement from Grantor, Grantee agrees that it will channel water from its property described in Exhibit "B" to the drainage easement described herein. The Grantor will be constructing an underground drain line to collect water and drain it to Yaquina Bay. Grantee agrees it will not drain water onto the Grantor's property, except as provided by the terms of this agreement.

4. **Conditions of Use.** Grantee agrees that it will not allow any hazardous or toxic materials from Grantee's property to be drained onto the Grantor's through this drainage channel or otherwise. The Grantee covenants and agrees that all water entering the Grantor's storm drainage system must be treated to comply with NOAA Slopes V requirements and the DEQ NPDES 1200-Z Permit.

5. **Maintenance.** In the event the drain easement is in need of maintenance or repair, Grantee shall contribute on a pro rata basis with Grantor to pay the costs of maintaining, cleaning or repairing the easement to allow it to serve its purpose of serving as a drain for runoff and storm water. Grantor will coordinate and organize the work within the easement, notifying the Grantee of the reason for the work and the breakdown of the cost for each party. Grantee shall pay its share of the cost within 30 days after being provided a statement of the amount due from Grantee. In the event the maintenance or repair is due to the negligence of one party, such as allowing pollutants in prohibited amounts to enter the drainage, the party causing the need for the maintenance or repair shall pay for those costs of maintenance or repair.

6. **Compliance with all Laws.** In installing, maintaining, repairing and utilizing the storm drain and drainage way and mitigation site, the Grantee shall comply with all applicable governmental laws, rules and regulations, including all provisions of the clean water acts that provide for the filtering and/or treatment of drain water so as to not violate any law, rule or regulation. Compliance with all laws shall be required as long as this easement is in effect.

7. **Indemnification.** The Grantee shall indemnify and hold Grantor harmless from any damages, claims and demands resulting from Grantee's use of the easement and the obligations of Grantee under this agreement. The duty to indemnify shall include a duty to indemnify and hold harmless Grantor from any attorney fees and costs incurred by Grantee in defending or responding to any claim, demand or litigation, regardless of whether any litigation is actually filed and includes attorneys fees and costs on any appeal. It is understood that this indemnification is a contractual obligation of the Grantee and the Grantee's obligation to indemnify the Grantor is not limited by any provision of the tort claim limitations imposed by Oregon law. The parties agree that the contractual limit of indemnification shall be \$10,000,000.00.

8. **Insurance.** The Grantee shall maintain adequate insurance which is defined as a general liability policy of at least \$10,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The Grantee's insurance policy shall name the Grantor as an additional insured and Grantee shall provide a copy of the policy to Grantor upon the request of Grantor.

9. **Binding Effect.** This agreement shall be binding on the heirs, successors and assigns of each of the parties.

10. **Notice and Cure.** Neither party shall be in default hereunder until it has received written notice from the other specifying the nature of its failure to comply with the terms hereof and such failure shall have continued for a period of 30 days after receipt of notice. Provided, however, that such party shall not be in default if the failure to comply is not reasonably curable

within the 30 day period and the party proceeds with diligence to cure the failure to comply. In the event an emergency exists or when damage would occur as a result of delay, the 30 day notice provided herein is not necessary. Provided, however, that the right to cure shall not relieve a party from paying damages or equitable remedies if the other party has suffered damage as a result of a breach of this agreement.

11. **Notices.** All notices to be given hereunder shall be sent as follows:

To Grantor: Rondys, Inc.
1301 West Oregon Street
Bellingham, WA 98225

To Grantee: Port of Newport
600 SE Bay Blvd.
Newport, OR 97365

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested to the addresses listed in this section. The addresses may be changed by written notice, given in the same manner. Notice given in any other manner other than the manner set forth herein will be effective when received by the party for whom it is intended.

12. **Attorney Fees.** In the event any suit or action is filed to enforce any term, condition or omission under this agreement, the prevailing party shall be entitled to recover from the losing party the prevailing party's reasonable costs and attorney fees, including any attorney fees and costs incurred on any appeal.

13. **Governing Law.** This agreement shall be governed by the laws of the State of Oregon.

14. **Entire Agreement.** This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and merges and replaces all prior and contemporaneous negotiations, discussion, representations, warranties, promises and agreements of the parties with respect to the subject matter hereof.

15. **No Waiver.** No waiver of any action or default by any party will be implied from a failure or delay by the other party to take any action in respect to such action or default.

16. **Easement over Grantee's Property.** In consideration of the grant of this easement, the Port of Newport hereby grants, gives and conveys to Rondys and its heirs, successors and assigns, an easement over the Port property for utilities, including but not limited to, power, water, sewer, communication cables, to serve the Rondys property. The location of said easement shall be in a location reasonable in scope and nature so as to not unreasonably interfere with the Port's property.

IN WITNESS WHEREOF, the parties have entered into this agreement this _____ day of _____, 2017.

PORT OF NEWPORT

RONDYS, INC.

By: _____

By: _____

Its: _____

Its: _____

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of the Port of Newport, an ORS 777 municipal corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of Rondys Inc., a Washington corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

PARCEL I: (TL 600)

That portion of land lying above the "Ordinary Low Water" line (Mean Low Water; +1.3 M.L.L.W. Datum) and within the herein described parcel;
Beginning at the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence South 0 deg. 37' 45" East, 1,489.38 feet, along said Section line; thence leaving said Section line South 79 deg 05' 40" West, 561.95 feet to a point on the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence along said "Ordinary High Water" line as follows; Thence North 04 deg. 30' 06" West 898.42 feet; thence North 01 deg. 18' 14" West, 445.57 feet; thence North 11 deg. 03' 28" East 192.23 feet; thence North 74 deg. 58" 49" East 129.12 feet; thence North 86 deg. 45' 06" East 230.53 feet; thence South 89 deg. 56' 29" East 141.93 feet; thence North 45 deg. 52' 08" East 112.70 feet to a point on the East line of Section 9, T 11 S, R 11 W, W.M.; thence along said Section line South 01 deg. 30' 00" East, 59.03 feet to the Meander Corner and the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

PARCEL II: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11, S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "Ordinary High Water line (Mean High Water, + 7.5 M.L.L.W. Datum) the following bearings and distances: thence South 01 deg. 18' 14" East 182.28 feet; thence South 04 deg. 30' 06" East 898.42 feet; thence South 07 deg. 35' 00" East 346.12 feet; thence South 05 deg. 44' 50" East 176.97 feet; thence South 00 deg. 41' 31" West 170.71 feet; thence South 29 deg. 29' 42" West 105.01 feet; thence South 64 deg. 29' 57" West 302.14 feet; thence South 74 deg. 09' 48" West 91.76 feet; thence South 74 deg. 36' 04" West 106.43 feet; thence South 82 deg. 25' 07" West 67.60 feet; thence North 53 deg. 46' 58" West 213.35 feet; thence North 45 deg. 24' 33" West 442.89 feet; thence North 48 deg. 30' 25" West 473.05 feet; thence South 79 deg. 14' 06" West 102.30 feet; thence leaving said High Water line the following bearings and distances; thence North 59 deg. 00' 00" West 218.00 feet; thence North 14 deg. 59' 11" East 607.90 feet; thence North 66 deg. 37' 09" East 35.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 160.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 270.00 feet returning to said Ordinary High Water Line; thence along said High Water Line the following bearings and distances; thence South 66 deg. 37' 09" West 442.42 feet; thence North 79 deg 18' 23" West 363.57 feet; thence North 75 deg. 47' 46" West 50.47 feet; thence North 69 deg. 39' 06" West 16.82 feet; thence North 40 deg. 28' 56" West 15.90 feet; thence North 03 deg. 54' 48" East 15.23 feet; thence North 57 deg. 15' 49" East 16.20 feet; thence North 84 deg. 09' 41" East 9.71 feet; thence South 85 deg. 27' 31" East 29.11 feet; thence North 05 deg. 37' 46" West 132.99 feet; thence North 06 deg. 23' 52" West 132.55 feet; thence North 48 deg. 16' 05" West 156.69 feet; thence North 53 deg. 06' 28" West 231.05 feet; thence North 21 deg. 00' 00" East 22.80 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 42 deg. 17' 57" East 19.97 feet; thence South 57 deg. 44' 00" East 175.80 feet; thence South 54 deg. 39' 31" East 134.93 feet; thence South 72 deg. 55' 33" East 193.87 feet; thence South 69 deg. 30' 32" East 161.53 feet; thence South 77 deg. 14' 36" East 168.78 feet; thence South 85 deg. 55' 21" East 119.45 feet; thence North 88 deg. 26' 06" East 180.76 feet; thence North 74 deg. 58' 04" East 299.55 feet; thence North 14 deg. 26' 08" West 242.29 feet to a point on the "1953 Mean Low Tide, National Ocean Survey (Hydrographic Sheet No. 8041)" line; thence along said Low Tide line the following bearings and distances; thence North 83 deg. 11' 10" East 417.96 feet; thence South 73 deg. 48' 38" East 63.52 feet; thence South 59 deg. 47' 58" East 250.66 feet; thence North 58 deg. 18' 10" East 96.59 feet; thence North 32 deg. 07' 55" East 192.28 feet; thence North 40 deg. 55' 25" East 111.41 feet; thence South 87 deg. 05' 06" East 164.38 feet; thence North 65 deg. 41' 34" East 124.87 feet; thence North 70 deg. 07' 01" East 140.90 feet; thence North 60 deg. 34' 58" East 109.29 feet; thence South 65 deg. 41' 15" East 79.08 feet; thence South 57 deg. 43' 35" East 105.25 feet; thence South 84 deg. 31' 08" East 0.10 feet to the point of beginning on said "Ordinary High Water" line.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

ALSO EXCEPTING Parcels A, G and L as described in instrument recorded April 2, 1984, Book 148, page 2144 Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded August 7, 2006, Document No. 200611998, Microfilm Records for Lincoln County, Oregon.

AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

PARCEL III: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "1953 Mean Low Tide National Ocean Survey" (Hydrographic Sheet No. 8041) line the following bearings and distances; thence North 84 deg. 31' 08" West 0.10 feet; thence North 57 deg. 43' 35" West 105.25 feet; thence North 65 deg. 41' 15" West 79.08 feet; thence South 60 deg. 34' 58" West 109.29 feet; thence South 70 deg. 07' 01" West 140.90 feet; thence South 65 deg. 41' 34" West 124.87 feet; thence North 87 deg. 05' 06" West 164.38 feet; thence South 40 deg. 55' 25" West 111.41 feet; thence South 32 deg. 07' 55" West 192.28 feet; thence South 58 deg. 18' 10" West 96.59 feet; thence North 59 deg. 47' 58" West 250.66 feet; thence North 73 deg. 48' 38" West 63.52 feet; thence South 83 deg. 11' 10" West 417.96 feet; thence South 14 deg. 26' 08" East 242.29 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 74 deg. 58' 04" West 299.55 feet; thence South 88 deg. 26' 06" West 180.76 feet; thence North 85 deg. 55' 21" West 119.45 feet; thence North 77 deg. 14' 36" West 168.78 feet; thence North 69 deg. 30' 32" West 161.53 feet; thence North 72 deg. 55' 33" West 193.87 feet; thence North 54 deg. 39' 31" West 134.93 feet; thence North 57 deg. 44' 00" West 175.80 feet; thence North 42 deg. 17' 57" West 19.97 feet; thence South 21 deg. 00' 00" West 22.80 feet; thence North 37 deg. 22' 27" West 66.69 feet; thence North 51 deg. 36' 30" West, 117.06 feet; thence North 49 deg. 20' 47" West 4.16 feet; thence North 39 deg. 56' 57" East 171.84 feet to the Southerly line of that parcel recorded in Volume 98, page 1415, Lincoln County Records; thence along the Southerly line South 62 deg. 54' 03" East 177.42 feet to the Southeast corner; thence along the East line North 38 deg. 24' 37" East 108.97 feet to the Northeast corner of said parcel; said point also being on the Southerly boundary of County Road No. 515; thence along the Southerly right of way South 50 deg. 51' 58" East, 66.57 feet; thence an arc length of 329.99 feet along a curve to the left having a radius of 622.96 feet; thence South 81 deg. 05' 08" East 328.37 feet; thence an arc length of 165.17 feet along a curve to the left having a radius of 1768.87 feet; thence an arc length of 325.46 feet along a curve to the left having a radius of 622.96 feet; thence North 63 deg. 37' 52" East 422.68 feet to the Northwest corner of that parcel conveyed to Dean Warren and recorded in Book 276, page 39, Lincoln County Records on 16th , March 1967; thence South along the West line of said parcel a distance of 86.2 feet, more or less , to the Mean High Water of 1912 line of Yaquina Bay; thence along said Mean High Water line as established by C. S. 5618, the following bearings and distances; thence North 64 deg. 39' 15" East 95.72 feet; thence North 47 deg. 48' 52" East 241.88 feet; thence North 68 deg. 44' 27" east 263.16 feet; thence North 59 deg. 08' 15" East 353.30 feet; thence North 77 deg. 30' 00" East 113.80 feet; thence North 86 deg. 29' 15" East 327.80 feet to a point along the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence South 74 deg. 58' 49" West, 28.54 feet; thence South 11 deg. 03' 28" West 192.23 feet; thence South 01 deg. 18' 14" East 263.29 feet along said High Water Line to the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

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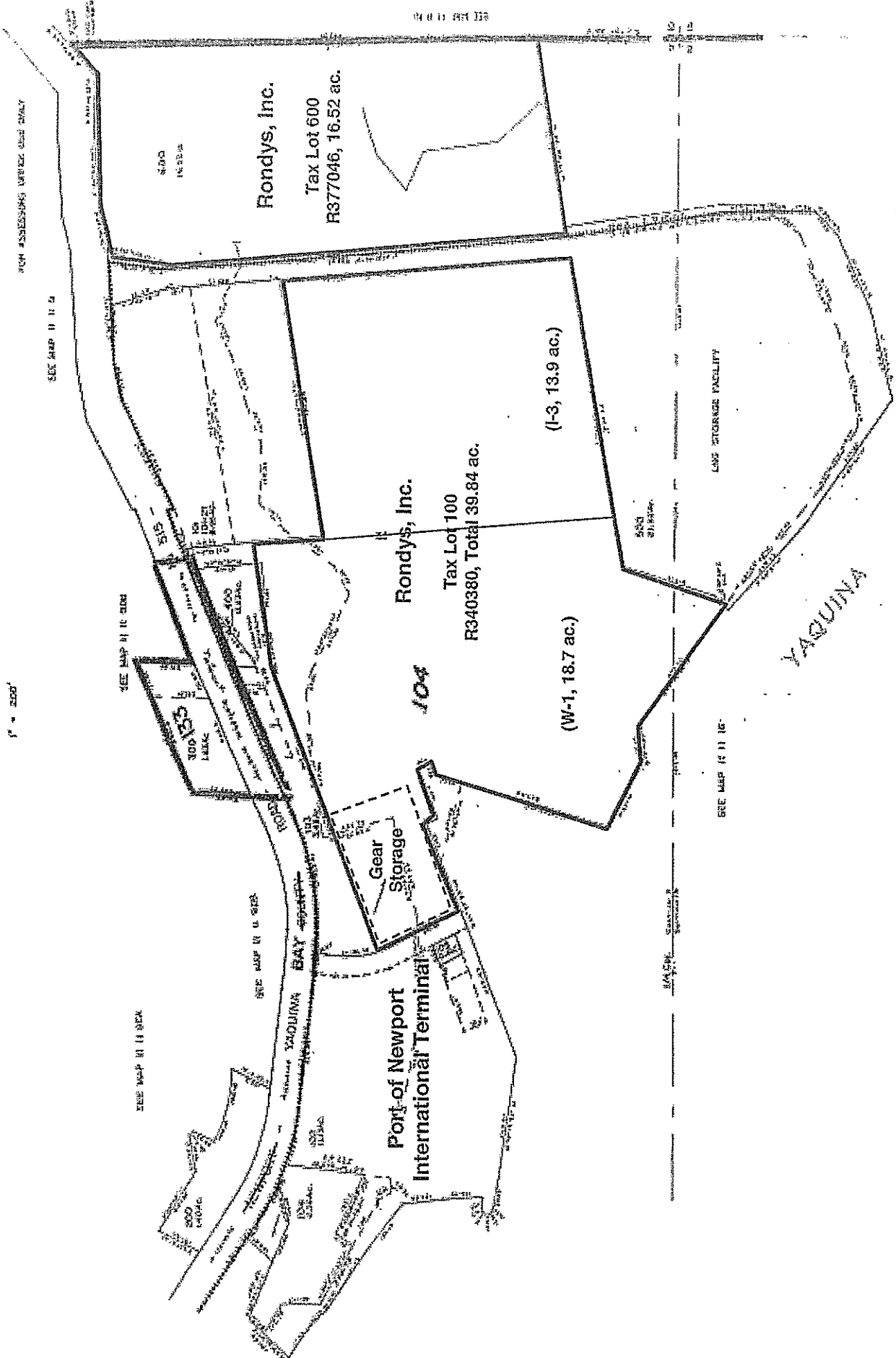
AND ALSO EXCEPTING that tract described in instrument recorded October 1, 1980, Book 117, page 595, Microfilm Records for Lincoln County, Oregon.

EXHIBIT B
DESCRIPTION OF PORT PROPERTY

EXHIBIT C

SE 1/4 SECTION 9 T11S R11W W1N
LINCOLN COUNTY

1" = 200'



11 11 9D

11 11 9D



TELEPHONE (541) 267-2872
 FAX (541) 267-0588
 ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
 COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
 DESCRIPTION OF A NON-EXCLUSIVE DRAINAGE EASEMENT

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Beginning at the Southwest corner of that property owned by the Port of Newport, recorded as Parcel "L" in Book 148 Page 2162 marked with a yellow plastic cap marked "MSS Engineering" per Lincoln County Survey No. 20555, said point having the coordinates of Northing 370,085.42' and Easting 7,283,922.58' in conformance with the Oregon State Plane Coordinate System, North Zone, North American Datum 83 (1991), Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be True North;

Thence North 78°59'06" East 15.12 feet;

Thence South 03°34'30" East 968.88 feet more or less to the north line of that property owned by NW Natural Gas Co.;

Thence along said north line of NW Natural Gas Co. South 79°05'10" West 173.88 feet to a 5/8" Iron Rod per Lincoln County Survey No. 20555;

Thence South 79°05'10" West 12.82 feet;

Thence South 15°43'30" West 267.90 feet;

Thence South 46°21'19" West 58.82 feet more or less to the Ordinary High Water Line;

Thence North 48°32'17" West along said Ordinary High Water Line 30.11 feet;

Thence North 46°21'19" East 53.17 feet more or less;

Thence North 15°43'30" East 284.08 feet;

Thence North 63°18'16" East 92.72 feet;

Thence North 79°05'10" East 45.52 feet;

EXHIBIT D

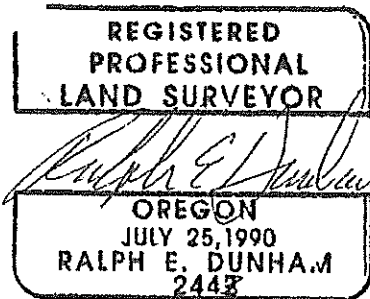
Page 1 of 3
 Page 113 of 186

Thence North 03°34'30" West 915.61 feet:

Thence North 86°25'30" East 60.00 feet to the Southwest corner of the property owned by the Port of Newport and the Point of Beginning;

Said easement containing 2.05 acres, more or less.

