

PORT OF NEWPORT COMMISSION EXECUTIVE SESSION & SPECIAL MEETING AGENDA

Monday, April 24, 2017, 12:00 noon
South Beach Activities Room
2120 SE Marine Science Drive, Newport, OR 97365

I. EXECUTIVE SESSION PURSUANT TO ORS 192.660(2)(e) – DELIBERATIONS TO NEGOTIATE REAL PROPERTY TRANSACTIONS. *No decisions will be made in Executive Session.*

Special Meeting to convene immediately following Executive Session.

- I. Call to Order
- II. International Terminal Shipping Facility Update
 - A. Agreement with USDOT for TIGER grant p 9
 - B. Resolution Accepting State of Oregon IFA loan..... p 31
 - C. Agreement with Silvan Forestry for capital contribution..... p 49
 - D. Lease with Teevin Bros. for 9-acre parcel..... p 55
 - E. Agreement with Rondys for property management p 63
 - F. Scope of Work and Contract with Stuntzner Engineering for engineering/project management services
- III. Public Comment
- IV. Adjournment

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

The Port Newport South Beach Marina and RV Park Activity Room 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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2017.04.24 Special Commission Meeting

Sample Announcement for Executive Session:

The Port of Newport Board of Commissioners will now meet in executive session pursuant to ***ORS 192.660(2)(e)***, which allows the Commission to meet in executive session to ***deliberate to negotiate real property transactions.***

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on or otherwise disclose any of the deliberations or anything said about these subjects during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.

OLD BUSINESS AGENDA ITEM

DATE: 4/24/2017
RE: International Terminal Shipping Facility / Real Property Transactions
TO: Port of Newport Board of Commissioners
ISSUED BY: Kevin Greenwood, General Manager

FINANCING UPDATE

TIGER Marine Administration:

- Agreement received and ready for Commission approval. Document shared with Commission on 4/17.

IFA Loan:

- Agreement received and ready for Commission approval. Document 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.

Silvan Forest LLC:

- Pete Gintner has completed the Port's draft and the agreement was shared with the Commission on 4/17. It was also shared with Silvan and I have not heard comments back.
- I was asked about the \$60k charge for the Port's use of Silvan's money. On an unsecured loan, I think 6% interest would be the best the Port could do. I compared the 6% interest on the remaining annual balance projection to the \$60k cost and the difference is about \$70k in the Port's favor. (\$360k to \$430k).

Teevin Bros.:

- Gintner is working on lease.

RISK ASSESSMENT UPDATE

- I met with Commissioner Beck, his CPA/Attorney Dick Kilbride and Walter Chuck on Friday, April 14th to listen to concerns about the financing plan.
- I believe that the risk is shared jointly between the Port and Silvan. If something happened that drastically changed the market, Silvan would not be paid back on their invest and the Port would have to make the \$117k annual payment. That being said, the Port would have a \$6.5-million shipping facility and could certainly market other user to the facility.
- Neither Teevin nor the Port will have any exclusivity clauses with Silvan.
- The Feasibility Study from June 2016 also reported strong findings for log exports from Newport.
 - Teevin is a proven operator
 - Teevin paid \$300k from engineering work for the lease option.
 - Sustainable 10 shipments per year within 20-40 miles of Newport. Includes less than 5% of the privately held timber.
 - Teevin's equipment is the barrier to entry. Having their equipment in Newport makes all other products and users possible.
 - Even though the Asian export market is less than in past years, demand still currently exists.
 - Transportation cost savings harvesting from Newport area/
 - Opens up potential for industrial park and other market support (private and urban renewal).
 - Log market is valid.

RONDYS UPDATE

- Easements have been forwarded to Evan Hall for review.
- Wetland mitigation site will be a deed restriction on Rondys property and will be described after the site is built.
- Dredge Spoils removal will also be a component, however, they will be retaining most of the material for construction on their property.
- Port will berm top soil along southern portion of their property. We will not be trucking top soil from site.

ENGINEERING UPDATE

- Easements have been completed.
- Wetland mitigation site will be a deed restriction on Rondys property.
- Dredge Spoils removal will also be a component, however, they will be retaining most of the material for construction on their property.

TENTATIVE TIMELINE

- Final Agreement w/ TIGER..... May 1, 2017
- Final Agreement w/ IFA..... May 1, 2017
- Final Agreement w/Silvan..... May 1, 2017
- Lease w/Teevin..... May 1, 2017
- Receive SOW from engineer for (1) final engineering, (2) bid development, (3) project management..... April 15, 2017
- Distribute Bid documents May 15, 2017
- Award General Contract..... July 1, 2017
- Project Completionlate fall 2017

TERMINAL USERS GROUP UPDATE

Draft Operations Plan:

- Pete Zerr, Terminal Manager, has returned from medical leave. However, he has been working on the draft document which should be completed for internal review during the week of the commission meeting.
- Staff will produce a PowerPoint and we can begin scheduling for a meeting by mid-May.