Bearings based upon Lincoln County Survey No. 5618, by Arnold Brubaker, presumed to be true north. Monuments noted as per Lincoln County Survey No. 20555 by Peter Seaders.



EXPIRES 12/31/17

DRAINAGE EASEMENT EXHIBIT

PORT OF NEWPORT

RONDY'S &
ASSOCIATES, INC.

NORTHING: 370085.42'
EASTING: 7283922.58'
BASED ON OREGON
STATE PLANE NORTH
ZONE NAD83 91

(S1' 03' 01"E GRID)
S3' 34' 30"E
968.88'

N78° 59' 06"E
15.12'

N86° 25' 30"E
60.00'

N3° 34' 30"W
915.61'

N79° 05' 10"E
45.52'

N63° 18' 16"E
92.72'

N15° 43' 30"E
284.08'

BASIS OF BEARING
LINCOLN COUNTY
SURVEY #5618
BRUBAKER



LOCATED SE 1/4 OF SEC 9,
T11S, R11W, W.M.
LINCOLN CO. OREGON

© MONUMENT FROM
CS #20555

NW NATURAL

S79° 05' 10"W
173.88'

S79° 05' 10"W
12.82'

S46° 21' 19"W
58.82'

S15° 43' 30"W
267.90'

N46° 21' 19"E
53.17'

OHWO

N48° 32' 17"W
30.11'

RONDY'S &
ASSOCIATES, INC.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Ralph E. Dunham

OREGON
JULY 25, 1990
RALPH E. DUNHAM
2443

EXPIRES 12/31/17



705 S. 4TH ST.
P.O. BOX 118
COOS BAY, OREGON 97420
Engineering - Land Surveying - Forestry - Land Planning - Water Rights

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

JOB #: 112-2-100

DATE: MAY 2017

DRAWN BY: AER

CHECKED BY: RED

Port of Newport

Drainage Easement Exhibit

FILE NAME: Port Site 2016 Easements.dwg

SHEET 1 OF 1

EXHIBIT D

Page 3 of 3

AFTER RECORDING RETURN TO:

Dennis L. Bartoldus
Attorney at Law
P.O. Box 1510
Newport, OR 97365

WETLAND MITIGATION AGREEMENT

This AGREEMENT is entered into this ____ day of _____, 2017, by and between Rondys Inc., a Washington corporation, licensed to do business in Oregon, hereinafter "Rondys", and the Port of Newport, an ORS 777 municipal corporation of the State of Oregon, hereinafter "Port".

RECITALS

A. Rondys and Port own adjacent properties located in Lincoln County, Oregon. The real property owned by Rondys is described in Exhibit "A". The real property owned by the Port is described in Exhibit "B". A map depicting the relationship of the properties to one another is attached as Exhibit "C".

B. The Port has requested that Rondys provide property to mitigate wetlands located on the Port property.

C. There are also wetlands located on the Rondys property. Rondys intends to mitigate wetlands existing on its property at the same location as the Port is using to mitigate wetlands. The size of the mitigation site on the Rondys property is sufficient to allow the mitigation of wetlands on both the Port property and the Rondys property.

D. The area to be provided for mitigation for both the Rondys property and the Port property is approximately 0.9 acres in size and is described in Exhibit "D".

AGREEMENT

1. **Grant of Use.** Rondys agrees to allow the Port to utilize the property described in Exhibit "D" for wetland mitigation for wetlands located on the property described in Exhibit "B". The Port acknowledges that wetland mitigation for the Rondys property will take place at the same location and the 0.9 acres has been deemed sufficient to mitigate the wetlands which must be mitigated on the properties described in Exhibit A and Exhibit B.

2. **Application.** The Port agrees it will submit an application to permitting agencies for the fill, removal and mitigation of .24 acres of wetlands which is the area needed to remediate wetlands on the Port property. Together with a wetland mitigation ratio applied, the Port will

utilize a total of .26 acres of mitigation for wetlands being mitigated on Port property. Rondys will submit its own permit to permitting agencies to mitigate .42 acres of wetland on Rondys property, which together with the wetland mitigation ratio applied will result in the need for Rondys to have .51 acres for mitigation. Rondys will pay its own application fee and consultant fees. The parties agree they will use John vanStaveren of Pacific Habitat Services as a wetlands consultant to assist with the application. In the event Mr. vanStaveren is unable to perform the duties or the parties mutually agree to employ someone else to perform the tasks, another consultant may be hired. The Port shall pay for all construction costs and monitoring costs of the mitigation for both the Port and Rondys properties in consideration of being able to mitigate its wetlands on the Rondys property.

3. **Construction.** The actual wetland remediation work for both Port and Rondys at the mitigation site will be done by a contractor hired and paid for by the Port. However, Rondys has the right to approve all mitigation plans on Rondys property. About 7,000 cubic yards of material will be removed for the construction of the mitigation area. Rondys will accept the buildable fill removed from the site as fill on the property owned by Rondys but any fill that is not building suitable or is in excess of what is needed by Rondys shall be removed by the Port from the property at Port's expense. The topsoil placed on the Rondys property shall be placed as directed by Rondys.

4. **Wetland Monitoring.** Any and all wetland monitoring and compliance required as part of the mitigation will be done and paid for by the Port. If the Port fails to monitor or otherwise fails to keep the mitigation site in compliance, then Rondys may do so and charge and recover from the Port any expenses Rondys incurs in monitoring for compliance and for any repair or additional work that is necessary to fully comply with all permits.

5. **Easement.** Rondys hereby grants Port an easement to the mitigation site for the purposes of access, monitoring and maintaining the mitigation area. The access will be over the Rondys property in an area designated by Rondys and in accessing the mitigation site, Port shall not interfere with operations on the Rondys property.

6. **Construction Time.** The construction of the mitigation area will begin on or about November 1, 2017 and the work shall be diligently pursued to completion within a reasonable period of time thereafter but must be completed within any time perimeters set forth in the permits and in accordance with all requirements of the permits.

7. **Indemnification.** The Port shall indemnify and hold Rondys harmless from any damages, claims and demands caused by construction, monitoring, maintenance, repair and restoration of the wetland mitigation site and from any obligation that is to be performed by Port. It is understood that this indemnification is a contractual obligation of the Port and the Port's obligation to indemnify Rondys is not limited by any provision of the tort claims limitation imposed by Oregon law. The parties agree that the contractual limit of indemnification is \$10,000,000.00.

8. **Binding Effect.** This agreement will be binding on the heirs, successors and assigns of each party.

9. **Notice and Cure.** Neither party shall be in default hereunder until it has received written notice from the other specifying the nature of its failure to comply with the terms hereof and such failure shall have continued for a period of 30 days after receipt of notice. Provided, however, that such party shall not be in default if the failure to comply is not reasonably curable within the 30 day period and the party proceeds with diligence to cure the failure to comply. In the event an emergency exists or when damage would occur as a result of delay, the 30 day notice provided herein is not necessary. Provided, however, that the right to cure shall not relieve a party from paying damages or equitable remedies if the other party has suffered damage as a result of a breach of this agreement.

10. **Notices.** All notices to be given hereunder shall be sent as follows:

To Rondys: Rondys, Inc.
1301 West Oregon Street
Bellingham, WA 98225

To Port: Port of Newport
600 SE Bay Blvd.
Newport, OR 97365

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested to the addresses listed in this section. The addresses may be changed by written notice, given in the same manner. Notice given in any other manner other than the manner set forth herein will be effective when received by the party for whom it is intended.

11. **Attorney Fees.** In the event any suit or action is filed to enforce any term, condition or omission under this agreement, the prevailing party shall be entitled to recover from the losing party the prevailing party's reasonable costs and attorney fees, including any attorney fees and costs incurred on any appeal.

12. **Governing Law.** This agreement shall be governed by the laws of the state of Oregon.

13. **Entire Agreement.** This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and merges and replaces all prior and contemporaneous negotiations, discussion, representations, warranties, promises and agreements of the parties with respect to the subject matter hereof.

14. **No Waiver.** No waiver of any action or default by any party will be implied from a failure or delay by the other party to take any action in respect to such action or default.

15. **Insurance.** The Port shall at all times maintain adequate insurance to repair any damage to Rondy's property caused by the Port or anyone using under the Port for any use or activities that result in damage that are outside the use of the terms of this agreement and shall

also maintain adequate insurance for injury to any person caused by the Port's activities. Adequate insurance is defined as \$10,000,000 per occurrence and in the aggregate. Rondys shall be named as an additional insured on any policy and Port shall provide a copy of the policy to Rondys upon the request of Rondys.

IN WITNESS WHEREOF, the parties have entered into this agreement this _____ day of _____, 2017.

PORT OF NEWPORT

RONDYS, INC.

By: _____

By: _____

Its: _____

Its: _____

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of the Port of Newport, an ORS 777 municipal corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this ___ day of _____, 2017, by _____, _____ of Rondys Inc., a Washington corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

PARCEL I: (TL 600)

That portion of land lying above the "Ordinary Low Water" line (Mean Low Water; +1.3 M.L.L.W. Datum) and within the herein described parcel;
Beginning at the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence South 0 deg. 37' 45" East, 1,489.38 feet, along said Section line; thence leaving said Section line South 79 deg 05' 40" West, 561.95 feet to a point on the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence along said "Ordinary High Water" line as follows; Thence North 04 deg. 30' 06" West 898.42 feet; thence North 01 deg. 18' 14" West, 445.57 feet; thence North 11 deg. 03' 28" East 192.23 feet; thence North 74 deg. 58' 49" East 129.12 feet; thence North 86 deg. 45' 06" East 230.53 feet; thence South 89 deg. 56' 29" East 141.93 feet; thence North 45 deg. 52' 08" East 112.70 feet to a point on the East line of Section 9, T 11 S, R 11 W, W.M.; thence along said Section line South 01 deg. 30' 00" East, 59.03 feet to the Meander Corner and the point of beginning.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

PARCEL II: (portion TL 100)

Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11, S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "Ordinary High Water" line (Mean High Water, + 7.5 M.L.L.W. Datum) the following bearings and distances: thence South 01 deg. 18' 14" East 182.28 feet; thence South 04 deg. 30' 06" East 898.42 feet; thence South 07 deg. 35' 00" East 346.12 feet; thence South 05 deg. 44' 50" East 176.97 feet; thence South 00 deg. 41' 31" West 170.71 feet; thence South 29 deg. 29' 42" West 105.01 feet; thence South 64 deg. 29' 57" West 302.14 feet; thence South 74 deg. 09' 48" West 91.76 feet; thence South 74 deg. 36' 04" West 106.43 feet; thence South 82 deg. 25' 07" West 67.60 feet; thence North 53 deg. 46' 58" West 213.35 feet; thence North 45 deg. 24' 33" West 442.89 feet; thence North 48 deg. 30' 25" West 473.05 feet; thence South 79 deg. 14' 06" West 102.30 feet; thence leaving said High Water line the following bearings and distances; thence North 59 deg. 00' 00" West 218.00 feet; thence North 14 deg. 59' 11" East 607.90 feet; thence North 66 deg. 37' 09" East 35.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 160.00 feet; thence North 23 deg. 22' 51" West 40.00 feet; thence South 66 deg. 37' 09" West 270.00 feet returning to said Ordinary High Water Line; thence along said High Water Line the following bearings and distances; thence South 66 deg. 37' 09" West 442.42 feet; thence North 79 deg 18' 23" West 363.57 feet; thence North 75 deg. 47' 46" West 50.47 feet; thence North 69 deg. 39' 06" West 16.82 feet; thence North 40 deg. 28' 56" West 15.90 feet; thence North 03 deg. 54' 48" East 15.23 feet; thence North 57 deg. 15' 49" East 16.20 feet; thence North 84 deg. 09' 41" East 9.71 feet; thence South 85 deg. 27' 31" East 29.11 feet; thence North 05 deg. 37' 46" West 132.99 feet; thence North 06 deg. 23' 52" West 132.55 feet; thence North 48 deg. 16' 05" West 156.69 feet; thence North 53 deg. 06' 28" West 231.05 feet; thence North 21 deg. 00' 00" East 22.80 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 42 deg. 17' 57" East 19.97 feet; thence South 57 deg. 44' 00" East 175.80 feet; thence South 54 deg. 39' 31" East 134.93 feet; thence South 72 deg. 55' 33" East 193.87 feet; thence South 69 deg. 30' 32" East 161.53 feet; thence South 77 deg. 14' 36" East 168.78 feet; thence South 85 deg. 55' 21" East 119.45 feet; thence North 88 deg. 26' 06" East 180.76 feet; thence North 74 deg. 58' 04" East 299.55 feet; thence North 14 deg. 26' 08" West 242.29 feet to a point on the "1953 Mean Low Tide, National Ocean Survey (Hydrographic Sheet No. 8041)" line; thence along said Low Tide line the following bearings and distances; thence North 83 deg. 11' 10" East 417.96 feet; thence South 73 deg. 48' 38" East 63.52 feet; thence South 59 deg. 47' 58" East 250.66 feet; thence North 58 deg. 18' 10" East 96.59 feet; thence North 32 deg. 07' 55" East 192.28 feet; thence North 40 deg. 55' 25" East 111.41 feet; thence South 87 deg. 05' 06" East 164.38 feet; thence North 65 deg. 41' 34" East 124.87 feet; thence North 70 deg. 07' 01" East 140.90 feet; thence North 60 deg. 34' 58" East 109.29 feet; thence South 65 deg. 41' 15" East 79.08 feet; thence South 57 deg. 43' 35" East 105.25 feet; thence South 84 deg. 31' 08" East 0.10 feet to the point of beginning on said "Ordinary High Water" line.

EXCEPTING therefrom that part, if any, lying in Tracts 1 and 2 of Northwest Natural Gas Co. deed, recorded March 29, 1974 in Volume 48, page 147, Film Records of Lincoln County, Oregon.

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Beginning at a point 517.72 feet South and 610.11 feet West of the Meander Corner on the East line of Section 9, T 11 S, R 11 W, W.M., in Lincoln County, Oregon; thence along the "1953 Mean Low Tide National Ocean Survey" (Hydrographic Sheet No. 8041) line the following bearings and distances; thence North 84 deg. 31' 08" West 0.10 feet; thence North 57 deg. 43' 35" West 105.25 feet; thence North 65 deg. 41' 15" West 79.08 feet; thence South 60 deg. 34' 58" West 109.29 feet; thence South 70 deg. 07' 01" West 140.90 feet; thence South 65 deg. 41' 34" West 124.87 feet; thence North 87 deg. 05' 06" West 164.38 feet; thence South 40 deg. 55' 25" West 111.41 feet; thence South 32 deg. 07' 55" West 192.28 feet; thence South 58 deg. 18' 10" West 96.59 feet; thence North 59 deg. 47' 58" West 250.66 feet; thence North 73 deg. 48' 38" West 63.52 feet; thence South 83 deg. 11' 10" West 417.96 feet; thence South 14 deg. 26' 08" East 242.29 feet to a point on the "1914 Mean Lower Low Water, National Ocean Survey (Hydrographic Sheet No. 3727)" line; thence along said Low Water line the following bearings and distances; thence South 74 deg. 58' 04" West 299.55 feet; thence South 88 deg. 26' 06" West 180.76 feet; thence North 85 deg. 55' 21" West 119.45 feet; thence North 77 deg. 14' 36" West 168.78 feet; thence North 69 deg. 30' 32" West 161.53 feet; thence North 72 deg. 55' 33" West 193.87 feet; thence North 54 deg. 39' 31" West 134.93 feet; thence North 57 deg. 44' 00" West 175.80 feet; thence North 42 deg. 17' 57" West 19.97 feet; thence South 21 deg. 00' 00" West 22.80 feet; thence North 37 deg. 22' 27" West 66.69 feet; thence North 51 deg. 36' 30" West, 117.06 feet; thence North 49 deg. 20' 47" West 4.16 feet; thence North 39 deg. 56' 57" East 171.84 feet to the Southerly line of that parcel recorded in Volume 98, page 1415, Lincoln County Records; thence along the Southerly line South 62 deg. 54' 03" East 177.42 feet to the Southeast corner; thence along the East line North 38 deg. 24' 37" East 108.97 feet to the Northeast corner of said parcel; said point also being on the Southerly boundary of County Road No. 515; thence along the Southerly right of way South 50 deg. 51' 58" East, 66.57 feet; thence an arc length of 329.99 feet along a curve to the left having a radius of 622.96 feet; thence South 81 deg. 05' 08" East 328.37 feet; thence an arc length of 165.17 feet along a curve to the left having a radius of 1768.87 feet; thence an arc length of 325.46 feet along a curve to the left having a radius of 622.96 feet; thence North 63 deg. 37' 52" East 422.68 feet to the Northwest corner of that parcel conveyed to Dean Warren and recorded in Book 276, page 39, Lincoln County Records on 16th, March 1967; thence South along the West line of said parcel a distance of 86.2 feet, more or less, to the Mean High Water of 1912 line of Yaquina Bay; thence along said Mean High Water line as established by C. S. 5618, the following bearings and distances; thence North 64 deg. 39' 15" East 95.72 feet; thence North 47 deg. 48' 52" East 241.88 feet; thence North 68 deg. 44' 27" East 263.16 feet; thence North 59 deg. 08' 15" East 353.30 feet; thence North 77 deg. 30' 00" East 113.80 feet; thence North 86 deg. 29' 15" East 327.80 feet to a point along the "Ordinary High Water" line (Mean High Water; + 7.5 M.L.L.W. Datum); thence South 74 deg. 58' 49" West, 28.54 feet; thence South 11 deg. 03' 28" West 192.23 feet; thence South 01 deg. 18' 14" East 263.29 feet along said High Water Line to the point of beginning.