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UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE
CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT, 2015
(PUB. L. 113-235, DECEMBER 16, 2014)
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS
DISCRETIONARY GRANT PROGRAM
(FY 2015 TIGER DISCRETIONARY GRANTS)

PORT OF NEWPORT

INTERNATIONAL TERMINAL SHIPPING FACILITY

MARAD FY 2015 TIGER Grant No. DTMA91G1600004

7069M7143O 2016 1PON170004 0000150002041010 61006600 – \$2,000,000.00

This agreement is between the United States Department of Transportation (*the “USDOT”*) and the Port of Newport (*the “Recipient”*). It reflects the selection of the Recipient for an award under the provisions of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235, December 16, 2014), regarding National Infrastructure Investments, as described in the Notice of Funding Availability for the Department of Transportation’s National Infrastructure Investments Under the Consolidated and Further Continuing Appropriations Act, 2015, 80 FR 18283 (April 3, 2015) (*the “NOFA”*). In this agreement, “**FY 2015 TIGER Discretionary Grant**” means an award under those provisions.

ARTICLE 1. AWARD TERMS AND CONDITIONS

- 1.1 **Operating Administration.** The Maritime Administration (“**MARAD**”) will administer this agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means MARAD.
- 1.2 **Purpose.** The purpose of this award is to advance capital investments in surface transportation infrastructure that will have a significant impact on the nation, a metropolitan area, or a region. The parties will achieve that purpose by completing the project that was described in the Recipient’s technical application, titled International Terminal Shipping Facility, as modified by the negotiated provisions on the project’s material terms and conditions, including the attachments referenced in section 1.8.
- 1.3 **Federal Award Amount.** The USDOT hereby awards a FY 2015 TIGER Discretionary Grant in the amount of Two Million Dollars (\$2,000,000) for the period of performance. The USDOT shall not provide funding greater than this amount under this agreement. The Recipient acknowledges that USDOT is not liable for payments that exceed this amount.

1.4 **Period of Performance.** The period of performance for this award begins on the date of this agreement and ends on period of performance end date that is listed in section 2.2. Under 2 CFR 200.309, the Recipient shall not charge to this award costs that are incurred after the period of performance.

1.5 **Urban or Rural Designation.** Based on information that the Recipient provided to the USDOT, including the technical application, the USDOT hereby designates the project to be a project in a rural area, as defined in the NOFA. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

1.6 **Fund Obligation.**

This agreement obligates the total amount of funds stated in section 1.3.

1.7 **Federal Award Identification Number.** The USDOT identifies this award with the following federal award identification number:

DTMA91G1600004

1.8 **Attachments.** This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Schedule
Attachment C	Estimated Project Budget
Attachment D	Performance Measurement Table

ARTICLE 2. PROJECT AND RECIPIENT INFORMATION

2.1 **Summary of Project’s Statement of Work.** (See Attachment A for additional details).

The project will include, grading of property, development of 10-acre laydown area with asphalt, fencing, lighting, small work shack, storm water collection system, transportation improvements off SE Bay Blvd. (a minor arterial), and extension of water and sewer lines.

2.2 **Summary of Project’s Estimated Schedule.** (See Attachment B for additional details).

Actual Completion of NEPA	April 13, 2017
Planned Completion of Final Design:	May 1, 2017
Planned PS&E Approval:	N/A
Planned Construction Start Date:	August 1, 2017
Planned Construction Substantial Completion Date:	January 31, 2018
Planned Period of Performance End Date:	April 30, 2018

Planned Project Closeout Date

July 31, 2018

2.3 **Summary of Project's Estimated Budget.** (See Attachment C for additional details).

TIGER Grant Funds and Additional Sources of Project Funds:

TIGER Discretionary Grant Amount:	\$2,000,000	30.4%
Other Federal Funds (if any):	\$	
State Funds (Via Loan):	\$2,000,000	30.4%
Local Funds (Port of Newport):	\$2,578,879.30	39.2%
Other Funds (if any):	\$	%
Total Project Cost:	\$6,578,879.30	100%

2.4 **Recipient Cost Share Certification.**

As negotiated, the Recipient hereby certifies that not less than Four Million Five Hundred and Seventy-Eight Thousand Eight Hundred and Seventy-Nine Dollars and Thirty Cents (\$4,578,879.30) in non-Federal funds are committed to fund the project.

2.5 **Project's State and Local Planning Requirements.**

Not applicable

2.6 **Project's Environmental Approvals and Processes.**

Environmental Documentation Type, Titles and Date: Environmental Assessment, April 13, 2017

Environmental Decision Type and Date: 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.

2.7 **Recipient's and any Subrecipient's Unique Entity Identifiers.**

Dun and Bradstreet Data Universal Numbering System No. (the "**DUNS No.**") of the Recipient: 05-303-2165

Name of any First-Tier Subrecipients (if applicable – to be reported if/when identified. If not applicable please note is N/A): N/A

DUNS No. of First-Tier Subrecipient (if applicable – to be reported if/when identified): N/A

2.8 **Recipient Contacts.**

Kevin M. Greenwood, General Manager
Port of Newport
600 SE Bay Blvd.
Newport, OR 97365
(541) 265-7758
kgreenwood@portofnewport.com

Karen Hewitt, Administrative Assistant
Port of Newport
600 SE Bay Blvd.
Newport, OR 97365
(541) 265-7758
khewitt@portofnewport.com

ARTICLE 3. GENERAL REPORTING TERMS

- 3.1 **Report Submission.** The Recipient shall send all reports required by this agreement to all of the USDOT contacts who are listed in Section 9.1.
- 3.2 **Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 3.3 **Reporting as History of Performance.** Under 2 C.F.R 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this agreement requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.
- 3.4 **Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (*the "OMB"*). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0563.