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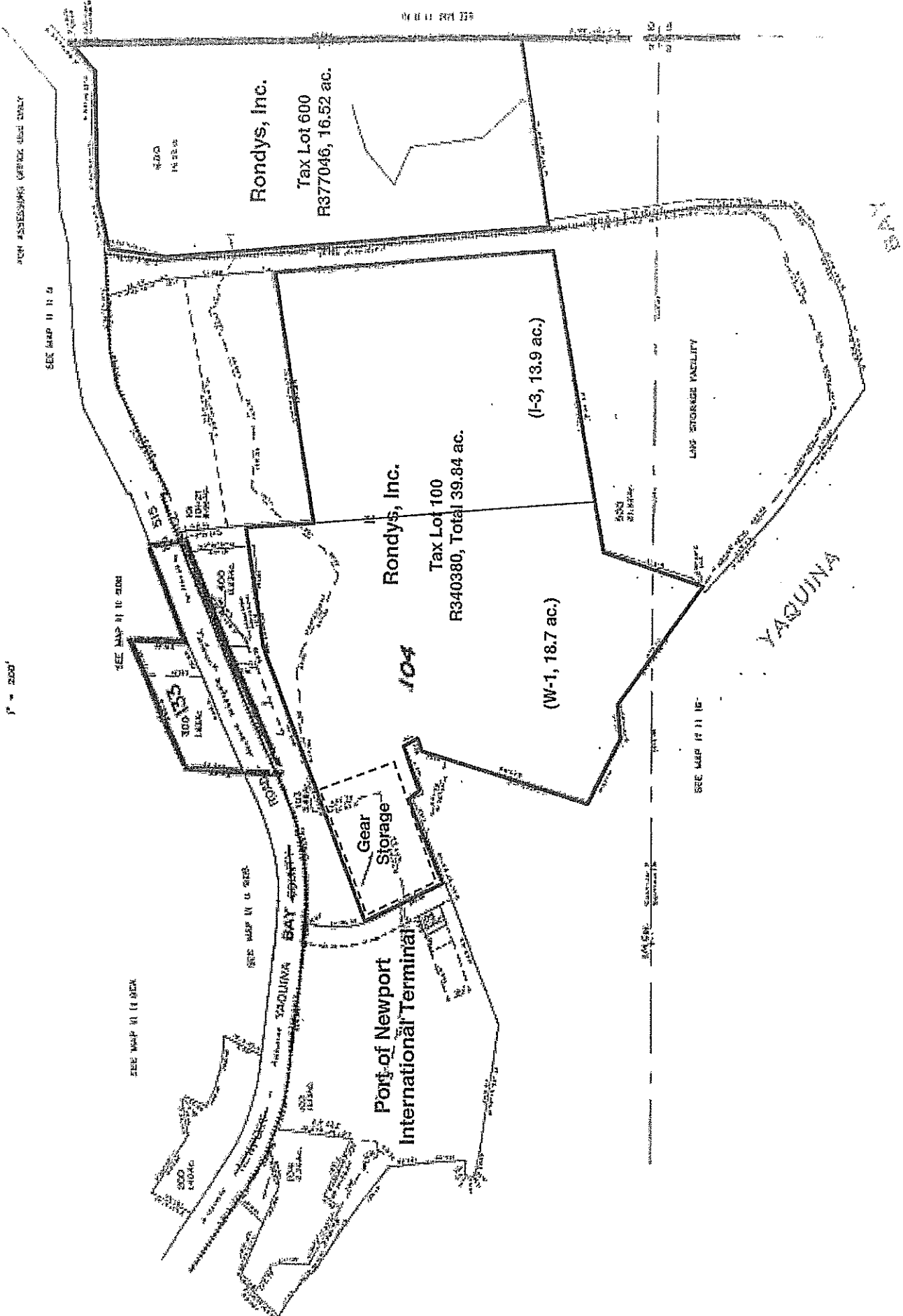
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EXHIBIT B
DESCRIPTION OF PORT PROPERTY

EXHIBIT C

SE 1/4 SECTION 9 T11S R11W WM
LINCOLN COUNTY

1" = 2000'



11 11 9D



TELEPHONE (541) 267-2872
FAX (541) 267-0588
ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
COOS BAY, OREGON 97420

COOS BAY – FOREST GROVE -DALLAS

EXHIBIT
DESCRIPTION OF A MITIGATION SITE BOUNDARY

Easement located in the SE ¼ of Section 9, T11S, R11W, W.M, Lincoln County, Oregon.

Commencing at a point, said point having the coordinates of Northing 368,844.19' and Easting 7,283,657.54' in conformance with the Oregon State Plane Coordinate System, North Zone, North American Datum 83 (1991), Bearings based upon True North;

Thence North 22°15'01" East 136.19 feet;

Thence North 66°35'34" West 49.10 feet;

Thence South 74°15'32" West 20.28 feet;

Thence South 45°02'48" West 20.53 feet;

Thence North 76°26'02" West 29.86 feet;

Thence North 57°52'05" West 36.68 feet;

Thence South 83°39'22" West 13.59 feet;

Thence South 31°51'32" West 17.07 feet;

Thence North 82°04'50" West 39.94 feet;

Thence South 04°16'24" West 33.61 feet;

Thence South 55°49'26" East 92.60 feet;

Thence South 26°48'08" West 47.98 feet;

Thence South 76°15'54" East 55.56 feet to the Point of Beginning;

Said easement containing 0.38 acres, more or less.

**THIS DESCRIPTION IS
SUBJECT TO REVISION**

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Ralph E. Dunham
ORIGON
JULY 25, 1990
RALPH E. DUNHAM
2448
EXPIRES 12/31/17

MITIGATION SITE BOUNDARY EXHIBIT

RONDY'S &
ASSOCIATES, INC.

N66° 35' 34"W
49.10'

N22° 15' 01"E
136.19'

NORTHING: 368844.19'
EASTING: 7283657.54'
BASED ON OREGON STATE PLANE
NORTH ZONE NAD83 91

S76° 15' 54"E
55.56'

S26° 48' 08"E
47.98'

S55° 49' 26"E
92.60'

S4° 16' 24"W
33.61'

S74° 15' 32"W
20.28'

S45° 02' 48"W
20.53'

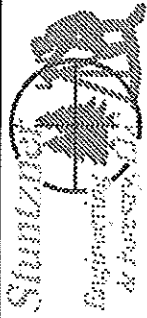
N76° 26' 02"W
29.86'

N57° 52' 05"W
36.68'

S83° 39' 22"W
13.59'

S31° 51' 32"W
17.07'

N82° 04' 50"W
39.94'



705 S. 4TH ST.
P.O. BOX 118
COOS BAY, OREGON 97420
PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com
Engineering - Land Surveying - Forestry - Land Planning - Water Rights

JOB #: 112-2-100
DATE: NOV. 2016
DRAWN BY: AER
CHECKED BY: RED

Port of Newport
Mitigation Site Easement Exhibit
FILE NAME: Port Site 2016 Easements.dwg

SHEET 1 OF 1

EXHIBIT D

Page 2 of 2

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

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AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____

(“Effective Date”) between the Port of Newport, a port district organized and existing under ORS Chapter 777.

(“Owner”) and

Stuntzner Engineering & Forestry, LLC, an Oregon limited liability company

(“Engineer”).

Owner’s project, of which Engineer’s services under this Agreement are a part, is generally described as follows:

Bid and construction services, final PS&E for the intermodal shipping facility located at the Port of Newport property SO9 T11S R11W. More particularly described in April 25, 2016 correspondence attached hereto as Attachment 1 and Attachments 2 and 3 showing the costs estimates and project schedule, respectively.

(“Project”).

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Exhibit C.

C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information

furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

A. Engineer is authorized to complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

A. Preparation and Submittal of Invoices. Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C and in a form agreeable to owner. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

A. Application to Interest and Principal. Payment will be credited first to any interest owed to Engineer and then to principal.

B. Failure to Pay. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. Disputed Invoices. If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

D. Legislative Actions. If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which no markup shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2007 Edition) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

6.02 Design Without Construction Phase Services

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, "Engineer Services". With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, "Engineer's Services".

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. Either party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate

for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Subconsultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been insured.

G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

B. Termination. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. Effective Date of Termination. The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination.

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment,

Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.07 Successors, Assigns, and Beneficiaries

A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 Dispute Resolution

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no

dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 Environmental Condition of Site

A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Indemnification and Mutual Waiver

A. Indemnification by Engineer. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to

and limited by the provisions agreed to by Owner and Engineer in Exhibit I, "Allocation of Risks," if any.

B. Indemnification by Owner. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

C. Environmental Indemnification. In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. Percentage Share of Negligence. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. Mutual Waiver. To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 Miscellaneous Provisions

A. Notices. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. Survival. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. Severability. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. Waiver. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. Accrual of Claims. To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C 700, 2007 Edition):

1. Additional Services – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

2. Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.

3. Construction Cost – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

Construction Cost is one of the items comprising Total Project Costs.

4. Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local

statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

5. Consultants – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
6. Documents – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. Drawings – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. Reimbursable Expenses – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. Resident Project Representative – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
11. Specifications – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
12. Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, “Engineer’s Services,” consisting of pages.
- B. Exhibit B, “Owner’s Responsibilities,” consisting of pages.

- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of pages.
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of pages.
- F. Exhibit F, "Construction Cost Limit," consisting of pages.
- G. Exhibit G, "Insurance," consisting of pages.
- H. Exhibit H, "Dispute Resolution," consisting of pages.
- I. Exhibit I, "Allocation of Risks," consisting of pages.
- J. Exhibit J, "Special Provisions," consisting of pages.
- K. Exhibit K, "Amendment to Owner-Engineer Agreement," consisting of pages.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 Designated Representatives

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:	Engineer:
By:	By:
Title:	Title:
Date Signed:	Date Signed:

Engineer License or Certificate No.
State of:

Address for giving notices:	Address for giving notices:
-----------------------------	-----------------------------

Designated Representative (see Paragraph 8.03.A): Paragraph 8.03.A):	Designated Representative (see Paragraph 8.03.A):
Title:	Title:
Phone Number:	Phone Number:
Facsimile Number:	Facsimile Number:
E-Mail Address:	E-Mail Address:



TELEPHONE (541) 267-2872
 FAX (541) 267-0588
 ralphdunham@stuntzner.com

705 SO. 4TH, P.O. BOX 118
 COOS BAY, OREGON 97420

COOS BAY - DALLAS - FOREST GROVE

April 25, 2016

Port of Newport
 Attn: Kevin Greenwood, General Manager
 600 SE Bay Blvd.
 Newport, OR 97365

RE: Budget Proposal For Bid and Construction Services, Final PS&E for the Intermodal Shipping Facility, located on the Port of Newport Property S09 T11S R11W.