ARTICLE 4. PROGRESS REPORTING

4.1 **Quarterly Project Progress Reports.** On or before the 20th day of the first month of each calendar year quarter and until Project Closeout, the Recipient shall submit to the USDOT a Quarterly Project Progress Report with the form and content described in Exhibit H. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report in the second calendar year quarter that begins after the date of this agreement.

4.2 **Annual Budget Review and Program Plan.**

(a) From the date of this agreement until Project Closeout, on or before the 60th day before the end of each Agreement Year, the Recipient shall submit to the USDOT an Annual Budget Review and Program Plan that contains:

- (1) a detailed schedule of activities and milestones for the next Agreement Year;
- (2) an estimate of specific performance objectives, including forecasted expenditures, for the next Agreement Year; and
- (3) a comparison of the approved project budget with an updated estimate of the project costs.

In this agreement, “**Agreement Year**” means 12 months beginning on the date of this agreement or an anniversary of the date of this agreement.

(b) If the Recipient’s updated estimate of the total project costs exceeds the total project costs in the approved project budget, then the Recipient shall:

- (1) include in the Annual Budget Review and Program Plan either documentation of committed funds to cover the increased costs or a written plan describing how the Recipient will cover the increased costs; and
- (2) meet with the USDOT to discuss the Annual Budget Review and Program Plan.

4.3 **Closeout Reports.** No later than 90 days after the project completion date the Recipient shall:

- (1) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports; and
- (2) provide a report comparing the final work, schedule, and budget to the statement of work described in section 2.1, the schedule described in section 2.2, and the budget described in section 2.3.

4.4 **Project Closeout.** In this agreement, “**Project Closeout**” means the date that the USDOT notifies the Recipient that the Project is closed out. Under 2 CFR 200.343. Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in section 4.3. :

ARTICLE 5. PERFORMANCE REPORTING

- 5.1 **Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment D.
- 5.2 **Pre-project Performance Measurement Report.** The Recipient shall submit to the USDOT, on or before the Pre-project Report Date that is stated in Attachment D, a Pre-project Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Pre-project Measurement Date that is stated in Attachment D; and
 - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 5.3 **Interim Performance Measurement Reports.** After project substantial completion date, the Recipient shall submit to the USDOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment D, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table.
- 5.4 **Project Outcomes Report.** The Recipient shall submit to the USDOT, on or before the Project Outcomes Report Date that is stated in Attachment D, a Project Outcomes Report that contains:
- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;
 - (2) data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Project Outcomes Measurement Date that is stated in Attachment D; and
 - (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

ARTICLE 6. AGREEMENT MODIFICATIONS

- 6.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 6.2 **Limited Unilateral Modifications.**
- (a) The Recipient may update the contacts who are listed in section 2.8 (Recipient Contacts) by written notice to all of the USDOT contacts who are listed in section 9.1.

(b) The USDOT may update the contacts who are listed in section 9.1 (USDOT Contacts) by written notice to all of the Recipient contacts who are listed in section 2.8.

6.3 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under section 6.1 or section 6.2. If an amendment, modification, or supplement is not permitted under section 6.1 and not permitted under section 6.2, it is void.

ARTICLE 7. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

7.1 **Statement of Work Changes.** If the project's activities differ from the statement of work that is described in section 2.1 and Attachment A, then the Recipient shall request a modification of this agreement to update section 2.1 and Attachment A.

7.2 **Schedule Changes.** If the project's substantial completion date changes to a date that is more than three months after the substantial completion date listed in section 2.2 or a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.2, then the Recipient shall request a modification of this agreement to update section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this agreement to update section 2.2 and Attachment B unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.

7.3 Budget Changes.

(a) If any of the budget amounts that are listed in section 2.3 changes from the amounts listed in that section, then the Recipient shall request a modification of this agreement to update section 2.3 and Attachment C. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment C unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.

(b) If the actual eligible project costs are less than the "Total Project Cost" stated in section 2.3, then the Recipient may reduce non-TIGER funds contributed to the project.

ARTICLE 8. TERMINATION AND EXPIRATION

8.1 **USDOT Termination.** The USDOT may, in its sole discretion, terminate this agreement and all of its obligations under this agreement if any of the following occurs:

(1) The Recipient fails to obtain or provide any non-TIGER Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with sections 2.2 and 2.3;

(2) The Recipient fails to begin construction before September 1 2017;

(3) The Recipient fails to begin expenditure of award funds by October 15, 2017;

(4) The Recipient fails to finish construction (substantial completion) by April 30, 2018;

- (5) The Recipient fails to meet the conditions and obligations specified under this agreement, including a material failure to comply with the schedule in section 2.2 even if it is beyond the reasonable control of the Recipient; or,
- (6) The USDOT, in its sole discretion, determines that termination of this agreement is in the public interest.

8.2 **Closeout Termination.** This agreement terminates on Project Closeout.

8.3 **Fund Expiration.**

- (a) The Recipient shall liquidate all obligations under this award not later than 90 days after the period of performance end date that is listed in section 2.2. The Recipient acknowledges that this period of availability for liquidation ends before the statutory expenditure deadline identified in section 8.3(c).
- (b) Liquidation and adjustment of funds under this agreement follow the requirements of 2 CFR 200.343–.345.
- (c) Outstanding FY 15 TIGER Discretionary Grant balances are canceled by statute after September 30, 2022, and are then unavailable for any purpose, including adjustments and expenditures.

8.4 **Reporting Survival:** The reporting requirements set forth in articles 4 and 5 of this agreement survive the termination of this agreement and the expiration of award funds.

ARTICLE 9. USDOT CONTACTS

9.1 **USDOT Contacts.** Except as authorized by the USDOT under section 3.2, the Recipient shall send all notices, reports, and information required by this agreement to all of the following contacts:

Judy Bowers
Sr. Grants Officer, Office of Acquisition
DOT – Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
MAR 380
W26, 418
Mailstop 5
(202) 366-1913
judy.bowers@dot.gov

and

Robert Bouchard
Director, Office of Infrastructure Development and Congestion Mitigation
DOT – Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
MAR 510
W21-308
Mailstop 3
(202) 366-5076
robert.bouchard@dot.gov

and

David Bohnet
Grant Specialist, Office of Infrastructure Development and Congestion Mitigation
DOT – Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
MAR 510
W21-226
Mailstop 3
(202) 366-0586
david.bohnet@dot.gov

and

OST TIGER Discretionary Grants Coordinator
United States Department of Transportation
Office of the Secretary
1200 New Jersey Avenue, SE
Washington, DC 20590
(202) 366-8914
TIGERGrants@dot.gov

ARTICLE 10. ADDITIONAL TERMS AND CONDITIONS

- 10.1 **Catalog of Federal Domestic Assistance Information.** This award is under the program titled “National Infrastructure Investments,” with number 20.933 in the Catalog of Federal Domestic Assistance.
- 10.2 **Research and Development Designation.** This award is not for research and development.
- 10.3 **Exhibits.** This agreement includes the following exhibits as integral parts located at: <https://maradpublicsp.marad.dot.gov>
- | | |
|-----------|------------------------------|
| Exhibit A | Legislative Authority |
| Exhibit B | General Terms and Conditions |

Exhibit C	Applicable Federal Laws and Regulations
Exhibit D	Grant Assurances
Exhibit E	Responsibility and Authority of the Recipient
Exhibit F	Reimbursement of Project Costs
Exhibit G	Grant Requirements and Contract Clauses
Exhibit H	Quarterly Progress Reports: Format and Content

10.4 **Construction.** If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 12, then the provision in Articles 1 – 12 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

ARTICLE 11. SPECIAL GRANT REQUIREMENTS

11.1 Reimbursement Requests.

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under section 1.6 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement of a cost more than 180 days after that cost was incurred, the USDOT may deny the request for being untimely.
- (c) The Recipient shall request reimbursement by completing forms in iSupplier, which is on-line and paperless. The USDOT may deny a payment request that is not submitted through iSupplier.
- (d) The Recipient shall complete training on using iSupplier before submitting a request for reimbursement. To encourage the Recipient to complete this training, the USDOT provides the following additional information, which may change after execution of this agreement:
 - (1) The Recipient may access the training from the USDOT “Delphi eInvoicing System” webpage at <http://www.transportation.gov/cfo/delphi-einvoicing-system.html>. The training is linked on the right side of that page under the heading “Web-Based Training (WBT).” The Recipient should click on “Grant Recipient WBT” to access the training, which is also available directly at https://www.transportation.gov/sites/all/dot_assets/DOT_GR_04-24-2012/lessons/index.html.
 - (2) A username and password is not required to access the on-line training.
 - (3) The training is currently available and will be accessible 24/7.
 - (4) The training will take approximately 1 hour to complete.

- (e) After the Recipient completes training on using iSupplier, the Recipient shall request and complete the External User Access Request form to receive a username and password. The Recipient can request the form by sending an email to: Judy Bowers at judy.bowers@dot.gov.
- (f) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF-270 (available at <http://www.grants.gov/vi/web/grants/forms/post-award-reporting-forms.html#sortBy=1>) to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK and the Program Office, DOT/MAR 510 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, ESC will certify and forward the request for reimbursement to the payment office.
- (g) Requests for reimbursement and required supporting documents should be sent via e-mail to the following e-mail address: maradinvoices@faa.gov (repository subject to change, upon notice to Recipient). Include the request for reimbursement and supporting documents as an attached PDF document. Include in the e-mail subject line the following:

Requests for Reimbursement #
Grant Award Number
Name of your Company/Organization
Attention: (Agreement Specialist's name)

Example: Invoice No. 1 of Grant No. DTFH61-08-H-00001 ABC Corporation,
Attention: John Doe

Note: If the request for reimbursement and supporting documents exceed 8 MB as an e-mail attachment, the recipient must select one of two non-electronic submission options presented below:

- (1) Requests for reimbursement may be submitted via regular U.S. Postal Service to the following P.O. Box address:

A/P Branch, AMZ-150
PO Box 25710
Oklahoma City, OK 73125

- (2) Requests for reimbursement submitted via an overnight service must use the following physical address because delivery services other than the U.S. Postal Service will not deliver to the P.O. Box address noted above:

AMZ-160, HQ Bldg., Room 272F
6500 S. MacArthur Blvd.