Dear Mr. Greenwood:

Thank you for the opportunity to provide the Port of Newport (Port) with a recommended scope of work and estimate for completion of the PS&E, and Construction Services for the proposed Intermodal Shipping Facility located on TL 101. In estimating construction services there are some general percentages which are common. Construction survey is typically 2-3% of construction cost (lower on larger projects and this specific one has less dense utilities than normal) and construction observation/management services are typically in the 5-6% range for the full service project, plus geotechnical specialty observation. You will note that building structures in this case are pre-manufactured and utilities relatively light therefore we should be in a low range of the normal service. I still estimate 16 weeks of construction to substantial completion, and another month minimum to final completion. The following is a list of tasks and general breakdown of estimated cost for the consulting service. These are budgetary numbers, although should be reasonably close, can be worked with on a fixed fee or hourly reimburseable structure. This also includes requirements from the Tiger Grant agreement.

1. Coordinate with the Port of Newport, based upon the final funding source requirements, final Plans, Specifications & Estimates (PS&E) for bid, facilitate receipt of bids and recommendation for award. This is task CE-1 in the attached spreadsheet estimates. we anticipated at least one site meeting (going over plans after submission), and multiple coordination calls, submission of backup information to address City concerns and the Rhondy's property and required modifications. Specifications would be based upon EJCDC standard documents or ODOT standard documents – your choice however I believe the EJCDC with references to ODOT specifications for materials is a better document – simply because it is easier to read (project specific) . Note a budget of \$5,190 is included for the Rhondy's property right of way clearances. Total budget for design plan updates, bid documents and bid is estimated at \$30,660.

2. Provide Construction Management (CE-2/CEI) and Construction Engineering services. This includes Contract Admin, submittal and RFI reviews, site progress meetings and general project oversight. Estimate is \$35,250.
3. Provide CE-3 Environmental Assurance and Construction Inspection services. This is a combination of environmental compliance review and construction monitoring, including quality assurance testing for materials used. Estimate is \$138,400 including geotechnical services from GRI.
4. Construction Surveying – Control and Quantity Verification. This budget assumes the consultant provides base control staking, clearing limits, and quantity surveys and verification while the contractor's construction surveyor will provide most of the grade and utility staking. Estimate is \$17,600.
5. Project Closeout/Grant Admin Documents, Record Drawings. While I am assuming most of the grant administration will be performed by Port of Newport Staff, supporting documentation and simple items like employee wage interviews, verification of payroll submittals, etc will be performed by the consulting staff. Closeout documentation, final inspection & agency walk through, final payment documentation and other record documentation. Estimate is \$18,600.
6. Note that again, primary grant-funding source administration is assumed to be by Port of Newport, however support documentation by consultant. Typical Admin costs are 2-4% for a project of this scale, with limited complexity. Multiple funding sources however increase the administration cost due to duplication of documentation in multiple formats.

Based upon the above listed scope of work, our estimate for these services is \$240,000. Note in the budget is \$288,000. Some work from that budget is already complete (approximately \$30K), but also our inspection time frame as proposed is a little longer.

I am attaching my spreadsheets for backup which details the expected hours and rates for your review. As I am aware of your valid concern about the earthwork, base and pavement being adequate for the expected loads, I have included essentially full time inspection during these operations. Note however, any work on the Rhondy's property concurrent with your work will be monitored, however it is not anticipated that we provide and amended the overall budget sheet to represent the lower number fairly well, and looked at the administrative items in respect to the CE/CM/CI budget.

Please review the proposed scope, and if you have any questions or concerns, please feel free to contact me at (541) 267-2872.

Sincerely;

Ralph Dunham, PE, PLS
Project Engineer

CE Services - Port of Newport - Industrial Site Development- FHWA Protocol.

Item of Work	Principal SPM	Project Manager CPM	Project Inspector CI	EIT Tech. QCCS	Survey Crew 2-MAN	Drafts- Person DS	Clerical Subtotal	Manhours	Computer Subcontr	Expenses	Task Subtotal	NOTES
CE-1 PM												
Project Management	1	8	24	0	0	0	0.5	32.5				
Coordination/Meet	1.1	4	12	0	0	0	0	16		\$237	\$3,785	
Construction Est	1.2		16	0	0	0	0.5	20		\$7	\$2,117	
System Design Mods	1.3	8	20	0	0	80	1	121	\$0	\$84	\$2,093	Includes Plan Reformat & Review
Specifications	1.4	20	24	0	0	0	4	48	\$0	\$120	\$5,550	
Bid Coordination	1.5	10	8	0	0	0	3	21	\$0	\$25	\$2,345	
Environmental	1.6	0	0	0	0	0	0			\$0	\$0	EIS Clearance-Complete
ROW Acquisition	1.7	25	16	0	0	0	3	44	\$0	\$75	\$5,190	Hall Easements -Issues
Manhours Subtotal		75	120	0	0	80	12	302.5	\$0	\$548	\$30,660	
Cost Est. Subtotal												
CE-2 CA/CEM												
Pre-Consl. Conf.	2.1	5	8	0	0	0	1	14	\$0	\$0	\$1,755	
Req'd Documentation	2.2	5	24	12	0	0	8	49	\$0	\$0	\$4,961	
Contract Admin.	2.4	5	60	16	0	0	8	89	\$0	\$800	\$10,293	
Progress Meetings	2.6	20	24	12	0	0	2	58	\$0	\$960	\$7,496	
Submittal Review	2.7	8	24	4	0	8	2	38	\$0	\$120	\$4,372	
Consultation (RFI's)	2.8	4	30	0	0	1	1	43	\$0	\$0	\$4,536	
Claim Support	2.10	4	6	2	0	6	1	19	\$0	\$0	\$1,838	
Manhours Subtotal		51	176	46	0	14	23	310	\$0	\$0	\$35,251	
Cost Est. Subtotal												
CE-3 Environmental												
Env. Compliance	3.1	17	60	24	0	4	4	105	\$0	\$960	\$12,537	
Inspection	3.2	16	80	650	12	16	16	798	\$29,500	\$10,500	\$118,064	Geotech Sub
QC Monitoring	3.3		24	0	60	2	2	86	0	\$1,140	\$7,780	
Manhours Bid & Des.		33	164	674	0	24	22	989	\$0	\$29,500	\$138,381	
Cost Subtotal												
CE-4 Surveying												
Control & Review	4.1	1	0	0	8	0	0	9	\$0	\$0	\$220	Re-establish Control for
Const. Survey	4.2	2	4	16	72	16	4	114	\$0	\$1,980	\$16,114	Contractor's Surveyor
Manhours Bid & Des.		3	4	16	80	16	4	123	\$0	\$0	\$2,200	Quantity Survey
Cost Subtotal												
CE-5 Project Closeout												
Final Insp. & Closeout	5.1	16	60	16	0	4	4	96	\$0	\$0	\$384	
Record Drawings	5.2	2	4	4	0	16	1	28	0	\$65	\$2,352	
Final Documents	5.4	6	24	8	0	2	8	48	0	\$220	\$5,048	
Manhours Bid & Des.		18	88	28	0	18	13	172	\$0	\$0	\$669	
Cost Subtotal												

PROJECT TOTALS	183	552	764	88.5	80	152	74	1896.5	\$0	\$29,500	\$18,057	\$240,379
Hourly Rates	\$125	\$115	\$98	\$63	\$147	\$67	\$50					
Labor Totals	\$22,875	\$63,480	\$74,872	\$5,576	\$11,760	\$10,184	\$3,700	\$192,447				

Note: Survey Crew assumes prevailing wage

PORT OF NEWPORT INTERNATIONAL TERMINAL SHIPPING FACILITY
PROJECT NO. 112-100
PROJECT SCHEDULE
FEB 26, 2017

ACTIVITIES	21-Aug	28-Aug	4-Sep	11-Sep	18-Sep	25-Sep	2-Oct	9-Oct	16-Oct	23-Oct	30-Oct	8-Nov	13-Nov	20-Nov	27-Nov	4-Dec	11-Dec	18-Dec	25-Dec	1-Jan	8-Jan	
Contract Executed																						
FINAL DESIGN																						
SPECIFICATIONS & BID DOCUMENTS																						
FINAL DESIGN REVIEW																						
BID PROCESS																						
BID PERIOD																						
UPDATE PERMITS																						
AWARD & APPROVALS																						
EXECUTE CONTRACTS																						
PRECONSTRUCTION CONFERENCE																						
CONSTRUCTION																						
MOBILIZE TO SITE																						
EROSION CONTROL																						
CLEARING & GRUBBING																						
EARTHWORK																						
SUBMITTALS																						
MITIGATION CONST (OFF SITE)																						
UTILITY INSTALLATION																						
STORMWATER SYSTEM																						
WATERLINE CONST																						
OFFICE SITE CONSTRUCTION																						
BASE AGGREGATE INSTALLATION																						
PAVING																						
EQUIPMENT INSTALLATION																						
FINAL SEEDING & CLOSEOUT																						
OUTSIDE AGENCIES																						
CENTRAL LINCOLN PUD																						
CITY OF NEWPORT (WATER)																						
MITIGATION PLANNING																						

This is EXHIBIT A, consisting of 11 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .

Engineer's Services

Engineer Services are as specified in attachments 1, 2 & 3 (April 25, 2016 correspondence and attachments).

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below to the extent they are not inconsistent with attachments 1, 2 & 3.

PART 1 – BASIC SERVICES

A.1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables:

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A.1.02 Preliminary Design Phase

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A.1.03 Final Design Phase

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:
5. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents.