11.2 Buy American Requirements.

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The project is a public work of the Federal Government under 41 U.S.C. § 8301.
- (b) This section 11.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
 - (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907;
 - (2) the Recipient may use information technology that is a commercial item;
 - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
 - (4) the Recipient may use foreign construction materials if the USDOT has authorized their use under section 11.2(d).
- (c) If the Recipient uses foreign construction material in violation of section 11.2(b), the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under section 8.1 and 2 C.F.R. 200.338.
- (d) The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under section 6.1, if the USDOT determines that:
 - (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
 - (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (3) the cost of domestic construction material is unreasonable.
 - The cost of a domestic construction material is unreasonable under section 11(c)
 - (3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.
- (e) The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under section 11.2(d). If the Recipient makes a request under this section 11.2(e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:
 - (1) a description of the foreign and domestic construction materials;

- (2) unit of measure;
 - (3) quantity;
 - (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);
 - (5) time of delivery or availability;
 - (6) location of the construction project;
 - (7) name and address of the proposed supplier; and
 - (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for a waiver under section 11.2(c);
 - (9) if the Recipient requests authorization under section 11.2(c)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
 - (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.
- (f) The Recipient acknowledges that (1) this agreement is not a Government procurement contract; (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.
- (g) In this section 11.2, the following definitions apply:

“Commercially available off-the-shelf (COTS) item”

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item as defined by 48 C.F.R. § 2.101;
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

“Construction material” means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“Cost of components” means—

- (1) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States, the District of Columbia, and outlying areas.

11.3 **Final Section.** There are no other special grant requirements for this project.

ARTICLE 12. EXECUTION

12.1 **Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties shall execute this agreement in triplicate and intend each countersigned original to have identical legal effect.

12.2 **Effective Date.** This agreement is effective when fully executed by authorized representatives of the Recipient and the USDOT. The Recipient shall execute this agreement and then submit three original signed copies of the agreement to the USDOT for execution. This instrument constitutes a FY 2015 TIGER Discretionary Grant when it is signed and dated by the authorized official of the USDOT.

EXECUTION BY THE USDOT

Executed this _____ day of _____, 2017.

Signature of USDOT's Authorized Representative

Name of USDOT's Authorized Representative

Title

EXECUTION BY THE PORT OF NEWPORT

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this agreement.

Executed this _____ day of _____, 2017.

Signature of Recipient's Authorized Representative

Name of Recipient's Authorized Representative

Title

ATTACHMENT A STATEMENT OF WORK

The project will create a 10 acre laydown area to accommodate cargo at the Port of Newport. Elements of the project include:

- Grading a 10 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

**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:	May 15, 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:	July 1, 2017
Planned Construction Start Date:	August 1, 2017
Planned Construction Substantial Completion Date	January 31, 2018
Planned Period of Performance End Date	April 30, 2018
Planned Project Closeout Date:	July 31, 2018

**ATTACHMENT C
ESTIMATED PROJECT BUDGET**

ACTIVITY	FY 2015 TIGER funds	State Funds (via Loan)	Local Funds (Port of Newport)	Project Cost
PROJECT MANAGEMENT (CA/CM)				
Subtotal Engineering/Utility Cost	\$195,169.70	\$195,169.70	\$251,659.60	\$641,999.00
CONSTRUCTION - Lay down area, small work shack, improvements to SE Bay Boulevard, lighting and fencing.				
Mobilization	\$143,159.02	\$143,159.02	\$184,594.96	\$470,913.00
Site Work and Fence – Grading 10-acre area	\$332,953.34	\$332,953.34	\$429,323.32	\$1,095,230.00
Underground Utilities, Lighting & Conduit	\$98,643.60	\$98,643.60	\$127,195.00	\$324,482.20
Storm Drainage	\$90,442.34	\$90,442.34	\$116,619.92	\$297,504.60
Water-Misc.	\$50,825.52	\$50,825.52	\$65,536.46	\$167,187.50
Sanitary Sewer Improvements	\$15,963.20	\$15,963.20	\$20,583.60	\$52,510.00
Sub Base and Paving	\$1,052,475.07	\$1,052,475.07	\$1,357,102.86	\$3,462,053.00
Layout Work	\$20,368.21	\$20,368.21	\$26,263.58	\$67,000.00
Subtotal Construction Cost	\$1,804,830.30	\$1,804,830.30	\$2,327,219.70	\$5,936,880.30
<u>Total Project Cost</u>	\$2,000,000.00	\$2,000,000.00	\$2,578,879.30	\$6,578,879.30

**ATTACHMENT D
PERFORMANCE MEASUREMENT TABLE**

Study Area: Port of Newport International shipping facility 10 acre laydown yard.

Pre-project Measurement Date: August 1, 2016 to July 31, 2017

Pre-project Report Date: Due August 30, 2017

Project Outcomes Measurement Date: Accurate as of March 30, 2021

Project Outcomes Report Date: June 30, 2021

Table 1: Performance Measurement Table

Measure	Description of Measure	Measurement Period	Reporting Period
Gross Tons	Economic Competitiveness Gross Tons of Freight in 10 Acre laydown area. Freight broken down by type. TEU/FEU Project Cargo Timber (Raw / Processed) Other (Define)	Baseline Measurement: Annual average amounts, accurate for the Pre-project Measurement Dates Interim Performance Measures: Accurate as of March 1, 2018, the first day of the first reported quarter	Baseline Measurement: Pre-project Report Due Date August 30, 2017 Interim Performance Measures: Quarterly for a period of 3 years, First report due June 30, 2018.
Freight Movements	Economic Competitiveness Number of Freight units in the 10 acre Laydown yard broken down by freight type.	Baseline Measurement: Annual average amounts, accurate for the Pre-	Baseline Measurement: Pre-project Report Due Date August 30, 2017 Interim Performance Measures:

	<p>TEU/ FEU</p> <p>Bulk</p> <p>Project Cargo</p> <p>Other (Define)</p>	<p>project Measurement Dates</p> <p>Interim Performance Measures:</p> <p>Accurate as of March 1, 2018, the first day of the first reported quarter</p>	<p>Quarterly for a period of 3 years, First report due June 30, 2018.</p>
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**PORT OF NEWPORT
RESOLUTION NO. 2017-08**

**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 [Ordinance/Resolution/Order] 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 [Title of Officer] (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 25th day of April, 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 \$6,532,577.

“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 National 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	4,532,577
Contingency	647,391	0
Legal	15,700	0
Construction Management	127,500	0
Total	\$2,000,000	\$4,532,577

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

This agreement, dated this _____, 2017, 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 _____ Limited Liability Company authorized to do business in Oregon, hereinafter called "Silvan".

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, ports 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 to fund the development of property in the International Terminal area to promote economic development which will benefit both the Port and Silvan as well as other Port patrons; and

WHEREAS, the Port has agreements for funding from various sources and this project funding agreement will allow the 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 the cooperative project funding 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, the lease wherein Teevin is the log yard operator, more specifically described in said lease; and

WHEREAS, the initial improvements described in said lease require construction, the cost of which is addressed by the Port obtaining certain sums by grant and loan, a portion of which is addressed by this Agreement.

WHEREAS, Silvan has established and maintains an interest in log shipments out of Yaquina Bay, in construction 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 these certain Port properties, including the initial improvements described in the lease in and around and including 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 general area generally and the shipments of logs specifically; and

WHEREAS, Silvan desires to aid in the funding of the development of the initial improvement and Terminal property as provided for under the Lease; 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

The Port and Silvan agree to proceed with infrastructure improvements for the development of a 9 acre log handling facility in the Terminal area as described in the above mentioned lease (section 4 initial improvements). Improvements will include, at minimum and as needed or required, new and realigned access roads onto the site, maintaining maximum log shipping facilities and the relocation of all underground utilities where required, including sewer, water, electric, telephone and cable access. In addition, The Port shall provide and maintain public access to the Port of Newport's lessees that are located at adjacent parcels.

The Port and Silvan in conjunction with Teevin will create a coordinated plan for the development and improvement of the Port's Terminal 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.

2. Funding

Silvan agrees to provide \$2.5 million as its share of the funding for the above mentioned 9-acre log handling facility. The \$2.5 million will be used by the Port to fund the construction of the project in conjunction with funds that the Port is receiving from a \$2 million TIGER Grant and a \$2 million IFA loan. Any unused portions of Silvan's share of the funding will be returned to Silvan. In exchange, the Port agrees to pay, on a non-recourse basis, \$60,000.00 per year as interest on the above mentioned funding share until the funded amount is fully abated.

Notwithstanding anything to the contrary stated herein, Silvan agrees that for abatement of this funding obligation it will look solely to the abatement schedule or such other abatement source, if any, it may now or hereafter be given to abate the funding of this project, and 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.

Port agrees to account for the tariff income it may charge for Silvan-related shipping and wharfage fees (including dockage, service and facility fees) as a restricted fund until this Agreement is in force. As long as this Agreement is in force, is restricted fund can only be utilized for, and shall be distributed to, the following (in the following order):

- 1) Debt service payment to the IFA loan;
- 2) Labor cost for an additional employee to be hired to service the Terminal and;
- 3) After the amounts for 1 and 2 above are fully covered, the remaining amounts of this restricted fund shall be distributed 50/50 between the Port and Silvan with Silvan's portion to be applied as further abatement of the \$2.5 million funding.

This funding agreement and restrictions contained herein shall cease when Silvan's funding amount has been fully abated. The Port agrees to the extent of the law, to not increase tariff fees for Silvan sourced log shipments during the term of this Agreement.

Neither party is liable to the other for any obligations outside the simple terms of this Agreement. All funding contributions are on a non-recourse basis. In conjunction with this, the Teevin lease shall be allowed to renew as provided in the lease document, provided all terms of the lease are performing as agreed.

In the event that Silvan-sourced shipments cease to occur for more than a year, the Port has a right to terminate this Agreement. The Port agrees, in good faith, to make an exception in the case that abatement provided above is not fully completed; however, it is in the sole discretion of the Port on whether or not to provide this exception.

Finally, in response to the funding provided above, the Port agrees to maintain a Terminal berth depth to enable “handy” sized vessels to call into the International Terminal.

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 therewith, and no 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 hereunder are not of an income producing nature. Otherwise, if any such revenues are generated, they shall inure to the party having legal title to, or possession of, the facility producing such revenue, except as otherwise agreed. In no event will Silvan have any claim to the Port’s assets, revenue or finances outside of the terms of this Agreement. This funding agreement amount is not 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 above funding amount is fully abated as set forth and all terms shall have been accomplished, or until a year has passed with no Silvan shipments. 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

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 and by the cost. Each party agrees to exercise reasonably diligent efforts to obtain a source of 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.

8. Insurance

When, in the reasonable opinion of counsel, it shall be appropriate to do so, each party agrees, upon request, to cause the other party or parties hereto to be added as named insureds upon any policy or policies of insurance maintained by such party, with respect both to public liability insurance and with casualty insurance, in so far as such policies provide coverage with respect to shared activities or the parties or upon personal property or improvements to real property in which more than one of the parties may have an interest.

PORT OF NEWPORT

BY: _____

ATTEST: _____

SILVAN FOREST, LLC

BY: _____

ATTEST: _____

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 11-11-09-00-00101-00, (collectively, the "Property") as generally depicted on the attached Exhibit A, attached hereto and made a part hereof.