6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is as provided in attachments 1, 2 & 3. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A.1.04 Bidding or Negotiating Phase

A. After acceptance by Owner of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.

5. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A.1.05 Construction Phase

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. General Administration of Construction Contract. Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
2. Resident Project Representative (RPR). Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. Selecting Independent Testing Laboratory. Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. Pre-Construction Conference. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. Schedules. Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. Baselines and Benchmarks. As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. Visits to Site and Observation of Construction. In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on

information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

8. Defective Work. Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

9. Clarifications and Interpretations; Field Orders. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.

10. Change Orders and Work Change Directives. Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

11. Shop Drawings and Samples. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. Substitutes and “or-equal.” Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

13. Inspections and Tests. Require such special inspections or tests of Contractor’s work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer’s review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. Disagreements between Owner and Contractor. Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor’s work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor’s Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. Applications for Payment. Based on Engineer’s observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer’s representation to Owner, based on such observations and review, that, to the best of Engineer’s knowledge, information and belief, Contractor’s Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor’s being entitled to such payment appear to have been fulfilled in so far as it is Engineer’s responsibility to observe Contractor’s Work. In the case of unit price work, Engineer’s recommendations of payment will include final determinations of quantities and classifications of Contractor’s Work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor’s Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor’s Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer’s review of Contractor’s Work for the purposes of recommending payments nor Engineer’s recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor’s Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor’s compliance with Laws and Regulations applicable to

Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. Contractor's Completion Documents. Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.

17. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

18. Additional Tasks. Perform or provide the following additional Construction Phase tasks or deliverables:

19. Final Notice of Acceptability of the Work. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

B. Duration of Construction Phase. The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.

C. Limitation of Responsibilities. Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 Post-Construction Phase

A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:

1. Provide assistance in connection with the adjusting of Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.
3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications,

or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

16. Providing Construction Phase services beyond the original date for final completion of the Work.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the date stated in A1.05.B.

This is EXHIBIT B, consisting of 3 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated , .

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this

Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

This is EXHIBIT C, consisting of 3 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Standard Hourly Rates Plus Reimbursable Expenses Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows: *including*

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Subconsultant’s charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached as
3. The total compensation for services under Paragraph C2.01 is estimated to be \$_____ based on attachments 1, 2 & 3.
4. Engineer may alter the distribution of compensation between individual tasks of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
5. The total estimated compensation for Engineer’s services included in the breakdown by tasks as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Subconsultant’s charges.
6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Subconsultant’s charges.

C2.02 Compensation for Reimbursable Expenses

A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in _____.

B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. Expenses related to the Engineer's project support systems associated with telephone, fax equipment, computer equipment and related peripheral equipment shall be a reimbursable expense applied to the project as a Technology and Communications Charge rate per hour of project labor. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related and Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.05.

C2.03 Compensation for Additional Services

A. Owner shall pay Engineer for Additional Services as follows:

1. General. For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to a fee determined by the method of payment for Basic Services in Paragraph C2.01, negotiated between the Owner and Engineer for specific additional work tasks performed by the Engineer.

2. Serving as a Witness. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under Paragraph A2.01.A.19, at the employee's Standard Hourly rate (but compensation for time spent in preparing to testify in any such litigation, arbitration or proceeding will be on the basis provided in Paragraph C2.03.A.1). Compensation for Engineer's Subconsultants for such services will be on the basis provided in Paragraph C2.04

C2.04 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subconsultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.05.

B. Factors. The external Reimbursable Expenses and Engineer's Subconsultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts:

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof prior to exceedance, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is EXHIBIT D, consisting of 5 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated ,

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D1.01 Resident Project Representative

A. Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree. It is agreed that Engineer will provide RPR for approximately 2 months and in facilities less than an office.

B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. General: RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.

2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

This is EXHIBIT G, consisting of pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated ,

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. General Liability: 1,000,000
- General Aggregate: \$2,000,000.00
- Each Occurrence (Bodily Injury and Property Damage): \$1,000,000

c. Excess or Umbrella Liability \$1,000,000.00 (we have 2,000,000)

d. Automobile Liability \$1,000,000.00
Combined Single Limit ~~1,000,000~~

e. Professional Liability (Aggregate)
1. Each Claim Made \$1,000,000.00
2. ~~Each~~ \$2,000,000

Engineer shall deliver to Owner certificates of insurance evidencing the coverage indicated.

B. Owner shall not be required to provide certificates of insurance as evidence of coverage but shall maintain coverage as required by State and local law ordinances.

C. Owner agrees to include in construction contracts resulting from design services under this Agreement, provisions for satisfactory protection to the Owner and Engineer during the construction phase of the project.

we have
2,000,000
4,000,000 E.P.O
BUT GEO MAY HAVE
LESS, SO PREFER TO
LEAVE AS IS.

CE Services - Port of Newport - Industrial Site Development- FHWA Protocol.

Item of Work	Principal SPM	Project Manager CPM	Project Inspector CI	EIT Tech. QCCS	Survey Crew 2-MAN	Drafts-Person DS	Clerical	Manhours Subtotal	Computer	Subcontr	Expenses	Task Subtotal	NOTES
CE-1 PM													
Project Management	1	8	24	0		0	0.5	32.5				\$3,785	
Coordination/Meet	1.1	4	12	0	0	0	0	16			\$237	\$2,117	
Construction Est	1.2		16	0	3.5	0	0.5	20	\$0		\$7	\$2,093	
System Design Mods	1.3	8	20	0	12		80	121	\$0		\$84	\$9,550	Includes Plan Reformat & Review
Specifications	1.4	20	24	0	0	0	4	48	\$0		\$120	\$5,580	
Bid Coordination	1.5	10	8	0	0	0	3	21	\$0		\$25	\$2,345	
Environmental	1.6	0	0				0			\$0	\$0	\$0	EIS Clearance-Complete
ROW Acquisition	1.7	25	16	0	0	0	3	44	\$0	\$0	\$75	\$5,190	Hall Easements -issues
<i>Manhours Subtotal</i>		75	120	0	15.5	0	80	302.5					
<i>Cost Est. Subtotal</i>									\$0	\$0	\$548	\$30,660	
CE-2 CA/CEM													
Pre-Const. Conf.	2.1	5	8	0	0	0	1	14	\$0	\$0	\$160	\$1,755	
Req'd Documentation	2.2	5	24	12	0		8	49	\$0			\$4,961	
Contract Admin.	2.4	5	60	16		0	8	89			\$800	\$10,293	
Progress Meetings	2.6	20	24	12	0		2	58	\$0		\$960	\$7,496	
Submittal Review	2.7	8	24	4	0		2	38	\$0		\$120	\$4,372	
Consultation (RFI's)	2.8	4	30	0	0		8	43	\$0			\$4,536	
Claim Support	2.10	4	6	2	0		6	19	\$0			\$1,838	
<i>Manhours Subtotal</i>		51	176	46	0	0	14	310					
<i>Cost Est. Subtotal</i>									\$0	\$0	\$2,040	\$35,251	
CE-3 Environmental													
Env. Compliance	3.1	17	60	24			4	105	\$0	\$0	\$960	\$12,537	
Inspection	3.2	16	80	650	12		24	798	\$29,500	\$0	\$10,500	\$118,064	Geotech Sub
QC Monitoring	3.3		24	0	60		2	86	0	0	\$1,140	\$7,780	
<i>Manhours Bid & Des. Cost Subtotal</i>		33	164	674	72	0	24	989	\$0	\$29,500	\$12,600	\$138,381	
CE-4 Surveying													
Control & Review	4.1	1	0	0		8	0	9	\$0	\$0	\$220	\$1,521	Re-establish Control for Contractor's Surveyor
Const. Survey	4.2	2	4	16	0	72	16	114			\$1,980	\$16,114	Quantity Survey
<i>Manhours Bid & Des. Cost Subtotal</i>		3	4	16	0	80	16	123	\$0	\$0	\$2,200	\$17,635	
CE-5 Project Closeout													
Final Insp. & Closeout	5.1	16	60	16			4	96	\$0	\$0	\$384	\$11,052	
Record Drawings	5.2	2	4	4	1	0	16	28	0		\$65	\$2,352	
Final Documents	5.4	6	24	8	0		2	48	0	0	\$220	\$5,048	
<i>Manhours Bid & Des. Cost Subtotal</i>		18	88	28	1	0	18	172	\$0	\$0	\$669	\$18,452	
PROJECT TOTALS		183	552	764	88.5	80	152	1896.5	\$0	\$29,500	\$18,057	\$240,379	
Hourly Rates		\$125	\$115	\$98	\$63	\$147	\$67	\$50					
Labor Totals		\$22,875	\$63,480	\$74,872	\$5,576	\$11,760	\$10,184	\$3,700	\$192,447				

Note: Survey Crew assumes prevailing wage

**PORT OF NEWPORT
RESOLUTION NO. 2017-09**

**A RESOLUTION AUTHORIZING A LOAN FROM THE SPECIAL PUBLIC WORKS FUND BY ENTERING INTO
A FINANCING CONTRACT WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY**

WHEREAS, the Port of Newport Board of Commissioners (the “Governing Body”) of the Port of Newport (the “Recipient”); and

WHEREAS, the Recipient is a “municipality” within the meaning of Oregon Revised Statutes 285B.410(9); and

WHEREAS, Oregon Revised Statutes 285B.410 through 285B.482 (the “Act”) authorize any municipality to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (the “IFA”) to obtain financial assistance from the Special Public Works Fund; and

WHEREAS, the Recipient has filed an application with the IFA to obtain financial assistance for a “development project” within the meaning of the Act; and

WHEREAS, the IFA has approved the Recipient’s application for financial assistance from the Special Public Works Fund pursuant to the Act; and

WHEREAS, the Recipient is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, number L16012, substantially in the form attached hereto as Exhibit 1. The project is described in Exhibit C to that Financing Contract (the “Project”); and

WHEREAS, Notice relating to the Recipient’s consideration of the adoption of this Resolution was published in full accordance with the Recipient’s charter and laws for public notification; NOW THEREFORE,

1. Financing Loan Authorized. The Governing Body authorizes the General Manager (the “Authorized Officer”) to execute on behalf of Recipient the Financing Contract and such other documents as may be required to obtain financial assistance (the “Financing Documents”), including a loan from the IFA, on such terms as may be agreed upon between the Authorized Officer and IFA, on the condition that the principal amount of the loan from the IFA to the Recipient is not in excess of \$2,000,000 and an interest rate of 3.30% (or 2.30% if certain contract conditions are met) per annum. The proceeds of the loan from the IFA will be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.