WHEREAS, Lessee desires to lease the Premises (defined below) 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. PREMISES. The "Premises" shall incorporate the Property as defined herein, Exhibit B.

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.

 - b. Termination Rights. In the event Lessee ceases to perform substantial business activities consistent with the authorized use of the Property for a period in excess of six 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. However, Lessee shall be responsible for all operating costs incurred with respect to the Premises.

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 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) all improvements outlined in the lay down yard specifications outlined in Exhibit C (collectively the ""Initial Improvements").

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 and other portable structures), 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 \$5,000,000 each occurrence, \$5,000,000 general aggregate, \$5,000,000 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

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: _____

PORT OF NEWPORT/RONDYS
OUTLINE OF AGREEMENTS
NOVEMBER 11, 2015

WETLAND MITIGATION AGREEMENT

1. Rondys will provide property to mitigate wetlands on Rondys property described as tax lot 100 and Port property described as tax lots 101, 400, 102 and 103.
2. The area to be provided is approximately 1.07 acres in size and is generally located at the southerly portion of tax lot 100. The approximate area of mitigation is shown on Exhibit A.
3. The Port will submit an application to permitting agencies for the wetland fill, removal and mitigation on the Port property ~~and the Rondys property~~. Rondys will cooperate in submitting and processing the applications. The parties will use John vanStaveren as wetlands consultant and to assist with the application. Initially, Rondys will be mitigating approximately .26 acres of wetland from Rondys property. Later, Rondys may mitigate additional wetlands from its property. The Port agrees to pay for the consultant and construction to mitigate all wetlands on Rondys property that may require mitigation in consideration of being able to mitigate Port wetlands on Rondys property.
4. The actual wetland remediation work for the Port property and the Rondys property at the mitigation site will be done by a contractor hired and paid for by Port but Rondys has the right to reasonably approve the contractor and has the right to approve all mitigation plans on Rondys property.
5. The wetland monitoring and compliance will be done and paid for by Port. If the Port fails to monitor then Rondys may do so and charge and recover from Port the expenses of such monitoring and any repair or additional work that is necessary to fully comply with all permits.
6. Rondys will grant Port an easement for the mitigation area and an easement to access the property. Said easement will be for purposes of monitoring and maintaining the mitigation area. The Port will pay for any damage caused to the Rondys property. Rondys will give Port an easement for a drain from Port property to the mitigation site. The Port will be responsible for maintaining the drainage way.
7. The construction of the mitigation area will begin on or about Summer September 2017 and the work will be diligently pursued to complete the work within a reasonable period of time thereafter but must be completed within any time parameters set forth in the permits.
8. The Port shall indemnify and hold Rondys harmless from any damages, claims and demands caused by construction and monitoring and repair of the wetland mitigation site.
9. The agreement will be binding on the heirs, successors and assigns of each of the parties.

✓

OK

is this still correct?

COST EST? →

how much? estimate

COST EST? →

OPS (minimum)

OPS (minimum)

OK

OK

DREDGE SPOILS AGREEMENT

- ok 1. Port has completed dredging project and has deposited dredge spoils on Rondys property.
- ok 2. Rondys has use of a portion of dredge spoils for filling its property and preparing the property for development.
- COST EST. → ok 3. 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.
- COST EST. → ok 4. Dredge spoils not needed or utilized on the Rondys property will be removed by the Port from Rondys property by Summer 2017. The cleanup of the property shall be in accordance with all applicable laws, rules and regulations. In the event the spoils are not removed by that date, Rondys shall be entitled to receive from the Port monthly rental in the amount of \$1 per month or Rondys may remove the material and the Port shall pay for the cost of such removal. *will be completed before rent.*
- COST EST. → ok 5. In conjunction with placing the dredge spoils on the Rondys property the Port shall remove approximately 20,000 cubic yards of topsoil from the Rondys property. The Port shall be responsible for removing from the site any topsoil not needed or requested by Rondys. *off the bus*
location of top soil on site on Rondys
- ok 6. The Port shall obtain any and all permits that are necessary to perform the work required under this agreement. Rondys as the property owner shall cooperate and sign applications and other documents necessary and convenient to allow the work to progress.
- ok 7. The Port represents that the dredge spoils are clean and are free from hazardous material.
- COST EST. → ok 8. 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.
- ok 9. The Port shall indemnify and hold Rondys harmless for any liability for work done in grading, levelling and compacting the dredge material and also from any other work in holding and removing the dredge spoils on the property.
- ok 10. The Port shall carry insurance for all work done on the property in the minimum amount of _____.
- ok { 11. Attorney Fee Provision.
- ok { 12. Notice and cure provision.
- ok { 13. Agreement binding on the successors and assigns of each party.
- ok { 14. Governed by Oregon law.

14k lot 1 1/2
6k
Barron's 9-acre.