2. Sources of Repayment. Amounts payable by the Recipient are payable from the sources described in section 4 of the Financing Contract and the Oregon Revised Statutes Section 285B.437(3) which include:

- (a) The revenues of the project, including special assessment revenues;
- (b) Amounts withheld under ORS 285B.449 (1);
- (c) The general fund of the Recipient; or
- (d) Any other source.

3. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Recipient may enter into covenants to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as may be required by the IFA or its bond counsel to protect the tax-exempt status of such interest.

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS this 27th day of June, 2017.

ATTEST:

Walter Chuck, President

Patricia Patrick-Joling, Secretary/Treasurer

SPECIAL PUBLIC WORKS FUND DEVELOPMENT PROJECT
FINANCING CONTRACT

Project Name: Port of Newport International Terminal Shipping Facility

Project Number: L16012

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), and the Port of Newport (“Recipient”) for financing of the project referred to above and described in Exhibit C (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C	Project Description
Exhibit D	Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost” means \$6,578,879.

“Interest Rate” means 3.3% per annum, computed by counting actual days occurring in a 360-day year.

“Loan Amount” means \$2,000,000.

“Maturity Date” means the 24th anniversary of the Repayment Commencement Date.

“Payment Date” means December 1.

“Project Closeout Deadline” means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline” means 36 months after the date of this Contract.

“Repayment Commencement Date” means the first Payment Date to occur after the Project Closeout Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project as a non-revolving loan (the “Loan”) in an aggregate principal amount not to exceed the Loan Amount.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.

SECTION 4 - LOAN PAYMENT; PREPAYMENT

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. If, on or before the fifth anniversary of the date of this Contract, Recipient realizes two value-added and/or new commodities for export or short-sea-shipping that utilize the completed Project (lay-down area), then OBDD shall, promptly after the satisfaction of that condition, reduce the Interest Rate on the unpaid principal of the Loan by one percentage point. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. The Recipient authorizes OBDD to calculate accrued interest for purpose of determining payments under this Contract including, but not limited to, loan amortization schedule, loan prepayment, and loan payoff. Absent manifest error, such calculations will be conclusive.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full. If the Interest Rate is reduced as described in section 4.B above, OBDD may, at its discretion, reamortize the unpaid principal of the Loan over the Loan’s remaining term to reflect the reduced interest rate, and adjust the yearly payment amount accordingly.

D. Loan Prepayments.

- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
- (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.

E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.

SECTION 5 - CONDITIONS PRECEDENT

A. Conditions Precedent to OBDD's Obligations. The OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient.
- (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
- (3) A Line of Credit Trust Deed; Assignment of Rents; Security Agreement and Fixture Filing recorded in the real estate records of Lincoln County, Oregon, granting OBDD a lien on the real property described in Exhibit B ("Collateral"), subject only to the Permitted Liens, to secure repayment of the Loan and the performance of Recipient's obligations hereunder.
- (4) A Certificate & Indemnification Regarding Hazardous Substances regarding the Collateral.
- (5) An ALTA standard mortgagee title insurance policy issued by Western Title & Escrow, Newport, OR, for the Collateral.
- (6) An opinion of Recipient's Counsel.
- (7) Such other certificates, documents, opinions and information as OBDD may reasonably require.

B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:

- (1) There is no Default or Event of Default.
- (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
- (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Special Public Works Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.

- (4) The OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
- (5) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
- (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
 - (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.

- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- E. No Defaults.
 - (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, or that relate to the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:
 - (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.

- (2) State labor standards and wage rates found in ORS chapter 279C.
- (3) OAR 123-042-0165 (5) requirements for signs and notifications.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) Provide OBDD with copies of all plans and specifications relating to the Project, and a timeline for the bidding/award process, at least ten (10) days before advertising for bids.
- (2) Provide a copy of the bid tabulation and notice of award to OBDD within ten (10) days after selecting a construction contractor.
- (3) Permit OBDD to conduct field engineering and inspection of the Project at any time.
- (4) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (5) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the OBDD in writing.
- (6) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, OBDD will be the final judge of the Project's completion.
- (7) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.

D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a "qualified management contract" as described in IRS Revenue Procedure 97-13, as amended or supplemented.

E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.

F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.

- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of OBDD's costs related to such assumption, and receipt by OBDD of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by OBDD to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, prepay the entire outstanding balance on the Loan in accordance with section 4.D.(1), unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.
- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit OBDD and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Loan proceeds, all construction contracts and invoices detailing the costs paid from Loan proceeds, and all contracts related to the uses of the Project, including leases, management contracts and service contracts that relate to the use of the Project.
- L. Diversification Plan and Economic Benefit Data. Recipient's Export Terminal TIGER VII Application related to the Project states that "the new site infrastructure will accommodate short-term and long-term job growth within a federally designated economically distressed area, and

support growth in Oregon Statewide and Nation Business Clusters, including: Processed Food and Beverage Products, Wood and Other Forest Products, Agriculture and Wave Energy Research & Development.” Accordingly, Recipient shall:

(1) No later than one year after the date of this Contract and to promote the competitiveness of the Project and ensure that it remains a long-term trade asset for the region, complete and submit to OBDD a written action plan detailing Recipient’s strategy for attracting a diversity of commodities at the Project (lay-down area). The plan must include at a minimum: timeframe for diversification, targeted commodities, key partners, barriers to diversification, marketing strategy and timeframe, and a funding strategy.

(2) As requested by OBDD, submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.

- M. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses...” The OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- N. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- O. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- P. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- Q. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting,

assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

R. Exclusion of Interest from Federal Gross Income and Compliance with Code.

- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. OBDD may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
- (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be “private activity bonds” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of OBDD, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be “disproportionate related business use” or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of OBDD, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
- (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.
- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist OBDD to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to OBDD such amounts as may be directed by OBDD to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse OBDD for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon OBDD’s request, Recipient shall furnish written information regarding its investments and use of Financing Proceeds, and of any facilities financed or refinanced therewith, including providing OBDD with any information and documentation that OBDD reasonably determines is

necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.

- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

SECTION 9 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of Section 103 and Sections 141 through 150 of the Code.
- D.
 - (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
 - (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
 - (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
 - (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
 - (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating OBDD's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.
 - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, to pay interest due on the Loan; then, to pay principal due on the Loan; and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.

- (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
- (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:

- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Contract or any other Financing Document must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to OBDD: Assistant Director, Economic Development
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: Port Manager
Port of Newport
600 SE Bay Blvd
Newport OR 97365-4338

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees

cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.

- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through the
Oregon Business Development Department



PORT OF NEWPORT

By: _____
Chris Cummings, Assistant Director
Economic Development

By: _____
Walter Chuck, Commission President

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ David Elott as per email dated 14 April 2017
David Elott, Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by OBDD dated 2 June 2016.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Permitted Liens” means the permitted liens listed in Exhibit B.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - SECURITY

- A. Full Faith and Credit Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from and secured by all lawfully available funds of Recipient.
- B. Real Property Collateral. Approximately 8.95 acres of real property located in Lincoln County, OR, with address at 1430 SE Bay Blvd., Newport, OR 97365, and more particularly described as:

Beginning at a point 70.21 feet South and 743.66 feet West of the Meander Corner on the East line of Section 9, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, said point also being on the Westerly boundary of Northwest Natural Gas Company property and the Southerly boundary of County Road No. 515 right-of-way; thence along the Northwest Natural Gas property boundary South 13° 44' 45" East, 198.23 feet; thence South 3° 34' 30" East, 380.17 feet; thence leaving said boundary South 79° 05' 40" West, 724.54 feet to the Easterly boundary of access road right-of-way; thence along said right-of-way boundary North 3° 34' 30" West, 470.22 feet to the Southern boundary of County Road No. 515 right-of-way; thence along said county road right-of-way the following courses and distances: North 65° 23' 00" East, 120.57 feet; South 0° 22' 45" East, 28.66 feet; North 68° 44' 27" East, 11.47 feet; North 59° 08' 15" East, 353.30 feet; North 77° 30' 00" East, 113.80 feet; and North 86° 29' 15" East, 135.59 feet to the Northwest Natural Gas Company property boundary and the point of beginning.

Permitted liens include all exceptions listed in that Preliminary Title Report, Order # WT0140122, prepared on March 22, 2017 by Western Title & Escrow, 255 SW Coast Highway, Suite 100, Newport, OR 97365.

EXHIBIT C - PROJECT DESCRIPTION

The Recipient shall complete improvements to create a new International Terminal Shipping Facility on its property located at 1430 SE Bay Blvd., Newport, OR 97365, including but not limited to the following components:

- Site preparation
- Drainage
- Underground Utilities
- Water improvements
- Sanitary sewer improvements
- Sub-base and Paving

EXHIBIT D - PROJECT BUDGET

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Engineering	\$218,000	\$0
Construction	991,409	4,578,879
Contingency	647,391	0
Legal	15,700	0
Construction Management	127,500	0
Total	\$2,000,000	\$4,578,879