ROAD AND UTILITY EASEMENT

1. There is presently a road located on the Rondys property that runs from Bay Boulevard to the International Terminal. The road is located on Rondys property and the Port was previously given an easement over the road. The parties desire to clarify the previous easement.
2. The easement shall be for the purpose of ingress and egress to the International Terminal and for utilities to serve the Port property. The road will also be used for access to the Rondys property and may be used for utilities to the Rondys property.
3. All utilities in the easement shall be placed underground.
4. The maintenance of the easement will be shared between the parties using the road pro rata based on usage and pursuant to ORS 105.170-105.185.
5. The condition to which the road will be maintained is a paved road approximately 40 ^{60 ft.} feet in width with an adequate subbase for heavy trucks, equipment and machinery.
6. Each party will indemnify and hold harmless the other party for each party's use of the road and those using the road under the auspices of one party of the other.
7. Each party will maintain adequate insurance which is defined as a general liability policy of at least standard per occurrence and standard in the aggregate. The Port's insurance policy shall name Rondys as an additional insured for and action regarding the easement.
8. Provision regarding good neighbor cooperation. The owner of the Rondys property will coordinate maintenance and repairs on the road. It will give the Port 30 days notice of repairs to be done and the breakdown of each party's percentage of repair costs. The Port must respond within 30 days if it disagrees with the proposal. If Port does not respond it is deemed to have accepted the breakdown. If the parties cannot agree on the repairs or maintenance to be done the matter shall be submitted to binding arbitration. If the parties cannot agree on an arbitrator, then the arbitration shall be done by the Arbitration Association of Portland or by the American Arbitration Association.
9. The easement will be perpetual and run with the Port property.
10. The agreement will be binding on the successors and assigns of each party.
11. Notice and cure provision.
12. Attorney fee provision.
13. Governed by Oregon law.
14. The easement road will not be dedicated as a public road unless both parties agree to the dedication.
15. The parties shall prepare a baseline report of the road within 45 days of the date of this agreement detailing the condition of the road and shall share in improvement to the road as follows:_____.
16. The Port shall grant to Rondys, an easement for utilities along the east side of Port's export facility.
17. Rondys has the right to approve all plans and improvements that affect the Rondys property.

- 10. In the event any suit or action is filed to enforce and term or condition of the agreement the prevailing party shall be entitled to recover from the losing parties the prevailing parties costs and reasonable attorney's fees including on appeal.
- 11. The Port shall carry adequate insurance to cover all work being done on the property.
- 12. Good neighbor provision to discuss issues as they arise.
- 13. Notice and cure provision except in cases of emergency or when damage would occur as a result of delay.
- 14. Governed by Oregon law.

ADDITINOAL PROVISIONS REGARDING DRAINAGE

- 1. Drainage from Port property described as tax lots 101, 102, 103 and 400 shall be allowed to drain onto Rondys property in a designated drainage way that drains to the wetland mitigation pond or to an outfall into the Bay.
- 2. The drainage from Bay Boulevard and any of the property lying northerly of Bay Boulevard shall be mitigated by improving drainage ditches along Bay Boulevard. The expenses of such mitigation within the public right of way along shall be shared equally between the Port and Rondys after the expenditure of any other funds from governmental entities such as urban renewal funds. The improvements along Bay Boulevard shall be completed by _____.
- 3. Rondys shall grant the Port and easement for the drainage channel to the wetland mitigation pond (referenced under the Wetland Mitigation Agreement).
- 4. No hazardous or toxic materials from the Port property or from any property lying northerly of the Port property shall be allowed in the drainage channel running across Rondys property or in the wetland mitigation pond.
- 5. Indemnification and hold harmless agreement from Port in favor of Rondys in the event any damages, claims and demands are made that any hazardous materials have been deposited on Rondys property from offsite.
- 6. Agreement binding on heirs, successors and assigns.
- 7. Notice and cure provision
- 8. Attorney fee provision.

NOT SURE ABOUT NEED FOR THIS

ok

ok

ok

ok

International Terminal Shipping Facility Financial Analysis

Year	1	2	3	4	5	6	7	8
Number of shipments	6	10	10	10	10	10	10	10
Tariff Proceeds	635,178	1,058,630	1,058,630	1,058,630	1,058,630	1,058,630	1,058,630	1,058,630
Agreement Costs	(192,462)	(192,462)	(192,462)	(192,462)	(192,462)	(192,462)	(192,462)	(192,462)
Net Tariff Proceeds	442,716	866,168	866,168	866,168	866,168	866,168	866,168	866,168
Abatement (@ 50%)	(221,358)	(433,084)	(433,084)	(433,084)	(433,084)	(433,084)	(113,222)	0
Reserve/Overhead/Loss	(168,000)	(245,000)	(245,000)	(245,000)	(245,000)	(245,000)	(245,000)	(245,000)
Income After Abatement	53,358	188,084	188,084	188,084	188,084	188,084	507,946	621,168
Amount Owed on Abatement	2,278,642	1,845,558	1,412,474	979,390	546,306	113,222	0	0
	136,719	110,733	84,748	58,763	32,778	6,793	0	0
	60,000	60,000	60,000	60,000	60,000	60,000		

* 6 shipments in the 1st year and 10 in each year after based on Sylvan projections. Average Tariff is \$105,863 per shipment

Overhead Dredging/Maint. (\$100k) and Ancillary Costs (\$5k/ship).

* Agreement Costs include Loan Payment (\$117k), Personnel Expenses (\$75k)

* Lost service revenue is 10% per 5 & 6 shipments (\$38k), 20% per 7 & 8 shipments and 25% per 9 and 10 shipments (\$95k)

* Net Operating Income includes tariff proceeds - additional costs - lost service revenue

* Abatement includes 50-50 split after subtracting \$192,462 for loan pmt. and personnel which are included in Additional Costs

* no tariff or lease rate increases over the abatement period

The International Terminal lost \$220k in FY15-16. The loss will be improved by adding the income after abatement line item.